
(1979) 12 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No's. 17073, 17074 and 17740 of 1979

B.P. Puttaraju and Others

APPELLANT

Vs

The Bangalore University and Another

RESPONDENT

Date of Decision : 05-12-1979

Acts Referred:

Karnataka State Universities Act, 1976 — Section 12, 25, 62

Citation : AIR 1980 Kar 39

Hon'ble Judges : M.P. Chandrakantaraj URS, J

Bench : Single Bench

Advocate : H. Subramanya Jois, for the Appellant; S. Viiaya Shankar, for the Respondent

Judgement

1. These three writ petitions (Contd. on Col. 2)

(1) Shri B. P. Puttaraju, Student, Dept., of Dance, Drama & Music, Prasanna Kumar Block, Central College.

(2) Shri C. D. Shivanna, Student, Dept., of Philosophy, Janna five offices on 29th October, 1979 and for Bharathi Campus, Bangalore University.

(3) Shri K. Shivalankaraiah Student, Dept., of Pol. Sc. Janna Bharathi Campus, Bangalore University are directed against the common order passed by the 2nd respondent-Vice Chancellor, Bangalore University, and in common questions of law, and therefore, they have been consolidated and heard and disposed of by this common order.

2. The petitioners are all students of the Bangalore University. The petitioner in W. P. No. 17073/1979 is a student of the Central College affiliated to the 1st respondent-University. The petitioner in W. P. No. 17074/1979 is a student at Janna Bharathi in the Dept. of Philosophy pursuing Post Graduate Course in that subject. The petitioner in W. P. No. 17740/ 1979 is a Post Graduate student in Political Science at the same Janna Bharathi of the 1st respondent-University. The petitioners are aggrieved by the Order passed by the 2nd respondent-Vice-

Chancellor on 30th October, 1979, a copy of which is produced at Exhibit-A in W. P. No. 17073/1979. In the course of this order, though reference is made to all the three petitioners, the facts and legal contentions asserted in W. P. No. 17073/1979 alone will be adverted to for convenience. The impugned order is as follows:

BANGLORE UNIVERSITY

No. VCP. 134:79

Janna Bharathi Campus Bangalore-56 dated 30th October. 1979.

ORDER

By virtue of the powers conferred on me u/s 62 and Section 12 of the Karnataka State Universities Act, 1976, I hereby order that the following students be suspended, pending enquiry into their misconduct in not attending the classes regularly and causing disturbance to the meetings conducted by the Vice-Chancellor, working of the Administrative Offices and smooth working of the classes at Janna Bharathi and Central College.

For his misconduct in disturbing the meeting of the Board of Appointment for selection of Examiners held on 17th Oct., 1979 and for disturbing the classes in Central College on that day and on subsequent days.

For shouting in front of the Administrative offices on 29th October, 1979 and for entering the offices of Examination Branch, Finance Branch, Academic Sections, and VC's/Registrar's Offices and threatening the officials with dire consequences if they continue to work and for having threatened to set fire to the buildings.

The Heads of the Departments concerned are requested to see that their names of the above students are removed from the attendance registers and they should not be allowed to attend the classes until the enquiry is completed and orders of the Syndicate are obtained. Such of the students who are the inmate of the hostel should also be directed to vacate the hostel immediately.

Sd/- Vice-Chancellor."

It is contended by Sri H. Subramanya Jois and Dr. Billigiri Rangaiah, learned counsel appearing for the petitioners that the above order is without jurisdiction and even this court were to come to the conclusion that the 2nd respondent-Vice-Chancellor had jurisdiction to pass the order, it is in excess of such jurisdiction vested in him by or under the provisions of the Karnataka State Universities Act (Karnataka Act No. 28/1976) (hereinafter referred to as the Act). It is further contended that the impugned order is violative of the rules of natural justice inasmuch as no opportunity has been given to the petitioners before passing the order in question.

3. A careful analysis of the order impugned reveals that the Vice-Chancellor has purported to pass the same under Sections 62 and 12 of the Act. The order also

must be divided into two parts. The first part relates to charges against the petitioners in general terms, and later sets out the specific charges against each of the student. The second part of it contains a direction to the concerned heads of Departments calling upon them to delete the names of the petitioners from the attendance register and further calling upon them to prevent the students from attending the classes. It further states if the petitioners are residing in hostels, they should be directed to vacate the hostels.

4. The respondent-University has filed its statement of objections on behalf of both the respondents in W. P. No. 17073/1979 and Sri S. Vijaya Shankar, learned Counsel for the respondents in all the petitions has prayed that the same be adopted as the statement of objections in respect of the other two petitions also.

5. In these writ petitions, this court is not called upon to examine the correctness of the facts alleged by the petitioners in their statement of facts or the correctness of the allegations contained in the impugned order. Therefore these writ petitions can be disposed of on the two main contentions raised, which have already been recorded above.

