

(1983) 10 KL CK 0008
In the High Court Of Kerala
Case No : O.P. No. 7655 of 1983-N

Abe Thomas

APPELLANT

Vs

The University of Calicut and Others

RESPONDENT

Date of Decision : 25-10-1983

Acts Referred:

Citation : (1983) 10 KL CK 0008

Hon'ble Judges : Balakrishna Menon, J

Bench : Single Bench

Advocate : Easwara Iyer, E. Subramoni and K. Radhakrishnan, for the Appellant;
C.P. Sudakara Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Menon, J.—The petitioner, a student of the Regional Engineering College, Calicut, has already completed the course of studies for the B.Sc. Engineering Degree of the Calicut University; he is yet to take 17 out of 52 examinations in respect of the course spread over eight semesters. He was served with memo, dated 20th November 1980 signed by the Registrar of the University where in it is stated that at the second semester examination held in April 1977 the Petitioner had obtained 21, 24 and 33 marks respectively for Mathematics Paper II, Strength of Materials and Engineering Chemistry Paper II. He had applied for a duplicate copy of the mark list and on verification of the concerned register it was found that the same had been tampered with and the entry of marks altered. On investigation it was found that this was done by a member of the staff at the instance of the petitioner and the Vice Chancellor had ordered an enquiry by the Registrar into the matter. The petitioner was therefore directed to appear before the Registrar at 11 a.m. on 1st December 1980. The petitioner appeared before the Registrar and denied the charge against him. The Registrar submitted a report to the 2nd Respondent, the Controller of Examinations, and also to the Deputy Superintendent of Police (Vigilance), Malappuram. The Deputy Superintendent of Police after investigation in the

matter submitted a final report to the Court of the Special Judge, Trichur on 8th November 1982 to drop further proceeding against the petitioner. Accepting the final report the Special Judge, Trichur passed orders on 29th November 1982 dropping further action by way of prosecution of the petitioner for the alleged tampering of records of the University. Thereafter the Vice Chancellor appointed an enquiry officer to conduct an enquiry on the question of the alleged malpractice committed by the petitioner. The enquiry officer gave a memo of charges containing also the statement of facts leading to the framing of charges and requiring the petitioner to file his written statement of defence within ten days of its receipt. A true copy of the memo of charges served on the petitioner is produced along with the original petition as Ext. P-2. There are two charges in Ext. P-2 namely that the petitioner induced Shri M.C. Raman, a low paid employee of the University to tamper with and alter the University records and that the offence was committed for the purpose of inflating the marks scored by the petitioner at the examination held by the University for the purpose of personal gain. Ext. P-2 further states that the petitioner had failed in the papers of which marks were altered but the altered marks would show that he had passed in those papers. He had applied for a duplicate copy of the mark list of the particular semester after having the entries in the tabulation register altered showing much higher marks than what he had scored at the examination. Ext. P-2 refers to nine documents with reference to which the charges were framed. The documents include a photostat copy of the concerned tabulation sheet of marks, a photostat copy of the original mark book, the reports of the Section Officer and the Assistant Registrar, the statement of Shri M.G. Raman, Peon of the Calicut University recorded on 21st October 1980 and the explanation offered by M.C. Raman to the Registrar on 18th November 1980. The petitioner was informed that if he desires to go through the records referred to in Ext. P-2, it was open to him to do so at the time and place mentioned therein. The petitioner is also directed to state whether he desires to be Heard in person and in case he so desires, an oral enquiry will be conducted at which it is open to him to examine witnesses on his behalf. The petitioner is asked to furnish the list of witnesses he proposes to examine at the oral enquiry in case he desires to be heard in person. Ext. P-3, dated 7th May 1983 is the written statement of defence submitted by the petitioner. He has denied the charges framed against him. His principal reliance is on the final report of the Dy. S.P. (Vigilance) on the basis of which further proceedings before the Special Judge, Trichur had been dropped. In Ext. P-3 the petitioner did not ask for an oral enquiry, nor did he express his desire to be heard in person. The enquiry officer submitted his report and the controller of Examination of the University issued a memo, dated 5th August 1983 to the Petitioner requiring him to show cause why the examinations taken by him since the incident on 17th October 1980 should not be cancelled and why he should not be debarred from taking further examinations up to and inclusive of May, 1983. A true copy of the memo is produced along with the original petition as Ext. P-4. Ext. P-4 refers to the report of the enquiry officer and states that the Standing Committee on Examinations, after considering the

report, has found the Petitioner guilty of the charges levelled against him. The Vice Chancellor after having considered the enquiry report and in consultation with the Standing Committee of Examinations had provisionally decided to impose the punishment proposed in Ext. P-4. In this original petition the petitioner prays for the issue of a writ of certiorari to quash the proceedings of the Respondents culminating in Ext. P-4. No final orders imposing punishment on the petitioner has yet been passed in this case. The Respondents in their counter-affidavit has raised a contention that the writ petition is premature and cannot be entertained at this stage.

