IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MAY, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 24579 OF 2021 (EDN-RES)

BETWEEN

JNANA SAROVAR EDUCATIONAL TRUST
PARASHURAMA NAGAR
BHUGATHAHALLI
VAJAMANGALA POST
BANNUR ROAD
MYSURU -570 011
REP BY PRESIDENT

...PETITIONER

(BY SRI. M.P.SRIKANTH., ADVOCATE)

AND

1. THE STATE OF KARNATAKA
   BY ITS SECRETARY TO THE GOVERNMENT
   PRIMARY AND SECONDARY EDUCATION
   M S BUILDING AMBEDKAR VEEDHI
   BENGALURU-560 001

2. THE COMMISSIONER OF PUBLIC INSTRUCTIONS
   PRIMARY AND SECONDARY EDUCATION
   NEW PUBLIC OFFICES
   NRUPATHUNGA ROAD K R CIRCLE
   BANGALORE-560 001

3. THE DIRECTOR OF PUBLIC INSTRUCTIONS
   PRIMARY EDUCATION
   NEW PUBLIC OFFICES
   NRUPATHUNGA ROAD, K R CIRCLE
   BANGALORE-560 001

4. DEPUTY DIRECTOR OF PUBLIC INSTRUCTIONS
   MYSURU DISTRICT
   MYSURU-570009.

5. BLOCK EDUCATION OFFICER
   TALUK RANGE
   MYSURU-570009

6. CHIEF EXECUTIVE OFFICER
   ZILLA PANCHAYATH
   MYSURU-570009

7. SRI D BALAKRISHNA KRISHNAPPA
   MAJOR
   RESIDING AT NO.355/B 15TH MAIN
   JANATHANAGARA, T K LAYOUT
   MYSORE-5700009

8. SRI WILLIAM YESUDAS
   MAJOR
   RESIDING AT NO.355/B 15TH MAIN
   JANATHANAGARA, T K LAYOUT
   MYSORE-570009

...RESPONDENTS

(BY SMT. SARITHA KULKARNI., HCGP FOR R1 TO R5;
SRI. B.J. SOMAYAJI., ADVOCATE FOR R6;
SRI. SHARATH KUMAR SHETTY., ADVOCATE FOR R7;
V/O DATED 26.2.2024, SERVICE OF NOTICE TO R8 H/S)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 23.11.2021 BEARING NO. EST(4)RTI 37/2016-17/16891 PASSED BY THE R6 VIDE ANNEXURE-AN AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 25.04.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

a. *Quash the order dated 23.11.2021 bearing No. EST(4)/RTI 37/2016-17/16891 passed by the 6th Respondent vide Annexure-AN.*

b. *Pass any order of consequential relief or any other appropriate order or direction as this Hon'ble Court deems fit in the facts and circumstances of the case in the ends of justice and equity.*

2. The petitioner claims to be a public charitable trust and running a residential school without any grant-in-aid offering the Central Board of Secondary Education (CBSE) syllabus from the year 2001. Subsequently, the petitioner changed the syllabus to Indian School Certificate Examination (ISCE) after obtaining affiliation from the Council for the Indian School Certificate Examination (CISCE) from 21.08.2009.

3. Sri.D.Balakrishna Krishnappa and Sri.William Yesudas filed an appeal under sub-Section (1) of Section 18 of the Right of Children to Free and Compulsory Education Act, 2009 (for short, 'RTE Act') read with Rule 11 of the Karnataka Right of Children to Free and Compulsory Education Rules, 2012 (for short, 'Karnataka RTE Rules'), alleging that the school had

not obtained recognition under the RTE Act and sought for action to be initiated.

4. The petitioner, having been issued with a notice on 09.12.2016, appeared before the authorities on 19.12.2016. A show cause notice came to be issued on 12.01.2017, which was replied to by the petitioner contending that the petitioner being a residential school, RTE Act cannot be made applicable to the petitioner. Respondent No.5 issued one more notice on 01.02.2017 stating that the management is responsible for not uploading the details of the students under the RTE Act followed with the communication from respondent No.4- Deputy Director of Public Instructions (DDPI) recommending action against the petitioner. The matter was taken up by respondent No.6 – Chief Executive Officer of Zilla Panchayath who directed the respondent No.4 – DDPI to hold an enquiry into the aspect and take

action in terms of sub-Section (5) of Section 18 of RTE Act.

