
(2013) 01 KL CK 0108

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 16645 of 2012 (E)

Dr. Abraham Kuruvilla

APPELLANT

Vs

University of Kerala and Others

RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(a), 21, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Citation : (2013) 01 KL CK 0108

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : D. Anil Kumar, for the Appellant; George Poonthottam, SC, Kerala Uty for R1 to R3, Sri. Kurian George Kannanthanam and Sri. Tony George Kannanthanam, for R5, Sri. N. Raghuraj, SC, TCMC and KNMC for R6 and Sri. P. Chandrasekhara Pillai, C.B.I. for R7, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—The main relief sought for in the writ petition is for a direction to the Central Bureau of Investigation to conduct an investigation into the alleged fraud committed by the fifth respondent in obtaining the mark list for his Pre degree examination from the first respondent University. The petitioner is a practicing Urologist in the Sri Chitra Tirunal Institute of Medical Sciences and Technology, Thiruvananthapuram and the fifth respondent is his brother-in-law. His sister, viz. Smt. Mini Jacob is the wife of the petitioner. Litigations are there pending between the petitioner and his wife, but the petitioner maintains that the writ petition is not filed as a retaliation in connection with the family disputes pending. The fifth respondent is a Radiologist who is conducting a scanning centre under the name Quilon Scans at Kollam. He completed his Pre degree course from Fathima Mata National College, Kollam during the years 1984-1986. The main allegation raised by the petitioner is that the fifth respondent has not successfully completed the course. The petitioner submits that the reply given by the fourth respondent to the application submitted by the Advocate of the

petitioner under the Right to Information Act, as instructed by him, arose suspicion in the matter. According to the petitioner, during the relevant years, viz. 1984-1986 there were two students by the same name Vinod Jacob in the same college. Ext. P7 is the reply given by the Principal of the college to one of the applications filed under the Right to Information Act. The same gives the details regarding the fifth respondent and another Vinod Jacob. The register number of the fifth respondent is shown as 77131 and as regards the other Vinod Jacob it is 77132. The marks of the said Vinod Jacob for the second year shows that he has obtained 87 for Physics, 53 for Chemistry and 88 for Mathematics. It is submitted that the fifth respondent was a student of Pre degree in the First Group whereas the other Vinod Jacob was in the First Group. Therefore, the consecutive register numbers shown is really impossible. The other Vinod Jacob belonged to Latin Catholic community whereas the fifth respondent belongs to Marthomite rite. The other Vinod Jacob died on 8.11.2005.

2. Ext. P9 is stated to be a reply received by the petitioner's counsel wherein the marks of the fifth respondent for the second year Pre degree is shown as follows: Physics-87/150, Chemistry-53/150, Biology-88/150. It is stated that these are the exact marks obtained by the deceased Vinod Jacob. Ext. P9 will show that for Mathematics the other Vinod Jacob obtained 88 marks whereas the fifth respondent obtained 88 marks in Biology and the allegation is that the fifth respondent had substituted the marks obtained by the deceased Vinod Jacob as that of himself. In answer to the application submitted by the petitioner requesting to furnish the marks of the Pre degree examination, the Principal, by Ext. P11 replied that the records are not available.

3. It is also the case of the petitioner that the enquiries made by him in the matter arose panic in the family of the fifth respondent. The mother of the fifth respondent applied for a course certificate as per Ext. P12 application, producing Ext. P13 mark list. The further allegation made by the petitioner is that Ext. P13 contains various anomalies as detailed in para 8 of the writ petition which creates a genuine suspicion about its authenticity. Thereafter, the fifth respondent filed an application and an affidavit stating that he lost the original of Pre-degree mark list. On coming to know that the first respondent University is about to issue a duplicate mark list to the fifth respondent, the petitioner obtained the copy of the application and the affidavit which have been produced as Exts.P14 and P15. The fifth respondent raised an objection in the matter as per Ext. P16. Ext. P17 is the reply given by the University in the matter to the petitioner. Therein, they have explained that the fifth respondent was issued a modified mark list dated 25.6.1987 incorporating the revaluation marks for Chemistry Paper II. The petitioner thereafter filed a complaint as per Ext. P18 before the second respondent Vice Chancellor of the University. He was given a reply by Ext. P19 stating that the allegations raised are baseless and the Vice Chancellor has ordered to close the file. Ext. P20 is the reply given by the Controller of Examinations. Ext. P22 is the copy of the duplicate mark list issued to the fifth respondent dated 8.5.2012. It is stated that the same is handwritten which is

also not normally possible. The fifth respondent after completing MBBS, has registered with the Travancore Cochin Council of Modern Medicine.

