
(2018) 04 RAJ CK 0096

In the Rajasthan High Court

Case No : Spl. Appl. Writ No. 55, 676, 688, 819, 820, 821 of 2017

State of Rajasthan & Ors @APPELLANT@Hash Meera Siksha Samiti

Date of Decision : 02-04-2018

Acts Referred:

Rajasthan High Court Rules, 1952 — Section 134
Constitution of India, 1950 — Article 225

Citation : (2018) 04 RAJ CK 0096

Hon'ble Judges : GOPAL KRISHAN VYAS, J; RAMCHANDRA SINGH JHALA, J

Bench : Division Bench

Advocate : SS Ladrecha, HS Sidhu, Harshvardhan Singh, Salit Trivedi, Nitish Rawat, Akshat Verma

Final Decision : Dismissed

Judgement

Mr. Justice GopalÂ Krishan VyasÂ

All above appeals are filed by the State of Rajasthan and others under Article 225 readÂ with Section 134 of the Rajasthan High Court Rules, 1952

against the judgment of learned Single Judge dated 17.10.2016 passed in SBCWP No.9409/2014 (Meera Siksha Samiti, Sangariya Vs. State of

Rajasthan & Ors.) whereby the learned Single Judge allowed the writ petition preferred by the respondent no.1 and set aside the order dated

26.9.2014 passed by the State of Rajasthan.Â

Â As per the facts, the respondent society was running Meera Girls College and Meera Girls Higher Secondary School at Sangaria, District â?

Hanumangarh, vide its resolution dated 25.07.2010 proposed acquisition of the educational institutions by the State Government and approached the

State of Rajasthan in this regard. The Joint Secretary to the Government, Higher Education (Group-III) Department vide its order dated 31.8.2013

communicated to the Director, College Education that the State Government has

accepted the request of the Managing Committee for takeover the said institution by the State Government alongwith movable and immovable assets and granted administrative sanction to takeover the private college

â?" Meera Girls College, Sangaria (Hanumangarh). In the communication it is indicated that it bears the concurrence of Finance (Exp.I) Department and further observed that formal financial sanction will be issued separately.Â In pursuance to the aforesaid communication dated 31.08.2013, the Director, College Education, Rajasthan, Jaipur constituted a Committee to undertake the procedure to takeover the institution and submit the same on or before 10.09.2013.Â

On 04.09.2013, the Dy. Director, Planning issued a communication for seeking information. Admittedly, by registered surrender deed dated 20.09.2013 was executed by the respondent -Society in favour of Government of Rajasthan through Nodal Officer whereby the movable and immovable properties of the institution were relinquished in favour of the State. Thereafter vide communication dated 26.09.2013 issued by the Joint Director, College Education to the Joint Secretary, Higher Education (Group-III) Department, it was informed that the State Government has already issued its administrative sanction to takeover the college. On 29.09.2013, one Indraraj Singh Chetiwal was posted from Government College, Suratgarh to Government Girls College, Sangaria, Hanumangarh as Acting/Working Principal, who took over the charge on 02.10.2013 from Dr. Harmendra Singh Garcha.Â Thereafter, the Director, College Education by its order dated 04.10.2013 delegated the financial powers to the said Indraraj Singh Chetiwal on 04.03.2014 and one Smt. Manju Bishnoi was transferred from Govt. College, Kaladera to Government Girls College, Sangaria.Â

As per the pleadings, the above actions whereby the administrative sanction was issued by the Government, surrender deed was executed by the respondent-Society, Principal was appointed and employees were transferred from other Government College, the process of takeover the college was completed, but suddenly after one year by order dated 26.09.2014 (Annex.- P/1), it was ordered that six colleges indicated in the order, which were taken over by the State Government, the said orders are de-notified with immediate effect and cancelled. The Joint Director, College Education vide communication dated 27.10.2014 submitted by the representation dated

02.10.2014 from the employees seeking payment of 13 months

outstanding salary. The respondent-Society preferred the writ petition to question the action of the State in cancelling the order of taking over the college.Â

Before learned Single Judge, the learned counsel for the respondent vehemently argued that the order dated 26.09.2014 has been passed in gross

violation of principles of natural justiceÂ without providing an opportunity of hearing and the order is nonspeaking order, no reasons are indicated, no

provision has been quoted for such action, therefore, the order impugned is bad in the eye of law. It is also submitted that there is no provision in law

for de-notifying any institution once it is taken over.Â In support of aforesaid arguments, the respondent-petitioner made referenceÂ of provisions of

the Rajasthan Civil Services

(Appointment and other Service Conditions of Employees of Private Institutions and other Establishments taken over by the Government), Rules 1977

(â??the Rules of 1977?) and submitted that under the Rules of 1977, there is no provision for de-notification or cancelling the order of takeover the

institution, once the process of takeover was completed, merely by passing an administrative order, the same cannot be cancelled therefore, the action

of the State Government is in violation of principles of natural justiceÂ because no opportunity of hearing was given to the society before passing

such order and it is also pointed out that after taking over of the institution, the salary etc. of the teachers have not been paid and therefore prayed that

the order impugned may kindly be quashed.Â In support of above arguments, attention of the learned Single Judge was invited towards the judgment

in case of Mohinder Singh Gill & Anr. v. The Chief Election Commissioner & Ors.: AIR 1978 SC 851 and Vinod Kumar v. State of Haryana : (2013)