5. The petitioner addressed a letter dated 15.02.2017 to respondent No.5 - Block Education Officer (BEO) stating that the RTE Act was not applicable to the petitioner's institution and seeking for withdrawal of the said notices and requested for recognition to be granted under Section 18(1) of the RTE Act. A further show cause notice came to be issued in terms of Annexure-AB calling upon the petitioner to show cause as to why action should not be initiated under sub-Section (5) of Section 18 of RTE Act as also for levy of fine thereon. The authorized representative of the petitioner appeared before the DDPI. Respondent No.4 imposed a penalty of Rs.1,60,50,000/- vide order dated 26.04.2017. Challenging the same, the petitioner filed W.P.No.21192/2017, which came to be partly allowed, the disposal order reads as under:-

> *Accordingly, the impugned order bearing No. A5/209018/RTE.Dhooru-216/2016-17 dated 26.04.2017 is set-aside. The writ petition stands allowed reserving liberty to the respondents to forward the relevant papers to the Chief Executive Officer to proceed in accordance with Rule 23 of Rules 2012. If the Chief Executive Officer is of the view that prima facie action needs to be taken against the petitioner, in such an event, Chief Executive Officer of the concerned Zilla Panchayat is hereby directed to provide ample opportunity to the petitioner by mean of issuing notice so also oral hearing, if necessary. The above exercise shall be completed within a period of four months from today. All contentions are left open to be urged before the Chief Executive Officer, Zilla Panchayat.*

6. The matter having been remitted to the Chief Executive Officer (CEO) vide its order dated 23.11.2021 at Annexure-AN imposed a penalty of Rs.1,61,50,000/-. It is challenging the same, the petitioner is before this Court.

7. Sri.M.P.Srikanth, learned counsel for the petitioner would submit that:

   7.1. The impugned order is violative of principles of natural justice.

   7.2. The impugned order only refers to the fact that the explanation offered by the petitioner is not

satisfactory and that no supporting documents are provided.

7.3. The said finding is without any reasoning and as such, it is not sustainable.

7.4. In this regard, he relies on the decision of the Hon'ble Apex Court in ***Oryx Fisheries (P) Ltd. v. Union of India***[1] more particularly Paras 31, 32, 33, 36, 37 thereof, which are reproduced hereunder for easy reference:

> ***31.*** *It is of course true that the show-cause notice cannot be read hypertechnically and it is well settled that it is to be read reasonably. But one thing is clear that 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.*
>
> ***32.*** *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*

[1] (2010) 13 SCC 427

when he has the power to take a punitive step against the person after giving him a show-cause notice.

33. *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.*

36. *The appellant gave a reply to the show-cause notice but in the order of the third respondent by which registration certificate of the appellant was cancelled, no reference was made to the reply of the appellant, except saying that it is not satisfactory. The cancellation order is totally a non-speaking one. The relevant portion of the cancellation order is set out:*

"Sub. : Registration as an Exporter of Marine Products under the MPEDA Rules, 1972.

Please refer to Show-Cause Notice No. 10/3/MS/2006/MS/3634 dated 23-1-2008 acknowledged by you on 28-1-2008 directing you to show cause why the certificate of registration as an exporter, No. MAI/ME/119/06 dated 3-3-2006 granted to you as merchant exporter should not be cancelled for the following reasons:

1. It has been proved beyond doubt that you have sent sub-standard material to M/s Cascade Marine Foods, LLC, Sharjah.

2. You have dishonoured your written agreement with M/s Cascade Marine Foods, LLC, Sharjah to settle the complaint made by the buyer as you had agreed to compensate to the extent of the value of the defective cargo sent by you and have now evaded from the responsibility.

3. This irresponsible action has brought irreparable damage to India's trade relation with UAE.

Your reply dated 4-2-2008 to the show-cause notice is not satisfactory because the quality complaint raised by M/s Cascade Marine Foods, LLC, Sharjah have not been resolved amicably. Therefore, in exercise of the power conferred on me vide Rule 43 of the MPEDA Rules, read with Office Order Part II No. 1840/2005 dated 25-11-

> *2006, I hereby cancel Registration Certificate No. MAI/ME/119/06 dated 3-3-2006 issued to you. The original certificate of registration issued should be returned to this office for cancellation immediately.*
>
> *In case you are aggrieved by this order of cancellation, you may prefer an appeal to the Chairman within 30 days of the date of receipt of this order vide Rule 44 of the MPEDA Rules."*
>
> *(emphasis supplied)*
>
> ***37.** Therefore, the bias of the third respondent which was latent in the show-cause notice became patent in the order of cancellation of the registration certificate. The cancellation order quotes the show-cause notice and is a non-speaking one and is virtually no order in the eye of the law. Since the same order is an appealable one it is incumbent on the third respondent to give adequate reasons.*

7.5. By relying on the above decision, he submits that the order of imposition of penalty is a non-speaking one and does not inspire any confidence.