4. The contention raised by the petitioner therefore is that the duplicate mark list has been obtained fraudulently and the answers given to the petitioner by the University as per Exts. P19, P20 and P21 cannot be sustained. The first prayer in the writ petition is to quash Exts. P19 to P22 and the further prayer is to direct the seventh respondent, Central Bureau of Investigation to conduct an investigation.

5. As directed by this Court, a counter affidavit was filed by the second respondent. The fifth respondent has also filed a counter affidavit and the petitioner has filed reply affidavits to the above counter affidavits.

6. Heard learned counsel for the petitioner, Shri D. Anilkumar, Shri George Poonthottam, learned Standing Counsel appearing for the University, Shri Kurian George Kannanthanam, learned Senior Counsel appearing for the fifth respondent, Shri N. Raghuraj, learned Standing Counsel appearing for the sixth respondent and Shri P. Chandrasekharan Pillai, learned Standing Counsel appearing for the seventh respondent.

7. The arguments were heard on the scope of admission of the writ petition, the reliefs sought for having a C.B.I. investigation and whether the same is entertainable. Learned counsel for the petitioner relied upon the decision of this Court in State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, to contend that an investigation by the CBI is required, whereas the learned Senior Counsel appearing for the fifth respondent submitted that in the light of the decision of the Apex Court in T.C. Thangaraj Vs. V. Engammal and Others, no case has been made out for any investigation by the CBI.

8. I shall refer to the averments in the counter affidavit of respondents 1 to 3, especially with regard to the alleged discrepancies in the marks and the suspicion reiterated by the petitioner. With regard to the respective register numbers, it is explained in para 4 that the register numbers of the candidates are prepared by the University on the basis of the applications submitted by the respective colleges for each examination which will be on the basis of alphabetical order and the contentions of the petitioner otherwise are not correct. It is stated that Ext. P7 given by the Principal of the college does not match with the data as available in the official records and the marks of the fifth respondent vide Ext. P9 reflect the official records prior to revaluation. The University has also disputed the correctness of the marks of the deceased Vinod Jacob. It is stated in para 6 that as per the records of the University he had only secured 57 marks for Mathematics. Therefore, the substitution of his marks by the fifth respondent cannot at all be made also. In para 7 of the counter affidavit it is explained that the glaring mistakes attributed by the petitioner in Ext. P13 photo copy of the mark list are not correct. It is stated that Ext. P13 mark list has been enlarged to

such an extent that the name of the University, emblem and the bottom portion of the mark list have been left out and hence the name of the University as well as its emblem are not discernible. It is stated that in any event, the entries have been compared with the original records and have been found to be correct. Ext. P13 is the computer generated one which came to be issued during the Pre Degree Board strike. The defects are most likely the result of lack of clarity in the photo copy. The marks have been entered pre fixing zero as they are computer generated. It will further qualify the accuracy of the marks obtained. The place and date of certificate have been indicated in the top right hand side. Other averments have also been made to show that the alleged mistakes attributed by the petitioner are not correct. It is further explained that Ext. P13 dated 25.6.1987 was issued prior to the effecting of marks obtained in the improvement examination. After effecting the changes, the marks of the fifth respondent in Biology was changed from 88 to 96, whereas the improvement marks for the first year was changed from 14 to 22. Similarly, he obtained 55 marks in Chemistry on revaluation from 53. The deceased Vinod Jacob, on the other hand, secured only 38 marks in Chemistry (as can be seen from Ext. P22(a) against the assertion of the petitioner that he secured 53 in the said subject. In para 9 of the counter affidavit it is stated that the deceased Vinod Jacob initially failed the Pre degree examination and his marks card came to be issued at a later date as priority is given to issue marks card of those candidates who have passed the examination. Under these circumstances, Ext. P22(a) was issued to the deceased Vinod Jacob on 18.10.1986, whereas the original of Ext. P22 was issued to him on 11.7.1986. The counter affidavit states that the allegations against the Vice Chancellor, the Registrar and the Controller of Examinations of the University are baseless. It is further averred that only after thorough investigation and after satisfying that all objections raised by the petitioner are baseless, the duplicate marks card was issued to the fifth respondent

