

(2009) 12 KL CK 0123

In the High Court Of Kerala

Case No : Writ Petition (C) No. 27625 of 2009 (W)

Derric Joy and Others

APPELLANT

Vs

The Director, Technical Education Trivandrum and Others

RESPONDENT

Date of Decision : 22-12-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 4 KLJ 625

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : T. Ramprasad Unni and Smitha George, for the Appellant; V. Manu (G.P.), K.P. Sujesh Kumar and G. Vanitha, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan

1. The petitioners, students of a Government Polytechnic College, face Ext. P2 order imposing removal from certain semesters. Petitioners 1 and 7 are barred from attending classes for 4 semesters spreading through the academic years 2009-2010 and 2010-2011. The other petitioners are barred for 2 semesters spreading over the academic year 2009-2010. All of them, except two, are also barred from appearing in the examinations, while two are permitted to appear in the supplementary examinations. Petitioners challenge it. The plea of the petitioners is that the allegations against them, of having indulged in ragging a deaf and dumb student, is unfounded and there is no provision in the college calender to dismiss a student from the college. They plead that the Kerala Prohibition of Ragging Act, 1998, hereinafter referred to as the "Kerala Act", does not. contain any provision authorising dismissal but provides for only suspension of students against whom accusation of ragging is made.

2. The petitioners admit that, an enquiry was conducted but plead that it was thoroughly biased and contend that even before the enquiry, those who had

participated in the enquiry had intimated the petitioners that they will be expelled. They plead that they had given statements in the enquiry, expressing their total innocence and that they, including one physically challenged, are targeted at, on the intervention of some politicians.

3. The petitioners further plead that the alleged victim is the real wrong doer and that he had sexual perverts and had exhibited obnoxious and indecent conduct. It is pointed out that the mother of the victim was forced to change her version later and the enquiry had not focused on the conduct attributed to the alleged victim. The petitioners rely heavily on the stand taken by the resident tutor who was in charge of the hostel and who was placed under suspension. following the incident.

4. Along with the counter affidavit filed by the second respondent" the communication given by the Principal of the College to the Sub. Inspector of Police informing the occurrence and also the complaint by the mother of the alleged victim are placed on record. The order of suspension of the resident tutor is also on record along with that, counter affidavit, The report of the enquiry committee is Ext. R2(d), Ext. R2(e) is the accident register cum wound certificate in relation to the victim.

5. The third respondent resident tutor has placed his counter affidavit producing, among other things his explanation given to the department.

6. In their reply affidavit the petitioners heavily rely on the stand of the resident tutor and contend that the enquiry report is tailor-made, They have placed on record Ext.s, P4 and P4(a) statements of the resident tutor.

7. The entire facts relating to the enquiry is on record. I also called for the files in relation to the disciplinary proceedings, in which, the order of suspension against the resident, tutor was revoked. The case diary of the criminal case is also made available.

8. The enquiry file discloses, among other things, the following facts :

(a) The Principal constituted an enquiry committee consisting of the Heads of the Sections in Electronics, Civil, Computer and Mechanical and the Workshop Superintendent. Of whom, two are ladies.

(b) Statements were obtained from 41 persons, including the students who are the petitioners, the victim as also others.

(c) The findings of the enquiry committee show that almost all the hostel inmates gave evidence and had agreed that the victim, a first year student, who was admitted to the hostel on 19.8.2009, was attacked by senior students at about 11 p.m. on 20.3.2009. According to the enquiry committee, the (sic) evidence clearly reveal that, those senior students physically attacked and mentally harassed the alleged victim for about 31/2 hours in night of 20.8.2009.

9. The committee was of the opinion that the incident might have occurred on

the refusal of the alleged victim to write answers to certain questions put to him by seniors. It was noticed that the victim requested for water and was raven drinking water several times during the course of action.

10. It was also noted that no first year student was involved in the incident and it can be seen that the incident is a clear case of ragging in terms of the definitions and guidelines of the All India Centre of Technical Education, for short, the "AICTE",

11. The committee also examined the counter allegations of the senior students against, the victim in relation to the incident The allegation made against, the victim is that he behaved in an indecent manner, as a homo sexual. That version was taken as unbelievable for different, reasons. It was noted that the senior students had not. given any evidence in support, of that, allegation in the statement. The committee also noted that the possibility of such a behaviour from a first year student, especially a deaf and dumb, that too, within two days of his stay in the hostel, is not probable or acceptable.

