

(1986) 04 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No's. 4833 to 4837 of 1986

Deepak

APPELLANT

Vs

Karnataka University

RESPONDENT

Date of Decision : 07-04-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka State Universities Act, 1976 — Section 12, 12 (1)

Citation : (1987) ILR (Kar) 414 : (1987) 2 LLJ 93

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Judgement

1. In these Writ Petitions under Article 226 of the Constitution, the petitioners have sought for quashing the notices dated 12th March, 1986 (Annexures A to D) and 13th March, 1986 (Annexure-E) issued by the 2nd respondent. By notices produced as Annexures A to D, the petitioners in Writ Petitions 4833, 4835 and 4836/86 have been called upon to explain and show cause in writing within seven days from the date of service of notices as to why they should not be permanently debarred from the college and in case they fail to offer any explanation as aforesaid, it will be presumed that they have nothing to explain and further action will be taken against them as deemed fit in the interest of the administration of the College and maintaining law and order among the students. Pending enquiry, the petitioners are also kept under suspension and they are further directed not to attend the classes and not to enter the class rooms for taking lessons and vacate the hostel rooms which they are occupying and further not to enter the hostel until further orders. As far as the petitioner in W.P. 4834/86 is concerned, though the notice issued to him is similarly worded, but he is only suspended and is prevented from attending the classes and entering the class rooms for taking lessons. The notice issued to the petitioner in W.P. 4837/86 is also similarly worded as those issued to the petitioners in W.Ps. 4833, 4835 and 4836 of 1986.

2. The 2nd respondent has entered appearance and has also filed the statement

of objections. Shri Ravivarma Kumar, learned Counsel for the petitioners, has raised the following contentions : (i) that as per Section 62 read with the sub-section (1) of Section 12 of the Karnataka State Universities Act 1976 (hereinafter referred to as the "Act"), it is the Vice-Chancellor alone who has the exclusive and ultimate power to maintain the discipline among the students of the University; therefore the 2nd respondent who is the Head of the College in question has no power whatsoever, either to suspend the students from attending the classes or to issue show cause notice to take action for disqualifying them or debarring them from the Institution; (ii) though the College is a private college, but it is an affiliated college; therefore it is required to obey the directions of the Vice-Chancellor and carry out the Statutes and Ordinances of the University; therefore, it exercises the power under the statute. Hence the jurisdiction under Article 226 of the Constitution can be exercised even against the show-cause notice issued by the Principal of the private college in question.

3. On the contrary, the 2nd respondent contends that he being the Head of the Institution, there is inherent power vested in him to take such steps as are necessary to maintain discipline among the students and in the precincts of the Institution as otherwise it is impossible for the Principal of the College to carry on the Administration and to ensure smooth running of the college, regular conduct of classes, safety to the students and to maintain proper atmosphere in the college congenial to study; that the power conferred upon the Vice-Chancellor of the University u/s 62 read with Section 12(1) of the Act, is the ultimate power and it does not affect the power of the Head of an Institution; that such exercise of power by the Head of a College is not derogatory to the power enjoyed by the Vice-Chancellor; that if the Vice-Chancellor does not approve the action taken by the Principal of a College, he can set aside the action taken by the Principal including the disciplinary action taken against the students of the college; therefore, the fact that the final authority is vested in the Vice-Chancellor in the matter of maintenance of discipline among the students of the University, does not take away the power of the Principal of a College to take such steps as are necessary for ensuring discipline in the College; that the 2nd respondent being a Private Institution, no Writ can be issued against it; that, after all, the notices issued are only show-cause notices and it is open to the petitioners to show-cause and in case the respondent is convinced, the whole proceeding can be dropped.

4. Having regard to the aforesaid contentions, the following points arise for consideration :

(i) Whether a Writ can lie against the decision of the Principal of a Private College ?

(ii) Whether the Head of a Private College (Principal) affiliated to the University can be held to have the power to suspend the students of the College for maintaining discipline in the College ?

(iii) Whether the impugned notices are sustainable ?

