
(1995) 10 DEL CK 0046

In the Delhi High Court

Case No : Civil Writ Petition No. 2977 of 1995

Ashok K. Mittal

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 01-10-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 35 DRJ 673

Hon'ble Judges : P.K. Bahri, J;J.B. Goel, J

Bench : Division Bench

Advocate : S.C. Gupta, L.R. Goel, Jitendra Sharma, Gunwant Dara, Rekha Agarwal, V.P. Singh and Ajay Verma, for the Appellant;

Judgement

P.K. Bahri, J.

(1) The petitioner has sought writ of certiorari seeking quashment of the decision dated July 22, 1995 of respondent No. 3, the Governing Body of Hindu College, by which ignoring; the recommendations made by the Selection Committee recommending the name of the petitioner for the post of Principal of the said B college, had directed the issuance of fresh advertisement for recruitment to the said post and for directions to the Governing Body to forward the report of the statutory Selection Committee dated July 18. 1995 to Delhi University for further consideration in accordance with the statutory Ordinance of the Delhi University.

(2) The Hindu College is one of the prestigious colleges of the National Capital Territory of Delhi and enjoys a high academic reputation as only students securing very high percentage of marks in various subjects in Senior Higher Secondary Examination are granted admission to various subjects in this college.

(3) The post of Principal in this college had fallen vacant and procedure has been prescribed under Ordinance xviii (7)(2) under the Delhi University Act for filling the post of Principal in affiliated colleges of Delhi University. The said Ordinance lays down that B the appointment of the Principal shall be made by the

Governing Body of the college on the recommendation? of a Selection Committee. The Ordinance also specifies the persons who would be the members of such a Selection Committee, inter alia, which would include two representatives of the University who are on the Governing Body and one expert nominated by the Academic Council for the purpose besides the Chairman of the Governing Body and two more nominees of the Governing Body. It also lays down that before any such recommendation of the Selection Committee is accepted for making appointment to the post of Principal, the Governing Body has to, before final selection, and appointment, submit to the University a list of persons who had applied for the post of Principal and also names of persons who may not have applied but whose names the Governing Body may desire to consider for the post in a form as prescribed by the University and shall indicate the persons from whom, in its opinion, the final selection may be made.

(4) The Ordinance further lays down that on such list being submitted by the Governing Body, the same shall be considered by another Selection Committee comprising; the Vice Chancellor, Pro-Vice Chancellor, nominee of the Visitor. Chairman of the Governing Body and two members of the Executive Council nominated by that Council and on the recommendation of such Selection Committee the University will transmit to the Governing Body a list of persons mentioned in the order of preference whom the University would be prepared to recognise as Principal or if none of the applicants are considered suitable, shall refrain from sending the list in which case the post shall be re-advertised. There is then a proviso added to the said Ordinance with which we are not concerned in" the present case.

(5) In consonance with the Ordinance, the post of Principal was advertised and the petitioner, who is one of the lecturers functioning in the Hindu College, along with others had" applied for the said post. The initial Selection Committee had approved the name of the petitioner for the said post and the matter then was put up before the Governing Body of the college which passed the impugned order requiring that the fresh advertisement be issued for filling up the post of Principal

(6) This order of the Governing Body is challenged by the petitioner on the ground that this order does not contain any reasons for not accepting the recommendation of the Selection Committee and for not forwarding the report of the Selection Committee as well as the names of all the applicants to the University for being considered by another Selection Committee in accordance with the Ordinance. It is also the case of the petitioner that the decision of the Selection Committee was unanimous and" five members of the Selection Committee were also the members of the Governing Body and the decision of the Governing Body, which is bereft of the reason"s, is on the face of it capricious and arbitrary and is liable to be struck down.

