

(1998) 09 AHC CK 0135
In the Allahabad High Court
Case No : C.M.W.P. No. 21735 of 1998

Committee of Management, Baba Raghav Das Post Graduate College, Deoria and another APPELLANT

Vs

State of U.P. and others RESPONDENT

Date of Decision : 17-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Intermediate Education Act, 1921 — Section 16D(2), 16D(3), 16D(4)
Uttar Pradesh State Universities Act, 1973 — Section 40, 57, 58(1)

Citation : (1998) 4 AWC 230 : (1998) AWC 230 : (1998) 3 UPLBEC 1903

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : G.K. Singh and A.P. Sahi, for the Appellant; S.C., T.N. Tiwari and C.N. Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Garg, J.—An order dated 26.6.1998 (Annexure-15 to the writ petition) has been passed by the-State of U. P. (Uccha Shiksha Anubhag-6), under the provisions of Section 58 (1} to the U. P. Universities Act, 1973 (hereinafter referred to as "the Act"), whereby the Committee of Management of Baba Raghav Das Post Graduate College, Deoria of which Krishna Murari Mani Tripathi, petitioner No. 2 is the Manager, has been suspended for a period of one year and the District Magistrate. Deoria has been appointed its Authorised Controller, which office he has taken over on 29.6.1998. It is this order, which has come to be challenged in the present writ petition under Article 226 of the Constitution of India, primarily on the ground that the offending order has been passed in flagrant violation of the principles of natural Justice. It is prayed that the impugned order dated 26.6.1998 be quashed and the respondents be commanded not to interfere with the functioning of the petitioners-Committee of Management, i.e., in running the institution and managing its affairs.

2. S/Sri T. N. Tewari and C. N. Tripathi, advocates appeared respectively on behalf of Mahendra Singh Yadav and Jai Prakash Rao, at whose instance the impugned order came to be passed. They made complaints highlighting various administrative and financial irregularities as well as bungling committed and resorted to by the Manager of the college -Krishna Murari Mani Tripathi, petitioner No. 2.

3. Sri R. N. Singh, learned senior counsel for the petitioners urged that since a pure question of law is involved in the present writ petition and which can be decided with the bare look on the intrinsic facts incorporated in the impugned order itself, the writ petition may finally be decided on merits without calling for any counter-affidavit. S./Sri T. N. Tewari and C. N. Tripathi, learned counsel for the complainants agreed that the writ petition be heard on merits and decided accordingly without requiring them to file counter-affidavit. Learned standing counsel also appeared to be of the same view. Therefore, with a view to decide the writ petition finally. Sri R. N. Singh, senior counsel, assisted by Sri A. P. Sahi, on behalf of the petitioners, learned standing counsel for the respondents and Sri T. N. Tewari and C. N. Tripathi, on behalf of the complainants, named above, who are not party to the writ petition, were heard at considerable length.

4. The present Committee of Management, which has been suspended for a period of one year came to be constituted as a result of fresh elections on 28.11.95. It was recognised on 18.7.1996. In past, there have been allegations and enquiries into the conduct of the Manager of the college, but it is not necessary to narrate those facts, as they are not germane to the controversy in hand. The narrative of only those facts, which are necessary for the decision of this writ petition is being unfolded.

5. On receipt of various complaints and getting an information that the petitioners have committed grave financial and administrative irregularities in the management of the affairs of the institution/college, an enquiry was directed by the State Government under the provisions of Section 40 of the Act, to be conducted by the District Magistrate. Gorakhpur who in his turn appointed three of his subordinate officers for the purpose. The committee constituted by the District Magistrate submitted a report of enquiry dated 25.6.1997 (Annexure-11). This report of enquiry along with report of the District Magistrate dated 4.7.1997 was transmitted to the State Government, A notice u/s 57 of the Act, dated 15.10.1997, Annexure-10 to the writ petition was issued calling upon the petitioners to show cause as to why action u/s 58 (1) of the Act be not taken. The petitioners submitted a very detailed and elaborate reply dated 23.12.1997. Annexure-12 to the writ petition, with a number of annexures. It appears that the District Magistrate, who had submitted a report had been transferred and consequently, the State Government called for the report of the present District Magistrate by order dated 13.4.1998. Annexure-13 to the writ petition. The District Magistrate submitted the report dated 22.4.1998. Annexure-14 to the writ petition. Thereupon, the State Government passed the impugned order

dated 26.6.1998, Annexure-15 to the writ petition, whereby as said above, the Committee of Management of the college was suspended for a period of one year.

