

(2016) 03 MAD CK 0160

In the Madras High Court

Case No : Writ Petition Nos. 22266, 22267 and 22268 of 2015

D. Percivul Pericles and Others

APPELLANT

Vs

The Principal School of Law Saveetha University and Others

RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Citation : (2016) 3 MLJ 269

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : R. Muthukumarasamy, Senior Advocate for S. Saravanan, for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—1. The orders, which are impugned in these writ petitions, is a common and identical order passed by the first respondent. The respondents in all the writ petitions are common. In all these writ petitions, common arguments have been advanced on behalf of the petitioners and the first respondent. Therefore, all these writ petitions are taken up together and are disposed of by this common order.

2. The petitioners, who are pursuing B.A., B.L. (Honours) in the first respondent University, have come forward with these writ petitions, challenging the order dated 24.06.2015 passed by the first respondent. In and by the order dated 24.06.2015, the first respondent debarred the petitioners from attending the classes from 26.02.2015, the date of their suspension till 15.06.2015 thereby the petitioners could not attend or write the XIV trimester examination.

3. The facts which are essential for disposal of these writ petitions are as under:-

The petitioners are students of the first respondent College where they are pursuing B.A., B.L. (Honours) from the academic year 2010-2011. It is a five year course. While so, on 26.02.2015 at about 10.10 am. in front of the M.M. Convention Hall, there was a clash between the students of the 2nd year B.A.,

B.L. (Hons) and the 5th year B.A., B.L. (Hons). The incident was brought to the notice of the first respondent by the security personnel in the college campus. Immediately, the first respondent came to the spot and witnessed a clash between the students and he also saw the students armed with dangerous objects such as sticks etc., The first respondent also witnessed the students hurling abusive language against each other. The first respondent also made arrangements to admit the injured students namely R. Dhanaram and Ganesh Babu in the Hospital for treatment. In connection with the above said incident, the first respondent suspended eight students, including the petitioners herein for having indulged in violent group clash within the college campus. Thereafter, in order to ensure discipline in the college campus and to prevent any such untoward incident in the immediate near future, the first respondent constituted a committee to conduct a preliminary enquiry to find out the reasons for the clash inter alia to ascertain as to who are all responsible for the incident. The preliminary inquiry conducted has revealed that there was a long standing ego clash going on between the students of the 2nd year and fifth year which has snowballed into the instant incident. The committee also felt that there was a misunderstanding between two female students and they have sought the intervention of the 2nd year and 5th year male students as the case may be and this has led to the clash. During the preliminary inquiry, some of the students denied their involvement or they were part of the clash or acts of violence. Therefore, the first respondent decided to call for explanation from eight students including the petitioners and they have also submitted their explanation. Not satisfied with the explanations offered, the first respondent issued a charge memorandum dated 10.04.2015 for which the petitioners have submitted their explanation denying the charges. Thereafter, an Enquiry Officer was appointed, who after conducting an enquiry submitted his report. Based on the report of the enquiry officer, the orders, which are impugned in these writ petitions have been passed by the first respondent imposing the punishment.

4. When the above writ petitions were taken up for hearing on 23.07.2015, this Court granted interim stay of operation of the final order passed by the first respondent. To vacate the interim stay, the first respondent has filed MP No. 5, 5 and 5 of 2015 in WP Nos. 22266, 22267 and 22268 of 2015.

5. Mr. D. Percivul Pericles, petitioner-in-person in WP No. 22266 of 2015 would strenuously contend that the enquiry officer has conducted enquiry ex-parte in which the petitioners did not participate. The petitioners were not given adequate opportunity to defend the enquiry proceedings. Therefore, according to the petitioner-in-person, the entire enquiry proceedings were vitiated. He also contended that the suspension of the petitioner is a prolonged one and there was no prima facie case made out even for conducting an inquiry as against him. The decision of the first respondent to appoint the enquiry officer is unilateral and he was not consulted before such appointment. Therefore, according to the petitioner, the appointment of enquiry officer is unilateral and impartial. In this context, the petitioner invited the attention of this Court to the letter dated