(7) On behalf of the Governing Body of the Hindu College, counter affidavit has been filed by Officiating Principal-cum-Secretary of the Governing Body. It has

been averred that the petitioner has no legal right the breach of which he could make grievance of in filing the present petition and thus he has no locus standi to challenge the order of the Governing Body requiring the re-advertisement of the post. It has been further pleaded that there is no legal requirement for the Governing Body to have given any reasons for its decision in question. It was urged that the Governing Body being the appointing authority for the post of Principal is within its right to reject the recommendation of the Selection Committee and direct for re-advertisement of the post to have more meritorious candidates for consideration for appointment to the post of Principal.

(8) During the course of the arguments the learned counsel for respondents 2 & 3 disclosed to the Court that the record which was available with the Governing Body at the time it took the decision in question can be shown to this Court which would reveal the reasons which prevailed with the Governing Body in not accepting the recommendations of the Selection Committee.

(9) The learned counsel for the petitioner, on the other hand, had argued that the impugned order being void ab initio as it did not contain any reasons for rejecting the recommendation of the Selection Committee, the respondents 2 & 3 are debarred legally from showing any reasons for taking the aforesaid decision. Normally in a writ of certiorari, the Court is entitled to look into the record to determine as to what reasons had been taken into consideration by the Administrative Body in arriving at a particular decision.

(10) Learned counsel for the petitioner, however, has urged that the petitioner is resting his case only on a legal issue that the Governing Body was legally bound to give reasons in its order itself and as it had not given any reasons, the impugned order cannot be supplemented with reasons available on the record in order to make it valid.

(11) So, the short question which has been agitated before us is as to whether the impugned order is void as it did not contain any reasons.

(12) It is, indeed, not disputed before us that the Governing Body while passing the impugned order, was not acting in any judicial or quasi-judicial capacity and it is purely an administrative order passed by the Governing Body. There is no statutory requirement under the Delhi University Act or under any rules or regulations of the college which require the Governing Body to give reasons for its administrative decisions and for passing any administrative orders.

(13) In Administrative Law by H.W.R. Wade, Seventh Edition at page 541, the learned authors have laid down that the principle of natural justice has not in the past included any general rule that reasons should be given for decisions and there appears to be no such rule even in the courts of law themselves and it has not been thought suitable to create one for administrative bodies. Nevertheless there is a strong case to be made for the giving of reasons as an essential element of administrative justice. The need for it has been sharply exposed by the

expanding law of judicial review now that so many decisions are liable to be quashed or appeals against on ground of improper purpose, irrelevant consideration and errors of law of various kinds, it was further mentioned the a right to reason is, Therefore, an indispensable part of a sound system of judicial review and natural justice may provide the been rubric for it since the giving of reasons is required by the ordinary man's sense of justice.

(14) In the book de Smith's Judicial Review of Administrative Action. Fourth Edition at page 346, it has desire mentioned that has often been asserted in judicial dicta and academic literature that all statutory powers or at least all statutory powers directly impinged ing on private rights must be exercised reasonably and inasmuch as powers are conferred object to an implied requirement that they be exercised reasonably and authority failing to comply with these requirements acts unlawfully or ultra vires.

(15) In a book Administrative Law by R. Dayal at page 126, the learned author has mentioned that the authorities or bodies which are given jurisdiction by statutory provisions to deal with the rights of citizen may be required by relevant statutes to act judicially in dealing with the matters entrusted to them and further, an obligation to act judicially may, in some cases, be inferred from the scheme of the relevant statutes and its material provisions. The learned author further laid down that if it appears that the authority or body has been given power to determine questions affecting the rights of citizens, the very nature of the power inevitably imposes the limitation that the power should be exercised in conformity with the principles of natural justice.

(16) It is quite settled that in case the administrative authority or body is to perform any quasi-judicial function or judicial function, then it has to conform to the principles of natural justice and one of its elements is to give reasons for its decisions. But where there is only purely and simply an administrative order, the question which is posed is whether such an order must contain reasons or the administrative authority or body is entitled to show when such an order is challenged in the Court of law that it had acted fairly and reasonably even though the order itself may not contain any reasons.