6. In the notice u/s 57, as well as the Impugned order u/s 58 (1) of the Act, the following five distinct charges have been incorporated :

(i) the Committee of Management advanced a sum of Rs. 93,000 to M/s. ISMA COMPUTERS out of the total amount of Rs. 1,25,000 received from the University Grants" Commission and placed order for purchase of hardware and software in violation of the rules, specifications, as prescribed by the University Grants" Commission ;

(ii) the Manager of the Committee of Management sold in auction a bus and a jeep of the college respectively for sum of Rs. 34,100 and 15,900 without obtaining a certificate that the said two vehicles are to be condemned as they are not serviceable. The auction was held on 4.6.1993 in an illegal manner ;

(iii) as per Accountant General's audit report for the year 1994-95, a sum of Rs. 83, 619 was advanced by the Manager of the Committee of Management: to various members of the teaching and non-teaching staff of the college and in spite of the assurances, the aforesaid amount has not been adjusted which in effect is temporary embezzlement ;

(iv) the Committee of Management has paid salary to a Lecturer appointed in "short term vacancy" in Agriculture/Botany subjects from out of maintenance fund (ANURAKSHAN KOSH) which was irregularly; and

(v) the college is possessed of 65.49 acres of agricultural farm, which has not been properly managed with the result, there has been loss of revenue as for the annual income of Rs. 20,000 only an income of Rs. 7,000 accrued.

In respect of the above five charges, the Manager-Krishna Murari Mani Tripathi was found to be responsible.

7. Sri R. N. Singh, learned senior counsel, has not challenged the proof or otherwise of the aforesaid charges on merits and confined his submission to challenge the validity of the impugned order only on the ground that the principles of natural justice have come to be violated by the State Government, inasmuch as, in Jumping over the conclusion that the management is to be suspended for a period of one year, no reasons have been recorded and that the order was passed without supplying a copy of the report of the District Magistrate and that of the Committee of three officers appointed for the purpose by him. According to the learned counsel, the impugned order stands vitiated on account of the absence of reasons which impelled the State Government to conclude that the Committee of Management is required to be suspended for a period of one year under the provisions of Section 58 (1) of the Act. In order to fortify his submission, the learned counsel placed reliance on the oft-quoted celebrated decision of the Apex Court in Union of India (UOI) Vs. Mohan Lal Capoor and Others, , in which it was held in paragraph 28 of the report, at page

854, that the reasons are the links between materials on which certain conclusions are based to the actual conclusion. They disclose how mind is applied to the subject-matter for a decision whether it is purely administrative or quasi judicial. They would reveal nexus between the facts considered and the conclusions reached. This view was reiterated in *Gurdial Singh Filli v. State of Punjab*, (1979) 2- 368. In the *Mohan Lal Kapoor's* case (supra), rules and regulations required recording of reasons in support of the conclusions, as mandatory.

