

(2024) 05 OHC CK 0168

Orissa High Court

Case No: Writ Petition (C) No..10498 Of 2024

Sivanand Educational
Trust for Social
Advancement

APPELLANT

Vs

State Of Odisha

RESPONDENT

Date of Decision: May 13, 2024

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Income tax Act, 1961 - Section 148

Hon'ble Judges: Chakradhari Sharan Singh, CJ; Murahari Sri Raman, J

Bench: Division Bench

Advocate: Budhadev Routray, Debabrata Das, Jagdish Biswal, Rabi Narayan Mishra

Final Decision: Disposed Of

Judgement

Murahari Sri Raman, J.â€

THE CHALLENGE:

1. Assailing legality and propriety of the decision taken in a meeting held on 13.03.2024 by the Apex Diploma Admission Committee under the

Chairpersonship of the Principal Secretary to the Government of Odisha in the Skill Development and Technical Education Department to keep the

admission in abeyance in respect of the Petitioner-Institute for the academic year 2024-25 for the â€œPOST DIPLOMA COURSE IN

INDUSTRIAL SAFETYâ€ (â€œPDISâ€, for short), which was communicated to the Petitioner through Letter No. 4540, dated 22.03.2024 issued by

the Directorate of Technical Education and Training, Odisha, the petitioner has approached this Court by way of this writ petition invoking provisions

of Article 226/227 of the Constitution of India.

THE FACTS:

2. Relevant facts leading the petitioner to come up before this Court, as appears from the pleading of the writ petition are that the petitioner-Trust had applied for affiliation to impart PDIS course in accordance with the guidelines laid down by the Opposite Parties in this regard in the year 2009. After due inspection of the Institute established by the petitioner, it was recommended by the inspection team for grant of affiliation to the said Institute. The petitioner-Institute was built over an area of Ac.1.09 dec., having built-up area of 547 sqm. and had appointed teaching and ministerial staff. The petitioner-Trust was granted affiliation since the academic year 2011-12 to impart PDIS course with intake capacity of 30 students in the State of Odisha. Since then, the petitioner-Institute had been regularly running PDIS course with intake capacity of 30 students till academic session of 2021-22.

2.1. In the academic audit held in respect of the petitioner-Institute for the academic year 2021-22, a joint Inspection team constituted by the opposite parties made a detailed inspection on 12.08.2021 and the team recommended that the intake capacity of the Institute could be enhanced to 60 from the original 30. Consequently, the intake capacity of the petitioner-Institute was enhanced to 60 from 30 from the academic year 2021-22.

2.2. Another inspection was conducted in respect of the petitioner-Institute, in pursuance of which, a letter was issued to the petitioner-Institute by the opposite party No. 1 instructing the petitioner-Institute to furnish reply to show cause in respect of the deficiencies pointed out in the report dated 02.08.2023. Said Inspection Report dated 02.08.2023 suggested that the Institute had eligibility for intake of 30 students, but was ineligible for 60 students. Said Report also pointed out certain deficiencies to substantiate the eligibility for intake capacity of 60 students.

2.3. The petitioner-Institute filed its reply to show cause notice by a letter dated 04.09.2023. Without dealing with the points submitted in the reply in proper perspective, the opposite party No.1 issued a letter dated 27.09.2023 granting the petitioner one month's time to comply with the deficiencies pointed out in the report.

2.4. The petitioner-Institute received a letter from the opposite party No.3, dated 22.03.2024, wherein it was stated that a Joint Inspection was held in

respect of the petitioner-Institute and the Committee had recommended the reduction of the intake capacity of the petitioner-Institute from 60 to 30

students. But when the said report was tabled in the First Apex Diploma Admission Committee (for brevity, —Apex Committeell) meeting held on

13.03.2024 under the Chairpersonship of the Principal Secretary to the Government of Odisha in the Skill Development and Technical Education

Department, the Committee decided to keep the admission in abeyance in respect of the petitioner-Institute for the academic year 2024-25.

