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W.P.(MD).No.16076 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 13.09.2022

ORDER PRONOUNCED ON : 20.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.16076 of 2012

The Chairman
The Rajaas Engineering College
Raja Nagar, Vadakangulam 627 116
Tirunelveli District

....Petitioner

Vs

The All India Council for Technical Education
Represented by its Advisor
7th Floor, Chanderlok Building
Janpathy
New Delhi 110 001

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order file No.N-1/2012-13/NQ/SRO dated 21.06.2012 issued by the respondent and quash the same and consequently direct the respondent to refund the amount of Rs.26,00,000/- to the petitioner.

For Petitioner : Mr.M.Mahaboob Athiff

For Respondent : Mr.N.Dilip Kumar



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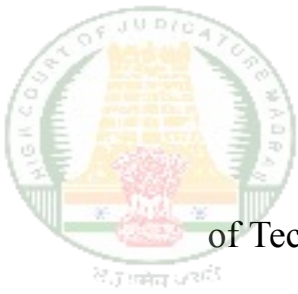
ORDER

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The present writ petition has been filed challenging an order passed by the respondent herein under which they have imposed a penalty of Rs.26/- lakhs on the petitioner College for admitting excess students under NRI quota for the academic year 2011-2012.

2.According to the petitioner, the Rajaas College of Engineering was founded in the year 1984 and they are offering under graduate and post graduate courses. They have been duly approved by All India Council for Technical Education (AICTE). According to the petitioner College, in the year 2010, they have submitted an application to the respondent seeking extension of approval for the year 2011-2012 and it was mentioned in the said application that there is no proposal for admitting the students under NRI quota.

3.According to the petitioner, they received a communication from the Commissioner of Technical Education, Chennai on 14.06.2011 that up to 5% of sanctioned intake per cut-off marks could be admitted under NRI quota. Relying upon the said communication, the petitioner College had provisionally admitted four students under NRI quota for the said academic year. However, when the admission list was sent for approval to the Director



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of Technical Education, the same was rejected on the ground that the College does not have approval for the intake of the students under NRI quota. Immediately, the petitioner college has given transfer certificates to those students and also refunded the fees paid by them and those students have not even appeared for the first semester examination.

4.The petitioner had further contended that a show cause notice was issued by the respondent herein on 28.05.2012 calling for explanation why action should not be initiated for admitting the students under NRI quota without proper approval of the respondent herein. The petitioner is said to have submitted a reply on 31.05.2012. However, the learned counsel for the respondent contended that no such reply was received by the respondent. Thereafter, the present impugned order has been passed by the respondent imposing a penalty of Rs.26/- lakhs on the petitioner College for excess admission under NRI quota. The said impugned order is under challenge in the present writ petition.

5.The learned counsel for the petitioner has contended as follows:

(i). The four students were admitted under NRI quota for the academic year 2011-2011 only relying upon the communication of the Director of Technical Education dated 14.06.2011. However, when the said Directorate



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had refused to approve the admission, all the four students were discharged from the College and their fees were also refunded in total. Those students have not even appeared for the first semester examination. Since the petitioner College came to know about the irregular admission, they have taken immediate action and removed the students from the roll.

(ii). The regulation of the respondent published on 15.01.2010 indicates that admitting excess students than the approved seats would attract seven types of punishments. However, in the show cause notice only the breach of regulation No.11.3 was pointed out but not the consequence of the said breach. In other words, the nature of punishments that is sought to be imposed by the respondent was not mentioned. Unless the course of action to be adopted by the respondent is mentioned in the show cause, the petitioner College would not be in a position to offer their effective explanation. The learned counsel had relied upon a judgement of the Hon'ble Supreme Court in a judgement reported *in 2014 9 SCC 105 (Gorkha Security Services Vs. Government (NCT of Delhi) and others)* and specifically relied upon Paragraph Nos.21 and 22 and contended that the show cause should specifically mention about the particular penalty/action which is proposed to be taken. Unless the proposed punishment is stated, the show cause is defective and consequential impugned order is also not legally sustainable.



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(iii). Pursuant to the show cause notice, a written explanation was submitted by the petitioner College on 31.05.2012 and they have also appeared for a personal hearing. A perusal of the impugned order indicates that none of the contentions have been referred to. Without considering any one of the explanations offered by the writ petitioner College, the order impugned in the writ petition has been passed imposing huge penalty of Rs.26/- lakhs.

(iv). The learned counsel had relied upon a judgement of the Hon'ble Supreme Court reported *in (2010) 9 SCC 496 (Kranti Associates Private Limited and another Vs. Masood Ahmed Khan and others)* specifically Paragraph Nos.46 and 47 to contend that unless the authorities record reasons, it becomes an opaque order and cannot be subjected to any judicial review. Hence, recording reason in an order is part and parcel of principles of natural justice. Since there is a violation of the said principle, the impugned order is liable to be set aside.

