

(2006) 07 KL CK 0039

In the High Court Of Kerala

Case No : Writ Petition No's. 13785 and 16911 of 2006

Alpha Jose

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Kerala Prohibition of Ragging Act, 1998 — Section 4, 5, 6

Citation : (2006) 3 KLT 886

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : P.J. Mathew, Thomas John Ambooken and Peeyes A. Kottam, for the Appellant; V.A. Muhammed and P.K. Shakeela, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The two petitioners, who are Third Year B.Sc. Nursing students in the School of Medical Education run by the Mahatma Gandhi University at Kottayam are challenging their suspension from the institution on account of the criminal case pending against them before the Judicial Magistrate of the First Class, Ettumannur, for ragging punishable u/s 4 of the Kerala Prohibition of Ragging Act, 1998, hereinafter called the "Act". FIR is filed against the petitioners based on Ext.P4 complaint filed by a first year B.Sc. Nursing student of the same School by name Ms. Supimol on 19.11.2005 before the District Superintendent of Police stating that the two petitioners were supporters of two boys by name Ranjith and Sherine who ragged and sexually assaulted the complainant. The main allegation against the petitioners in Ext.P4 which led to filing of FIR is that they along with other girls ragged the complainant in the ladies hostel by compelling the complainant to sing, dance, jump, etc. Even though Ext.P4 does not contain the date on which petitioners ragged the complainant in the hostel, in the FIR filed by the police, the date of ragging by the petitioners was stated as 23.10.2005. However, later, additional report was filed by the police changing the date of ragging as 23.9.2005. Petitioners, in support of their denial of the charges, have produced copy of the attendance

register and clinical rotation plan for third year Nursing degree students maintained by the Medical College Hospital which show that petitioners were on night duty in the hospital on the alleged date of ragging that is on 23.9 2005 from 6 P.M. to 7.30 A.M., whereas the alleged ragging under the final police report took place at 8.30 P.M. on that day. I do not think it either proper or required for this Court to consider the merits of the pending criminal complaint in this proceeding wherein petitioners are only challenging their continued suspension from college for more than six months.

2. While Section 5 of the Act provides for dismissal of a student on conviction u/s 4, Section 6 of the Act authorises educational institution to suspend a student found prima facie involved in ragging based on complaint filed by the victim or his/her parent, guardian or any teacher of the educational institution. The first suspension order issued to both the petitioners on the same date, namely, 26.11.2005 only states that suspension is "on account of alleged involvement of the petitioners in the ragging of a girl student on 21.10.2005". When petitioners challenged this suspension order in this Court, this Court wide judgment dated 9.1.2006 directed the Vice-Chancellor of the University to refer the matter for decision by the Board of Adjudication of Students' Grievance. The Board heard the petitioners on 7.3.2006, and considered the duty register of the Medical College Hospital produced by the petitioners, which shows that both the petitioners were on night duty from 6 P.M. to 7.30 A.M. at the Medical College Hospital on 23.9.2005, when the alleged ragging according to the criminal case filed by the police took place in the Ladies Hostel. However, the Board without entering into any finding about the prima facie involvement of the petitioners in the ragging, retained their suspension order vide impugned proceedings produced as Ext.P16 in WPC 16911 of 2006 and Ext.P8 in WPC 13785 of 2006 after observing that petitioners are not absolved of the charges by the Judicial First Class Magistrate before whom case is pending. Petitioners are challenging the common order on the ground that there is no complaint of ragging against them by victim or parent or guardian or teacher and there is no prima facie case established justifying suspension u/s 6 of the Act. It is to be noted that no complaint was filed before the University or college authorities about the ragging by the victim or by her parents or guardian or any teacher to initiate action u/s 6 of the Act. It is further stated by the Board that the complainant has left the college and joined elsewhere. The ladies hostel in which the complainant and the petitioners were residing and where the alleged ragging took place is run by Nuns and the Chief Matron is a Sister who is the retired Headmistress of a High School. Petitioners have relied on the statement given by the Chief Matron of the Hostel before the police wherein she has stated that the Hostel authorities are unaware of any ragging and the complainant has not made any complaint at any time before the Hostel authorities, even though each floor of the three storied building has one Sister each in charge of it. Petitioners have contended that the criminal case as well as the disciplinary action initiated against them are on account of statements made by the petitioners in a Press Conference held by

