

(1990) 01 KAR CK 0006
In the Karnataka High Court
Case No : Writ Petition No. 12856 of 1989

P. Umesha Rao

APPELLANT

Vs

Bangalore University, Bangalore and Others

RESPONDENT

Date of Decision : 03-01-1990

Acts Referred:

Karnataka State Universities Act, 1976 — Section 62

Citation : (1991) 4 KarLJ 338

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Briefly stated, the essential facts of the case are as follows:

The petitioner appeared for the final year B.E. examination in the month of March, 1989. On 28-3-1989 when the petitioner was taking the examination in Value Engineering the flying squad of the Bangalore University seized the answer book from a student by name K. Kamalakara Reddy who was sitting adjacent to the petitioner and the said answer book actually belonged to the petitioner himself. On the day when the answer book was seized from Kamalakara Reddy, the petitioner did not offer any explanation or any statement. On 3-4-1989 the petitioner wrote to the Registrar (Evaluation) of Bangalore University, requesting for release of the answer book for the purpose of valuation. However, the answer book was not released or returned. On 21-4-1989, the article of charge and statement of allegations in support of the charge were issued to the petitioner and it reads as follows:

"BEFORE THE MALPRACTICE ENQUIRY COMMITTEE

In the matter of Malpractice Enquiry against Sri P. Umesh Rao, Reg. No. 078401082.

CHARGE

That on 28-3-1989 at afternoon you being a candidate for IV year B.E. Examination in B.M.S. College of Engineering, Bangalore, were found to have exchange your answer book with the candidate bearing Reg. No. E 82 BH 023.

STATEMENT OF ALLEGATIONS IN SUPPORT OF THE ABOVE CHARGE:

You were a candidate for IV year B.E. Examination from BMS College of Engineering, Bangalore on 28-3-1989 in the afternoon while you were writing the paper on the subject Value Engineering found to have exchange your answer book with the candidate bearing Reg. No. E 82 BH 023 while the University Squad entered. Accordingly the Hall Ticket, relevant paper were seized under the report from the Chief Superintendent.

Thus you have committed a malpractice which is unbecoming of a student.

The aforesaid charge is supported by the following list of documents:

1. Hall Ticket.
2. Answer Scripts.

You are hereby requested to submit your statement of Defence if any and to appear in person before the committee on 4th May, 1989 at 2.00 p.m. in the Chambers of the undersigned, failing which the enquiry will be proceeded on the basis that you have no defence to offer."

In the said article of charge, the petitioner was called upon to submit his statement of defence if any and also to appear in person before the Enquiry Committee on 4-5-1989 at 2 p.m. in the Chambers of the convener, Malpractice Enquiry Committee. The petitioner appeared before the said Committee on 4-5-1989 and submitted his answers to the questions embodied in the prescribed proforma. The following are the answers given by the petitioner to the questions found in the proforma before the Malpractice Enquiry Committee on 4-5-1989.

"1. Have you received the article of charge?

Ans: Yes.

2. Have you gone through it?

Ans: Yes.

3. Do you admit the charge or deny the same?

Ans: Denies the same"

Beyond answering these questions the petitioner does not appear to have asked either for examination of his witnesses or for cross-examination of any witnesses nor did he file any other statement before the Enquiry Committee.

2. On 3-7-1989, an endorsement was issued to the petitioner informing him that the findings and recommendations of the Malpractice Enquiry Committee as per its report dated 4-5-1989 were accepted by the University Syndicate at its meeting held on 7-6-1989 and a penalty was imposed upon the petitioner denying him the benefit of performance of all papers (theory and practice) of IV year B.E. Examination held during March, 1989, and also that he was debarred

from appearing for two more such examinations viz., of June 1989 and February 1990.

3. Aggrieved by this order, a copy of which is produced as Annexure-C, the petitioner has challenged the said endorsement in this writ petition. Besides quashing the endorsement dated 3-7-1989 issued by the 2nd respondent, a copy of which is marked as Annexure-C, the petitioner has also sought for a mandamus to respondent No. 1 to publish his results of the final year B.E. Examination held in March, 1989.

4. Arguments were addressed by Sri U.L. Narayana Rao, learned counsel for the petitioner and by Sri M.N. Seshadri learned Standing Counsel appearing for the Bangalore University.

5. It was contended by the learned counsel for the petitioner that principles of natural justice were thrown into the winds and adequate opportunities were not afforded to the petitioner to defend himself against the charge. What was contended by the learned counsel for the petitioner was that the Malpractice Enquiry Committee did not give an opportunity to the petitioner to explain his defence and to meet the imputation made against him and therefore the enquiry held against the petitioner is bad in law.

6. On behalf of the Bangalore University the learned counsel submitted that the writ petition itself deserves to be dismissed on the ground that the petitioner cannot invoke the writ jurisdiction in view of the fact that the petitioner has admitted the malpractice by virtue of the statement voluntarily given by him, subsequent to the incident of detection made by the flying squad when particularly the petitioner was under no obligation at all to make such a statement.

