

(1999) 02 MAD CK 0128

In the Madras High Court

Case No : Writ Petition No's. 19261, 19622 and 29278 of 1998

Odayappa Education Trust

APPELLANT

Vs

All India Council for Technical Education and Government of
Tamil Nadu
Elizabeth Thomas Educational and Welfare
Trust Vs The All India Council for Technical Education

Dr. A.S. Raja representing Raja Educational and
Charitable Trust as its Chairman Vs The Advisor, representing
All India Council for Technical Education

RESPONDENT

Date of Decision : 03-02-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311, 311(2)
Customs Act, 1962 — Section 28(1)

Citation : (1999) 02 MAD CK 0128

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : S.V Jayaraman for N. Mani Narayanan, in W. P. 19261/98, V.T. Gopalan for V. Sanjeevi, in W.P. No. 19622/98, V.T. Gopalan for Radha Gopalan, in W.P. No. 20309/98, S. Krishnasamy, in W.P. No. 20278/98, for the Appellant; N.R. Chandran, A.S.G. for R. Santhanam, Additional Central Govt Stg. Counsel and M. Rathinam, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. Though these Writ Petitions are filed by different Trusts, since the contesting Respondents are common and most of the issues that arise for consideration in all these Writ Petitions are also common, with consent of all parties, these Writ Petitions are disposed of by this common order.

2. All the Writ Petitioners wanted to establish self- financing Engineering Colleges, and, after getting the letter of viability, from the All India Council for Technical Education (for short, AICTE), they wanted formal permission to start the Colleges. The same was rejected by the impugned orders. The impugned order is the respective Writ Petition is extracted below:

W.P. No. 19261 of 1998:

All India Council for Technical Education

F. No. 732-52-161 27th Nov. 1998. (NDEG)/ET/97

The Chairman, Odaiyappa Educational Trust, ...Theni.

Sir, In pursuance of the Hon''ble Madras High Court Order dated 14.09.1998 in the W.P. No. 11480 of 98 and W.M.P. No. 17512/98, I am to inform you that the proposal submitted by you to the Council for the establishment of new Engineering College during the academic year 1998-99 has been carefully considered as per the regulations of the Council.

Based on the recommendations of the Expert Committee Report, the Council has decided not to accord approval for starting the Degree Programme mentioned above at your institution during the academic session 1998-99 due to the following reasons:

- a. The Management produced evidence for account for Rs. 1,50,537.60 in current account in M/s Canara Bank on the day of inspection, viz. 14.11.1998. This is far from the need to develop a new higher education technical institute.
- b. No proof of working fund was made.
- c. There is complete absence of masterplan, phasewise plan and approved plan by competent authority for development of Institute.
- d. Novice Staff members are identified for Recruitment.

Based on the observations made above, the Council regrets to inform you that the proposal stands rejected for the session 1998-99.....

W.P. 19622 of 1998:

27th Nov. 1998.

In pursuance of the Hon''ble Madras High Court order dated 11.09.1998 in the W.A. No. 1185/98, I am to inform you that the proposal submitted by you to the Council for the establishment of new Engineering College during the academic year 1998-99 has been carefully considered as per the regulations of the Council.

Based on the recommendations of the Expert Committee, the Council has decided not to accord approval for starting the Degree Programme mentioned above at your institution during the academic session 1998-99 due to following reasons:

1. The Hostel for boys is located on first floor of administrative-cum-academic block of institution. This is an absolute impractical arrangement. The academic block cannot be shared with resident and such an arrangement would be an impediment to academic atmosphere of the college.

2. Proposed site is not contiguous, permanent site is divided roughly in ratio of 1:4 by a road running across it. In future, when the road will become busy due to traffic, it may prove hazardous to the students of the Institution.
3. There is a poramboke land of about 1 hectare near the proposed site. Govt, may allot this land at a future date of weaker section for residential purpose. It may spoil the academic atmosphere.
4. Management could not produce evidence for adequate funds required to establish a new institute. At the time of inspection, trust could produce evidence only for a working fund of Rs. 31,025/- (Rupees Thirty One thousand twenty five only) which is grossly inadequate to run a technical institution.
5. No senior faculty has been identified. The identified staff members are novice and inexperienced. They cannot develop the institution.
6. There is neither any master plan nor any detailed design for the construction of building.

Based on the observations made above, the Council regrets to inform you that the proposal stands rejected for the session 1998-99....

W.P. No. 20278 of 1998.

27th Nov. 1998.

In pursuance of the Hon"ble Madras High Court Order dated 21.09.1998 in the W.P. No. 12362/98 and W.P. No. 18806/98, I am to inform you that the proposal submitted by you to the Council for the establishment of new Engineering College during the academic year 1998-99 has been carefully considered as per the regulations of the Council.

Based on the recommendations of the Expert Committee report, the Council has decided not to accord approval for starting the New Degree Programme mentioned above at your institution during the academic session 1998-99 due to following reasons:

1. Without getting the Master plan approved by the Competent Authority, the Trust has started tinkering with old buildings on the permanent site and haphazard extension/construction is underway. No Master plan has yet been prepared even.
2. In spite of repeated requests, the Management did not produce documentary evidence to the committee to prove that the land on which the approach road has been laid belongs to the trust.
3. Management was unable to provide a copy of village map showing the location of the proposed site of Institute. The committee could not ascertain the contiguity of the proposed permanent site.
4. No documentary evidence was shown for working funds available with the

trust nor the committee was convinced about the potential of the trust to mobilise funds.

