
(1975) 02 GUJ CK 0008
In the Gujarat High Court

Sharda Education Trust

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 28-02-1975

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)

Gujarat Secondary Education Regulations, 1974 — Regulation 9

Citation : (1976) 17 GLR 298

Hon'ble Judges : P.D. Desai, J

Bench : Single Bench

Judgement

P.D. Desai, J.—The petitioner is the managing trustee of a registered public trust (sharda education trust) the object of which is to promote educational activities. On or about January 21, 1974 the trust in question took over the management of a primary school known as "Sardar Vidya Vihar" from another public trust with all rights and liabilities. The name of the school was then changed and it was renamed as "Sharda Vidyalaya".

2. The public trust from which the management of the primary school in question was taken over had made an application to the district education officer, Ahmedabad on November 28, 1973 for starting a secondary school (standards VIII and IX) after the sharda education trust took over the management, it pursued the said application. On January 21, 1974, the district education officer, Ahmedabad informed the petitioner that the application for starting a secondary school was filed as no permission to start a new secondary school was to be given for the time being. The petitioner thereafter wrote several letters to the authorities to reconsider the matter but none of them evoked any response. At the commencement of the new academic year, the sharda education trust started classes for standard VIII. In July, 1974 the district education officer, Ahmedabad inspected the school. In the mean time, the Gujarat Secondary Education Act, 1972 (hereinafter referred to as the Act) came into force the petitioner made an application on August 7, 1974 for registration of the secondary school with effect from June 1974 to the Gujarat Secondary Education board (hereinafter referred

to as the board) and paid the prescribed fees. On August 19, 1974 the petitioner was informed by the board that the application for registration was rejected on the grounds mentioned therein. In all four grounds were set out for the refusal of registration. The petitioner, feeling aggrieved by the order of the board, preferred an appeal to the State Government u/s 31(10) of the Act. Several grounds were set out in the appeal memo dated October 5, 1974 in support of the challenge to the order refusing registration. By a communication dated November 2, 1974 signed by the section officer, education and labour department, Government of Gujarat, the petitioner was informed that the Government saw no cogent reason to modify the impugned order passed by the board and that the appeal was, therefore, dismissed. The present petition is directed against the said decision of the State Government.

3. The impugned order is assailed on behalf of the petitioner on several grounds. It is, however, not necessary to refer to and deal with all the grounds because the impugned decision is liable to be quashed and set aside on account of two glaring defects. The first defect is that the appellate order is not a speaking order and the second defect is that in reaching its decision, the appellate authority has relied upon some material which does not appear to have been disclosed to the petitioner. I shall presently deal with these points in detail. Before I do so, however, I might make a brief reference to the provisions governing grant or withdrawal of recognition to secondary schools and the background against which their enactment and implementation should be viewed.

4. Formerly, recognition of secondary schools was governed by the grant-in-aid code. Chapter ii of the code laid down the procedure and conditions for recognition. The provisions of the code were, however, mere executive instructions and they embodied the policy of the state in the matter granting recognition to secondary schools. These administrative instructions, which were mainly intended for regulating the flow of grant-in-aid to private secondary schools, did not have any statutory force and so long as there was no violation of any fundamental right or denial of natural justice, no person could make any complaint in a court of law so far as their implementation was concerned. The position has, however, materially altered since the enactment of the Act inasmuch as recognition is a matter which is now governed by the Act. The relevant provisions are to be found in chapter IV of the Act and regulation 9 of the secondary education regulations, 1974 framed u/s 54 of the Act. u/s 31(1), the imparting of secondary education through a school is prohibited unless the school is registered under the provisions of the Act. Certain procedure is prescribed for the recognition of a school in regulation 9 and accordingly an application for registration has to be made to the board in the prescribed form the application has to be inquired into and the report and recommendations of the district education officer in regard thereto have to be called for by the board. Such report and recommendations are to be placed before the executive committee for approval. The question whether or not to grant or continue registration has to be decided in the light of certain factors or requirements

which have been laid down in regulation 9. In case the recommendations of the district education officer to register or not to register a school is not accepted by the board, it is required to record its reasons therefore in writing. The name of the school which is granted registration is entered in a register of secondary schools and such school is given a certificate of registration in the prescribed form. Under Sub-section (9) of Section 31 power is given to the board to direct the name of a school to be removed from the register for such period as may be specified or to remove it from the register permanently under certain circumstances Sub-section (10) of Section 31 in substance provides that any person aggrieved by the decision of the board in the matter of registration or non-registration of a school or removal of the name of a registered school from the register may, within the prescribed period, appeal to the State Government the decision in such appeal is made final. This is the main out line of the relevant statutory provisions governing the recognition of a secondary school.

