
(1968) 09 KL CK 0012
In the High Court Of Kerala
Case No : Writ Appeal No. 98 of 1968

P.M. Kurien

APPELLANT

Vs

P.S. Raghavan and Others

RESPONDENT

Date of Decision : 27-09-1968

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311
Kerala University Act, 1957 — Section 19, 26

Citation : AIR 1970 Ker 142

Hon'ble Judges : V.R. Krishna Iyer, J; P.T. Raman Nayar, J

Bench : Division Bench

Advocate : Manuel T. Paikadey and Leelamma Paikaday, for the Appellant;
Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Raman Nayar, J.—This case has a history, and it is necessary to set that out at some length for a proper appreciation of the contentions raised.

2. Early in April 1966, the appellant, a student of the Government Victoria College, Palghat, who had just completed the first of the three years of the B.Sc. course of the Kerala University to which the College is affiliated, and sat for the annual promotion examination conducted by the College, received the following communication from the 1st respondent, the Principal of the College:

"It has been reported that you have resorted to malpractice during the annual examinations. You are directed to explain in writing why disciplinary action shall not be taken against you. You should submit your explanation to the undersigned on or before 15-4-1966. If no written explanation is forthcoming, it will be presumed that you have no remarks to offer."

As a charge this was patently defective for it furnished no particulars whatsoever of the alleged malpractice so as to enable the appellant to submit his defence. But one should have thought that the appellant's natural reaction would have

been to protest his innocence forthwith (if he was innocent), and, if the charge was persisted in, to ask for particulars which could be refused only on peril of the entire proceedings being vitiated. Unless, of course, he knew full well what it was all about and had no answer. But, different persons react differently to the same situation. We are assured by counsel that there was a background (which not being relevant for the present purpose has not been disclosed) which would satisfactorily explain why the appellant reacted differently; even the same person might react differently at different times. Be that as it may, the appellant's reaction was to take legal advice and (we are told, on the strength of that advice) to ignore the communication altogether. Not receiving any explanation within the time allowed, the Principal convened a meeting of the College Council (a body, as disclosed in the affidavits filed by the Principal in the second of the three writ petitions the appellant has so far brought against him, composed of the Principal and the Professors of the College whose function it is to advise the Principal on matters such as the promotion and detention of students and their discipline) which having duly considered a report (Ext. P-12, dated 19-3-1966) made by the Lecturer appointed to value the answer papers in Inorganic Chemistry come to the conclusion that the appellant must have inserted previously prepared answer books in his answer paper and was therefore, guilty of malpractice. Accordingly, on the recommendation of the Council, the Principal decided to detain the appellant in the first year class for malpractice, and his name was posted on the notice board of the College among those so detained. Thereupon, the appellant came to this Court with the first of his writ petitions, O. P. No. 1683 of 1966, for quashing the entire proceedings of the Principal, mainly on the ground that they were not in conformity with the principles of natural justice. The learned Judge who heard the petition took the view that, defective though the communication received by the appellant was, regarded as a charge, it nevertheless gave the appellant due notice of the inquiry proposed to be held against him and ample opportunity to ascertain the particulars of the charge against him and answer it if he was so minded. That, according to the learned Judge, was all that natural justice demanded in the circumstances of the case. And, since by ignoring the communication, he had with contumely refused the opportunity offered to him of participating in the inquiry and repudiating the allegation, an ex parte inquiry was all that he could reasonably expect. In particular, natural justice did not require that the Principal should have given the appellant notice of the further stages of the inquiry or issued fresh invitation to him to participate in it and make his defence. In this view the learned Judge dismissed the petition.

3. This was on the 30th of June 1966. The appellant took the matter up in appeal forthwith and in the appeal, W. A. No. 151 of 1966 (decided on the 15th September 1966 and reported in 1967 KLT 97 a division bench of this Court while deprecating the appellant's conduct in consulting a lawyer and ignoring the Principal's communication instead of asking for clarification, nevertheless came to the conclusion that the inquiry held on a vague and indefinite charge was in

violation of the principles of natural justice. This is what their Lordships decided:

"If the appellant has therefore, to be heard and the proceedings before the authorities were of a quasi-judicial nature, there can be no doubt that the appellant must be told in the first instance with what he is charged and this must be in clear and unambiguous terms. The proceedings in this case are vitiated in that this has not been done. This is a fundamental error and everything that followed however bona fide that may be, is equally vitiated because the appellant has been denied an opportunity to state his case regarding the charges against him.

