
(1995) 01 AHC CK 0047
In the Allahabad High Court
Case No : Writ Petition No. 627 of 1994

Brij Gopal Dwivedi

APPELLANT

Vs

Kendriya Vidyalaya Sangathan and Others

RESPONDENT

Date of Decision : 17-01-1995

Acts Referred:

Constitution of India, 1950 — Article 311(b)

Citation : (1995) 01 AHC CK 0047

Hon'ble Judges : I.P.Vasishtha, J

Final Decision : Dismissed

Judgement

I. P. Vasishth, J.—The petition revolves around the scope of Article 81 (b) of the Education Code of Kendriy Vidyalaya, (hereinafter referred to as the Education Code) since the petitioner's services were dispensed with by the Commissioner on the ground of moral turpitude involving exhibition of immoral sexual behaviour towards a girl student.

2. For the proper appreciation of the point in issue it would be in the fitness of things to have a glance into the factual position. At the relevant time in March, 1994, the petitioner was working as Hindi teacher in Kendriya Vidyalaya, Aliganj, Lucknow. His students included Km. Vineeta Bhat of the 1XC. On 30/3/1993 during school hours he asked Km. Vineeta Bhat to bring some corrected Hindi Project Notebooks from his room and as she went to collect the books, he followed her and in the solitude of the room tried to embrace and kiss her. Km. Vineeta successfully frustrated his efforts and ran away from there even though the petitioner tried to cover up the situation by proclaiming that he only wanted to brief her about some important questions which were likely to be asked in the Annual examination.

3. Feeling outraged Km. Vineeta reported the matter to her mother Mrs. Nirmala Bhat respondent No. 4, who on very next day came down to the school and protested to the Principal respondent No. 3 against the unbecoming behaviour of the teacher viz. the petitioner. The Principal and some other teachers tried to

pacify Mrs. Nirmala Bhat but she returned in an agitated mood and on 24/1/1994 submitted a written complaint incidentally the school was closed on 1st April, 1994 on account of Good Friday. Besides gathering facts at his own level the Principal sought the assistance of some lady teachers as well as the teacher incharge of Class IXC to contact Km. Vineeta and to find out the truth as during the meanwhile on 16/4/1994 her mother Mrs. Nirmala Bhat again filed a written complaint even though the school staff had been busy with Annual examinations.

4. On 18th April, 1994 the statement of Km. Vineeta was also taken down in writing and the matter was ultimately reported to the Assistant Commissioner, Kendriya Vidyalaya Sangathan, who entrusted inquiry to one Smt. Rai, an Education Officer. She joined the petitioner B.Q. Dwivedi also with the proceedings and on completing the requisite inquiry, submitted her report dated 30/4/1994 along with the related material like the statements of persons examined during the proceedings, to the Assistant Commissioner Kendriya Vidyalaya Sangathan, who then reported the entire material to the Commissioner, Kendriya Vidyalaya Sangathan. Taking an over all view of the matter the latter passed the impugned order (Annexure 1) dated 5/8/1994 terminating the petitioner's services in exercise of the powers under Article 81 (b) of the Education Code of Kendriya Vidyalaya.

5. The petitioner's grouse is that the provisions of Article 81 (b) of the Education Code is ultra vires being violative of Article 311(2) of the Constitution of India, that even if the Commissioner were assumed to have valid powers she never exercised such powers in a fair and equitable manner : that there was no inquiry under her authority ; that she did not apply her mind to all the facts and circumstances of the case and passed the order in a mechanical manner on accepting a very cryptic and cursory report of Mrs. Rai regardless of the fact that the Assistant Commissioner had no authority to entrust the inquiry to her and that the entire proceedings were tainted by the mala fide of the Principal who was inimical towards the petitioner otherwise the alleged episode itself was a tissue of lies based on conceptions, unworthy of credence.

6. When the petitioner came up for hearing at the admission stage, after exchange of counters, before Brother S.C. Varma, J. on 7/9/1994, he was pleased to dismiss it on sustaining the respondents' preliminary objection that the petitioner should have first exhausted the alternative remedy of an appeal to the Chairman of the Kendriya Vidyalaya Sangathan. But the said judgment was set aside in Special Appeal by a Division Bench of this Court, which was pleased to direct its adjudication on merits as the availability of the alternative remedy was a doubtful proposition.

7. It may not be out of context to mention here that at an earlier stage also on 4/5/1994 the petitioner had filed Writ Petition No. 2424 of 1994 (S/S), ventilating similar grouse but then withdrew it because it was found that till then the impugned order of termination had not yet been passed. In the said petition the Principal as well as Mrs. Nirmala Bhat had filed their separate, though similar,

counters.