01.05.2015 written by him to the respondents wherein he not only questioned the authority of the second respondent to be appointed as enquiry officer but also sought to furnish the Rule or Regulation under which the inquiry has been proposed to be conducted. In the letter dated 01.05.2015, the petitioner also requested the first respondent to change the venue of the enquiry since there is an insecurity prevailing in the campus and it would be detrimental for him to attend the enquiry in the campus. As regards his non-appearance during the enquiry, the petitioner vehemently contended that there was a ban imposed by the first respondent restraining him from entering into the college premises, as could be seen from the letter dated 27.02.2015. On the one hand, the first respondent imposed a ban and restrained the petitioner from entering into the college premises and on the other hand, the enquiry proceeded without the presence of the enquiry and on the basis of the outcome of such enquiry, the final order of punishment has been passed. It is also his contention that some of the students, who really involved in the clash, have been let off without any punishment and he has been made a scape-goat. Therefore, he prayed for allowing the writ petition.

6. In order to substantiate his contention, the petitioner-in-person has relied on the judgment of the Honourable Supreme Court rendered on 31.03.2015 in Appeal (Civil) No. 2300 of 2005 (Canara Bank vs. V.K. Awasthy) and submitted that the adherence to principles of natural justice is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties or any administrative action involving civil consequences.

7. The petitioner-in-person also relied on the decision of the Karnataka High Court in the case of (Ashish Suman and others vs. National Law School of India) reported in , AIR 2003 Karnataka 136 to drive home the point that no punishment shall be imposed without giving the delinquent a reasonable opportunity to show cause against the action proposed to be taken against him.

8. The learned counsel appearing for the petitioners in WP Nos. 22267 & 22268 would contend that before imposing punishment on the petitioners, it is expected that the respondents ought to have given reasonable and adequate opportunity to them to defend the charges. Even the charges were framed after prolonged suspension of the petitioners. The petitioners have not come to adverse notice during their four years of study and only in the fifth year, they were falsely implicated in connection with the clash that had taken place in the campus on 26.02.2015. The petitioners could not attend the enquiry owing to a ban order passed against them on 27.02.2015 from entering into the college premises. Such a ban order has not been revoked paving way for the petitioners to attend the enquiry proceedings. Even some of the students, who really indulged in the clash were let off without even recording any statement from them. The entire enquiry proceedings are biased and one-sided. The learned counsel for the petitioners also brought to the notice of this Court the inconsistencies in the evidence given by the students who participated in the enquiry with regard to

those who really indulged in the clash and their presence. However, the first respondent, without properly considering the statement of the students, who attended the enquiry, has passed the impugned final order. The learned counsel for the petitioners therefore prayed for allowing the writ petition.

9. The learned senior counsel appearing for the first respondent vehemently opposed the writ petitions. According to the learned senior counsel for the first respondent, the petitioners are part of the group clash. In none of the correspondences made by them to the first respondent or in the affidavits filed in support of the writ petition, they have not denied their involvement in the group clash. In other words, the participation of the petitioners in the group clash has been witnessed by several persons and they cannot plead innocence. In this context, the learned senior counsel for the first respondent brought to the notice of this Court an apology letter dated 10.03.2015 written by the petitioners along with other students. In the letter of apology, the students only sought for revocation of the order of suspension passed against them and assured the first respondent that they will not indulge in any further. It is further stated in the letter of apology dated 10.03.2015 that in consideration of their future academic career, their plea for revocation of suspension may favourably be considered. According to the learned senior counsel for the first respondent, the petitioners, for the reasons best known, did not bring to the notice of this Court the letter of apology written and signed by them on 10.03.2015. Therefore, the learned senior counsel for the petitioners would contend that prima facie, there is adequate proof to show that the petitioners indulged and involved themselves in the group clash and to ascertain the exact cause for the clash and/or the role played by each of the students, the first respondent has conducted an enquiry. However, what is agitated by the petitioners in these writ petition is that they were not given adequate opportunity to defend the proceedings. In this context, the learned Senior counsel for the first respondent submitted that it is true that a ban was imposed on the petitioners from entering into the college campus to avoid any further untoward incident and to ensure the safety of the students. Subsequently, on the request of the petitioners, the first respondent changed the venue of the enquiry to Saveetha Dental College and it was intimated to them by communication dated 04.05.2015. In spite of the same, for the reasons best known, the petitioners did not participate in the enquiry. According to the learned Senior counsel for the first respondent, only on the request of the petitioners, the venue has been changed meaning thereby the ban order has got nothing to do with the attending the enquiry at Saveetha Dental College. Even after changing the venue of the enquiry proceedings, the enquiry officer adjourned the proceedings to enable the petitioners to participate in the enquiry. As they did not participate in the enquiry, the enquiry officer was constrained to proceed ex-parte. On the basis of the report of the enquiry officer and on considering the materials available on record independently, the first respondent was constrained to pass the impugned order debarring the petitioners from attending the classes for two trisemesters namely 14th and 15th trisemester. The final order has been