(17) The rule of law enshrined in our Constitution permeates every branch of the authority, may be executive, legislative or even judicial. One of the requirements of the rule of law is that no authority should act capriciously, unfairly or arbitrarily. But there is no principle of law that when an administrative authority is performing its administrative functions and in performing such functions, it passes some order or takes some decision, then the order or the decision itself must contain the reasons in order to be immune from being challenged in a Court of law. It may be a correct proposition of law to enunciate that in case a legal right of a particular person is sought to be adversely affected by an administrative order, then such an order must give reasons so that the person who is aggrieved and whose legal right had been jeopardised should know as to on what grounds such an order has been passed to enable him to have his legal

remedy in a Court of law against such an adverse order.

(18) A large number of judgments have been brought to our notice by both the counsel to which we will make reference. But before we deal with the cases cited before us, it is to be emphasised that petitioner has no vested legal right to claim appointment to the post of Principal of the college. He could be having some expectation to be appointed to the said post on making an application for being considered for appointment to such post initially by the Selection Committee and thereafter by the Governing Body when his name has been recommended by the Selection Committee. On being recommended by the Selection; Committee also he has not been conferred with any legal right by virtue of which he could claim appointment to the post of Principal. At the most, he could have only a legitimate expectation to be considered for being appointed to the post of Principal.

(19) Law Lexicon Edition 1989 describes a legal right to be a right which had secured interest or as a capacity of asserting a secured interest or as a claim that could be asserted in the Courts. " In nutshell, the legal right in its strict sense is one which has an assert able claim enforceable before Courts and administrative justice or in its wider sense has any addition or benefit conferred upon a person by a rule of law.

(20) "LEGITIMATE Expectations", as described in Words and Phrases Supplement 1993 are interests which do not amount to legal rights, powers or privileges. It also laid down that the term legitimate expectation-" is some time used in a different sense describing an expectation of a person that a procedural fairness will be extended to him before a power is exercised.

(21) In Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), , the Supreme Court has held that the condition of giving reasons is only attached to an order made by the Government when it functions judicially as a tribunal in a comparatively small number of matters and not in regard to the administrative orders it passes.

(22) LEARNED" counsel for the petitioner had made reference to B. N. Nagarajan Vs. State of Mysore AIR 1966 S C 1947, particularly to observation made in para 7 of the judgment, to the effect that if the Government advertises the appointments and the conditions of service of the appointment and makes a selection after advertisement there would be no breach of Articles 14 and 16 of the Constitution because everybody who is eligible in view of the conditions of service would be entitled to be considered by the State. This judgment does not help us in deciding whether the Governing Body in the present case when it was acting in its administrative functions and had taken the decision for re-advertising the post has affected any legal right of the petitioner and was legally bound to give any reasons for its decision or not.

(23) Learned .counsel for the petitioner also referred to N. M. Siddique Vs. Union of India 1978 (1) S L R 279 wherein the Supreme Court, in para 9, laid down thai the mere circumstance that the appellant was put on a panel for promotion does

not mean that he would have been automatically promoted to the higher post. Being empanelled for promotion confers upon the person concerned the limited right of being considered for promotion which is another way of saying that persons who are put on the panel framed for promotion to a higher post are at the given moment considered eligible for promotion.

(24) Again, this judgment also does not lay down that any legal right accrues to an empanelled person for being appointed to the post. This limited right to be considered in a way is merely a legitimate expectation for being appointed to the post of Principal in the present case but it cannot be said that any legal right of the petitioner stood breached if the Governing Body had taken a decision to readvertise the post for having more and better candidates for consideration.

(25) Counsel for the petitioner also sought some support from case of Gurdial Singh Fijji Vs. State of Punjab 1979 (1) S L R 804.(4) Here the question which arose for consideration was whether an adverse report could be taken into consideration foddering the promotion to a person without it being communicated to such person and giving him opportunity to improve his work and conduct or to explain the circumstances. The Supreme Court has held that the principle is well-settled that in accordance with the rules of natural justice an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. This judgment does not help us to decide" the point arising for decision in this case.

