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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 671/2017

Reserved on: 12th November, 2018

Decided on: 16th November, 2018

DR. KANWALJEET SINGH

.....Appellant

Through: Mr. Kunal Vinayak, Advocate.

versus

UNION OF INDIA & ORS.

....Respondents

Through: Mr. Dev P. Bhardwaj, CGSC with Ms
Akansha Mishra, Advocates for R1, 2
and 4.

Mr. Kanwal Chaudhary, Advocate for
R3 and 5.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

J U D G M E N T

Dr. S. Muralidhar, J.:

1.This appeal by Dr. Kanwaljeet Singh is directed against the judgment dated 8th August, 2017 dismissing his W.P.(C) No.7711/2016. In effect, the learned Single Judge negatived the plea of the Appellant that the appointment of the Respondent No.5 as Vice-Chancellor ('VC') of the Laxmibai National Institute of Physical Education, Gwalior ('LNIPE') by the order dated 23rd September 2015, pursuant to an approval order issued on the previous day i.e. 22nd September, 2015 by the Appointments Committee of the Cabinet ('ACC'), was illegal.

2. The background facts are that LNIPE is a society registered under the provisions of the Madhya Pradesh Societies Registration Act, 1973. It is a deemed university fully funded by the Ministry of Youth Affairs and Sports (YAS), Government of India. Consequently, in terms of the stand of the Respondents 1 to 4, the 'governance system and management structure is the sole prerogative of this Ministry'.

3. The appointment of the VC of the LNIPE is governed by Rule 26 of the Memorandum of Association ('MoA')/Rules 2014 of the LNIPE which reads as under:

“(i) The Vice Chancellor shall be a whole time salaried officer of the Institute and shall be appointed by the President of LNIPE, with the prior approval of Appointment Committee of Cabinet from a panel of three names suggested by a Search-cum-Selection Committee specifically constituted for the purpose by the Ministry of Youth Affairs and Sports, Government of India. The composition of the above Committee shall be as follows:-

- a. A nominee of the President of the LNIPE as the Chairperson of the search-cum-selection committee.
- b. A nominee of the Government of India (Ministry of Youth Affairs and Sports), who shall be an eminent academician / educationist nominated by the Central Government, preferably an ex-VC or .serving VC of any University funded by the Central / State Government.
- c. A nominee of the Board of Management — member.

Provided further that if the President does not, approve of any name as recommended by the search committee, he /she may call for a fresh panel."

4. In addition thereto, the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training (DOPT), New Delhi, Government of India issued an Office Memorandum ('OM') dated 30th July, 2007, setting out the instructions/principles applicable to the Search-cum-Selection Committee for posts in autonomous/statutory bodies under the Societies Registration Act. Clause 5 (v) of those principles, relevant to the present case, reads as under:

“v. the panel recommended by the Committee will have to be accepted in toto by the Ministry / Department: Any deviation In the matter will require the prior approval of the ACC”.

5. Apart from the above, there have been instructions issued from time to time by the same Ministry, requiring the Selection Committee to specify the order of merit. These instructions were issued by way of OM dated 17th July, 2012 and the OM dated 5th September, 2014. The last mentioned OM, requires to be set out in full and reads as under:

“OFFICE MEMORANDUM

Subject: Setting up of Search Committees/Search-cum-Selection Committees.

Attention of all Ministries/Departments is Invited to DoPT's OM no. AB.14017/11/2004-Estt. (RR) dated 25.05.2009 on the subject mentioned above conveying the direction of the AGO that the Selection Committee / Search-cum-Selection Committee should recommend panels In the order of merit. The ACC has, however, observed that in some of the cases submitted by various Ministries/Departments, the Selection Committees/Search-cum-Selection Committees are not recommending the panel In order of merit /preference.

2. In view of the above, the ACC has reiterated that unless statutorily required not to arrange the names in the panel in the order of preference, the Selection Committee/Search-cum-Selection Committee must invariably indicate the order of preference.

