
(1996) 06 MAD CK 0032

In the Madras High Court

Case No : Writ Petition No. 13340 of 1995 and W.M.P. No's. 21398 to 21400 of 1995

B. Muthuvairam

APPELLANT

Vs

The Principal, Pachiappa's College, Madras and Another

RESPONDENT

Date of Decision : 26-06-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Penal Code, 1860 (IPC) — Section 332

Citation : AIR 1997 Mad 121 : (1996) 2 LW 563

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : Prakash Goklaney, for the Appellant; Vijay Narayan, for the Respondent

Judgement

1. The petitioner was a third year B. A. Philosophy student in the Pachiappa's College, Madras, He also claims to be the General Secretary of

the College Students' Union at the relevant time. On 15-9-1995 he was taking his examination in English in Hall No. 39. The examination time was

between 9.30 a.m. and 12.30 p.m. After having entered the examination hall, the petitioner says, that at about 11.30 a.m., he heard some

commotions in the place below the examination hall. Says the petitioner, that he apprehended the problem as relating to a student and as General

Secretary he sought permission to go out and enquire into the matter. It turned to be a problem between the Watchman and a parent of one

student and he therefore, returned to the examination hall. According to the petitioner one Professor Ramabushanam questioned his entry into the

hall, but the petitioner was assaulted by the Professor. In a short while, the first respondent, Principal arrived at the scene and the petitioner was

taken to the Principal's Room. According to the petitioner some other students also questioned the conduct of the Professor-and the Principal

straightaway expelled the petitioner and suspended two other students pending further enquiry against them. The order of expulsion is said to have

been put up in the Notice Board of the College. The writ petition is to quash the said order of expulsion dated 15-9-1995.

2. In the counter-affidavit filed by the Principal of the College, it is stated that the petitioner was writing his answer paper in September, of the year.

On 15-9-1995 in the morning sessions, English-I paper was taken by the students and in the evening sessions English-II paper was to be taken.

The petitioner who attended the morning session at 9.30a.m. left the examination hall at 10.50a.m. without the permission of the Invigilators. The

Rules relating to the examinations specifically state that no candidate should be allowed to leave the examination hall and even if they do so, they

should be accompanied by an Assistant Superintendent or a member of the teaching staff of the College. When the petitioner left the examination

hall, the answer paper was collected by the Hall Superintendent. The petitioner spent 15 minutes outside the hall and sought to return to the

examination hall. The Hall's Superintendent refused to return the answer paper and thereupon the petitioner is said to have argued with the Hall

Superintendent and that as Secretary of the College Students' Union, he had some special privileges. The petitioner is said to have abused the Hall

Superintendent with foul and filthy language. Two of his classmates, one D. Arunprakash and B. Vinayagam joined the petitioner in intimidating the

Hall Superintendent. There was a commotion in the examination hall. The Chief Superintendent and Professor being Professor Ramabushanam,

proceeded to the hall. The petitioner did not mind the Chief Superintendent and continued his argument with the Hall Superintendent in an

intimidatory manner. The petitioner and his two colleagues called upon the other students to come out of the examination hall. It is at this stage that

the Principal entered the hall and directed the petitioner and his two colleagues to come to the Principal's Room.

3. Four Hall Superintendents who were in the said Hall No. 39 have given reports requesting the Chief Superintendent to take action. The Chief

Superintendent was asked to make an enquiry on the spot and submit a report. Since the petitioner was instigating other students to boycott the

examination, the first respondent convened a meeting of the Heads of all Departments as well as the Discipline and Students' Welfare Committee.

The meeting took place at about 12 noon and the petitioner was present. The first respondent made enquiries from all the Hall Superintendents and

the Chief Superintendent. The petitioner was asked about his conduct on the basis of the allegations made against him. The only answer of the

petitioner was that as the Secretary of the College Students' Union he had a special privilege of leaving the hall and returning to the examination

hall as and when it pleased him. At about 1.30 p.m. a decision was taken to expel the petitioner and the order was issued. Since the two other

students did not leave the examination hall, they were only suspended from the College. It is pointed out that suspension of a student will still entitle

him to write the examination whereas expulsion would deprive him from writing the examination.