(iv). The learned counsel for the petitioner had further contended that the College fees received by the said four students has been refunded to them and they have not even appeared for the first semester examination. In such an event, the respondent was not right in imposing penalty of fee equal to five



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times of the total fee calculated per student admitted in excess of the approved strength. The admission of the students was only provisional and subject to the approval of the Director of Technical Education. When the students had been removed from the rolls with repayment of fees, the respondent could not have invoked the said penalty. The said penalty has been imposed as if the students have continued the course and appeared for the first semester examination. Hence, the order is vitiated by the fact that it is a result of non application of mind.

(v). The learned counsel had further contended that the students having been removed from the rolls and fees have been repaid, the imposition and penalty of huge amount of Rs.26/- lakhs is disproportionate to the alleged breach. He had further contended that Regulation No.11.3(a) empowers the respondent to impose a penalty equivalent to five times of the total fee collected per student. In the present case, the respondent has proceeded to calculate fee for each student for four years period and has arrived at a sum of Rs.26/- lakhs. But in reality, the four students had studied only for a period of six months and even before appearing for the first semester, they have left the College and fees were also refunded. Hence, he prayed for allowing the writ petition.



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6.The contentions of the learned counsel for the respondent as follows:

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(i). The penalty was imposed upon the petitioner College under the impugned order dated 21.06.2012. The petitioner College has paid the penalty and after six months the present writ petition has been filed seeking to quash the order impugned in the writ petition and for a direction to refund the amount. Having paid the penalty, the petitioner College is estopped from contending that the order impugned in the writ petition is not legally sustainable.

(ii).As per regulation No.5, an appeal is provided before the Appellate Committee which is constituted by the Chairman, AICTE. When an effective alternative remedy is available, the present writ petition challenging the impugned order is not maintainable.

(iii).The learned counsel had further contended that though seven types of punishments are enumerated for excess admission as contemplated under Regulation No.11.3, the least punishment has been imposed upon the writ petitioner College. This punishment would only have financial implication. All other punishments would result in reduction in strength or affect the approval of the course or College. Hence, the contention of the learned counter for the petitioner that the explanation has not been properly considered is not legally sustainable. When the most lesser punishment has



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been imposed upon the College, after breach has been admitted by them during the personal enquiry, the petitioner cannot have any grievance whatsoever with the penalty imposed in the impugned order.

(iv). The learned counsel for the respondent had further contended that after paying penalty as imposed in the impugned order, the present writ petition has been filed after a delay of six months which has not been properly explained in the writ affidavit. Only after payment of penalty, the student strength for the next academic year was approved by the respondent herein.

(v).The learned counsel had further contended that the petitioner had applied for their extension of approval for the academic year 2011-2012 and the same was granted by an order dated 01.09.2011. The said order specifically discloses that the petitioner College is not entitled to admit any students under NRI quota. However, the students have been sent out of the College only in November 2011 and January 2012. Hence, the contention of the writ petitioner that they relied upon an order dated 14.06.2011 passed by the Director of Technical Education is not legally acceptable. When an order has been passed by the competent authority on 01.09.2011, instead of following the said order, they cannot follow the order dated 14.06.2011.

(vi). The learned counsel for the respondent had further contended that the petitioner College had paid the penalty only as a consideration to obtain



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an extension of approval for the academic year 2011-2012. Only based upon the payment of the said penalty, the extension of approval was granted.

Thereafter, they cannot turn around and contend that the imposition and penalty is bad in the eye of law.

(vii). The learned counsel had further contended that it is an admitted fact that the petitioner College has committed breach of extension of approval order and has admitted students under NRI quota. The said fact was also admitted by them during the personal hearing. Only based upon the said admission, the present impugned order imposing penalty was passed. The petitioner College has also accepted the said order and paid the penalty by getting an order of extension of approval for the next academic year. Therefore, the petitioner cannot contend that the show cause was defective and the impugned order was bereft of any reason especially after complying with the said impugned order.

7.I have considered the submissions made on either side and perused the materials available on record.

8.It is an admitted fact that the petitioner Engineering College had not received any approval for admitting the students under NRI quota for the year 2011 -2012 from the respondent.



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9. According to the petitioner College, they had relied upon a communication issued by the Directorate of Technical Education on 14.06.2011 permitting the College for an intake of 5% of total strength as NRI student. However, the said fact is refuted by the respondent on the ground that on 01.09.2011 they have granted extension of approval without NRI quota.

10. In the light of the above said facts, let us consider the contents of the show cause notice. The show cause has been issued as against the petitioner College calling upon them why action should not be initiated for admitting the students under NRI quota. The show cause notice also pointed out that why appropriate actions, including withdrawal of the approval cannot be initiated against the institution for non-observance of the terms and conditions of approval as also for misleading the AICTE by its self disclosure/declaration of false information.

