

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 37679 of 2014****Between:**

Gitanjali Devashray and others
... Petitioners

And

The State of Telangana and others
... Respondents

JUDGMENT PRONOUNCED ON: 26.02.2024**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 37679 of 2014****% 26.02.2024****Between:**

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< Gist:

➤ Head Note:

!Counsel for Petitioner: Mr Omar A Pasha

^counsel for Respondents: G.P. for Education

? Cases Referred:

1. (2010) 13 scc 427
2. (2001) 5 scc 664
3. (2010) 9 scc 496
4. (1951) scc 1088
5. air 2009 Sup. SC 561
- 6 (1974) ICR 120 (NIRC)
7. (2010) 3 SCC 732
8. (1978) 1 SCC 248

HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 37679 of 2014

ORDER:

Heard Mr. Omar A Pasha, learned counsel appearing on behalf of the Petitioners, and learned Government Pleader for Education appearing on behalf of respondents.

2. The petitioner approached the Court seeking prayer as under:

"to issue a Writ or order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 3rd Respondent in issuing the impugned proceedings Rc.No.1164/AD.B/2014-2/A2, dated 13.10.2014 as arbitrary, illegal, unconstitutional and consequently set aside the same."

3. PERUSED THE RECORD :

A) The order impugned dated 13.10.2014 vide Rc.No.1164/AD.B/2014-2/A2 passed by the 3rd respondent, reads as under:

Smt.G.Gita Karan, Director, Gitanjali Group of Schools is informed that in this office proceedings 1" cited,, notice was served to you for violation of certain sections of RTE

Act 2009. You were requested to submit your reply along with certain information within 07 days from the date or receipt of the communication. It was also informed therein that if no reply is received, it will be construed that you had no explanation to offer and further action would be taken as per the material evidence available without further correspondence in the matter as per RTE Act 2009.

Smt.G.Gita Karan, Director, Gitanjali Group of Schools has submitted reply to the notice through the reference 2nd, on examining the reply it is found that, she has accepted regarding conducting of screening procedure due to non availability of space in her school.

Further it is also informed that, as seen in the website the following procedure was adopted by the Management while giving admissions to the students.

(Xvi) Selling of application forms @ Rs 175/-

(xvii) Tests and interviews for admissions in to classes will be conducted.

(xviii) Collected admission fee Rs 2500/-

(xix) Giving admissions for P.P i.e., Nursery, LKG, UKG, with tests/Interviews.

(xx) All applicants for N.S and P.P-1 classes will be called in for an interview, the aim being to admit children who can display age appropriate skills.

It shows the Management has deviated the following rules:-

No Capitation fee and screening procedure for admission.

Rule 13 (1) of the RTE Act 2009: "No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure".

Rule 13 (2) of the RTE Act 2009: Any school or person, if in contravention of the provisions of sub section (1)-

(g) Receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged;

(h) Subjects a child to screening procedure, shall be punishable with fine which may extend to Twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contraventions.

In view of the above, you are hereby instructed to pay fine as contemplated in the above rules within a week without fail into the Government Treasury to the head of account as follows:

Primary Education head of Account:

0202	Education, Sports, Art & Culture
01	General Education
MH 101	Elementary Education
SH 81	Other Receipts
001	Other Receipts

You are requested to pay fine of Rs 10,00,000/- (Rupees Ten Lakhs only) ten times the total amount

reported to have been collected as capitation fees and twenty five thousand rupees for admitting the children by conducting screening procedure. You are requested to submit compliance report. The entire amount should be remitted the school head of account within a week days.

If the above fine is not paid by the stipulated time, further action will be taken action as per the material evidence available in this office as per the RTE Act 2009 without entertaining any correspondence in the matter.

The receipt of these proceedings should be acknowledged.

