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Court : Allahabad

Decided On : Dec-12-1972

Reported in : AIR1973All458

Judge : Satish Chandra and ;N.D. Ojha, JJ.

Acts : Uttar Pradesh Intermediate Education Act, 1921 - Sections 16D(3) and 16D(4)

Appeal No. : Special Appeal No. 543 of 1972

Appellant : The State of U.P. and ors.

Respondent : The Managing Committee, Arya Kanya Inter College, Jhansi and ors.

Advocate for Def. : V.K. Khanna, Adv.

Advocate for Pet/Ap. : Adv. General and ;Standing Counsel

Disposition : Appeal dismissed

Judgement :

Satish Chandra, J.

1. This appeal has been filed by the State and the officials of its education department, It is directed against the judgment of a learned single Judge, whereby he quashed an order appointing an authorised controller for the Arva Kanva Inter College, Jhansi.

2. On 21st April. 1971, the Director of Education U. P. served upon the Manager of the College a notice purporting to be under Section 16-D (2) of the U, P. Intermediate Education Act. It enumerated 19 irregularities and defects in the working of the institution, and stated that the mentioned irregularities made it clear that the management of the college was not being conducted properly and that the instructions issued by the Department were being repeatedly evaded. It required the institution to remedy the defects and to submit an explanation under Section 16-D (2). The management submitted a detailed explanation on 14th May. 1971. Thereafter, the Director made some further queries by his letter dated May 26. 1971, to which a reply was sent by the management on 3rd June 1971. On December 21. 1971, the State Government passed an order under Section 16-D (4) (I) of the Act, This order stated that after considering the recommendations made by the Director under Section 16-D (3) (I) of the Act, the Government was of the opinion that the explanation furnished by the institution to the notice served upon it, was not satisfactory. Irregularities were still existing in the College, as a result of which maladministration was rampant in the institution. In these circumstances, it had become impossible for the affairs of the institution to be run properly, and so, it was necessary to appoint an authorised controller. The order went on to state that the District Inspector of Schools. Jhansi, was being appointed as the authorised controller for a period of one year, who would remove the irregularities and mismanagement in the institution within this period.

3. The management felt aggrieved and instituted a writ petition in this Court. The order appointing the authorised controller was challenged on a variety of grounds. A learned Single Judge was impressed by one of them. He held that before passing an order Under sub-section (4) of Section. 16-D, the State Government must give an opportunity of showing cause to the management of the institution. No such opportunity was given. Further, although the impugned order states that upon a consideration of the report of the Director of Education, the State

Government was satisfied that there was mismanagement in the institution, it gave no instances of acts of mismanagement. It seems blindly to have followed the report of the Director. On this twin ground, it was held that the order violated the principles of natural justice, and was liable to be quashed. Aggrieved, the State authorities have come up in appeal.

4. Section 16-D in so far as it is material states:--

'16-D. Inspection of recognised institution and removal of defects-

(1) The Director may cause a recognised institution to be inspected from time to time.

(2) The Director may direct a management to remove any defect or deficiency found on inspection or otherwise.

(3) If the management fails to comply with any direction made under subsection (2), the Director may, after considering the explanation or representation, if any, given or made by the management.

(a) refer the case to the Board for withdrawal of recognition or

(b) recommend the State Government to proceed against the institution under Sub-section (4).

(4) If on, the receipt of a recommendation under Sub-section (3) the State Government is satisfied that-

(a) the affairs of the recognised institution are being mismanaged; or

(b) the management of the institution has wilfully or persistently failed in the performance of its duties; or

(c) the institution is being conducted otherwise than in accordance with the scheme of Administration; or

(d) the draft of the Scheme of Administration has not been submitted within the time allowed. It may by order make provision-

(i) for exercising control over such institution by authorising any person (hereinafter referred to as an 'Authorised Controller') to exercise with respect to such institution and its management for such period as may be specified by the Government such functions of control as may be specified in the order and on the making of such order the institution and its management, as the case may be, shall so long as the order continues in force be conducted and carried on in accordance with any direction given by the Authorised Controller in accordance with the provisions of the order, and every person having any function of management of such institution shall comply with such directions; and

(ii) for any incidental or supplementary matter which appears to the State Government necessary or expedient for the purpose of the order. The period for which an order under this Sub-section is made may be extended by the Government from time to time:

Provided that the period for which the initial order under this sub-section is made shall not exceed the period of one year:

'Provided further that it shall be lawful for an institution to submit a draft of the Scheme of Administration and for the Director to approve it with or without modification in accordance with the provisions of Section 16-C. in so far as they are applicable, and on the approval of the said Scheme; the order made under this sub-section in pursuance of Clause (d) shall be withdrawn.'