12. Immediately it needs to be mentioned that one Sunu, whose statements are available at S1. No. 8(7, 8) in the enquiry file, had first given a statement, on 25-8-2009 attributing the victim with homo sexual advances. However, on 29-8-2009, he gave a version to the contrary and on being questioned in that regard by the enquiry committee, Sunu had categorically stated that his earlier version was at the asking and on threat by the senior students. Sunu is a first year student and he was the room mate of the victim. With these materials, the enquiry committee, specifically noticed that, Sunu, the room mate of the victim, though gave a report on the first day of enquiry on 25-8-2009, as to the alleged homo sexual behaviour of the victim, further corrected his earlier statement and admitted that he had raised such an allegation on compulsion from senior students, I have read the two versions of Sunu as available in the enquiry report, and I find no reason to hold that the findings of the enquiry committee is baseless or unavailable on record. Inferences have been rightly drawn on the basis of the materials on record and the common course of human conduct, in as much as, the committee stated that the victim who joined the hostel only on 19-8-2009 would not have behaved in a manner as is attributed against, him as on that day or on the subsequent day. I have also read the other statements in the enquiry report. If the versions given by the different students as to the conduct, of the victim is to be swallowed, the same would be nothing but. the peak of artificiality, more so because, during the day time of 20-8-2009, none of the students had complained, either to the resident tutor to any other authority of an attribute to the victim that he had virtually been going round trying to fiddle the private parts of the different, male students. They, surprisingly, conceived, during the enquiry, to attribute this allegation to the victim which would give a picturesque description of a sexual pervert running from one-student to another, trying to reach out at the private parts of each of such student. This version has been found to be unacceptable to the committee.

Having considered the materials in the enquiry file, I find no reason to disagree with that view.

13. The committee further found that the petitioners and others named in the impugned order were involved in the acts, Accordingly,, the enquiry committee reported to the Principal of the college, specifically recording the findings and also making reference to the AICTE regulations,

14. Certain aspects needs to be noticed. Even in the writ petition, the petitioners admit, that an enquiry was conducted. They proceed to characterise it as biased and pre-mediated to hold the petitioners guilty. The constitution of the enquiry committee is not under challenge. As already noticed, the Heads of four departments., of whom 2 were women, and the Workshop Superintendent were the members of the committee. No personal allegations of bias or ill-motive is attributed to them. They belong to the teaching staff, The allegation in the writ petition is only that the entire exercise has been a mechanism on ground of certain political involvement Except such bald allegation,, there is no specific pleading or any shred of evidence to hold so,

15. Having found that the constitution of the committee is not under and beyond challenge, a perusal of the file would show that the petitioners also participated in the enquiry. The statement of the different students were recorded. All relevant, details were collected and the findings have been rendered after adverting to end considering the materials on record, I have perused the entire enquiry file ami find no ground to hold that the findings arrived at by the enquiry committee and the report, it made to the Principal is, m any manner, unreasonable, arbitrary, perverse, illegal, irrational or lacking in procedural impropriety or unavailable on the materials on record, warranting interference under Article 226 of the Constitution of India.

16. This takes us to the plea on behalf of the petitioners that the impugned orders are issued making reference to the Kerala Act though the said legislation does not make any provision for dismissal or barring admission from classes during any particular academy: session and therefore, the whole exercise is unauthorised.

17. Ext. P2 makes specific reference to the AICTE notification dated 25-3-2009, By that notification, the AICTE issued All India, Council for Technical Education (Prevention and Prohibition of Ragging in Technical Institutions, Universities including Deemed to be Universities imparting technical education) Regulations, 2009. Those regulations, hereinafter referred to as the "AICTE Regulations" were issued in exercise of statutory power under the AICTE Act, 1987 and with the objective to root out ragging in ail its froms technical institutions, Universities, including deemed to be Universities imparting technical education in the country, by prohibiting it by law, preventing its occurrence and to punish those who indulge in ragging in spite of the prohibition. It also provides for preventive action. Those regulations were triggered by the superlative directions issued in