7.6. The CEO has not categorically stated as to how the petitioner is responsible and/or liable and as such, the order is required to be set aside.

7.7. He relies on the decision of the Hon'ble Apex Court in the ***B.A. Linga Reddy and Others. Vs. Karnataka State Transport Authority***

and Others[2] more particularly Paras 17 to 26 thereof, which are reproduced hereunder for easy reference:

> ***17.*** *It is apparent from the provisions that the scheme is framed for providing efficient, adequate, economical and properly coordinated road transport service in public interest. Section 102 of the 1988 Act does not lay down the requirement of recording any express finding on any particular aspect; whereas the duty is to hear and consider the objections. It requires the State Government to act in public interest to cancel or modify a scheme after giving the State transport undertaking or any other affected person by the proposed modification an opportunity of hearing. The State is supposed to be acting in public interest while exercising the power under the provision. However, that does not dispense with the requirement to record reasons while dealing with objections. Modification of the scheme is a quasi-judicial function. While modifying or cancelling a scheme, the State Government is duty-bound to consider the objections and to give reasons either to accept or reject them. The rule of reason is antithesis to arbitrariness in action and is a necessary concomitant of the principles of natural justice.*
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> ***18.*** *In Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India [(1976) 2 SCC 981] , it was held: (SCC pp. 986-87, para 6)*
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> *"6. … It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N.M. Desai v. Testeels Ltd. [(1979) 3 SCC 225 : 1979 SCC (L&S) 261] But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of*

[2] (2015) 4 SCC 515

reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8-12-1961 which were repeated in the subsequent representation dated 4-6-1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

19. *This Court in Rani Lakshmi Bai Kshetriya Gramin Bank case [Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney, (2009) 4 SCC 240 : (2009) 1 SCC (L&S) 806] while relying upon S.N. Mukherjee v. Union of India [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445] has laid down thus: (Rani Lakshmi Bai Kshetriya Gramin Bank case [Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney, (2009) 4 SCC 240 : (2009) 1 SCC (L&S) 806] , SCC p. 243, para 8)*

"8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in S.N. Mukherjee v. Union of India [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445] , is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the

chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation."

20. *A Constitution Bench of this Court has laid down in Krishna Swami v. Union of India [(1992) 4 SCC 605] that if a statutory or public authority/functionary does not record the reasons, its decision would be rendered arbitrary, unfair, unjust and violating Articles 14 and 21 of the Constitution. This Court has laid down thus: (SCC p. 637, para 47)*

"47. … Undoubtedly, in a parliamentary democracy governed by rule of law, any action, decision or order of any statutory/public authority/functionary must be founded upon reasons stated in the order or staring from the record. Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21. But exceptions are envisaged keeping institutional pragmatism into play, conscious as we are of each other's limitations."

21. *In Workmen v. Meenakshi Mills Ltd. [(1992) 3 SCC 336 : 1992 SCC (L&S) 679] while considering the principles of natural justice, it has been observed that it is the duty to give reasons and to pass a speaking order; that excludes arbitrariness in action as the same is necessary to exclude arbitrariness. This Court has observed thus: (SCC pp. 374 & 378, paras 42 & 49)*

"42. We have already dealt with the nature of the power that is exercised by the appropriate Government or the authority while refusing or granting permission under sub-section (2) and have found that the said power is not purely administrative in character but partakes of exercise of a function which is judicial in nature. The exercise of the said power envisages passing of a speaking order on an objective consideration of relevant facts after affording an opportunity to the parties concerned. Principles or guidelines are insisted on with a view to control the exercise of discretion conferred by the statute. There is need for such principles or guidelines when the discretionary power is purely

administrative in character to be exercised on the subjective opinion of the authority. The same is, however, not true when the power is required to be exercised on objective considerations by a speaking order after affording the parties an opportunity to put forward their respective points of view.