4. All the Ministries/ Departments etc. are requested to ensure compliance of these Instructions.”

6. As far as the facts in the present case are concerned, consequent upon the resignation of the then VC of the LNIPE on 26th September, 2012, the post fell vacant. Accordingly, on 8th December, 2014, a Search-cum-Selection Committee was constituted in accordance with Rule 26 of the Revised MoA/Rules – 2014. This Search-cum-Selection Committee held meetings on 19th and 20th March, 2015 at New Delhi and recommended a panel of three candidates for the post of VC, LNIPE, Gwalior in the following order:

- (i) Dr. Kanwaljeet Singh
- (ii) Dr. Dilip Kumar Dureha
- (iii) Dr. Nayana D. Nimkar

7. The matter was then placed before the Minister of State (‘MoS’) for YAS. This Court has seen the original noting of the Minister where he simply notes as under:

“I have examined the bio-data of all three candidates. I recommend Dr. Dilip Kumar Dureha considering his merits. We may seek ACC approval for the same.”

8. Thus it is seen that the above note sets out the conclusions but gives no reasons for the decision of MoS (YAS) for his decision to choose Respondent No.5, who was second in the order of merit in the panel

prepared by the Selection Committee, except to say that he has examined the bio-data of all three candidates and he recommends Respondent No.5 “considering his merits”.

9. At the next stage, it appears that the entire file, including the CVs of the three candidates was sent to ACC. However, the note placed before the ACC, which is contained in the separate file that has been shown to this Court, states that only the case of the Respondent No. 5 was processed and since he was found fit in all respects, approval was sought for his appointment. The ACC apparently then cleared the appointment of the Respondent No. 5. Thereafter, the order appointing him as VC was issued.

10. The learned Single Judge was of the view that although the OMs issued by the department have mandated that the Selection Committee must invariably indicate the order of preference, there was no such stipulation in Rule 26 of the MoA/Rules of the LNIPE. The learned Single Judge observed that there was nothing in Rule 26 which suggested that “the person at serial number one, only needs to be appointed.” The learned Single Judge then concluded that “any person whose name finds mention in the panel, can be appointed but with reasons on the file for recommending/appointing the person, lower in the order of preference.”

11. The learned Single Judge perused the note sheets, which this Court has also perused. The note placed before the MoS (I/C) (YAS) recorded that the Selection Committee had recommended the three names “in order of preference” and further stated there that their “CVs are placed below for orders.” The learned Single Judge rightly notes that the MoS states that he

had examined the bio-data of all three candidates and then recommended the name of the Respondent No. 5.

12. Learned counsel for the Respondent Nos. 1 to 4 submitted that the above noting of the MoS had to be understood as indicating that he found the Respondent No. 5 to be better than the other two candidates on a comparison of their relative merits. However, the Court finds that the noting of the MoS is silent as to the reasons that weighed with the MoS in picking up Respondent No.5 from amongst the three candidates shortlisted.

13. On behalf of the Respondent No.5, it was urged that Rule 26 did not require the making of recommendation in any order of preference. Therefore, in picking up the Respondent No.5, there was no deviation from the panel. It was only if there was a deviation from the panel, should the prior approval of the ACC be obtained.

14. As far as this submission is concerned, it appears that even according to the Respondent Nos. 1 to 4, it was necessary to get the prior approval of the ACC because in their view there was a deviation from the order of preference in terms of merits, as determined by the Selection Committee. This submission, therefore, does not find favour with this Court.

15. There had to be some purpose to three OMs of the Department requiring the Search-cum-Selection Committee to recommend a panel in the order of merit. This was by way of acknowledgment that the opinion of the Selection Committee, which invariably comprises of experts, should be given due weightage. Even if one were to accept the plea of the Respondents that

under Rule 26, the MoS (YAS) was not bound to accept the order of preference determined by the Selection Committee, surely the MoS had to give reasons as to why he was not going by that order of preference.

16. It was repeatedly urged on behalf of the Respondents that Rule 26 gave the power to the MoS to pick up any candidate of his choice from the panel of names placed before him. While this, on a first blush, may flow from a bare reading of Rule 26, it must be underscored that such power is coupled with responsibility. The power must be exercised for valid reasons, which must be discernible from the decision itself. The acts of public officials in exercise of statutory powers must be informed by reasons that are disclosed. Reasons are the very life-breath of a decision and without reasons the decision of the public official cannot *per se* be justified in law. This position is fairly well settled in a catena of decisions, to which a brief reference may be made hereafter.

17. The Supreme Court, in its decision in ***Ravi Yashwant Bhoir v. District Collector, Raigad (2012) 4 SCC 407***, made the following pertinent observation:

“36. The emphasis on recording reason is that if the decision reveals the 'inscrutable face of the sphinx', it can be its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. In other words, a speaking out, the

inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.”