5. Now, it cannot possibly be disputed that teaching is a profession and it may even be called an occupation or business. The teaching or imparting of education to pupils in a secondary school is, therefore, an occupation, profession or business Article 19(1)(g) of the constitution of India guarantees to all citizens the right to practise any profession or to carry on any occupation, trade or business. Therefore, teaching or imparting of education to pupils in a secondary school is a fundamental right guaranteed to the citizens of this country for the effective exercise of such right, however, recognition of such a school by the state is an essential concomitant it is a fact altogether too well-known and of which judicial notice can be taken that unrecognised schools are not eligible to grant-in-aid from public funds and that its scholars are not permitted to appear at public examinations or scholarship examinations the pupils of such school can not avail themselves of the opportunity of higher education in the university and they are not eligible for entering into the public service. Without recognition, therefore, the exercise of the fundamental right to establish an educational institution imparting secondary education would be a teasing illusion or a meaningless exercise. At the same time, the state cannot indiscriminately recognise all schools. The right to carry on the occupation, profession or business of teaching is subject to reasonable restrictions imposed in the interest of general public. The state is, therefore, entitled to enact legislation imposing conditions for recognition and so long as such conditions are reasonable and regulative of the educational character of the institution and are conducive to making the school an effective vehicle of education, such conditions would stand justified. The competent authority which discharges the function of granting recognition must of course act bearing in mind these conditions and with a constant awareness that the power conferred upon it is coupled with the duty to grant recognition if the relevant conditions are satisfied. Its action would, otherwise, be liable to be challenged as arbitrary, capricious, mala fide and ultra vires. The grant or continuance of recognition is no longer a matter governed by executive instructions dictated by considerations of policy or expediency and it is not

tantamount to the conferment, as it were, of a privilege it is now a matter of statutory right arising upon the reasonable and proper satisfaction of the competent authority regarding the fulfilment of the prescribed conditions. This is the effect of the enactment of the relevant statutory provisions and their mandate as contained in the peremptory language of Regulation 9(8)(i). The competent authority must take cognizance of this basic alteration in the situation governing the grant of recognition and in its entire approach to the question now there must be a fundamental change. This is the background against which the enactment and implementation of the present statutory provisions shall have to be scrutinised.

6. Turning now to the first point indicated earlier, it is true that Section 31(10) does not expressly require the State Government to give reasons in support of its appellate decision. At the same time, there is no provision in the Act or the regulations which either expressly or by necessary implication prohibits the State Government from making a speaking order. The question will, therefore, have to be determined having regard to the true nature of the power exercised by the State Government in disposing of an appeal u/s 31(10). If the State Government exercises quasi-judicial powers, it must make a speaking order, for, it is well-settled that every administrative authority exercising quasi-judicial functions is bound to give reasons in support of the order it makes see *Testeels Ltd. v. J.V. M. Desai* 10 G.L.R. 622 (F.B.). Two reasons have been given in support of this principle. First, the duty to Act judicially excludes arbitrariness and one of the most important safeguards to ensure observance of the duty to Act judicially is the necessity of giving reasons. If the authority upon whom the duty to Act judicially is imposed is required to set forth in writing the mental process of reasoning which has led it to the decision, it would to a large extent help to ensure performance of the duty to Act judicially and exclude arbitrary or capricious discharge of its functions. Secondly, the necessity of giving reasons is manifest because the power of judicial review is conferred upon the Supreme Court under Article 32 of the constitution and upon the High Courts under Article 226. In order that the Supreme Court and High Courts can effectively exercise their powers of judicial review, it is necessary that the administrative authorities discharging quasi-judicial functions must be required to give reasons in support of their orders so that they could be subject to judicial scrutiny and correction. The necessity of giving reasons in support of a quasi-judicial order is thus a well-settled requirement.

7. The question then is whether the State Government Acts in a quasi-judicial capacity in deciding an appeal u/s 31(10). It appears to me that in order to determine this question, it would be necessary first to decide whether the board performs quasi-judicial functions while deciding the question of grant or continuance of recognition, for, if that is the true nature of the power exercised by the board, the appellate function of the State Government would necessarily involve a quasi-judicial process. Now, it is well-settled that even though the statute may not provide in so many words that the authority passing an order is

required to Act judicially, the duty so to Act can be inferred from the express provisions of the statute read along with the nature of the power conferred, the person on whom it is conferred, the manner of disposal provided, the objective criterion, if any, to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute see *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, and *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . It appears that though no one circumstance will be determinative of the question whether the authority set up by a statute has the duty to Act judicially or not, the basic tests which have been generally adopted for distinguishing an administrative from a quasi-judicial decision are: (i) whether the decision of the statutory authority is based solely and exclusively on the application of objective standards to the facts found on the material placed before it without any extraneous considerations or whether it is guided by considerations of policy or expediency and is based on the subjective satisfaction of the statutory authority; (ii) whether the decision declares rights or imposes upon parties obligations affecting their civil rights; and (iii) whether the essential procedural attributes are present or absent see *Jashwant Sugar Mills Ltd. v. Lakshmi Chand and Ors.* AIR 1968 S.C. 677 and *Testeels Ltd.* (supra). It is in the light of these tests that I must now proceed to examine the nature of the power which the board exercises when it grants or withdraws recognition.

