

(1997) 08 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No's. 7922 to 7926, 8301 to 8307, 9257-9261, 9279, 9280, 9370-9372, 9479-9481 and 11512 of 1997

Mathews Ashwanth Goveas

APPELLANT

Vs

Director of Technical Education and Others

RESPONDENT

Date of Decision : 20-08-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 30, 311, 311(2)
Penal Code, 1860 (IPC) — Section 307

Citation : AIR 1998 Mad 94

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : K. Chandru, for the Appellant; Senthamarai Kandappan, Government Advocate for Respondent No. 1, C. Chinnaswamy for S. Haja Mohideen Gisthi and M. Venkatachalapathy for M. Sriram, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—In all these writ petitions the writ petitioners, who are students of third respondent Institution, aggrieved against the order

of rustication ranging from a month to three years, have approached this Court to quash the said order and consequential direction to direct the

third respondent to permit them to complete their Engineering course in the third respondent college. Since the facts in all the cases are identical,

for the sake of convenience, I shall refer the facts in the first writ petition, namely, W.P. No. 7922 of 1997.

2. The petitioner in W.P. No. 7922 of 1997 has joined the third respondent Engineering College during the academic year 1994-95 and at present,

he is doing third year Mechanical Engineering. He is also an elected Convenor of the Students' Council of third respondent college. The third

respondent Institution is started by one brother Dinakaran. The institution was started as a self-financing college and it is affiliated to the Bharathiar University, the second respondent herein. The admission procedure of the third respondent college is governed by the directives issued by the first respondent and also on the basis of the guidelines issued by the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . It is contended that the third respondent college never had any regard to the fees stipulated by the Government and the Supreme Court. On many occasions the third respondent was allowed to flout the directives of the Supreme Court with impunity. For each and every lapse of a student exorbitant fine amounts were collected by the functionaries of the college. After few months of the start of the college, in the academic year 1995-96, the students of the third respondent college felt agitated and started a movement against the imposition of illegal fine amounts which was by then ran into several lakhs of rupees. In order to avoid any pressure from outside, the third respondent claimed that they were taking action against students who were allegedly guilty of ragging and used it as a pretext for bringing police into the campus. Since 12 students were detained by the police, in order to show sympathy, other students of the college went on strike and took processions to the second respondent demanding justice. Subsequent to the agitation, an agreement was signed before the District Collector between the Management of the third respondent and the students as well as the parents on 11-9-1996. It was the first time, the management agreed to drop the system of fines and also all the previous disciplinary action cases. After signing of the agreement, the college reopened in a phased manner on September 25th, 26th and 27th of 1996. All the students attended classes. On 28-9-1996, a student by name Prasanna Ganesh was beaten by a non-teaching staff and the student was hospitalised. This incident once again provoked the students and they also lodged their protest. During their vacation, the petitioner received a charge memo dated 16-12-1996 from the third respondent college. Like the petitioner 42 other students also received charge memos. Questioning the above, a writ petition in W.P. No. 257 of 1997 was filed before this Court. On 18-1-1997 this Court granted while admitting the writ petition granted interim stay of further proceedings of the third respondent. Subsequently, when the writ petition came up for final

hearing, after some deliberations, it was suggested by both sides, that the students must give an undertaking for good behaviour and that the management should drop all further moves with regard to the disciplinary action. This Court accepted the suggestions and received their affidavits and recorded the same in its final order dated 26-2-97. After opening of the college, the third respondent wanted to crush any form of students activities. In order to provoke the students, the third respondent college included a sum of Rs. 490/- in the mess bill stating that it was towards some damages caused by the students in the alleged destruction that took place in the early part of the academic year 1996-97. Since the first year students were in no way connected with the incident, they got enraged and started protesting against the penal levy. On hearing from the agitated students, the representatives of the students who were residing outside, wanted to investigate the happenings inside the campus. The management in a pre-planned manner attacked the representatives of the students and in that incident, the Chairman of the Students' Council was also injured and the vehicles belonged to the students were also damaged on the night of 13-4-1997. The police which was acting in a partison manner registered a case against the students as well as the security guards of the third respondent college. Subsequently, 20 students who were falsely arrested in the case were granted bail by the Sessions Court, Coimbatore.

3. It is further contended that when the representations made by the students to the third respondent failed, the students boycotted the University Examinations of the second respondent University. They went on a hunger fast for acceptance of their legitimate demands. Thereafter, a letter of assurance dated 2-5-97 was given by the District Collector that the students should be permitted to write their University Examinations along with the Semester Examinations to be held in November, 1997. The third respondent had communicated the decision of the District Collector in a covering letter dated 3-5-97 to all the parents. In the covering letter there was no reference about the alleged obstruction of students from attending to their examinations. While such is the position, the petitioner has received a notice dated 15-4-97 from one A.P. Jayachandran, an Advocate at Coimbatore stating that on 30-4-97 the petitioner had obstructed the students from writing their University examinations and he was

