
(1971) 07 KL CK 0005

In the High Court Of Kerala

Case No : Writ Appeal No's. 970 and 985 of 1969

A. Raghavan and Another

APPELLANT

Vs

D.E.O. Attingal and Another

RESPONDENT

Date of Decision : 27-07-1971

Acts Referred:

Kerala Education Rules, 1959 — Rule 6

Citation : AIR 1972 Ker 108 : (1972) 1 LLJ 352

Hon'ble Judges : T.C. Raghavan, Acting C.J.; P. Narayana Pillai, J

Bench : Division Bench

Advocate : K. Shahul Hameed and P.P. Mathew, for the Appellant;

Final Decision : Dismissed

Judgement

Raghavan, Ag.C.J.

1. These writ appeals are by two parents of two students who were dismissed by the Head-master of the High School where they were studying. On 17th Feb. 1969, a violent commotion took place before the school, during the course of which the Headmaster and some of teachers of the school were attempted to be manhandled. The students, in their attempt to manhandle the teachers, abused them in vulgar language and also brutally beat one of the students. The Headmaster intimated the parents of seven students, who were considered to be the ring-leaders of the trouble; and on a subsequent day, he dismissed them too. Appeals were taken before the District Educational Officer, before whom it was contended that the Headmaster did not follow the principles of natural justice in not framing formal charges against them and in not holding an enquiry too -- in other words, in dismissing them without hearing them. The District Educational Officer himself held an enquiry and found that the charges levelled against the students were established. The result was that he confirmed the dismissal orders.

2. Writ petitions were filed before this Court; and a learned Judge dismissed the writ petitions holding that, though the Headmaster did not frame formal charges

against the students and did not also give them an opportunity to explain the charges, the defect was cured when the District Educational Officer held an enquiry and evidence was also taken, in appeal before him. In the result, the Single Judge held that there was no defect in the dismissal orders.

3. In appeal the same argument that was raised before the Single Judge has been reiterated. In reply the Government Pleader has drawn our attention to Rule 6 of Chapter IX of the Kerala Education Rules. Clause (1) of the rule lays down that any pupil, who is deliberately insubordinate or mischievous or guilty of fraud or malpractice in connection with examinations or who is found guilty of any other offence under these rules or who by his proved conduct is in the opinion of the Headmaster likely to cause an unwholesome influence on other pupils, may be, according to the degree of the offence, censured, suspended or dismissed by the Headmaster. And one of the Notes to this clause says that before a pupil is suspended or dismissed, the Headmaster shall inform the pupil's guardian about it. And this rule, according to the Government Pleader, justified the action of the Headmaster.

4. The counsel of the appellants, at this stage, has drawn our attention to the decision of Mathew, J. In President. The President, the Commonwealth Co-operative Society Ltd., Ernakulam Vs. The Joint Registrar (General) of Co-operative Societies, Trivandrum and Another, where the learned Judge has considered the application of the principles of natural justice. The learned Judge has observed that, even if a statute does not expressly provide for notice, the justice of the common law will supply the omission and will require notice and will also require an opportunity to be given to the affected party of being heard. In this connection, Mathew, J. has considered a few English decisions and the decision of the Supreme Court in Shri Bhagwan and Another Vs. Ram Chand and Another, . The Government Pleader has, in his turn, drawn our attention to the recent decision of the Supreme Court in Union of India (UOI) Vs. Col. J.N. Sinha and Another, . The Supreme Court has laid down in this decision that the rules of natural justice are not embodied rules, nor can they be elevated to the position of fundamental rights; that their aim is to secure justice or to prevent miscarriage of justice; that these rules can operate only in areas not covered by any law validly made; that they do not supplant the law but only supplement it; that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so, because it must be presumed that the legislatures and statutory authorities intend to act in accordance with the principles of natural justice, but, if a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice; and that the question whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of

that power. In laying down this principle, the Supreme Court has referred to its earlier decision in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, .

5. Now, we have to consider Rule 6 of Chapter IX of the Kerala Education Rules in the light of this decision of the Supreme Court. And, in this connection, it is obvious that the decision of Mathew, J., in the *The President, the Commonwealth Co-operative Society Ltd., Ernakulam Vs. The Joint Registrar (General) of Co-operative Societies, Trivandrum and Another*, is subject to the principles laid down by the Supreme Court.

6. Rule 6 has a purpose, and that is to maintain discipline and order in a school : and from the language of the said rule, it does not appear that it is intended that, when a Headmaster takes action under this rule, the rules of natural justice should be followed strictly. In our opinion, this rule will come within the principles laid down by the Supreme Court in the case cited -- that by necessary implication, the rule excludes the strict application of any rules of natural justice. In the light of this decision, we feel that the punishment imposed by the Headmaster (at any rate, the District Educational Officer) on the appellants cannot be impugned on the ground of failure to apply the principles of natural justice.

7. At this stage, the counsel of the appellants has pleaded that these young students, who, in their youthful exuberance or even ignorance, did certain acts without adverting to or foreseeing their magnitude, should not be visited with such dire consequences, which will mar their entire future; and that this Court should view the delinquents with sympathy and give them an opportunity to reform. The counsel has also pointed out that the appellants have been out of school for more than two years and a half and that this is a sufficient punishment for them. Considering all the circumstances, we feel that the loss of about three years and the remorse the students must have had during this time and the trouble to which they have put their parents, the appellants, are sufficient to instil sense and reason into them so as to redeem them. We, therefore, hope that the authorities will consider the question of the punishment imposed on these students.

8. This naturally leads to the question whether there is any power in the authorities to do so and our attention has been drawn to Rule 92 of Chapter XIV-A of the Kerala Education Rules dealing with the revisional powers of the Government. The Division Bench ruling in *James Chereath v. Regional Dy. Director of Public Instruction, Ernakulam*, 1971 Ker LR 75 : 1971 Lab IC 284 has also been brought to our notice, where the learned Judges have held that Rule 92 provides for revision from any order passed by a subordinate authority, and it is not necessary to confine its application to orders relating to matters falling under Chapter XIV-A alone. In view of this decision, we feel that the Government has power to reconsider these cases on the question of punishment. And we hope that the Government will take into consideration the lapse of two years and a half that has already intervened after the incident, during which the students

could not continue their studies, and the other circumstances mentioned by us.

9. With the aforesaid observation, the appeals are dismissed. No costs.