4. A police complaint was lodged and the same was taken on file as Crime No. 1531/95 under S. 332, I.P.C.

5. The counter-affidavit filed by the second respondent refers to the report of the staff and the meeting held at the Principal's Room and the

ultimate decision to expel the student. They also referred to Regulation IV of the Chapter-XXXIX of University Calendar Volume II -- Part-I,

1970, and it runs as follows :--

If any student is expelled from an affiliated college, intimation of the fact of expulsion, with a statement of the reasons therefor, shall be given

forthwith by the Principal, (a) to the parent or guardian of the student and (b) to the Syndicate; intimation to the Syndicate shall be accompanied by

the transfer certificate of the student. The Syndicate on the application of the student or his parent or guardian may, after making such enquiry as it

deems proper, deliver the certificate to the student with necessary endorsement or withhold it temporarily or permanently.

The Principal had intimated about the expulsion of the student, and the same was forwarded to the petitioner. The petitioner was informed that he

could collect the Transfer Certificate from the Registrar of the University of Madras.

6. The main contention which has been urged before me is that the principles of natural justice have not been followed in making the order of

expulsion. Secondary contention is that the first respondent was having ill-feelings against the petitioner and was waiting for an opportunity to

victimise the petitioner. A few instances have been cited in the affidavit filed in support of the writ petition. In elaborating the first contention it is

argued that no specific charge was framed and no opportunity was given to the petitioner to submit his explanation and the first respondent did not

have sufficient materials to come to the conclusion that the petitioner had misbehaved in the examination hall. On the other hand, it is argued on

behalf of the first respondent that the principles of natural justice are not the same in respect of the misconduct on the part of a student as

compared with misconducts on the part of an employee. It is urged that different standards have to be adopted and the principles of natural justice

cannot be encompassed in a strait-jacket formula. Once we come to the conclusion that the misconduct on the part of the petitioner is proved and

the order of expulsion is justified, it is not necessary to go into the earlier instances which are of a routine type in the matter of a College Students"

Union Secretary and the Staff Members.

7. On behalf of the petitioner three judgments are cited. The first is The Board of High School and Inter-mediate Education, U.P. and Others Vs.

Kumari Chitra Srivastava and Others, . In that case the petitioner was permitted to appear for the examination and later the examination taken by

her was cancelled on the ground that she lacked attendance. It is in the above fact that the Apex Court observed that the non-issue of a show

cause notice had vitiated the proceedings. The ratio is as follows (para 8):--

Whether a duty arises in a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's notification

that the person to be penalised has no defence but on the nature of the order proposed to be passed.

Board of Technical Education, U.P. and others Vs. Dhanwantri Kumar and others, , is more or less or similar facts except that the Apex Court

found that the notices served on the students were vague and imprecise.

8. Sundar, G. S. v. The Controller of Examinations, Madurai Kamaraj University 1992 W LR 52, is a judgment of this Court where the principles

of natural justice have been gone into in a little more detailed manner. In that case, the results of VIII Semester examination were withheld by the

authorities. When the petitioner approached the authorities as to why the results were withheld, the petitioner was asked to appear for an enquiry.

At the enquiry the petitioner was forced to give a statement that he had committed a malpractice during the examination. It is to be noticed that

during the examination no complaint was made and it is only at the time of publishing the results the authorities pointed out certain malpractices said

to have been practised during the examination. These facts have to be borne in mind while considering the ratio of a judgment. The ratio is found in

the following passage :--

In my view, in this case, it cannot be said that the enquiry has been done fairly and the petitioner had an opportunity for making his defence. It is

true that the scope of the power under Art. 226 of the Constitution of India is in such matters limited and it is not sitting on appeal over the decision

of the authorities. But it is open to this Court to consider the probabilities and circumstantial evidence and arrive at a finding that it is a reverse

decision. As I have already stated, the alleged confessional statements on which reliance was placed by the University, in my view, cannot be

accepted. This Court is aware of the proposition that in the matter of student of indiscipline, meticulous procedure ought not to be insisted upon.