POINT NO (i) :

5. It is not possible to accept the contention of respondent-2 that no Writ can be issued against the decision of the Principal of a Private Institution suspending the students of the College and preventing them from attending the classes and further directing them to vacate the hostel pending enquiry into the matter relating to the acts of indiscipline alleged to have been committed by them. Though the College is a Private College, but it is an affiliated college. The definition of "the college", as found in sub-section (2) of Section 2 of the Act means, an institution maintained by the University as such and includes an institution admitted to the privileges of the University as an affiliated college of the University in accordance with the provisions of the Act. Though the college in question is a private college and it is not maintained by the University; but it being an affiliated college, it is governed by the provisions of the Act, as it is admitted to the privileges of the University. As an affiliated college, it has to carry out the directions issued by the Vice-Chancellor, comply with the Statutes and Ordinances passed by the Academic Council and the Syndicate which cover not only the curriculum taught in a college but also maintenance of discipline among the University students and several other aspects connected with the University education and administration. The Principal of a College exercises power under the Ordinances and the Statutes. He has to comply with the directions if any issued by the Vice-Chancellor of the University. Therefore, even though the College is a private college, it is not possible to hold that it does not exercise any statutory power.

6. Similar situation arose in the case of Kumkum Khanna and Others Vs. The Mother Aquinas and Another, , in which it is held that a private college may be formed and its Principal may be appointed without attracting the applicability of public law; but when a college is admitted to the privileges of the University, it ceases to be an entirely private institution. It becomes the subject of statutory provisions and is regulated by it. The Academic Council is an authority of the University created by a statute. The power now conferred on the Principals of affiliated and constituent colleges by Ordinance VII was formerly exercised by the Academic Council. The power exercised or duty performed under Ordinance VII is, therefore, a statutory power and a statutory duty. Acting under Ordinance VII, therefore, the Principal is acting in a public capacity. Though the office of the Principal can exist outside a statute, it becomes a statutory office when the college is admitted to the privileges of the University. This is why such a college and its Principal have been defined in clauses (a) and (d) of Section 2 of the Delhi University Act. Even if the office of the Principal is not regarded statutory in the sense that it is created by a statute, it is a public office because the powers and duties of the Principal relate to a large Section of the public, namely, the students of the college.

The aforesaid enunciation squarely applies to the case on hand because the

college in question is affiliated one and it falls within the definition of the "college" as found in the Act. It is also pertinent to notice the observations made by the Supreme Court in *The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others*,

"6. No doubt, Article 226 provides the every High Court shall have power to issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus, etc. or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest, It has always required that the applicant for a mandamus should have a legal and a specific right to enforce the performance of those duties. Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purposes of fulfilling public responsibilities. (Cf. Halsbury's Laws of England (3rd Ed.), Vol. II, P. 52 and onwards)."

The aforesaid enunciation can even be applied in the case of certiorari jurisdiction in relation to an order or notice issued by the Head of a private institution which is affiliated to the University and the action taken by him is traced to the statutory powers. Therefore, the first point is answered in the affirmative and in favour of the petitioners.

7.1) POINT NO. (ii) : In support of the contention falling under Point No. 2, learned Counsel for the petitioners has placed reliance on a Division Bench decision of this Court in *Bangalore University & Anr. v. BP. Puttaraju & Ors.* (1981 (1) KLJ 72). That was case in which the powers of the Vice-Chancellor in the matter of maintaining discipline among the students of the University came up for consideration before a Division Bench of this Court; and it was held thus :

"So extensive power has been thus conferred on the Vice-Chancellor constituting him the principal executive, over all the affairs of the University. He is the final authority for maintenance of discipline among the students. His jurisdiction in matters of internal discipline has been made exclusive, subject to the power conferred on the Syndicate on two specific matters namely, imposing punishment of debarring a student from examinations and expulsion from a College or a

hostel or an institution. 5. In order to develop that mind in every student, what is required is a proper academic atmosphere and timely guidance. It would be for the Vice-Chancellor and the teaching staff to maintain that atmosphere in the University and guide the students. It is for them to make the University a centre of scholarship, research and culture. It is for them to make it a focus radiating learning and wisdom and not to allow it as a battle ground with strikes and strifes. Discipline is the bedrock on which a University is founded, and the Vice-Chancellor under the University Act is charged with the duty to maintain that discipline.