also appointed as an Enquiry Officer. It was also stated that the enquiry will be conducted on 23-5-97 in the college campus and the petitioner

was asked to appear before him to answer in respect of the so called misconduct. Immediately the petitioner sent a telegram to the Enquiry Officer

on 20-5-97 requesting postponement of the enquiry to another date because of his inability to attend on 23-5-97. The Enquiry Officer did not

respondent to the request of any one of the petitioners. However, the petitioners were received an order dated 24-5-1997 from the third

respondent stating that a report was given by the Enquiry Officer dated 23-5-97 holding them guilty of the charges. It is also contended that on the

basis of the report of the Enquiry Officer a punishment of rustication ranging from one month to three academic years starting from 1997-98 was

ordered against the petitioners. None of the letters mentioned in that order were even received by them. The said order of the third respondent is

opposed to principles of natural justice as no opportunity has been given to the petitioners in defending themselves during the enquiry. The third

respondent has not furnished with any copy of the charge sheet against the petitioners and a copy of the complaint. In any event, the Enquiry

Officer was wrong in not postponing the enquiry though a request was made by the petitioner. The non furnishing of the copy of the report of the

enquiry given before it was accepted will also vitiate the enquiry. Even though the first and second respondents are empowered to take action

against the third respondent, they have not acted fairly and have remained as a deaf mate to the illegalities committed by the third respondent. In

those circumstances, having no other remedy the petitioners have approached this Court for necessary relief as stated above.

4. The third respondent has filed independent identical counter-affidavits in all the above cases. For the sake of convenience the defence taken by

them in W.P. No. 7922 of 1997 is briefly stated hereunder: The writ petition is liable to be dismissed in limini as one not maintainable since it

revolves around the internal administration of a Minority Institution, which is otherwise protected under Article 30 of the Constitution of India. It is

also submitted that the matter in issue being a disciplinary proceeding against a student by the Institution coupled with the fact that the charges as

against the petitioner being grave in nature, in the interest of discipline in the Institution, this Court may not exercise the discretionary relief in favour

of the petitioner. They also contended that they are not violating any of the Acts or the Law laid down by the Supreme Court. The entire

allegations made by the petitioners are motivated and deserve no consideration. It is submitted that earlier meetings were held at the District

Collector level and thereafter in the writ petition also, orders were passed by this Court using the power of pardon. The entire sympathy and

concessions shown by those authorities, this Court and by the respondent had turned out to be nothing but a wasteful exercise. The said students

once again started behaving in an unruly manner preventing, the other students from either attending classes or appearing for the examinations etc.

The administration was driven to such an extent that they will have to file criminal complaints against their own students in respect of the criminal

activities done by the said students. In the earlier round Hon''ble Mr. Justice Swamidurai was appointed as Enquiry Officer. In view of the delaying

tactics adopted by not appearing, the Hon''ble Judge resigned. Therefore, the present Enquiry Officer, in view of the urgency, had to complete the

enquiry on the date fixed. The handicap of the Institution is that, fearing bodily injury, affected persons are not even coming forward to depose

against the writ petitioner. However, on the available evidence, the Enquiry Officer found them guilty and the punishment of rustication came to be

imposed on the petitioner. Out of 35 students charged, since two have completed the course, taking a lenient view, action against them is dropped,

even though they are found guilty. So far as one student is concerned, he has obtained Transfer Certificate, and therefore no penalty was imposed.

In respect of other students, after complying with the necessary formalities, the third respondent imposed the punishment. Absolutely there are no

violation of principles of natural justice as contended by the petitioners. The petitioners have not come out with any reason in the telegram for

adjournment. It is therefore nothing but a delaying tactics and as such in view of the precarious situation in which the Institution was placed, there

was no scope for adjourning the matter. The Enquiry Officer used his discretion against the petitioners. It is further contended that out of 23

persons who have been charge sheeted, nearly about 7 persons have given the undertaking before this Court and therefore the students have scant

regard for the orders of this Court and the undertaking given before this Court. Therefore, the said students are not entitled to any sympathy from

this Court. The attitude of the petitioners seems to be to cause loss and damage to the Institution. The punishment imposed is just and equitable.

With these averments, they prayed for dismissal of the writ petitions.

5. In the light of the above pleadings, I have heard Mr. K. Chandru, learned Counsel for the petitioners. Miss Senthamarai Kandappan, learned

Government Advocate (Education) for the first respondent, Mr. C. Chinnaswamy, learned senior Counsel for the second respondent and Mr. M.

Venkatachalapathy, learned senior Counsel for the third respondent.