The scheme of the section in relation to the power of the Board to withdraw the recognition as well as the power of the State Government to appoint an Authorised Controller, is that Director of Education is to require the management to remove the defects or deficiencies found in inspection or otherwise. If the management fails to comply with any' direction, the Director is to make his recommendations, after considering the explanation or representation given by the management. One of the recommendations can be to the State Government to appoint an Authorised Controller. The State Government under sub-section (4) has to be satisfied that one or more of the four grounds mentioned in clauses (a) to (d) thereof exist. On reaching such satisfaction, the State Government is to appoint an Authorised Controller. In the scheme of things, the role of the Director is that of an enquiry

officer, who is to collect facts and material as well as the explanation of the management, and make his recommendations to the State Government. The State Government passes an order after considering the explanation as well as the recommendation. Section 16-D provides for an opportunity of explanation to the management at the stage when the matter is in the hands of the Director. The Director makes his recommendations after considering the explanation furnished by the management. The State Government acts on receipt of the recommendations of the Director. This means that the State Government considers the material collected by the Director including the explanation of the management. The material collected by the Director will consist of the notice given by him to the management, its reply or explanation, and the recommendations of the Director himself. The State Government has to make up its mind after considering those materials. Section 16-D does not authorise the State Government to consider any other material or matter. Since Section 16-D specifically provides for an opportunity of explanation, at a preceding stage and does not make any provision therefor at the stage when the matter comes up before the State Government, an implication that the Legislature intended another opportunity of explanation at the stage when the matter was before the State Government cannot be read or inferred.

5. For the management, it was urged that even though the proceedings before the State Government may be administrative in nature, yet since the order of the State Government affects the vested right of the institution to be managed by its own managing committee, the order can be passed only consistently with the principles of natural justice. In this connection, reliance was placed upon the decisions of the Supreme Court in *State of Orissa v. Dr. (Miss) Binapani Dei*, (AIR 1967 SC 1269) and *A. K. Kraipak v. Union of India*. (AIR 1970 SC 150). Neither of these two cases, however, says that an opportunity of explanation must be given at every stage of the proceedings. In *Kraipak's* case, it was observed that the rules of natural justice operate only in area not covered by any law validly made. They do not supplant the law of the land but supplement it. In *Union of India v. J. N. Sinha*. (AIR 1971 SC 40). the Supreme Court held that if a statutory provision, either specifically or by necessary implication, excludes the application of the principles of natural justice, the statutory provision prevails, and the courts cannot read into

the concerned provision on the principles of natural justice. There are several decisions which illustrate this principle. See *Local Government Board v. Alridge*. (1915 AC 120).

6. Section 39 of the Housing Town Planning & C. Act. 1909. provided that the Local Government Board shall determine its procedure by rules. The relevant rules provided that the Board would not dismiss any appeal without having first held a public local enquiry. The Board's inspector held a local enquiry and made a report. The Board's decision in deciding the appeal was challenged on the ground that it violated the principles of natural justice inasmuch as the Board had utilised the report of the Inspector without giving the owner an opportunity to meet it. The House of Lords repelled the submission, and held that the Board was bound to follow the procedure prescribed by the Rules. The Rules provided for a public hearing at one stage and did not prescribe any other hearing by the Board itself. Nondisclosure of the Inspector's report to the owner did not contravene the principles of natural justice.

7. In *S. Kapur Singh v. Union of India*, (AIR 1960 SC 493 Paragraph 21), the Supreme Court held that in cases where an enquiry had been held by the Enquiry Commissioner under the Public Servants (Inquiries) Act 1850, it was not necessary for the President of India to hear the matter all over again before passing an order of dismissal. The statute did not make any such condition, and it would not be reasonable that the whole process should be repeated.

8. Recently a Full Bench of this Court in *T. P. Tripathi v. Board of High School and Intermediate Education*. 1972 All LJ 515 = (AIR 1973 All 1) considered this aspect. The regulations provided that the sub-committee will hold a spot enquiry into the charge of using unfair means in the presence of the candidate and make its recommendations after considering the explanation of the candidate. Thereafter, the Examinations Committee was to consider the matter and pass suitable orders. It was held that the prescribed procedure left no room for the application of the principles of natural justice at the stage when the Examinations Committee was considering the matter and the non-disclosure of the opinion of the Spot-Enquiry Sub-Committee to the candidate did not vitiate the orders of the Examinations

Committee.

9. In Writ Petition No. 3629 of 1967. *Syed Rashid Hasan Roomi v. The U. P. State* (decided on 1-3-1968). Section 7-A of the U. P. Town Areas Act was considered under the provisions, an opportunity of explanation was provided before the District Magistrate made his recommendations to the State Government in regard to the removal of the Chairman. It was held that the prescribed procedure did not leave any room for the application of the principles of natural justice so as to require the State Government to afford another opportunity of explanation before passing an order of confirmation. If the statutory provisions contemplated an opportunity of explanation at one stage and not at another, the principles of natural justice could not be superimposed upon the prescribed procedure.