However, this is a case of cancellation of results of the petitioner for three years at one stroke, which in my view, cannot be done. So on the facts

and circumstances of the case, I am satisfied that the respondents have not followed the principles of natural justice and the petitioner has not been

given opportunity to defend himself by giving him the charges. Excepting catling him to meet and obtaining statements from him.

9. As against the above line of decisions Mr. Vijay Narayan for the first respondent has cited a series of authorities pointing out that each case of

indiscipline has to be dealt with on the facts of the case and uniform principles of natural justice cannot be adopted, in the case of a student's

indiscipline. I do not propose to go into the facts of each case except to cite the following decisions. The first is C.D. Sekkilar Vs. R.

Krishnamoorthy, and paragraph No. 16 may be usefully referred to. In Bright Son Jose Vs. Madurai Kamaraj University and Another, , a Division

Bench of this Court has said that where a student is caught red handed by the Invigilantor while copying, the enquiry against the student does not

call for rigid and mechanical insistence of a full-fledged enquiry and the observance of the principles of natural justice may not be conducive for

the effective functioning and preservation of the structure of an educational institution. In Maharashtra State Board of Secondary and Higher

Secondary Education Vs. K.S. Gandhi and Others, , the apex Court has pointed out the principles of natural justice which should be adopted in

the case of a student indiscipline. In Leo Francis Xavier Vs. The Principal, Karunya Institute of Technology, Coimbatore and another, . This

Court has referred to a large number of cases and it was quoted with approval a passage in Russell v. Duke of Norfolk (1949) 1 AER 109:

The requirements, of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is

acting, the subject-matter that is being dealt with, and so forth.

There is one other interesting passage in the judgment of Mohan, J. as he then was, in C. Rajendran v. Director of Higher Secondary Education

(1989) 2 MLW 206. Learned Judge pointed out that it cannot be insisted that there must be a memorandum of charge, an enquiry and a finding

arrived at like a Court of law or a judicial proceeding.

10. Guru Nanak Dev University and another Vs. Harjinder Singh and another, is close to the facts of the present case. In that case while students

were writing their examination, the flying squad inspected the hall and found that many students were having incriminating materials. On seeing the

flying squad the (sic) committee chose in the examination hall. The apex Court set aside the judgment of the High Court quashing the proceedings

against the student and restoring the disciplinary action taken by the authorities.

11. It is thus clear that the facts of each case have to be borne in mind before we apply the principles of natural justice. I am clearly of the opinion

in the case of students, being caught red-handed in the act of indiscipline the one and only principles of natural justice which has to be kept in mind

is whether the authorities have acted fairly and reasonably and whether the students concerned had been prejudiced in any manner in explaining

his side of the case. In this case, I have perused the records and the reports of the Chief Superintendent and the Hall Superintendents and the

minutes of the urgent meeting held at the Principal's Room. The averments in the counter affidavit are borne out by the records. The Principal was

faced with the situation that the entire examination was likely to be boycotted by the students if the petitioner had been allowed to remain in the examination hall. One can easily imagine the plight of hard working and regular students being deprived of the right to complete the examination and become successful. In the light of the above situation and in the face of unanimous opinion of the Invigilators and Staff members there is no reason why the conclusion should not be accepted. The only defence of the petitioner was that as College Student's Union Secretary he had a special privilege of going out of the examination hall and coming back at any time he chose. Such a right can never be coted in favour of a College Students' Union Secretary or office-bearer. Discipline is the hall mark of any educational institution. In fact, it is the most needed quality in any citizen of this Country. I have no doubt in upholding the decision of the respondent and holding that the petitioner was not prejudiced by the procedure adopted by the respondents. In this view of the matter, the writ petition fails and is dismissed. There will however, be no order as to costs. Consequently, W.M.Ps. are also dismissed.

12. Petition dismissed.