6. The learned Counsel for the petitioners submitted that the impugned order in all the writ petitions is opposed to the principles of natural justice as

no opportunity has been given to the petitioners in defending themselves during enquiry. He also relied on a decision of this Court reported in

Bright Singh v. The Bharathiyar University 1994 Writ LR 768. On the other hand, the learned Counsel for the third respondent contended that

even though there is no need to conduct an enquiry, the third respondent after appointing Enquiry Officer, giving proper and sufficient opportunity

to the petitioners and also considering the grave charges against them, passed the impugned order. In support of his above contention, he relied on

the following decisions:

(1) State Bank of Patiala and others Vs. S.K. Sharma, ; (2) Abhay Kumar Yadav Vs. K. Srinivasan and Others, ; (3) P.M. Unni Raja and Others

Vs. Principal, Medical College, Trivandrum and Others, ; (4) A.K. Sen and Others Vs. Union of India (UOI) and Others, ; (5) Satyavir Singh and

Others Vs. Union of India (UOI) and Others, (6) Shivaji Atmaji Sawant Vs. State of Maharashtra and Others, ; (7) Ikramuddin Ahmed Borah Vs.

Superintendent of Police, Darrang and Others, ; (8) Leo Francis Xaviour Vs. The Principal, Karunya Institute of Technology, Coimbatore and

another, .

7. Out of 26 writ petitioners, 16 petitioners (students) involved in a criminal case. These students were suspended on account of their involvement

in criminal cases. They were granted bail by the Sessions Court. When the enquiry notice came, they sought for an adjournment. On the same day,

the Enquiry Officer conducted the enquiry and found them guilty on the basis of their names being found in the First Information Report. In respect

of other 10 petitioners, action was taken on the ground that they prevented the

students from writing examinations. Though an objection was raised regarding the maintainability of the writ petitions against third respondent being a minority institution in view of the decision of the Apex Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and subsequent decisions, the learned Counsel for the third respondent has not seriously pursued the above objection. Hence I hold all the writ petitions filed against the third respondent are maintainable and the petitioners are entitled to challenge the impugned order of rustication before this Court in these proceedings under Article 226 of the Constitution of India. Even though in all the affidavits filed in support of the above writ petitions the petitioners have made serious allegations against the third respondent with regard to collection of money in excess than the prescribed, imposition of fine and imposing a particular religion on all students irrespective of their religion I am not going into those aspects, since the main issue is whether the third respondent has followed the principles of natural justice before passing the impugned order of rustication. It is seen that an agreement was signed before the District Collector between the management of the third respondent and the students as well as the parents on 11-9-1996 subsequent to the agitation by all the city college students of Coimbatore. After signing of the agreement the college re-opened in a phased manner on September 25th, 26th and 27th of 1996. It is the case of the petitioners that on 28-9-96 a student by name Prasanna Ganesh was beaten by a non-teaching staff and he was hospitalised. Thereafter, during vacation in the month of December, 1996, some of the petitioners herein received charge memo from the third respondent. Aggrieved against the action of the third respondent, the parents/guardians Association of Karunya Institute of Technology for the cause of the students, filed a writ petition before this Court in W.P. No. 257 of 1997. After hearing the arguments of both sides on the basis of the affidavits filed by parties, this Court has passed a final order on 26-2-1997. While passing the said order on 26-2-97 this Court gave certain advice to the Management and also gave direction to re-open the college in the following manner:

The Management should also realise that imposing their own faith against the wish of others in an educational institution in the guise of discipline

amounts to forego their own faith and affects their sentiments. The management should not create such atmosphere, or to create a circumstance

provoking a situation where the immature mind will react to a situation aggressively. It is all the more necessary for the management to develop a

sense of compassion, fellow feeling, harmony, understanding and sympathy towards the students. It is these qualities that hold the students and the

management together. It should aim at making public thoughtful, intelligent, rational capable and responsive to new ideas, but more important it

should also make them moral, kind generous and selfless. This can be achieved by a good understanding and not by hatred.... The management

should not have a revengeful eye on the delinquent students keeping the interest of the institution and the students....

8. In pursuance of the order stated above, after opening of the college, it is stated that the management has included a sum of Rs. 490/- in the mess

bill stating that it was towards some damages caused by the students in the alleged destruction that took place in the early part of the academic

year 1996-97. As the first year students were in no way connected with the said incident that took place in the campus, the students

representatives residing outside, wanted to investigate the happenings inside the campus. According to the petitioners, the management as pre-

planned attacked the representatives of the students and in that incident, the Chairman of the Students' Council was also injured and the vehicles

belonging to the students were also damaged on the night on 13-4-97. Due to the said incident, about 20 students were arrested and subsequently

they were granted bail by the Sessions Court, Coimbatore. With reference to the above incident the petitioners received notice from one A.P.

