

(1985) 06 KAR CK 0044
In the Karnataka High Court
Case No : Writ Petition No. 2663 of 1982

Mohammad Zafar Sharief

APPELLANT

Vs

Karnataka University

RESPONDENT

Date of Decision : 19-06-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka State Universities Act, 1976 — Section 62, 62 (2)

Citation : (1987) ILR (Kar) 1056

Hon'ble Judges : Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : G.N. Seshagiri Rao, for the Appellant; Subash B. Adi, for R 1 and N.S. Prasad, for R-3, for the Respondent

Judgement

Chandrakantaraj Urs, J.—The petitioner was a student in B Pharma Degree Course in the year 1981. In July 1981 he took the I Year Examination, but his results were withheld. On enquiry he was told, it was alleged that if he tendered an apology in his own hand writing about the incident said to have occurred outside the Examination Hall during July 1981 Examination, he would be forgiven and his results announced. The petitioner claims that he complied with the same. A true copy of the letter of apology is to be found at Annexure-A1 to the petition. It does not bear any date.

2. Thereafter, by a letter dated 7-11-1981 he received intimation from the Controller of Examinations of the 2nd respondent University namely, the Karnatak University Dharwar, charging him with malpractice of having manhandled the College peon by name Shri K. Ramamurthy i e., by giving blows on his face when the B. Pharma Examination was in progress and the same had been reported by the Senior Supervisors. He was requested to appear before the Malpractice Cases Consideration Committee (hereinafter referred to as the Committee) and adduce any evidence, if any, and other suitable explanation for his conduct as alleged above. That letter was replied to by the petitioner stating

that he had given his explanation and apology on 3-11-1981 itself through the Principal of the College at Raichur and the same may be accepted by the Committee and he be permitted to continue his studies. On 3-12-1981 he was informed that the University after careful consideration of his case and on the recommendations of the Committee was fully convinced that he actually resorted to malpractice at the above said Examination and as such it was decided to give him the punishment of his performance being cancelled at the Examination he had taken in July 1981 and further debarred from appearing for 5 consecutive Examinations. These correspondences are to be found at Annexures-B, C and D respectively.

3. Aggrieved by Annexure-D the last of the correspondences mentioned above, the petitioner has approached this Court under Article 226 of the Constitution praying for the quashing of the same inter alia contending that his explanation and apology were obtained under false promises and instead of exonerating after the apology was tendered in relation to the alleged misconduct, he had been punished contrary to the law and without jurisdiction.

4. The respondent-University after notice has entered appearance. It did not file any statement of objections. It made the records of the case available for scrutiny of the Court. The facts themselves are not in dispute. I do not think this Court should need go into the question as to whether the letter of apology at Annexure-A1 to the Petition was obtained under false promises.

5. Mr. G.N. Seshagiri Rao, Learned Counsel for the petitioner-Student, has fairly conceded that the student did assault the peon, Ramamurthy. What Mr. Seshagiri Rao really emphasised in his arguments in support of the quashing of the impugned order at Annexure-D is that assault, however, criminal it might have been, it could not be considered as malpractice at the Examination though it may fall in the category of misconduct by a student in the College premises or at the premises where the Examinations were being held.

6. The argument is really founded on the language of Section 62 of the Karnataka State Universities Act, 1976, (hereinafter referred to as the Act). Section 62 of the Act has fallen for consideration before this Court in several cases. Sub-section (1) of Section 62 of the Act does no more than declaring that the Vice-Chancellor is the final authority for maintenance of discipline among the students of the University. It further mandates all concerned that any direction the Vice-Chancellor may issue in that behalf shall be carried out by the Heads of Colleges, Hostels and other institutions. Neither the records nor the statements made by the Learned Counsel throw any light as to the role played by the Vice-Chancellor in the action taken against the petitioner. The reference to the consideration by the University in Annexure-D to the Petition is the only indication that the Vice-Chancellor had in any way dealt with the matter except at the stage of considering the report of the Committee. In other Words, for any act of indiscipline by the petitioner either in the premises of the College or Hostel or at the Examination Hall, there was no complaint by the Principal of the College

or the Senior Supervisor in regard to the behaviour inside the Examination Hall or the Warden of Hostel.

7. The records disclose that the imputation of the charge against the petitioner was that he had assaulted the peon, Shri Ramamurthy, outside the Examination Hall as that peon was responsible for preventing another student from taking into the Hall some material which would have been of assistance to the petitioner. In other words, the provocation for the assault was the prevention of the material being carried into the Hall. But such material was ever used by the student inside the Examination Hall was not the gravamen of the charge. On the other hand, it is clear from the report of the Senior Supervisor that the assault took place after the Examination. That does not indicate any commission of malpractice at the Examination. It certainly indicates an act of indiscipline or misconduct. If the charge itself is not clear and even if it is held to be clear and is considered a misconduct of the student, punishment of withholding the result, debarring the student from further Examinations and the matter being investigated and reported by the Committee appears to be somewhat strange.

8. No doubt, Sub-section (2) of Section 62 of the Act provides for punishment being imposed either by debarring or by rustivating the student from Examinations or College or Hostel by the Syndicate on the report of the Vice-Chancellor. From the records it is seen a note is submitted to the Vice-Chancellor by the Members of the Committee of what is described as malpractice at the B.Pharma Examination.