18. This Court, in its decision in *Prakash Atlanta JV v. National Highway Authority of India* 169 (2010) DLT 664, considered the judgment of the Constitution Bench of the Supreme Court in *S. N. Mukherjee v. Union of India* (1990) 4 SCC 594 and made the following observations:

“23. The requirement of an administrative authority to record reasons for its decisions was considered by the Constitution Bench of the Supreme Court in *S. N. Mukherjee v. Union of India* (supra). In para 9 of the said judgment (AIR @ p. 1988) one of the first questions formulated was "is there any general principle of law which requires an administrative authority to record the reasons for its decisions". It was noticed that there was a divergence of opinion on the issue in common law countries. While in the United States of America, the Federal Administrative Procedure Act, 1946 required administrative decisions to indicate a statement of findings and conclusions as well as reasons or basis therefor, in England there was no such requirement. A reference was then made to the recommendations of the Donoughmore Committee and the Franks Committee which led to the enactment in the United Kingdom (U.K.) of the Tribunals and Enquiries Act, 1958 which mandated the tribunal or Minister to furnish a statement, either written or oral, and the reasons for the decision, if requested, on or before the giving of notification of the decision to support the decision. The Tribunals and Enquiries Act, 1971 also contained a similar provision. As far as India was concerned, the 14th Report of the Law Commission of India relating to reforms in judicial administration, recommended that administrative decisions should be accompanied by reasons. A reference was made to the decision of the Supreme Court in *Madhya Pradesh Industries Ltd. v. Union of India* (supra) and *Bhagat Raja v. Union of India* AIR 1967 SC 1606. Reference was also made to the decisions in *Travancore Rayon Ltd. v. Union of India* AIR 1971 SC 862; *Mahabir Prasad Santosh*

Kumar v. State of U.P. AIR 1970 SC 1302 and Raipur Development Authority v. Chokhamal Contractors AIR 1990 SC 1426. Thereafter in paras 34 and 35, the Supreme Court observed as under (AIR @ p. 1995):

"34. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its

decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge. "

24. Thereafter in para 38, the Supreme Court observed "keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities". The decision in *S. N. Mukherjee v. Union of India* by Constitution Bench of the Supreme Court, rendered in the context of court martial proceedings under the Army Act 1950, has been consistently followed by the courts in other contexts as well and in particular in the context of orders blacklisting contractors. The decision of the Supreme Court in *Madhya Pradesh Industries Ltd.*, to which a reference is made by the

learned senior counsel for the NHAI, was considered by the Constitution Bench of the Supreme Court in *S. N. Mukherjee* which then explained the law as noted hereinbefore. Therefore, the decision of the larger Bench in *S. N. Mukherjee*, which has been consistently followed by this Court in the decisions noted hereinafter, holds the field.”

19. In its decision in *Mekaster Trading Corporation v. Union of India* 106 (2003) DLT 573, this Court was to consider the blacklisting of a contractor and made the following observations with regard to an administrative order passed without proffering any reasons for doing so:

“24. Thus, the most impelling consideration for insistence upon disclosure of reasons in support of an order or decision is that it ensures proper application of mind, reduces the possibility of casualness and minimises whim and caprice, and thereby serves to provide legal protection to persons against arbitrary official conduct [See *Bhagat Raja v. Union of India*, [1967] 3 SCR 302; *Travancore Rayons v. Union of India*, 1978 (2) ELT 378 (SC); and *C.B. Gautam v. Union of India*, [1993] 199 ITR 530 (SC)] .

25. Another judicial rationale for requirement of reasons is that a person affected by an adverse order is entitled to know why the decision has gone against him or her. The decision might be perfectly right, but the person against whom it was made was left with the real grievance that he was not told why the decision had been made (See *Poyser and Mills' Arbitration*, [1964] 2 QB 467). The obligation to give reasons according to the decision of the Supreme Court in *Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India*, AIR 1976 SC 1785 stems from the mandate of natural justice. The Court held that absence of reasons leads to denial of justice because "the rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law".

These threads were picked up and given a further boost in *Organo Chemical Industries v. Union of India*, AIR 1979 SC 1803. There, the Court emphasised that one of the requirements of natural justice was "spelling out reasons for the order made, in other words, a speaking order. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance".