passed taking note of the gravity of the misdemeanour attributable on the part of the petitioners. Such an order was constrained to be passed by the first respondent only to maintain orderliness and discipline in the institution. At any rate, after following all the procedures in accordance with law, the final order has been passed and it needs no interference by this Court.

10. The learned senior counsel for the first respondent also submitted that the enquiry conducted by the respondents with respect to an incident that had taken place in the educational institution cannot be equated to or compared with an enquiry in a departmental proceedings or before a Tribunal. The enquiry conducted by the first respondent is to ascertain the cause for the incident and those students who unlawfully involved themselves in such incident. For the purpose of ascertaining the above, it is necessary that a prima facie case is made out and it need not required to be dealt with elaborately by bringing outsiders as witnesses to the enquiry. In this context, the learned senior counsel relied on the decision of this Court in (P. Senthil and others vs. The Principal, SIVET College, Chennai and others) , (2003) 1 MLJ 644 wherein it was held that in the interest of maintaining proper discipline in an educational institution, it is highly necessary to strengthen the hands of the college authorities by arming them with sufficient powers, so that the other students in the institution who are keen to study and improve their career, would not become the victims of handful of persons who may spoil academic atmosphere by indulging in anti-social activities.

11. The learned senior counsel for the first respondent also relied on the decision of this Court rendered on 03.04.2008 in WP Nos. 6059 and 6060 of 2008 (S.K. Manikandan and another vs. Saint Michael's Polytechnic College and another) wherein it was held in para Nos. 10, 11 and 12 as follows:-

"10. In matters relating to the internal discipline of educational institutions, under the guise of observing principles of natural justice, a right and mechanical insistence or full-fledged enquiry of examination and cross-examination of witnesses may not be conducive for the effective functioning and preservation of structure of educational institution. The Supreme Court in "Harinath Mishra and others vs. The Principal, Rajendra Medical College, Ranchi and others (1974 (1) SCJ 223 has pointed out that the educational institution have to devise a just and reasonable plan of enquiry which on the other hand would not expose the innocent students who were victims of harassment by the delinquent students and on the other hand secure reasonable opportunity to the delinquent student, who is the accused of certain acts of misconduct.

11. Coming to the facts of this case, it is seen that in the counter affidavits, it is clearly mentioned that after the incident that had happened on 30.11.2015 and 01.12.2005, an enquiry was called on 01.12.2005 and the complaint given by not only the students but also by one of the parent was considered. Before such enquiry, all the 19 students including the petitioners were informed of the purpose for which enquiry is conducted. This is one part of the incident.