49. We are also unable to agree with the submission that the requirement of passing a speaking order containing reasons as laid down in sub-section (2) of Section 25-N does not provide sufficient safeguard against arbitrary action. In S.N. Mukherjee v. Union of India [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445] , it has been held that irrespective of the fact whether the decision is subject to appeal, revision or judicial review, the recording of reasons by an administrative authority by itself serves a salutary purpose viz. 'it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making' (SCC p. 612, para 36)."

22. *In Divl. Forest Officer v. Madhusudhan Rao [(2008) 3 SCC 469 : (2008) 1 SCC (L&S) 788] , this Court has laid down thus: (SCC p. 473, para 20)*

"20. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice, the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum."

23. *In Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney [Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney, (2009) 4 SCC 240 : (2009) 1 SCC (L&S) 806] , it was observed that: (SCC p. 243, para 8)*

"8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in S.N. Mukherjee v. Union of India [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445] , is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its

mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation."

24. *In Manohar v. State of Maharashtra [(2012) 13 SCC 14] it has been laid down that in the context of the State Information Commission, it has to hear the parties, apply its mind and record the reasons as they are the basic elements of natural justice. This Court has laid down thus: (SCC p. 23, para 17)*

"17. The State Information Commission is performing adjudicatory functions where two parties raise their respective issues to which the State Information Commission is expected to apply its mind and pass an order directing disclosure of the information asked for or declining the same. Either way, it affects the rights of the parties who have raised rival contentions before the Commission. If there were no rival contentions, the matter would rest at the level of the designated Public Information Officer or immediately thereafter. It comes to the State Information Commission only at the appellate stage when rights and contentions require adjudication. The adjudicatory process essentially has to be in consonance with the principles of natural justice, including the doctrine of audi alteram partem. Hearing the parties, application of mind and recording of reasoned decision are the basic elements of natural justice. It is not expected of the Commission to breach any of these principles, particularly when its orders are open to judicial review. Much less to Tribunals or such Commissions, the courts have even made compliance with the principle of rule of natural justice obligatory in the class of administrative matters as well."

25. *Now we come to the order passed in the instant case with respect to the Bellary Scheme which is to the following effect:*

"The objections and representations received in this regard are examined and the arguments advanced by the representatives of the STUs and private operators for and against the modification proposed by the State Government are considered in the light of the provisions of the Motor Vehicles Act, 1988.

Section 102 of the MV Act, 1988 empowers the State Government, at any time, if it considers necessary in the public interest so to do, modify any approved scheme.

Therefore, what is paramount for modifying the scheme is that it should be in the public interest. The modification now proposed is necessitated in view of the stand taken by the Hon'ble Supreme Court of India in Ashrafulla Khan case [Karnataka SRTC v. Ashrafulla Khan, (2002) 2 SCC 560 : AIR 2002 SC 629] . During the period from 4-12-1995 and 14-1-2002, considering the interpretation with regard to the words "overlapping", "intersection" and "corridor restriction" of the Hon'ble High Court of Karnataka, the transport authorities have granted the permits to the private operators in accordance with the provisions of the MV Act, 1988 and the Rules made thereunder considering the need of the travelling public, as these operators are meeting the genuine demands of the travelling public in excess of the services provided by the STUs. Hence, it has become necessary to save all the permits, granted by the RTAs which were in operation as on 1-4-2002 in the interest of the travelling public.

Therefore, on the facts and averments made before me, I do not find that sufficient ground is established to support the objections and representations received and made in person opposing the modification of the approved Bellary and Raichur Schemes published in Notifications Nos. HD/22/TMP/64 dated 18-4-1964 and TD/140/TMI/82 dated 3-11-1987. Hence, the draft notification modifying the above schemes published in Notification No. HTD/122/TMA97 dated 25-10-2002 is upheld and approved. All the permits held as on 1-4-2002 are saved with the condition that they shall not pick up or set down passengers except at the bus-stands."

26. *It is apparent that there is no consideration of the objections except mentioning the arguments of the rival parties. Objections both factual and legal have not been considered much less reasons assigned to overrule them. Even in brief, reasons have not been assigned indicating how objections are disposed of.*

7.8. By relying on the above decision, he again submits that the impugned order suffers from lack of application of mind, there are no reasons recorded and as such, by exercising powers under judicial review, this Court is required to set aside the said order.