Jayachandran, an Advocate at Coimbatore stating that in respect of the incident stated above, he was appointed as an Enquiry Officer. It was also

stated in the said notice that the enquiry will be conducted on 23-5-97 in the college campus and the petitioners were directed to appear before

him to answer in respect of the misconduct. It is the case of the petitioners that for want of sufficient time, almost all of them either sent telegram or

letter immediately requesting the Enquiry Officer to postpone the enquiry in the month of June, instead on 23-5-97. They also requested him to

inform the next hearing date. It is seen that the Enquiry Officer did not respond to the request of the petitioners. The Enquiry Officer, on the very

same day i.e. on 23-5-97 after setting the petitioners ex parte, examined witnesses on the side of the third respondent and submitted his report on the very same day. It is further seen that on the next day the, report has been placed before the college committee and thereafter the Principal of the third respondent college passed the impugned order of rustication which was also taken place on the very same day i.e. on 24-5-97. In such a circumstance, the petitioners have approached this Court on the ground that they were not given proper and sufficient opportunity to put-forth their case. On the other hand, it is, the contention of the third respondent that in view of the modus operandi, of the students to cause loss and damages to the property of the Institution and in view of their earlier round of litigation as well as in view of urgency, the Enquiry Officer had to complete the enquiry on the date fixed (23-5-97). It is also contended that the handicap of the institution is that, fearing bodily injury, affected persons are not even coming to depose, against the writ petitioners and that on the available evidence, the Enquiry Officer, found them guilty and the punishment of rustication came to be passed on the petitioners. Even though Mr. Venkatachalapathy, learned senior Counsel has submitted that in view of the conduct and behaviour of the petitioners and of the fact that some of them are facing criminal prosecution, there is no need to conduct an enquiry, the fact remains the third respondent unilaterally appointed an Enquiry Officer, namely, A.P. Jayachandran, an Advocate of Coimbatore Bar. Having appointed an Enquiry Officer in order to find out the truth with reference to the alleged incident that took place on 13-4-97 as well as on the basis of the criminal case filed against some of the students, let me consider whether the Enquiry Officer and the disciplinary authority have given sufficient opportunity of the petitioners and whether the report of the Enquiry Officer and the ultimate impugned order of the disciplinary authority are in accordance with law.

9. Admittedly the third respondent has not informed the petitioners regarding the appointment of Mr. A.P. Jayachandran as Enquiry Officer, nor they sent any Notice to the petitioners with regard to the proposed domestic enquiry. Only the Enquiry Officer, viz., A.P. Jayachandran, an advocate of Coimbatore Bar, in his letter dated 15-5-97 has informed the petitioners stating that he had been appointed as the Enquiry Officer to

go into the charges levelled against them. In the said letter, he has informed that a complaint has been received by the Principal of Karunya Institute

of Technology (third respondent) from an employee of Karunya Institute of Technology on 30-4-97 against the petitioners stating that they had

obstructed the students from appearing the University Examinations near the Gents hostel gate on 30-4-97 at 8.45 a.m. Except the above

reference, none Of the petitioners were provided with separate charges to be enquired by the Enquiry Officer. In the very same letter dated 15-5-

97 the Enquiry Officer has informed the petitioners that enquiry will be conducted on 23-5-97 at 9.30 A.M., at Karunya Institute of Technology.

Coimbatore 641114. At this Stage, the learned Counsel for the petitioners brought to my notice that most of the students have sent telegrams or

letters requesting the Enquiry Officer to postpone the enquiry in the month of June, 1997 instead on 23-5-97. It is also brought to my notice that

most of the students are from very far-away places like A.P., Madras, Cochin etc., and the learned Counsel has also cited that the petitioner in

W.P. No. 8302 of 97 has given a change of address even in the year 1994. But the Enquiry Officer has sent notice to the old address only.

Likewise the petitioner in W.P. No. 9371/97 though he was not arrested by the police, yet suspended ""on account of arrest"". The father of the

petitioner in W.P. No. 9279 of 97 sent a telegram requesting the Enquiry Officer to grant time but it was returned unserved. Petitioner in W.P. No.

9258 of 97 was in the hospital due to injuries sustained on the relevant date (according to the petitioner, he was beaten by security guards and

hospitalised). Petitioner in W.P. No. 9257 of 97 asserted that he has not received enquiry notice from the Enquiry Officer till date. Even though the

petitioner in W.P. No. 8302 of 97 had shifted his residence in the month of October, 1996, letter has been sent only to his old address. The

petitioner in W.P. No. 9372 of 97 who is a native of Andhra Pradesh and General Secretary of the Students Union, received notice only on 24-5-

97. The order of rustication was made on 24-5-97 itself. Likewise the other petitioners have also mostly received notice just on the date of the

enquiry and they immediately sent reply letters or telegrams requesting further time to participate in the enquiry. In order to substantiate the above

statements the learned Counsel for the petitioners has submitted two charts containing the names and addresses of the petitioners, case numbers,

punishment, their status as well as particulars regarding service of notice, date on which they sent telegram to the Enquiry Officer and other

remarks. In the light of the above contentions, I have carefully analysed both the charts which according to him, support the contentions of the

petitioners. In the counter affidavit the third respondent has admitted that they have not sent any letter intimating the petitioners regarding the

appointment of one A.P. Jayachandran, advocate, Coimbatore, as Enquiry Officer. Only the Enquiry Officer has informed the petitioners regarding

his appointment as Enquiry Officer on 15-5-97 mentioning that enquiry will be conducted on 23-5-97. When the third respondent opted for

domestic enquiry, it is needless to mention that they have to follow all principles and the enquiry must be in accordance with law. (Emphasis

supplied) Admittedly the third respondent has not communicated the appointment of Enquiry Officer to the petitioners. They have also not

informed the charges levelled against the petitioners to be enquired by the Enquiry Officer. Hence even though the third respondent has appointed

an Enquiry Officer even at the beginning, the Management has not informed the appointment of Enquiry Officer as well as forwarded the charges

levelled against the petitioners. In the absence of forwarding of charge or charges to the petitioners, it is not possible for them to defend their case

before the Enquiry Officer effectively. This is a first flaw in the action of the third respondent.