12. As the enquiry could not be completed on the same date due to incessant rains, it was adjourned to the next date. After the enquiry was adjourned, the subsequent incident of waylaying the buses in which not only the male students but also the female students were on board. Some of the third year students were pulled down by the petitioners and some outsiders were beaten up. Further, two of the staff members who travelled in the bus were also beaten. All these complaints were placed before the committee and for answering the same before the committee, none of the petitioners appeared. When the petitioners did not appear before the enquiry, they cannot now contend that they were not given opportunity. As already observed, a detailed enquiry before any order of punishment is imposed on a student is not required in the matter of preserving discipline in the educational institution. Suffice for an enquiry conducted wherein all the students and other persons aggrieved are present and their submissions are recorded. A perusal of the statements given by not only the third year students but also the two staff members of the college as well as the letter of a parent dated 13.12.2005 informing the college that since his son had given complaint against the petitioners, they are calling them over phone and threatening them with dire consequences of their life is an adding factor to the gross indiscipline of the petitioners. Only on the basis of the above serious allegations, the petitioners were dismissed from the college. In my opinion, such action cannot be interfered with by this Court, as it would amount to interfering in the management of the college in maintaining the administration of discipline in the college."

12. I heard the Petitioner-in-Person in WP No. 22266 of 2015, the learned counsel for the petitioners in WP Nos. 22267 & 22268 of 2015 and the learned Senior counsel appearing for the first respondent at length. I had carefully perused the entire materials placed on record.

13. It is unfortunate that in a clash between two group of students, two students studying in the first respondent college sustained bleeding injuries. Such an incident ought not to have happened within the campus, but it has happened.

14. Before dealing with the merits or otherwise of the contentions urged on both sides, it has to be stated that maintenance of discipline and orderliness in the educational institution is the prerogative of the first respondent and any slight disturbance or commotion among the students cannot be permitted to take place there. More than the academic curriculum of the students, discipline and good behaviour are the hallmark of the students and therefore in enforcing the same, certain stringent measures are inevitable.

15. In this case, the petitioners have raised very many contentions relating to their prolonged suspension, procedures adopted by the respondents in conduct of the enquiry against them, their justification for not participating in the enquiry, improper appreciation of the statements made by the students in the enquiry etc.,. Before proceeding further, it has to be mentioned that this Court can only exercise restraint in dealing with these questions as these are mixed questions of

facts and law. Be that as it may, in the present case, in connection with the incident that took place in the college campus on 26.02.2015, the petitioners along with other students were immediately suspended from 26.02.2015 and they were prohibited from entering into the college. According to the respondents, such suspension has been made to facilitate the respondents to conduct a preliminary enquiry. It is the contention of the first respondent that the preliminary enquiry held on 24.03.2015, after normalcy was restored in the campus, revealed the involvement of some students in the clash, including the petitioners.

16. It is pertinent to mention that even before the conduct of preliminary enquiry by the first respondent, the petitioners, along with the other students, written a letter of apology to the first respondent and requested to consider revoking their suspension. However, when communication was sent regarding conduct of enquiry, the petitioners have raised several questions relating to the power or authority of the first respondent to conduct the enquiry, non-existence of prima facie case to proceed against them etc., The petitioners also written letters to the first respondent to change the venue of the enquiry from the college campus. In consideration of such request, in order to enable the petitioners to attend the enquiry, the venue was changed from the first respondent campus to Saveetha Dental College, which is an adjacent premises of the campus. On being intimated about the change of venue of the enquiry, the petitioners, in my opinion, ought to have participated in the enquiry to prove their innocence. Instead, the petitioners harped upon the ban order imposed on them to enter into the college. When once the venue of the enquiry was changed from the first respondent campus to the Saveetha Dental College, at the request of the petitioners, the petitioners ought to have participated in the enquiry. As rightly pointed out by the learned Senior counsel for the first respondent, the ban order imposed on the petitioners has nothing to do with the participating in the enquiry that too in some other premises other than the college campus. In other words, the petitioners were allowed to freely participate in the enquiry and that is the reason why the venue of the enquiry was changed at their behest. Notwithstanding the change of venue of enquiry proceedings, for the reasons best known, the petitioners did not participate in the enquiry. It is not the case of the petitioners that they were not aware of the date of enquiry or change of the venue of the enquiry proceedings. While so, it is futile on the part of the petitioners to contend that the first respondent did not consider the statement of some of the students or they were not given adequate or reasonable opportunity to defend the charges against them. What prevented the petitioners to participate in the enquiry proceedings, at the changed venue, is not known. At any rate, when the petitioners did not participate in the enquiry, it is not open to them to say the enquiry ought to have been conducted in a particular manner, they ought to have been consulted before appointing an enquiry officer or to consider the statement made by the students in the proper perspective.

