

(2019) 02 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No. 24456, 23039 Of 2018

Mr. Tushar

APPELLANT

Vs

Internal Complaints Committee

RESPONDENT

Date of Decision : 27-02-2019

Acts Referred:

Citation : (2019) 02 KAR CK 0025

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : Prashanth H S, Jayna Kothari, Rohna Kothari , Siddharth B Muchandi, H S Chandramouli

Final Decision : Disposed Off

Judgement

1. Mr.Prashanth H.S., learned counsel for the petitioner. Smt.Jayna Kothari learned Senior counsel for Mr.Rohna Kothari, learned counsel for respondent No.4. Mr.Siddharth B.,Muchandi learned counsel for Mr.H.S.Chandramouli, learned counsel for respondent No.3.

In W.P.No.23039/2018

Mr.P.P.Hegde, learned counsel for the petitioner. Smt.Jayna Kothari, Learned Senior Counsel for Mr.Rohna Kothari, learned counsel for respondent No.4. Mr.Prashanth H.S., learned counsel for respondent No.5. Mr.Siddharth B.Muchandi for Mr.H.S.Chandramouli, learned counsel for respondent No.3.

2. The writ petitions are admitted for hearing. With consent of the parties, the same are heard finally.

3. In these writ petitions since common questions of law and fact arise for consideration they were heard analogously and are being decided by this common order.

4. The facts giving rise to filing of the writ petitions briefly stated are that petitioners as well as the respondent No.4 are students of B.A. LL.B., course in

Christ University. As per averments made in the petitions, at the relevant time, while the petitioners as well as respondent No.4 were students of IV Semester of B.A. LL.B., course on 22.03.2008, the petitioner in W.P.No.24456/2018 (hereinafter referred to as petitioner No.1) while he was in the flat of petitioner in W.P.No.23039/2018, (hereinafter referred to as petitioner No.2) sent an image of his bare chest from the mobile of petitioner No.2 via snap chat application with a caption "This is mine, send urs" to the respondent No.4 in W.P.No.24456/2018, hereinafter referred to as the complainant. It is further averred in the writ petition that the petitioner No.1 played a prank on the complainant as he knew that the image cannot be sent when there is no internet connection to the mobile phone. It is also pleaded that the petitioner No.2, objected and protested but by the aforesaid time, the petitioner No.1 had already pressed the send button and since, the internet was off, the same was not delivered at that time. However, it is further pleaded that subsequently when petitioner No.2 on his mobile, the internet connection was restored and the image was delivered to complainant. It is also averred that immediately thereupon the petitioner No.2 tried to contact the complainant to submit his apology but the complainant did not receive his phone. It is also averred that the room mate of the petitioner No.2 viz., one Shourya Pande who was present at the time of incident also sent an email to the Vice Chancellor of the University and the Director School of Law narrating the events as stated supra.

5. The complainant brought the aforesaid incident to the notice of a member of the law faculty viz., Mrs.Sharmila who advised the complainant to report the incident to the college Counselor. The complainant met the college Counselor and showed her the offending image / message sent from the phone of the petitioner No.2. The Counselor thereupon summoned the petitioner No.2 and enquired with regard to the offending image from him. The Counselor also spoke to parents of petitioner No.2. Thereafter, the petitioner Nos.1 and 2 have tendered apology with an undertaking that such an incident shall never happen in future, to the Director School of Law on 26.03.2018 and 27.03.2018. The petitioners were debarred from completing the remaining subjects of fourth semester examinations, which was held between 27.03.2018 to 11.04.2018. Again on 28.03.2018, the petitioners admitted that they had sent the offending image and gave a letter of apology to the Director of School of Law.

6. The complainant on 28.03.2018 filed a complaint to the Director School of Law, Christ University. The Director School of law on 04.04.2018 advised the complainant to forward her complaint dated 28.03.2018 to the Internal Complaint Committee (hereinafter referred to as 'the Committee' for short).