9. The fifth respondent in his counter affidavit, stated that the writ petition is clearly to wreck vengeance in view of the dispute between the petitioner and his wife who is the sister of the fifth respondent and due to the fact that their marital relationship was broken. It stated that for the CBI to investigate, there should be at least the registration of a crime by the Police and no crime is pending investigation against the fifth respondent. The petitioner has not approached the State Police also in the matter. The fifth respondent has produced as Exts. R5(a) to R5(c) copies of the mark lists. It stated that he had appeared for improvement of first year Biology paper along with the second year examination and the marks got improved and therefore the actual marks of Biology ought to have been 96 instead of 88. This was not included in Exts. R5(a) and R5(b). The fifth respondent had also applied for revaluation. The corrected mark list was issued on 25.6.1987, produced as Ext. R5(c). It is stated that the reverse side of Ext. R5(c) shows that it is a corrected copy. Further, he got the benefit of revaluation by two marks for Chemistry. This also was incorporated now.

10. In the reply affidavit filed by the petitioner to the counter affidavit of the University, the allegations have been reiterated. The petitioner has filed a detailed reply affidavit to the averments of the fifth respondent also.

11. The petitioner has not admittedly approached the State Police and the justification pleaded by the petitioner in para 18 of the writ petition is that an investigation by the Kerala Police will not be fair and impartial as the wife of the present Controller of Examinations is now the Inspector General of Police.

12. Learned counsel for the petitioner, Shri D. Anilkumar emphasised that the comparison of the marks of deceased Vinod Jacob and that of the fifth respondent leads only to one possibility that the marks have been substituted. It is submitted that the replies given by the University are not cogent or convincing. It is also submitted that Exts. R5(a) to R5(c) produced by the fifth respondent will only supplement the averments of the petitioner.

13. Shri George Poonthottam, learned Standing Counsel for the University submitted that all the allegations are only the figment of imagination of the petitioner, raised because of the family disputes. It is submitted that the University is sought to be drawn into the private dispute without any justification and wide publicity has been given with respect to the filing of the writ petition. It is submitted that the detailed replies given by the University will reveal the correct facts. Learned counsel explained that the main plea raised by the petitioner about the substitution of the marks of the deceased Vinod Jacob to that of the fifth respondent falls to the ground in the light of the fact that the fifth respondent had obtained marks after improvement and revaluation and the marks of deceased Vinod Jacob shown by the petitioner are not the correct ones. It is submitted that all the replies have been given after tallying with the official records and the duplicate mark list has also been issued accordingly. Learned Standing Counsel further submitted that without approaching even the State Police in the matter, the plea raised by the petitioner for an investigation by the CBI cannot be accepted.

14. Learned Senior Counsel appearing for the fifth respondent submitted that the petitioner is trying to wreck vengeance because of the family disputes and the fifth respondent is now being drawn to this Court in the matter unnecessarily and that the petitioner has given wide publicity about the filing of the writ petition. It is submitted that the fifth respondent has only obtained correct marks and there is no reason for him to substitute the marks of deceased Vinod Jacob.

15. Shri D. Anilkumar, learned counsel for the petitioner explained that the publicity alleged to have been given is not the work of the petitioner. The question is whether the issue needs an investigation to be conducted by the CBI. Admittedly, the petitioner has not approached the Police by filing a complaint.

16. The decision of the Apex Court relied upon by the learned counsel for the petitioner, viz. Committee for Protection of State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, lays

down that the Apex Court under Article 32 and this Court under Article 226 has wide powers to direct an investigation by the CBI into a cognizable offence without the consent of the State. The question arose on the interpretation of Section 6 of the Delhi Special Police Establishment Act, 1946 which is under the heading "Consent of State Government to exercise of powers and jurisdiction.