8. I have given my thoughtful and anxious consideration to the matter. The decisions with regard to the question of applicability of principles of natural justice do not all speak in the same voice and sometimes it is difficult to reconcile them. Nevertheless, however, a duty has been cast on the administrative authorities exercising quasi judicial functions to record reasons. The earlier view as was taken by the Apex Court in *Som Datt Datta Vs. Union of India (UOI) and Others*, . was that apart from any requirement imposed by statute or statutory rule either expressly or by necessary implication it cannot be said that there is any general principle or any rule of natural justice that a statutory body should always and in every case give reasons in support of its decision. Such orders cannot, therefore, it was observed, be held to be illegal for not giving any reasons for confirming the orders of the concerned authority. In view of the expanding horizon of the concept of principles of natural justice, the above wide and general statement came to be restricted and has been hedged with certain conditions. Now the present slant of the doctrine of applicability of principles of natural justice is that unless, the rule expressly or by necessary implication excludes recording of reasons, it is implicit that the principles of natural justice or fair play do require recording of reasons as a part of fair procedure. In an administrative decision, its order/decision itself may not contain reasons. It may not be requirement of rules, but, at least the record should disclose reasons. It may not be like a judgment of the Court. But some reasons, howsoever precise they may be, have to be there. In *S.N. Mukherjee Vs. Union of India*, , the Constitution Bench of the Apex Court surveyed the entire case laws in this regard, which it is not necessary to recount to unnecessarily burden this judgment, and held that except in cases where the requirement has been dispensed with, expressly or by necessary implication, an administrative authority exercising judicial or quasi Judicial function, is required to record reasons for its decision. In para 36 of the report, at pages 612 and 613, it was further held that the recording of reasons..... excludes chances of arbitrariness and ensures a degree of fairness in the process of decision making. The said principle would apply equally to all decisions and its implications cannot be confined to the decisions which are subject to appeal, revision or judicial review. The same view was reiterated in the case of *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, , in which it was observed in para 21 of the report as follows :

"21. Thus, it is settled law that the reasons are harbinger between the mind of

the maker of the order to the controversy in question and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. The order when it affects the right of a citizen or a person, irrespective of the fact, whether it is quasi judicial or administrative fair play requires recording of germane and relevant precise reasons. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record."

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. In *M.J. Sivani and Others Vs. State of Karnataka and Others*, , it has been observed in para 32 of the report, as under :

"32. It is also settled law that the order need not contain detailed reasons like Court order. Administrative order itself may contain reasons or the file may disclose reasons to arrive at the decision showing application of mind to the facts in issue. It would be discernible from the reasons stated in the order or the contemporaneous record contained. Reasons are the link between the order and the mind of its maker. When rules direct to record reasons, it is a sine qua non and condition precedent for valid order. Appropriate brief reasons, though not like a judgment, are necessary concomitant for a valid order in support of the action or decision taken by the authority or its instrumentality or the State."

9. No hard and fast rule can be laid down for testing the question as to whether the principles of natural justice have been complied with or not as no strait-jacket has been provided for the observance of principles of natural Justice. It depends on the nature of the proceedings and the procedure adopted by the Court, Tribunal, or authority. In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, the Hon"ble Supreme Court held as follows :

"..... The theory of reasonable opportunity and the principles of natural justice has been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not in connotations to be invoked nor rites to be performed on all the sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case"

From the above enunciation of the principle of law, it is clear that the applicability of the principles of natural justice is not a rule of thumb or a strait-jacket formula or an abstract proposition of law. It depends upon the facts of the case, nature of the enquiry and the effect of the order/decision on the rights of the persons and attendant circumstances. Courts have not hesitated in moulding the concept of natural justice to suit the exigencies and the situations. An order which does not disclose the points, which were considered and the reasons for rejecting them, was not approved by the Apex Court in several cases emphasising the necessity

to give sufficient reasons which disclosed proper appreciation of the problem to be solved and the mental process by which conclusion is reached. However, broad grounds may be set out and the reasons to support the conclusions, howsoever scanty they may be, may be sufficient to uphold the order/decision of an administrative authority.

