

(2003) 12 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No. 37931 of 2003

Hanumanth Ballappa Ilager

APPELLANT

Vs

The Karnataka University and Another

RESPONDENT

Date of Decision : 05-12-2003

Acts Referred:

Karnataka State Universities Act, 2000 — Section 77 (2)

Citation : (2004) ILR (Kar) 946 : (2004) 2 KCCR 766

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Sadiq N. Goodwala, for the Appellant; Rajendra Kumar Sungay, for R1, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—The Petitioner, assailing the legality and validity of the order dated 18.3.2003 passed by the 1st respondent in No. Ku/Exam/Comm/MPC/ 2003-228 vide Annexure-E, has presented this Writ Petition.

2. The petitioner is a B.Com student studying in 2nd respondent's College; he has taken admission for the I year B.Com in the academic year 200-01 for which examination was held in the month of April 2001; his Registration Number was 4839; When he was writing the examination for the 1 year B.Com, squad of the 1st respondent-University had registered a case against him for involving in malpractice; the squad has submitted its report to the concerned authorities and thereafter, 2nd respondent has sent a communication to the petitioner stating that he was involved in the malpractise. When thing stood thus, after completion of the I year examination, petitioner took admission to the II year B.Com in the same college and he has appeared for the II year examination conducted by the 1st respondent, and he has been declared as pass. After the announcement of the result of the II year, he took admission for HI year B.Com and when he is prosecuting the studies in the III year, he received the impugned order dated 18.3.2003 vide Annexure-E from the 1st respondent stating that the mal-practice

committed by the petitioner during the I year examination is proved and university has taken a decision that to the effect that: "the performance of the candidate at B.Com Part-I exam held in April, 2001 be cancelled and to allow the candidate to appear for B.Com Part-I Examination, in April 2003. He is required to seek fresh admission to B.Com Part-II only in June 2003. Further the candidate is not eligible for B.Com Part-II and III. His performance (if any) in B.Com II may be cancelled. He shall also not to be permitted to appear for the B.Com III examination to be held in April 2003". The said order has been passed by the 1st respondent unilaterally, without conducting any enquiry or affording any opportunity to the petitioner. Feeling aggrieved by the order dated 18.3.2003 passed by the 1st respondent, the petitioner has presented this Writ Petition.

3. The principal submission canvassed by the learned Counsel for the petitioner is that, the petitioner has not received any notice either from the Enquiry committee or the college authorities that squad has registered a case against him and matter has been referred to the Inquiry Committee. The petitioner is not aware of the proceedings pending adjudication before the 1st respondent and the 1st respondent has passed the impugned order imposing penalty unilaterally, behind the back of the petitioner. The said order passed by the 1st respondent is contrary to the existing Regulations and mandatory provisions of the Karnataka State Universities Act, 2000. To substantiate his case, he placed reliance on Sub-section 2 of Section 77 of the Karnataka State Universities Act, 2000, and the law laid down by this Court in the case of *DURGAPPA.B v. PRINCIPAL BASAVESHWARA ENGINEERING COLLEGE, BAGALKOT AND ANR.* 1982 (1) Kar L.J. 120 and submitted that, in view of the law laid down by this Court as stated supra and the Apex Court to the effect that "the punishment to the student should not be penetrative in nature which affects the career of the student", and also for non compliance of the mandatory provisions of the Act, the impugned order passed by the 1st respondent vide Annexure-E is liable to be set aside.

4. Per contra, the learned Counsel for the 1st respondent-University has filed statement of objections and substantiated the order passed by the 1st respondent. However, he submitted that the notice has been sent to the petitioner and in spite of issue of notice, petitioner has not chosen to appear before the inquiry Committee and therefore the Committee has proceeded with the matter on the basis of the materials available record and submitted a report recommending the penalty as per the existing regulations. The said report was placed before the Vice Chancellor and thereafter, it has been placed before the Syndicate and the Syndicate has taken a decision by accepting the recommendations made by the Malpractice Inquiry Committee and the said decisions taken by the 1st respondent is in accordance with law and as per the relevant provisions of the Act and as such, no error has been committed by the 1st respondent - University. Further, he submitted that, the petitioner has not made out any good grounds to interfere with the impugned order passed by the 1st respondent and therefore, the Writ Petition is liable to be rejected.

