

(2011) 07 GUJ CK 0077
In the Gujarat High Court

Case No : Special Civil Application No. 4940 of 2011

Dalicha Suketur

APPELLANT

Vs

Chairman

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 07 GUJ CK 0077

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : M.R. Rakesh R Patel, for the Appellant; H.S. Munshaw, for the Respondent

Final Decision : Allowed

Judgement

Abhilasha Kumari, J.—Rule. Mr. H.S. Munshaw, learned Counsel waives service of notice of Rule on behalf of the Respondents. On the facts and in the circumstances of the case, and with the consent of the learned Counsel for the respective parties, the petition is being heard and finally decided, today.

2. This petition under Article 226 of the Constitution of India has been preferred against order dated 20.12.2010 passed by Respondent No. 3, whereby the Petitioner, who is a student of the 3rd year of General Nursing & Midwifery (Diploma) Course in V.S. General Nursing School, Ahmedabad has been permanently rusticated. Aggrieved thereby, the Petitioner has approached this Court by filing the present petition.

3. Briefly stated, the case of the Petitioner is that the order dated 20.12.2010, rusticating the Petitioner permanently, has been issued without affording the Petitioner an opportunity of hearing and without supplying copies of the complaints and other documents that have been taken into consideration while passing the said order. In the affidavit-in-reply filed on behalf of Respondent No. 3, Principal of V.S. General Nursing School, a stand has been taken that several

warnings have been issued to the Petitioner in the past, for certain deeds of misbehavior committed by him from time to time, and his parents have also been informed of the same. However, the said affidavit-in-reply is silent as to whether any opportunity of hearing has been given to the Petitioner before passing the final order of rustication, and whether copies of the complaints/documents mentioned in the said order have been provided to the Petitioner.

4. Mr. Rakesh R. Patel, learned Counsel for the Petitioner has submitted that the impugned order makes it clear that a complaint dated 18.11.2010 made by a Student, and dated 19.11.2010 made by the Tutors, of the Nursing School, have formed the basis of the order of rustication. It is further contended that Respondent No. 3 has also taken into consideration the approval granted by the Chairman of the Managing Committee of V.S. General Hospital, while passing the impugned order. The specific point raised by the learned Counsel for the Petitioner is that none of these complaints/documents have been supplied to the Petitioner so as to enable him to offer his explanation, or defense. It is further contended that no opportunity of hearing, much less an effective opportunity of hearing, has been afforded to the Petitioner before rusticating him permanently. That the order has serious civil consequences, as it would put an end to the career of the Petitioner. It is contended that the Petitioner is in the final year of the Diploma Course and as the impugned order does not specify the time-frame during which the Petitioner shall remain rusticated, it would mean that the course pursued by the Petitioner till now have been put to naught.

5. Mr. H.S. Munshaw, learned Counsel for the Respondents, has submitted that the complaints against the Petitioner are of a serious nature. The Petitioner was warned several times regarding his conduct and behavior but did not improve, therefore, he has been rusticated.

6. Be that as it may. On the last date of hearing, the learned Counsel for the Respondents had been requested to take instructions and inform the Court whether an opportunity of hearing had been afforded to the Petitioner before passing the impugned order, and whether copies of the complaints that have been considered while passing the impugned order have been provided to him.

7. When the matter is taken up for hearing, today, the learned Counsel for the Respondents states, upon instructions, that no specific opportunity of hearing has been given to the Petitioner before passing the impugned order dated 20.12.2010, and copies of the complaints dated 18.11.2010 and 19.11.2010 that have been taken into consideration while passing the impugned order, have not been supplied to the Petitioner. It is stated by Mr. H.S. Munshaw, learned Counsel for the Respondents, up on written instructions from the Dean of V.S. General Nursing School dated 01.07.2011, that the Petitioner shall be given an opportunity of hearing.

8. Though it may transpire that the complaints against the Petitioner are of a serious nature, however, while passing an order that entails civil consequences, it

is imperative that the authority passing such an order ensures that the principles of natural justice are satisfied. The legal position in this regard has been enunciated by the Supreme Court in a catena of judgments.

9. In the case of *Malavkumar Arunbhai Patel v. Sardar Patel University and Ors.* reported in (2006) 3 G.L.H. 695, this Court relying upon certain judgments of the Apex Court, has held as under:

23. Any action taken by an administrative or quasi judicial authority which entails civil consequences should only be taken after complying with the principles of natural justice. Although the principles of natural justice cannot be put into a strait-jacket formula, it cannot be disputed that the doctrine of natural justice exists not only to secure justice but also to prevent the miscarriage of justice. It is true that strict rules of evidence do not apply in proceedings such as those which took place in the case of the Petitioner before the "Unfair Means Committee". However, even the requirement of preponderance of probabilities has not been adhered to since the impugned Notification dated October 4, 2000 as well as the Minutes of the proceedings which led to the passing of the impugned order do not disclose the material which was available with the committee which pointed out the involvement of the Petitioner in the incident. In that view of the matter, the impugned order is also not a speaking one and does not disclose the reasons or the grounds on which the decision to permanently debar the Petitioner has been taken.

24. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, the aim and relevance of the principles of natural justice have been clearly enunciated by the Constitution Bench of the Supreme Court in para 20 thereof, which reads as under:

20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (*Nemo debet esse iudex propria causa*), and (2) no decision shall be given against a party without affording him a reasonable hearing (*Audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries

from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George Vs. University of Kerala and Others*, the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

25. Further in *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant*, reported in (2001)1 SCC 182, the Supreme Court has held as under in paragraphs 1 and 2 of the reported judgment:

Since the decision of this Court in *Kraipak's case* (*A. K. Kraipak v. Union of India*) one golden rule that stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. What, however, does this doctrine exactly mean? Lord Reid about four decades ago in *Ridge v. Baldwin* very succinctly described it as not being capable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances - who then is a reasonable man - the man on the clapham omnibus? In India, however, a reasonable man cannot but be a common man similarly placed. The effort of Lord Reid in *Ridge v. Baldwin* in not attributing a definite meaning to the doctrine but attributing it to be representing a fair procedure still holds good even in the millennium year. As a matter of fact this Court in the case of *Keshav Mills Co. Ltd. v. Union of India* upon reliance on the attributes of the doctrine as above stated as below (SCC p.387, para 8) "8. The second question, however, as to what are the principles of natural justice that should regulate an administrative act or order is a much more difficult one to answer. We do not think it either feasible or even desirable to lay down any fixed or rigorous yard-stick in this manner. The concept of natural justice cannot be put into a strait-jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. See, for instance, the observations of Lord Parker in *H. K. (an infant), In re*. It only means that such measure of natural justice should be applied as was described by Lord Reid in *Ridge v. Baldwin* case as "insusceptible of exact definition but what a reasonable

man would regard as a fair procedure in particular circumstances". However, even the application of the concept of fair-play requires real flexibility. Everything will depend on the actual facts and circumstances of a case. As Tucker, L.J observed in *Russell v. Duke of Norfolk*:

The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with and so forth.

2. While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and if we may say so, cannot be made to define the doctrine in a specific manner or method. Strait-jacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance with the doctrine, the law courts in that event ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most-accepted methodology of a governmental action.

26. It is now an accepted proposition of law that any statutory body which is entrusted by statute with discretion, must act fairly. It does not matter whether its functions are described as judicial or quasi-judicial on the one hand, or as administrative on the other. Even an administrative order, which involves civil consequences must be made consistently with the rules of natural justice. Although the expression "civil consequences" has not been defined anywhere, the observation made in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, is relevant in this context and reads as below:

What is civil consequence, let us ask ourselves, by passing verbal booby-traps? "Civil consequences" undoubtedly cover infraction of not merely property or personal rights but of civil liberties material deprivation and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence

27. The permanent debarring of the Petitioner from appearing in any examinations conducted by the University and from seeking admission in any of the courses to be conducted by the University, no doubt entails serious civil consequences. In these circumstances, the rule of *Audi Alteram Partem* should have been followed by the Respondents. The principle that no man should be condemned unheard and both sides must be heard in order to ensure fairness on the part of the deciding authority or body before passing any order is well known. A person against whom any action is sought to be taken which entails civil consequences must have knowledge about the allegations/ charges/

materials against him on the basis of which such a decision is sought to be taken.

10. Examined in the light of the aforesaid legal position, it is clear that the impugned order dated 20.12.2010, which has the effect of permanently rustivating the Petitioner, is surely one that entails civil consequences, as it would adversely affect the career of the Petitioner. Admittedly, neither has the Petitioner been afforded an opportunity of hearing, nor has the material used against him been supplied to him. It is, therefore, evident that the rule of audi alteram partem has been violated by the Respondents. The order of rustication has been passed in violation of the principles of natural justice as the Petitioner had no opportunity to offer an explanation or controvert the allegations against him.

11. The impugned order dated 20.12.2010, being unsustainable in law for reasons stated hereinabove is, therefore, quashed and set aside.

It is directed that the competent authority shall provide the Petitioner with copies of all documents/complaints that are being considered against him, and shall afford him an opportunity of personal hearing. The Respondents shall communicate to the Petitioner a mutually suitable date on which he is to appear before the authority, who shall hear him. After the hearing is completed, a fresh order may be passed, within a period of one month from the date of hearing, which shall be communicated to the Petitioner.

The petition is partly-allowed, as above. Rule is made absolute, accordingly.

It is clarified that while passing this order, the Court has not entered into the merits of the case.