5. Identified staff for recruitment in the Institute is inexperienced.

Based on the observations made above, the Council regrets to inform you that the proposal stands rejected for the session 1998-99?.

W.P. No. 20309 of 1998

27th Nov. 1998.

In pursuance of the Hon"ble Madras High Court Order dated 11.09.1998 in the W.A. No. 1186/98, I am to inform you that the proposal submitted by you to the Council for the establishment for new Engineering College during the academic year 1998-99 has been carefully considered as per the regulations of the Council.

Based on the recommendations of the Expert Committee Report, the Council has decided not to accord approval for starting the Degree programme mentioned above at your institution during the academic session 1998-99 due to following reasons:

1. The proposed land for permanent site is an agricultural site and presently a part of the same is under cultivation. Moreover, LAND USE CERTIFICATE was not produced which is to be issued by Tahsildar.
2. Trust failed to provide encumbrance certificate for the temporary site - hence there is no claim of the Trust over the premises of the College.
3. The temporary site chosen is a defunct rice mill which is not at all conducive to run an engineering college.
4. There is no sound and well conceived Master plan for development of campus.
5. Identified faculty for recruitment is novice and experienced. No senior faculty has been identified for recruitment in the college.

Based on the observations made above, the council regrets to inform you that the proposal stands rejected for the session 1998-99, ...

3. According to learned Senior Counsel for Petitioners, copy of the Expert Committee Report was not furnished to the Petitioners, It is submitted that when the impugned order is based only on the Report of the Expert Committee, it should not have been acted upon, or at least the Petitioners should have been given an opportunity to explain how the Report is not correct. An alternative contention was also taken by all the Petitioners that even if there was any deficiency found by the Expert Committee, reasonable time should have been given to the Petitioners to rectify the same, and it was the procedure that was being followed by AICTE in many cases. It is also said that Petitioners herein are entitled to be heard before any adverse order is passed against them and they should be given notice of any adverse report..

4. It is also their case that most of the alleged deficiencies are imaginary. According to them, some of the deficiencies noted are non-existent since the Expert Committee did not take into consideration relevant material. It is also said that many documents have been placed before the Regional Office of the AICTE long before the Expert Committee visited the spot, and AICTE was dutybound to take into consideration those records also before passing the impugned order, which they refused to do. It is further said that if there is substantial compliance as per the infrastructural facility to run an institution, the institution must be allowed to run, and the approach should not be that some more facility should have been or should be provided before permission is granted. Whether there are minimum requirement to run the institution, should be the approach, which the Authorities did not take into consideration.

5. As against the said contention, learned Additional Solicitor General, appearing for the contesting Respondent- AICTE, submitted that the Inspection Report was prepared after notice to the Petitioners, and what they have recorded is only the facts stated by the Petitioners. Therefore, there is no necessity for furnishing a copy to the Petitioners. At any rate, it cannot be said that the Report of the Expert Committee is prejudicial to the Petitioners, in the sense that the same has been fully accepted by the AICTE. So long as there is no prejudice, the principles of natural justice have no application in such cases. It is further said that when an Expert Committee files a Report, the jurisdiction of the Court to consider the same is very much limited. Unless and until it is proved that the Report is perverse, in the sense that no reasonable man would have come to such a conclusion, the Court should be reluctant to enter a contrary finding. According to him, all the conclusions arrived at by the expert committee may not be correct, but, even then, if one or two of the conclusions are correct, that is sufficient to refuse permission, and in such a case, there is no justification for interference under Article 226 of the Constitution.

6. Argument of learned Additional Solicitor General is that a writ petition under Article 226 of the Constitution is not as if to re-hear an appeal. It is further submitted that what the Court has to consider is, whether the Expert Committee was justified in coming to the conclusion reached by it, on the basis of the materials placed before it. The consideration should not be that there are some more materials which are now placed before Court and, therefore, a different conclusion could be arrived. It was argued that the main contention that is raised against AICTE is mala fides, and so long as that is not established, none of the Petitioners is entitled to any relief. It was also submitted that the Regulations do not say anything regarding furnishing of copy to the applicants, nor a further opportunity after getting a Report. It was argued that after getting the Report, the same is placed before the Committee for consideration. No conclusion is arrived at on the basis of the materials placed before the Expert Committee, and its report alone requires consideration.

7. On the basis of the above submissions, the following questions emerge for

consideration:

- 1) Whether the impugned orders are violative of the principles of natural justice?
- 2) Whether the contention of the Petitioners that they are entitled to have reasonable opportunity to explain the alleged deficiencies and they should be given opportunity to rectify the defects if they are found to be correct, can be sustained? and
- 3) What are the relief's to which the Petitioners are entitled?

8. The first question that arises for consideration is, whether the principles of natural justice have been violated. For deciding the same, we have to take into consideration the AICTE Regulation.