10. The Enquiry Officer having sent a communication to various places without verifying the fact that whether the addresses of the petitioners are

correct or not, proceeded with the enquiry on 23-5-97 in spite of receipt of requests from the petitioners/their fathers for postponing the enquiry in

the month of June, 1997 and completed the same on the very same date. At this stage the learned Counsel for the third respondent could not

explain the reason for completion of the enquiry on the very same date, i.e., on 23-5-97 when admittedly none of the petitioners were able to

present. The only reason brought to my notice by the learned senior Counsel for the 3rd respondent as found in para 5 of the counter affidavit is in

view of urgency (the reason for urgency not explained), the Enquiry Officer has completed his enquiry on the date fixed. No doubt, the learned

senior Counsel for third respondent submitted that fearing bodily injuries, the affected persons are not even coming forward to depose against the

petitioners, In such circumstances, according to him, on the available evidence the Enquiry Officer found them guilty and the disciplinary authority has also imposed the punishment of rustication on the next day itself. A reading of paragraphs 5 and 6 of the counter-affidavit shows that in order to complete the enquiry for the sake of enquiry after having sent notice to the petitioners without giving sufficient and proper opportunity, without ascertaining their cause defence the Enquiry Officer submitted a report merely on the basis of the statement made by the witnesses on the Management side. The third respondent also on the basis of the report of the Enquiry Officer, passed the impugned order on the next day i.e., on 24-5-97 imposing an order of rustication for periods from three months to three years. For the sake of repetition, I once again verified the impugned order dated 24-5-97. It mentions what had happened on 30-4-97, the report of the Enquiry Officer holding the charge levelled against the petitioners proved, placing the Enquiry Officer's report before the disciplinary authority, the recommendation of the disciplinary committee for imposing deterrent punishment and the ultimate conclusion of the Principal. As stated earlier, neither in the counter affidavit, nor before me it was not explained why all the above things have rushed through within a period of two days. After perusing the entire records I am satisfied that the Enquiry Officer though he is a practising member of the Bar has not followed the principles of natural justice since after receipt of reply telegrams from various aggrieved persons, he could have granted some reasonable time or atleast one opportunity to them to put-forth their defence. I am of the view that he has failed in his duty. Likewise, even though in the impugned order the Principal says that the report of the Enquiry Officer has been considered by the disciplinary committee, I am afraid whether the disciplinary committee has taken note of the absence of all the petitioners, the request made by the petitioners in some cases and their fathers in few cases requesting for adjournment of the enquiry. The above factual position shows that the disciplinary authority merely endorsed the report of the Enquiry Officer without applying their mind. Likewise the Principal has also put his seal on the very same day and passed the impugned order of rustication. In such circumstance, there is no hesitation in holding that the third respondent has pre-determined to impose punishment on the petitioners, at any cost the enquiry and the consideration of the disciplinary,

committee are only an empty formalities and nothing more.

11. It is not the case of the third respondent that they are not aware of the enquiry proceedings, nor how they have to conduct enquiry against their

students. At this stage it is relevant to refer the Division Bench decision of this Court reported in *Bright Singh S. v. Bharathiyar University* 1994

Writ LR 768. Interestingly the said decision came to be passed at the instance of one of the students of the very same third respondent college. In

the said decision all the respondents arrayed here were also respondents. In other words, the said decision is rendered in respect of a dispute

between a student and the third respondent institution. In that case, against the order of dismissal, dismissing the petitioner therein from the college,

he filed a writ petition before this Court. A contention was raised in that case by the said student that no charge memo was served on him with

regard to the allegations made against him and no enquiry whatsoever was conducted before the impugned order was passed and it was also

contended that the impugned order in the said case is invalid and liable to be quashed as it is violative of principles of natural justice. The learned

single Judge of this Court who heard the said writ petition took the view that the minutes recorded by the Committee of Enquiry sufficiently

indicated that affair enquiry that is possible with reference to the nature of the charges and the peculiar circumstances of the case had been

conducted and that there was no violation of the principles of natural justice. Consequently the learned single Judge did not countenance the plea of

the petitioner and by order dated 15-4-1993 dismissed W.P. No. 19131 of 1992. Thereafter the said student filed Writ Appeal No. 780 of 1993

before the Division Bench. Before the Division Bench an argument was advanced that the college management before passing the impugned order

dismissing the appellant therein from the college has not framed any charge against him and no charge memo was served on him, no opportunity

was given to him to state his case, the statements of affected students examined by the Enquiry Committee were not recorded by the Enquiry