(26) The learned counsel for the petitioner has also referred to a judgment of Andhra Pradesh High Court given in case of Superintendent of Post Offices, Khammam Division, Khamman. and another Vs. Kalluri Vasayya 1983(3) S L R 629. It has been held in para 90 of the judgment given by Ramaswamy, J. that it may be made clear that mere making an application does not create a right in the citizen to the post. But a citizen has a right to expect that the authority concerned should consider the claims and qualifications uninfluenced by extraneous considerations. But if the authority swerves aside and takes extraneous factors into account while considering the claims and qualifications, then the Court steps in to remind the authority of the interest or legitimate expectation of the citizen putting it on forefront and insist on the authority to adopt fair procedure. There is no doubt about this principle of law that in all administrative actions or functions, the authority has to act fairly and reasonably and not capriciously or arbitrarily. But it does not mean that there is any legal right of a particular person which is breached when his name is being considered for being-up pointed to a particular post so that if any adverse decision is given, the decision must contain the reasons.

(27) It is one of the settled principles of law that if any administrative order brings about any adverse civil consequences for any person, then" before passing the order, rules of natural justice must be followed. Recording of reasons

in the order is one of the facets of the rules of natural justice. Rules of natural justice require giving of an opportunity of hearing to the affected person also. (See State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, .(6) The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others, .(7)

(28) In the present case, the decision taken by the Governing Body not to accept the recommendation of the Selection Committee even at the initial stages has not brought about any adverse civil consequences for the petitioner inasmuch as the petitioner, in our view, had no legal right which could be deemed to have been infringed by the impugned decision of the Governing Body.

(29) Reference was made by learned counsel for the petitioner to Commissioner of Police, Bombay Vs. Gordhandas Bhanji 1952 (III) S C R 135 where the Supreme Court had held that public orders publicly made in exercise of statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant or of what was in his mind, or what he intended to do. In the said case, the power was tested in the Commissioner with regard to the cancellation of a Cinema license. It appears that instead of exercising his independent power, the Government had taken the decision for cancellation of the license and that decision was communicated by the Commissioner under his signatures. It was sought to be urged that it was the order of the Commissioner which cancelled the license but the order which was communicated to the affected party only indicated that decision has been taken by the. Government and Commissioner has only forwarded the same to the affected party. In that situation the Court held that it was a public order already communicated to the affected party and only language of that order can be looked into for considering the import of the order and the order cannot be explained by giving any further material. The case is clearly distinguishable. In the present case, no public order has been made by the Governing Body and no such order has been communicated to the petitioner so that the Governing Body may be deprived of showing to this Court the record of the proceedings in support of the impugned order.

(30) In case of Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, the Supreme Court has held that if an administrative order affects the rights of a citizen the said order is to be treated as a quasi-judicial order and the same must give the reasons,

(31) In case of Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, it was held by the Supreme Court that dividing line between an administrative power and the quasi-judicial power is quite thin and is being gradually obliterated. The principles of natural justice apply to the exercise of the administrative powers as well. But those principles are not embodied rules and what particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the Constitution of the Tribunal or body of persons appointed for the purpose. Again, this law has been

laid down by the Supreme Court in the context of the order affecting the legal right of a citizen bringing about adverse civil consequence for the affected party.

(32) In case of *E.P. Royappa Vs. State of Tamil Nadu and Another*, , the Constitution Bench speaking through the majority judgment had, in para 85, clarified the legal position as far as the State actions are concerned and it was laid down that Articles 14 and 16 of the Constitution strike at arbitrariness in State action and ensure fairness and equality of treatment and the required that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant consideration because that would be denial of equality. It is obvious that arbitrariness even in administrative actions is anathema to the "principles enshrined in Article 14 of the Constitution of India.

(33) Even in *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, the emphasis was with regard to the action of the State affecting the rights of the parties in order to see whether the order which affects, such right is administrative or quasi-judicial so as to invoke the principles of natural Justice which f,;iav also inclined recording of reasons for passing such an order adversely affecting the rights of the parties.