7. Secondly, it was contended by the learned counsel for the Bangalore University that in a case of malpractice of this kind with which the Court is confronted in the instant case, what is contemplated is not the enquiry characteristic of the one to be held either by an Industrial Tribunal or even by a Domestic Tribunal. The gravity of the case is so accentuated by the fact that there was a red handed seizure of the answer script written by the petitioner when it was in the possession of Kamalakara Reddy who was sitting next to him writing in the same examination at the time when the flying squad laid its hand on the answer script. It may be said that it is a case in which the circumstances speak themselves particularly in the absence of any explanation from the petitioner that the seizure was made coupled with the fact that the petitioner made a tacit admission of his answer script in the hands of his neighbour in the examination hall on 28-3-1989, as could be seen from the contents of the letter which he addressed to the Registrar (Evaluation), Bangalore University, on 3-4-1989.

8. It may be necessary to refer to the provisions relating to malpractice actionable under Section 62 of the Karnataka State Universities Act, 1976 (for

short the "Act"). Clause 8.7 of the ordinance framed under the Act relates to illustrative example of malpractice. It reads:

"8.7 Copying from the material or matter or answer of another candidate or similar aid or assistance is rendered to another candidate."

Clause 8.12 also amounts to malpractice. It reads:

"8.12 Communicating any other act or commission intending to gain an advantage or favour in the examination by misleading, deceiving or inducing the examiner or officers or authorities of the University/College."

According to Clause 8.15 the procedure for imposing penalties is as follows:

"8.15 PROCEDURE FOR IMPOSING PENALTIES:

1. No penalties may be imposed on a candidate except after an enquiry held, as far as may be, in the manner hereinafter provided.

2. The Malpractices Enquiry Committee shall frame definite charges and communicate such charges together with a statement of allegation on which they are based, to the candidate in writing and he shall be required to submit within such time as may be specified by the committee, a written statement of his defence and also to state whether he desires to be heard in person:

Provided, if any candidate has admitted having committed the malpractice before the Chief Superintendent of the Examination Centre, the Vice-Chancellor may issue the charge-sheet and if the candidate accepts the charge without contest, proceed to impose the punishment as provided in the ordinances."

Clause 8.16 reads:

"8.16 The Malpractice Enquiry Committee shall, in the course of enquiry, consider such documentary evidence and take such oral evidence as may be relevant or material in regard to charge or charges. The candidate shall be entitled to cross-examine witnesses examined in support of the charges and to give evidence in defence. The person presenting the case in support of the charges shall be entitled to cross-examine the candidate and the witness examined in defence."

9. According to the article of charge communicated to the petitioner, the substance of the allegation is, that the petitioner was found to have exchanged his answer book with the candidate bearing Registration No. E 82 PH 023 while the flying squad entered. Accordingly, the Hall Ticket and the relevant papers were seized under the report of the Chief Superintendent. The charge was supported by two documents, one being a Hall Ticket and the other being the answer script and the petitioner was afforded an opportunity to submit his statement of defence if any and also to appear in person before the Committee on 4-5-1989 at the appointed time in the chamber of the convener of Malpractice Enquiry Committee.

10. The learned Standing Counsel for the Bangalore University made available all

the records relating to the enquiry and I have gone through them.

11. It is not the case of the learned counsel appearing for the petitioner that there was a violation of the rules in holding an enquiry or that a wrong charge was framed against the petitioner. But what was vehemently contended by the learned counsel for the petitioner was, that there was no satisfaction of the principles of natural justice inasmuch as the petitioner did not have the opportunity of offering his defence and the benefit of cross-examination of witnesses.

12. The records show that beyond answering the questions that were incorporated in the proforma before the Enquiry Committee, the petitioner had nothing more to say than merely denying the charge. In other words, it is a case of denial simplicitor. There is no material on record to come to a conclusion that the petitioner wanted to do something more than denying the charge against him. The petitioner did not come forward with the request that he would either like to examine the witnesses or produce the documents or that he had the intention of cross-examining any witnesses. It is a fact that no witness was examined on behalf of the Bangalore University and this is quite understandable. The petitioner by addressing a letter voluntarily on 3-4-1989 had virtually made a tacit admission that the answer book was taken by his neighbour without his knowledge when he was engrossed in answering the questions in the examination hall. Annexure-A, dated 3-4-1989 is the letter addressed by the petitioner to the Registrar (Evaluation), Bangalore University and it constitutes the basis for recording a finding that the petitioner even before the enquiry was held had made a clean breast of the circumstances by slating that though he was not a party to the transfer of answer script to Kamalakara Reddy, his answer script was taken without his knowledge by Kamalakara Reddy, taking advantage of his being engrossed in answering the remaining questions.