7.9. He relies on the decision of this Court in ***Nooli Channayya Smaraka v. State of Karnataka***[3] more particularly Para 15 thereof, which is reproduced hereunder for easy reference:

> ***15.*** *At this stage, the Learned Counsel for the respondents submits that the petitioner had filed a Revision Petition against the order at Annexure 'D' and that failure of natural justice if any at the original bestage has been cured by giving a hearing at the appellate stage. It is to stated here that breach of natural justice at the original stage cannot be cured by sufficiency of natural justice at the appellate/revisional stage. When the Trial body did not observe natural justice the same cannot be remedied by an Appellate/Revisional body by giving a sufficient hearing to the party. The appeal/Revision is not a complete substitute for a right of hearing before the original authority.*

7.10. He submits that there are no particulars which have been provided for levy of penalty of

[3] ILR 2004 KAR 4133

Rs.1,61,50,000/- and the same cannot now be sought to be given when the petitioner has challenged the order of levying penalty.

7.11. The impugned order is contrary to Rule 23 of the Karnataka RTE Rules, 2012. Rule 23 provides for procedure to be undertaken while passing an order under sub-Section (5) of Section 18 of the RTE Act. The opinion of the Chief Executive Officer is not in compliance with Rule 23 of Karnataka RTE Rules, 2012.

7.12. Though this Court had remitted the matter to CEO of Zilla Panchayath, the CEO has to consider whether the requirement of Rule 23 had been followed. The petitioner having raised a preliminary objection firstly, an order was to be passed on the preliminary objection, and thereafter, an opportunity had to be given to the petitioner to address arguments on merits and

only thereafter, an order to be passed on merits and not before.

8. Smt.Sarita Kulkarni, learned HCGP appearing for the State would submit that:

8.1. In terms of Section 18 of the RTE Act, it is a bounden duty on part of any educational institution to seek for registration. Any violation thereof would entail penalty in terms of sub-Section (5) of Section 18 of RTE Act. The petitioner admittedly not having been registered itself and sought for recognition and contending that there is no requirement for recognition. There is admission on part of the petitioner itself that recognition had not been sought for and that itself would be sufficient for the CEO and for this Court to hold that there is violation of Section 18 of RTE Act requiring the application of sub-Section (5) of Section 18 of RTE Act and

what has been done by the CEO is proper and correct.

9. Sri.B.J.Somayaji, learned counsel for respondent No.6 – CEO Zilla Panchayat would submit that:

9.1. In pursuance of the remand made by this Court vide order dated 19.09.2019 in W.P.No.21192/2017, the CEO has proceeded with the matter. The only explanation offered by the petitioner being that RTE Act would not be applicable to the petitioner and there being no reason as to why there was a delay and CEO has found the petitioner to be in violation of the RTE Act levied the penalty as indicated under sub-Section (5) of Section 18 of RTE Act, which contemplates a fine of Rs.1,00,000/- and in case of continuing contraventions, a fine of Rs.10,000/- for each day during which such contravention continues.

10. In reply, Sri.M.P.Srikanth, learned counsel for the petitioner would submit that sub-Section 5 of Section 18 of RTE Act contemplates two actions. First action on part of the CEO to hold the petitioner to be in violation by levying a fine of Rs.1,00,000/- and even if thereafter, the petitioner were to continue the violation, it is only then, that a fine of Rs.10,000/- could be imposed for each day during which the contravention subsists. Thus, he submits that even if all contentions of the petitioner are not accepted by this Court, the fine has to be reduced to Rs.1,00,000/- and quash the fine of Rs.1,61,50,000/-.

11. Heard of Sri.M.P.Srikanth, learned counsel for the petitioner, Smt.Sarita Kulkarni, learned HCGP appearing for respondents No.1 to 5, Sri.B.J.Somayaji, learned counsel for respondent No.6 – CEO Zilla Panchayat and Sri.Sharath Kumar Shetty, learned counsel for respondent No.7 and perused papers.

12. Having heard the learned counsel for the petitioner and respondents, the points that would arise for consideration are:

1) Whether there is a requirement for a school to obtain a Certificate of Registration under Section 18 of the Right of Children to Free and Compulsory Education Act, 2009?

2) Whether the petitioner has violated Section 18 of Right of Children to Free and Compulsory Education Act, 2009?

3) Whether it was required for the CEO, Zilla Panchayat to have considered all the requirements under the Karnataka Right of Children to Free and Compulsory Education Rules, 2012 subsequent to the remand made by this Court vide its order dated 19.09.2019 in W.P.No.21192/2017?