(34) Reference was made by learned counsel "for the petitioner to *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, . wherein it Was laid down that when the statutory functionary makes an order based on "certain grounds, ifs validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise. an order bad in the beginning may by the time it comes to the Court on account of a challenge gets validated by additional grounds later brought out. In the said case, the order passed by the education commission under Article 324 of the Constitution cancelling the poll in the entire constitution was under challenge This ratio of law cannot apply in our view to an administrative action of the Governing Body in calling for the re-advertisement for the post in question because such a decision of the Governing Body cannot be considered as an order pass.Jd by any statutory authority affecting any legal right of any person.

(35) In the well-known judgment of the highest Court in case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , again it has been reiterated that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that the State action must not be arbitral but must be based on some rational relevant principles which is non-discriminatory; it must not be actuated by any extraneous or irrelevant considerations because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action whether it be under authority of law or any exercise of executive power without making of law.

(36) It is one thing to say that State should act fairly and not arbitrarily in its executive functions as well but it is another thing to lay down that every administrative order of the State should contain the reasons and State should not be allowed to show the reasonableness and fairness of the administrative order made by reference to the material which was before the State when a non-speaking order has been made. In what circumstances, an administrative order should come in the reasons depends on the nature and the effect of the order on the legal right of the particular person. It may be that if any administrative order affects adversely the legal rights of a person or citizen, then such an order must contain the reasons but if no legal right of any person is affected and order does not by itself bring about any civil consequence for any person, then only duty cast on the administrative authority is to show to the Court, if its order is challenged, that the order is not arbitrary but is fair in view of the material which was available before the authority making the order.

(37) Reference may be made to the judgment given in *Jatinder Kumar and Others Vs. State of Punjab and Others*, where question arose with regard to the power of the Government viz-a-viz the recommendations -made by the Public Service Commission. It was held in this judgment by the supreme Court that a person selected by the Subordinate Service Selection Board for direct appointment to the post of Assistant Sub-Inspector of Police does not have an unfettered right to be appointed on the basis of the recommendation made by the said Board. Here also it was laid down that the Government may accept the recommendations of the said Board or may decline to accept the same. But if the Government is to fill up the vacancy, then the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission as it cannot disturb the order of merit on its own sweet will except for other, good reasons i.e. bad conduct or character of the candidate, this judgment also emphasises that the person so recommended by the Selection Board does not get any legal right to be appointed to the post.

(38) The petitioner in the present case cannot claim that he has any legal right to be appointed to the post. He has in our view only a legitimate expectation for being considered for appointment to the said post and the same cannot be placed at the pedestal of any legal right that if any administrative order is made for not making any appointment on the basis of recommendation of the Selection Committee, any legal right of the petitioner stands impinged.

(39) Learned counsel for the respondent has made reference to *R.S. Dass Ors. Vs. Union of India (UOI) and Others*, , where contention was raised that principles of natural justice required that Selection Committee, while making selection, must record the reasons for the supersession of the senior officer by junior officer to enable them to make representations against their supersession. The Supreme Court laid down that there is no merit in such a submission as principles of natural justice do not require an administrative authority or a Selection Committee or an Examiner to record reasons for the selection or non-

selection of a person, and in the absence of a statutory provision the administrative authority is under no legal obligation to record reasons in support of its decision. It was emphasised that there was no scope for applying principles of natural Justice in matters relating to selection of suitable members of the State Service for promotion to a higher service. The Supreme Court also, in para 25, held as follows in this case :-

"NO vested legal right of a member of the State Civil Service who after being considered, is not included in the Select list is adversely affected. Non-inclusion in the Select List does not take away any right of a member of the State Civil Service that may have accrued to him as a government servant; Therefore no opportunity Is necessary to be afforded to him for making representation against. the proposed supersession."

(40) This judgment has made reference to various other judgments of the Supreme Court and has laid down that the rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and the background of the statutory provision. nature of the right which may be affected and the consequences which may entail end their application depend on the facts and circumstances of each case. These principles do not apply to all cases and situations.