B) The show cause notice dated 24.06.2014 vide Rc.No.1164/Spl/AD-B/2014-3 issued by the 3rd respondent, reads as under:

"The Correspondent/ H.M of Gitanjali Devshala, Balamrai, Sappers Lane, Secunderabad, Hyderabad District is informed that, this office is receiving complaints regularly from parents, that the management is demanding and collecting huge donations and fees Rs 1.00 lakh and above and conducting screening tests to the children for admission.

The Correspondent/ H.M of Gitanjali Devshala, Balamrai, Sappers Lane, Secunderabad, Hyderabad District is further informed that:

(A) Government have enacted Act No.5 of 1983 i.e., the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act

1983 as per said section 5 "The collection of any capitation fee by any educational institution or by any person who is in charge or is responsible for the management of the institution is hereby prohibited"

(B) The Government while issuing, recognition to, State syllabus, to the private schools prescribing the conditions that "i) The management should collect the fee and special fee etc., as prescribed by the Governing body from time to time (1) The management should not collect donations either from the students or parents for admission (iii) They should abide the State Government Rules, Regulations and orders issued from time to time. (iv) Provisions of Right to Education Act 2009 shall be scrupulously followed.

(C) Government of India also enacted Act No.35 of 2009 Le, the Right of Children to free and compulsory Education Act 2009. As per section 13 "No school or person, shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure. Any school or person, if in contravention of the provisions of Sub section (1), (a) receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged; (b) Subjects a child to screening procedure, shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand for each subsequent contraventions. As per Rule 15 "A child shall be admitted

in a school at the commencement of academic year or within such extended period as may be prescribed. As per the rule 21 (1) (c) "specified in sub-clauses (iii) and (iv) of clause (n) of section shall admit in classes I, to extent of at least twenty-five percent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighborhood and provide free and compulsory elementary education till its completion.

Rule 10(11): That the educational agency shall not collect fee or donations either in cash or in kind other than the fee prescribed by the Governing Body from pupils or parents or any other persons on their behalf, for any purpose whatsoever.

Rule 20: The Educational agency shall submit the annual administration report in the prescribed proforma to the competent authority for every financial year by the 30th September at the latest, Such report shall be supported by the audited statement of accounts of the school duly audited by Chartered Accountant. Separate accounts shall be maintained for each school.

Similarly the educational agency, which is running more than one school shall also submit such returns within the stipulated time to the competent authority."

Therefore, in terms of powers vested as per rule 3 of GO.Ms.No.1, Edn. Dt 01.01.1994 read with rule 11 and in terms of the provisions of Right to Education Act, 2009, the Correspondent/ H.M of Gitanjali Devshala,

Balamrai, Sappers Lane Secunderabad, Hyderabad District is directed to show cause why action shall not be initiated for withdrawal of permission / recognition for violation of instructions / rules as per Rule (11) of G.O.Ms.No. 1 Edn. Dept., Dated 01.01.1994.

The explanation shall reach the undersigned within 15 days from the date of receipt of these proceedings, failing which further action will be taken without giving any further correspondence.

C) The explanation of the petitioner dated 07.07.2014 to the show cause dated 24.06.2014 vide Rc.No.1164/Spl/AD-B/2014-2, reads as under:

"Re: Response to Letter Rc. No. 1164/Spl/AD-B/2014-3 to Gitanjali Devshala School, Balamrai, Secunderabad

In response to your letter dated 24 June 2014 we wish to respond to the allegations you have raised regarding our institution Gitanjali Devshala School, Balamrai, Secunderabad.

1) Capitation and Donations to the tune of lakhs of rupees - This is a categorically false and baseless allegation without any merit. I am surprised that until now you are not aware that fees charged by Gitanjali School are the most affordable when compared with other similar institutions in Hyderabad. The first Gitanjali School was started in 1986 and it has taken the Institution almost 30 years to grow to a size of 4

schools. We would have grown at a much faster rate had we been selling our admissions for one lac rupees per admission as alleged in your letter. I would also like to inform you that Gitanjali School has produced the best ICSE results in Hyderabad and Andhra Pradesh and has been ranked among the top schools in India year after year. Such is the quality of education that Gitanjali maintains and cannot be easily sustained when capitation fees are charged. We also have among our parents many government employees including in the central government, income tax department and within the education department itself to whom one cannot charge capitation fees. You may verify this from a survey any of our parents.

