

(1997) 11 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No. 11799 of 1997 connected with Writ Petition No's. 9496 to 9505 of 1997 connected with Writ Petition No's. 9102 to 9105 of 1997

M. Rajesh

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 26-11-1997

Acts Referred:

Karnataka State Universities Act, 1976 — Section 62, 62 (2) (b)

Citation : AIR 1998 Kar 165 : (1998) ILR (Kar) 1015 : (1998) 6 KarLJ 587

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : Sri Vivek Reddy for Sri K.N. Subba Reddy and Sri M.R. Shylendra, for the Appellant; Sri N.K. Ramesh, High Court Government Advocate, Sri N.B. Bhat and Sri R.B. Deshpande, for the Respondent

Judgement

1. The petitioners herein are students of M.B, Patil Medical College, Bijapur.

A complaint was lodged on 21-1-1997 in the A.P.M.C. Police Station, Bijapur, alleging that an incident of ragging took place on 18-12-1996 in the said college. Accordingly, it is alleged that an FIR was lodged alleging that 4 persons were involved in the ragging incident, namely, (1) Prashant Desai, (2) Mayank Kumar, (3) Shakil Ahmed, and (4) Abdul Aziz. As per Annexure-D dated 31-1-1997, these 4 students and 11 others were suspended from the college. Thereafter proceedings were initiated to rusticate the students involved in the ragging incident from the college. It is alleged that a notice was served on the petitioners on 17-3-1997 calling upon them to appear before the Principal on 26-3-1997. Thereafter Annexure-H rustication order was passed on 27-3-1997 after hearing the petitioners; sixteen students are rusticated. The said order is impugned in these proceedings.

2. I have heard Mr. Vivek Reddy and Mr. M.R. Shylendra, learned Counsels for the petitioners. The petitioners' Counsels attempted to take me through the oral

evidence tendered by the students who were allegedly ragged by the petitioners and others. I am afraid, this Court cannot in its writ jurisdiction reappreciate the evidence tendered by the students. That may be the function of the appellate jurisdiction and this Court is not exercising the appellate power. Besides, it is doubtful whether a writ will issue at all to quash the impugned order of rustication issued by the Principal of the college. Any way, this question need not be gone into at this stage for the following reasons.

3. It is brought to my notice that the punishment has been imposed on the students by the Principal in exercise of the power u/s 62(2)(b) of the Karnataka State Universities Act, 1976. Section 62 of the Act reads as follows:

"62. Discipline.--(1) The final authority responsible for maintenance of discipline among the students of the University shall be the Vice-Chancellor. His directions in that behalf shall be carried out by the heads of colleges, hostels and other institutions.

(2) Notwithstanding anything contained in sub-section (1).

(a) the punishment of debarring a student from examinations shall, on the report of the Vice-Chancellor be considered and imposed by the Syndicate; and

(b) the punishment of rustication from a college or a hostel or an institution shall be imposed by the head of the college or hostel or institution concerned. Provided that no such punishment shall be imposed without giving to the student concerned a reasonable opportunity to show cause against the action proposed to be taken against them".

It is clear from the said section that the final authority responsible for maintenance of discipline among the students is the Vice-Chancellor and his directions in that behalf shall be given effect to by the heads of colleges/hostels and other institutions. In other words, his will be the final order in the matter of maintaining discipline among students of the University. Derivatively any order passed by any other authority responsible for maintaining discipline in any of the institutions referred to in the section is amenable to his supervisory jurisdiction. This is demonstrated by sub-section (2) of the section. Sub-section (2) of Section 62 carves out an exception to sub-section (1) and provides that notwithstanding anything contained in sub-section (1), the heads of the institutions, hostels or the colleges, as the case may be, has the power to impose the punishment of rustication on the students. The effect of employing *non obstante* clause in sub-section (2) is that, it means to provide that over and above the class of officer mentioned in sub-section (1), the authorities mentioned in sub-section (2) also may exercise the powers catalogued therein. To put it differently, it is intended to mean that, when the power under sub-section (2) is invoked, sub-section (1) cannot be relied on to oppose the invoking of power under sub-section (2). The clear intent thereof would be that besides the authority competent to exercise the power under sub-section (1) of Section 62 of the Act, the authorities mentioned in Section 62(2) would also be entitled to exercise the powers named