17. The said case arose when the High Court of Judicature at Calcutta directed investigation by CBI in relation to an incident which occurred wherein a group of people belonging to one political party were attacked by another group of opposing members of a political party which resulted in a number of casualties. The legality of the direction issued by the High Court came up for consideration before the Apex Court. The Constitutional provisions concerning separation of powers and the power of judicial review conferred on the Constitutional courts have been elaborately considered therein. It was held that "no Act of Parliament can exclude or curtail powers of Constitutional Courts with regard to enforcement of fundamental rights.

18. In fact, the Apex Court was considering the alleged violations of the fundamental rights as evident from para 28 of the judgment, viz. the right to equality under Article 14, the freedom of speech under Article 19(1)(a) and the right not to be deprived of life and liberty except by procedure established by law under Article 21. Various decisions of the Apex Court were examined and the direction to conduct CBI investigation was sustained. But in para 46, the Apex Court has issued certain self imposed limitations on the exercise of the constitutional powers. The said paragraph reads as follows:

46. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Arts. 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the C.B.I. to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the C.B.I. would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

It was held that an order in the form of a direction to the CBI to conduct an investigation is not to be passed as a matter of routine or merely because a

party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations. Those situations will be to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. It was held that otherwise, the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases.

19. Therefore, these factors are relevant for the purpose of considering the plea for C.B.I. investigation in this case also. Herein, it is not a case involving any violation of the fundamental rights. The petitioner is not alleging that any offence has been committed against his person or property. Therefore, evidently, none of the tests laid down in para 46 will apply here.

20. In a later decision of the Apex Court in *Thangaraj v. Engammal* (2011 (3) KLT SN page 115, C. No. 117), these principles were reiterated and held that the power under Article 226 should be exercised sparingly, cautiously and in exceptional circumstances. The dictum laid down therein reads as follows:

The power of the High Court under Art. 226 of the Constitution to direct investigation by the C.B.I. is to be exercised only sparingly, cautiously and in exceptional situations and an order directing to C.B.I. is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. S. 156(3) of the Code of Criminal Procedure provides for a check by the Magistrate on the police performing their duties and where the Magistrate finds that the police have not done their duty or not investigated satisfactorily, he can direct the Police to carry out the investigation properly, and can monitor the same.

In fact, it was also observed that Section 156(3) of the Code of Criminal Procedure gives power to the Magistrate to direct the Police to carry out the investigation properly and he can monitor the same also. The said findings are also relevant while considering the pleas of the petitioner.

21. Herein, the plea raised by the petitioner for not approaching the local Police is that the wife of the Controller of Examinations is an I.P.S. Officer in the cadre of Inspector General of Police. The petitioner has not approached the State Police and there is no averment to that effect in the writ petition. Therefore, it is too premature to accept the said averment on its face value. The same will not justify a direction to the CBI to investigate the matter. Learned Standing Counsel for the CBI also submitted that the petitioner's contentions cannot be accepted. Judged in the light of the dictum laid down in the above two cases, the present case does not satisfy those tests and this is not a fit case for a direction to be issued to the CBI to investigate the matter.

22. In fact, learned counsel for the petitioner submitted that the publicity in the matter was not given by the petitioner. I am not going into such disputes in this

writ petition. The only consideration is whether the petitioner has established any grounds in tune with the guidelines issued by the Apex Court for a direction to conduct an investigation by the CBI. Those are not satisfied in this case.

23. Even though the petitioner has made other prayers regarding quashing of Exts.P19 to P22, viz. the replies given by the Public Information Officer of the University under the Right to Information Act, by the Controller of Examinations explaining various aspects regarding the marks and by the Joint Registrar and the appellate authority under the Right to Information Act. I am not satisfied that the said prayers also can be granted. In Exts.P20 and P21 elaborate reasons have been given while denying the suspicion raised by the petitioner in the matter. Therefore, for all these reasons, the writ petition is not entertainable and the same is accordingly dismissed.