Thereupon the complainant forwarded the complaint to the Internal Complaint Committee on 04.04.2018 itself. The petitioners as well as complainant were served with a notice by email sent on 05.04.2018 and were asked to participate in the enquiry on 06.04.2018. On 06.04.2018, the enquiry commenced at 2.30 p.m. and completed at 6.00 p.m. and the enquiry committee submitted its

enquiry report. On the basis of the aforesaid report, by an order dated 11.04.2018, the petitioners were found guilty and a punishment of detention from their current studies for a period of one year was imposed on them. Being aggrieved the petitioners preferred an appeal before the Internal Complaints Appellate Committee, which was dismissed vide order dated 08.05.2018. In the aforesaid factual background, the petitioners have approached this Court by seeking the relief of quashment of order dated 11.04.2018 passed by the Committee as well as the Internal Complaints Appellate Committee.

6. Learned counsel for the petitioners while inviting the attention of this Court to the Regulation for prevention, Prohibition and Redressal of Sexual Harassment framed by the Christ University (hereinafter referred to as 'the Regulation' for short) has submitted that the procedure prescribed in Clause 4.2 of the Regulation was not followed inasmuch as neither the copy of the complaint was furnished to the petitioners nor the petitioners were given time to submit their reply. It is further submitted that the petitioners were also not given opportunity either to produce documentary evidence or any witnesses and the enquiry was conducted in a hot haste, which commenced at 2.30 p.m. and was concluded at 6.00 p.m. The impugned order is therefore, procedural ultra vires. It is further submitted that the petitioners were cross-examined by the members of the Committee and proceeded with the enquiry with a pre determined mind. It is urged that the enquiry was not conducted in a dispassionate manner by following the normal judicial practices. It is further submitted that the petitioners have tendered an unconditional apology before this Court. It is also pointed out that even before the enquiry commenced, the petitioners were not allowed to appear in the remaining subjects of fourth semester examination and till today even though the petitioners have appeared in the remaining subjects of the fourth semester as well as the fifth semester examination, their results have been withheld by the University. It is also urged that there is no elements of mens rea and the quorum of the Committee was not complete, therefore, the proceeding of the committee are vitiated in law. It is also pointed out that three members of the Committee who were not part of the enquiry committee initially, which conducted the proceeding on 06.04.2018 were shown as the party to the enquiry report and all the members of the enquiry committee had not signed the report. It is also pointed out that Clauses (d) and (e) of the Regulation 8 was not followed while holding the enquiry against the petitioners. It is also argued that the alleged admissions were extracted from the petitioners by posing a threat of rustication.

7. On the other hand, learned counsel for respondent No.3-University submitted that even prior to filing of the complaint, the petitioners had tendered an apology on 26.03.2018 and 28.03.2018 to the Director of School of Law. It is further submitted that the petitioners in unequivocal terms had admitted their guilt. Therefore, they cannot be heard to say that there is any violation of the procedure. It is also submitted that the petitioners were given an opportunity of being heard and the order passed by the enquiry committee does not suffer from

any infirmity. It is also pointed out that even in the Writ petition the petitioners have not denied that the offending image was sent to the complainant.

8. Learned Senior Counsel for the respondent No.4 submitted that the act of the petitioners amounts to sexual harassment. In support of aforesaid submissions, reference has been made to Section 2(n) of the Act. It is further submitted that even if the complaint made by the complainant was not supplied to the petitioners, no prejudice has caused to them as the image, which in substance is the complaint was shown to the petitioners even before the enquiry. It is further submitted that the petitioners have admitted that they have sent the offending image to the complainant. It is further submitted that the procedure prescribed under the Regulation has been followed and there has been no violation of principles of natural justice. It is also urged that under the regulations 2/3rd members of the committee is necessary to complete the quorum and the quorum was complete. It is further submitted that from perusal of the statements of the petitioners it is axiomatic that they had admitted their guilt in unequivocal terms. It is argued that this Court in exercise of powers of judicial review cannot look into the quantum of punishment and the principles of natural justice are not rigid rules and an action cannot be invalidated merely because there has been mere technical infringement of principles of natural justice in the absence of any prejudice to the delinquent. In support of his submissions, reliance has been placed on decisions of Supreme Court in 'K.L.TRIPATHI VS. STATE BANK OF INDIA AND OTHERS', (1984) 1 SCC 43, 'THE CHAIRMAN BOARD OF MINING EXAMINATION AND CHIEF INSPECTOR OF MINES AND ANOTHER VS. RAMJEE', (1977) 2 SCC 256, 'UNION OF INDIA AND OTHERS VS. ALOK KUMAR', (2010) 5 SCC 349, 'CENTRAL BANK OF INDIA LTD. VS. KARUNAMOY BANERJEE', AIR 1968 SC 266, 'CHANNABASAOOA BASAPPA HAPPALI VS. THE STATE OF MYSORE', 1971(1) SCC 1, 'APPAREL EXPORT PROMOTION COUNCIL VS. A.K.CHOPRA', AIR 1999 SC 625 and 'MEDHA KOTWAL LELE AND OTHERS VS. UNION OF INDIA AND OTHERS', (2013) 1 SCC 297 as well as a division Bench decision of this court in case of 'NEELESH KUMAR AND ANOTHER VS. STATE OF KARNATAKA', ILR 2013 KAR 1555.