5. On this short ground we allow this appeal and set aside the detention of the appellant. This will not stand in the way of fresh steps being taken in an appropriate manner and in accordance with law against the appellant, if so advised.

6. We cannot possibly postulate the outcome of any such proceedings, if any such proceedings are taken. In the meantime, we do not want the student to lose the benefit of one year. We therefore, consider it imperative that the appellant must be permitted to attend the Second Year Course and continue his studies. We direct accordingly. We make it clear that such attendance of the appellant which we have permitted will not confer any right on the appellant in case it is found that he is guilty and liable to the punishment of "detention".

4. The Principal decided to proceed with the charge against the appellant and, in due course (by Ext. P7 dated 18-11-1966) he appointed a committee consisting of three members of the staff to conduct an inquiry in the matter--meanwhile the appellant had been provisionally admitted to the IInd Year B. Sc. Class in accordance with the directions of this Court, The committee framed a proper charge against the appellant giving full particulars of the alleged malpractice and communicated it to the appellant by a memorandum dated 22-11-1966 which, in addition, required him to appear before it for an inquiry on 29-11-1966. The appellant appeared before the committee and presented a memorandum (Ext. P8) alleging that the members of the committee were disqualified from holding the inquiry by reason of one of them, the President, having been party to the decision of the College Council in the first instance, and the remaining two being under the official control and influence of the Principal who he declared was his prosecutor and avowed opponent. He also raised many other objections and made it clear that he was not prepared to participate in any inquiry by the committee. The committee reported the matter to the Principal without proceeding with the inquiry, and the Principal, warned by his previous experience, not unnaturally came to the conclusion that this was a matter in which he should proceed with great circumspection after obtaining legal advice. But, since that would take time, the Principal decided to examine the question whether ignoring the alleged malpractice the appellant had passed in the examination--as his report Ext. P 12 shows, the examiner who had reported the alleged malpractice had not, in view of his suspicions, valued the appellant's

answer paper in Inorganic Chemistry- Accordingly, (by Ext. P10, dated 1-12-1966) the Principal called for a report regarding this from the Professor of Chemistry and the Professor reported on 6-12-1966 that the appellant had not secured the minimum qualifying marks for promotion even assuming that he had committed no malpractice.

5. Students detained for want of progress at the close of the academic year 1965-66 had been permitted to sit for a re-examination to prove their fitness for promotion. This opportunity had not been offered to the appellant, who had been detained on the ground of misconduct; and it was rightly thought proper to afford him such an opportunity now that the detention was to be on the ground of want of progress. Accordingly, the Principal passed the order Ext. PII on 7-12-1966 directing the appellant's detention in the First Year Class, but, subject to the result of the inquiry into the charge of malpractice permitting him to sit for a re-examination to prove his fitness for promotion. Pending that, the appellant was provisionally permitted to continue attending the Second Year Class.

6. The re-examination was to be held on the 16th and 17th December 1966. But, to use his own language, the appellant saw this as a new ruse improvised for getting him into the Principal's grip and then throttle him. He refused to step into what he called this trap and forthwith came to this court once again with his second writ petition, O. P. No. 4514 of 1966. It would appear that, while this petition was pending, the Principal affirmed his order, Ext. PII, the appellant not having chosen to sit for the re-examination, and, since the appellant had not sought re-admission into the First Year Class--apparently the practice is that a detained student has to apply for re-admission the following academic year taking his chance with the new entrants--removing his name from the rolls. Thereupon the appellant moved this court for punishing the Principal for contempt --that petition it would appear was eventually withdrawn in view of the order made in the writ petition.