2) Screening of students for admission - Admission forms are limited based on seats available in the classrooms and issued on a first come first serve basis. In order to maintain our quality, we assess our incoming students to identify the weaker students in the class and ensure that they are given special remedial attention to perform at a high standard. Since the ICSE syllabus is of a higher standard and since children come to our school from different schools of varying syllabus and standards and may not have the prerequisite knowledge to be able to cope with the teaching in that class the children may be admitted into a lower class.

We receive many more queries for admission than we are able to admit and are limited by the space

available in our school. We strictly restrict number of students in our classes so that we can give individual attention to our students. We sincerely wish we could help many more children in our institutions but we are constrained by our available space and resources. I would like to bring to your attention that some disgruntled parents of children who have not secured admission due to our space limitations have put pressure on us from higher authorities and even though we have explained that we do not have additional space available in our school, they have threatened us that they will make such complaints to the authorities unless seats are given to them.

Our school is a private unaided school and does not follow the state board. We are affiliated to the ICSE board. As requested we have provided our statement of accounts duly attested by a Chartered Accountant and our schedule of fees.

Sir, you being an Officer of our Government and a fair person please use your own judgment and satisfy yourself by verifying the truth of these allegations by surveying our existing parents.

Thanking you for your understanding.

4. The case of the petitioner as per the averments made in the affidavit filed by the petitioner in support of the present writ petition, in brief, is as under:

- a) The 3rd petitioner is the Director of Gitanjali Group of Schools and the 2nd petitioner is one of the school and the 1st petitioner is Gitanjali Education and Welfare Society.
- b) The 1st petitioner society had established various schools in and around Hyderabad, including the 2nd petitioner school and the 1st Gitanjali School started way back in the year 1986 and since then the schools run by the 1st petitioner had been imparting quality education to all the children and contributing to all round development of the children.
- c) The 3rd respondent had issued a notice dated 24.06.2014 to the petitioners to show cause as to why action should not be initiated for withdrawal of permission/ recognition for violations of instructions/rules as per Rule 11 of G.O.Ms.No.1 (P.S.2) Education Department, dated 01.01.1994 without making a specific allegation as to the claim or alleged violation by the petitioners.
- d) The allegations levelled in the show cause notice issued against the petitioners dated 24.06.2014 is twofold; that the petitioner school is demanding and collecting huge donations and fee Rs. One lakh and above and are conducting screening tests to the children and to that effect complaints are being

received regularly from parents against the management by the office of the Regional Joint Director of School Education, Hyderabad.

e) The petitioner submitted a detailed explanation dated 07.07.2014 denying the allegations of the petitioners charging capitation fee stating that the said charge is baseless. The petitioners very clearly stated in their explanation, that the petitioner school has parents who include many Government Employees working for the Central Government, income tax department and Education Department itself to whom one cannot charge any capitation fee. The petitioner school very clearly stated that a survey could be conducted and the parents could be enquired to verify and examine this specific allegation, of charging capitation fee by the petitioners herein.

f) Though there is no specific allegation about the petitioners school conducting screening test for children for admission purpose and a reference to that effect is indicated in the subject of the show cause notice dated 24.06.2014 and in the first para of the said show cause notice dated 24.06.2014, but the show cause notice dated 24.06.2014 issued by the 3rd respondent, however, does not frame any

specific charge to that effect. It is further the case of the petitioner that the petitioner was called upon to submit explanation within 15 days from the date of the said notice, failing which action will be initiated against the school.

g) In so far as the screening test is concerned, the petitioner – Director of Gitanjali Group of Schools in response to the show cause notice dated 24.06.2014 stated in the explanation dated 07.07.2014 that in order to maintain quality, the school assess their incoming students only to identify the weaker students in the class and ensure that they are given special remedial attention to perform at a high standard. But however, without considering the explanation dated 07.07.2014 furnished by the petitioner, the order impugned dated 13.10.2014 vide Rc.No.1164/AD.B/2014-3/A2 has been passed against the petitioner by the 3rd respondent. Aggrieved by the same the petitioner filed the present writ petition.