6. There may be a wide range of circumstances developing in the University polluting the academic atmosphere. Different considerations may have to be thought of by the Vice-Chancellor to meet such a variety of cases. There may be cases where prompt and stern action may be called for and sometimes it may be necessary to keep erring students away from the main stream till appropriate disciplinary proceedings are taken

7. The question in the present case, therefore, is as to which side of the line—whether quasi-judicial or magisterial - the powers vested in the Vice-Chancellor under Sections 12(1) and 62 of the Act fall. If the action taken is so fundamental to the position of a student in the University then we must regard the power of the Vice-Chancellor as quasi-judicial and he cannot make any order without opportunity to the student to be affected thereby. But on the other hand, if the Vice-Chancellor is enforcing internal discipline, till the Syndicate takes appropriate action against such students, then he must be exercising only magisterial powers. We have no doubt that the action of the Vice-Chancellor with which we are concerned, falls into the latter category."

In that case, the powers of the Head of a private Institution in the matter of maintaining discipline among the students of the institution vis a vis the powers of the Vice-Chancellor in such matters are not considered. Therefore, the aforesaid decision does not fully cover the point involved in the present case. Sri Viswanatha Shetty, learned Counsel for respondent-2, submits that no doubt the Vice-Chancellor of the University is the final authority in the matter of maintaining discipline among the students and his directions in that regard shall have to be carried out by the Heads of the Colleges, hostels or other institutions which are affiliated to the University; but that does not mean that the Head of a Private Institution in the interest of maintaining discipline in the college and among the students of the college, does not have any power to suspend the students from the college.

7.2) Section 62(1) and (2) of the Act, are as follows :

"62. Discipline : (1) 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 colleges, hostels and other institutions.

(2) Notwithstanding anything contained in sub-section (1), the punishment of debarring a student from examinations or rustication from 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."

Sub-section (1) of Section 12 of the Act, is as follows :

"12. The powers of the Vice-Chancellor : (1) The Vice-Chancellor shall be 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."

A reading of both these provisions makes it clear that the Vice-Chancellor is constituted as the final authority in the matter of maintaining discipline among the students of the University and his directions in this regard are required to be carried out by all concerned. The students of a private college affiliated to the University, are also the students of the University. Sub-section (2) of Section 62 of the Act, further makes it clear that the punishment of debarring a student from examinations or rustication from a college or hostel or an institution on the report made by the Vice-Chancellor, the Syndicate alone is entitled to consider and impose after giving an opportunity to the student or students concerned to show cause to the action proposed to be taken against him or them. Sub-section (1) of Section 12 of the Act, makes it clear that the Vice-Chancellor is the principal executive and academic officer of the University and is empowered to exercise general control over the affairs of the University and to exercise all powers necessary for due maintenance of discipline in the University.

7.3) The question for consideration is whether the fact that the aforesaid provisions vest the final authority in the Vice-Chancellor, in respect of the matters mentioned therein, can be interpreted to mean that Heads of Private Institutions are left with no power at all. If that would have been the object or the intention of the Legislature, there would have been a clear provision contained in the Act to the effect that no other authority other than the Vice-Chancellor can exercise the power in this regard. The maintenance of discipline among the students of a college is a matter of day to day concern. Constant watch and control over the activities, conduct and behaviour of the students in the campus of the college are required to be observed and maintained by the Principal in order to maintain discipline among the students, and ensure an atmosphere congenial to learning. If the Principal has no power and he is there only to see and suffer the acts of indiscipline committed by the students in the college and he is only required to report to the Vice-Chancellor and wait until the Vice-Chancellor takes action in the matter, it would be nothing but handing over the administration of the college into the hands of a few unruly students of the