9. Para 3 of the note states the Vice-Chancellor may please accept the above recommendations of the Committee on behalf of the Syndicate as authorised so as to enable the candidates to submit their application forms for admission to the above said Examinations to be held in January 1982. The first case in the note describes the action of the petitioner and the Committee recommended the punishment which has been imposed. But no paper has been made available to the Court as to the report of the Vice-Chancellor placed before the Syndicate. I would hold that in the absence of report even if it be a report of the recommendation of the Committee is not the essential ingredient for the Syndicate to assume jurisdiction to proceed further in the matter. In the absence of such report from the Vice-Chancellor, the Syndicate cannot be seized of the matter.

10. Whatever that may be, proviso to Sub-section (2) of Section 62 of the Act mandatorily requires the Syndicate to propose the punishment first to the student concerned, seek his explanation and thereafter proceed to punish according to the procedure or reduce or nullify the same in the light of the explanations received. That procedure prescribed in the proviso does not appear to have been followed in this case because the Controller of Examinations who issued the show cause notice at Annexure-B proceeded to inform the punishment imposed, in accordance with Annexure-D, allegedly by the University.

11. In fact, the Learned Counsel for the University has not been able to place before the Court, the proceedings of the Syndicate in this Court. What is made available to the Court is a notification dated 1-12-1981 issued by the Controller of Examinations. As far as the knowledge of this Court goes to the proceedings of the Syndicate are to be published and notified only by the Registrar and not by the Controller of Examinations. In other words, from the records this Court has to painfully form the opinion that there is every likelihood that the matter was not brought before the Syndicate at all. In fact, in the notification of 1-12-1981 there is no reference to the Syndicate. It merely states that the University has carefully considered. University consists of 21 authorities, not all of them empowered to act u/s 62(2) of the Act. It is only the Syndicate which may do so. In this position, I must hold that the entire exercise appears to have been without the authority of law, highly improper, vague and high-handed.

12. Worse still, the conduct alleged and which this Court may take as admitted by the petitioner was outside the Examination Hall, though deplorable can never be treated as malpractice. The word "malpractice" as defined in the Law Lexicon of British India compiled and edited by P. Ramanatha Aiyar, B.A., B.L.. at page 779 has given the following meanings :

"Malpractice. As applied to attorneys at law, evil practice in a professional capacity and a resort to methods and practices unsanctioned and prohibited by law; misbehaviour; practice contrary to established rules (Cent. Dict.) ; improper or immoral conduct ; objectionable practice (Standard Dist.), evil practice, illegal or immoral conduct..... "Malpractice" is mal or bad practice etc."

13. The Concise Oxford Dictionary 1972 re-print at page 738 gives the following meaning of the word :

"Malpractice, n. Wrong doing, (law) physician's improper or negligent treatment of patient, (law) illegal action for one's own benefit while in position of trust."

14. From the above two extractions what is apparent is that in general usage malpractice is referable in relation to practice of a profession and an act is a malpractice if it is prohibited by law or contrary to Rules. Undoubtedly, students who indulge in malpractice either in a College or a Hostel or at an Examination do no more than what is prohibited by law. In that broad sense, the student-petitioner in the instant case has committed an act prohibited by law by assaulting the peon of the college. But at no time was a charge imputed that the petitioner assaulted the peon in order to gain advantage in his Examination Hall which he could not otherwise have done. But the undisputed fact is, any advantage he could have gained was lost because the assault took place after the Examination for that day was over. In that sense, I am unable to see how the petitioner could have committed a malpractice at the Examination. There is no complaint by the peon on record. There is no complaint by the College Principal on record. The only complaint on record is that of the Senior Supervisor at the Examination Hall on the relevant day. Annexure-A makes it clear that the

complaint was channelled through the Principal, but the Principal himself was not a party to the complaint. Having regard to all the circumstances and the infirmities I have pointed out the action complained of as at Annexure-D is clearly without the authority of law, contrary to the procedure prescribed by the Act and on a misconception that what transpires outside the Examination Hall constituted malpractice at the Examination.

15. No doubt, in the final notification issued by the Controller of Examinations, there is a reference to manhandling with an oblique mark separating it from malpractice. No material is placed before the Court to come to the conclusion that manhandling outside the Examination Hall of a peon amounts to an act which confers jurisdiction on the Committee. In fact, the scope and power of that Committee is not-made known to the Court.

16. The whole episode took place in the year 1982. Three years are over and probably five examinations from which he was debarred are already completed and the petitioner punished to that extent. But withholding of the result of the performance of July Examination of 1981 appears to me to be most unreasonable.

17. In the light of my conclusions that the action was without the authority of law, the entire order is liable to be quashed and it is so quashed. Normally, I would have reserved the liberty to the respondent, to take action afresh but having regard to the lapse of time and the punishment suffered by the petitioner I do not wish the University to proceed once again against the student who has already suffered the punishment illegally.

18. However, the University is directed to announce the result of his performance at the I Year B. Pharma Examination held by it in July 1981. This petition has been delayed in its disposal entirely due to the fact of the several adjournments taken by the University. In that circumstance, the petitioner is entitled to his costs. Advocate's fee is Rs. 500/-.

19. Rule is made absolute.

The petitioner was a student in B Pharma Degree Course in the year 1981. In July 1981 he took the I Year Examination, but his results were withheld. On enquiry he was told, it was alleged that if he tendered an apology in his own hand writing about the incident said to have occurred out-side the Examination Hall during July 1981 Examination, he would be forgiven and his results announced. The petitioner claims that he complied with the same. A true copy of the letter of apology is to be found at Annexure-A1 to the petition. It does not bear any date.

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