therein. But, as the ultimate authority in the matter relating to discipline is vested in the Vice-Chancellor u/s 62(1), the power exercised u/s 62(2)(b) by the said authority could be subject-matter of revision before the Vice-Chancellor of the University who is competent to re-examine the propriety or correctness of the order. According to Mr. Vivek Reddy, learned Counsel for the petitioners, the effect of Section 62(2) would be to take away altogether the power of the Vice-Chancellor u/s 62(1) and vest the same with the authority named in sub-section (2) and that the Vice-Chancellor thereafter cannot exercise any power in behalf of what is contained in Section 62(2) once that authority has exercised the power. I am afraid, this contention cannot be accepted. It is clear from Section 62(1) that the power to maintain discipline in an University is completely vested in the Vice-Chancellor and notwithstanding such vesting, the authorities mentioned in sub-section (2)(a) and (b) can also exercise the named power therein. It does not mean that once the authorities named in Section 62(2)(a) or (b) have exercised their respective powers, the authority u/s 62(1) is precluded from exercising the power conferred on him under that section. The situation is akin to an authority delegating its power to a subordinate authority. It cannot at all be said that, after such delegation, the delegating authority is totally denuded of its power. It can still examine whether the delegate has exercised its power properly.

4. In the light of the circumstances stated above, it is only proper to direct the petitioners to move the Vice-Chancellor to re-examine the impugned Annexure-H order in exercise of the power conferred on him u/s 62(1) of the Karnataka State Universities Act, 1976. In such circumstances, it is not proper for this Court to examine the propriety or correctness of the said order at this stage. All contentions urged by the petitioners in the writ petitions can be examined by the Vice-Chancellor if revision is filed by the respective aggrieved students against the order of rustication issued against them.

5. In the light of the said circumstance, I direct the petitioners in all the writ petitions to approach the Vice-Chancellor by filing an appeal/revision u/s 62(1) of the Act, challenging the rustication order Annexure-H and seek appropriate orders. The Vice-Chancellor may dispose of the same after hearing the affected persons if deemed fit and proper.

6. One other submission made by the learned Counsel for the petitioners is regarding the interim relief sought for. In view of the interim order passed by this Court, the petitioners are continuing their studies and some of them have taken the examination as well. In regard to certain students, the ensuing examination is scheduled to be held on 4-12-1997. As per the interim order passed by this Court on 17-10-1997, the petitioner in Writ Petition No. 11799 of 1997 has paid the examination fees as well. But as regards the other petitioners who are to take the examination as well, i.e., petitioners in Writ Petition Nos. 9496 to 9505 of 1997, they have not paid the examination fees as there were no interim orders enabling them to pay the fees. In fact, they had also filed applications

seeking interim order to permit them to pay the fees. Mr. Vivek Reddy, learned Counsel for the petitioners, contended that appropriate interim order may be passed by this Court at this stage itself to enable the petitioners to pay the examination fees before 4-12-1997. I do not think that it would be a proper exercise of discretion by this Court so to do now. When there is an appellate or revisional authority to exercise the power vested in it u/s 62(1) of the Act, the exercise of such a power should not be interfered with by this Court at this stage in the guise of an enabling direction. Hence, considering all the circumstances, I direct such of those petitioners in the above said writ petitions who desire to take the examination, may move for an interim relief before the Vice-Chancellor concerned for permitting them to pay the examination fees and take the examination being held on 4-12-1997. Similar petition for interim relief to permit him to take the examination may be moved by the petitioner in Writ Petition No. 11799 of 1997 and the Vice-Chancellor may pass appropriate orders. In view of the urgent situation, I make it clear that the Vice-Chancellor shall deal with the application well in advance so that the petitioners can pay the examination fees and take the examination in the event an interim order is passed by the Vice-Chancellor. I also make it clear that while deciding as to whether permission should be granted to the petitioners to pay the fees, the Vice-Chancellor may keep in mind the circumstances that in an identical situation, the petitioner in Writ Petition No. 11799 of 1997 was granted permission on 17-10-1997 to pay the examination fees. Therefore, a decision in this behalf, as stated above, may be taken by the Vice-Chancellor in any event sufficiently in advance so that the petitioners can have the benefit of the interim order if granted.

7. The direction to approach the Vice-Chancellor for interim order as indicated is intended to cover case of petitioners in Writ Petition Nos. 9496 to 9505 of 1997 as well. They may also make similar interim applications. As regards the petitioners in Writ Petition Nos. 9102 to 9105 of 1997 are concerned, they are not to take any examination in the near future. They may be allowed to continue their studies that they were prosecuting so far, in pursuance to the interim order passed by this Court. The further studies will depend upon the order being passed by the Vice-Chancellor.

Xerox copies of this order may be supplied to the learned Counsel for the petitioners.