6. Clause (X) of sub-section (b) of Section 4 of the Act, speaks of the powers of the University to supervise and control the residence and discipline of the students of the University. Similarly, Section 25 of the Act enumerates the powers of the Syndicate and under clause (b) of subsection (2) of that Section, the Syndicate is to supervise and control the residence and discipline of the students of the University and to make arrangements for promoting their health and well being.

7. Distinct from these general powers conferred on the University and the Syndicate, Section 12 of the Act speaks of the powers of the Vice-Chancellor, who is one of the officers of the University enumerated in Section 2 of the Act. Sub-sections (1) and (5) of Section 12 of the Act which are, the sources of power claimed for the respondents to pass the impugned order is set out below for convenience.

"12. The powers of the Vice-chancellor,

- (1) The Vice-Chancellor shall be the principal executive and academic officer of the University, and shall exercise general control over the affairs of the University. He shall exercise all powers necessary for due maintenance of discipline in the University.

xx xx xx xx xx (5) In case of any emergency which, in his opinion, requires immediate action the Vice-Chancellor shall take such action as he deems necessary and shall at the earliest opportunity thereafter report the action taken to such Authority or body as would in the ordinary course have dealt with the matter.

Provided that if the action taken by the Vice-Chancellor is not approved by the Authority, or body concerned it may through the State Government refer the

matter. To the Chancellor whose decision shall be final."

(The 2nd proviso is not necessary for our purpose)

Similarly, sub-section (1) of Section 62 of the Act speaks of discipline and holds the Vice-Chancellor solely responsible for maintenance of discipline among the students of the University, as the authority in such matters. It further enjoins that all Heads of Colleges, Hostels and other institutions shall carry out his directions in that behalf. Sub-section (2) of Section 62 of the Act begins with the non obstante clause and acts as a check on what would otherwise be arbitrary conferment of power on the Vice-Chancellor in sub-section (1) of Section 62 of the Act. To appreciate this, it is necessary to set out Section 62 of the Act.

"62. Discipline. -(I) The final authority responsible for maintenance of discipline among the students of the University shall be the Vice-Chancellor. His directions in that behalf shall be carried out by the Heads of college's hostels and other institutions.

(2) Notwithstanding anything contained in sub-section. (1), the punishment of debarring a student from examinations or rustication from a college or a hostel or an institution shall, on the report of the Vice-Chancellor, be considered and imposed by the Syndicate:

Provided that no such punishment shall be imposed without giving to the student concerned a reasonable opportunity to show cause against the action Proposed to be taken against him".

From the language of sub-section (2) of Section 62 of the Act, it is clear that whatever may be the powers of the Vice-Chancellor to maintain discipline and give directions to heads of Colleges and Hostels and other institutions, inflicting punishment by way of debarring the students from examinations or rustication from the college or hostel or an institution, can only be done by the syndicate on the consideration of the report by the Vice-chancellor and after giving an opportunity to the student concerned to show cause against the action proposed against him, that the proviso is mandatory has already been decided by this court in the case of Arun Kumar Agarwal v. Bangalore University (1977) Kar LJ 334, by Malimath, J.

8. The learned counsel for the petitioners strongly contended that having regard to the language of Section 62 of the Act, the second part of the impugned order is clearly violative of Rules of Natural Justice. It provides for rustication of the petitioners from their respective colleges without even specifying the period of rustication and without an opportunity being given to them as mandatorily provided for in the proviso to subsection (2) of Section 62 of the Act

9. This argument is founded on the meaning of the word "rustication". This word is not defined in the Act or in the statutes framed under the Act by the University. In the result this court has to lean back on the ordinary dictionary meaning of that term. Both the Oxford Dictionary and Webster's Third

International Dictionary have given the meaning of the word "rusticate" to mean expulsion for a specified temporary period. It is well known that the word "rusticate" owes its origin to the word "rustic" or a man from the country. To rusticate means to send the man away to the country. However, the meaning in relation to educational institutions must necessarily be understood as expulsion for a given period of time and no more. If understood in that sense, in the Impugned order (latter part of it) the Vice-Chancellor has arrogated to himself what necessarily is the specific Power of the Syndicate. Therefore, there is some force in the contention of the learned counsel for the petitioners that the latter portion of the order impugned is liable to be struck down, as without jurisdiction and as definitely in excess of the jurisdiction vested in the Vice-Chancellor.

10. Sri S. Vijaya Shankar, learned counsel for the University fairly contended that this would be a reasonable construction, but however, has argued that power to suspend includes power to remove students from the rolls of the concerned College. I am unable to agree with the learned counsel. Suspension pending enquiry as is obvious from the first part of the order cannot be equated with actual expulsion without even specifying the period. One must look at the scheme of the educational pattern in the University to understand the difficulty in accepting the argument advanced by the counsel for respondents. The students are required to put in a minimum attendance of 60 per cent, below which, even the Syndicate of the University has no power to condone. If students removed from the rolls of the college are prevented from attending the college, it practically amounts to denying them the attendance, which in itself results in a punishment if the enquiry is not conducted and completed within a very short time. Therefore, the latter portion of the order must be construed as a punishment inflicted and not merely as a natural corollary to the order of suspension contained in the first part of the order. This becomes clearer on account of the directions given to the heads of institutions or colleges concerned.

