

(2012) 08 BOM CK 0084

In the Bombay High Court

Case No : Writ Petition No. 4544 of 2012

Rashtriya Shikshan Sangh Sidhewadi Shivajirao (Bapu)
Shendage Primary Ashram School, Sidhewadi, Late
Droupadhi Dadas, Secondary Ashram School, Sidhewadi,
Bhimsmruthi Primary Ashram School, Subash Nagar and
Through the President of the Rashtriya Shikshan Sangh
Sidhewadi

APPELLANT

Vs

State of Maharashtra, The Director of the S.T., N.T. and Other
Backward and Special Backward Welfare Office, State of
Maharashtra, Pune, The District Welfare Officer and The
Additional Commissioner of the Welfare Department, Sangli
and Popat Bhimrao Jadhav

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 6 ALLMR 672 : (2013) 1 MhLj 129

Hon'ble Judges : S.C. Dharmadhikari, J

Bench : Single Bench

Advocate : G.S. Godbole instructed by Tejpal Ingale, for the Appellant; R.M. Patne, AGP for Respondent Nos. 1 to 3 Mr. Vijay Patil with Sachin Hande instructed by . Raju Yamgar, for the Respondent

Judgement

S.C. Dharmadhikari, J.—This petition under Articles 226 and 227 of the Constitution of India challenges the order passed by the Minister, Social Justice, Government of Maharashtra. The order has been passed on an Appeal of the petitioners before me. The grievance of the petitioners in the said appeal was that the petitioners have established an Ashram School and there are other schools, each one of which are mentioned in the petition and it is stated that there are proper facilities and amenities for residential as well as non residential students.

2. On some of the complaints that were made on account of a political fall out, an Administrator was appointed in respect of these schools and Institutions on

2nd April 2007. That order was challenged by way of Writ Petition No. 7080 of 2006. That petition was allowed and the appointment of Administrator was set aside. Thereafter, a show cause notice dated 31st March 2011 was issued by the respondent Nos. 3 to 6 to this petition and in which a reference is made to certain complaints and particularly with regard to lack of basic amenities, such as bath rooms, toilets etc in the Ashram Schools. A detailed explanation was given to this show cause notice on 18th April 2011. Thereafter, the matter was initially heard by respondent No. 2 but, later on, the hearing was given by the State Government Respondent No. 2 and the matter was remanded to Respondent No. 2. There were certain visits and inspections of these schools reports of which have been relied upon and equally, there is a visit of the second respondent, the Director himself. However, the grievance of the petitioner is that the entire material which was placed before the second respondent - Director, including in his personal visit, has not been referred to and he passed an order on 27th February 2012, cancelling the approval of these schools. An appeal has been preferred against this order on 1st March 2012 and which appeal was heard by respondent No. 1 State Government and particularly by the Minister of Social Justice and by the impugned order the said appeal has been dismissed.

3. A copy of the order under challenge is at pages 222 to 225 of the paperbook. What I find from reading of the impugned order is that the hearing was given by the Minister of Social Justice, Government of Maharashtra on 25th April 2012. At such an hearing, the representatives of all including the Advocates of petitioner and the officials of the Directorate and the complainant were present. The oral arguments have been purportedly heard by the said Minister. However, curiously the order recites at pages 224-225 that at or after the hearing, when the entire material was placed before the Minister, the said Minister discussed the matter with the concerned officials and it is the opinion of the Minister - appellate authority which is set out in the impugned order. That opinion is that the order passed by the second respondent should be maintained and the appeal be dismissed.

4. The relevant para or part of the impugned order above its operative portion records such opinion which is stated to be expressed by the Minister. Then, it is stated that this is the order passed by the Minister himself.

5. To my mind, a perusal of the order in its entirety would and setting out the controversy in brief, what is apparent is that the Minister may have heard the matter but the ultimate order has not been passed by him. It is his opinion which has been communicated or made known to some officer in the Department of Social Justice and the official has drafted, made or prepared the impugned order which is signed by the Minister. The basis of the order is the opinion also is stated to be expressed after discussion with the concerned officials of the department. Thus, if the Minister is the appellate authority, it was expected that he records his satisfaction that there is merit in the appeal or otherwise. It is his satisfaction and opinion which is important and paramount, as the appeal was