4) Whether the order passed by the CEO is proper and correct and requires interference at the hands of this Court?

5) Whether the penalty levied on the petitioner is proper and correct?

6) What order?

13. **<u>Answer to Point No.1</u>: Whether there is a requirement for a school to obtain a Certificate of Registration under Section 18 of the Right of Children to Free and Compulsory Education Act, 2009?**

13.1. Section 18 of RTE Act reads as under:-

> ***18. No school to be established without obtaining certificate of recognition. -***
>
> *(1)No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.*
>
> *(2)The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed:*
>
> *Provided that no such recognition shall be granted to a school unless it fulfils norms and standards specified under section 19.*
>
> *(3)On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition:*

Provided that such order shall contain a direction as to which of the neighbourhood school, the children studying in the de-recognised school, shall be admitted:

Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed.

(4)With effect from the date of withdrawal of the recognition under sub-section (3), no such school shall continue to function.

(5)Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

13.2. A perusal of sub-Section (1) of Section 18 of RTE Act makes it clear that no school other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of the Act, be established or function, without obtaining a certificate of recognition by making an application in such form and manner as may be prescribed.

13.3. In terms of Rule 11 of the Karnataka RTE Rules, more particularly, sub-rule (2) thereof, every Governing Council of a school other than a school established, owned or controlled by the Government or local authority established before the commencement of the Act, shall make a Self-Declaration in Form-I within six months from the date of commencement of the Rules to the concerned Block Education Officer regarding its compliance or otherwise with the norms and standards prescribed in the Schedule along with the conditions prescribed under sub-rule (2).

13.4. The said Rule 11 of the Karnataka RTE Rules is reproduced hereunder for easy reference:

> ***11. Admission of children belonging to weaker section and disadvantaged group***.- *(1) The school referred to in clauses (iii) and (iv) of clause (n) of section 2 shall ensure that children admitted in accordance with clause (c) of sub-section (1) of section 12 shall not be*

segregated from the other children in the classrooms nor shall their classes be held at places and timings different from the classes held for the other children.

(2) The school referred to in clauses (iii) and (iv) of clause (n) of section 2 shall ensure that children admitted in accordance with clause (c) of sub-section (1) of section 12 shall not be discriminated from the rest of the children in any manner pertaining to entitlements and facilities such as text books, uniforms, library and Information, Communication and Technology (ICT) facilities, extra-curricular and sports

(3) The area or limits of neighbourhood specified in sub-rule (1) of rule 6 shall apply to admissions made in accordance with clause (c) of sub-section (1) of section 12:

Provided that the school may, for the purposes of filling up the requisite percentage of seats for children referred to in clause (c) of sub-section (1) of section 12, extend these area or limits with the prior approval of the appropriate Government.

13.5. Thus, in terms of sub-rule (2) of Rule 11 of the Karnataka RTE Rules, there is an obligation imposed on the school to make a self-declaration in Form-I within six months of the commencement of the Rules, which Rules came to be published in the official gazette on 28.04.2012 and thus, came into force on

28.04.2012 requiring the Governing Council of the School to make the declaration in Form-I by 27.10.2012. This obligation being a statutory obligation on the Governing Council, it was but required for the Governing Council to discharge the obligation. Thus, reading of Section 18 of the RTE Act with Rule 11 of the Karnataka RTE Rules, it is mandatory for a School other than a school established, owned and controlled by the appropriate Government or the local authority to apply for in terms of Form-I of the Karnataka RTE Rules, 2012 for recognition under the RTE Act, there being no exceptions.

13.6. Hence, I answer Point No.1 by holding that there is a requirement for a school to obtain a Certificate of Registration under Section 18 of the RTE Act.

14. **<u>Answer to Point No.2</u>: Whether the petitioner has violated Section 18 of Right of Children to Free and Compulsory Education Act, 2009?**

14.1. As answered to Point No.1 above, sub-rule (2) of Rule 11 of the Karnataka RTE Rules requires a self-declaration in Form-I within six months from the date of commencement of the Rules. Thus, if a school other than that established, owned or controlled by the appropriate Government or the local authority were not to file a declaration in Form-I by 27.10.2012 as recorded supra, there would be a violation of the requirements. Admittedly, in the present case, the petitioner has not filed such Form-I but has only contended that the RTE Act is not applicable to the petitioner. Therefore, it is clear that there is a violation of sub-rule (2) of Rule 11 of the Karnataka RTE Rules and therefore, Section 18 of the RTE Act by the petitioner.