10. There is another thinking which necessitates the recording of reasons to support the conclusions. It is well-settled law that every action of the instrumentality of the State must be informed by reason. Actions uninformed by reason may tantamount to arbitrariness. The State action must be just, fair and reasonable. Fair play and natural justice are part of public administration ; non-arbitrariness and absence of discrimination are said to be hallmarks for good governance under the rule of law. One cannot, therefore, escape from the conclusion that it is imperative on the State Government to inform its order by recording reasons to reach a particular conclusion. With this caution in mind, and in the perspective of the law, as mentioned above, the question is whether the impugned order with stands the test of scrutiny at the alter of the principles of natural Justice or not and if it is found that the reasons are conspicuously missing to arrive at the conclusion, a further question would be whether omission to record reasons vitiates the impugned order or is in violation of the principles of natural justice. The order appointing the Authorised Controller u/s 58 (1) of the Act is something more than the administrative order because It requires issuance of show cause notice which means that right of hearing is to be given to the management to show cause why authorised controller should not be appointed. The administrative order is in the nature of quasi-Judicial order because it requires the State Government to act on an information that the conditions given in Section 57 exist which require it to call upon the management to show cause why an order u/s 58 should not be made. The order u/s 58 cannot be made unless the mandatory requirement of affording an opportunity to the management is not complied with. Right of hearing is sine qua non for passing an order u/s 58. Therefore, at that stage complete procedure prescribed u/s 57 of the Act is to be followed which indicates that the order passed u/s 58 (1) has attributes of a quasi-Judicial order. Section 58 (1) pre-supposes that requirement of Section 57 are complied with.

11. In the instant case, the State Government ordered an enquiry u/s 40 of the Act directing the District Magistrate to submit his report. After the receipt of the report from the District Magistrate, the State Government issued a notice u/s 57 of the Act on 15.10.1997. A copy of the report of enquiry was annexed with the notice itself. The petitioners were required to show cause why the Committee of Management should not be suspended and in its place an authorised controller appointed. The petitioners, as said above, have submitted a very detailed reply on 23.12.1997 to the show cause notice. The impugned order u/s 58 (1) passed by the State Government incorporates various charges against the petitioners and the conclusions arrived at on enquiry and in the penultimate paragraph of the order, it has been mentioned that after due consideration of the explanation

dated 23.12.1997 submitted by the Manager of the Committee of Management, the Governor of the State. In exercise of powers u/s 58 (1) of the Act, suspends the Committee of Management for a period of one year and appoints Sri Dabesh Chaturvedi. District Magistrate. Deoria as the Authorised Controller. A bare reading of the order of the State Government gives a complete picture of the allegations, the conclusions arrived at after the enquiry and the decision taken by the State Government. The conclusion that the management is required to be suspended is clearly related to and is dependent upon the findings recorded in respect of each one of the five charges. Therefore, it cannot be said that the State Government has only unfolded narratives of the facts and after doing so, straightaway jumped to the conclusion that the committee is required to be suspended. The very fact that the State Government has given due consideration to the explanation submitted by the petitioners in the context of five charges with regard to the financial and administrative Irregularities furnishes adequate reason to arrive at the conclusion. The paragraph containing conclusion cannot be separated from or read in disjunction or in isolation from the earlier paragraphs in which the various charges have been detailed. It was not obligatory on the part of the State Government to say more than what was stated in the Impugned order as the order, as it is, shows application of mind. The order cannot be characterised as a non-speaking order. In *Ram Kumar Vs. State of Haryana*, . It was held that when the punishing authority agrees with the finding of the enquiry officer and accepts the reasons given by him in support of the findings, it is not necessary for the punishing authority to again discuss evidence and come to the same finding as that of the enquiry officer and give same reasons for the findings. This view was also taken in *State Bank of India v. S. S. Koshal* It was held that the order being one of affirmance, the appointing authority was not bound to say any more. To the same effect are the observations made in *State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover*, , in which it was ruled that there is implied obligation also to record reasons in the case of concurrence with the finding of the enquiry officer. Even assuming that such an obligation is implicit, still the order of the disciplinary authority cannot be held to be bad as before concurring with the findings of the enquiry officer, it has gone through the entire proceedings and applied its mind thereto.

12. Inspiration may be derived from another decision of the Supreme Court in *State of U.P. and Others Vs. Committee of Management of S.K.M. Inter College and Another*, , in which the provisions of Section 16D (2) and (3) of the U. P. Intermediate Education. Act. 1921 came to be considered. The contentions raised on behalf of the respondent-Committee of Management of that case were that the requirement of recording reasons mentioned in subsection (4) of Section 16D has not been complied with ; recording of reasons is preceded by consideration of explanation followed by agreement or disagreement with the explanation submitted by the management ; reasons recorded in that behalf would not constitute compliance of sub-section (4) of Section 16D. The Apex Court did not

