

(1996) 01 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No's. 19312 to 318 of 1995

Mallikarjuna Swamy and Others

APPELLANT

Vs

Bangalore University and Others

RESPONDENT

Date of Decision : 17-01-1996

Acts Referred:

Citation : (1996) ILR (Kar) 2455 : (1996) 5 KarLJ 637

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : R.U. Goulay, for the Appellant; N.K. Patil, for R-2, for the Respondent

Final Decision : Allowed

Judgement

M.F. Saldanha, J.—I have heard the petitioners' learned Advocate and the learned Advocate who represents the University at considerable length. In this case, I have taken the unusual precaution of looking at the question papers that were seized from each of the students as also their answer papers. The facts are very unusual in so far as these students who are appearing for the B.D.S. examination are alleged to have written the names of certain drugs which were the answers to the first part of each question on the question paper itself and it is the case of the University that it is on this basis that they have answered not only this question but more elaborate ones that follow. The petitioners were called for an enquiry which was virtually conducted piece-meal after a long period of about eight months and it is their grievance that the Malpractices Committee in such cases must hold an enquiry, expeditiously. I completely share that view and this Court has had occasion to elaborately point out to the educational authorities such as the University, the Board etc., that where a malpractice is alleged, it is very much in the interest of the authorities themselves to complete the enquiry when the facts are fresh in the minds of those who are responsible for their conduct, and it is equally important that the students should have a fair opportunity at the earliest point of time to deal with those charges and even if an adverse order follows, that they should be made

aware as to what the position is so that they can accordingly plan their future career. In this case, Mr. Patil submits that there were some litigations which was the reason for the delay. I am not going into the reasons or otherwise but it is imperative that the authorities take serious note of the observations of this Court and that hereinafter, in any case where a malpractice is alleged to my mind, the Malpractice Committee must complete the enquiry and indicate its decision within an outer limit of eight weeks from the date of the incident in question. This Court has come across instances where the students are unable to decide on the future examinations only because the decision in the earlier instance has been abnormally delayed. That practice will have to be discontinued.

2. As far as the merits of the case are concerned, petitioners' learned Advocate submitted that the students in question had merely jotted down on the answer paper some names of the drugs or medicine as an aid to their memory while answering the related questions. His case is that this cannot under any circumstance form the basis of a malpractice because the charge against the students stops at that point and it is not alleged that they have been guilty of any unfair or corrupt means in the course of that examination. In sum and substance, the learned Advocate contends that if a student has made certain notings on the question paper and even if these are correct in so far as they are the ones that are subsequently reproduced in the answer paper, that by no stretch of imagination can it constitute a corrupt practice or a malpractice in relation to the examination. Even though because of the time delay the students have subsequently appeared for the examination, he submits that the adverse finding against the petitioners must be quashed as these would reflect seriously on their career in future life.

3. The case Put forward on behalf of the University requires to be stated because Mr. Patil has submitted that this was not a case of merely making some notings on the question paper. He has produced the original documents before me and he submits that the names of the medicines or drugs was crucial to the entire group of answers under each head. He has also demonstrated that once these names were available to the students that it was not difficult for them to answer the entire group of questions and he has produced before me the record of the enquiry and in particular the enquiry report because it is the case of the University that the invigilators had been helpful by providing this crucial data to the students in question, which was why it was written down by them on the question paper. The enquiry report indicates that some sort of unfair practices were going on and that when the Vigilance Squad arrived in order to alert the persons responsible the peon rang the bell at 3.20 p.m. and that one of the invigilators very conveniently left the examination hall. If this was the case, then the charge ought to have been very different and the University ought to have led evidence to substantiate that charge. Unfortunately, the authorities have committed certain procedural errors while conducting the enquiry as a result of which it has inevitably gone by default. This Court can only take cognisance of the charge as made out vis-a-vis the students namely that they should not have

written certain notings on the question paper. This was all that is alleged against them and there is no allegation that these question papers were even passed from one to the other or that any of the students had access to what the other one had written. It is in this background, that this Court will be left with no option except to hold that on the basis of the limited charge made out against the petitioners, it would be impossible to sustain a finding of malpractice. The University has considerably altered its case after the matter has come to this Court and when it has filed its reply. If this was the case of the University it should have been stated so right from the beginning and this case ought to have been established. Had that been done, the decision of this Court would perhaps have been different.

4. On the material placed before the Court, I find it impossible to uphold the adverse findings that have been recorded against the petitioners and consequently, the adverse orders that have been passed against them to the extent that they are held guilty to have committed a malpractice in the course of the examination conducted in September 1994 for the 2nd B.D.S. course, is quashed. The petitioners, as I understand have subsequently appeared for the later examinations in these subjects and therefore, it is unnecessary for this Court to issue any further direction. As a necessary consequence, the only direction that the petitioners would be entitled to is that since they have been cleared of the malpractice charge, that the results of the 2nd B.D.S. examination held in September 1994 be declared as this may make some difference to their subsequent course of study.

5. The Petitions accordingly succeed. Rule is made absolute to this extent. No order as to costs.