

(1990) 12 AHC CK 0055

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18035 of 1990

Ajai Kumar Mittal

APPELLANT

Vs

Vice-Chancellor, Roorkee University, Roorkee and others

RESPONDENT

Date of Decision : 12-12-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1991 All 177 : (1990) 1 AWC 66 : (1991) 63 FLR 291 : (1992) 2 LLJ 634 : (1991) 1 UPLBEC 132

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : R.P. Goyal and P.K. Singhal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. There was a scuffle on 28-4-1990 in the cinema hall (Hanger) of the Roorkee University (hereinafter referred to as the University) between the petitioner, a of 2nd year B.E. (Civil) of the University on the one hand and Salil Yadav and Brij Pal Singh on the other, which resulted in injuries to both student the sides. Both the sides submitted reports of the incident to the University authorities. On 30-4-1990 the Vice-Chancellor constituted an inquiry committee to inquire into the incident and pending decision of the inquiry petitioner was suspended from attending classes with immediate effect. The Vice-Chancellor however, by his order dt. 2-5-1990, passed on the representation of the petitioner's father, allowed the petitioner to appear in the spring semester examination, 1989-90 pending decision of the inquiry committee with the observation that the petitioner is to appear before the inquiry committee as and when called without the pretext of being busy in the preparation of the examination. The examination of the petitioner commenced from 5/7-5-1990 and continued up to 25-5-1990. There is a dispute between the parties about the date on which the examination commenced inasmuch as the petitioner claims that the examination commenced

on 5-5-1990, where as the case of the University is that the examination commenced from 7-5-1990.

2. Statement of the petitioner was recorded by the inquiry committee on 2/3-5-1990 and by letter dt. 4-5-1990 the petitioner was directed to appear before the inquiry committee on 5-5-1990 at 4.15 p.m. and the petitioner in compliance thereof appeared before the inquiry committee on 5-5-1990 at the time given when he was asked to reply certain charges which he did obviously by denying his guilt. Case of the petitioner is that on 5-5-1990 he appeared before the inquiry committee after leaving the examination, which was to continue up to 5 p.m. Thereafter on 14-5-1990 a show cause notice containing the following two charges (i) you had abused Salil Yadav and Brij Pal Singh and asked them in insulting manner to stand aside during the film show in the S.W.P. Hanger and (ii) you possessed a knife with you which you used in wounding Brij Pal Singh outside the S.W.P. Hanger, was served on the petitioner asking him to show cause as to why he should not be rusticated from the University for the period of one academic year 1990-91 and he be placed on probation for the remaining period of stay in the University after he rejoins in July, 1991. Along with this show cause notice no material including the copy of the inquiry report was supplied to the petitioner and the petitioner accordingly by a letter dt. 17-5-1990 requested the respondents to supply him copy of the inquiry report and such other evidence and material including the statements of witnesses, which might have been relied upon against him. Registrar of the University by his letter dt. 19-5-1990 informed the petitioner that the inquiry committee after due deliberation has submitted the report and at this stage providing the statements of witnesses does not arise. However, the petitioner was permitted to submit his reply by 30-5-1990 and to see the inquiry report in the office on any day before 30-5-1990 petitioner by his letter dt. 26-5-1990 complained to the Registrar of the University that after giving advance information, he along with his father on 25-5-1990 waited in the office up to 4.30 p.m. for inspecting the report but nothing was made available to him and as such, requested him to either furnish him the copies or permit the inspection. Petitioner's father also by his letter dt. 28-5-1990 made identical complaint to the Vice-Chancellor. However, neither the inquiry report was supplied to the petitioner nor was he allowed its inspection. On 30-5-1990, which was the last date for submitting the reply to show cause, petitioner gave his reply. The Vice-Chancellor passed the impugned order dt. 25-6-1990, whereby the petitioner was rusticated for a period of one academic year 1990-91 with immediate effect and after one year he has been permitted to join during 1991-92 (in July, 1991) with a direction that his conduct will be on probation for the entire future stay at the campus of the University, Against this order the petitioner had made a representation to the Chancellor and had also made a prayer for interim relief. Petitioner's representation has been rejected on the ground that against the order of the Vice-chancellor of Roorkee University, the Chancellor has no power to interfere. A true copy of the letter communicating the order of the Chancellor has been filed as Annexure VII to the writ petition.