9. Regulation 6 deals with "conditions for grant of approval". It reads thus:

Every application under Sub-regulation (1) of Regulation 4 shall be considered subject to the fulfilment of the following conditions, namely:

- (i) The financial position of the applicant shall be sound for investment in developed land and in providing related infrastructural and instructional facilities as per the norms and standards laid down by the Council from time to time and for meeting the annual recurring expenditure;
- (ii) the courses or programmes shall be conducted as per the assessed technical man power demands;
- (iii) the admissions shall be made according to the regulations and directions of the Council for such admissions in the respective technical institution or university;
- (iv) the tuition and other fees shall be charged within the overall criteria as may be laid down by the Council;
- (v) the staff shall be recruited as per the norms and standards specified by the Council from time to time;
- (vi) the Governing Body in case of private technical institutions shall be as per the norms as specified by the Council;
- (vii) any other conditions as may be specified by the council from time to time.

Regulation 8, as amended in 1997, deals with "scrutiny of applications". If all these cases, the letter of viability has been issued, even though that was after the filing of various writ petitions before this Court, Sub-Regulation (8) of Regulation 8 provides certain conditions on the basis of which a letter of viability be issued. Sub-Regulations (8) to (13) of Regulation 8 are relevant for our purpose. They read thus:

(8) While issuing a Letter of viability under Sub-regulation (7), the Council shall ask the applicant to submit by May 15 the following documents, along with the

applications in Form 1, namely:

(i) (a) Deed of registration of land relating to ownership/title of the applicant society/trust on the land earmarked for setting up of the new institution;

(b) A land use certificate from the authority concerned; and (c) In case the applicant is running any other educational institution in the same premises where the new institution is proposed to be set up, and irrevocable resolution of the applicant stating that sufficient area of the premises has been earmarked specifically for setting up the proposed institution.

(ii) A Fixed Money Deposit jointly in the name of applicant society/trust and Regional Office of the respective Regional Officer as per the requirements specified in Table II of Sub-regulation (4) for a period of ten years after which the applicant may apply to the council to allow or use the funds for development purposes of the institutions.

(iii) The accounts of the fund shall be maintained by the Regional Office. .

(iv) In case the applicant society/trust does not hold ownership right over the building, a Lease Agreement duly registered in its name for temporary accommodation for a minimum period of two years along with lay out plan and photographs of the premises.

(v) A master plan for the entire institutional complex with the details of the plinth area, including area of laboratories, classrooms, drawing halls, worships, library, administrative block, hostel, etc. shall be submitted along with the construction schedulee indicating estimated cost of construction involved.

(vi) A registered undertaking on non-judicial stamp paper, stating that the institute shall abide by all the regulations, Norms, Guidelines and Standards of the Council.

(9) In case of applications for introduction of new courses or programmes or for increase in the intake capacity of seats in any institution approved by the Council, the information about additional requirement of infrastructural and instructional facilities only shall be required to be furnished by May 15.

(10) An Expert Committee appointed by the Chairman of the Council shall, at the cost of the applicant visit the premises of the proposed institution or existing institution, as the case may be, and verify all the details furnished in the application, prior to final approval being given.

(11) The report of the Expert Committee and other relevant information obtained by the Council shall be placed before Executive Committee for its decision.

(12) Subject to the provisions of Sub-regulation (8), the final decision of the Council shall be communicated to the State Government concerned or the University Grants Commission, the University of the Directorate of Technical Education concerned, as the case may be, the Regional Office concerned and the

applicant by 15th June in case the application was made before the preceding 31st December.

(13) The rejection of an application shall not disentitle an applicant to make fresh application for any subsequent academic year.

10. Application for issue of letter of viability is made under Regulation 5, as per Form VI. There is also a declaration appended to that Form. The same is also relevant for our purpose, for it is in that Form, the application itself is filed. The Declaration reads thus:

I We on behalf of...undertakes to comply with the norms and standards and regulations of the All India Council for Technical Education (Council). I do undertake to furnish the following documents after receiving the viability letter within the stipulated period, failing which our proposal shall be liable to be rejected by the Council -(1) Document showing ownership of land as per norms laid down by the Council in the name of the Society/Trust/Applicant.

(2) Fixed deposit receipt in joint name of Applicant and concerned Regional Officer, as per the norms laid down by the Council.

(3) Master plan for permanent construction of the proposed technical institution along with estimated expenditure involved.

(4) Lease deed/title deed of lands for temporary accommodation having adequate area as per the norms laid down by the Council, in the name of Trust/Society/Applicant.

(5) Any other relevant document the Council may ask for processing the proposal....

11. The main argument advanced by learned Senior Counsel for Petitioners is that the impugned order is based only on a Report, copy of which has not been furnished to Petitioners, and the Petitioners were also not given any reasonable opportunity to explain how far the Report is not correct. I have already said that the learned Additional Solicitor General submitted that the Report is prepared on the basis of information given by Petitioners and, therefore, there is no question of giving information about the contents of the Report thereafter. It was also argued that it is on the basis of the Expert Committee Report, final orders are passed, and the Statute does not provide for the further hearing. It was also argued that these Petitioners are not affected by the decision since the Authorities have only accepted the Report. The argument is that if favourable report has been filed, and if the Respondent comes to a different conclusion and is not accepting the Report, only in such cases an explanation is required and not in cases where the Report itself is accepted.

12. It is settled law that no person is entitled to exercise arbitrary powers and if any person is given the power to decide and determine any question, and if the decision is ultimately going to prejudice that person, law requires that the

affected person must be heard before any decision is taken.