9. I have heard the submissions of the learned counsel on both the sides and have perused the record. In 'SWADESHI COTTON MILLS VS. UNION OF INDIA', AIR 1981 SC 818, the Supreme Court while dealing with principles of natural justice has held that the phrase is not capable of any static and precise definition and cannot be imprisoned in the strait jacket formula. It has further been held that historically natural justice has been used in a way which implies of existence of moral principles of self evident and unarguable truth and the rules of natural justice may be summarized in one word viz., 'fairness'. In 'DEV DUTT VS. UNION OF INDIA', 2008 8 SCC 725, it has been held that what is fair would depend on the situation and the context.

10. In 'S.L.KAPOOR VS. JAGMOHAN AND OTHERS', AIR 1981 SC 136 it has been held that where on the admitted or indisputable facts only one conclusion is

possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. Therefore, merely because facts are admitted or they are indisputable it do not follow that natural justice need not be observed. Similar view has been taken by the Supreme Court in 'M.C.MEHTA VS. UNION OF INDIA AND OTHERS', (1999) 6 SCC 237, 'ALIGARH MUSLIM UNIVERSITY AND OTHERS VS. MANSOOR ALI KHAN,' (2000) 7 SCC 529 and in 'UNION OF INDIA AND OTHERS VS. ALOK KUMAR,' (2010) 5 SCC 349.

11. In the backdrop of aforesaid legal principles, the facts of the case on hand may be examined. Before proceeding further it is apposite to take note of the relevant provisions pertaining to enquiry procedure before the committee which reads as under:

a. The ICC upon receipt of the complaint shall get the same scrutinized by reference to a Select Committee within 7 working days of such reference shall examine and report on the complaint to the presiding officer with regard to its veracity, if needed by summoning the complainant and or/by making independent preliminary enquiries. The Select Committee in its Report shall clearly state the reason/s that has lead to its decision on the veracity of the complaint. The independent enquiry referred to may include examining evidences from CCTV cameras installed by the University and the opinion about the general behavioral traits of the complainant/offender from discrete sources.

b. The Presiding Officer on the basis of the report of the Select Committee, if the complaint is to be further enquired, shall as soon as possible send Notice to the respondent with a copy of the complaint seeking his/her appearance before the ICC along with his/her response in writing on a specified date which shall not be earlier than 7 working days from date of the Notice, Notice will also be sent to the Complainant for his / her presence on the specified date. If the case needs urgent attention the Notice period may be reduce at the discretion of the Presiding Officer.

c. If the Select Committee is not convinced of the veracity of the complaint and has so reported, the Presiding Officer shall as soon as possible send Notice to the complainant with a copy of the report of the select committee seeking his/her appearance before the ICC along with his/her response in writing on a specified date which shall not be earlier than 7 working days from date of the Notice. If the case needs urgent attention the Notice period may be reduced at the discretion of the Presiding Officer.

d. Enquiry/Hearing by the ICC shall be conducted dispassionately by following normal judicial practices and if warranted the parties may be allowed to produce documentary evidences/witnesses in support of his/her claim or defence as the case may be. However, either Party shall not be allowed to be represented by any third party including an Advocate.

e. The ICC may hear and / or cross examine the parties either independently or in joint presence as may be deemed fit by the Presiding Officer.

f. If the respondent does not appear on the specified date of Hearing the ICC may pos the Hearing to the same day of the subsequent week and if the respondent once again fails to appear, the ICC may proceed to decide the case on ex-parte basis.

g. Either party on appearance if seeks time to defend his/her case, he/she may be allowed time up to not more than 7 days at a time and no such extension of time shall be permitted more than twice.

