

(1995) 02 KAR CK 0045
In the Karnataka High Court
Case No : Writ Petition No. 14533 of 1994

Kammalapati Brahmarao etc.

APPELLANT

Vs

Gulbarga University and others etc.

RESPONDENT

Date of Decision : 08-02-1995

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : AIR 1996 Kar 37 : (1995) ILR (Kar) 824 : (1995) 3 KarLJ 491

Hon'ble Judges : J. Eswara Prasad, J

Bench : Single Bench

Advocate : N.K. Patil, for the Appellant; B. Veerabhadrapa and N.B. Bhat, for the Respondent

Judgement

1. K. Brahmarao the petitioner in Writ Petition No. 14533 of 1994 and P. Basavaiah Naidu the petitioner in Writ Petition No. 14851 of 1994 were debarred from taking the examination in Engineering for four years, i.e. for the next eight available examinations, besides forfeiting the performance in the examination in which they are said to have been involved in the commission of malpractice by the respondent Gulbarga University by the impugned order dated 23-3-1994. The petitioners question the order as made in violation of the principles of natural justice and arbitrary.

2. K. Brahmarao is a student of final year B.E. Course studying in K.B.N. College of Engineering, Gulbarga. P. Basavaiah Naidu is also a student in the same college studying engineering. K. Brahmarao appeared for Electrical Technology Examination of second year as well as for the final year examination in which he failed in the month of January, 1994 with Registration No. 89B 0565. P. Basavaiah Naidu appeared for Instrumentation Technology (II) of third year course (theory) on 4-2-1994 and for the backlog in engineering drawing for the first year with Registration No. 89B 673. Both the petitioners were issued with show cause notices by the second respondent dated 28-2-1994 and 25-2-1994 respectively. The charge against K. Brahmarao was that he was impersonator to

B.E. IIIrd year candidate with Registration No. 89B 673. The charge against P. Basavaiah Naidu was impersonation at the examination. The petitioners appeared before the Malpractices Committee of the respondent and denied the charges. The Malpractices Committee found them guilty of the charges and proposed the punishment of debarring the petitioners from taking the examinations for four years besides forfeiting their performance in the examination. The Vice-Chancellor reported the matter to the Syndicate along with his recommendation to accept the punishment proposed by the Committee. The Syndicate agreed with the Vice-Chancellor and imposed the punishment recommended by the Committee.

3. The learned counsel for the petitioners contended that the charges framed against the petitioners were vague and that they had no opportunity to meet the allegations made against them. He further contended that the copies of the relevant documents were not furnished to the petitioners that the persons connected with the alleged malpractice, namely the junior and senior Supervisors at the examination were not examined and the petitioners had no opportunity to cross-examine them. He further submits that the impugned orders are vitiated as they are not speaking orders and no reasons for imposing the punishment were mentioned and that the so-called enquiry proceeded in utter violation of the principles of natural justice.

4. The learned counsel for the respondent-University contended that due procedure was strictly followed by issuing show cause notices with specific charges and that the enquiry was held by following the principles of natural justice by affording an opportunity to the petitioners to peruse the records and after hearing them the punishment was imposed giving the reasons for imposing the punishment.

5. The Rules were framed by the Malpractice Cases Consideration Committee of the Gulbarga University and are approved by the Syndicate. Under Rule 1(xiii) of the said Rules, impersonating another, or allowing any other person to impersonate him/her in the examination hall is one of the acts of malpractices. In the Schedule of punishment under Rule 2 S1. No. 1(c)(v), the candidate on whose behalf impersonation is done, the candidate as well as the impersonator, if he is a student of the University/College or any affiliated college, shall be debarred for four years from taking the next available examinations. The procedure to be followed and the enquiry into the malpractice is prescribed under Rule 3. In Rule 3(i) the candidates, the personnel involved in the conduct of the examinations and the other persons shall be summoned before the Malpractice Cases Consideration Committee for interrogation etc., by issuing a notice. Under Rule 3(ii), after due enquiry, the Committee shall record its recommendations on each case paper for being submitted to the Vice-Chancellor. Under Rule 3(iii) on acceptance of the recommendations by the Vice-Chancellor, action contemplated in the recommendations shall be taken by the Registrar (Evaluation)/ Registrar.