Thereafter the petitioner filed this writ petition before this Court.

3. Learned counsel for the petitioner has challenged the order of the Vice-Chancellor on the grounds (i) that inquiry was conducted in violation of the principles of natural justice and the Vice-Chancellor has also passed the impugned order in disregard to the aforesaid principles, and (ii) that the order of punishment against the petitioner is arbitrary, discriminatory and has been passed on account of extraneous consideration. Learned counsel for the University has justified the inquiry and the order passed by the Vice-Chancellor and in this connection has placed before me counter-affidavit and documents annexed thereto.

4. From the perusal of the affidavits filed by the parties and the documents annexed thereto, it is quite clear that examination of the petitioner commenced according to the petitioner with effect from 5-5-1990 and according to the University with effect from 7-5-1990. In the counter-affidavit filed by the University the commencement of the examination with effect from 5-5-1990 has been denied and it has been stated that the examination in fact commenced from 7-5-1990. Petitioner however, has filed along with his rejoinder affidavit a certificate signed by all the students of 2nd year (civil) in which it has been mentioned that examination of Fluid Mechanic Practical quiz was held on 5-5-1990 till 5 p.m. Be that as it may, it is admitted to both the sides that examination continued up to 25-5-1990 and the inquiry was started just before the commencement of the examination and continued during the course of examination and the petitioner was asked to show cause on 14-5-90 as to why he be not expelled from the University for one academic session in view of the charges mentioned therein. A student of 2nd year Engineering of the University has to work hard for getting through the examination and if the inquiry is Started just before the commencement of the examination and continued during the examination period, it is quite natural the boy will get disturbed mentally with the result that he would neither be able to appear in the examination with full preparation nor would he be able to submit an effective reply to the show cause notice. A disciplinary inquiry against a student is neither ritual nor an empty formality. The object is such an inquiry is to ascertain the true state of affairs after giving reasonable opportunity to the delinquent. If in view of the facts and circumstances of a case, it is not possible for person concerned to participate in the inquiry effectively or to submit a reasonable reply during certain period, it will be a case of violation of principles of natural justice, if participation in the inquiry or a reply is insisted during such period. Holding of the inquiry just before the examination or continuing it during the examination period, appears to be highly unfair, unjustified and in violation of the principles of natural justice.

5. In paragraph 23 of the counter-affidavit filed on behalf of the University, it has been mentioned that in arriving at its conclusion against the petitioner, inquiry committee has examined 10 students along with witnesses named by the petitioner and has also collected some other evidence. It is admitted that these

witnesses were neither examined in presence of the petitioner nor was he given their statements. Petitioner was also not given a gist of the statements of these witnesses and the other evidence recorded and collected by the inquiry committee behind his back. As has been mentioned hereinbefore, the petitioner was also not given copy of the inquiry report along with show cause notice and when the petitioner asked for the copy of the inquiry report and the statements of witnesses, if any, same was refused to be supplied and he was merely asked to inspect the inquiry report in the office. Petitioner wanted to inspect the inquiry report on 25-5-1990 along with his father; but after waiting up to 4.30 p.m. they had to return as the report was not shown to them. Thereafter the petitioner as well as his father complained to the University authorities against the non-availability of the inquiry report and requested for its copy as well as copy of the statements of the witnesses or inspection on any other date. This prayer was not granted, with the result that the petitioner had to submit his reply to the show cause notice without knowing anything about the material and inquiry report relied upon against him.