5. Learned counsel appearing on behalf of the petitioner mainly puts forth the following contentions:

a) The show cause notice dated 24.06.2014 is vague.

- b) The show cause notice dated 24.06.2014 does not indicate specifically the rule alleged to have been violated by the petitioner and on what basis.
- c) The show cause notice dated 24.06.2014 does not spell out any concrete allegation to which the petitioner's could have submitted a meaningful reply.
- d) The petitioner's had not been put on proper notice and therefore, the impugned order dated 13.10.2014 is in clear violation of principles of natural justice.
- e) The impugned proceedings calling upon the petitioner to pay a sum of Rs.10 lakhs as fine is unreasonable, shocking, without any basis without making any specific allegation that such a capitation fee was over charged by the school.

6. The respondents filed counter and in particular, paras 6, 11, 12, 13, 14, 16 and 17, read as under:

"6. It is submitted that oral complaints have received from the parents of children to the competent authority/higher authorities in the school education Department that the management of Gitanjali School is demanding and collecting huge donations and fees of Rs.1.00 lakh and above and conducting screening tests to the children for admission. The Management of the

School in their website laid down the following procedure for admissions to the students.

1. Selling of application forms at Rs.175/-
2. Tests and interviews for admission into classes will be conducted
3. Collected admission fee Rs.2,500/-
 - Giving Admission for PP i.e. Nursery, LKG, UKG with tests/interviews.
 - All applications for Nursery Section and PP1 classes will be called for an interview, the aim being to admit children who can display age appropriate skills.

11. It is submitted that in terms of the provisions of Act/Rules made thereunder, the competent authority (Viz) the Regional Joint Director of School Education, Hyderabad issued a show cause notice to the Management of the Gitanjali Schools Secunderabad, why action should not be taken for withdrawal of permission/recognition for violation of rules in terms Rule 11 of G.O.Ms.No.1 Education, dated 1.1.1994, vide Prol. Dated 24.06.2014.

12. It is submitted that Smt Geeta Kara, Director of Gitanjali Schools submitted her explanation dated 10.07.2014. In the explanation she has accepted the conduct of screening test due to non-availability of space in their schools.

13. It is submitted that the competent authority has examined her explanation and found that the explanation is not convincing and accordingly issued

orders vide Proc.dated 12.10.2014. The petitioner against the said orders approached this Honorable Court with the present writ petition.

14. It is submitted that with reference to the contentions of the petitioner Nos. 1 to 3, the petitioner violated the provisions of the Andhra Pradesh Educational Institutions (Regulation of admission and prohibition of capitation Fee) Act, 1993, the Rules issued in G.O.Ms.No.1, Education, dated 1.1.1994 as amended from time to time. Right to children free and compulsory Education Act, 2009 (Act No.35/2009) and the rule made there under in G.O.Ms.No.20, Education, dated 03.03.2011, in collection of capitation fee, donations and in conduct of screening test. The proc. Dated 13.10.2014 issued by the third respondent (viz) Regional Director of School Education, Hyderabad are in order and as per rules within the provisions of the powers vested with him and valid. Therefore, the contentions of the petitioner are far from truth and incorrect.