8. The scheme and relevant provisions of the Act and regulations have been set out earlier. It is true that there would ordinarily be no two parties before the board when it considers the question of recognition and that the contest, if any, would ordinarily be between the authority and the management of the school. Still, however, in view of the well-settled legal position, the determination of the authority will yet be a quasi-judicial Act if the other tests are satisfied. Now, the power of recognition has been conferred upon the executive committee of a statutory board. Such committee might also recommend to the board the withdrawal of recognition. The constitution of the board and of its executive committee indicates that both these bodies are broad-based and representative in character, (see Section 3 and regulation 7). The constitution of the statutory authority itself suggests that it is not a mere limb of the state which carries out the policy dictated by it but it is a body corporate set up to implement the policy and provisions of the Act. The power of recognition is exercisable by the statutory authority subject to the guide-lines laid down in the Act and in the regulations. The grant or withdrawal of recognition does not depend upon the subjective satisfaction of the statutory authority guided solely by considerations of policy and expediency but upon the application of objective standards to the material placed before it. The mere use of the expression is satisfied in Regulation 9(8)(i) cannot in the context be over emphasised, for, such satisfaction has to be arrived at on application of objective criteria to the facts found upon investigation. The investigation to be made is subject to certain procedural attributes. The person desirous of getting registration for a school has

to fill in an application in the prescribed form giving several material particulars. The matter is then to be inquired into and the report and recommendation of the district education officer have to be called for and taken into consideration. In case such recommendation is not accepted, reasons therefore are required to be recorded in writing. In case of withdrawal of recognition, an opportunity of being heard is required to be given to the person likely to be adversely affected. The decision of the board in the matter of grant or withdrawal of recognition is subject to an appeal to the State Government and the decision in appeal is made final. Besides, as pointed out earlier, the decision of the statutory authority in the matter of recognition has far-reaching consequences virtually affecting the exercise of the fundamental right guaranteed under Article 19(1)(g) to the person concerned.

9. The aforesaid analysis of the constitution of the statutory authority and the function to be discharged by it and the manner of exercise of its powers and the effect of its decision on the person concerned, clearly indicates that the board discharges a quasi-judicial and not an administrative function in deciding the question of grant or continuance of recognition. Consequently, the State Government hearing an appeal against the decision of the board must also be held to be performing a quasi-judicial function. The duty to give reasons in support of their decision, therefore, inheres by the very nature of the function performed by both these statutory authorities under the Act.

10. Now, in the present case, the communication addressed to the petitioner conveying the decision of the State Government in appeal is laconic and it merely states that since the State Government did not see any reason to modify the order passed by the board, the appeal was dismissed. The communication, which is signed by a section officer of the education department, is not accompanied by any formal order made by the State Government containing the reasons for its decision. Indeed, the stand of the State Government is that it is not necessary to pass any reasoned order on such appeals and that therefore, no such order was passed in this case. In my opinion, having regard to the foregoing discussion, it was obligatory upon the State Government to pass a speaking order and to communicate the same to the petitioner that having not been done, there is a fatal defect and the decision must be quashed on that ground alone.

11. Mr. A.J. Patel, learned assistant Government pleader, urged that the grant of recognition was a discretionary matter dependent upon subjective satisfaction and that the statutory authority might grant recognition only if it was duly satisfied as provided in Regulation 9(8)(i). Besides, the question whether to grant or continue recognition was required to be decided according to the policy of the State Government it was urged that the principal test for holding the function of the board as quasi-judicial was, therefore, not satisfied. Reliance was placed in support of this argument upon the decision of the Supreme Court in *The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others*, . I have already dealt with this aspect of the matter earlier and no more needs to be

said about it. So far as the decision of the Supreme Court relied upon by Mr. Patel is concerned, it has no application since that case was governed by the grant-in-aid code whereas in the present case we are concerned with a legislative enactment which occupies the field and regulates the rights in the matter of recognition. The observations made in the said case, therefore, cannot be called into aid in the instant case.