7. The second writ petition, O. P. No. 4514 of 1966, was disposed of by a single judge of this court on 18th January 1967, and, since the present writ petition is the direct outcome of what was ordered therein, it would be as well to set out the operative portion of the judgment (marked here as Ext. P1) in full:

"4. In dealing with the writ appeal (the appeal against the dismissal of the appellant's first writ petition--the learned judge was a member of the bench which heard and decided the appeal) we proceeded on the basis that the only blemish, if any, alleged against the petitioner, was the reported malpractice. I do not think therefore, that at this distance of time there should be a fresh scrutiny of the examination results and a detention on the ground that the petitioner has not secured enough marks. There was no such detention order at any time earlier. The petitioner has been permitted to attend the Second Year Course by this Court by the judgment in Writ Appeal 151 of 1966, and till recently, he has been attending the class. In these circumstances, it was suggested to the respondent that the proceedings commencing from Ext. P4 (Ext. P11 here)

should be withdrawn and the learned Advocate General who appeared for the respondent stated before me that the respondent is willing to adopt such a course. In view of the above, the proceedings commencing with Ext. P4 will be ignored.

5. As to whether the proceedings commenced by the issue of the charge sheet Ext. P2 must be pursued is a matter for the respondent to decide. If he decides to conduct an enquiry the enquiry will be conducted by Shri P. Gopalan Nair, Professor of Malayalam as agreed to by either side. It is also agreed that he is a person who had nothing to do with this matter and is in no way incompetent to conduct the enquiry. If such an enquiry is to be held, it will be held on the 25th January 1967 commencing at 10 A. M. in the office of Shri P. Gopalan Nair. The information regarding any material which would be relied on and copies of records if any, will be given to the petitioner on or before the 20th of this month. A list of the witnesses to be examined will also be furnished. Such of the documents, copies of which cannot be furnished, must be made available for inspection at the office of the enquiry officer Shri P. Gopalan Nair, on Monday the 23rd, between hours that will be notified by Shri P. Gopalan Nair, the inspection to take place in the presence of Shri P. Gopalan Nair.

6. After the enquiry a report will be drawn up by Shri P. Gopalan Nair entering his findings on the charge and this will be sent to the Principal on or before the 26th January. The College Council will consider this report and pass appropriate orders on or before the 28th of this month. If the petitioner is found not guilty, he will be allowed to continue his studies from the 30th January in the Second Year B.Sc. In that event necessary exemption condoning lack of attendance, if any, arising out of absence of the petitioner from the class because of his original detention and the present expulsion will be granted to him.

7. This writ application is ordered on the above terms. There will be no order as to costs."

It will be noticed that the charge of malpractice pending against the appellant was not the subject-matter of this second writ petition. That petition was concerned only with his detention under Ext. P11 for want of progress. But, oppressed by the circumstance that the career of a young man was at stake, everybody concerned, the judge not least of all, was anxious that if the charge of malpractice was being pursued the inquiry should be brought to as speedy a conclusion as possible and should be conducted in such a manner as to give not the least room for complaint. And it is clear that that was why the learned judge persuaded himself (with, as his judgment indicates, the consent of both sides) to give detailed directions regarding a matter that was not really before him.

8. The Principal decided to prosecute the charge of malpractice, and, since Shri Gopalan Nair, who was to have held the inquiry according to the directions in Ext P1, proceeded on leave, he applied to the court for further directions. And further inquiry according to the directions in Ext. P2 dated 13-24967, in the following

terms:

"2. It is agreed now by the parties to the original petition that the enquiry may be conducted by Smt. Anna Vareed, Professor of Zoology. She will therefore conduct the enquiry in her office commencing at 10 A. M. on the 21st February, 1967. The information regarding any material which would be relied on and the copies of records, if any, will be given to the petitioner on or before the 17th February. A list of the witnesses to be examined will also be furnished before the date. Such of the documents, copies of which cannot be furnished, must be made available for inspection by the petitioner at the office of the Enquiry Officer on Saturday the 18th February, 1967. The inspection will take place in the presence of the officer directed to conduct the enquiry. After the enquiry the report of the officer together with the findings will be placed before the College Council and the College Council will consider the report and findings and pass appropriate orders."