26. The recording of such reasons is imperative not only when the administrative authority discharges quasi-judicial function but also it is a pure administrative function and the decision is visited by civil or evil consequences as far as affected party is concerned (See *Ramesh B. Desai v. Union of India*, AIR 1988 Delhi 288). So far as cases of blacklisting are concerned, this requirement will, all the more, be imperative having regard to the spirit of the judgments of the Supreme Court in the cases of *M/s. Erusian Equipment* (supra) and *M/s. Star Enterprises* (supra)."

20. In the present case, while the MoS (YAS) in his note states that he had examined the CVs of the three candidates, he gives no indication why he considers the Respondent No. 5 to be better than the other two. In particular, there is no indication why he is overlooking the candidature of the present Appellant, who is at serial number one in the order of merit. Since there are no reasons whatsoever given in the decision of the MoS, it is difficult to accept the reasoning of the learned Single Judge that the MoS did exercise his power for valid reasons in selecting the Respondent No.5.

21. Even as regards what transpired before the ACC, the learned Single Judge notes in paragraph 14 of the impugned judgment as under:

"14. During the course of the arguments it was put to Mr. Sanjay Jain, Ld ASG as to what was the material, which was sent to the ACC for its approval as it is the case of the

petitioner, that the Ministry/Department had not forwarded the correct/complete facts and information with respect to recommendation made by the Search cum Selection Committee to the ACC and had in fact deliberately omitted the phrase 'in order of preference'. Mr. Jain has pointed out the record, which has already been filed by the petitioner between pages 95 to 125 of the paper book. The said record includes the recommendation made by the Search cum Selection Committee, particulars of the Officers including qualification and experience, extract of Rule 26 etc. There is nothing to deduce that the ACC has not considered the said recommendation while approving the name of respondent No.5 for appointment. This answers the plea of the petitioner that the phrase 'in order of preference' has been deliberately omitted in the OM dated July 23, 2015. The OM dated July 23, 2015 did state that the Minister of State (I/C) had recommended the name of respondent No. 5 for the post of Vice Chancellor. In any case, it is expected that the ACC is aware of all the instructions issued from time to time by the DoP&T, which have been referred above.”

22. A careful reading of the above reasoning shows that the learned Single Judge has adopted a negative reasoning by stating that the silence in the file as regards the reasons that weighed with the ACC for approving the name of the Respondent No.5 for appointment leads to the inference that it had in fact considered the recommendation made by the Selection Committee. The phrase “There is nothing to deduce that the ACC has not considered the said recommendation” is, in the considered view of this Court, not an acceptable reasoning particularly since the exercise of powers by public authorities has to be backed by reasons found in the file noting. There has to be an indication that the ACC considered the entire record before accepting the recommendation made. There is nothing in fact to indicate in the file that the ACC did examine the recommendations of the Selection Committee and

thereafter decided to accept the decision of the MoS, recommending the appointment of the Respondent No.5.

23. Consequently, this Court is of the view that neither the decision of the MoS recommending the Respondent No.5 for the post of VC in LNIPE nor the decision of the ACC granting approval for such an appointment can be said to be sustained in law.

24. This Court is informed that the Appellant was 63 years old at the time of his application for the post of VC and the appointment was for 7 years or till he attains the age of 70, whichever is earlier. Therefore, it is not correct on behalf of the Respondents to contend that the Appellant would now stand disqualified on account of his age. If he is selected even now pursuant to the decision of this Court, he can serve in the post of VC till he attains the age of 70 years.

25. In result, the Court issues the following directions:

- (i) The impugned judgment of the learned Single Judge is hereby set aside as is the decision dated 23rd July 2015 of the Minister of State (YAS) and the order dated 23rd September 2015 issued by the ACC appointing the Respondent No.5 to the post of VC.
- (ii) The papers now be placed before the MoS (YAS) for a fresh decision in accordance with law uninfluenced by the earlier decision, within a period of four weeks from today.
- (iii) In the event that the MoS decides not to accept the order of preference set out by the Selection Committee, then the papers will be placed,

with the reasons given by the MoS for such deviation before the ACC within a period of four weeks thereafter and the decision thereon by the ACC will be taken within four weeks from the date the papers are placed before it for consideration. At each stage the reasons for the decision must be evident from the decision itself.

- (iv) The entire exercise as directed above will be completed within a period of eight weeks from today and the decision thereafter communicated to the Appellant within a period of one week thereafter.
- (v) If the Appellant is still aggrieved by the said decision, it will be open to him to seek appropriate remedies in accordance with law.

26. The appeal is disposed of with above directions.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 16, 2018

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