
(1995) 06 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18516 of 1994

G. Kondala Rao

APPELLANT

Vs

Registrar, Sri Venkateswara University, Tirupathi, and another

RESPONDENT

Date of Decision : 14-06-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1995 AP 338 : (1995) 2 ALT 507

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : Mr. N. Guru Gopal, for the Appellant; Mr. T.S. Harnath, for the Respondent

Judgement

1. The petitioner is the student of first year law in five years law course, appeared for the first year examination which was held on 20-5-1994 being the second paper in the first year examination paper being Political Science. The invigilator seems to have found the petitioner without the question paper. At the spot, the Invigilator found the question paper of the petitioner in the hands one Mr. Venkat Rao, another student appearing for the first year examination. The Invigilator seems to have made some efforts to gather information as to how the question paper of the petitioner found in the hands of Venkat Rao. It is stated that neither the petitioner nor Venkat Rao co-operated with the Invigilator with the result the invigilator had to send the report to the Chief Superintendent of the examination centre intimating the mal-practice the petitioner had indulged. Basing on the report of the Invigilator, the University authorities had issued show-cause notice, dated 1-7-1994 seeking explanation from the petitioner on the following ground :

"The candidate was not having his Section II question paper. When questioned, he answered that somebody has taken it away from him. When it was found with Mr. P. Venkat Rao, Reg. No. 1935131; he said that he had committed a mistake. He refused either to disclose his address or show his hall-ticket and stated that,

he can be booked and debarred".

On the said allegation as stated supra, show-cause notice dated 1-7-1994 was issued to the petitioner seeking his explanation on or before 7-7-1994. It is stated that the petitioner failed to furnish his explanation to the show-cause notice with the result the respondent had passed final order on 24-9-1994 debaring the petitioner from appearing for the examinations up to September, 1995. Further, the result of the examinations which the petitioner had undergone were directed to be cancelled and the petitioner was not permitted to appear for September, 1994 and April, 1995 examinations.

2. Questioning the said order dated 24-9-1994. the present writ petition is filed.

I have heard Sri Sanku, learned counsel appearing on behalf of the writ petitioner and Sri Haranath, learned counsel appearing on behalf of the respondent-University.

3. On hearing the argument at length, two questions fall the consideration before this Court:

(1) Whether the petitioner is entitled to question the proceedings dated 24-9-1994 issued by the respondent; and

(2) Whether the respondents have shown justifying reasons for this Court to sustain the efforts in maintaining the order dated 24-9-1994.

4. Sri Haranath, the learned Standing Counsel appearing on behalf of the respondent makes herculean efforts before this Court trying to convince this Court that the petitioner had indulged in mal-practice, with the result the decorum and discipline which is expected to be maintained during examination by the participants in the examination-hall has been shattered. The petitioner had assisted one Mr. Venkat Rao by handing over his question paper incorporating all the answers on the back side of the question paper, which act amounts to mal-practice during the examination time. Sri Haranath has also placed before me the relevant record and the report of the Invigilator which shows that the petitioner had refused to disclose his identity and co-operate with the Invigilator and had behaved irresponsibly with the Invigilator creating sonic nuisance in me examination hall. The Invigilator report further shows that the petitioner had written answers on the back side of the question paper with the sole intention to assist Venkat Rao.

5. In this context, Sri Haranath persuades this Court, taking into consideration the conduct expected from the students at the time of examinations and contends that there are no grounds for this Court to interfere in matters dealing with discipline of students are involved and, therefore, submits that the writ petition has to be dismissed.