9. Smt. Anna Vareed accordingly held an inquiry from the 21st to the 24th February 1967. At this inquiry the Principal and Shri Lakshminarayanan, the examiner in Inorganic Chemistry for the annual examination of 1966, who had first made the allegation of malpractice, as also Smt. Saraswathi, Professor of Chemistry, were examined in the appellant's presence and the appellant's explanation was recorded. The Principal had (and could have had) nothing relevant to say regarding the charge itself. And, all that Shri Lakshminarayanan and Smt. Saraswathi did was to draw attention to the suspicious features in the appellant's answer book (objective facts speaking for themselves) leading to the inference of malpractice as alleged. They spoke to nothing within their own personal knowledge.

10. Smt. Anna Vareed submitted her report, Ext. X3 to the Principal on 27-2-1967. This is the conclusion she reached:

"The failure on the part of Sri. P. M. Kurien to offer an explanation to the memo, dated 6-4-1966 and referred as Ext. P1 in the file, served to him and the facts pointed out by the concerned examiners in Chemistry, such as the abrupt ending on page 4, the overwriting on the original numbers of certain pages, the high standard of the answers on the renumbered sheets and the observed breadthwise foldings on pages 5 to 16 indicate that Kurien must have resorted to the alleged malpractice reported against him. However being a teacher in Zoology I am not an authority to distinguish the difference in standard between the answers to questions 2 and 3 and the answer to question 1. The poor standard of the answer to question 5 is quite obvious. So far as the re-numbering is concerned the explanation given by Shri Kurien does not sound satisfactory. The distinct breadthwise foldings on the reported inserted sheets I am unable to detect at this stage because the whole file appears to be soiled and crushed by too much of handling. A year is over now since the alleged malpractice committed by Sri Kurien has been reported.

Taking all these facts into consideration I find it difficult to prove definitely that Kurien had resorted to the malpractice reported against him."

11. As the minutes Exts. X1 and X2 disclose, the report was considered at two meetings of the College Council held on the 4th and 7th March 1967 respectively. Ext. X1 shows that the report which had been previously circulated among the members was discussed in detail with reference to the file. Of the 16 members of the Council (including the Principal) 12 held the appellant guilty of the malpractice alleged, two including Smt. Anna Vareed, endorsed the conclusion reached by her in the report, one, Shri Gopalan Nair (who by his absence on leave had relieved himself of the responsibility of holding the inquiry as ordered by Ext. P1) chose to refrain from expressing any opinion, while the remaining member wanted time to go through the file before coming to a conclusion. It was to give that member the time he wanted that the meeting was adjourned. At the adjourned meeting held on 7-3-1967 the matter was again discussed at length and a resolution was moved to the effect that the Council had come to the conclusion that the appellant was "guilty of the offence of malpractice reported against him by Shri Lakshminarayanan" and that the Council therefore recommended to the Principal that the appellant "should be punished with detention in the First B.Sc. Chemistry Class at the end of the academic year 1965-66". The resolution was put to vote and carried, 13 voting for, none against, and three abstaining.

12. Another resolution was also moved and carried by 15 votes with one abstention. That was to the effect that "in consideration of the peculiar turn of events and the time factor" the Principal should, as a special case, regard the appellant as having been re-admitted to the First Year Class for the academic year 1966-67, provided he made an application in writing to the Principal for the purpose on or before 31-3-1967. In that event, his promotion from the First Year Class to the Second Year Class at the end of the year 1966-67 was to be based on his performance in a special examination in the optional subjects to be conducted in the re-opening week in June 1967.

13. The Principal accepted the recommendations of the College Council and accordingly issued the order, Ext. P3 dated 28-3-1967. Needless to say, the appellant was no more prepared to accept this than he was prepared to accept the previous orders of detention, and, on the 6th April 1967, he brought his third writ petition, the present petition, for quashing the Principal's order Ext. P3 and all proceedings leading thereto and for such other consequential and incidental reliefs as to the court may seem just and necessary in the circumstances of the case.

14. Put briefly the grounds on which the appellant assailed, and still assails. Ext. P3 are:

1) That the Ordinances of the University provide for detention only for want of progress and do not contemplate its imposition as a punishment for misconduct.

The order of detention is therefore illegal, and, in any case, beyond the competence of the Principal and the College Council;

2) That the impugned order, Ext. P3, and the proceedings leading up to it violate the directions given in Exts. P1 and P3; and

3) That the entire proceedings are void for offending against the principles of natural justice.