college. Law should not be interpreted in such a way so as to make it impossible to an administrator to carry on the administration of the college and exercise his power. An interpretation which tends to cause strange and anomalous results should always be avoided. At the same time, when the statute vests final authority in the Vice-Chancellor, the Principal of the college cannot also be held to have power to impose the punishment on the students in the purported exercise of his power to maintain discipline among the students. He is entitled, and must be held to have been empowered, to take only such action as is necessary to maintain the discipline in the college until the Vice-Chancellor takes decision in the matter. In order to maintain discipline, if it becomes necessary, and the situation demands it, the Principal is entitled to suspend the delinquent students pending enquiry into their alleged misconduct. Regarding the period of suspension pending enquiry, what is held by this Court in respect of the Vice-Chancellor must hold good in respect of the Principal of the College also. This Court, in the aforesaid B. P. Puttaraju's case (supra) while interpreting Section 62 of the Act, has held that the Vice-Chancellor has power to suspend the students pending enquiry into misconduct. It has also been further held that the action should be prompt and an order of suspension of a student should be limited to a reasonably short period, say not more than a week or ten days, to avoid hardship to a student unless the delinquent student himself renders the continuance of an enquiry inevitable by his own laches and non-co-operation. The power of the Principal to take necessary steps to maintain discipline cannot also be held to enable him to remove the students from the college or from the hostel, but he can, pending enquiry, if he thinks that it is necessary for the purpose of maintaining discipline among the students, suspend the student/students who is/are responsible or the cause for indiscipline for a period of ten days and report the matter to the Vice-Chancellor in this regard. The Vice-Chancellor is expected to take a decision in the matter immediately. If the Vice-Chancellor agrees with the action proposed by the Principal, he can direct an enquiry to be held and take a decision if the matter is not the one falling u/s 62(2) of the Act. If it falls u/s 62(2) of the Act, he is only required to hold an enquiry or cause it to be held and make a report to the Syndicate. On the report of the Vice-Chancellor, the Syndicate has to take a decision.

7.4) Sri P. Viswanatha Shetty, learned Counsel appearing for the College, submits that it is not necessary for the Principal of the college to issue notice to the students before suspending them from the college pending enquiry. It is not possible to lay down the rule in such absolute terms. As a result of suspension, the students will not only be deprived of their attendance but also the lessons. The injury caused to them in that way may in some cases prove to be fatal to the career of a student. Therefore it cannot be done without notice except in exceptional circumstances. The notice, depending upon the nature and circumstances of the case, and the situation brought about by reason of acts of indiscipline, may be of a short period, but it is necessary in the absence of exceptional circumstances. Therefore, it is necessary to clarify that in a given

case, the situation may be such that by issuing notice, further damage is going to be caused. In such exceptional cases on recording the reasons for it, the Principal may suspend without notice. It is also contended that except in the matter falling under sub-section (2) of Section 62 of the Act, the Principal has got all other powers including constituting a committee for holding enquiry. Section 62 of the Act, as it stands, final authority is vested in the Vice-Chancellor. The Principal of the college is bound to assist the Vice-Chancellor in the matter of maintaining discipline and he has to carry out the directions issued by the Vice-Chancellor in his behalf. If the Principal holds an enquiry either by himself or through a Disciplinary Committee and submits a report to the Vice-Chancellor for taking appropriate decision, it cannot be held that the Principal will be usurping the powers of the Vice-Chancellor as he will not be taking final decision in the matter and he will only be submitting his report to the Vice-Chancellor. But, here again it is necessary to clarify that under the guise of holding an enquiry, he cannot continue the suspension of students for more than ten days, unless the delinquent student himself renders the continuance of an enquiry inevitable.

7.5) For the reasons stated above, the second point is answered in the affirmative but subject to the observance of the conditions mentioned in the preceding paragraphs i.e., 7.1 to 7.4.