Committee in the presence of the appellant and contended that the impugned order is clearly violative of principles of natural justice. The said

contentions were repelled by the management before the Bench. After framing necessary points whether the appellant was given an opportunity to

meet the allegations made against him and whether the order dated 8-9-92 passed by the second respondent (college management) dismissing the

appellant from the college is violative of principles of natural justice and whether it is liable to be quashed." The Division Bench consisting of

Hon"ble K.A. Swami, Chief Justice and Justice Somasundaram after referring various decisions of the Apex Court came to the conclusion thus:

We are unable to agree with the conclusion arrived at by the learned single judge in the order under appeal, that the enquiry conducted by the

second respondent against the appellant is fair enquiry and that the order dated 8-9-1992 is not violative of the principles of natural justice and

therefore, the order under appeal is liable to be set aside.

After holding that no opportunity was given to the appellant therein to meet the case put against him, they have quashed the impugned order of

dismissal. The said judgment has become final. It is unfortunate that when the Division Bench has explained in domestic enquiry how the principles

of natural justice have to be followed after having the said judgment in their hands, the third respondent institution has failed to follow the same.

12. The facts demonstrated above clearly show that the third respondent has not followed the principles of natural justice. Since the learned senior

Counsel for third respondent has cited several decisions, I shall consider one by one. The first case referred to by the learned senior Counsel for

the third respondent is State Bank of Patiala and others Vs. S.K. Sharma, . In the said decision, Their Lordships have explained the principles to

be followed in the context of disciplinary enquiries and the order of punishment imposed by an employer upon the employee with reference to

Articles 311 and 14 of the Constitution of India. After analysing various earlier decisions Their Lordships have summarised the following principles

to be adhered to and the same is extracted hereunder:

32. We may summarise the principles emerging from the above discussion. (There are by no means intended to be exhaustive and are evolved

keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the

rules/regulations/statutory provisions governing such enquiries should not be set

aside automatically. The Court or the Tribunal should enquire

whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position in this procedural provisions are generally meant for affording a reasonable and

adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every

procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under "no notice", "no

opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of

prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that

he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the

order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may

be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of

prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a

provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead

defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for

it. The prejudice is self-evident. No proof or prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e.,

whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of

directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same

aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (including-..the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar AIR 1994 SCW 1050. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural;

justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the

Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule,

as explained in the body of the judgment. In other words, a distinction must be made between ""no opportunity"" and no adequate opportunity, i.e.,

between ""no notice""/""no hearing"" and ""no fair hearing."" (a) In the case of former, the order passed would undoubtedly be invalid (one may call it

void"" or a nullity if one chooses to). In such cases, normally; liberty will be reserved for the. Authority to take proceedings afresh according to

law, i.e., in accordance with the said rule (audi alteram partem), (b) But in the latter case, the effect of violation (of a facet of the rule of audi

alteram partem) has to be examined from the stand-point of prejudice, in other words, what the Court or Tribunal has to see is whether in the

totality of the circumstances, the delinquent officer/employee did or did not have

a fair hearing and the orders to be made shall depend upon the, answer to the said query. (It is made clear that this, principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind

the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this

objective which should guide them in applying the rule to varying situation that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing or the rule of audi, alteram partem. In such

situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.

The above principles are very clear and even though there is no employer employee relationship and the strict provisions of the Industrial Disputes

Act are not applicable in our case, the said principles are useful to decide whether the enquiry conducted in our case is in accordance with the

mandate of the highest Court of the land. It is the contention of the learned Counsel for the third respondent that in this case since there is no rule or

regulation or statutory provision, the actions of the Enquiry Officer and the disciplinary authority are in accordance with law. After careful reading

of the principles mentioned in the above said decision I am unable to accept his contention because the enquiry is not governed by any rule or

regulation or statutory provision as per the decision of the Apex Court referred above, the only obligation to observe the principles of natural

justice. In our case, the facts placed before me clearly show that the petitioners were not given proper opportunity. Hence the decision referred to

by the learned Counsel for the third respondent only supports the case of the petitioners.

13. The next decision relied on is Abhay Kumar Yadav Vs. K. Srinivasan and Others, . In that case a student was prosecuted u/s 307, I.P.C., for

stabbing a co-student. The Principal of the concerned institution passed an order debarring the delinquent student from entering the premises of the

institution and from attending the classes till the pendency of criminal case

against him, though the Disciplinary Committee had recommended the penalty of expulsion. In the light of the above facts the learned single Judge of the Delhi High Court has held as follows:

It was a suspension order in the nature of a preventive action and was not a final order. The order was rational and judicious. Its main object was

to maintain peace in the campus. The delinquent student was therefore, not entitled to any prior notice or opportunity.