15. None of these grounds appealed to the learned single Judge who heard this petition in the first instance. Neither do any to us.

16. Section 19 of the Kerala University Act 1957, read with section 26 thereof, empowers the Syndicate to make Ordinances providing for (among other matters) the courses of study and the conduct of examinations, the admission of students to the various courses of study and to the examinations, and the residence and discipline of students. The courses of study and the examinations referred to are those conducted by the University itself either through its own colleges _ or through colleges affiliated to it, and it seems to us--we must mention that we are not actually deciding this question since the University is not a party before us and a decision on the question is not really necessary for the purposes of this case --that the Ordinances relating to these matters can have nothing to do with the internal affairs of affiliated colleges, such as, examinations held by them and detentions ordered in respect of the classes run by them even if the incidental result be a detention in the University course." And, so far as the remaining matter, namely, the residence and discipline of students is concerned, even assuming that an Ordinance providing for the residence and discipline of students of affiliated Colleges is contemplated by the Act. no such Ordinance has in fact been made. Surely, that cannot mean that no action whatsoever can be taken by anybody in the matter. It is therefore no use urging, as counsel for the appellant has done, that the Ordinances provide for a denial of promotion from one class of the University course to the next higher class only for failure to obtain the minimum marks prescribed for sessional work. Nor is this correct, for, as the learned Government Pleader appearing for the Principal has pointed out the Ordinances make the grant of the annual certificate, entitling a student to proceed from one class to the next higher class, dependent not merely on satisfactory progress but also on satisfactory conduct. If satisfactory conduct is necessary for earning promotion it must necessarily follow that promotion can be withheld as a penalty for proved misconduct.

17. In the absence of provision to the contrary in the rules governing the matter, whether they be statutory or otherwise, the internal administration of a college must necessarily vest in its Principal as the head of the institution and it follows that matters like the discipline of the students and their detention or promotion must be within his control. Therefore, in the absence of any such rule it must be within the competence of the Principal to punish a student for misconduct. No such rule has been brought to our notice; on the contrary Clause 8 (d) of

Chapter I of the Ordinance expressly lays down that a student of a college shall be under the disciplinary control of the head of the institution. The contention is, however, raised that the directions in Exts. P1 and P2 divest the Principal, of this power in so far as the matter now on hand is concerned.

18. Whether the source of the authority of Exts. P1 and P2 be adjudication or consent, both sides regard those orders as binding on them. That, we think, is as it ought to be. But, as we have seen, it is the case of the appellant that those orders have been violated, for, according to him, those orders vest the person appointed to hold the inquiry with exclusive jurisdiction to pronounce on his guilt or innocence, leaving for the College Council only the power of passing appropriate consequential orders. And, in any case, they give the Principal no authority to pass any order -- the impugned order, Ext. P2, it is pointed out, was passed by the Principal and not by the College Council.

19. Both Exts. P1 and P2 say that the report drawn up by the person holding the inquiry, together with the findings will be placed before the College Council and the College Council will consider the report and the findings and pass appropriate orders. We have no doubt that this does not mean that the College Council is only to pass appropriate orders on the findings but that it is to consider the findings and arrive at its own decision, both with regard to the guilt or innocence of the appellant and with regard to the consequential orders that are to be passed.

20. It is no doubt true that under Exts. P1 and P2 it is the College Council that has to pass orders in the matter, not, it would appear, the Principal. But, even if it was intended to deprive the Principal of powers which would otherwise vest in him, we should think that, in substance even if not in form, the decision was taken by the College Council and that the impugned order by the Principal was only a communication of that decision.