11 SCC 293 and submits that the order impugned may kindly be quashed.Â Â

The appellant respondents refuted all the allegations andÂ Â said that as per the office record there was no such decision of the State Government to

take over the institution in question, but somehow the order wasÂ passed to take over the institution with movable and immovable property, but in

fact, there was no such decision taken by the State, therefore, no interference is called for.Â

The learned Single Judge after considering the entire facts of the case allowed

the writ petition solely on the ground that order impugned is against the principles of natural justice because no opportunity of hearing was given prior to passing non-speaking order, therefore, such type of order is not sustainable in law.

The learned Single Judge further observed that the reasons indicated in the reply of the State regarding lack of financial consent is incorrect on its face as it is obvious from the order dated 31.8.2013 that the order was issued with concurrence of Finance Department.

The learned Single Judge allowed the writ petition while following the judgment in case of Mohinder Singh Gill (Supra) and quashed the order dated 26.9.2014 (Anex.P/1) passed by the Dy. Secretary (Admn.), Higher Education (Group III) Department, Jaipur with all consequences as if the order dated 26.9.2014 was never passed qua the said college.

In these appeals the State Government has challenged the judgment dated 17.10.2016 rendered by the learned Single Judge on various grounds and tried to satisfy this Court that there is no illegality in the action taken by the State of Rajasthan so as to quash the order dated 26.9.2014, but there is no whisper about the fact whether any opportunity of hearing was given to the respondent institution or not.

Learned AAG vehemently argued that without any proper legal decision, the order was passed to take over the institution in question which is obvious from the record of the State that no such decision was taken by the State Government to take over respondent private institution in question, therefore, the learned Single Judge was under obligation to consider every aspect of the matter in right perspective, but it has not been done, therefore, the order impugned may kindly be quashed.

Learned counsel appearing on behalf of the respondent institution vehemently argued that no such reasons which are taken in the reply, were communicated by the appellants before cancelling the order dated 31.8.2013. As per the record, the State Government accepted the request of Managing Committee of private college for taking over the institution alongwith all movable or immovable assets.

It is also argued that the learned Single Judge held that before passing impugned order no opportunity of hearing was given which is basic element of principles of natural justice, therefore, order impugned is bad in the eyes of law.

After hearing counsel for the parties, we have perused the judgment and considered the law laid down by the Apex Court.Â

In case of Mohinder Singh Gill (supra), the Hon'ble Supreme Court gave the following verdict:

â??When a statutory functionary makes an orderÂ based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.Â Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional ground later brought out.â??

In case of SN Mukherjee Vs. Union of India reported in (199) 4 SCC 594 the Constitution Bench of the Hon'ble Supreme CourtÂ Â specifically held

that record of reasons is necessary.Â Paras nos.36 and 39 of the judgment are as under:Â

â??36.Â Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial func- tions, would no doubt

facilitate the exercise of its juris- diction by the appellate or supervisory authority. But the other considerations, referred to above, which have also

weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These

considerations show that the re- cording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrari-

ness and ensures a degree of fairness in the process of decisionmaking. The said purpose would apply equally to all decisions and its application

cannot be confined to deci- sions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be

recorded should govern the decisions of an admin- istrative authority exercising quasijudicial functions irrespective of the fact whether the decision is

subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elabo- rate as in the

decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the

reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of

reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not

give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

39.Â The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fairplay in action." As pointed out earlier the

requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by

excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the

principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice

which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application

depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the

exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring

the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be

recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express

provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review)

Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion

can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest

underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot,

therefore, be insisted upon in such a case.â??

In both these judgments, the Hon'ble Apex Court categorically held that order which affects civil consequences, must be passed after providing an

opportunity of hearing by reasoned order.Â Â

After hearing learned counsel for the parties, we have perused the judgment and considered the law laid down by the Hon'ble Supreme Court.Â

Admittedly, in this case, before passing the order impugned no opportunity of

hearing was given to the respondent institution.Â It is also required to be observed that in the order dated 31.8.2013 no reasons are incorporated whereby the respondent institution was taken over by the government,

meaning thereby, the learned Single Judge has rightly considered the fact that order has been passed in violation of principles of natural justice.Â

In view of the above, we are in complete agreement withÂ the finding given by the learned Single Judge so as to quash the order dated 26.9.2014

passed the Dy. Secretary (Admn.), Higher Education (Group-III) Department qua the Meera Girls College, Sangaria, District Hanumangarh.Â Â

Therefore, there is no question to interfere in the order impugned.Â Â However, it is made it clear that if the appellant State is still desirous to take

action so as to quash the order dated 31.8.2013, the State Government will be at liberty to give notice to the respondent institution and after receiving

reply if any and providing an opportunity of hearing, the State Government will be free to decide the question of taking over the institution by speaking

order within a period of three months.Â

Consequently, all the aforesaid appeals are hereby dismissed with above observations.Â