
(1987) 08 RAJ CK 0045

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1146 of 1986

Jagdish Prasad

APPELLANT

Vs

Principal, R.N.T. Medical College, Udaipur and Others

RESPONDENT

Date of Decision : 21-08-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan University Ordinances, 2009 — Ordinance 88

Citation : AIR 1988 Raj 174 : (1988) 1 RLW 195

Hon'ble Judges : S.S. Byas, J; Milap Chandra, J

Bench : Division Bench

Advocate : Kewal Chand, for the Appellant; G.M. Bhandari, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Byas, J.—This appeal u/s 18 of the Rajasthan High Court Ordinance, 1949 is directed against an order of a learned single Judge of this Court dt. Aug. 26, 1986, by which the appellant's writ petition, challenging his rustication from the Medical College was summarily dismissed.

2. Facts, first the appellant (hereinafter referred to as "the petitioner") was a student of IX semester of M.B.B. S. Course in R.N.T. Medical College, Udaipur. On May 23, 1986 he was served with an order Annexure-3 dt. May 16, 1986, by which the Principal rusticated him for one academic year and was further expelled from the College Hostel permanently. The petitioner filed the writ petition challenging the impugned order Annexure-3 on many grounds, the principal being that it was passed without notice to him and without affording him any opportunity of hearing. The learned single Judge, looking to the repeated acts of gross misconduct, such as indiscipline, rowdism, theft, misbehaviour etc., as revealed by the order Annexure-3, summarily dismissed the writ petition at the admission stage even without issuing a show cause notice to the respondents. 3. We have heard Mr. Kewal Chand for the petitioner and Mr.

G. M. Bhandari, Additional Government Advocate for the Principal of the Institution. On the joint request of the parties, the appeal was heard on merits for final disposal at the admission stage.

4. It was contended by Mr. Kewal Chand that the essential questions the petitioner had agitated in his writ petition that the impugned order was passed without any notice to him and without affording him any opportunity of hearing, were not at all touched and decided by the learned single Judge. The impugned order Annexure-3 of the Principal of R.N.T. Medical College was, thus, bad and unsustainable. The committee, appointed to make an inquiry on the charges of misconduct issued no notice to the petitioner. It was all, thus, one sided affair. The petitioner had no occasion or opportunity to meet the charges and to exhibit his innocence. No charges or allegations amounting to misconduct were conveyed to the petitioner. It was argued that the principles of natural justice were said a good-bye by the Committee as well as by the Principal of the Institution.

5. It was, on the other hand, contended by Mr. Gautam Mal Bhandari that there is no provision in the Ordinances of the University of Rajasthan providing a procedure for making the inquiry into the misconduct of the student. Ordinance Order 88 speaks about the punishment to be awarded to the student, but does not lay down that any notice is to be issued to him or that he is to be afforded an opportunity of hearing. We have taken the respective submissions into consideration.

6. It is true that Ordinance Order 88 empowers the Principal of an affiliated College to impose the penalties of suspension, rustication and expulsion from the Institution and the hostel. The ordinance does not speak that any notice is to be issued to the student or he is to be afforded an opportunity of hearing.

7. The pertinent question before us is whether the penalties of rustication, expulsion etc. can be imposed on a student without a notice to him or without affording an opportunity of hearing. Where the Rules, Regulations, Statutes and Ordinance etc. are silent as to what procedure is to be followed in imposing the penalties, the principle of natural justice would intervene. The educational institutions must act according to the rules of natural justice when no statutory procedure has been laid down for conducting an inquiry. It is the cardinal principle of justice that before one is condemned and punished, he should be heard. The concept of natural justice is based on "audi alteram partem (hear the other side) and "audiatur et altera pars" (also hear the other party). The rule is, thus, well settled that no one should be condemned unheard. Notice is the first pre-requisite of the principle of natural justice. The fundamental rule of natural justice is that a man has a right to be heard before he is condemned.

8. The learned Additional Government Advocate has submitted the entire record of the petitioner before us. We have examined it and we have no hesitation in saying that no notice was issued to the petitioner nor was he afforded an

opportunity of hearing during inquiry conducted by the Committee and subsequently when the order of rustication and expulsion Annexure-3 was passed against him. Report Annexure-R/2 of the Inquiry Committee also does not show that any notice of holding an inquiry was issued to the petitioner by the Committee and he was afforded an opportunity of hearing. The impugned order Annexure-3 of the Principal also does not show that before the punishments of rustication and expulsion were imposed on the petitioner, he was heard or was afforded an opportunity of hearing.

9. Almost a similar situation arose in *S.P. Trikha v. Principal, Government Medical College* AIR 1965 J&K 23, where also a student of Medical College was rusticated from the Institution on the grounds of misconduct. The learned single Judge observed: --

"A quasi-judicial authority can impose penalty upon a person only after giving that person an opportunity to put forward an explanation and not on mere suspicion, even though there is no statutory obligation that the person should be heard. Therefore, when the decision to take disciplinary action was arrived at by the Principal of the College or for that matter by the University and the punishment was passed against the student for his alleged misbehaviour without notice to him of the inquiry proceeding, there occurred a violation of the rules of natural justice even though no notice in disciplinary proceedings were contemplated by the statutes and provisions of the *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, and *(S) Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, and AIR 1961 J&K 56 Foll.

Notice, in this context, would mean notice to the person against whom any action is sought to be taken. The notice must indicate to him the precise nature of the accusation, the precise time and place and the gentleman or the authority who is going to hold the inquiry and before whom he is directed to appear. A vague assertion by the Principal that the student's father was asked through a messenger to bring the student on the day when the inquiry into the alleged misbehaviour was to be made in his office cannot, in any sense of the word, satisfy the requirements of a notice to be served upon a person who is to be condemned."

10. We are in respectful agreement with the view taken by the learned single Judge. The legal position, according to us, is that where no procedure has been prescribed, the punishing authority must follow the principles of natural justice before awarding any sort of punishment to the student. Ordinance Order 88 does not lay down any procedure to be followed where a student is to be punished for his misconduct or misbehaviour. It was, therefore, incumbent on the inquiry on the inquiry committee and the Principal of the Institution to have a recourse to the rules of natural justice. The rules of natural justice require that the petitioner must have been issued a notice asking him to participate in the inquiry and should have been granted a reasonable opportunity of hearing. The Committee and the Head of the Institution failed to do so. We are, therefore, unable to

maintain the impugned order Annexure-3 rustivating the petitioner from the Institution and expelling him from the hostel.

11. In the result, we allow the appeal and set aside the judgment of the learned single Judge dated August 26, 1986. We allow the writ petition and quash the impugned order Annexure-3 dated May 16, 1986 passed by the Principal, R.N.T. Medical College and Controller, Associated Group of Hospitals, Udaipur.