made over to him. If it was to be heard by him, then, the order in appeal should clearly record his opinion and satisfaction and it cannot be left to the officials to incorporate or express the opinion and conclusion of the Minister by drafting an order for him and thereafter, the Minister signs such order. That clearly means that one who has heard the matter has not recorded his satisfaction and opinion so also the conclusion but it is somebody else who does, also this, on his behalf. The Minister may be assisted during the course of hearing by certain officials in the department, including the Director. However, it was incumbent upon the Minister or the appellate authority himself to pass an order. It is not the wording of the order which has led me to arrive at this conclusion. Ordinarily, one would word an order of this nature and recording one's own satisfaction and opinion so also conclusion in first person. The order cannot read like "that the Minister (Social Justice) feels" or "it is his opinion". The official or officer in the Department is not competent to hear and decide the appeal. If the quasi-judicial powers vest in the Head of the Department, then, they cannot be delegated to anybody or everybody in the Department irrespective of their hierarchy and status. That such practices are adopted because high officials and Ministers are very busy and cannot devote full time and attention is no answer. Similarly, they conduct hearings but have no time to write or dictate the orders in quasi-judicial matters, is no excuse. In judicial scrutiny and review of such orders, the Higher Courts are not expected to accept such reasons for they would be blamed for adopting a casual and light hearted attitude or permitting a course which subverts justice. A Court exercising writ jurisdiction cannot countenance an argument or accept a plea which results in justice being a casualty. To encourage such methods would make a mockery of the Rule of Law. However, this itself is not decisive in this case.

6. What I additionally find is that after the conclusion of an alleged hearing before the Minister, some discussions have taken place, at which certain conclusions have been reached and the appellate authority has merely expressed them orally and which has been communicated in the form of an order passed by the appellate authority (in this case the Minister). Besides this, if the order is perused, it would clearly indicate that there is no application of mind. The appellate order merely reproduces the conclusions in the report of the Director of the Schedule Tribes, Nomadic Tribes and Other Backward Classes and Special Backward Welfare, in relation to each of the schools. Subsequently, it narrates what transpired at the hearing held on 25th April 2012 and the claim of the petitioners that all deficiencies and defects noticed in the inspection have been removed. Thereafter, the order refers to the opinion of the department expressed through the Director, that the petitioners' Institutions do not have the requisite basic amenities. Thus, the Minister puts his seal of approval without any independent application of mind on the contents of the report of the concerned department which was submitted to him. Such an exercise is not expected when the proceedings are as serious as challenging the order of cancellation of approvals given to the institutions, particularly, Ashram schools. If the petitioners

claim to have established the schools in the year 1993, 1994 and 1999 and the cancellation has been effected by an order passed on 4th December 2012 and prior thereto an attempt to appoint Administrator has not succeeded so also there being charges of political interference and political motives of to the authorities, then, all the more it was expected of the appellate authority to assign cogent, satisfactory and independent reasons. It is not expected to merely act as a rubber stamp and endorse mechanically the opinion of the department officials. Thus, the entire exercise before the appellate authority is meaningless and an empty formality.

7. Precisely this is the reason which has been emphasised way back in the year 1959 by the Supreme Court in the case of Gullapalli Nageswara Rao and Ors. Vs. Andhra Pradesh State Road Transport Corporation and Anr., reported in AIR 1959 S.C. 308. The Supreme Court has held thus:-

29. The mode of performing quasi-judicial acts by administrative tribunals has been the subject of judicial decisions in England as well as in India. The House of Lords in *Local Government Board v. Arlidge* (1) in the context of the Housing, Town Planning Etc., Act, 1909, made the following observations at page 132:

My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same.

In *New Prakash Transport Co., Ltd. v. New Swarna Transport Co., Ltd.*, AIR 1957 SC 232, this Court reviewed the case law on the subject and came to the conclusion that the rules of natural,-justice vary with varying constitutions of statutory bodies, and the rules prescribed by the legislature under which they have to act, and the question whether in a particular case they have been contravened must be judged not by any preconceived notion of what they may be but in the light of the provisions of the relevant Act. This Court re-affirmed the principle in *Nagendra Nath Bora v. Commissioner of Hills Division* (supra)

30.One of the parties to the dispute before the State Government was the Transport Department functioning as a statutory authority under the Act. The head of that department received the objections, heard the parties, recorded the entire proceedings and presumably discussed the matter with the Chief Minister before the latter approved the scheme. Though the formal orders were made by the Chief Minister, in effect and substance, the enquiry was conducted and personal hearing was given by one of the parties to the dispute itself. It is one of the fundamental principles of judicial procedure that the person or persons who are entrusted with the duty of hearing a case judicially should be those who have no personal bias in the matter. In *Ranger v. Great Western Ry.*

Co., 1854-5 HLC 72 at p.89: 10 ER 824 at p.827, Lord Cranworth, L.C., says:

A judge ought to be, and is supposed to be, indifferent between the parties. He has, or is supposed to have, no bias inducing him to lean to the one side rather than to the other. In ordinary cases it is just ground of exception to a judge that he is not indifferent, and the fact that he is himself a party, or interested as a party, affords the strongest proof that he cannot be indifferent.