public interest by the Hon''ble Supreme Court of India on the basis of the report, of the committee constituted by that Court, to suggest remedial measures to root out. the problem of ragging in educational institutions. Those notifications provide, in Regulation No.8, that, the punishment to be meted out to the persons indulging in ragging has to be exemplary and justifiably harsh to act as a deterrent against recurrence of such incidents and the students who are found to have indulged in ragging should be debarred from taking admission in any technical institution in India. Without, exception, the institutional authorities are to report every single incident of ragging to the police authorities for registration of First Information Report, Depending upon the nature and gravity of the offence as established by the Anti-Ragging Committee of the institution,, the possible punishments for those found guilty of ragging at the institution level shall be any one or any combination of the different punishments enumerated in those regulations. They include "rustication from the institution for a period ranging from 1 to 4 semesters. It needs to be, therefore, noticed that the punished handed down to the petitioners are within that frame. With that the mere fact, that the Kerala Act. provides for dismissal only on the basis of conviction under that Act is of no consequence and the mere reference made to the Kerala Act in the impugned order, in no manner, takes away the jurisdiction of the Principal to have imposed the impugned punishment.

18. Learned senior counsel appearing for the petitioners further argued referring to the judgments of this Court in P.M. Kurian v. Principal. Government Victoria College. Palghat [1967 KLT 97] and in P.M. Kurien v. PS. Raghavan & Others [1969 KLT 253] that in the absence of rules, the Principal of a college is incompetent to punish a student and disciplinary proceedings cannot but be in consonance with principles of natural justice and domestic enquiry has to be appropriately held. It is argued that it was insufficient that the enquiry'' concluded with the report, which was not thereafter put to the petitioners,

19. The allegations which, led to the aforesaid precedents cited on behalf of the petitioners related to a student who was alleged to have resorted to malpractices during the annual examinations. In the latter judgment, this Court considered the issues after noticing that the student therein had earlier sought relief that led to the earlier decision.

20. In so far as the realm of domestic enquiry and disciplinary matters is concerned, there is no doubt that rules of natural justice have to be followed, Fairness is an inexcusable element of all proceedings which result in deprivation of freedom to enjoy certain rights, including the right, to be imparted with instructions in a college. The AICTE Act 1987 empowers the framing of regulations. The directions issued by the Apex Court in matters relating to ragging were issued in public interest and with immediate requirement, having regard to the devastating effect that ragging has in the field of education and in campus. They are plenary directions. It. needs to be recalled that even in anticipation of regulations., the Apex Court, had issued directions to regulate the

field of education in that regard. The regulations under consideration is not under challenge. The validity of those regulations are not impugned. They are statutory. As already noticed, it provides specifically for the imposition of punishments which are enumerated therein, which include the punishment imposed on the petitioners. The imposition of punishment has to be made depending upon the nature and gravity of the offence, as established by the Anti-Ragging Committee of the institution. As already noted, the constitution of the committee is not challenged. Its competence is not challenged and no vitiating attribute is made against that committee.

21. With this, it has to be noted that, the proceedings being in terms of statutory regulations, rules of natural justice cannot be imposed to say that the report of the committee ought to have been again put to the petitioners,, before the Principal took a decision on the basis of that report, because the statutory regulations themselves oblige the Principal to band down the punishment based on the report, of the committee.

22. In so far as the quality of the enquiry is concerned, it has already been noted that the statements of the students were recorded; relevant questions were put to them and answers elicited. Having regard to the nature of the enquiry,, it is not the requirement to have any further hearing on the basis of that, report made by the committee after due enquiry. The enquiry and the imposition of the impugned punishment are, therefore, not vitiated on any count.

23. From the aforesaid, it also needs to be noticed that the petitioners are facing proceedings before the criminal court. The quality of appreciation of materials in an enquiry- under the Regulations, essentially rests on preponderance of probabilities and it would not., in any manner, impair the petitioners defence at trial, in the criminal case. It is so clarified. The appreciation of evidence by the committee has already been found to be reasonable and no attribute as to arbitrariness or perversity sustains against it. The findings and the punishment therefore, stands.

In the result, this writ petition fails. The same is accordingly dismissed. No costs.