8. The learned counsel for the petitioner was at pains to submit that actually there was no incident as projected by the respondents, that the entire episode was borne out of the malice of the Vidyalaya's Principal who was annoyed with the petitioner's trade union activities and that the impugned order suffers both on account of arbitrary and excessive authority vested in the Commissioner as well as for want of proper exercise thereof of unauthorised persons like the Principal and the Assistant Commissioner because the summary inquiry, if any, conducted by Mrs. Rai was never sanctioned by the Commissioner herself.

9. In so far as the objection relating to the vires of Article 81 (b) of the Education Code on the plea of excessive or arbitrary delegation is concerned, this Court is not inclined to give any serious thought to it because it basically draws inspiration from similar provisions contained in Proviso (b) to Article 311 (2) of the Constitution of India, which has been interpreted in a number of pronouncements even up to the Apex Court. For readyhand reference one may look into the case of Satyavir Singh v. Union of India, AIR 1986 SC 555, at an earlier stage that very case was taken up by Delhi High Court as reported in 1982 Labour Industrial Cases 663, and amongst others reliance was also placed on a Division Bench judgment of Punjab and Haryana High Court in the case of Boola Ram v. State of Punjab, 1980 Lab 1C 489, in which a part of the debates of the Constituent Assembly was quoted in extenso. The gist of these pronouncements was that in the peculiarity of certain situations it was very much required to make the system workable by conferring some extraordinary powers on the competent authority and to have faith in his wisdom and discretion to dispense with a detailed inquiry for attaining the objective of the purposes related to the Institution and that in a given situation even a singular reason could justify the dispensation of an elaborate and exhaustive inquiry.

10. It is besides the point that in some unreported judgments pertaining to the matters of Sri Jag Ptasad v. Commissioner, Civil Writ Petition No. 2518 of 1989, dated 11/11/1991, Makendra Prasad Keshari v. Kendriya Vidyalaya Sangathan, Writ Petition No. 894 of 1992) dated 17/9/1991 and Sri Munin Chaudhari v. Chairman, Kendriy Vidyalaya Sangathan, New, Delhi, Civil Rule No. 533 of 1985, dated 12/8/1989 Delhi, Patna and Guahati High Courts also sustained the orders passed by competent authority in exercise of such powers under Article 81 (b) of the Code.

11. That practically confronts the Court with the propriety and legality of the inquiry proceedings conducted by Mrs. Rai on her appointment by the Assistant Commissioner. For an effective and appropriate adjudication of the legal proposition involving the implications of Article 81 (b) of the Education Code, it would be in the fitness of things to have its reproduction which run as below :

"(b) Termination of Services of an employee found guilty of in/moral behaviour towards Siwdente. Wherever the Commissioner is satisfied after such ^a

summary enquiry as he deems proper and practicable in the circumstances of the case that any member of the Kendriya Vidyalaya is prima facie guilty of moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards any student, he can terminate the services of that employee by giving him one months" or 3 months" pay and allowances according as the guilty employee is temporary or permanent in the service of the Sangthan. In such case procedure prescribed for holding enquiry for imposing major penalty in accordance with CCS (CCA) Rules, 1965 as applicable to the employees of the Kendriya Vidyalaya sangthan, shall be dispensed with ; provided that the Commissioner is of the opinion that it is not expedient to hold regular enquiry on account of serious embarrassment to the student or his guardians or such other practical difficulties. The Commissioner shall record in writing the reasons under which it is not reasonably practicable to hold such enquiry and he shall keep the Chairman of the Sangthan informed of the circumstances leading to such termination of services." (Emphasis supplied)

12. A bare perusal of the aforesaid provisions and in particular the underlying portions would show that (a) primarily it is the subjective satisfaction of the Commissioner to form her opinion after such a summary inquiry as she deems proper and practicable in the circumstances of the case, and (b) that the guilt of the delinquent teacher need not be established conclusively to the hilt because prima facie proof thereof is sufficient. Now what type of such summary inquiry should be and what is deemed to be proper and practicable in the given circumstances would obviously depend upon situation to situation.

13. The Court cannot be oblivious of the fact that the ethos and discipline of a coeducational institution are entirely different as those prevalent in the ordinary public offices. Here the parents send their young wards including female children to the school under the faith and assumption that they would be looked after, nursed and cared for by the teachers not only to prepare them in the niceties of academics but also modulate them into responsible and decent citizens. Such type of education requires a value based relationship in the "Guru Shishya Prampara". It is more than a trust and fiduciary obligation which a teacher is supposed to discharge.