10. In our opinion, these decisions are applicable to the instant case. The statute provided for an opportunity of explanation at the stage when the matter is before the Director and not at the subsequent stage. The principles of natural justice cannot be superimposed upon the procedure prescribed by the statute. We are unable to sustain the view of the learned single Judge on this point.

11. The learned single Judge held that the impugned order violated the principles of natural justice inasmuch as it did not disclose the reasons for the conclusion that the institution was being mismanaged and it was necessary to appoint an Authorised Controller. We are in agreement that the impugned order is bad for not disclosing the reasons, but on a different ground. It is well settled that the principles of natural justice are that no one shall be a judge in his own cause, that no decision shall be given against a Party without affording him a reasonable opportunity of being heard and that a quasi-judicial enquiry must be held in good faith without bias and not arbitrarily. The principles of justice do not (sic) require a statement of reasons.

12. The observations of Subba Rao, J in *M. P. Industries Ltd v. Union of India*. (AIR 1966 SC 671) were approved in *Bhagat Raja v. Union of India* AIR 1967 SC 1606. Subba Rao, J., had stated that compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate, minimises arbitrariness, it gives satisfaction to the party against whom

the order is made; and it also enables an appellate or supervisory court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal. It was also observed by Subba Rao. J., that there is an essential distinction between a court and an administrative tribunal. A judge is trained to look at things objectively, uninfluenced by consideration of policy or expediency but an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they should do is to give reasons for their orders. This view was reiterated by the Supreme Court in several subsequent decisions *State of Madhya Pradesh v. Seth Narsingh Das Jankidas Mehta* (AIR 1969 NSC 115) *State of Gujarat v. Patel Raghav Natha* (AIR 1969 SC 1297). *Prag Das Umar Vaish v. Union of India*, (1967 Jab LJ 817) (SC) and *M/s. Travancore Rayon Ltd. v. Union of India*. (AIR 1971 SC 862). A Full Bench of our Court in *R. M. Saran v. State of U. P.* (1970 ALJ 1177 = (AIR 1971 All 54)) (FB) has followed this view. The Full Bench emphasised (P. 1195) that an examination of the decisions shows that the view of the Supreme Court is that where the administrative authorities which have not the habit of mind of acting judicially, are required to act judicially, they must give reasons for their orders.

13. Previously, courts used to maintain a distinction between an administrative function or proceeding and a quasi-judicial one. The validity of this distinction was considered by the Supreme Court in AIR 1970 SC 150; it was observed that the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. The concept of the rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially is nothing but a requirement to act Justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. It was held that the aim of the rules of natural justice is to ensure or to put it negatively to prevent miscarriage of justice.

14. Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially, there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice, there is no reason why those rules should be made inapplicable to administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry. For these reasons, the Court declared that the rules of natural justice are equally applicable to administrative enquiries, which adversely effect the rights of parties. From this point of view, the Court reiterated its decision in AIR 1967 SC 1269.

15. In our opinion, the distinction between an administrative and a quasi-judicial function is equally irrelevant from the point of view of the requirement to state reasons.

16. In *Kraipak's case*. AIR 1970 SC 150, the Supreme Court emphasised that the requirement of acting judicially is nothing but to act justly and fairly and not arbitrarily or capriciously. We may recall the observations of Subba Rao, J., that the condition to give reasons excludes, or, at any rate, minimizes arbitrariness. In other words, compulsion to disclose reasons would ensure that the administrative authority has discharged its function in a fair and just manner. The other reasons accepted by the Supreme Court as necessitating the condition to give reasons, namely, that it gives satisfaction to the party against whom the order is made and it also enables the appellate and supervisory courts to keep the tribunals within bounds, are equally applicable to a purely administrative enquiry, affecting vested rights. The least that should be expected of administrative authorities is to give reasons for their orders. In the present case the order adversely affects the vested right of the College to be managed by its managing committee or of the managing committee to run the affairs of the College. An interference with these rights could be made in a judicial spirit namely *inter alia* by a speaking order.

17. The impugned order of the State Government only states that maladministration was rampant in the institution and that the explanation furnished

by the management was not satisfactory. No reasons have been disclosed in support of these conclusions. The matter was highly controversial. The Director had indicated 19 heads of irregularities. The institution had furnished an elaborate and detailed reply. Its case was that the charges were misconceived. Under the circumstances, the institution was entitled to know why its case has failed, which particular irregularities have, in the opinion of the State Government, remained unrectified. For lack of reasons, this Court is also disabled from satisfactorily exercising its supervisory powers under Articles 226 and 227 of the Constitution. On this ground, the impugned order was liable to be quashed. It will, however., be open to the State Government to. pass a fresh order in accordance with law.

18. In the result the appeal fails and is accordingly dismissed with costs.

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