6. From a perusal of the Rules, it is clear that due enquiry is contemplated

though the details of due enquiry are not mentioned, it is clear that the principles of natural justice have to be followed by the Committee. The rules also require that the candidates and the personnel involved in the conduct of examination and other persons shall be summoned before the Committee for interrogation.

7. The records of the Malpractices Committee were placed before the Court. The show cause notice dated 28-2-1994 issued to K. Brahmarao charges him with impersonation at the examination by being an impersonator to B.E. IIIrd Year candidate with Registration No. 89B-673. In the subject mentioned in the said notice, "malpractice at B.E. final year," it was stated that the senior supervisor B.E. IIIrd Year sent a report against K. Brahmarao. In the show cause notice dated 25-2-1994 issued to P. Basavaiah Naidu, the charge was "impersonation at examination." The subject was "malpractice at B.E.I. year with seat No. 89B-0673" and it is mentioned that the senior Supervisor for B.E. I Year sent a report that P. Basavaiah Naidu was involved in malpractice. A perusal of the report of the Junior Supervisor dated 4-2-1994 would show that P. Basavaiah Naidu was writing the examination of his friend. The report of the senior Supervisor dated 4-2-1994 would show that K. Brahmarao was writing the paper. A perusal of the above mentioned record would clearly reveal that there was utter confusion in the reports submitted by the junior and senior Supervisors with regard to the person impersonating and the person for whom the impersonation was done. The charges also are inconsistent as to whether the malpractice was at B.E. 1st year examination or B.E. final year examination and whether the impersonation was for B.E. 1st year or B.E. IIIrd year examination. In the said circumstances, it cannot be said that the petitioners were given a reasonable opportunity to answer the charges which were vague, conflicting and self-contradictory.

8. The records further reveal that the petitioners made representations in writing requesting for copies of the documents on which the allegations are based and they were rejected by stating that the said documents are confidential in nature and no copies can be granted and it is open to the petitioners to peruse the records in the office. It is to be noted that the petitioners are only students who are not well versed in legal affairs and they cannot be expected to peruse the documents and prepare their defence. The documents in question cannot be called strictly confidential in nature. The petitioners were entitled to be furnished with copies of the documents and denial of the same is violative of the principles of natural justice.

9. The prescribed procedure clearly contemplated summoning of the candidates as well as the personnel involved in the conduct of the examination and other persons for interrogation by the Committee. Admittedly this was not done and the impugned order is purely based on the material on record namely, the reports of the junior and senior Supervisors. The report of the junior Supervisor dated 4-2-1994 mentions that the impersonation is proved by the staff members of the I.T. Department. It was incumbent on the part of the committee to

interrogate the Junior Supervisor and Senior Supervisor who sent the report and the other staff members of I.T. Department. In the absence of the statements which should have been recorded, there was no probative evidence on record to support the finding.

10. Quoting with approval the decision in *R. v. Deputy Industrial Injuries Commissioner ex. P. Moore* (1965) 1 QB456 : *Mohan v. AIR New Zealand Limited* 1984 AC 808 the Supreme Court in *S.N. Mukherjee Vs. Union of India*, a observed, ""a similar trend is discernible in the decisions of English Courts wherein it has been held that natural justice demands that the decision should be based on some evidence of probative value. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". By not following Rule 3(i) and (ii), the committee not only had no evidence of probative value to base its decision upon but denied an opportunity to the petitioners to cross-examine the persons who made the reports. In the absence of such evidence of probative value and without affording reasonable opportunity to the petitioners to cross-examine, the enquiry cannot be held to be made in accordance with the principles of natural justice.