13. In *The Scheduled Caste and Weaker Section Welfare Association (Regd.) and others Vs. State of Karnataka and others*, in paragraph 15 of the judgment, Their Lordships have said thus:

It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its Officers. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power and the rule of natural justice operates in areas not covered by any law validly made. What particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the body of persons appointed for that purpose. It is only where there is nothing in the statute to actually prohibit the giving of the opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding, that the *audi alteram partem* rule could be imported....

(Emphasis added)

14. The purpose of following the principles of natural justice is prevention of miscarriage of justice and hence the observance thereof is the pragmatic requirement of fair play in action. Rules of natural justice operate as checks on the freedom of administrative action. Although adherence to it may often prove to be time-consuming, yet that is the price one has to pay to ensure fairness in administrative action. Where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. Any order or decision in matters involving civil consequences has to be made consistently with rules of natural justice. Every authority, quasi-judicial or administrative or executive, should act fairly, reasonably and in a just manner, i.e., in accordance with the principles of natural justice, when the result of the exercise of the power is likely to affect any person or visit him with civil consequences.

15. What is meant by "Civil Consequences"? As was held in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, "Civil Consequences cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence". It was held in *Union of India and Another Vs. Tulsiram Patel and Others*, that violation of a rule of natural justice results in arbitrariness which is the same as discrimination and where discrimination is the result of the State action, it is a violation of Article 14. It was, therefore, declared that the principle of natural justice is part of Article 14 of the Constitution of India.

16. Earlier, the Honourable Supreme Court had declared that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. In *S.L. Kapoor Vs. Jagmohan and Others*, , Their Lordships have held that the non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. The same principle was followed in other decisions also. But, in *State Bank of Patiala and others Vs. S.K. Sharma*, , Their Lordships have analysed the entire case law on the point and have summarised the principle thus:

We may summarise the principles emerging from the above discussions (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary / departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquiry whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained herein before and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under -"no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence and in a given case the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice,

i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principles.

(4)(a) In the case of a procedural provision which is not of a Mandatory character, the complaint-of violation has to be examined from the stand point of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to the former, then it must be seen whether the delinquent officer was waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench, in B. Karunakar. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice" no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it Void" or a nullity if one chooses to). In such cases, normally liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the stand point of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the

ultimate and over-riding objective underlying the said rule, viz, to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arises before them.

(7) There may be situations where the interests of State of Public interest may call for a curtailment of the rule of audi alteram partem. In such situations, the Court may have to balance public/state interest with the requirement of natural justice and arrive at an appropriate decision".

(Emphasis supplied)

17. What is then the scope of fair hearing? In De Smith, Woolf and Jowell Judicial Review of Administrative Action -1995 Edition, Chapter 9 deals with "Procedural Fairness: Content". The learned Author begins the Chapter thus:

Tucker, L.J. In Russell v. Duke of Norfolk said that "there are, in my view, no words which are of universal application in every kind of domestic tribunal ...whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case.

In paragraph 4 of the said chapter, the learned author has said thus:

Procedural fairness generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed, so that they may be in a position:

- (1) to make representations on their own behalf; or
- (2) to appear at a hearing or inquiry (if one is to be held); and
- (3) effectively to prepare their own case and to answer the case (if any) they have to meet.

In paragraph 18 of the same chapter, the learned Author has said thus:

If prejudicial allegations are to be made against a person, he must normally, as we have seen, be given particulars of them before the hearing so that he can prepare his answers. In order to protect his interest in he must also be enabled to controvert, correct or comment on other evidence or information that they may be relevant to the decision; indeed, at least in some circumstances there will be a duty on the decision maker to disclose information favourable to the applicant, as well as information prejudicial to his case. If material is available before the hearing, the right course will usually be to give him advance notification...

Learned author further says in paragraph 19 thus:

If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is a prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing...

18. In "Administrative Law by H.W.R. Wade & C.F. Forsyth - 7th Edition (1995 Edition), under the heading "Fair Hearing -General aspects", at page 531, the learned Author has said thus:

A proper hearing must always include a "fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view". Lord Denning has added:

If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them.

19. In M.A. Jackson Vs. Collector of Customs, , question u/s 28(1) of the Customs Act, 1962 for short levy. of duty came for consideration. In that case, a show-cause notice was issued for alleged short-levy of custom duty. The basis for the issuance of show-cause was the price mentioned in the magazine by the Customs Authorities, was not informed to the Assessee. In paragraph 8 of the judgment, it was held thus:

In our view, once it is admitted that the price mentioned in the magazine was not mentioned in the show-cause cause notice issued to the Petitioner, any reliance on the said price mentioned in the magazine by the Customs authorities must be held to be illegal. Further, it is clear that though this point was taken in the ground of the appeal before the appellate authorities, a copy of the magazine was never made available to the Petitioner....

(Emphasis supplied)

20. In K. Vijayalakshmi Vs. Union of India (UOI) and Others, , allegation against the Petitioner was that she adopted unfair means in departmental examinations. An expert opinion was obtained on the basis of enquiry by the Department. The question was, how far the Report could be made use of against the Petitioner when copy of the same was not furnished to the employee. In paragraph 6, it was held thus:

We are of the view that without going into the factual aspect of the case, the order of the Tribunal as well as the order of the General Manager confirmed by the appellate authority are liable to be set aside on the sole ground that the document based on which the conclusion came to be reached having not been supplied to the Appellant, the decision cannot be sustained. The Respondent ought to have given to the Appellant a copy of the opinion of the Forensic Department based on which the impugned order came to be passed.