2.5. Aggrieved thereby, the petitioner-Institution made representations before the opposite parties to allow the petitioner-Institute to admit 30 (thirty)

students for the academic year 2024-25 before the end of the admission date on 30.04.2024. Though the petitioner-Institute also suggested for fresh

inspection as the Institute had undergone renovation and was currently eligible for intake capacity of 60 students, no fruitful result yielded.

2.6. Being aggrieved by the decision of the Apex Committee, the petitioner has, thus, approached this Court by way of filing the instant writ petition.

HEARING:

3. This Court has taken up this matter on 07.05.2024 for entertainment of the writ petition. Counsel for both the sides having conceded that the nature

of grievance involved in the present case is required to be addressed as it relates to career of students intending to pursue Post Diploma Course in

Industrial Safety. Accordingly, this Court took up the matter and heard Sri Budhadev Routray, learned Senior Advocate assisted by Sri Jagdish Biswal,

learned Advocate for the petitioner and Sri Rabi Narayan Mishra, learned Additional Government Advocate for the opposite parties.

SUBMISSIONS AND ARGUMENTS:

4. Sri Budhadev Routray, learned Senior Advocate submitted that the Sivananda Educational Trust for Social Advancement proposed to establish

Sivananda Institute of Industrial Safety affiliated to the State Council for Technical Education and Vocational Training, Odisha, under self-financing

with annual intake of 30 students in first shift and 30 students in second shift, and having applied for, got recommendation of the Expert Committee for

intake of 30 students in first shift for 2011-12. Accordingly, got approval of Government of Odisha in Industries Department on 22.09.2011 as New

Institute (Industrial Safety) for academic session 2011-12 and the same got extended for subsequent periods. On academic audit being conducted on

12.08.2021, the inspecting officials expressed the view that the intake can be enhanced from 30 to 60 students.

4.1. Upon a joint inspection comprising officials of the Directorate of Technical Education and Training (DTE&T)

and the State Council for Technical Education and Vocational Training (SCTE&VT) being conducted and consequent report dated 02.08.2023 being

submitted, the Government of Odisha in Skill Development and Technical Education Department, sought for furnishing reply to show cause as to why

action would not be initiated against the institution for having not met the deficiencies pointed out vide Notice dated 21.08.2023. It is submitted by Sri

Budhadev Routray, Senior Advocate that to the utter surprise, it has been recommended in the joint report for intake of 30 students instead of 60

students for the period of approval 2023-24. Responding to such show cause, a reply had been submitted by the petitioner-institute on 04.09.2023

explaining each aspect of deficiency pointed out and it requested for allowance of existing intake affiliation of 60 students.

4.2. Notwithstanding furnishing compliance of notice to show cause, the Skill Development & Technical Education department issued Letter No.SDTE-

PDE-II-Poly-0036-2023-7117/SDTE, dated 27.09.2023 directing the petitioner to comply all the deficiencies cited in the Inspection Report

dated 02.08.2023 within one month.

4.3. Instead of considering the explanation dated 04.09.2023 already furnished responding to show cause notice dated 21.08.2023, the Director of

Technical Education & Training, Odisha, communicated the following decision:

Directorate of Technical Education & Training,
Odisha, Cuttack.

Tel: 0671-2301061 Email: dtetorissa@gmail.com

Letter No. 4540 File No.TT-VII-03/2024

Date: 22.03.2024

From

Reghu G, I.A.S.

Director of Technical Education

& Training Odisha, Cuttack.

To

The Chairman/Principal,

Sivananda Institute of Industrial Safety,

Ananda Bazar, Talcher, Angul - 759 10.