14. The other aspect which requires consideration is that according to Article 80 and Appendix XIX of the Education Code, it is the Assistant Commissioner who is the appointing authority of the Kendriya Vidyalaya teachers. In the case in hand on being apprised of the incident the Principal involved at least two other lady teachers and after collecting facts sent a report to the Assistant Commissioner and the latter thus entrusted the inquiry to Mrs. Rai. It, therefore, cannot be propagated that the inquiry was ordered by an unauthorised person. It is apparent that the appointing authority did not think it proper to take action at his own level which certainly required an elaborate inquiry, he, therefore, referred the issue to the Commissioner with the obvious intention of seeking her intervention by virtue of Article 81 (b) of the Code.

15. A reference at this stage to the impugned order (Annexure1) would have no manner of doubt about the application of mind and subjective as well as objective satisfaction of the Commissioner towards the fairness of the report prepared by Mrs. Rai and the ultimate necessity to dispense with a regular and detailed inquiry. As a matter of fact this order itself contains ingredients of all the legal requisites and their due compliance.

16. The content ion .was that there should have been a separate order to show that the Commissioner had addressed herself to the facts and circumstances of the case and taken an independent decision to dispense with the regular inquiry. Mention has been made only for the purposes of records ; otherwise the submission required summary rejection in the light of Apex Court's observations in the context of Union of India v. Tulsi Ram Patel, AIR 1985 SC 1416 (para 134) that it may be usual to record reasons separately but it would be better to record the reason in the final order itself to avoid the allegation that it was not recorded in writing before passing the final order or that it was fabricated at a later stage. Their Lordships were further pleased to hold that the reason for dispensing with the inquiry need not contain detailed particulars though/it must not be vague or just a repetition of the statutory clause.

17. As would be evident from the impugned order Annexure1 to the instant case the Commissioner was already seized of the entire material containing the allegations and report of the Inquiry Officer including the petitioner's explanation by way of a statement before this Inquiry Officer about the incident and it was only after perusal of the entire material that the Commissioner felt satisfied about petitioner's guilt in making unwarranted sexual advances towards adolescent girl student.

18. The petitioner's grouse of malice and mala fides on the part of the Principal is irrelevant and devoid of merits, moreover it is not even borne out from the records. Be that as it may, there is absolutely nothing before the Court to infer the bias of the concerned student Km. Vineeta or her mother Mrs. Nirmala Bhat. Having regard to the ordinary human conduct no sensible mother would dare to expose her young daughter to the risk of a social stigma inherent in the charge of being a victim of molestation or sexual misbehaviour.

19. Similarly, there is no merit in the petitioner's contention of being taken by surprise with the report of the Inquiry Officer because a bare perusal of his own statement in the form of "question answer", recorded by the Enquiry Officer Mrs. Rai on 29th April, 1994, would show that he was fully apprised of the allegations and given due opportunity to project his side of the story. Question No. 12 thereof was categorically put to him to explain as to why Km. Vineeta and her mother had chosen to raise these allegations against him. He came out with an evasive reply of ignorance. It was followed by Question No. 26 in the form of residuary question whether he wanted to say anything else in regard to the allegations but barring a vague reply of falsehood of the charge and his continuous go 3d conduct, he had nothing to say. To be precise he was

associated with the inquiry proceedings and given an opportunity to explain the allegations but he had no worthwhile explanation.

20. At this stage it would be worthwhile to pause and ponder once again over the legislative intent manifest in the phraseology of Article 81(b) of the Education Code about the nature of inquiry and standard of proof to sustain the insinuation of sexual morbidity and misbehaviour on the part of a teacher at the risk of repetition, it may be mentioned that keeping in view the intricate and fiduciary relationship of a teacher and student, besides the much needed educational and healthy academic environment in the educational institutions, it was felt sufficient to lay down that the Commissioner should feel satisfied with such summary inquiry as he/she deemed proper and practicable in the circumstances of a case. It was nowhere provided that such inquiry should proceed only after the incident was brought to his notice and he had passed specific order for that purpose. The intention rather was that the powers could be exercised even in a situation where the entire episode, along with the related material, was brought to his notice so that he could address himself to the issue in a detached and dispassionate manner, similarly such subjective satisfaction was not required to go beyond the normal belief regarding the existence of prima facie guilt or moral turpitude involving sexual offence or exhibition of immoral sexual behaviour towards a student.

21. As discussed hereinbefore on these sanctioned parameters no fault could possibly be found with the impugned order which actually originated from the complaint of a girl student and her mother neither of whom had any personal bias, malice or rancour against the petitioner.

22. Thus, in the totality of the circumstances the petition must fail and is accordingly dismissed. However, there would be no order as to costs.