5. Heard the learned Counsel for the petitioner and the learned Counsel for the 1st respondent. After thorough evaluation of the entire materials available on record with the assistance of learned Counsel for both the parties and after careful perusal of the impugned order passed by the 1st respondent, it is manifest on the face of the record that, the 1st respondent has committed an error of law, in passing the impugned order contrary to the materials available on record and also the mandatory provisions of the Universities Act. The 1st respondent has failed to follow Sub-section 2 of Section 77 of the Karnataka State Universities Act, 2000, as pointed out by the learned Counsel for the petitioner. It is worth to extract the relevant provisions here, which reads as follows:

"Section 77(2) Notwithstanding anything contained in Sub-section 1 - (a) the punishment of debarring a student from examinations shall on the report of Vice Chancellor be considered and imposed by the syndicate".

But in the instant case, except making a statement in statement of objection to the effect that "notice was issued to the petitioner", the 1st respondent has neither produced any documents to show that notice issued to the petitioner was served on him nor produced any acknowledgment to show that notice was serviced on the petitioner. The 1st respondent stating that notice has been sent to the petitioner by an ordinary post has proceeded to pass orders on the basis of the materials available on record. The said statement will not suffice for compliance of the mandatory provision of the Act and even its own existing regulations.

6. Further, it is significant to note that time and again, Apex Court and this Court in series of matters laid down the well settled principles of law and inspite of that, the University authorities have failed to follow even the mandatory provisions of the statute and existing regulations. This Court in the case of DURGAPPA B. v. PRINCIPAL BASAVESWARA ENGINEERING COLLEGE, BAGALKOT has held thus:

"When on a charge of malpractice at the examination, a show cause notice was issued to the student and an opportunity to appear before the Mal Practices Inquiry Committee and the student denied the charge against him, the Committee cannot proceed to draw its own conclusions on material (opinion of an expert) which was not brought to the notice of the student.

Any opportunity given in cases of this kind must be real in which the student can conveniently meet the charge. He must not only be made known the charge, but he must be made aware of the evidenced on the basis of which the committee proposes to find against the students. Where the Committee bases its conclusion on material obtained behind the back of the student, it transgresses the limits laid down by Courts in regard to even domestic enquiries. Further the proviso to Section 62 (2) of the State Universities Act must be complied with and opportunity, given to the erring student of being informed of the proposed

punishment."

7. In view of the well settled principles of law laid down by this Court as stated supra and for non compliance of the mandatory provisions of the Act, the order passed by the 1st respondent is vitiated for non compliance of the principles of natural justice. Therefore, I am of the considered view that, this is a matter which requires reconsideration by the 1st respondent - university afresh.

8. Having regard to the facts and circumstances of the case as stated above and taking into consideration the factual and legal aspect of the matter as enumerated above, I do not find any justification to sustain the impugned order passed by the 1st respondent and hence it is liable to be set aside.

9. Accordingly, the Writ Petition is allowed. The impugned order dated 18.3.2003 passed by the 1st respondent in No. Ku/Exam/Comm/ MPC/2003-228 vide Annexure-E, is hereby set aside.

The matter stands remitted back to the 1st respondent for reconsideration afresh with the following directions:

(i) The 1st respondent - University is directed to consider the matter in accordance with relevant provisions of the Karnataka State Universities Act and its existing regulations and decide the same after affording an opportunity to the petitioner, as expeditiously as possible, within four months from the date of receipt of this order.

(ii) The petitioner herein is directed to appear before the Registrar-Evaluation of the 1st respondent University, on 29th December 2003 at 3 p.m. in his chambers.

(iii) Further, the Registrar Evaluation of the 1st respondent -University is directed to give further date to the petitioner for his appearance.

(iv) No further notice will be issued to the petitioner. If the petitioner is not appeared on that date before the Registrar Evaluation of the 1st respondent - University, it is open for the University to proceed with the matter and decide the same in accordance with law.

With the above observations, the Writ Petition stands disposed of.