(Emphasis supplied)

21. In Benny T.D. and Others Vs. Registrar of Cooperative Societies and Another, , similar question arose for consideration, In that case, District Co-

operative Bank, Kottayam in Kerala recruited employees. There were allegations of corruption. Under the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission, enquiry was ordered and a detailed report was submitted. The report was that the marks awarded and the consolidated marks recorded were corrected and manipulated. The Employees recruited by the Bank were not given copies of the Reports, nor the persons affected by the Report were made known about the contents of the Report. The recruitment made by the Bank was questioned, and the matter ultimately came before the Honourable Supreme Court. Their Lordships held at page 20 of the judgment thus:

Apart from the aforesaid questions which are common in respect of recruitment in both the Banks, in case of Kottayam Bank, the Division Bench of the High Court has categorically found that the recruitment itself is vitiated on account of large-scale malpractice. It may be stated that the Registrar while issuing notice under Rule 176 of the Rules to the Board of Directors of Kottayam District Co-operative Bank by letter dated 24.7.1986 did not indicate about any large scale malpractice adopted in the test conducted by the Bank excepting to the effect. "The marks awarded and the consolidated marks recorded are corrected and manipulated". Some of the candidates were given less marks and some others were given higher marks. But, while considering the legality of the resolutions passed by the Bank appointing several persons, the Registrar took into consideration the so called report of the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission who had directed for a detailed enquiry and on that basis came to the ultimate conclusion that the appointment of candidates made by the Kottayam District Cooperative Bank is vitiated. The learned single Judge came to the conclusion, and in our opinion rightly, that in the absence of any detailed particulars of the alleged irregularities in the notice issued to the Bank under Rule 176 and in the absence of the Report of the Kerala Public Men's (Corruption, Investigation and Enquiries) Commission being made available to the Bank of the persons appointed, it is not open to the Registrar to come to the conclusion about the irregularity and the said conclusion is vitiated on account of gross violation of the principle of natural justice. The Division Bench, however, disagreed with the conclusion of the learned single Judge on this score and relied upon the report of the Commission and came to hold that the entire selection process was vitiated by illegality and irregularity and therefore there is no other option than to cancel the appointments of all the candidates. The Division Bench was conscious of the fact that the persons to be adversely affected by the impugned decision had not been given an opportunity in as much as the relevant documents had not been put to them nor even to the Bank who made recruitment but yet brushed aside the principle of natural justice and did not focus its attention to the same and on the other hand came to the conclusion that the process of selection got vitiated on account of alleged irregularity and illegality. In our considered opinion, the Division Bench patently committed an error in relying upon the report of the Commission and in recording a finding that irregularities have been committed in the selection

notwithstanding the fact that the said report had not been made available to the Bank or to the affected parties. That apart, as stated earlier in the notice that was issued by the Registrar, there were no particulars given and so such vague assertions made, it was not permissible to record a conclusion that there has been any irregularity in the process of selection. The said conclusion of the Division Bench must accordingly be set aside.

(Emphasis supplied)

22. In *State of West Bengal and Others Vs. Nuruddin Mallik and Others*, , while deciding a similar question, their Lordships have directed the authorities concerned to decide the question raised by making any inspections, as they deem fit and proper, after giving due opportunity to the management, decide the matter, after giving a copy of the same to the management.

23. On the basis of the above decisions, it is clear that the person affected or likely .to be affected must be heard , and he must also be given notice of all adverse materials that are likely to be used against him.

24. In this case, the question to be considered is, how far that principle would apply.

25. I have already said that the expression "civil consequences" comprehensive connotation, in which everything that affects a citizen in his civil life inflicts a civil consequence.

26. In all these cases, Petitioners have obtained Viability Certificate for establishing Engineering College. Certain conditions are imposed in the Letter of Viability. All the Petitioners herein submit that they have fully satisfied those conditions by spending few crores of rupees by putting up construction, installing machineries and providing all infrastructural facilities to run an educational institution. They are spending that amount on the expectation that they will be permitted to run the Institute immediately after getting permission. They are expecting permission under the bona fide belief that they have complied with the conditions provided therein. If the Authority finds that the Petitioners are not entitled to run the Institution, the loss sustained by them will be huge. That is a civil consequence, which enables the Petitioners to challenge the action in case the Order is passed violating the principles of natural justice.

27. The only document that is relied on by Respondent - ACTE to hold that these Petitioners are not entitled to run the institution for this Academic year, is the report submitted by the Expert Committee. Learned Additional Solicitor General submitted that the Report only contains what the Petitioners informed the Inspection Committee, and it is not a Report prepared without their knowledge. Therefore, there is no question of informing the contents of the Report to Petitioners. I do not think that the said submission of the learned Additional Solicitor General could be accepted. All these Petitioners only say that an Expert Committee visited the various Institutions, and they were not known at that time

that an adverse report is going to be filed. The Report itself was prepared in their absence. Their signatures were also not obtained in the Report. The Expert Committee only recorded the facilities in the College on the information submitted by the Petitioners. According to them, the information submitted by them is that the conditions have been satisfied. If that information alone is incorporated, the Report can never be against the Petitioners. Only when a decision is taken on the Report, these Petitioners are informed that on the basis of the recommendation of the Expert Committee, their applications are rejected. So, the sole reliance is on an adverse material against the Petitioners, about which they were not given notice. The impugned orders, therefore, violate the principles of natural justice. The Petitioners are entitled to know the contents of the Report before any action is taken against them.