6. It is open to the authorities in the disciplinary proceedings against a student to record statement of witnesses in his absence and not to supply their statements to him so as to avoid the disclosure of the identity of the witnesses. Similarly in case the supply of the inquiry report may lead to disclosure of the names of the witnesses the same may be withheld from the student. But in cases where witnesses are examined and evidence is collected behind the back of delinquent it is essential that the gist of the statements of these witnesses and other evidence as well as the gist of the inquiry report should be supplied to him so as to enable him to make reasonable and effective representation against the charges. Failure to do so would result in violation of fair principles of natural justice. In this connection reference may be made to the decision of City Corner Vs. Personal Assistant to Collector and Addl. District Magistrate, Nellore, , where Hon"ble Supreme Court has laid down that (Para 5)

"It is not always necessary that the documents asked for should themselves be furnished provided the substance of those documents is furnished, always provided, however, that the summary is not misleading.

xxxxx We are of opinion that the order passed by the District Magistrate post haste immediately he received the appellants reply without either giving him the copies asked for or at least telling him that the material already furnished was sufficient to enable him to make his representation, and if he had any further representation to make he could do so offends the principles of natural justice."

In the instant case, as mentioned before, all evidence was recorded and collected behind the back of the petitioner and he was also not given the gist of the evidence as well as the inquiry report or its gist in spite of specific request having been made by him. Asking the petitioner to submit a reply against the show cause notice without such a gist has resulted in gross-violation of the principles of natural justice and fair play in action. That apart conducting the inquiry during

the course of examination was itself not fair and reasonable amounting to violation of the principles of natural justice. The impugned order is, as such vitiated and is liable to be set aside.

7. Learned counsel for the respondents has argued that in the matter of disciplinary proceedings against the student, it is not necessary to apply the strict rules of principles of natural justice and in this connection has placed reliance on *Kamal Singh v. The Chancellor*, 1981 UPLBEC 393: (1981 UPLTNO 169), *The Principal, Government Engineering College, Trichur Vs. John K. Kurien and Another*, , *R.C. Thampan and Others Vs. The Principal, Medical College, Calicut*, , *Ratiram Singh Yadav Vs. Principal, Government Polytechnic, Harda and Another*, , *Dr. Bhupesh Gupta and Dr. Ashwani Kumar Vs. State of Himachal Pradesh and Others*, and *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, .

8. The basic requirements of the principles of natural justice are: (i) notice of the case to be met and (ii) a reasonable opportunity to explain. This is the minimum and what will be exact requirement for compliance of the principles of natural justice may differ from case to case, as rules of natural justice not being inflexible cannot be placed in rigid formula and their application depends on several factors. The principles of natural justice, which may be applicable in the case of disciplinary inquiry against a public servant or in a domestic inquiry against a workman may not strictly apply to a case of disciplinary action against students by educational institutions. Reasons for it are obvious, inasmuch as firstly, the relationship between the students and the authorities of educational institutions are not that of master and servant; but on the other hand these authorities are, as observed by Hon"ble Supreme Court in the case of *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, in loco parent is to the students; and secondly, in disciplinary proceedings against students witnesses are mostly students, whose main object being to complete their studies as early as possible and who want to avoid involvement in any controversy, which may expose them to harassment in future. It is as such open to examine the witnesses in the absence of the delinquent and also not to disclose their to the authorities of the educational institudentity examination by not supplying the statements of these witnesses. But in case the authorities rely upon those statements, it is necessary that atleast the gist or summary of the statement of the witnesses and the documentary evidence, if any, be supplied to the delinquent along with the report of the inquiry committee or its substance so as to enable him to make an effective representation. Unless the material including the statement of witnesses or their gist as well as the inquiry report or its gist, which are the basis for taking action against a student are supplied to him, it is not reasonably possible for him to make an effective representation against the charges levelled against him. In the instant case nothing of the kind has been done and the proceedings by the inquiry committee have been conducted and concluded and the impugned order has been passed by the Vice-Chancellor in complete disregard of the principles of

natural justice.