In *Rex v. Sussex Justices Ex Parte McCarthy* 1924- 1 K B 256 at p.258, Lord Hewart, J., observed:

It is said, and, no doubt, truly, that when that gentleman retired in the usual way with the justices, taking with him the notes of the evidence in case the justices might desire to consult him, the justices came to a conclusion without consulting him, and that he scrupulously abstained from referring to the case in any way. But while that is so, a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The question therefore is not whether in this case the deputy clerk made any observation or offered any criticism which he might not properly have made or offered; the question is whether he was so related to the case in its civil aspects as to be unfit to act as clerk to the justices in the criminal matter. The answer to that question depends not upon what actually was done, but upon what might appear to be done.

This was followed in *Rex v. Essex Justices; Ex Parte Perkins*, 1927-2 KB 475. In *Franklin's Case*, 1948 A C 87 (supra) though on a construction of the provisions of that Act under consideration in that case it was held that the Minister was not acting judicially in discharging his duties, his Lordship accepted the aforesaid principle and expressed his view on the doctrine of "bias" thus, at page 103:

My Lords, I could wish that the use of the word "bias" should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute.

The aforesaid decisions accept the fundamental principle of natural justice that in the case of quasi-judicial proceedings, the authority empowered to decide the dispute between opposing parties must be one without bias towards one side or other in the dispute. It is also a matter of fundamental importance that a person interested in one party or the other should not, even formally, take part in the proceedings though in fact he does not influence the mind of the person, who finally decides the case. This is on the principle that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The hearing

given by the Secretary, Transport Department, certainly offends the said principle of natural justice and the proceeding and the hearing given, in violation of that principle, are bad.

32. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party- appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.

8. Hence, while emphasising the need for a decision by one who hears and after a meaningful and complete so also proper exercise what the decision of the Supreme Court in addition emphasises is that there ought to be an independent application of mind. In the present case, if the proceedings are in the nature of an appeal, then, the entire case is open for consideration by the Authority who is deciding the appeal and the challenge to the order impugned before it. It is expected to take an impartial view of the entire proceedings and the matter as a whole. It is not expected to complete the exercise by merely endorsing a preformed or arrived opinion and satisfaction recorded in the orders that are impugned before it.

9. Precisely for the above reasons, the hearing in this case is a farce and empty formality. It is for this reason alone and without examining any other contention, this petition must succeed. The order passed by the Minister, Social Justice dated 5th May 2012 is quashed and set aside and the appeal now shall be heard by the Principal Secretary/ Secretary in the Department of Social Justice and Special Assistance, Government of Maharashtra, who shall give an opportunity of hearing to the parties including the respondent No. 4 and after an independent and proper consideration of the entire materials, pass a fresh order without being influenced by the order of the Minister, passed earlier and which is set aside today so also the opinion of the Director - Second respondent before this Court. All the materials placed by both sides should be considered by the Principal Secretary/ Secretary of the said department and he must pass a reasoned order as expeditiously as possible and within four weeks from the date of first appearance of parties before him. The parties shall appear before the Principal Secretary/ Secretary in the said department on 3rd September 2012. All contentions are kept open.

10. Mr. Godbole, learned Counsel appearing for petitioner makes a serious grievance that once the appellate order is set aside and proceedings are remitted

back for consideration afresh, at least the salary grants for the period during which the petitioners have employed the teachers and staff and conducted the classes should be released. It is Mr.Godbole's contention that the petitioners have been duly and properly running the schools in question.

11. To my mind, the order passed by the Director - second respondent is dated 27th February 2012. The matter was pending before the appellate authority from February 2012 till May 2012. In these circumstances, interest of justice would be served if the respondent Nos. 1 and 2 are directed to consider the request of the petitioners and release the salary grants in favour of the teachers and non teaching employees of the petitioners at least till such time as the schools and classes therein were duly conducted. All documents including the muster rolls etc. shall be placed before the Director - second respondent and the Director should communicate his decision with regard to the release of the salary and other grants within 10 days from today. Rule made absolute accordingly. No orders as to costs.