

(1996) 02 KAR CK 0012
In the Karnataka High Court
Case No : Writ Petition No. 4468 of 1995

D.M. Keshavamurthy

APPELLANT

Vs

Pre-University Education Examination Board, Bangalore and
Another

RESPONDENT

Date of Decision : 19-02-1996

Acts Referred:

Citation : (1997) 3 CivCC 254

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Vagdevi Associates, for the Appellant; A.V. Snnivasan Reddy, Addl. Govt. Advocate, for the Respondent

Judgement

M.F. Saldanha, J.—Heard petitioner's learned Advocate and the learned Government Advocate. Petitioner's learned Advocate has seriously assailed the correctness of the order dated 1-2-1996 because he submits that neither has any proper enquiry been conducted nor has the charge of having committed the malpractice been established. His contention was that some statement is attributed to the petitioner which does not- establish anything namely that the slip in question was recovered from the custody of the petitioner or more importantly, that the contents of that slip was in any way connected with the examination. Apart from the fact that the petitioner has moved this Court earlier on the ground that he was kept in a state of limbo insofar as no action was taken right up to the month of January 1996 nor were the petitioner's results declared, as a result of which he sought permission to appear at the ensuing examination which was why this Court issued certain time bound directions. The learned Advocate submits that the petitioner complied with everything but the Principal refused to accept the fees and that on 27-1-1996 his client was only called and asked to sign on a piece of paper before the Committee and that on 1-2-1996 the impugned order debarring him from the last examination as also the forthcoming one has been passed. The learned Advocate has submitted that even though he accepts the position that no full dressed detailed proceedings are

required, that at least a semblance of a correct fact finding enquiry must be held and he submits that in this instance the report produced by the learned Government Advocate will indicate that the Committee has only looked at the statements of the invigilator, the vigilance squad and the one attributed to the petitioner and has straightaway passed an order against him. He submits that the petitioner had no opportunity of pointing out anything to the Committee. As far as this challenge is concerned, I am unable to uphold it because the petitioner was present along with his father and he is alleged to have admitted his earlier statement regarding the fact that he was found with a piece of paper but he thereafter resiled from this position at the instance of his father which is recorded in the report. However, the report also indicates that the petitioner's version has been set down by the Committee namely that he pointed out that the paper had nothing to do with this subject.

2. As regards the last aspect of the matter, the petitioner learned Advocate submitted that the prohibition contained in the rules with regard to documents, material etc., must by necessary implication lead to mean any material that is connected with the subject-matter of that examination and which would therefore be of assistance to the candidate in copying or indulging in some sort of malpractice. He submits that if any other piece of paper happens to be in the possession of a candidate which has nothing to do with the subject in question, that it cannot come within the ambit of committing a malpractice. As far as this last aspect of the matter is concerned, I do find that the Enquiry Committee has jumped to a conclusion without applying their mind to this important aspect of the case. In actual fact, they ought to have very clearly, recorded what the contents of that slip were and whether it was something from which the petitioner could derive the benefit assuming it was recovered from his possession or that he had used it in the course of answering his examination. This crucial aspect of the case has been completely overlooked by the Committee. To this extent, the petitioner's learned Advocate is right in pointing out that the finding against the petitioner would be unsustainable.

3. The incident in question has taken place in October, 1995. The authorities state that they have straightaway passed an order dated 18-10-1995 but that, pursuant to the directions of this Court, it once again held an enquiry on 27-1-1996 and passed the present order dated 1-2-1996. On a technical point, this order is once again rendered defective and will therefore have to be set aside but that does not take away the right of the respondents to reconsider the matter and pass a fresh order. The important question is whether they should be permitted to do so? The petitioner is a young student and even assuming that the authorities are right in their allegations against him, they ought to have completed the enquiry on a time bound basis and they ought to have completed it correctly. If anything has gone wrong in that regard, I do not propose to permit them to reopen the matter and pass a third order irrespective of what they have come up in the enquiry. This Court has while dealing with several similar cases repeatedly laid down that in instances of this type, it is necessary

both for the authorities and for the students that the enquiry be expedition and time-bound and this Court has therefore prescribed the time limit of two months for completing the enquiries. That order however will not apply to this case insofar as the incident was much prior to those directions being issued.

4. It is in this background that the impugned order dated 1-21996 will have to be quashed. This Court would however have to mould the relief granted to the petitioner insofar as merely because I have disallowed the respondents from holding another enquiry, I do not propose to confer any undue benefit on the petitioner. To my mind, he has been sufficiently punished and therefore, the earlier direction that his fees in respect of the ensuing examination be accepted and that he be permitted to appear for the ensuing examination is confirmed.

5. The petition succeeds to this extent. With these directions, the petition to stand disposed of.