9. In the case of Kamal Singh (1981 UPLT NOC 169) (supra) the question involved was whether the witnesses were to be examined in the presence of the delinquent and he be given opportunity to cross-examine them. This plea was rejected by this Court on the ground that it is not always necessary to examine the witnesses in the presence of the delinquent and the cross-examination is not invariably a condition precedent for compliance of principles of natural justice. In the case of The Principal, Government Engineering College, Trichur Vs. John K. Kurien and Another, victims of ragging were examined in the presence of the delinquents and they were cross-examined by them. In R.C. Thampan and Others Vs. The Principal, Medical College, Calicut, gist of the evidence was supplied to the delinquents. In Ratiram Singh Yadav Vs. Principal, Government Polytechnic, Harda and Another, controversy was different inasmuch as misbehaviors by students was detected during examination and it was held that when misbehaviors if detected in the examination hall, it is not necessary to give a show cause notice or opportunity of being heard to the students. In the case of Dr. Bhupesh Gupta and Dr. Ashwani Kumar Vs. State of Himachal Pradesh and Others, it was laid down that in view of the provisions of the Ordinance of the University opportunity to be heard in person and for explain the conduct in writing is confined to the cases of rustication and expulsion of a student and not to the cases of cessation of a student from attending classes for a particular period. It is thus, clear that in none of the cases the question whether supply of the gist of the evidence relied upon against a student is necessary was raised and decided.

10. In the case of Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, decided by the Hon"ble Supreme Court, there was no dispute about the incident and the only question was about the identity of the culprits, whose names had been mentioned in the complaint and the inquiry committee got the photographs of the delinquents" identified by the girls after mixing them with 20 other photographs of students. Inquiry committee called students one after the other in its room, "and to each one of them contents of the complaint were explained, due care being taken not to disclose the names of the girls who had made the complaint" and these delinquents were also given charges in writing. It is thus obvious that the gist of the complaint of the girls students without disclosing their names was explained to the delinquents. This case also cannot help the respondents.

11. The inquiry report has now been filed before this Court as Annexure IV to the counter-affidavit of the University. The relevant extract from this report pertaining to the incident of 28-4-1990 is quoted below :

"In the evening of 28th Apr., 1990 a film show, "Flash Dance" was organised by the Cinema Club. Mr. Ajay Mittal, Mr. Vinay Krishna Pandey, Mr. Anuj Maheshwari and one more ME student were sitting on a bench just immediately after the centre gallery in the SWP Hanger, Mr. Brij Pal Singh, BE (E & C) I yr. and Mr. Salil

Yadav, BE (met) I yr. came to the Hanger at around 8.00 p.m. Since they were late, they were trying to locate the seats for themselves. When they were standing in the centre gallery they were standing in front of Mr. Ajay Mittal and were obstructing his view. Since Ajay Mittal felt uneasy he rudely asked both of them to stand aside. Salil Yadav and Brij Pal Singh picked up an argument with Mr. Ajay Mittal and abused him and asked him to come out of SWP Hanger. Satil Yadav has been nursing a grudge against Ajay Mittal for being included in the Cricket team. All the three went outside where Salil Yadav and Brij Pal Singh started beating Ajay Mittal. Mr. Brij Pal Singh caught hold of Ajay Mittal by one of his arms and Salil Yadav beat up Ajay Mittal severally. In the process Ajay Mittal fell down on the ground, while the other two students continued beating him.

Ajay Mittal was also crying "please save me". During this Ajay Mittal took out a knife and stabbed Brij Pal Singh on his hand. On getting stabbed. Brij Pal Singh had to loosen his grip and Ajay Mittal got himself freed from the students (Mr. Salil Yadav and Mr. Brij Pal Singh) and ran away towards the Civil Lines."