11. This takes me to the next question argued by the learned counsel for the petitioners i.e., the scope of Section 12 of the Act. From the language of sub-s. (5) of S. 12 of the Act, it is clear that the Vice-chancellor has, indeed been vested with enormous powers to deal with certain situations which, in his opinion, require immediate action, sub-section (1) of Section 12 of the Act, speaks that he is the principal executive and academic officer of the University and shall exercise general control over the affairs of the University and also shall exercise all powers necessary for due maintenance of discipline in the University.

12. If one looks at the specific charges levelled against each of the petitioners, in the impugned order, it leaves no doubt in one's mind that there was a situation in which the 2nd respondent Vice-Chancellor could form, an opinion that the matters required immediate action preventive action to maintain discipline in the University and its students. If so construed, sub-section (5) of Section 12 of the Act necessarily gives power to the Vice-Chancellor to suspend the student concerned. In the instant case, the petitioners are prevented from attending

classes in order to ensure a fair and impartial enquiry and thereafter the Vice-Chancellor has to submit a report to the appropriate authority or body who or which is competent to deal with the matter of acting on such report submitted by him. It is clear from the reading of sub-section (5) of Section 12 of the Act with sub-section (2) of Section 62 of the Act that any action taken by the Vice-Chancellor under sub-section (5) of, Section 12 of the Act, as in the instant case, must necessarily be dealt with by the Syndicate under sub-section (2) of Section 62 of the Act in the manner provided therein. It is only, in case, the action taken by the Vice-Chancellor is not approved by the authority or body concerned, the Chancellor may decide that question if the State Government refers the same to him.

13. Sri Subramanya Jois has argued for the petitioners that unless power of suspension is specifically conferred , such power cannot be implied. It is difficult to accede to such a contention. This would be contrary to the accepted Maxim *Cuicunque Aliquis quidconcedit Concedere Videtur Et Id Sine Quo Res Ipsa Esse Nonpetitioner* (who ever grants a thing is deemed also to grant that without which the grant itself would be of no effect). In England and in this country this Maxim has been given maximum effect whenever found necessary. At page 313 of 10th Edition of *Brooms Maxims*, quoting from *Fenton v. Hampton* (1858) 11 Moo PC 347 at P. 360, it is stated:

"Whenever anything is authorized, and especially if, as matter of duty, required to be done by law, and it is found impossible to do that thing unless some else not authorised in express terms be done, then that something else will be supplied by necessary intendment. But it, when the maxim comes to be applied adversely to the liberties or interests of others, it be found that no such impossibility exists that the power may be legally exercised without the doing that something else, or, even going a step further, that it is only in some particular instances, as opposed to its general operation, that the law fails in its intention unless the enforcing power be supplied then in any such case the soundest rules of construction point to the exclusion of, the maxim, and regard the absence of the power which it would supply by implication as a *casus omissus*."

14. This principle has been approved and applied by our own Supreme Court in the case of *Matajog Dobey Vs. H.C. Bhari*,

15. A. combined reading of Sections 12 and 62 of the Act clearly demonstrates that a duty is cast on the Vice-Chancellor to maintain discipline in the constituent colleges and among the students of" Ahs University. If Legislature has not specifically empowered to take preventive action in defence of the property of the University and security of the staff, as in the instant case, the powers conferred in Sections 12 and 62 of the Act, become meaningless. Therefore, the power to take action as contemplated by the first part of the impugned order i.e., to hold an enquiry into the charges levelled against the petitioners, and in that period, keep the students under suspension is a power which must necessarily be

implied and conceded to the Vice-Chancellor. Any other view would result in the Vice-Chancellor being rendered hopelessly impotent to deal with the increasing confrontation between the students and the University authorities that one cannot but fail to notice as the recent trend in the country. Therefore, I am of the view that the first part of the impugned order is competent and does not suffer from my error of jurisdiction either by want of power or power exercised in excess.

16. However, I must not fail to observe that having regard to the need for required number of days as the minimum attendance to enable the students to take examination, the enquiry contemplated under Exhibit-A must be finished not later than 31st December, 1979, against all the three petitioners and this direction is mandatory and not subject to any extension of time even if applied. In the event, the students are ultimately exonerated, by direction of this court, the period of suspension of the students should be treated as attendance put in by them in their respective classes. How it is to be worked out, is the problem of the University and not of this court. With these observations and for the reasons given above, the petitioners succeed partially and in that the paragraph commencing from "the Heads of the Departments concerned" ending with "to vacate the hostels immediately", is struck down. Rest of the impugned order is kept intact. But, in the circumstances of these cases, there will be no order as to costs.

17. A copy of this order will be communicated to the respondents as well as to the petitioners, free of cost forthwith.

18. Order accordingly.