Relying on the said passage, the learned senior Counsel for the third respondent contended that considering the grave charges levelled against the

petitioners, there is no need to give prior notice or opportunity to the petitioners to contest the case. In that case, as observed by the learned

Judge, it was only a suspension order which was in the nature of preventive action and not a final order. Here in our case, the impugned order is

not a suspension, but a final order of rustication. In such circumstances, the said decision is not applicable to our case.

14. The other decision is P.M. Unni Raja and Others Vs. Principal, Medical College, Trivandrum and Others, . The following observation of the

Division Bench of the Kerala High Court in the said decision has been pointed out by the learned Counsel for the third respondent (at pp. 207-08

of AIR):

Courts have generally set certain limitations and self-imposed restrictions on them while exercising their discretionary power under Article 226 in

dealing with decisions of academic bodies. The Courts have consistently kept their hands off high academic bodies unless flagrant violation of fair-

play based on bias or mala fides is brought to their notice in the orders passed by them. Even formal violations of principles of natural justice have

been winked at by Courts if allegation of such violation is inconsequential in nature and when the aggrieved is assured of such opportunity in

parallel proceedings.

Even the Division Bench has expressed if there is flagrant violation of fair-play it is open to the Court to interfere. The above observation came to

be passed by the Division Bench when aggrieved of such opportunity in parallel proceedings. In our case, by the impugned order, the third

respondent has passed an order of rustication debarring the petitioners up to three years. Here there is no question of any parallel or further

proceedings. Hence the said decision is also not helpful to the 3rd respondent.

15. The other decision referred to is A.K. Sen and Others Vs. Union of India (UOI) and Others, . In the said decision the disciplinary authority

has dispensed with the enquiry. The said dispensation was approved by the Court in that case. The said decision cannot be cited for our case,

since the persons involved in that case are Central Industrial Security Force. There was a large scale of abstention from duty and parade, orders of

superior officers were disobeyed and flouted, and superior officers were abused in filthy and obscene language and there were dharnas and gheraos

of superior officers in a unit of the Force. In such circumstance, without conducting an enquiry, the said personnel were dismissed from service.

Considering the fact that the personnel were Central Industrial Security Force and maintaining high order and discipline, the action of the

disciplinary authority dismissing them from service for misconduct without enquiry is justified and no stretch of imagination, the said decision can be

applied to the facts of our case.

16. In Satyavir Singh and Others Vs. Union of India (UOI) and Others, also the dispensation of enquiry was upheld by the Apex Court. In the said

decision the persons involved were working in Research and Analysis Wing of Government (RAW). Since the Research and Analysis Wing of

Government was concerned with international affairs and under cover activities pertaining to national security, the dispensation of enquiry in that

case is justified and the same cannot be compared to the facts of the present case.

17. In Shivaji Atmaji Sawant Vs. State of Maharashtra and Others, . Here also, a police constable was dismissed from service without enquiry and

the reasons for dispensing inquiry were served separately after the order of dismissal. The action of dismissal without enquiry was upheld in that

case. In that case also the person involved was a constable in Bombay City Police Force. He had been instigating others to indulge in acts of

insubordination and indiscipline and were instigating them to withdraw from their lawful duties, inciting them to violence and mutiny, joining rioting

mobs and participating in arson, looting and other criminal acts and were wilfully disobeying orders of their superior officers. In such a

circumstance, it was not practicable to hold an enquiry, hence the Apex Court

has upheld the order of dismissal passed without conducting an (sic). For the reasons stated in the earlier cases and in view of the fact that the persons involved were police force and the misconduct alleged were serious in nature, dispensation of enquiry in that case was fully justified, hence the same cannot apply to our case.

18. The other decision is Ikramuddin Ahmed Borah Vs. Superintendent of Police, Darrang and Others, . In that case, due to non-availability of witness on account of fear of officer concerned, invoking Clause (b) of the second proviso to Article 311(2) the enquiry was dispensed with. The said procedure was upheld by the Apex Court in the said decision. Relying on the said decision, the learned senior Counsel for the third

respondent submitted that here also there was some fear in the minds of the victims and it is not possible to postpone the enquiry beyond 23-5-97.

Though the said statement is made in the counter affidavit, it is not reflected neither in the enquiry report nor by the disciplinary authority. I have

already held having issued notice to appear for enquiry, the petitioners must be given adequate opportunity to put-forth their case. I have already

demonstrated through the two charts filed by the learned Counsel for the petitioners that most of the petitioners have received notices only on the

date of the enquiry and they sent telegrams requesting postponement of the enquiry for some other date to enable them to participate in the

enquiry. This was not considered by the Enquiry Officer, and he submitted his report on the very same date, the disciplinary authority passed the

impugned order of rustication on the next date.