16. It is submitted that with reference to the contentions in Para 5,6,and 7, of the affidavit, that the petitioner was given notice by the competent authority **only on receipt of the oral complaints made by the parents of the children seeking admissions in the schools managed by the petitioner to him/higher authorities** regarding seeking donations of Rs.1.00 lakh and conduct of screen tests and after confirming from

the web site of the school about the admission procedure vide Prp. Dt. 24-06-2014. **In the explanation given by the petitioner dt. 07-07-2014 she has accepted on the conduct of screen tests. No school management normally do accept on the charging of donations and it cannot be proved in normal course. Therefore the orders issued by the competent authority vide proc. Dt. 13-10-2014 are valid and as per rules.**

17. It is submitted that, with reference to the contention of the petitioner at Para 8 of the affidavit, Sec 3(1) of Right of Child to free and compulsory education Act says that every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighborhood school till completion of elementary education. And section 13(1) says that no school or person shall while admitting a child collect any capitation fee and such the child or his or her parents or guardian to any screening procedure. The petitioner violated above provisions of the Act. Therefore she is punishable under 13(2) of the said Act. Therefore the orders issued in pro. Dt. 13-10-2014 are within the powers vested to the competent authority by the Act 35/2009 and the rules made thereunder. The contention off the petitioner is therefore not correct and far from truth.

7. The learned Government Pleader appearing on behalf of the respondents placing reliance on the counter affidavit filed

by the respondents contends that the petitioner in the explanation dated 10.07.2014 submitted in response to the show cause notice dated 24.06.2014 has accepted the conduct of screening test and further took a specific plea that no school management normally accepts, on the charge of donation and therefore, it cannot be proved in normal course and hence, the order impugned issued by the competent authority vide proceedings dated 13.10.2014 is in accordance to the rules in force and the petitioners are not entitled for any relief as prayed for and the interim orders granted in favour of the petitioners dated 08.05.2014 need to be vacated.

DISCUSSION AND CONCLUSION

8. The interim order dated 08.12.2014 passed by this Court, reads as under:

Since the issue involved in these writ petitions is similar, they are taken up together.

The petitioners suffered orders alleging violation of Right of Children to Free and Compulsory Education Act, 2009 (for short 'the Act') on the ground that they have found collecting capitation fee and also conducting screening test for admission of the students.

Keeping in view the show-cause notices, the replies of the petitioners and the orders impugned, prima facie, the collection of capitation fee by the petitioners does not appear to have been established and hence imposition of penalty of ten times in respect of collection of capitation fee, cannot prima facie be enforced.

So far as screening test is concerned, the reply of the petitioners as well as the web site, as mentioned in the impugned order, show that screening tests are being conducted. In view of that, under Section 13(2)(b) of the Act, the fine of Rs.25,000/- for first contravention would be appropriate.

Pending further orders, the impugned orders shall remain stayed subject to the condition that the petitioners in each of the writ petition shall deposit Rs.25,000/- (Rupees twenty five thousand only) with the 3rd respondent on or before 12-12-2014.

Learned Government Pleader takes notice and seeks time to file counter.

Post after four weeks.

The said interim order dated 08.12.2014 is in force as on date.

9. In so far as the screening test is concerned, this Court in its earlier order dated 08.12.2014 very clearly observed that the petitioner school conducted the screening test, this Court is not inclined to interfere with the said finding of this Court.

10. Learned counsel appearing on behalf of the petitioner also fairly gives up the said plea in so far as the prayer put forth by the petitioner in that regard pertaining to the screening test is concerned. In so far as collection of capitation fee, this Court in its order dated 08.12.2014 passed in the present writ petition

observed that keeping in view the show cause notice, the replies of the petitioners and the orders impugned, prima facie the collection of capitation fee by the petitioner does not appear to have been established and hence, imposition of penalty of 10 times in respect of collection of capitation fee cannot prima facie be enforced.

11. A bare perusal of the show cause notice dated 24.06.2014 indicates that there is no specific charge alleged against the petitioners in so far as collecting donations and fee of Rs.One Lakh is concerned except stating that the office of the Regional Joint Director, School Education, Hyderabad had been receiving complaints regularly from the parents that the management is demanding and collecting huge donations and fee of Rs. One lakh and above and conducting screening test to the children for admission and further the counter affidavit **filed by the respondents in particular, para 16 also refers to only oral complaints made by the parents of the children seeking admissions in the schools of the petitioners herein.**

12. A bare perusal of the order impugned 13.10.2014 does not indicate any consideration of the explanation dated 07.07.2014 furnished by the petitioner herein in respect of show cause notice dated 24.06.2014 issued to the petitioner except stating that the petitioner accepted in her reply dated 07.07.2014 submitted in response to the notice dated 24.06.2014 issued by the 3rd respondent, regarding conducting of screening procedure.

