
(1966) 07 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 2233 of 1966

Babu Ahamad Kabir

APPELLANT

Vs

The Principal, Medical College, Kozhikode and Another

RESPONDENT

Date of Decision : 14-07-1966

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1967 Ker 121

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : V.R. Krishna Iyer and P.C. Balakrishna Menon, for the Appellant;
Govt. Pleader, for the Respondent

Judgement

K.K. Mathew, J.—The petitioner is a student studying in the Medical College, Kozhikode, The petition has been filed for quashing Ext. P-6 passed by the 1st respondent, the Principal of the College, expelling the petitioner from the College in pursuance of the disciplinary proceedings taken against him for his misconduct towards a lady student in that college. On 5-9-1966 the Principal of the College received a complaint petition dated 4-9-1965 from Miss Meena Philomena Reubens, a 1st Year M.B.B.S. student of the College alleging that at about 7.00 p.m. on 4-9-1965 she was molested by a male student of the College while she, along with six other lady students, was going to the Women's Hostel from the Lady Students' quarters in order to go along with the senior inmates of the Hostel to the Railway Station for proceeding home for Onam Holidays in the complaint she has given an account of the incident, but there was no mention of the petitioner having been in any way involved in the incident. Thereafter, on 1-10-1965 a letter was sent by Miss Meena Philomena Reubens to the 1st respondent stating that she was able to identify the person who assaulted her on 4-9-1965, and that his name is Bahu Ahamed Kabir (the petitioner) of the IInd Year M.B.B.S. Class. The circumstances under which she could identify the petitioner were also stated in that letter. The 1st respondent placed the matter before the College Committee of Management on 6-10-1965. The Committee of

Management appointed a committee to enquire into the complaint against the petitioner. The College Committee also decided to suspend the petitioner from the College pending further enquiry into the matter. The three-man committee constituted to conduct the enquiry into the matter and report to the College Committee of Management consisted of the Professor of Pharmacology, the Professor of Bio-Chemistry, and the Professor of Surgery. In pursuance to the directions of the College Committee of Management, the 1st respondent suspended the petitioner from the College by his memorandum dated 7-10-1965. In that memorandum a summary of the complaint received from the complainant Miss Mcena Philomena Reubens, was also incorporated in order to make the petitioner aware of the allegations against him. In the said memorandum it was also stated that the petitioner should appear before the Enquiry Committee on 16-10-1965 at 1.00 p.m. in the Pharmacology Department. In the complaint petition dated 4-9-1965, Miss Meena Philomena Reubens had mentioned the names of six lady students who were with her at the time when she was accosted by the petitioner and molested. In the letter dated 1-10-1965 she had given the name of another male student, who was with the petitioner at the time of the incident. Memos were issued to these girl students and also to the male student informing them that a committee of enquiry has been constituted to enquire into the alleged assault on the complainant and that the enquiry will be held at 1.00 p.m. on 16-10-1965 in the Pharmacology Department and directing them to appear before the committee to give evidence. The committee held an enquiry on 16-10-1966. Miss Meena Philomena Reubens, the petitioner, Mr. K. R. Gopi, who was alleged to have accompanied the petitioner at the time of the Incident, and the six lady students who were in the company of the complainant were examined and their statements were recorded by the committee. The petitioner was Identified by the complainant as the person who molested her on 4-9-1966. During the enquiry the petitioner never requested for cross-examination of any of the persons who gave statements nor did he ask for an opportunity to examine any witness in support of his defence. The petitioner gave a statement denying his complicity in the incident. On the conclusion of the enquiry the committee recorded their findings and submitted the findings to the College Committee of Management. The enquiry committee was of opinion that the complainant was subjected to assault as detailed in her complaint and the person who assaulted her was the petitioner. The College Committee of Management at its meeting held on 25-10-1965 considered the matter, and they agreed with the findings of the enquiry committee and came to the provisional conclusion that the petitioner should be expelled from the College. A memorandum dated 26-10-1965 was communicated to the petitioner stating that the college committee of Management has accepted the findings of the enquiring committee and that the petitioner would be expelled from the College unless he showed cause for not taking the proposed action. The petitioner submitted his explanation on 2-11-1966. The College Committee considered the explanation by the petitioner in response to the show cause notice. Finding that the explanation is not satisfactory, they came to the conclusion that there were no grounds for