2. The grounds on which relief is sought in this writ petition are that that the Petitioner had no opportunity to participate in the enquiry held against him, he had also no opportunity to cross-examine witnesses, if any examined, in the course of the enquiry, the materials relied on by the enquiry officer are not disclosed to the petitioner and he had not been given a copy of the enquiry report before he is asked to show cause why the punishment proposed should not be imposed on him.

3. There is no substance in the contention that the petitioner had no opportunity to participate in the enquiry or to cross-examine witnesses, if any examined by the enquiry officer. The memo of charges Ext. P-2 itself requires the petitioner to state whether he desires to be heard in person, in which case alone there will be an oral enquiry. The petitioner did not express his desire to be heard in person, nor did he demand an oral enquiry. Apparently there was no oral enquiry in the matter and the enquiry officer submitted his report on the basis of the records available and referred to in Ext. P-2 itself. There is also no substance in the contention of the petitioner that the materials relied on by the enquiry officer were not disclosed to him. Ext. P-2 itself enumerates the materials on the basis of which the charges are framed, and the petitioner was given an opportunity to peruse the records relied upon by the enquiry officer. The only other ground of violation of natural justice pleaded by the petitioner is the non-disclosure of the enquiry report before Ext. P-4 memo proposing the punishment is issued to him.

4. In dealing with a question of indiscipline among students the Supreme Court in the decision in *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, stated at page 1262 that the principles of natural justice are not inflexible and may differ in different circumstances. The Supreme Court in *Suresh Koshy George Vs. University of Kerala and Others*, , dealing with the question of natural justice in the matter of an enquiry with respect to malpractices committed by a student in the University examination, stated thus at page 201:

7. The only other contention that was taken before the Division Bench and repeated in this Court was that in as much as the Vice Chancellor did not make available to the Appellant a copy of the report submitted by the second Respondent before he was called upon to make his representations against the provisional decision taken by him, there was breach of the principles of natural

justice. The Appellant had been duly informed of the charge against him long before the inquiry began; the inquiry was held after due notice to him and in his presence; he was allowed to cross examine the witnesses examined in the case and he was permitted to adduce evidence in rebuttal of the charge. No rule either statutory or otherwise was brought to our notice which required the Vice Chancellor to make available to the Appellant a copy of the report submitted by the Inquiry Officer. It is not the case of the Appellant that he asked for a copy of that report and that was denied to him. The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions.

In the decision in *Swadeshi Cotton Mills Vs. Union of India (UOI)*, , the Supreme Court stated thus at page 844:

86. In *General Medical Council v. Spackman* (1955) 1 K.B. 24, Lord Wright condemned the oft-adopted attitude by tribunals to refuse relief on the ground that a fair hearing could have made no difference to the result. Wade in his *Administrative Law*, 4th Edn., page 454, has pointed out that "in principle it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be prejudged unfairly".

87. In *Maxwell v. Department of Trade and Industry* (1974) QB 523, Lawton L.J. expressed in the same strain that "doing what is right may still result in unfairness if it is done in the wrong way". This view is founded on the cardinal canon that justice must not only be done but also manifestly seen to be done.

In *Suresh Koshy George Vs. University of Kerala and Others*, there was no demand for a copy of the enquiry report. In the present case one of the grounds urged in his writ petition is of the violation of natural justice on account of the failure of the Respondents to supply a copy of the enquiry report to the petitioner. In the circumstances it should be taken that there is a demand for a copy of the enquiry report. The punishment proposed as per Ext. P-4 is provisional and is based on the findings in the enquiry report. It is open to the petitioner to submit his explanation to Ext. P-4 and satisfy the authorities that the proposed punishment based on the findings in the enquiry report cannot be imposed on him, and in that context it is also open to him to challenge the correctness of the findings contained in the enquiry report. The Respondents will have to furnish a copy of the enquiry report to the petitioner to enable him to make an effective representation against the proposed punishment. Since no final orders had yet been passed, the writ petition at this stage is premature.

Subject to the above observations this writ petition is dismissed. There will be no order as to costs.