28. In this case, all these Petitioners have a case that the Expert Committee has not taken into consideration the documents which were already placed before the Respondent and most of the deficiencies are imaginary. It is also said that at the time when the letter of viability was issued, these Petitioners were asked to comply with certain conditions, which are stated in the letter itself. While the Report is filed, something not provided in the letter of viability is also taken into consideration. Before passing any final order, the Respondent is bound to hear the Petitioners as to how far the Report is acceptable or whether the Report required any reconsideration. When documents are filed before them and not before the Expert Committee, Respondent is also bound to consider the validity of the Report on the basis of the materials placed before it. It is here the declarations submitted by Petitioner in their applications for letter of viability gain importance. In the declaration, it is stated that they will submit the documents before the Respondent. I find that most of the documents were before the Respondent - AICTE, but they were not taken into consideration by the Expert Committee. While considering the Writ petitions independently, I will deal with this contention separately.

29. Respondent is also not unaware of the procedure adopted after getting the Report of the Expert Committee. Learned Senior Counsel for Petitioners brought to my notice that in cases where even the basic facilities are not available and the same is reported by the Expert Committee, Respondent used to inform the applicant about the deficiencies noted in the report and have the same rectified. They also expressed their willingness to have a re-inspection. Learned Senior Counsel submitted that the Respondent-AICTE is too much obliging to certain Institutes. What the learned Senior Counsel submitted was that the Respondent need not be obliging, but they must maintain a true standard, and they should treat the Institutes equally. Learned Senior Counsel placed before the proceedings of Respondent dated 6.8.1996 and 23.9.1996, wherein the Respondent had informed the National Institute of Technology and Science addressed to the Hindustan Engineering Training Centre at Madras. From the proceedings, it could be seen that even the land and construction were far from satisfactory, and, immediately, the Institute was informed about it, and the

Respondent-AICTE volunteered to have reinspection on hearing from them. The same was repeated in the subsequent letter dated 23.9.1996. It is clear from this proceeding that the Respondent is aware as to what is the procedure to be adopted. If a Report is the only material on the basis of which a decision is taken, Respondent had understood the legal implications of the same, and that is why it informed the contents of the Report, to have the deficiencies rectified.

30. In this case, the case of the Petitioners herein is that the Report does not represent the true facts. In such a case, Respondent was duty-bound to get clarification. Moreover, it failed to take into consideration the documents already before it. It is at this juncture, learned Additional Solicitor General submitted that the scope of Judicial Review is very much limited in such cases, and only in rare cases, the Court can interfere in the Report of an Expert Committee. Learned Counsel relied on the decision reported in AIR 1950 SC 1402 (*Nelima Misra v. Harinder Kaur Painial*). Relevant portion of paragraph 32 reads thus:

...When appointments based on recommendations of experts nominated by the Universities, the High Court has got only to see whether the appointment had contravened any statutory or binding rule or ordinance. The High Court should show due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which Chancellor has acted....

(Emphasis added).

Learned Additional Solicitor General also relied on the decision reported in 1977 II M.L.J. 403 (*Miss Sathya Rao v. University of Madras*). The argument was that when the Authority is entrusted with the responsibility and it discharged the same, the Court should not sit as an Appellate Authority over the wisdom of the particular body, and, unless the Court is convinced that the Report is so unreasonable as no reasonable person would have come to or alien or foreign, the purpose for which power was conferred, the Court cannot hold that the satisfaction is unreasonable and avoid the same. The sum and substance of the argument is that unless the Report is perverse, the Court should not interfere.

31. In *De Smith, Woolf and Jowell -Judicial Review of Administrative Action* (1995 Edition), in Chapter 5 under the heading, "scope of Review of Findings of Law and Findings of Fact", in paragraph 90, the learned Author has summarised the Scope of Judicial Review, and, at page 286, the learned Author has said thus:

The concept of error of law includes the giving of reasons that are bad in law or (where there is a duty to give reasons) inconsistent, unintelligible or substantially inadequate. It includes also the application of a wrong legal test to the facts found, taking irrelevant consideration into account and failing to take relevant consideration into account, exercising a discretion on the basis of any other incorrect legal principles, misdirection as to the burden of proof, and wrongful admission or exclusion of evidence, as well as arriving at a conclusion without any supporting evidence. Error of law also includes decision which are unreasonably burdensome or oppressive. Thus whether or not the drawing of an

inference from the primary facts, or the application of a statutory term of the facts and inferences drawn therefrom, is held or assumed to be a matter of fact (or fact and degree) or a matter of law, the Court may still hold the decision erroneous in point of law if any of the above defects is present.

32. In paragraph 91 of the same Chapter, the learned Author has considered whether error of fact is a ground for judicial review, and has said thus:

The proposition above shows that, despite the ideal conception of judicial review, it cannot be unqualifiedly asserted that reviewing Courts have no part to play in the assessment of fact. Proposition (5) shows in particular that the Courts do presume, and rightly so, that Parliament does not intend an inferior body to act irrationally, or to exceed its given powers by misapplying the law (an exercise that can involve drawing the wrong inferences from facts).