15. **<u>Answer to Point No.3</u>: Whether it was required for the Chief Executive Officer, Zilla Panchayat to have considered all the requirements under the Karnataka Right of Children to Free and compulsory Education Rules, 2012 subsequent to the remand made by this Court vide its order dated 19.09.2019 in W.P.No.21192/2017?**

15.1. Rule 23 of the Karnataka RTE Rules reads as under:-

> ***23. Academic authority**.- (1) The Central Government shall notify an academic authority for the purposes of section 29 within one month of the appointed date.*
>
> *(2) While laying down the curriculum and evaluation procedure, the academic authority notified under sub-rule (1) shall, -*
>
> *(a) formulate the relevant and age appropriate syllabus and text books and other learning material;*
>
> *(b) develop in-service teacher training design; and*
>
> *(c) prepare guidelines for putting into practice continuous and comprehensive evaluation.*
>
> *(3) The academic authority referred to |in sub-rule (1) shall design and implement a process of holistic school quality assessment on a regular basis.*

15.2. The contention of Sri.M.P.Srikanth, learned counsel for the petitioner is that BEO on receipt of the complaint has not issued a notice and thereafter it is not brought it to

the notice of the DDPI. The DDPI has not instituted an enquiry and submitted a report to the CEO and therefore, CEO could not take any action.

15.3. These very contentions had been taken up by the petitioner in W.P.No.21192/2017 and this Court vide its order dated 19.09.2019 in the said matter had remitted the matter to the Chief Executive Officer to proceed with the matter. It further observed that if the Chief Executive Officer is of the view that *prima facie* action needs to be taken, in such an event, the Chief Executive Officer was directed to provide opportunity to the petitioner by means of issuing notice and oral hearing if necessary. Thus, this Court being aware of the submissions made by the petitioner and taking into consideration the said averments and the arguments advanced,

had remitted the matter to the CEO to pass orders and not to the BEO to issue notice to the petitioner.

15.4. Thus, the remittal made was to be actioned upon by the CEO in terms of sub-Rule (4) of Rule 23 of the Karnataka RTE Rules and not the previous part of Rule 23 as now sought to be contended by Sri.M.P.Srikanth, learned counsel for the petitioner.

15.5. The said order passed by Co-ordinate Bench of this Court having attained finality and not having been challenged, the petitioner having appeared before the CEO and submitted its preliminary objections, addressed its arguments, it cannot now lie for the petitioner to contend that the matter needs to be referred to BEO for the BEO to issue a show cause notice.

15.6. Hence, I answer Point No.3 by holding that in the present case on account of the order dated 19.09.2019 in W.P.No.21192/2017, the matter was remitted to the CEO to provide an opportunity to the petitioner to answer the allegations and thereafter after providing an opportunity of hearing pass orders, which has been so done and therefore, there is no violation of Section 23 of the Karnataka RTE Rules.

16. **Answer to Point No.4: Whether the order passed by the Chief Executive Officer is proper and correct or requires interference at the hands of this Court?**

16.1. The submission of Sri.M.P.Srikanth, learned counsel for the petitioner is that the impugned order passed by the CEO is violative of principles of natural justice. It is a non-speaking order and is therefore required to be set aside since the only

observations made in the said order is that the explanation provided by the petitioner is not satisfactory.

16.2. In this regard, he relies upon the decision in ***Oryx Fisheries*** case. In ***Oryx Fisheries*** case, the registration as an exporter was sought to be cancelled on account of sub-standard material being supplied, violation of the agreement with the consignee and irresponsible action taken which brought irreparable damage to India's trade relation with UAE.

16.3. The recipient of the show cause notice therein having answered the show cause notice, the authority had cancelled the registration certificate with a finding that the explanation offered by the noticee was not satisfactory.

16.4. As could be seen from the above, in ***Oryx*** matter, there was substantial allegation which

had been levelled, which had been answered and it is in that background that the Hon'ble Apex Court came to a conclusion that there has to be reasoned speaking order on each of the allegations.