(41) In case of S.N. Mukherjee Vs. Union of India, , one of the questions which came up for consideration was to the following effect: Is there any general principle of law which requires an administrative authority to record the reasons for its decision ?

(42) It was laid down by the Supreme Court that there is divergence of opinion in the common law countries. The legal position in the United States is different from that in other common law countries and it examined the state of law existing in United States, England and Australia. Reference was made in the judgment to the report of the Law Commission in the Fourteenth Report pertaining to reform in Judicial Administration where recommendation had been made that in case of administrative decisions provision should be made that they should be accompanied by reasons as the reasons will make it possible to test the validity of these -decisions "by the machinery of appropriate writs. In para 21, the Supreme Court held that no law has, however, been enacted in pursuance of these recommendations, imposing a general duty to record the reasons for its decision by an administrative authority though the requirement to give reasons is found in some statutes.

(43) In para 35, after analysing the various judgments, the Supreme Court on this point, came to the conclusion that the decisions of the Court, referred to above, indicated 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 that 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 that Court or the High Courts to effectively exercise the appellate or supervisory power. Then it was noticed that there are other considerations which also have weighed with the Courts in taking the view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decision; and (iii) minimise chances of arbitrariness in decision making. It was concluded by the Supreme Court that the requirement that the reasons be recorded should govern the decision of an administrative authority exercising quasi-judicial functions irrespective of the- fact whether the decision is subject to appeal, revision or judicial review. So, law was laid down by the Supreme Court that except in cases where the requirement has been dispensed with expressly or by necessary implication an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision. However, the Supreme Court has not laid down that in purely administrative orders which do not affect the legal rights or being about any adverse civil consequences, even such orders must record the reasons.

(44) In *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, , it was held that an administrative function is called judicial when there is an obligation to adopt the judicial approach or to comply with the basic requirement of justice. Where there is no such obligation the decision is called purely administrative and there is no third category. An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim "*audi alteram partem*". It means that the decision maker should afford to any party to a dispute an opportunity to present his case. It was held by the Supreme Court in this case that in matters relating to public employment where by promotion or direct recruitment the only requirement to be complied with is the mandate of Articles 14 and 16 of the Constitution. There is no right with the candidates to make representation to the Executive Council much less to the Chancellor against the recommendations of the Selection Committee. While considering the various provisions of the U.P. State Universities Act, it was held that the Chancellor, who is the final authority to take a decision on the recommendation of the Selection Committee does not have to follow any principles of natural justice for taking a decision and such an order is purely administrative in nature. The only requirement which is to be followed by the Chancellor is to act fairly and not arbitrarily.

(45) In *Union of India and others Vs. E.G. Nambudiri*, , the question which arose for decision was whether an administrative authority is bound to record reasons while rejecting the representation made by a Government servant against the adverse remarks recorded in his A.C.R. It was held that there is no dispute that there is no rule or administrative order for recording reasons in rejecting a representation. It was held that the competent authority rejecting such a

representation is not under any obligation to record reasons. Only requirement of law is that such an authority must act in a fair and just manner and such an order, if made fairly and in a just manner, cannot be nullified on the ground of absence of recording of reasons.

(46) So, it is not that every administrative order which may have some sort of effect on a particular person must contain, reasons.

(47) As already discussed above, it is only where any legal right of a person is impinged upon or any adverse civil consequences flow from any administrative order that the law requires that it must contain reasons.