(Emphasis supplied).

33. In "Administrative Law" by H.W.R. Wade & C.F. Forsyth - 17th Edition (1995), while considering "findings, evidence and jurisdiction", (at page 316 to 318) the learned Authors have said as follows, under the heading "Error of material fact":

Mere factual mistake has become a ground of judicial review, described as "misunderstanding or ignorance of an established and relevant fact", or acting upon an incorrect basis of fact.

In a case where the Secretary of State had power to get directions if he was satisfied that the local education authority were acting unreasonably, Lord Wilberforce, in explaining that such powers were to some extent subject to judicial review, said:

"If a judgment requires, before it can be made, the existence of some facts, then although the evaluation of those facts is for the Secretary of State alone, the Court must inquire whether those facts exist, and have been taken into account, whether the judgment has been upon a proper self-direction as to those facts, whether the judgment has not been made upon other facts which ought not to have been taken into account. If those requirements are not met, then the exercise of judgment, however bona fide it may be, becomes capable of challenge.

Lord Wilberforce approved a remark by Lord Denning MR in another case that the Court could interfere if a minister "plainly misdirect himself in fact or in law". Effect was given to these ideas when the Court quashed a Secretary of State's decision owing to a mistake of fact in his inspector's report which said that a site had never been proposed as green belt when in fact it had been; and when the Court of Appeal held that it could quash a local authority's decision which was "flawed by an error of fact" as to the content of a judgment of the House of Lords. Similarly in New Zealand it was held that a minister's decision was invalid for failure to take into account the true facts, a medical referee having misled him by an inadequate report.

This ground of review has long been familiar in French Law and it has been adopted by statute in Australia. It is no less needed in this country, since decisions based upon wrong facts are a cause of injustice which the Courts should be able to remedy. If a "wrong factual basis" doctrine should become established, it would apparently be a new breach of the ultra vires doctrine, analogous to finding facts based upon no evidence or acting upon a misapprehension of law. A minister, for example, would have to show not only that he decided reasonably on the material before him, but that he had the relevant material before him in correct form. This would tighten still further the Court's control over administrative findings of fact and would consign much of the old law about jurisdictional fact, etc. to well-deserved oblivion. It would make judicial review into a comprehensive system, able to correct serious errors of all kinds.

(Emphasis supplied)

Learned Authors has also summarised the Rules, and has given a comparison of the old Rule and the new Rule which reads thus:

...The overall picture is of an expanding system struggling to free itself from the trammels of classical doctrine laid down in the past. It is not safe to say that the classical doctrines are wholly obsolete and that the broad and simple principles of review, which clearly now command themselves to the judiciary, will entirely supplant them. A summary can therefore only state the long-established rules together with the simpler and broader rules which have now superseded them, much for the benefit of the law. Together they are as follows.

Errors of fact Old Rule: The Court would quash only if the erroneous fact was jurisdictional.

New Rule: The Court will quash if an erroneous and decisive fact was (a) jurisdictional (b) found on the basis of no evidence, (c) wrong, misunderstood or ignored." (Emphasis supplied) 33. From these texts, it is clear that even if an expert body files a report, and that is taken as the only basis for passing the order, ignoring the evidence already before the Respondent, the Court cannot close its eyes merely on the ground that the Report has been filed by an Expert body.

34. Learned Additional Solicitor General also produced before me the copies of the Report filed by the Expert Committee. I have my own doubt whether I will be justified in considering the same, while an opportunity has not been given to Petitioners to verify the correctness of the same.

35. On perusing the Report, I find that the Expert Committee has not properly considered how they have discharged their duties.

36. In *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc.*, Their Lordships have said that private educational institutions have now become a necessity and these institutions merely supplement the effort of the

State in educating the people. In the same decision, it is said that it is not an independent activity. These private educational institutions are playing a great role in the educational system and the same cannot be ignored. When these institutions invest huge amounts for establishing professional colleges, Respondent has to consider in what way the same could be established and maintained. In *Al-Karim Educational Trust and another Vs. State of Bihar and others*, Their Lordships considered how the matter should be approached. Their Lordship took judicial notice and observed that or even the imponderables to start an institution, cannot be gainsaid. Their Lordships further said that "no insist on fulfilling all requirements at a stretch in modern conditions is not a practical proposition and ordinarily, only those aspects or requirements, which is the minimal will give a good start for effectively imparting education, with ancillary requisites may be considered sufficient in the extraordinary circumstances of this case!. Their Lordships also said that "It is impractical to insist, for a foolproof or absolute adherence to all requirements without regard to their importance or relevance, for the purpose of imparting education, in a practical way". Their Lordships posed a question thus:

...Whether there exists the minimal and satisfactory requirements to keep the matter going, and not whether better arrangements that will render the set-up more efficient and more satisfactory, should be insisted as a "wooden rule?"

In that decision, it was further held thus:

It may be that there are some minor deficiencies here and there which call for rectification. Time can certainly set right such matters. What is required is a total, practical, overall view....

There should be "substantial" though not literal compliance of the deficiencies. In paragraph 12 of that judgment, Their Lordships have further said thus:

...Once the Institution feels secure on the question of affiliation, we have no doubt that these minor deficiencies, if they exist, shall be taken care of by those in charge of the institution. For taking such further steps, the grant of affiliation need not wait.