16.5. In the present case, the allegation made against the petitioner is that the petitioner has not applied for registration/recognition in terms of Section 18 of the RTE Act, which was so to be done in terms of sub-rule (2) of Rule 11 of the Karnataka RTE Rules by filing a self-declaration in Form-I. The only defence offered by the petitioner is that the RTE Act is not applicable to the petitioner despite a remand having been made by this Court to the CEO.

16.6. A reading of the entire objections filed by the petitioner does not indicate any reasons or defence offered by the petitioner to the

allegations or to the delay in such registration. The only defence being offered is that RTE Act was not applicable, therefore in my considered opinion, the CEO was right in holding that the said defence is not satisfactory since infact no defence was offered more so when there was a self-declaration to be filed in terms of sub-rule (2) of Rule 11 of the Karnataka RTE Rules.

16.7. The decision in ***Linga Reddy's*** case is relied on for the same purpose to contend that there has to be application of mind and for reasons to be provided, I am of the considered opinion that the said decision is also not applicable since there was no defence as such which had been offered by the petitioner for the CEO to apply his mind.

16.8. The factum of non-filing of the application in Form-I is clearly established and accepted or

admitted, and there was no further requirement for a reasoned order by the CEO in this regard there being no dispute.

16.9. Hence, I answer Point No.4 by holding that the order passed by the CEO is proper and correct and does not require any interference at the hands of this Court.

17. **Answer to Point No.5: Whether the penalty levied on the petitioner is proper and correct?**

17.1. The submission of Sri.M.P.Srikanth, learned counsel for the petitioner in this regard is that firstly there has to be a finding that there is a violation, then, an imposition of fine of Rs.1,00,000/- and only thereafter if the order passed is not obeyed for continuing contravention, Rs.10,000/- for each day could be imposed.

17.2. Sub-rule (2) of Rule 11 of the Karnataka RTE Rules as indicated above requires for the Governing Council of a school other than a

school established, owned or controlled by the Government or local authority established before the commencement of the Act to make a self-declaration in Form-I within six months from the date of the commencement of the Rules to the Block Education Officer. Thus, if Form-I is not filed within the aforesaid six months in my considered opinion the contravention occurs.

17.3. In the present case, no such Form-I having been filed by 27.10.2012, the petitioner's school in contravention of Section 18 of the RTE Act requiring imposition of fine penalty as contained in sub-Section (5) of Section 18 of the RTE Act, Form-I not having been filed by 27.10.2012 would call for imposition of penalty of Rs.1,00,000/-. The period of six months having expired on 27.10.2012 and no application in Form-I having been filed

subsequent thereafter to my considered opinion would require imposition of a fine of Rs.10,000/- for each day subsequent to 27.10.2012 since the contravention which came into being on 27.10.2012 has continued for each day thereafter.

17.4. It cannot be heard of from the violator like the petitioner to contend that until a finding is given of contravention of violation, there cannot be a further fine of Rs.10,000/- on continuing the contravention.

17.5. Reading of sub-Rule (2) of Rule 11 of the Karnataka RTE Rules imposes an obligation of a self-declaration and the phraseology used is "shall make a self-declaration in Form-I". This obligation being on the school, there is no requirement for the authorities to issue notices, find the school in violation of the

applicable rules, levy a penalty and thereafter impose a fine for further contravention.

17.6. The petitioner being fully aware of the requirements under the Act not having offered any explanation for the delay, except to state that the Act is not applicable, the Act not having been challenged in these proceedings or the applicability of the Act not having been challenged in these proceedings, I am of the considered opinion that the fine which has been levied by the respondent No.6 – CEO, Zilla Panchayath is in terms of sub-section (5) of Section 18 of RTE Act and there is no infirmity in the same.

17.7. The submission of Sri.M.P.Srikanth is that the CEO cannot be allowed while the present proceedings are pending to offer an explanation as regards the levy of fine by relying upon the decision in ***Nooli Channayya Smaraka***'s case, I am of the

considered opinion that the said decision would not be applicable to the present case since the fine which has been imposed is in terms of sub-section (5) of Section 18 of RTE Act which was to the knowledge of all concerned. What has been provided to this Court in the present matter is only a calculation. The methodology of implementation is already covered under sub-section (5) of Section 18 of RTE Act, I find no infirmity in the said calculation.

18. **Answer to Point No.6**: **What order?**

18.1. In view of my findings as regards all the above points, I pass the following:

ORDER

i) No grounds having been made out, the Writ Petition stands ***dismissed***.

Sd/-
JUDGE

PRS
List No.: 1 Sl No.: 83