

(1991) 12 KL CK 0029
In the High Court Of Kerala
Case No : O.P. 10683/91

George Roy and Another

APPELLANT

Vs

Mar Athanasius College of Engineering and Another

RESPONDENT

Date of Decision : 06-12-1991

Acts Referred:

Citation : (1991) 12 KL CK 0029

Hon'ble Judges : Chettur Sankaran Nair, J

Bench : Single Bench

Advocate : S. Venkitasubramonia Ayyar, T.P.K. Nambiar, for the Appellant; M.N. Sukumaran Nayar, for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Chettur Sankaran Nair, J.—Petitioners, debarred from studies for three years from 14th November 1990 to 13th November 1993 by Ext. P-7 order of second Respondent-principal of an Engineering College, challenge that order. They are 8th Semester students in the Engineering College under second Respondent. Jubilant in mood and high in spirits, Petitioners are said to have accosted some girl students and asked them for their names. The girls were not responsive to the overtures. Annoyed with their indifference, Petitioners used obscene language and one of them pulled a girl by her arm, while the other lay his hands on the thighs of Anr. girl. This was around 3 p.m. on 12th November 1990.

2. Show cause notices were issued, replies were obtained and an adjudication was made. To cut a long story short, Petitioners were expelled by Ext. P-7 order.

3. Petitioners allege infraction of natural justices, on the grounds that statements made by the girl students were not furnished to them, that material of which they had no notice was relied on, and that they were not given an effective opportunity to cross-examine the girl students. They would also submit that punishment is harsh, dwelling on the theme of reformation and repentance.

4. Requirements of natural justice have been differently understood in different

contexts. In *James Dunbar Smith v. Her Majesty The Queen* 1877-78 (3) A.C. 614 the Judicial Committee of Privy Council, understood the requirement as "the requirement of substantial justice". In *re H.K. (An Infant)* 1967 (2) Q.B. 617 Parker C.J. described the requirement of natural justice as the duty to act fairly. A graphic description of the requirement was given by Lord Russell of Killowen in *Fairmount Investments Ltd. v. Secretary to State for Environment* 1976 (1) W.L.R. 1255 as:

a fair crack of the whip.

Even in *Ridge v. Baldwin* 1964 A.C. 230 the bedrock of natural justice in modern times, a larger requirement or a broader principle, was not visualised. Lord Reid stated:

In modern times, opinions have some times been expressed to the effect that natural justice is so vague.... It appears to me that one reason why the authorities of natural justice have been found difficult to reconcile, is that insufficient attention has been paid to the great difference between various kinds of cases in which it has been sought to apply the principle.

(emphasis supplied)

The need to modulate requirements in varying situations, was again stressed by Megarry, J. in *Hounslow London Borough Council v. Twickenham Garden Developments Ltd.* (1971) 1 Ch. 233.

The principles of natural justice are of wide application and great importance, but they must be confined within proper limits and not allowed to run wild.

(emphasis supplied)

The same caution was administered by Ormrod L.J. in *Norwest Holst Ltd. v. Secretary of State for Trade* (1978) 1 Ch. 201.

The House of Lords, and this Court have repeatedly emphasised that the ordinary principle of natural justice must be kept flexible and must be adapted to the circumstances prevailing in any particular case.

(emphasis supplied)

The observations of Hailsham L.C. in *Pearlberg v. Varty* (1972) 1 W.L.R. 534 bear repetition:

The doctrine of natural justice has come in increasing consideration in recent years and the courts generally and your Lordship's House in particular, have, I think rightly advanced its frontiers. But, at the same time, they have taken an increasingly sophisticated view of what it requires in individual cases

(emphasis" supplied)

In *Chingleput Bottlers Vs. Majestic Bottling Company*, after surveying the law in

extenso, the Supreme Court came to the view that there is no principle of uniform application. The Court stated:

There are no inflexible rules of natural Justice. Each case turns on its circumstances.

5. Principles of natural justice embody basic notions of fair play, which were always part of man's beliefs. It implies the duty to act fairly in substance, and not in any specified manner of procedure. The requirement is neither invariable, nor inflexible. Nor, can it be cabined, confined and cribbed in procedural frames. The requirement varies with situations, in which they are sought to be supplied. Every adjudication or *lis*, involves conflicting interests. Fairness implies fairness to both--the accused and the aggrieved, and not to one alone. The precise extent of application of the principle to an enquiry made by an academic body, must be determined by relevant considerations, like relationship between the teacher and the taught, need to maintain discipline, and consequences that may follow undue leniency. An academic body is not a bridge to an economically better life. It is intended to be an Alma mater in the true sense. It must develop values and character in the young men and women who pass through its portals. The relationship between the teacher and taught is highlighted in *Thampan v. Principal, Medical College* 1979 KLT 45:

The inherent right and quasi-parental authority of a teacher to proceed by way of disciplinary action against a pupil under his charge has been well recognised over the years....