13. A bare perusal of the counter affidavit also does not indicate any specific enquiry conducted pertaining to the allegation of the petitioners' collecting huge donations and fee of Rs.One Lakh and above from the parents nor is their any written complaint on record except stating in the counter affidavit at para 16, that no school management normally accepts on the charge of donations and the same cannot be proved. This Court opines that such a stand in the counter affidavit, cannot be the basis for holding the petitioners guilty of the allegation of levy of capitation fee and huge donations being demanded from parents by the petitioners herein.

14. A bare perusal of the order impugned dated 13.10.2014 vide Rc.No.1164/AD.B/2014-2/A2 passed

by the 3rd respondent herein clearly indicates that the order impugned is passed without assigning any reasons except stating that on examining the reply dated 07.07.2014 of the Director, Gitanjali Group of Schools in response to the show cause notice dated 24.06.2014 of the 3rd respondent herein it is found that petitioner had accepted regarding conduct of screening procedure by the petitioners herein. There is no discussion in the order impugned dated 13.10.2014 of the 3rd respondent in so far as the explanation furnished by the 3rd petitioner dated 07.07.2014 in response to show cause notice dated 13.10.2014 issued to the 3rd petitioner herein nor any reasons are indicated in the said order in arriving at a conclusion that petitioners received capitation fee from students and further imposing a fine of Rs. Ten lakhs unilaterally upon the petitioners stating the said amount is ten times the total amount reported to have been collected as capitation fee by the 3rd petitioner herein.

Reason is the soul of justice, reason is the heart beat of every conclusion, recording of reasons is

principles of natural justice as it ensures transparency and fairness in decision making.

15. Few Judgments of the Apex Court on the point of recording of reasons.

a. The Apex Court in the judgment reported in (2001) 5 SCC 664 in Tandon Brothers Vs. State of West Bengal & Others at para 34 observed as under :

“Governmental action must be based on utmost good faith, belief and ought to be supported with reason on the basis of the State of Law – if the action is otherwise or runs counter to the same the action cannot but be ascribed to be malafide and it would be a plain exercise of judicial power to countenance such action and set the same aside for the purpose of equity, good conscience and justice. Justice of the situation demands action clothed with bonafide reason and necessities of the situation in accordance with the law.”

b. The Apex Court in the judgment reported in (2010) 9 SCC 496 in Kranti Associates Private Limited & Another v. Masood Ahmed Khan & Others at para 47 observed as under :

Para 47 : *Summarising the above discussion, this Court holds:*

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making,

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future.

Therefore, for development of law, requirement of giving reasons, for the decision is of the essence and is virtually a part of "due process".

c. The Supreme Court in case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji reported in (1951) SCC 1088 observed as under :

"We are clear that the public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the Officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the acting's and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

d. Former Chief Justice of India, Late Justice Y.V. Chandrachud in judgment reported in (1978) 1 SCC 248 in Menaka Gandhi Vs. Union of India held that law cannot permit any exercise of power by an executive to keep the reasons undisclosed if the only motive for doing so is to keep the reasons away from judicial scrutiny.

e. The Apex Court in case of Steel Authority of India Limited Vs. Sales Tax Officer, Rourkela-I Circle, AIR 2009 Supplement SC 561 observed as under :

“Reason is the heart beat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless”.

f. In Alexander Machinery (Dudley Limited) Vs. Crabtree reported in (1974) ICR 120 (NIRC) it was observed

“Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “Inscrutable face of the sphinx” it can, by its silence, render it virtually impossible for the Courts to perform their Appellate function or exercise the power of judicial review in adjudging the validity of the decision.”

g. The Apex Court in judgment reported in (2010) 3 SCC 732 in Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity & Others at para 41 observed as under :

“Reason is the heart beat of every conclusion, it introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order unsustainable particularly when the order is subject to further challenge before a higher forum”.