11. There is no dispute that the respondent authorities are empowered to initiate action as contemplated under Regulation No.11.3 for admitting excess students than the approved strength. A perusal of the above said regulation clearly indicates that seven types of punishments/penalties are enumerated under the said Regulation. It is left to the complete discretion of



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the respondent herein to invoke and impose any one of those penalties/punishments, depending upon the facts and circumstances of each case and gravity of the breach committed by the College and the habitual nature of the breach. Once a discretion is granted to an administrative authority to impose penalty by choosing any of the punishments/penalties, it is all the more necessary that the nature of punishment to be imposed as against the petitioner College should have been specifically mentioned in the show cause notice. The Hon'ble Supreme Court in its judgement reported ***in (2014) 9 SCC 105 (Gorkha Security Services Vs. The Government (NCT of Delhi) and others)***, Paragraph Nos.21 and 22 are extracted as follows:

“21) The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.



22) *The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:*

i) The material/ grounds to be stated on which according to the Department necessitates an action;

ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

we may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.

12.A perusal of the above said judgement will clearly reveal that it should not only contain a statement of imputations calling for explanation but the nature of proposed action should also be mentioned. Only that the noticee would be in a position to point out that the proposed action is not warranted in the given case, even if the breach is not satisfactorily explained. In the present case, a penalty of Rs.26/- lakhs has been imposed upon the College



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on the ground that they have admitted four students under NRI quota without any approval. The quantum of penalty has been arrived at on the basis of the tuition fee paid by the four students for their four years course. If the proposed action of imposing monetary penalty had been disclosed in the show cause, the petitioner could have very well pointed out that all the four students were given transfer certificate even before their appearance for the first semester examination and tuition fee was also refunded. Hence, non mentioning of the proposed punishment has clearly vitiated the order impugned in the writ petition.

13.A perusal of the order impugned in the writ petition discloses that the Standing Complaint Committee has recommended for imposing five times fees per student against each excess admission as a penalty. Thereafter, the penalty has been calculated for four years period and a direction has been issued to pay the said much sum of Rs.26/- lakhs within a period of 15 days. When the show cause notice was issued on 28.05.2012, all the four students have already left the College without appearing for the first semester examination after getting back their fees. However, under the impugned order a penalty has been imposed on 21.06.2012 for a sum of Rs.26/- lakhs. Hence, it is clear that despite an explanation being offered, the said explanation has not been considered and the impugned order has been passed. The impugned



order does not reflect the explanation submitted by the writ petitioner or any discussion about the delinquency of the petitioner College or about the proportionality of the punishment to be imposed upon the writ petitioner College. The Hon'ble Supreme Court in a judgement reported ***in (2010) 9 SCC 496 (Kranti Associates Private Limited and another Vs. Masood Ahmed Khan and others)*** in Paragraph Nos.46 and 47 have held as follows:

“46. The position in the United States has been indicated by this Court in S.N. Mukherjee in SCC P.602, para 11 : AIR 11 at p. 1988 of the judgment. This Court held that in the United States the Courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the Court cannot exercise their duty of review unless they are advised of the considerations underlying the action under review".In S.N. Mukherjee this court relied on the decisions of the U.S. Court in [Securities and Exchange Commission vs. Chenery Corporation](#), and [Dunlop v. Bachowski](#), in support of its opinion discussed above.

47. Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.



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c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.



j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to [Article 6](#) of European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of



law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

14.A perusal of the Hon'ble Supreme Court clearly reveals that the reasons or its indispensable components of a decision making process are part of the principles of natural justice. The reasons reassure that the discretion has been exercised by the authorities on the relevant ground disregarding extraneous consideration. In the present case, the impugned order merely records the recommendation of the committee and proceeded to impose penalty. Hence, the order impugned in the writ petition is a non speaking order which is liable to be set aside.

15.The learned counsel for the respondent had contended that an appeal remedy is available under Regulation No.5 and without invoking the said remedy, the present writ petition is not maintainable. The writ petition has been filed in the year 2012 and at this point of time, the writ petition cannot be dismissed on the ground of alternative remedy. Moreover, unless a reasoned order has been passed, the question of driving the writ petitioner to an alternative remedy does not arise.

16.The impugned order has been passed on 21.06.2012 directing the petitioner College to pay a penalty of Rs.26/- lakhs. According to the learned



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counsel for the respondent, the said amount has been paid on 28.06.2012.

Once the petitioner has accepted the impugned order and paid the penalty, thereafter, he cannot turn around and contend that the impugned order is erroneous. Mere payment of penalty would not take away the right of the writ petitioner to challenge the said order, in case, if it is passed in violation of principles of natural justice and the order is bereft of any reason.

17.The contention of the learned counsel for the respondent is that only a most lesser punishment has been imposed and hence, the writ petition is not maintainable. The lesser punishment namely imposition of penalty has got a connection with number of students admitted and the fees collected from the said students. In the present case, as stated supra, those students have been sent out after refund of the fees even before issuance of show cause notice. Just because a lesser punishment is being imposed, the contention that the reasons need not be assigned in the said impugned order is not legally sustainable. Had this lesser punishment being disclosed in the show cause, the petitioner would have been in a better position to submit his reply that the students have not continued their courses and they were sent out of the College, in view of rejection of their admission by the Director of Technical Education. Hence, the said contention is not legally sustainable.



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18. In view of the above said discussion, I find that the order impugned in the writ petition is not legally sustainable and hence, it is set aside. The writ petition stands allowed. No costs.

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