In a situation like that, the rigours that accompany an enquiry in other regions, do not apply in full force. Rules like furnishing copies of statements, cross-examining witnesses, and so on do not apply.

6. In *Regina v. Race Relations Board, Ex parte Selvarajan* 1975 (1) W.L.R. 1686. Denning, M.R. indicated the scope of enquiries:

The investigating body is the master of its own procedure. It need not hold a hearing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it, if the broad grounds are given, it need not name the informants.

In *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, the Supreme Court had occasion to consider the extent to which principles of natural justice apply in such enquiries. The Court said:

These authorities were in loco-parentis to all the students, male and female living in the hostel and the responsibility...was greater because their guardians had entrusted them to their care...the authorities could not dismiss the matter as of small consequence.... The committee called the girls privately and recorded their statements. Thereafter the students named by them were called.... The committee was not satisfied with the explanation, and thereafter made the report. We think that under the circumstances of the case, requirements of

natural justice were fulfilled.... However unsavoury the procedure may appear to a judicial mind, these are facts of life which are to be faced. The girls who were molested would not have come forward to give evidence in any regular enquiry....

Likewise, in *Herring v. Templeman and Ors.* (1973) 3 All. E.R. 769 dealing with a similar allegation, it was said:

...We see no unfairness in the academic board judging those matters on all relevant material available to them from whatever source, and in their so doing without first hearing the Plaintiff.... The governing body is master of its own procedure. Its members are not judges in a law court, nor are they legal arbiters. They are entitled to such flexibility in their procedure as they think the particular case under consideration requires...was the governing body then bound to act as a court of appeal, from that assessment? We do not think so.... Nor, can we see any reason why it should in effect, not say: "This is the assessment. You know what is set out in the academic report signed by the academic Registrar because it was sent to you, some while ago. Now tell us what the reasons are, why you say you should remain in the college and complete your course...."

7. Similar views were expressed in *University of Ceylon v. Fernando* (1960) 1 All. E.R. 631, *Furnell v. Whangarei High School Board* (1973) 1 All. E.R. 400 (P.C.) and *Casson and Anr. v. University of Aston* (1983) 1 All. E.R. 88. Professor H.W.R. Wade (*Administrative Law-Fifth Edition*) refers to the law in this regard:

The courts have in general held that academic disciplinary proceedings require the observance of the principles of natural justice, but equally they have refused to apply unduly strict standards, provided that the proceedings are substantially fair....

(Academic Discipline at page 501).

Again Professor Wade [85 *Law Quarterly Review* (1969) Page 47] Counsels restrains:

Comment has previously been made in these pages on a case which suggested that certiorari might be breaking loose from its moorings: see (1967) 83 L.Q.R. 486, noting *R. v. Criminal Injuries Compensation Board, ex p. Lain* (1967) 2 Q.B. 864. In that case Lord Parker, C.J. said that "the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined." But he also said "private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is, from the agreement of the parties." University examiners clearly fall within this "private or domestic" category.... Natural justice is now a hardworked doctrine, and its foothold in the law needs to be clearly understood.

8. The Law is thus clear. Fair hearing and reasonable notice are all that the context calls for. These were extended to Petitioners. They knew what the charges were. They said, all they could, for themselves. These were considered

objectively by those who were in loco-parentis to them. The findings are beyond taint.

9. High standards of conduct must be enforced in a professional college. Deeds which fall clearly within provisions of the penal Law, like Section 354, cannot be condoned as harmless sport. Traumatic experiences of victims and the impact such make on their young minds, must certainly weigh with authorities. If academic bodies turn out to be breeding ground of vice, the sensitive may turn away from portals of higher education. Punishments must be adequate and must act as a deterrent in such situations. Final Year students who should have been a good example to the younger students, turned out to be a bad example. The punishment of debarring for three years, is not harsh for them. If the authorities erred--they erred on the side of leniency.

Original Petition is without merit and is accordingly dismissed. I express appreciation of the help rendered by Sri T.P. Kelu Nambiar, who argued ably as Amicus Curiae, as also by Advocate General and Sri S.V.S. Ayyar, counsel for Petitioners.