By the same report the inquiry committee had concluded that the petitioner is guilty of the following two charges :

"(a) He abused Mr. Salil Yadav and Mr. Brij Pal Singh and asked them in an insulting manner to stand aside during the film show in the Hanger.

(b) He possessed a knife with him which he used in wounding Mr. Brij Pal Singh outside the SWP Hanger, probably as a measure of self-defence."

The other two students, who were party to the incident. The Committee concluded them to be guilty of the following :

Mr. Brij Pal Singh BE (E & C) I yr.

"(a) He abused Mr. Ajay Mittal while he was sitting in the SWP Hanger and then he compelled Ajay Mittal to come outside the Hanger.

(b) He has beaten Ajay Mittal outside the Hanger and also assisted Salil Yadav in beating Ajay Mittal.

Mr. Salil Yadav BE (Met) I yr.

(a) He abused Mr. Ajay Mittal while he was sitting in the SWP Hanger and compelled Ajay Mittal to come outside the Hanger.

(b) He initiated violence and has severally beaten Mr. Ajay Mittal outside the Hanger.

(c) He also threatened Ajay Mittal with dire consequences when Ajay Mittal was going to the University Hospital for treatment."

12. From the conclusion of the inquiry report it is apparent that only thing against the petitioner was that he asked the two other students in the Cinema hall in an insulting manner to stand aside as they were blocking his view and

further as a measure of self-defence he used the knife on account of which Brij Pal Singh was wounded which loosened the grip of Brij Pal Singh and the petitioner got himself freed from them. On the other hand charges against Brij Pal Singh and Salil Yadav were that they compelled the petitioner to come outside Hanger and had severally beaten him thereafter and also threatened him of dire consequences. From a comparison of the conclusion drawn by the Committee, it is quite clear that the conduct of Brij Pal Singh and Salil Yadav was more reprehensible than the petitioner. Although, the misconduct attributed to the petitioner was, as compared to the misconduct of the other two students, not as serious as of those two students; but the Committee recommended rustication of the petitioner for one full academic year 1990-91 and placed the University out of bound for him from May, 1990 to July, 1991, whereas for Brij Pal Singh only a fine of 40 marks out of the discipline group for the session 1990-91 was awarded and he was rusticated for two months only from 17th July, 1990 to 15th Sep., 1990. Regarding the third student, Salil Yadav, the recommendation of the Committee has not been brought on the record and the grievance of the petitioner is that no punishment has been awarded to him. It is thus, obvious that although misconduct of the other two students was much serious as compared to the petitioner, who acted in self-defence to save his life; but those two have been let off with much lighter and nominal punishment, whereas the petitioner has been awarded a very severe punishment. No reasons have been disclosed for this unfair treatment meted out to the petitioner in the matter of punishment. From the perusal of the counter-affidavit and the documents annexed thereto, no justification for such a treatment has been given by the University. The impugned order thus, is absolutely arbitrary and discriminatory. It is true that what punishment to be awarded to a student is within the jurisdiction of the University authorities but it is not open to them to act in arbitrary and discriminatory manner. Punishment has to be in proportion to the misconduct, and if it is not so, it becomes arbitrary and unfair. It is exactly what has happened in this case. As mentioned herein-before, persons, who have committed serious misconduct have been awarded a nominal punishment than the punishment awarded to the petitioner, who acted in his self-defence to save his life.

13. For the reasons given above, the writ petition is allowed with costs and the impugned order dt. 25-6-1990 (Annexure I to the writ petition) is quashed. Respondents are directed to declare the result of the petitioner within two weeks from the date of receipt of a certified copy of this order and permit the petitioner to prosecute his further studies in the University. As on account of the impugned order the petitioner could not attend the classes, he will not be penalised or his examination form will not be withheld on account of the shortage of attendance or on account of not attending the classes during all this period. Petitioner will also be given all facilities so as to make up the loss of his studies, which was incurred on account of the impugned order.

14. Petition allowed.