(48) In case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K. S. Ghandhi 1991 (2) S C C 710, placing reliance on the law laid down in case of S. N. Mukherjee (supra) by the Constitution Bench, it was held that reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. They also exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assured an inbuilt support to the conclusion/decision reached. Where an order affects the right of a citizen, irrespective of the fact whether it is a quasi-judicial or administrative order, and unless the rule expressly or by necessary implication excludes recording of reasons, it is implicit that the principles of natural justice or fair play require recording of germane and precise relevant reasons as a part of fair procedure. In an administrative decision, its order/decision itself may not contain reasons. It may not be the requirement of the rules, but at the least, the record should disclose reasons. In the said case, there were some admissions of the students against whom enquiry was conducted and it was held that omission to record reasons by the Enquiry Officer is not illegal and is not vocative of principles of natural justice. In the said case, the legal rights of the students were being affected by the decision based on the report of the Enquiry Officer, still it was held that non-recording of the reasons was not fatal. This judgment also makes it clear that unless there is a rule requiring recording of reasons in administrative orders, affecting the legal rights of a citizen or the person the order would not be invalid or illegal if the record, on the basis of which such an order is passed, shows the reasons for making of such an order.

(49) In National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others, , it was held that the function of the Selection Committee is neither judicial nor adjudicatory. It is purely administrative and there is no rule or regulation which requires the Selection Committee to record reasons and the Selection Committee is under no legal obligation to reasons in support of a decision of selecting one candidate in preference to another and even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. It was held that giving of reasons for decision is different from, and in principle distinct from, the

requirements of procedural fairness. The procedural fairness is the main requirement in the administrative action. The fairness or the fair procedure in the administrative action ought to be observed.

(50) In the present case, only a recommendation had been made by the first Selection Committee in favor of the petitioner after considering the short listed applicants and the Governing Body, which is the appointing authority, in its wisdom, decided not to accept such recommendation but to advertise the post again, obviously with a view to have better candidates for consideration for the job in question. So, it was in the process of the selection that decision has been taken by the Governing Body. So, it has not, in any manner, impinged any legal right of the petitioner or had brought about any adverse, civil consequence for the petitioner.

(51) In Union Territory of Chandigarh Vs. Dilbagh Singh and others, , the facts were that a select list had been prepared but the same was cancelled. It was held that a selective placed on a select list is not entitled to an opportunity of hearing before cancellation as even though such selective have a legitimate expectation but they have no indefeasible right to be appointed. The only requirement before cancelling the select list is that the administration, must act in a bona fide and a fair manner and not arbitrarily.

(52) The learned counsel for petitioner had laid a lot of emphasis on the judgment given in case of Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others, , in support of his contention that Governing Body, while passing the impugned order, must have recorded the reasons for not agreeing with the recommendations of the Select Committee. In this judgment, the question was with regard to the right of the Government vis-a-vis a select list sent by the Public Service Commission. The Supreme Court held that it is evident from Articles 317 to 320 that the Constitution contemplates the Commission to be an independent and effective body outside the Governmental control. This is an instance of application of the basic tenant of democratic form of Government viz-a-viz diffusion of governing power. The idea is not to allow the concentration of governing power in the hands of one person, authority or organ. It is the light of this constitutional scheme that one has to construe rules 39 and 41 of the 1967 Rules. Rule 39 does not confer an absolute power upon the Government to disapprove or cancel the select list sent by the Public Service Commission. Where, however, the Government is satisfied, after due enquiry that the .selection has been vitiated either on account of violation of a fundamental procedural requirement or is vitiated by consideration of corruption, favoritism or nepotism, it can refuse to approve the select list. In such a case, the Government is bound to record the reasons for its action, and produce the same before a court, if and when summoned to do so apart from placing the same before the legislature as required by clause (2) of Article 323.

(53) It is not possible to hold that this ratio of law which has been laid down by the Supreme Court in view of the constitutional provisions would apply to

ordinary administrative orders being passed by the executive authorities which do not affect any legal rights of the persons. The judgment is distinguishable because it is the constitutional authority which had prepared the select list and obviously if the Government had no power to tinker with the said list except for good reasons and in case the Government was to cancel the list on the grounds indicated in the judgment of the Supreme Court obviously the Government had to give reasons for its conclusion that list is not to be adhered to. In the said case, the Government had approved the list in part and rejected the other part. In such like situation, the Supreme Court held that the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. The Supreme Court has not laid down the law in this case that if reasons are not recorded in the order of the Government, the Government cannot supply the reasons when its action is challenged in a court of law.