Sub: Abeyance of Post Diploma in Industrial Safety Admission for the AY 2024-25

w.r.t. Sivananda Institute of Industrial Safety, Angul" regarding

Madam/Sir,

In inviting a reference to the subject cited above, I am to say that a joint inspection of your institution was done by two numbers of inspecting officers as

representatives of the DTE&T, Odisha, Cuttack and SCTE&VT, Odisha, Bhubaneswar.

They had recommended the reduction of intake capacity from 60 to 30 due

to deficiencies like unavailability of required laboratories and safety equipments.

The Joint inspection report was placed in the 1st Apex Diploma Admission Committee Meeting held on 13.03.2024 under the Chairpersonship of the Principal

Secretary to Government in SD&TE Department Government of Odisha. The Committee decided to keep the admission in abeyance w.r.t. your institution in PDIS

course for the academic year 2024-25, keeping in view of the quality of education and safety of the students.

This is for information.

Yours faithfully,

Sd/-

Director of Technical Education

& Training, Odisha

4.4. It is also submitted by the learned senior counsel that despite its attempt for review of such decision of keeping in

the admission by submitting representations on 12.04.2024, and prayer for resumption of intake of at least 30 students as was prevailing

prior to enhancement of seats in respect of academic session 2024-25, the authority concerned paid no heed. He has submitted that no reason has been assigned by the authority in coming to the conclusion to keep the admission of students in abeyance. In spite of the fact that the petitioner proffered explanation reciting compliance of each aspect of deficiencies as pointed in the enquiry report, there has been complete non-consideration thereof. Such decision has rendered not only the staff jobless, but also thrown the career prospects of the students into darkness. Unfair attitude of the Skill Development and Technical Education Department has caused serious prejudice to the institution also, which besides facing financial loss, is losing its reputation, he contends.

4.5. Sri Budhadev Routray, learned Senior Advocate has made an attempt to persuade this Court, by drawing attention to the joint inspection report dated 02.08.2023, wherein it has been recommended by the Deputy Controller, State Council for Technical Education & Vocational Training, Odisha, Bhubaneswar and the Deputy Director (Procurement), Directorate of Technical Education & Training, Odisha, Cuttack for 30 intake instead of 60, that the authority concerned failed to appreciate that the institute for the academic session 2024-25 could intake 30 students. He further went on to submit that the decision thus taken by the Director of Technical Education & Training, Odisha to keep in abeyance the admission with respect to PDIS course in the petitioner-institute is unwholesome, illogical and irrational, which is liable to be struck down by this Court exercising extraordinary jurisdiction under Article 226/227 of the Constitution of India.

5. As against the contentions and averments, Sri Rabi Narayan Mishra, learned Additional Government Advocate per contra urged that it is for the betterment of students that such a decision has been taken by the Director of Technical Education & Training, Odisha. Joint verification of the Expert Committee consisting of the Deputy Controller of SCTE&VT and Deputy Director of DTE&T could bring to the fore the deficiencies of the institution which was required to be complied. Therefore, apt decision in the circumstances has been taken by the competent authority. The reply of the petitioner-institution, being found to be unsatisfactory, the decision to restrain it from allowing admission of students to the PDIS was taken and

informed. It is submitted by the learned Additional Government Advocate that if the petitioner is so advised, it may make good the deficiencies and move the appropriate authority for restoring for imparting PDIS course.

ANALYSIS WITH DISCUSSIONS:

6. It is apparent from the Letter dated 22.03.2024 issued by the Director of Technical Education & Training that none of the explanation vide reply to show cause dated 04.09.2023 furnished by the petitioner has been taken into consideration. It is apparent from the Joint Report dated 02.08.2023 available at Annexure-5 series that the institute is eligible for intake capacity of 30 students and the Expert Committee members have recommended for 30 intake instead of 60. There is no reason perceived on the face of the decision communicated to the petitioner vide Annexure-8 to keep the admission in abeyance in respect of 30 students. In other words, it is not understood from the Letter in Annexure-8 as to why the opposite parties have taken a decision to vary with the recommendation of the Expert Committee.