19. The last decision referred to by the learned senior Counsel for the third respondent is Leo Francis Xaviour v. Principal, Karunya Institute of

Technology (1992) 2 Mad LW 642 : AIR 1993 Mad 233. In that decision, the learned Judge of this Court (Srinivasan, J., as he then was) refused

to interfere against the order of expulsion of a student who was found guilty in an enquiry conducted on a complaint against him and others by

another student for ragging. I have carefully perused the judgment referred above. There is no dispute that there was a full-fledged enquiry in that

case. As a matter of fact, the petitioner in that case accepted his mistake and pleaded guilty before the enquiry officer. The following conclusion of

the learned Judge is relevant to consider whether that decision is applicable to

our case. In para 8 the learned Judge has observed thus:

A perusal of the file produced by the first respondent shows that an enquiry has been held that the petitioner was given sufficient opportunity to

have his say. The principles of natural justice have been complied with and no complaint can be made by the petitioner that the action was taken

behind his back.

Again in para 26 it is observed thus:

As it is found on the facts that there was an enquiry satisfying the requirements of the principles of natural justice, this Court cannot interfere with

the finding of the Enquiry Committee and the consequential order of expulsion passed against the petitioner.

The above conclusion of the learned Judge clearly shows that there was a proper enquiry and the petitioner in that case was given sufficient

opportunity to prove his case. The learned Judge on satisfaction has held that principles of natural justice have been complied with. Only in such a

circumstance he has come to the conclusion that this Court cannot interfere with the finding of the Enquiry Committee and the consequential order

of expulsion passed against the petitioner. That is not the position in our case. Since I have already demonstrated that the principles of natural

justice have neither been followed nor fulfilled, the decision referred above cannot apply to our case.

20. Even at the outset, I expressed that had the third respondent considering the gravity of the charge chosen to dispense with the enquiry and

passed an order of rustication, that is a different matter. Having appointed an Enquiry Officer after one month from the date of incident and the

Enquiry Officer having issued notices to the petitioners for participation in the enquiry, a duty is cast on the Enquiry Officer as well as the

disciplinary authority to give full opportunity to the petitioners to participate and defend their case effectively. I have also demonstrated the decision

of Division Bench of this Court in the earlier occasion, namely 1994 WLR 768 cited supra in respect of the same college, in which the punishment

of expulsion imposed on the appellant by the College/Management was set aside on the ground of violation of the principles of natural justice.

When they are having a decision of this Court in their hands. I do not know how the same mistake has been committed by the disciplinary authority

and the college. I am also unable to countenance the action of the third respondent in not communicating the charge or charges to the petitioners, appointment of Enquiry Officer etc. As already stated, both the Enquiry Officer and the disciplinary authority failed to follow the principles of natural justice. In such circumstance, this Court has no other option except to interfere with the impugned order passed by the third respondent.

20A. The first respondent is the Director of Technical Education, Chennai and the second respondent is the Bharathiyar University, Coimbatore.

There is no dispute that the third respondent institution is affiliated to the second respondent and also under the control of the first respondent.

Apart from the present incident, against which the petitioners have filed the above writ petitions, there were some instances on earlier occasion also

with regard to collection of higher fees, imposition of heavy fines, imposition of particular faith on the students, the respondents 1 and 2 who are

empowered to enquire against the third respondent, have not acted properly and remained as silent spectators. Since the third respondent has

denied all the above allegations, I am not expressing anything in this regard. However, I am of the view that the respondents 1 and 2 could have

taken some more interest in the affairs of the third respondent to ascertain the grievance of the students with regard to the above complaints. Since

no information regarding tangible steps taken by respondents 1 and 2 is brought to the notice of this Court, I am constrained to make such an

observation. It respondents 1 and 2 involve and consider the grievances of both the students and the third respondent-Management then and there

or at the initial stage. I am of the view that the incident said to have taken place in the campus could have been avoided. Apart from the

respondents 1 and 2, it is all the more necessary for the third respondent institution to develop a sense of passion, fellow feeling, harmony,

understanding and sympathy towards their students. Equally it is also the responsibility of the students to concentrate on their studies without

involving their minds or concentrating on avoidable matters during their valuable stay in their campus.

21. Accordingly, I pass the following common order in all these writ petitions:

(i) All the writ petitions are allowed and the impugned order of the third respondent is set aside. There will be no order as to costs.

(ii) If the third respondent wants to proceed further, it is open to them to proceed against the petitioners in accordance with law. While conducting enquiry, the third respondent is directed to follow the principles of natural justice by affording all reasonable and proper opportunities to the petitioners and pass appropriate orders. Petitioners are directed to inform their correct postal address within 10 days to third respondent I make it clear that before initiation of fresh enquiry or during the enquiry or even after the enquiry if any one of the petitioners involve in any activities detrimental to the enquiry, opening of the institution and to other students, it is open to the Management of the third respondent to take appropriate action in accordance with law.

22. Finally a last word to the students in the third respondent Institution and students community in general, I make this observation that having come to the Educational Institutions to learn and pave way for the bright future, it is better to concentrate on their studies and to avoid matters other than learning education till completion of their course.