16. A bare perusal of the show cause notice dated 24.06.2014 issued by the 3rd respondent clearly indicates that the same is vague, and the same is not clear on the charges alleged against the 2nd petitioner and in the present case it is evident that the 3rd respondent prejudged the issue against the petitioners at the threshold of show cause notice itself.

17. The Apex Court in the Judgment reported in (2010) 13 SCC 427 in Oryx Fisheries Pvt., Ltd., Vs. Union of India & Others, in its Head note duly referring the relevant paras of the said judgment, observed as under :

“It is well settled that a quasi-judicial authority, while acting in exercise of its Statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to

give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice. (Para 24).

At the stage of show-cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. At that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in the present case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony. (Para 27)

Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.

In the present case, from the show-cause notice it is clear that the third respondent, Deputy Director, MPEDA HAS demonstrated a totally closed mind at the stage of show-cause notice itself. Such a closed mind is

inconsistent with the scheme of Rule 43 of the MPEDA Rules. (Para 29).

It is true that the show-cause notice cannot be read hyper technically and it is well settled that it is to be read reasonably. But, while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence. (para 31)

Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when the authority has the power to take a punitive step against the person after giving him a show- cause notice. (para 32)

The principle that justice must not only be done but it must eminently appear to be done as

well is equally applicable to quasi-judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it. (para 33)”

18. A bare perusal of the order impugned dated 13.10.2014 vide Rc.No.1164/AD.B/2014-2/A2 does not discuss about the explanation dated 07.07.2014 in reference to the specific allegation of collection of huge donations and fee of Rs. One lakh and fine from parents nor it gives any reasoning for having arrived at the said conclusion, there is no basis or material on record even as per the order impugned dated 13.10.2014 which indicates that the allegation of the petitioners having charged huge donations from the parents as having been established and the said allegations even as per the averments made at para 16 of the counter filed by the respondents is based on oral complaints of parents made to the office of the 3rd respondent herein. This Court is of the firm opinion as rightly observed in the order of this Court dated 08.12.2014 and on perusal of the show cause notice dated 24.06.2014 and the reply dated 07.07.2014 of the petitioner to the show cause notice dated 24.06.2014 and the impugned order dated 13.10.2014 vide Rc.No.1164/

AD.B/2014-2/A2 passed by the 3rd respondent, the collection of capitation fee by the petitioners has not been established.

18. Taking into consideration the aforesaid facts and circumstances and the law laid down by the Apex Court in various judgments (referred to and extracted above) and which are again enlisted hereunder:

1. Tandon Brothers v State of West Bengal & others reported in (2001) 5 SCC 664.
2. Kranti Associates Private Limited & another v Masood Ahmed Khan & others reported in (2010) 9 SCC 496.
3. Commissioner of Police, Bombay v Gordhandas Bhanji reported in (1951) SCC 1088.
4. Menaka Gandhi v Union of India reported in (1978) 1 SCC 248.
5. Steel Authority of India Limited v Sales Tax Officer, Rourkela-I Circle, AIR 2009 Supplement SC 561.
6. Alexander Machinery (Dudley Limited) v Crabtree reported in (1974) ICR 120 (NIRC)
7. Secretary and Curator, Victoria Memorial Hall v Howrah Ganatantrik Nagrik Samity and others reported in (2010) 3 SCC 732.
8. Oryx Fisheries Pvt. Ltd v Union of India and others reported in (2010) 13 SCC 427.

And in the light of the discussion and conclusion as arrived at as above, his writ petition is allowed and the order impugned dated 13.10.2014 vide Rc.No.1164

/AD.B/2014-2/A2 passed by the 3rd respondent is set aside to the extent of directing the 3rd petitioner to pay Rs.10 lakhs (Rupees ten lakhs only) ten times the total amount reported to have been collected as capitation fees. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Dated: 26.02.2024

Note: L.R. copy to be marked

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