11. In *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, it was held that "In imposition of punishment on examinees using unfair means, the Examinations Committee acts quasi judicially. The effect of the decision of the committee may in an extreme case blast the career of an young student for life and in any case will put a serious stigma on the examinee concerned and may damage him in later life. The Supreme Court stated thus:

"The nature of misconduct which the committee has to find under Rule 1(1) in some cases is of a serious nature, for example, impersonation, commission of fraud, and perjury; and the committee's decision in matters of such seriousness may even lead in some cases to the prosecution of the examinee in courts. Considering therefore the serious effects following the decision of the Committee and the serious nature of the misconduct which may be found in some cases under Rule 1(1), it seems to us that the Committee must be held to act judicially in circumstances as these". Repelling the contentions made on behalf of the appellant, that there are a number of cases which come up before the committee under Rule 1(1) and if the committee is held to act judicially as a quasi-judicial Tribunal in the matter it will find it impossible to carry on its task the Supreme Court held that it is not a criterion for testing whether a duty is cast to act judicially in view of all the circumstances of the case. The learned Standing Counsel made a similar contention in this court which has to be promptly rejected following the decision of the Supreme Court. When the nature of misconduct alleged against the petitioners is impersonation which is a matter of serious nature which could affect the career of the petitioners for life and it would put a serious stigma on them which may damage them in later life, the committee should have acted judicially and should have strictly adhered to the

principles of natural justice. Even in the case of an administrative order which involves several consequences, it was held in *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, that the decision maker should afford the party to the dispute involving civil consequences, an opportunity to present his case". What is now in dispute is that the person concerned must be informed of the case against him and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken against him." More so where the authority concerned is bound to act judicially as in the present case.

12. Dealing with a case arising out of a departmental enquiry, the Supreme Court of India in *Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others*, held "and this view was taken as flowing from Art. 21 that no one should be deprived of his life or opportunity except with the procedure prescribed in law. The expression "life" does not merely connote animal existence or a continued drudgery through life but has a much wider meaning. Where therefore the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person, some of the finer graces of human civilization which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedures". The emphasis is thus on fair procedure where the reputation or livelihood of the person are involved. Any action which is not taken after following fair procedures cannot be upheld and has to be struck down as violative of Art. 21 of the Constitution of India as it would affect the future of the petitioners and would put a serious stigma on them.

13. The last submission of the learned counsel for the petitioners is that the impugned orders are vitiated as no reasons are furnished and also on the ground that they are not speaking orders. The order against both the petitioners is common and reads as follows in column No. 7:

"The candidate on whose behalf impersonation shall be debarred from taking the examination Four years i.e. the next Eight available examinations, besides forfeiting the performance in the examination in which he commits the malpractice."

From this it is not clear as to the grounds on which the punishment is imposed. In column 6 "Impersonation" is a malpractice alleged against P. Basavaiah Naidu and "Impersonator" against the name of Brahma Rao. In the absence of a speaking order, it is not possible to find out as to how P. Basavaiah Naidu is charged with "Impersonation" and is found guilty of "Impersonation" when it is alleged that he did not write the examination.

14. In *State of West Bengal Vs. Atul Krishna Shaw and Another*, it was held that giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is

receiving justice, but also a valid discipline for the Tribunal itself. Therefore, statement of reasons is one of the essentials of justice. The same view was taken in *S.N. Mukherjee Vs. Union of India*, . Having regard to the fact that the Malpractices Committee acts as a quasi-judicial body and is burdened with numerous cases of malpractices, it is not necessary that it should give detailed reasons by elaborate speaking order. But it should give reasons briefly which can be understood by the candidate on whom punishment is imposed. The impugned orders are held to be bad on the ground that they are not reasoned orders. In other words, understandable reasons are not furnished for passing the impugned orders. The impugned orders are made in violation of the principles of natural justice. In that the charges made against the petitioners were vague, the petitioners were not furnished with copies of the documents which the committee relied, the Junior and Senior Supervisors on whose reports the enquiry is based were not examined as required under the rules and no opportunity was afforded to the petitioners to cross-examine them. The impugned orders do not reveal any discernible reasons and are not speaking orders. The effect of the impugned decisions blasts the careers of the petitioners and will put a serious stigma on them and damage them in their later life. The committee which is a quasi judicial body and which had to act judicially has not followed the principles of natural justice in a matter of such a serious nature and its action cannot be upheld merely on the ground that the committee has to deal with a large number of such cases and that it will find it impossible to carry on its task if it has to strictly act judicially as a quasi judicial Tribunal. It may be necessary for the respondent-University to devise means by which the committee can act judicially when it deals with cases involving serious allegations such as impersonation, commission of fraud and perjury and where the Committee's decision may lead to serious consequences.

15. For all the aforesaid reasons the impugned orders are quashed. The writ petitions are allowed.

16. Petitions allowed.