21. As for the alleged violation of the principles of natural justice, we have first to point out that the very elaborate and exhaustive prescription in Exts. P1 and P2, made with the consent of both sides, as to the person who should hold the inquiry, the authority who should pass orders in the matter, and the procedure to be followed, was designed to ensure that the requirements of natural justice, indeed something more than that, were complied with in full. That being so, it does not lie in the mouth of the petitioner to say that the Principal and the members of the Council who were party to the first order of detention made against him, were disqualified, because of bias, from judging him -- the composition of the College Council had already been disclosed and he was fully aware of it when the orders Exts. P1 and P2 were made with his consent--or that he should have been provided with a copy of the enquiry officer's report and then heard by the College Council itself before a decision was taken. Exts. P1 and P2 did not provide for this. And, since they make no reference to legal assistance at the inquiry to be held, it would appear that the appellant no longer insisted on the demand he had made for such assistance by Ext. P8. Neither does it appear

that he made any such demand before the enquiry officer so that the appellant's complaint that he was not allowed to engage a lawyer to defend him merits little attention. (Not that we think that natural justice demands that he who hears must decide, or, that when the person who decides is not the person who has heard, a copy of the latter's report and findings should be made available to the person affected and he be given an opportunity to make a further representation, or that the person affected must be allowed to engage a lawyer to defend him although, no doubt, these may properly be prescribed by any rules governing the matter). Nor do we see the least ground for thinking that the Principal or the members of the College Council were actuated by bias or mala fides -- that the appellant has chosen to repeatedly charge them with that in language which, for acrimonious vituperation, would be difficult to beat, cannot by itself prove anything. (Along with his reply affidavit the appellant produced copies of the affidavits filed in an interlocutory proceeding in his second writ petition from the Chairman and Secretary of the College Union to the effect that when they interceded with the Principal on the appellant's behalf on the second order of detention being made, the Principal told them that there was no room in the College for both of them and that he would see the appellant out even if it cost him his job. It is surprising that counsel should have thought that reliance could be placed on such material in proof of the allegation of bias and mala fides. In any case, Ext. R1 a copy of the counter affidavit filed by the Principal in that prior proceeding, which he has incorporated as part of his counter-affidavit in the present case contains a denial of this charge. According to the Principal, all he told the deputationists is that they should not interfere with the administration of the institution). In circumstances in which the authority competent to decide is the very authority to initiate proceedings, the fulfilment to some extent of the double role of prosecutor and judge is inevitable, and it is not to be presumed that a person who has once decided a matter without due hearing would have such a bias in favour of his decision as not to be capable of reaching a fair decision after due hearing. Even the two procedure codes do not require that a remand should be to a different judge and that would not be so were there any such presumption. And, although the Principal and Smt. Saraswathi who sat on the Council which pronounced the appellant guilty gave evidence at the inquiry, their testimony, as we have seen, did not relate to any matters within their personal knowledge and the adjudication did not involve any appreciation thereof or any conclusion as to its veracity. The facts spoken to by Smt. Saraswathi were objective facts which were there for all to see, and the proper inference to be drawn from them was really a judicial rather than testimonial function.

22. We might add that the inference of malpractice which the College Council drew from these facts, (a remarkable fact was that the answer to each question occupied a complete answer book or books, no more and no less) considered in the light of the appellant's explanation (and this indeed seems to have been the inference which the enquiry officer herself drew although she seems to have fought shy of coming to the logical conclusion, possibly under the mistaken

impression that direct evidence of the malpractice was essential) seems to us legitimate.

23. There has been considerable discussion at the bar as to whether the College Council acted as a judicial tribunal or was only a domestic tribunal, a contractual domestic tribunal at that (whether the contract be that implied when the appellant sought and obtained admission to the college or that created by the consent embodied in Exts. P1 and P2) since, admittedly, there are no statutory provisions governing the matter. We do not think it really necessary to make the classification -- as we shall show nothing much turns on that, at any rate so far as this case is concerned--although, we have little doubt that the tribunal was only a contractual domestic tribunal. For, even if it be regarded as a creature of the adjudication in Exts. P1 and P2, that will not make it a judicial tribunal entrusted with the adjudicative function of the State.