12. Mr. Patel next urged that in the present case the State Government merely affirmed the decision of the board and that in such a case it was not necessary to give independent reasons in support of the decision. This argument is unsustainable in view of the decision of the Supreme Court in *Bharat Raja Vs. The Union of India (UOI) and Others*, and *Travancore Rayon Ltd. Vs. Union of India (UOI)*, the order impugned in the former case was passed by the Central Government in exercise of its revisional powers under Rule 55 of the Mineral Concession Rules, 1960 and the question which directly arose was whether the order being merely in confirmation of the Action of the State Government, reasons were required to be given. It was observed in this connection in para 16 at page 1613 of the report as under:

Equally, in a case where the Central Government merely affirms the order of the State Government, it should make it clear in the order itself as to why it is affirming the same. It is not suggested that the Central Government should write out a Judgment as courts of law are wont to do. But we find no merit in the contention that an authority which is called upon to determine and adjudicate upon the rights of parties subject only to a right of appeal to this Court should not be expected to give an outline of the process of reasoning by which they find themselves in agreement with the decision of the State Government as a matter of fact, Rule 26 considerably lightens the burden of the central government in this respect. As the State Government has to give reasons, the Central Government after considering the comments and counter comments on the reasons given by the State Government should have no difficulty in making up its mind as to whether the reasoning of the State Government is acceptable and to state as briefly as possible the reasons for its own conclusion.

In the latter case, the question was whether the impugned order of the Central Government rejecting a revision application u/s of the central excises and salt Act, 1944 was vitiated because it was laconic. In para 11 at page 865 of the report, the following pertinent observations were made while dealing with this question:

In this case the communication from the Central Government gave no reasons in support of the order; the appellant company is merely intimated thereby that the Government of India did not see any reasons to interfere with the order in appeal. The communication does not disclose the points which were considered and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the Central Government. Necessity to give sufficient reasons which disclose proper

appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency.

The observations made in both these cases apply with equal force to the instant case. As pointed out earlier, the order of the State Government in appeal is subject to judicial review under Article 226 or 227, as the case may be, and this Court would be greatly handicapped unless the State Government sets out in its order even briefly the nature of the contentions raised before it and the process of reasoning for rejecting the same. It must be remembered that when recognition is denied to an educational institution on specified grounds, it would ordinarily place before the State Government in appeal its own version or explanation and put forth all material facts in support thereof. It is the duty of The State Government as the appellate authority to apply its mind to those facts and contentions and to indicate in its order how the various points raised in the appeal memo were considered by the State Government. Such disclosure would not only assist this Court in exercising its writ jurisdiction but will also guarantee consideration and exclude or at any rate minimise arbitrariness. In my opinion, therefore, notwithstanding the fact that the impugned order was an order affirming the decision of the board, it was the duty of the State Government to give reasons in support thereof.

13. There is yet another infirmity in the appellate order. In the affidavit-in-reply filed on behalf of the state Government it has been stated that while considering the appeal, the Government examined the report of the District Educational Officer through whom the requisite inquiries were made by the board and that it appeared to the Government that the statutory requirements laid down in Regulation 9 were not satisfied and the appeal was, therefore, rejected. Now, it is not in dispute that the petitioner was not supplied with a copy of this report. It is elementary that in any quasi-judicial process, it is the basic right of a party to correct or controvert any statement prejudicial to his view. No material which has a bearing on the decision of the dispute can be taken into account by the adjudicating authority unless it has been disclosed to the party to the dispute. This is the bare requirement of the rules of natural justice. Since the report of the district educational inspector was intended to be taken into account by the state Government in reaching its decision; it was its duty to disclose it to the petitioner and to give him a fair opportunity to set up his own version or defence and to correct or controvert any relevant statement prejudicial to his interest in such report. Since such an opportunity was not given, rules of fair play and natural justice have been violated. Therefore, the order under challenge is vitiated even on that ground.

14. In the result, the petition succeeds and is allowed. The impugned order

passed by the State Government in appeal is quashed and set aside. The matter will now go back to the State Government which will dispose of the appeal preferred by the petitioner in the light of the observations made in this judgment and in accordance with law. In deciding the appeal the State Government will examine amongst other things the question whether the decision of the board units turn suffers from the same defects which are found in the impugned order of the State Government and, if so, it will make suitable orders the State Government will also bear in mind in this connection that the requirement of giving reasons is not complied with merely by setting out grounds in the statutory language, for, reasons must be distinguished from grounds which are merely the statement of opinion or conclusions drawn by the competent authority from the material on record whereas reasons supply the link between the conclusions and the factual data. Rule made absolute in terms aforesaid with no order as to costs in the circumstances of the case. The writ to be sent to the State Government as expeditiously as possible. The petitioner has started standard viii in the school in question since June 1974. Thirty three students have been admitted to the school and their future hangs in a balance. The academic year is about to come to a close. The State Government will, therefore, decide the appeal as expeditiously as possible and not later than fifteen days of the receipt of the writ. In case the state Government decides to reject the appeal, it is expected that it will make proper arrangement for the pupils studying in the school of the petitioner to appear in the final examination through any other recognised school so that one precious year of their lives is not wasted for no fault on their part.