12. In the instant case, neither the copy of the complaint was provided to the petitioners nor they were granted any opportunity to file a response in writing. The petitioners have also not been afforded an opportunity to produce documentary evidence as well as to produce their witnesses. The petitioners were summoned by an email sent on 05.04.2018 and wre asked to participate in the enquiry on 06.04.2018. The enquiry commenced at 2.30 p.m. and concluded at 6.00 p.m. i.e., within 3 ½ hours. The questions were put to the petitioners by the members of the committee to which they have replied. Thus, the entire enquiry against the petitioners has been conducted dehors the procedure prescribed under the regulation viz., regulation 4.2. In the instant case, even if it is assumed that the petitioners had admitted their guilt, only one conclusion with regard to the punishment is not permissible. In the facts of the case, the penalty of detention for 1 year as well as debarring them from appearing in the semester examination, in the instant case, different punishments can be imposed on the petitioners, which are not prescribed under the law. Therefore, compliance of principles of natural justice is necessary in the fact situation of the case. Therefore, the observance with principles of natural justice as incorporated in the Regulation was necessary. The enquiry appears to have been conducted in hot haste and it is pertinent to mention here that three members who were not part of the enquiry held on 06.04.2018 are parties to the enquiry report dated 09.04.2018. The impugned orders dated 08.05.2018 & 16.05.2018 therefore cannot be sustained in the eye of law.

13. So far as reliance placed by the Learned Senior Counsel for the complainant in the case of K.L.TRIPATHI supra is concerned, the same is an authority for the proposition that non compliance of principles of natural justice must cause some prejudice to the delinquent officer, suffice it to say that the aforesaid decision has no application to the fact situation of the case as departmental proceedings were conducted as per the conduct rules in the aforesaid case. Similarly, the decision in the case of CHAIRMAN BOARD OF MINING EXAMINATION AND CHIEF INSPECTOR OF MINES AND ANOTHER lays down a proposition that natural justice is not an unruly hors and in a case where reasonable opportunity has been provided the court will not interfere. The aforesaid decision is also of no assistance to the complainant. Similarly in the case of UNION OF INDIA AND OTHERS supra it has been held that if upon admitted or indisputable facts only

one conclusion was not possible then in such a case principle of natural justice was in itself prejudice, would not apply. The aforesaid decision is also of no assistance to the complainant. Similarly the decision relied in the case of CENTRAL BANK OF INDIA LTD., does not apply to the fact situation of the case as during the enquiry proceeding in the aforesaid case the workmen had made an admission with regard to his guilt. However, in the instant case, it is relevant to mention that despite the admission made by the petitioners even before initiation of enquiry, the respondent No.3 decided to hold an enquiry and did not act on the admission of the petitioner. Therefore, the aforesaid decision which is an authority for the proposition that if the facts are admitted no enquiry need be held does not apply to the fact situation of the case. The decision in the case of APPAREL EXPORT PROMOTION COUNCIL supra deals with sexual harassment of women at work places, which has no application to the fact situation of the case and for the same reason the decision in the case of MEDHA KOTWAL LELE AND OTHERS supra does not apply to the fact situation of the case.

14. In view of preceding analysis the impugned orders dated 08.05.2018 & 16.05.2018 are quashed and set aside. Needless to the state that respondent no.3 shall be at liberty to take action against the petitioners after giving them a notice in terms of the Regulation and giving them an opportunity to give a written reply as well as adduce oral as well as documentary evidence in accordance with procedure prescribed under the Regulation. With the aforesaid liberty, the petitions are disposed of.