7. Needless it is to have observation that in the event in compliance of notice to show cause a reply has been furnished, the same has to be considered in its proper perspective by the authority who called for the reply.

7.1. From bare reading of the impugned decision recorded in Letter dated 22.03.2024 vide Annexure-8 it is ascertained that there has been complete non-application of mind. This is not the way an authority in seisin of factual determination on the basis of enquiry conducted into the activities of the institute, which has been imparting education since 2011 being approved, is to dispose of the reply to show cause. In absence of —reason as to why the reply to the show cause furnished by the petitioner-institution did not find favour with the opposite party-authority, the decision becomes vulnerable.

7.2. In Broom's Legal Maxims (1939 Edition, Page 97) there can be found a useful principle, *Cessante Ratione Legis Cessat Ipsa Lex*, that is to say, "Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself". It is, thus, by now fairly established that reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. [See, Raj Kishore Jha Vrs.

State of Bihar, (2003) 11 SCC 519].

7.3. Even in respect of administrative orders Lord Denning, M.R. in Breen Vrs. Amalgamated Engg. Union, (1971) 1 All ER 1148, observed:

“The giving of reasons is one of the fundamentals of good administration.”

7.4. In Alexander Machinery (Dudley) Ltd. Vrs. Crabtree 1974 ICR 120 (NIRC) it was observed:

“Failure to give reasons amounts to denial of justice.”

7.5. 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. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind

to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary

requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The “inscrutable face of the sphinx” is

ordinarily incongruous with a judicial or quasi judicial performance. Vide Steel Authority of India Limited Vrs. Sales Tax Officer, (2008) 9 SCC

407.

7.6. It is felt apposite to refer to Kranti Associates (P) Ltd. Vrs. Masood Ahmed Khan, (2010) 9 SCC 49,6 wherein the Hon^{ble} Supreme Court

of India has summarised the legal position as follows:

“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. (See David Shapiro in *Defence of Judicial Candor*, (1987) 100

Harvard Law Review 731-37).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component

of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija Vrs. Spain*, (1994) 19 EHRR 553 EHRR, at 562 para 29 and *Anyia Vrs.*

University of Oxford, 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

“adequate and intelligent reasons must be given for judicial decisions”.

(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”.

7.7. The following observation of the Hon^{ble} Supreme Court of India, while turning down to entertain the matter challenging notice for assessment,

in the case of GKN Driveshafts (India) Ltd. Vrs. Income Tax Officer, (2002) Supp. 4 SCR 359, is noteworthy:

“We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the above-said five assessment years.”

7.8. It is held in Assistant Commissioner Vrs. Shukla and Brothers, (2010) 4 SCC 785, that the doctrine of audi alteram partem has three basic

essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an

opportunity of being heard. Secondly, the concerned authority should provide a “fair and transparent” procedure and lastly, the

authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by Courts in India

and abroad.

7.9. In the case of S.N. Mukherjee Vrs. Union of India, (1990) 4 SCC 594, it is said “administrative process will best be vindicated by clarity in

its exercise”.

7.10. The obligation to record reasons operates as a deterrent against possible arbitrary action by the authority invested with quasi judicial power. In

Travancore Rayons Ltd. Vrs. The Union of India, AIR 1971 SC 862 = (1970) 3 SCR 40 = (1969) 3 SCC 183, it has been laid down as follows:

“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 Court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.”

8. Perusal of record transpires that the petitioner-Institute has been granted affiliation with intake capacity since 2011 and was renewed each year. In

the year 2021-22 when Academic Audit was undertaken by inspecting officials comprising the Deputy Director, Factories and Boilers, Angul, the

Assistant Environment Engineer, State Pollution Control Board, Angul and the Principal, Government Polytechnic, Angul, in respect of PDIS course,

by a report dated 12.08.2021 it was suggested as follows:

“The Chairman of the Institute is requested to take steps for installation of CC Camera in the classroom and laboratories, etc. Considering the infrastructure the intake capacity may be enhanced from 30 (thirty) to 60 (sixty) per year.”

