

(1990) 10 AHC CK 0041

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18461 of 1990

Anil Kumar Sheel

APPELLANT

Vs

The Principal, Madan Mohan Malviya Engg. College, and
others

RESPONDENT

Date of Decision : 22-10-1990

Acts Referred:

Constitution of India, 1950 — Article 134
Penal Code, 1860 (IPC) — Section 377, 504
Uttar Pradesh State Universities Act, 1971 — Section 13(1), 16(1), 37(4), 41, 68
Uttar Pradesh State Universities Rules, 1971 — Rule 8(2), 9(3)

Citation : AIR 1991 All 120 : (1990) 1 AWC 92 : (1991) 62 FLR 298 : (1990) 3 UPLBEC 1504

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : Sri M.C. Singh, for the Appellant;

Final Decision : Allowed

Judgement

1. Whether the Administrative or Qasi-Judicial authorities are obliged to observe principles of natural justice and whether an alternative remedy available under a statute is an absolute bar for exercising writ jurisdiction under Art. 226 of the Constitution are short but significant questions that fall for consideration in the present petition filed by a student of third year Civil Engineering for the session 1988-89, in Madan Mohan Malviya Engineering College Gorakhpur (for short the College) which was governed by the provisions of the U.P. State Universities Act 1971 (for short the Act) and its statutes.

2. The factual matrix of the case is that a FIR (Annexure-2) was lodged by one Sushil Kumar Verma, a student of Engineering college against the petitioner and 2 other students for an offence u/S. 377/504, I.P.C. (the unnatural offence and criminal tress pass). That case appears to be under investigation but the Dean of the Students of the College taking it to be a misconduct and indiscipline awarded the punishment of expulsion of the petitioner from the college as well as the

hostel with immediate effect by the order dated 18-9-1989 (Annexure 1) whereas other two students. Anuj Kumar and Harish Chandra Sharma were suspended from classes till 31-10-89 and one A. K. Tripathi was expelled from Hostel only.

3. Sri S. N. Upadhyaya, learned counsel for the respondents has taken a preliminary objection that as the petitioner has an alternative remedy of preferring a Reference against the impugned order passed by the Dean of Students with approval of the Principal of the College, u/S. 68 of the Act hence present petition was not maintainable. Suffice it to say that an alternative remedy is not a rule of law but just a rule of convenience and discretion. Even if there is an alternative remedy available nevertheless the jurisdiction of this Court is not ousted particularly when the impugned order has been passed in violation of the principles of natural justice and contains no reason for the punishment awarded. The representation u/S. 68 of the Act cannot be said to provide really an effective alternative remedy particularly when no opportunity of hearing was provided to the petitioner and the said order contains no reason at all. See Ram and Shyam Company Vs. State of Haryana and Others, .

4. Mr. M. C. Singh, the learned counsel for the petitioner raising short but significant questions of violation of principles of natural justice urged that the alleged ugly incident of unnatural offence allegedly committed by the petitioner and two others on 15-9-89 in the night at about 1-30 a.m. itself appears to be unnatural and unreliable. He was not named and the victim did not offer any resistance and did not recognise the petitioner. No FIR was lodged about it on that day even though the victim told it to one alleged "Sir". He again narrated it on 17-9-89 to one Prem Shankar Srivastava, but the informant Sunil Kumar Varma or the victim did not recognise the petitioner but only on statement of co-accused Anuj Kumar, the name of petitioner was mentioned. The report was lodged on 18th. September, 1989. There was no evidence against the petitioner. Even victim did not name him or recognise him. It is just on suspicion that the petitioner was involved in the matter on account of some earlier enmity. Neither charges were framed or communicated to the petitioner nor he was given any opportunity of hearing much less a reasonable opportunity of hearing. Further even though it was the order of Disciplinary-cum-administrative authority nevertheless as it affected the petitioner's legal rather fundamental rights pertaining to his life and future career as a student of Engineering 3rd year of the College he must have been afforded an opportunity of hearing and the impugned order must have contained reasons. As the FIR was lodged not on the date of alleged incident on 15-9-1989 but on 18-9-1989 and the impugned order of expulsion from the college & hostel was also passed the same day without informing the petitioner or affording any opportunity and arbitrarily containing no reasons.

5. Mr. S. N. Upadhyaya, however urged that no opportunity of hearing was contemplated in respect of proceedings for misconduct and indiscipline against a

student. It was next urged that there was in the alternative, no violation of principle of natural justice.

6. The statutory provisions in respect of the discipline in general and also of the students of the University are contained u/S. 13(1)(d) of the Act are follows:

"13(i). The powers and duties of the Vice-Chancellor.

(ii) The Vice-Chancellor shall be the principle executive and academic officer of the University and shall:

(d) be responsible for maintenance of discipline in the University:

U/S. 37(4) of the Act it is provided that the principal shall be responsible for the discipline of its students and for the superintendence and control over its staff.

7. The oft quoted maxim Audi Alteram Partem, connotes that no one shall be condemned unheard, the Corollary of which is that the person to whose prejudice the order is sought to be passed must be given a reasonable notice of the nature of case to be met. See Errigton v. Minister of Health, (1935) 1 KB 249.

8. The next question germane to the controversy is some consideration as to how for laws should uphold the morality. According to Prof. Hart in his Law, Liberty and Morality at page 51, some share morality is essential to the existence of any society. Some shared morality is an ingredient of any and every community. It may also connote certain additional moral ideas which according to Mitchell's Law, Morality and Religion in a Secular Society, "have become part of the fabric of a particular society."