13. It is difficult to accept the contention of the learned counsel for the petitioner that no reasonable opportunity was given to the petitioner to defend himself. Not only the petitioner was invited to offer his defence in writing but also he was given a personal hearing by the Enquiry Committee and because the petitioner did not take advantage of the opportunity afforded to him, he cannot lay blame at the doors of the University. I am of the opinion that in the circumstances of the case, there is substantial compliance with the principles of natural justice.

14. According to Clause 8.7 of the ordinance pertaining to malpractice in the University examination under Section 62 of the Act, if aid or assistance is rendered to any other candidate in order to copy from the material in the answer script, it would amount to malpractice. The probabilities in the case are that either the petitioner himself has allowed Kamalakara Reddy to avail himself of the answer script of the petitioner for the purpose of copying or that the petitioner was not careful enough as a reasonable and prudent person in preventing Kamalakara Reddy from taking away his answer script and making use of it for the purpose of copying. The fact that there was a change of place of

the answer script from the possession of the petitioner to Kamalakara Reddy who was sitting next to him is not disputed. Whether the petitioner himself had handed over the answer script to Kamalakara Reddy or whether Kamalakara Reddy had taken away the answer script from the possession of the petitioner without his knowledge is beside the point. What is relevant for the purpose of this case is, whether or not in the circumstances of this case, aid or assistance was rendered directly or indirectly to another candidate by the petitioner for copying from the material contained in the answer script of the petitioner. Annexure-A itself is sufficient to hold that malpractice did take place and the petitioner is blameworthy in this behalf.

15. It is not the case of the petitioner that he does not stand by the letter which he addressed to the Registrar (Evaluation), Bangalore University on 3-4-1989, though at the time of enquiry in response to the question whether he admits the charge or deny it, the petitioner has stated that he denies it. However, the petitioner has nothing to say about his own letter, addressed to the Registrar (Evaluation), Bangalore University, on 3-4-1989 and its contents. In these circumstances, it is difficult to accept the contention that the petitioner either did not have an opportunity of defending himself or did not commit any malpractice.

16. Having gone through the records which are produced before me, I am satisfied that there is due compliance with the principles of natural justice and it is too late in the day for the petitioner to complain that he did not have the benefit of either cross-examination or adequate opportunity to defend himself against the charge.

17. Learned counsel for the petitioner placed reliance on H.S. & I.E. Board, U.P. v Bagleshwar, AIR 1966 SC 875. At paragraph 12, their Lordships observed thus:

"In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or appellant No. 1 set up Enquiry Committee to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is justification to do so, Courts should be slow to interfere with the decisions of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Article 226, the High Court is not sitting in appeal over the decision in question; its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order."

I do not see that the principle laid down in this case is of any assistance to the

petitioner. Not only the petitioner on his own saying has contributed to the substantiation of the charge made against him but also the probabilities of the case and the circumstantial evidence do warrant a finding that the petitioner has committed a malpractice. I do not see any justification to reach a different conclusion.

18. The learned counsel for the petitioner has also relied on the case in *Suresh Koshy v University of Kerala*, AIR 1969 SC 198. In order to substantiate his contention that the requirements of natural justice in a case of an enquiry of this kind, that the person accused should know the nature of accusation made; secondly he should be given an opportunity to state his case and thirdly that the Tribunal should act in good faith.

19. Applying the principles laid down in the said decision, I do not find any difficulty in holding that the petitioner was made known the nature of the accusation made against him and he was given an opportunity to state his case in writing apart from a personal hearing and most important it is not the case of the petitioner that the Enquiry Committee had acted in bad faith. Neither bias nor mala fides is attributed to the Enquiry Committee nor the authority which has passed the impugned order after holding an enquiry. It may not be necessary for me to make an extensive reference to the observations made in this decision since I have already held that the principles of natural justice have been fully satisfied in the instant case.

20. Learned counsel for the Bangalore University invited my attention to a decision of the Division Bench of this Court in *Kumari Uma v Board of Pre-University Education*, 1987(3) Kar. L.J. 477: ILR 1988 Kar. 2552, wherein it was held that it is not possible to contend that this Court which is clothed with the jurisdiction to issue writs in the nature of certiorari should not look into the records which has resulted in the impugned orders. The jurisdiction conferred on this Court is a discretionary jurisdiction and this Court must be satisfied that the parties have approached this Court with clean hands.

21. Another observation brought to my notice in this decision is, on the facts and circumstances of the case it is held that these are not the matters in which the Court should exercise the discretionary power under Article 226 of the Constitution notwithstanding the fact that the enquiry held by the authorities concerned in the matter like this did not fully satisfy the requirements of natural justice and notwithstanding the fact that the decision rendered in violation of the principles of natural justice is void and non-est.

22. In the light of the above discussions, I do not consider that this is a fit case for exercise of the extraordinary jurisdiction vested under Article 226 of the Constitution. Therefore, the writ petition fails and is dismissed. In the circumstances of the case, there shall be no order as to costs.