8.1) POINT NO (iii) : The impugned notices though call upon the petitioners to submit their explanation at the same time, the petitioners are suspended from the college and hostel. The impugned notices do not state that the acts of indiscipline alleged to have been committed by the petitioners have brought about such a situation that their immediate suspension from the college is necessary in order to ensure peaceful atmosphere and discipline in the college. In the absence of such finding, the suspension of the petitioners from the college and preventing them from entering the class room and taking lessons and also directing the petitioners in Writ Petitions 4833, 4835 to 4837/86 to vacate the hostel room and not to enter it, cannot be sustained. Therefore, it is not possible to accept the contention advanced on behalf of the college that as the notices in question are issued only to enable the petitioners to show cause, and as it is open to them to show cause, it is not necessary to interfere at this stage under Article 226 of the Constitution. The suspension has also not been limited to a particular period. Therefore the contention is rejected.

8.2) As far as the remaining portions of the show-cause notices are concerned, the same do not suffer from any infirmity. If the petitioners have not so far filed their explanations to the show-cause notices, it is open to them to file their explanations on or before the 11th April, 1986.

Accordingly, Point No. (iii) is answered as follows :

The impugned notices in so far they suspend the petitioners from the college and prevent them from entering the class rooms and taking lessons and direct them

to vacate the hostel rooms are not sustainable.

9. The next question for consideration is, in view of the fact that the examinations are scheduled to commence from next week, whether it is appropriate for the Principal of the College and the Vice-Chancellor of the University to proceed with the enquiry pursuant to the show-cause notices in question during the course of the examination. In this connection, the petitioners have filed a memo dated 16th April, 1986 giving an undertaking. The said memo reads thus :

"The petitioners in the above Writ Petitions are bona fide students of Anjuman Engineering College, Bhatkal affiliated to Karnataka University. The petitioners are law abiding citizens and have been bona fide students of the college without giving room for any disciplinary action against them. However, for certain extraneous reasons the Principal of the college issued orders of suspension which are questioned in these Writ Petitions.

The first two petitioners are taking their final examination during this month while the last three petitioners will be writing their pre final examination during this month. If any disciplinary action is taken against the petitioners at this juncture it would result in grave miscarriage of justice to them and deprive them the fruits of their study by affecting their right to take the examinations scheduled to commence during this month.

The petitioners hereby unconditionally undertake that they will not indulge in any acts of violence either against the second respondent-college or against the members of the staff of the college or the sister college in the premises of this college during their stay in the college.

In view of this undertaking, the petitioners humbly pray that no further liberty be reserved to the second respondent to take any action in respect of the allegations levelled against the petitioners in the impugned orders."

In addition to this, it is also stated on behalf of the petitioners that they will file an undertaking similar to the one incorporated in the aforesaid memo before the Principal of the College in question, before the commencement of the examination. It appears to me that for the purpose of postponing the enquiry during the course of the examination, the undertaking given by the petitioners can be acted upon. In case the petitioners file the undertaking similar to the one contained in the aforesaid memo, I have no reason to doubt that the Principal of the college will not act upon it, inasmuch as holding an enquiry during the course of the examination will cause hindrance to the petitioners in prosecuting their education. It is therefore, necessary to order that if the petitioners file an undertaking in the aforesaid terms before the Principal, he shall consider the same in the light of the observations made in this order.

10. For the reasons stated above, these Writ Petitions are disposed of in the following terms :

- a) The impugned notices produced as Annexures A to E, in so far they suspend the petitioners from the college and prevent them from attending the classes and entering class rooms and taking lessons; and further directing them to vacate the hostel room occupied by them forthwith and not to enter the hostel room, are hereby quashed. The remaining portions of the impugned notices stand undisturbed.
- b) If the petitioners have not filed their explanations to the impugned notices, it is open to them to file the same on or before the 11th April, 1986.
- c) If the petitioners file an undertaking in terms of the one contained in the Memo dated 16th April, 1986 referred to in this order, the Principal of the College shall act upon it and postpone the enquiry during the course of the examination scheduled to commence from next week.