9. In Sitaram v. District Inspector of Schools 1985 UPLBEC 783 a Division Bench of this Court considering the question of applicability of the principles of natural justice, in respect of those statutory provisions where there was no provision for affording opportunity of hearing, held as follows (at page 786):

"But even when the statute is silent, the law may in a given case make an implication and reply the principle stated by Byles, J. in Cooper v. Wardsworth Board of Works (1863) 14 CBNS 180 "A long course of decisions, beginning with D. Bentley's case (1723) 1 SC 557 and ending with some very recent cases, establish that although there are not positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply omission of the legislature."

10. In Yogendra Tiwari Vs. District Judge, Gorakhpur and Others, it was observed as follows (at page 1151):

"Even in the absence of these provisions viz. proviso to S. 16(1) and Rules 8(2) and 9(3) of the Rules framed u/S. 41 of the Act the principle of audi alteram partem would clearly be applicable. The District Magistrate in making an order of allotment under cl. (a) or an order of release under cl. (b) of S. 16(1) clearly exercises a quasi-judicial function and therefore he has the duty to hear. There

must be an impartial objective assessment of all the pros and cons of the case after the hearing of the parties concerned."

10-A. In *Institute of Chartered Accountants of India v. L. K. Ratna* (1986) 4 SCC 537 it was observed as follows:

"Predecisional hearing must be afforded by the authority responsible to take first determinative decision which has grave adverse effects on the person against whom it is taken. Appeal cannot cure it, as unfair trial and right of appeal not proper."

11. In respect of administrative authorities where called upon to decide the rights of the parties it was observed in *Harbhajan Singh Dhalla Vs. Union of India* (UOI), at page 688 that the administrative authority enjoined to decide rights of parties must afford hearing to the affected person and pass a reasoned order.

12. In the instant case even though the occurrence has taken place on 15th Sept. 1989 in the night at about 1 -30 a.m. but no FIR was lodged till 18th Sept. 1989. The impugned order has also been passed the same day. It is just a order not indicating as to whether the petitioner was afforded any opportunity of hearing nor indicating the charges levelled against him. There was no opportunity to lead evidence in rebuttal of the charges or to prove that the petitioner was innocent. Perusal of the FIR would also indicate that even the victim himself did not state about the incident. He named the petitioner on the pointing out of another student. Apart from the fact that the petitioner was not indicated the charges by the Disciplinary Authority Cum-Administrative Authority exercising quasi-judicial powers, but as the impugned order affects the rights of the petitioner particularly his future career, reasonable opportunity of hearing was a must.

13. The next point is that in the impugned order reasons must have been recorded so as to indicate as to what were the factors due to which administrative or quasi judicial authority passed the impugned order.

14. In *S.N. Mukherjee Vs. Union of India*, constitution Bench of Supreme Court held in para 39 as follows:

"The object underlying the rules of natural justice "is prevent miscarriage of justice" and secure "fairplay in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that requirement to record reasons can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities."

There are no reasons in the impugned order nor does it indicate that any opportunity of hearing was given to the petitioner.

15. Matter can be viewed from another angle. Even though matter pertaining to an unnatural offence is primarily one of morality, in this respect it is pertinent to indicate a statement, Wolfenden Committee advocated lifting the ban of the criminal law from homosexuality between consenting adults. But the report was criticised by a distinguished Judge Lord Devlin in a lecture to the British Academy. He however, maintained that the law should continue to support a minimum morality. The report and the lecture aroused widespread controversy. (See Jurisprudence by R.W.N. Dias 4th Edition page 145). As the State is very much concerned with the behaviour of the citizens it must also continue to concern with moral ideas. However, in my opinion, the problem would always be as to how far laws should uphold morality and it depends upon the facts and circumstances of the case. A Judge is to keep his finger on the pulse of society.

16. Moral ideas are part of the fabric of a given society and that society is entitled to preserve them. Lord Devlin however, compared contravention of this morality to treason. The law cannot undertake not to interfere. See *Reynolds v. U. S.* 98 US 145 (1878) and *Musser v. Utah* 333 US 95 (1948).

17. There is another maxim *QUI Aliquid Statuerit Parte Inaudita Altera Aecquum Licet Dixerit Haud Aecquum Facerit*, i.e., he who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right, or in other words, as it is now expressed "justice should not only be done but should manifestly be seen to be done".

18. In the present case the principles of law as applied earlier clearly indicate that the petitioner was neither afforded any opportunity of hearing nor charges were explained to him nor he was directed to lead evidence and the same day when the FIR was lodged, the impugned order was passed, and that too without recording any reason. As the order was after three days from the date of incident the FIR was lodged and the same day the impugned order was passed. It is, therefore, manifest that neither opportunity was afforded nor the impugned order indicates that justice has been done nor any efforts were made by the authorities to manifest that justice has been done. In these days of expanding horizon of the principles of natural justice the recording of reasons in the order of Diciplinary-cum-Administrative Authority is a must so as to exclude and prevent the miscarriage of justice and secure a fair play in action and exclude arbitrariness the principles of natural justice were, therefore, violated and no reasons have been recorded in the impugned order.

19. Applying priori and posteriori reasonings, the impugned orders cannot be sustained. The writ petition succeeds and is allowed. The impugned order dated 18-9-1989 passed by the respondent No. 2 (contained in Annexure-1 to the petition) is quashed. The respondents are directed to admit the petitioner forthwith in III year Course of B.E. (Civil) and to permit the petitioner to appear in the said examination and also to permit him to complete his degree of B. E. (Civil). Petitiioiner shall also be given accommodation in the hostel. There shall, however, be no order as to costs.

20. Before the judgment could be signed, an oral prayer was made on behalf of the respondents that certificate for appeal to the Supreme Court may be granted under the provisions of Art. 134-A of the Constitution of India, but as the case does not involve a substantial question of law, as to the interpretation of the Constitution, consequently said prayer is refused.

21. Petition allowed.