8.1. However, based on subsequent Joint Verification Report dated 02.08.2023 submitted by the Expert Committee Members comprising the Deputy

Director (Procurement), Directorate of Technical Education and Training, Cuttack and the Deputy Controller, State Council for Technical

Education and Vocational Training, Odisha, Bhubaneswar, suggesting for 30 intake instead of 60, the Notice to show cause was issued on

21.08.2023 by the Joint Secretary to Government of Odisha in Skill Development and Technical Education Department, to which the petitioner has

stated to have submitted response on 04.09.2023 explaining in detail with respect to each of the deficiencies pointed out in such report.

8.2. It is alleged that the decision taken to keep in abeyance the admission of students to the PDIS Course vide Letter dated 22.03.2024 issued by the

Director of Technical Education & Training, Odisha, does not emanate consideration of such reply/defence of the petitioner. The Letter dated

22.03.2024 of the Director of Technical Education & Training, propriety of which is the subject matter of challenge in this petition, does not ascribe

any reason as to why admission of 30 students as recommended in the Joint Verification Report has been varied. The decision to keep in abeyance

such admission, it appears, has merely assigned keeping in view of the quality education and safety of the students.

8.3. In such circumstances, there is force in submission of Sri Budhadev Routray, learned Senior Advocate that for want of reason, the decision is

required to be revisited by the competent authority.

CONCLUSION & DECISION:

9. As is discussed in the foregoing paragraphs, it is abundantly clear that the decision taken by the opposite parties vide communication in File No.TT-

VII-03/2024"4540, dated 22.03.2024 does not inspire consideration of the reply/explanation of the petitioner stated to have been submitted in

connection with Notice bearing No. SDTE-PDE-II-Poly-0036-2023" 6072/SDTE, dated 21.08.2023. Therefore, this Court is driven to observe that

the said decision impugned in the petition records only conclusions and no cogent reasons. It does not objectively deal with the defence/explanation of

the petitioner. Hence, this Court has no hesitation to hold that said decision is vitiated.

10. Under the aforesaid perspective, it is not inapt to refer to the decision rendered in the case of Union of India Vrs. Upendra Singh, (1994) 3 SCC

357, to exercise power of judicial review invoking provisions of Article 226 of the Constitution of India:

“The function of the Court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Kamal Vrs. Gopi Nath & Sons, (1992) Supp.2 SCC 312. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus: (SCC p. 317, para 8) “Judicial review” it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.” ***

11. Situated thus, having found infirmity in the approach of the authority in taking the decision vide communication dated 22.03.2024 (Annexure-8 to the writ petition), which is bereft of reason for the conclusion arrived at, the opposite party-Director of Technical Education & Training, Odisha is required to revisit, without being influenced by decision already taken.

12. Finding absence of reasons in the decision of the opposite party-Director of Technical Education & Training, Odisha on the issue of varying with the recommendation of the Expert Committee members and taking a decision to keep in abeyance the admission of 30 students as recommended in the Joint Verification Report, this Court remits the matter to the said authority for a fresh decision.

13. It goes without saying that while considering the matter afresh, said authority may take into consideration not only the deficiencies pointed out but also the recommendations made in the Joint Verification Report dated 08.02.2023 submitted by the Expert Committee. Having regard to the career of students pursuing Post Diploma Course in Industrial Safety (“PDIS”), it is desired that the authority shall take appropriate decision bearing in mind

the legal position discussed supra preferably within a period of six weeks from today.

14. It is clarified that this Court has not expressed any opinion on merit of the deficiencies pointed out in the Joint Verification Report, which is left

open to be decided by the opposite party-Director of Technical Education & Training, Odisha.

15. In fine, the writ petition is disposed of with the above direction, but in the circumstances, without any order as to costs.

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