modifying their provisional conclusion to expel the petitioner from the College. The Committee therefore resolved to address Government for orders for imposing the punishment of expulsion on the petitioner. The Government was informed about the decision taken by the College Committee and Government was requested to pass appropriate orders. The file also was sent to Government. While the matter stood thus, O.P. No 1984 of 1966 was filed by the petitioner to quash the suspension order dated 7-10-1966 and the show cause notice dated 26-10-1966. When the writ petition came up for hearing it was represented on behalf of Government that orders in the matter will be passed by Government within a week from that date. Subsequently, the 1st respondent received a telegram from Government directing the 1st respondent to pass final orders in the matter to consultation with the Government Pleader, Calicut. Accordingly, the 1st respondent passed final orders on 14-6-1966 after consulting the Government Pleader, Calicut, as directed by the Government, expelling the petitioner from the college.

2. The petitioner questions the validity of the order on several grounds. Counsel for the petitioner submitted that the petitioner was not on the spot at the time of Incident, that he had gone for cinema and that the possibility of his having assaulted the complainant was too remote for serious consideration. He submitted that the substance of the complaint was not communicated to the petitioner, that the witnesses were not examined in his presence, that copies of the statements or the gist of the evidence given by the witnesses were not given to him in order to enable him to effectively cross-examine the witnesses, and that he was not given sufficient opportunity to adduce evidence to substantiate his contentions.

3. Neither the complainant nor the other students were examined in the presence of the petitioner. The statements were all given behind the back of the petitioner. The petitioner was called into the room in which the Committee sat and was identified by the complainant as the person who assaulted her. From the records of the case it is clear that the petitioner was not supplied with the copies of the statements given by the lady students who gave statements before the enquiry committee, or of the complainant or of K. R. Gopi. There is nothing on record to show that the enquiring committee acquainted the petitioner with the substance of the statements given by the complainant or the other students in order to enable the petitioner to cross-examine them. It is no doubt open to a domestic tribunal to gather informations from any source it thinks fit, but before using them as evidence it is necessary that the materials should be put to the delinquent. The learned Government Pleader appearing for the Principal very frankly submitted that there is nothing on record to show that the substance of the evidence given by the complainant and the other students was communicated to the petitioner. But he relied on the affidavit filed by one of the members of the enquiring committee in this Court to the effect that the substance of the evidence given by the complainant and the other students was put to the petitioner before he gave his statement. As the records of the enquiry

do not show that the petitioner was supplied with copies of the statements of the complainant and the other students, or that the substance of their statements was communicated to him, I do not think, I will be right if I say that the petitioner was given an effective opportunity to defend himself. Ext. P-1 memorandum, directing the petitioner to appear before the enquiry committee on the 16th, did not state the purpose for which he was asked to appear before the committee. It was not stated in that notice that the witnesses will be examined before the committee on that date or that the petitioner himself will be examined on that day. As there is no record to show that either the statements of the witnesses or a substance thereof were communicated to the petitioner, I am constrained to lay that the principles of natural Justice have not been observed in conducting the enquiry. One cannot make an effective defence in vacuum. If in these circumstances the petitioner did not say on that day that he wanted to cross-examine the persons who gave statements on that day, I cannot find fault with him. An institution like the College in question conducting a domestic enquiry must scrupulously follow the principles of natural justice, especially in a case like this where the punishment imposed would blast the career of a student and spoil his reputation and good name. See the decisions of the Supreme Court in *Kesoram Cotton Mills v. Gangadhar* AIR 1964 SC 70 and *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, and the decisions of the Allahabad and Punjab High Courts in *Surendra Kumar Mehrotra v. Secy., Board of Technical Education, U. P. Lucknow* AIR 1066 All 207 and *Karamjit Kaur v. Punjab University* AIR 1964 P&H 327 respectively. In *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, the Supreme Court said:

"Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunals must scrupulously follow rules of natural Justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary Courts of law. In the present case, no animus is suggested and no mala fides have been pleaded. The enquiry has been fair and the respondent had an opportunity of making his defence."

4. The learned Government Pleader, submitted on the basis of my ruling in *Nanda-kumaran v. Principal, Govt. Victoria College* 1964 KLJ 1201 that since the petitioner has no right to ask for cross-examination of the complainant or the other persons who gave statements, there was nothing wrong in not giving the petitioner copies of their statements or the substance thereof. The pros and cons of according a right of cross-examination to a student were considered in that case and on a balance of all considerations I was inclined to take the view that generally a student has no right of cross-examination. But the right to know on what materials the authorities are going to make a decision is a part of the right to defend oneself, whether or not cross-examination is permissible under all circumstances. The passage cited above from the judgment of the Supreme

Court is clear on the point that the accused must be given an opportunity for defending himself. How is a defence possible unless one is informed of the evidence against him or of the substance of it? it may be noted that the Privy Council in *University of Ceylon v. Fernando*, 1060 1 All ER 881, justified the denial of opportunity to cross-examine on the ground that Fernando did not ask for it and not on the ground that he had no right for it. In an expulsion case the material damage likely to be suffered by the student involved is great and consequently a large degree of procedural protection has often been demanded. In such cases it has been held that a student is entitled to know what testimony has been given against him unless his non-disclosure can be justified on higher considerations of public interest. Quite apart from the question whether the petitioner had a right to cross-examine the witnesses, I see no justification for not acquainting him with the evidence given by the complainant and the other students.

5. The petitioner had stated that he had gone for cinema on that day along with two other students of the College, Ganga-dharan and Govindan of the IInd Year M. B. B. S. Class, that at the time of occurrence he was in the theatre with them and that respectable persons had seen him in the theatre. I am not satisfied that sufficient opportunity was given to the petitioner to adduce evidence to substantiate his contention that he was elsewhere when the incident took place. Ext. P-1 notice asked him only to appear before the enquiry committee. The enquiry was conducted only on the 15th, and there was no opportunity for the petitioner to produce his evidence. I would hold that the petitioner had no effective opportunity to defend.

6. It may be remembered that in the complaint petition dated 5-9-1965, the complainant did not mention the name of the petitioner as the assailant. At that time she could not say that it was the petitioner who molested her. The other lady students who were walking with her at the time did not in their statements before the enquiring committee say that it was the petitioner who molested the complainant. They could not identify the assailant. I am not saying that the enquiring committee or the College Committee of Management cannot act on the evidence of the complainant and find the petitioner guilty. But before acting upon it fairness required that the substance of her evidence was communicated to the petitioner to enable him to make an effective defence.

7. It would appear from the records that the College Committee of Management and the 1st respondent were largely influenced by the opinion of the Government Pleader, Call-cut in finding the petitioner guilty. The responsibility for making the decision in the matter is entirely that of the College Committee of Management. Under these circumstances, I cannot take the view that the enquiry has been properly conducted. I would therefore, set aside the order. Ext. P-5 directing the expulsion of the petitioner from the college, and direct the 1st respondent to conduct a fresh enquiry in accordance with law, and pass the appropriate order.. Probably it would be better to constitute another enquiry committee for

conducting the enquiry, so that they may bring a fresh approach. The proceedings must be completed within six weeks from today. The petitioner will remain under suspension until the completion of the proceedings.

The writ petition is disposed of as above. There will be no order as to costs.