17. In the decision relied on by the learned senior counsel for the first

respondent, in S.K. Manikandan and another mentioned supra, it has been clearly held that in matters relating to the internal discipline of educational institutions, under the guise of observing principles of natural justice, a right and mechanical insistence or full-fledged enquiry of examination and cross-examination of witnesses may not be conducive for the effective functioning and preservation of structure of educational institution. Therefore, as held by this Court, an enquiry conducted by the educational institution cannot be compared with an enquiry conducted against a delinquent in a department. In the departmental enquiry, existence of preponderance of probability is an essential factor. Whereas, in the enquiry conducted by the educational institution to ensure discipline and conducive atmosphere, the educational authority can simply record the statements of the students and to arrive at a just conclusion. In the present case, the first respondent has not only recorded the statement of the students but some of them were permitted to cross-examine. Therefore, it cannot be said that the enquiry is vitiated by reason of adherence to irrelevant and improper procedures.

18. The contention of the petitioners that some of the students have been let off without any punishment and they alone have been victimised cannot be countenanced. First of all, the petitioners did not participate in the enquiry and they cannot now contend discrimination in the matter of imposition of punishment to the students. If the petitioners participated in the enquiry and defended the charges against them, then this Court can consider such an argument advanced on behalf of the petitioners. In this case, the petitioners, for the reasons best known, did not participate in the enquiry while so, this Court cannot consider such a bald statement raised on behalf of the petitioners regarding discrimination in the matter of imposition of punishment. Moreover, the evidence on record clearly indicates that only after conducting a preliminary enquiry, some of the students were let off without imposing any punishment on the ground that there is no prima facie case established against them for proceeding them with enquiry. However, in the very same preliminary enquiry, as a prima facie case has been established against the petitioners herein, the petitioners were proceeded with by appointing an enquiry officer. Therefore, the contentions raised on behalf of the petitioners that the petitioners alone were discriminated cannot be accepted.

19. Yet another contention raised on behalf of the petitioners is that the first respondent did not consult the petitioners before appointing the enquiry officer or the presenting officer. Such a contention cannot merit acceptance. It is the prerogative of the first respondent to appoint a person to conduct an enquiry in a circumstances of this nature. Here again, the petitioners did not participate in the enquiry. Had they participated in the enquiry and raised certain allegation of bias as against the enquiry officer, even the first respondent would have had an occasion to consider the same. Therefore, when the petitioners did not participate in the enquiry, this Court cannot consider the plea of bias raised on behalf of the petitioners.

20. It is well settled that in matters of this nature, this Court has to exercise caution and restraint in interfering with the internal administration of the first respondent. The first respondent, as Principal of Law School, can set or frame it's own procedures and norms for administrative function to ensure orderliness in the campus and to prevent any commotion or disturbance among the students. It is the duty of the first respondent to ensure prevalence of a conducive atmosphere to enable the students to achieve academic excellence. In such circumstances, this Court hesitates to interfere with the orders impugned in these writ petitions as it would amount to interfering in the management of the college in ensuring discipline among the students.

21. Before concluding, it is pertinent to mention that by the order passed by the first respondent, which is impugned in these writ petitions, the petitioners were debarred from attending the college from 26.02.2015, the date of their suspension till 15.06.2015. The period during which the petitioners were debarred already lapsed and therefore also, the relief sought for by the petitioners no longer survives for consideration by this Court.

22. In the result, all the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.