6. To meet these contentions, Sri Sanku, the counsel appearing on behalf of the petitioner prima facie points out that the show-cause notice issued to the

petitioner is defective inasmuch as the principal accusation made against the petitioner is not found in the show-cause notice and, therefore, the efforts not being made to settle the crucial question by way of argument is not sustain-able. It is further contained that on the question paper, neither the signature of the petitioner is found nor the student had any occasion to explain the allegation that he had written the answers on the back side of the question paper. The show-cause notice only discloses that the petitioner's question paper was found with one Mr. Venkat Rao. Mere finding a question paper of the petitioner, it is -stated, cannot be a ground to presume that the petitioner intended to assist the so-called Venkat Rao or the petitioner could be termed as indulging in mal-practice. It is further urged by Sri Sanku that in the absence of show-cause notice making a specific allegation to the effect that the petitioner had incorporated all the answers on the back side of the question paper and that paper was handed over to Venkat Rao, which is intended for writing correct answers, it cannot be said that the petitioner has indulged in malpractice. In the absence of this specific allegation when the show-cause notice itself is defective, the petitioner has no occasion to meet the specific charge and as such failed to submit his explanation. The respondents have no justifying grounds to pass the order of this nature which is in effect debarring a student from the examinations for two years up to September, 1995.

7. I have heard the arguments of both the counsel at length. It is true that when the matter of this nature, discipline and decorum are-expected to be maintained in the Universities, Courts are to keep away from interfering when action by the University authorities is initiated particularly with reference to the allegations levelled against a student is of such magnitude indulging in malpractices. It is equally true that the students who are appearing in the examinations are expected to maintain certain amount of decency and discipline without giving scope for any malpractice. Here is the case where allegations are made against the petitioner that he had indulged in malpractices by way of helping other student by name Venkat Rao, handing over his question paper by incorporating necessary answers on the back side.

8. Unfortunately, on the question paper which is said to have been the question paper of the petitioner, no signature of the petitioner is obtained to show that it belonged to the petitioner. Even otherwise, the show-cause notice which is issued to the petitioner seeking his explanation, fails to disclose the principal allegation against the petitioner that the petitioner had incorporated all answers on the back side of the question paper and passed on the same to Mr. Venkat Rao which action is intended to help him to write correct answers. Having failed to indicate the principal allegation in the show-cause notice, I am afraid, I cannot accept the contention of Sri Harinath, learned counsel appearing on behalf of the respondents, when he says that mere failure to indicate the allegation may not vitiate the show-cause notice.

9. As I said earlier, the crucial question is whether the respondents have made

efforts to elicit from the petitioner through the show-cause notice the principal allegations against him as to the petitioner writing answers on the back side of the question paper and passing over the same to Venkat Rao which would enable the said Venkat Rao to copy the answers. Since the show-cause notice fails to disclose the same, I am not persuaded to accept the view submitted by the learned counsel for the respondents. In this view of the matter, I hold that basing on the defective show-cause notice, the respondents are not allowed to have their say through its impugned proceedings which has the effect of preventing the petitioner from appearing for the examinations up to September, 1995. The efforts now being made by the counsel for the respondents to improve the case, though not specifically pleaded, may not achieve the desired effect.

10. In this context, it is noteworthy to extract the following para from *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, .

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out."

Precisely, the efforts now being made by Sri Harinath, seem to be in the above lines. Therefore, I have no hesitation in holding that, the efforts now being made by Mr. Harinath cannot be permitted to, and are rejected.

11. In this view of the matter, the writ petition is allowed and consequently, the proceedings under challenge are set aside. However, it is open to the respondents if they are so advised, to issue fresh show-cause notice to the petitioner calling for his explanation and pass appropriate order according to procedure. Since I have set aside the order of debarring the petitioner for appearing from the examinations, what is the relief the petitioner now entitled to ? Sri Harinath, however, disputes to the fact that Article 226 can be extended up to only a reasonable point. I am afraid, the scope of Article 226, cannot be limited. In a given circumstance, Constitutional Courts can mould the relief meeting the situation.

12. In this case, the petitioner seems to have appeared for the first year Political Science examination and second year examinations pursuant to the interim direction granted by this Court on 11-10-1994, pursuant to which the petitioner appeared on 17-10-1994. It is stated that the results of the said examination have not been announced. Since I have set aside the impugned order, the respondents are directed to announce the results of the examinations for which the petitioner has appeared on 17-10-1994 pursuant to the interim direction of this Court dated 11-10-1994.

The Writ Petition is allowed in the above terms. No costs.

13. Petition allowed.