(54) The recording of reasons in administrative order is not a sine qua-non for its validity. "The reasons can be culled out from the records which is considered by the Government in making the order.

(55) This judgment given by the Supreme Court was followed by a Single Judge of this Court in case of S.C. Bajpai Vs. University of Delhi and Others, and it was held that the Governing Body must give reasons in its order while not accepting the recommendations of the Select Committee. In this case, the appointment of a Vice Principal was under consideration. The Single Judge has rightly laid down the law that it is well-settled that an executive authority must act in a just, fair and reasonable manner. Arbitrary power is anti-thesis of the equality clause enshrined in Article 14 of the Constitution. It was held that the Governing Body while examining the recommendations of the Selection Committee, has normally to accept the recommendations of the Selection Committee but where the Governing Body is satisfied after due enquiry that selection has been vitiated on account of violation of the procedural requirement as prescribed in the Statute or this selection is infected with favoritism and nepotism, the selection can be overturned by it but only after recording the reasons for such a decision.

(56) We are afraid that if the judgment is considered to have laid down the law that unless reasons are recorded in the order itself, this administrative authority passing the order is incapacitated to show the material existing on the record from where reasons can be culled out in support of the order, then we disapprove such ratio of law because in a writ of certiorari, after rule nisi is issued by the Court in writ jurisdiction, if record shows that the order has been passed in a fair manner and not arbitrarily such an order cannot be considered to be vitiated or void only on the ground that the order itself does not contain the reasons.

(57) So, we have to hold that mere fact that the decision of the Governing Body itself does not contain the reasons for not accepting the recommendations of the Selection Committee by itself is not sufficient to vitiate its decision and the respondents are well within their rights to show the record to this Court to

indicate the reasons on the basis of which the decision was taken by the Governing Body. We would have looked into the record but in view of the submission of the learned counsel for the petitioner that the petitioner is resting his case only on legal issue that Governing Body itself should record the reasons and order should be quashed if reasons are not there in the order, we have refrained ourselves from seeing the record. However, we have come to the conclusion that non-recording of the reasons in the order itself does not vitiate the order.

(58) It has been contended by learned counsel for the petitioner" that the Governing Body had no power to scuttle the selection process as the Ordinance in question required the Governing Body to forward the names of all the applicants considered by the Selection Committee along with the recommendation of the Selection Committee and also names of any other candidates who were not before the Selection Committee making it clear its preference and thereafter another high-power selection committee was to consider the names and make its own recommendation and thereafter the Governing Body was to consider the question of making or not making appointment of the persons who might have been recommended by the second Selection Committee and thus without following such procedure the Governing Body has violated the provisions of the Ordinance. It was urged that the Governing Body should have acted in the manner indicated in the Ordinance and could not have adopted any other procedure and reference was made to A.K. Roy and Another Vs. State of Punjab and Others, which lays down that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all and other modes of performance are necessarily forbidden.

(59) This well-established principle of procedure is not applicable in the present case because admittedly the Governing Body is the appointing authority and ultimately the decisions are to be taken by the Governing Body with regard to making the appointment. If the Governing Body, even at the initial stage, while considering the report of the Selection Committee, has come to the decision; that post should be re-advertised for having more meritorious candidates, it cannot be said that the Ordinance which had laid down the procedure for making the selection to the post of principal of the college has in any manner been violated by the Governing body. The whole process would have been futile if the Governing body, while sending the names of all the applicants and the recommendations of the Selection Committee, had indicated at that very stage to the University that none of the candidates are acceptable to the Governing Body and Governing Body was not having any other names for indicating its preference.

(60) We do not think that the Governing Body had acted in violation at the procedure prescribed in the Ordinance by taking the decision at the initial stage itself that post be re-advertised obviously for the purpose of having more meritorious candidates for the said post.

(61) In view of the above discussion, we find no merit in this writ petition. We dismiss the writ petition but leave the parties to bear their own costs.