Why I am relying on the above decision is, that while going by the Inspection Report, it is said that First Aid Box is not kept in a particular place. This shows how negligible matters were taken into consideration by the Inspection Authorities in not recommending the establishment of a College. When crores of rupees have been invested, not to recommend the establishment, on unnecessary grounds, only shows that the Expert body is not discharging their duties as expected of them. Where there are minimal requirement, it can permit the Institution to run. The Expert Committee has to act in that way, and not in the way in which it has acted in the instant case. I am not going into the details of each and every reason stated by the Expert Committee, since the same has not been put to the Petitioners, at the time of inspection or subsequently after the filing of the Report. I only hold that the Expert Committee has taken into

consideration irrelevant matters, and it gives this Court and jurisdiction to review the findings of the authorities.

37. Learned Additional Solicitor General also relied on the decision reported in AIR 1963 SCC 779 State of Orissa v. Bidyubbushan), to contend that even if all the findings of the Expert Committee are not correct, and if atleast one or two findings of the Expert Committee are correct, the recommendation could be justified. Relevant portion of the judgment reads thus:

The reasonable opportunity contemplated by Article 311(2) has manifestly to be in accordance with the rules framed under Article 311 of the Constitution, but the Court, in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanor established. The reason which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justifiable; nor is the penalty open to review by the Court. If the order of dismissal may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground" alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer of the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all, it appears that there had been violation of the rules of natural justice.

(Emphasis supplied).

38. The said decision also may not have any application to this case, when the main contention of Petitioners herein is that the report of the Expert Committee does not represent the real fact. As per the letter of viability, it is said that the Inspection Committee will inspect on satisfying the conditions. Therefore, when the Expert Committee makes a visit, it follows that all the papers were placed before it.

39. Learned Senior Counsel for Petitioners placed before photographs of the various Institutions, which they have established. It is said that those photographs were placed before the Expert Committee, and it is part of their records. It is also said that the masterplan also been filed before Respondent, which has, not been taken into consideration by the Expert Committee. Prima facie, from the records that have been produced along with the writ petition, and also when Petitioners have stated in their affidavit that they produced the relevant records before the Respondent, I feel that there is justification in their contention. If that be so, the entire report of the Expert Committee can only be said as one prepared without considering the papers before it, and the reasons mentioned therein are based on no materials.

40. In view of the findings entered by me above, I hold that the impugned order is violative of the principles of natural justice. Since the Petitioners have

invested huge amounts, refusal of permission on the basis of alleged deficiencies, is not proper. The approach by the Respondent-AICTE seems to be to refuse permission somehow or other. Such an approach is not expected of a Statutory authority. It should have considered whether there is minimal facilities in the Institution for running the same, as has been held in Al-Karim's case (supra). If that be so, any further opportunity should be given to the Petitioner to rectify the defects, if any, that are found in the Institution.

41. Now I come to the relief prayed for in W.P. No. 19261 of 1998. In paragraph 8 of the affidavit, it is said that the Petitioner received a fax message about, the proposed inspection without giving any particulars. It was an incomplete message. When the Respondent was contacted, they did not sent any reply, and ultimately Petitioner received a letter dated 11.11.1998 proposing to inspect the premises on 14.11.98 at 2.00 p.m. The letter was received by Petitioner on that day (14.11.1998) at 12.00 Noon. But, in spite of the short notice, Petitioner was in a position to explain their case to a certain extent. From the typed set of papers, it could be seen that Expert Committee itself requested for further particulars, and the same were submitted by Petitioner on 16.11.1998. The query was about the funds available with the Petitioner. The details were given on 16.11.98. In the Inspection Report, the Expert Committee admits that some papers were given to them. But, when the Report is filed, nothing is said about the papers submitted. There allso, the masterplan was submitted, and papers were also placed before the Committee as to how the staff was recruited. Unfortunately nothing was considered in the Report. If only the Report had been submitted with notice to the Petitioners, or before an Order was passed, notice was given to Petitioners, such an order would not have been passed by the Respondent. I find that the impugned order requires interference, and the same was passed violating the principles of natural justice. The recommendation of the Expert Committee is based on no evidence, and it has also not considered relevant materials. Consequently, the order impugned in W.P. No. 19881 of 1998 is quashed. I direct the 1st Respondent-AICTE to reconsider their decision and pass revised orders within a period of three weeks from to-day. Before passing fresh Orders, 1st Respondent shall hear the Petitioner. 1st Respondent cannot refuse permission for 1998-99 on the ground of any belatedness, for, it is their own making. Petitioner should not be made to suffer for the illegality committed by the first Respondent. First Respondent is directed to reconsider the matter and pass Fresh orders in the light of the observation made above.W.P. No. 19261 of 1998 is allowed as indicated above. No costs.

42.W.P. No. 19622 of 1998:

In this Writ Petition, the definite case of Petitioner is that alternative place buildings were also shown to the Expert Committee for housing the hostel. But this is not referred to in the report. None of the grounds in the Order is valid. At the time of issuing the Viability Certificate, the sustainability of the land were never objected. The Regulations do not say that the site should be contiguous. It

only says that it must be suitable. The word "suitable", as seen in the Regulation should be given its ordinary meaning, namely, "suited" and "were fitted" and not