agree with the above contentions and held that it is settled law that the administrative authorities are not required to record reasons as elaborately as an order by a Court. What is required is application of mind to the relevant facts placed before the administrative authority : short reasons that weighed with them to take action need to be recorded, it is seen that the order at hand is an elaborate one and from the record it is seen that the Director had called out material facts that emerged from the record. In fact it was specifically stated about misappropriation of the funds ; non-accounting of the poor boys fees collected from the students ; fee collected for construction of the Science Block. The collections spread over six to seven years and yet the building was not completed. Failure to account the money and depositing it into the account amounts to misappropriation. The existence of the properties is not disputed. In paragraph 11 of the report, the Supreme Court further observed that it is well-settled law that the High Court exercising the power under Article 226 of the Constitution is not like an appellate authority to consider the dispute. It has to see whether the Impugned order is based on records or whether the authorities have applied their own mind to the relevant facts. When the facts do exist on record and Government have applied their mind to those facts and came to the conclusion that from the facts so collected they were satisfied that the Committee had contravened clauses (v) and (vi) of sub-section (3) of Section 16D, they have rightly exercised the power under sub-section (4) of Section 16D. It was held that the High Court, in that case, had traversed the controversy as a Court of appeal and committed manifest error of law in interfering with the order.

13. In the backdrop of the above law and the facts as stated above. I have no hesitation in concluding that the impugned order dated 26.6.1998 (Annexure-I5 to the writ petition) passed by the State Government is not a non-speaking order. From the order itself, one can easily find the reasons to arrive at the conclusion as to under what circumstances the Committee came to be suspended.

14. Another limb of the submissions made by Sri R. N. Singh, learned senior counsel is that the order is vitiated on account of non-supply of the enquiry report and other documents to the petitioners. To support this submission, reliance was placed on a Division Bench decision- of this Court in the case of Committee of Management. Vaidik Higher Secondary School, Faizpur Ninana, District Meerut and another v. Distt. Inspector of Schools. Meerut and another (1993) 2 UPLBEC 934 , in which It was observed that one of the first principles of natural justice is that " you must not permit one side to use means of Influencing a decision which means are not known to the other side". It has to be emphasised that any person even if represented at any enquiry who is to be adversely affected by any decision therein should not be left in the dark as to the risk of the finding being made depriving him any opportunity to adduce evidence or material of probative value which had it been placed before the decision maker, might have deterred him from making the finding even though it cannot be predicated that it cannot inevitably have had that result. In substance, it was held that the person who is going to be adversely affected must be Informed of

all the materials which may be utilised against him. A reference was also made to a decision of this Court in Masiuddin Naimuddin Vs. Commissioner, Allahabad Division, Allahabad and Another, . which was a case relating to cancellation of licence to possess a firearm. It was held that a fair hearing cannot be said to have been afforded to the licensee when the order of cancellation is based on a charge for which is never asked to explain. Both these decision are of no assistance to the petitioners as they are not applicable on all fours to the facts of the present case. Even otherwise, it may be pointed out that the report of enquiry dated 26.6.1997 of the sub-committee appointed by the District Magistrate was delivered to the petitioners in the form of an Annexure to the show cause notice dated 15.10.1997, a copy of which is Annexure-10 to the writ petition. In paragraph 2 of the said show cause notice, it has been clearly mentioned that the copy of the enquiry report was being annexed and in the light of the irregularities pointed out therein, the petitioners were required to show cause why the Committee of Management be not suspended by Invoking the provisions of Section 58 (1) to appoint an authorised controller. It is, therefore, not a case where the petitioners have not been supplied the copies of the relevant documents. It was on the basis of the report of enquiry that a very detailed and elaborate explanation was submitted by the petitioners on 23.12.1997.

15. In the conspectus of the above facts, I have no hesitation in coming to an irresistible conclusion that the State Government has passed the impugned order which does not suffer from any infirmity. The order is clearly in conformity with the principles of natural justice. The order is not required to be interfered with in the writ jurisdiction. The writ petition, therefore, fails, and is accordingly dismissed. There is no order as to costs.