them along with others at Ernakulam on 18.11.2005 stating that the allegations of ragging and sexual assault are untrue. Even though no complaint was filed by the victim or anybody else against the petitioners either before the police or before the college authorities until holding of press conference by the petitioners about the alleged ragging that took place nearly two months back, Ext.P4 complaint was filed by the victim before the District Superintendent of Police immediately after the holding of press conference by the petitioners along with others. It is admitted that no complaint was filed by the victim or her relations before the college authorities or the University either before or even after filing the petition before the police. Petitioners' case is that suspension of the petitioners from the college is only under pressure from a Section of the students who held violent agitation in the University Office based on untrue media reports of ragging. No one can have any doubt that an educational agency has inherent authority to take disciplinary action against students engaged in ragging which is gross indiscipline. In fact many grave acts of ragging amount to criminal offences punishable under various provisions of the IPC. Therefore, even before passing of the Act, ragging could be dealt with by the law enforcing agencies and the educational institutions. However, when the Legislature has enacted a special law providing for punishment and for disciplinary action against students for ragging, the authorities are bound by the statutory provisions and it is the duty of this Court to examine whether the action taken is authorised under the statute or otherwise arbitrary warranting interference. The Act is very brief and I am afraid whether in the course of achieving brevity, the Legislature has missed many matters which should have found a place in the Act. So far as suspension is concerned, Section 6 of the Act authorises it only if there is written complaint by the student, parent or guardian or teacher of the educational institution. Admittedly neither the victim nor any of the persons referred to in Section 6 has lodged a complaint against the petitioners before the University demanding their suspension. University admittedly suspended the petitioners purely based on the criminal complaint. The Act before providing for suspension of students u/s 6, provides for prosecution and penalty for ragging u/s 4. Mandatory provision for dismissal of a student convicted of ragging is provided u/s 5. However, Legislature has consciously avoided provision for automatic suspension or presumption of a prima facie case for suspension merely on filing of a criminal complaint on police report or on private complaint. Obviously the Legislature did not want to deprive a of educational facilities merely on filing of a criminal complaint. Legislature will be well aware of the not so infrequent filing of untenable criminal complaints against less influential people even by police. Therefore, Section 6 authorises suspension only on written complaint by any person named therein, and only if the educational agency is prima facie satisfied that the allegation of ragging is true. This provision certainly gives a handle to the educational institution to examine prima facie case based on a criminal complaint, though complaint does not by itself give rise to a presumption of prima facie case. In the first place in this case I find in the absence of a written complaint by any of the persons referred to in S .6, suspension of the petitioners

on 26.11.2005 and the continued retention of it, is unauthorised under the Act. Even though statute does not authorise the educational institution to initiate suo motu action for suspension, I am of the view that an educational institution has inherent authority to take note of ragging from any source of information and can initiate disciplinary proceedings against the students involved as part of discipline in the institution, without any statutory power authorising it. However, the next question to be considered here is whether the suspension of the petitioners six months back and the present order for it's continuation indefinitely is justified or not. Suspension authorised u/s 6 of the Act is only when there is a prima facie case. I do not think even in exercise of the inherent power of the educational institution assumed by this Court, students can be suspended on allegation of ragging without establishing a prima facie case about the allegation. The next question therefore to be considered is whether there is prima facie case established against the petitioners for ragging. Even though this Court cannot collaterally decide any matter pertaining to the criminal case pending against the petitioners, this Court has to necessarily refer to the facts of the criminal case which is the sole basis of suspension of the petitioners. The intrinsic weaknesses and contradictions in the facts are, firstly, that in Ext.P4 complaint made by the victim before the District Superintendent of Police the date of ragging was 23.10.2005, which was the date incorporated in the FIR. However, the police in the final report changed date of ragging by the petitioners to 23.9.2005 Though petitioners produced Medical College hospital register towards proof of night duty they attended in the hospital from 6 P.M. to 7.30 A.M. on 23.9.2005, as against the alleged occurrence at 8.30 PM. on the said date, the University in the impugned proceedings did not discard it or disbelieved it. Thirdly the alleged ragging took place in a ladies hostel run by nuns where generally discipline is the rule and indiscipline is exception. The matron who is a senior nun and was head of the educational institution has made statement before the police that there was no allegation of ragging or any harassment by the victim to the hostel authorities at any time during her stay in the hostel. Above all, the victim or any of her relation has not sought for disciplinary action against the petitioners and her complaint to police is provoked by the press conference conducted by the petitioners and others. Finally the complaint was filed before the District Superintendent of Police nearly two months after the alleged occurrence. In these circumstances, the question to be considered is whether continued suspension of the petitioners, who are already kept out of college for over six months, is justified or not. Section 5 of the Act provides for very deterrent punishment in the form of dismissal of students on their conviction for ragging u/s 4. Suspension u/s 6 is left to the discretion of the educational authority, that too on establishing a prima facie case against the students involved. In the impugned proceedings the University has not established a prima facie case against the petitioners for their continued suspension. Even though nothing stopped them from conducting an enquiry in the hostel, where the alleged ragging took place, they probably would not have ventured to do it because of the unequivocal statement of the matron to the

police that no ragging or harassment was reported to the hostel authorities.

3. In the circumstance, I feel the continued suspension of the petitioners is unjust, arbitrary and unauthorised by the Act. If the petitioners are ultimately absolved of the criminal charge, no one could compensate them for the irreversible damage caused to their career by keeping them out of college. It is also to be noted that petitioners have already suffered punishment to a large extent by being kept out of college for over six months. I deprecate the attitude of the University in bowing before pressure exerted by student Unions with threat of agitation and in passing orders to appease them.

In the circumstances, W.Ps. are allowed vacating the impugned suspension orders, Ext.P16 in WPC 16911 of 2006 and Ext.P8 in WPC 13785 of 2006 with direction to the respondents to permit petitioners to join the college immediately. If any examination results of petitioners are withheld on account of suspension, the same should be published forthwith. However, I make it clear that the observations and findings with reference to Section 6 of the Act on suspension should not be relied on or referred to for the purpose of pending criminal case.

Issue photocopy of this judgment to counsel on both sides today itself.