24. It seems to us that, although the requirements of natural justice must" necessarily vary according to the circumstances of each case, the test as to whether there has been a violation is simple, disarmingly simple, although, perhaps for that very reason, difficult of application in practice. The test is much the same whether the tribunal be a judicial or merely a domestic tribunal. It is essentially whether there has been such a manifest failure of justice as to shock the conscience -- in the case of judicial tribunals, where public policy demands that there must not be even the appearance of injustice, a presumption of such a failure will be drawn from such appearance just as a failure of justice will be presumed when a mandatory safeguard for ensuring fair trial is disregarded. What would be the reaction of a fair-minded person of ordinary sense and ordinary sensibility who has been informed of all that has happened? Would it be: Poor man! He has not had a square deal. He has been condemned without being heard. And the consequences are serious. Or, as variations of the same theme, he was not even told and had no means of knowing what it was that was being held against him. He was not given a fair opportunity to state his case or meet what was said against him. His "judges" did not act in good faith. They were so biased against him that they came with a closed mind. They had already made up their minds to convict--the so-called inquiry was a farce. There was really no decision, no real satisfaction of guilt, only blind prejudice. How else can you account for the conviction when there is not a scintilla of evidence, nothing on which a reasonable man could possibly hold the accused guilty? Or would it be: He knew or could easily have found out what precisely was the accusation against him. He was given sufficient opportunity to meet it, to state his case and to controvert or explain what there was against him, and has only himself to thank if he did not take it. His "judges" considered the matter fairly and came to a conclusion which it is possible for a reasonable man to reach. True, one or two of them might have been ill-disposed towards him. But that could not have really affected the decision -- there were so many others against whom nothing can be said. Perhaps things could have been better done but then there are no rules and this is not a court and you really cannot ask for more from ordinary men of

affairs. The consequences are not very serious and what has been done is fair enough in the circumstances and the man can have no real grievance. Or, where the rules, whether statutory or contractual, dispense with what are usually regarded as the dictates of natural justice: No doubt it is rather hard on him, but then that is all that the rules require, that is all that he bargained for. (Even so, where rights regarded as fundamental and inalienable are concerned, when the very right to live is involved, when the matter is, as it is commonly put, a matter of life and death, the reaction might nevertheless be: It is not fair. It is monstrous that, in a matter like this, a man should be held to his bond, "that such a rule should be upheld).

25. Applying this simple test to the present case, we should think that, far from the appellant having been condemned without a fair hearing, he has been dealt with, with a degree of patience and leniency that is no doubt commendable having regard to the fact that the career of a young man was at stake--whether it was altogether so commendable from the point of maintaining discipline and good conduct in the college we do not know. The appellant was told in precise terms what the charge against him was. The circumstances appearing against him were put to him and his explanation was obtained. And he was judged fairly by persons of his own choice in accordance with a procedure laid down at his own instance,

26. We might perhaps mention that at no time was the jurisdiction of this Court to interfere, should it think fit, under Article 226 of the Constitution questioned. Possibly because, apart from the stigma involved, the impugned order is fraught with the most serious consequences, and an affiliated college, whether private or government owned, acts so far as the university courses and examinations are concerned, as a limb of the University.

27. One of us is supplementing this judgment with reference to the authorities cited at the bar, and, to save repetition, we are not referring to them here. All we need here say is that there is no authority cited which is against the view we are taking.

28. We dismiss this appeal but make no order as to costs.

Krishna Iyer, J.

29. My learned brother has spoken for both of us and I should myself have thought it supererogatory to break my silence, which I do out of regard for the rather elaborate arguments addressed by counsel on both sides who have spared no pains in unearthing precedents and articulating the nuances of natural justice and administrative fair-play. I desist from discussing the facts and confine myself to a few public law questions bearing on natural justice. The central issue in the case is whether the student-appellant has been visited by the College Council and the Principal with punitive "detention" in gross disregard of the obligatory essence of fair hearing. The chequered academic career of the writ petitioner, who has very nearly martyred himself in the cause of natural justice, even after

three rounds of writ proceedings, arouses my sympathy, when his lot is viewed in the retrospect of years during which he has sat through his classes but has not accomplished the degree for which he joined the University course. Judicial sympathy, in itself, is of no consequence for a litigant but the circumstances of this case will, I hope, receive compassionate consideration at the hands of the Principal of the College, who, the Government Pleader assured us, is the appropriate authority empowered to salvage students in similar situations. I must express the disquieting feeling here that viewed from the strict stance of natural justice, the proceedings resulting in the detention of the pupil appeared to hover about the unfair margin, although we have, after anxious examination of the matter, declined to demolish the order impugned for reasons based on Exts. P1 and P2 and the entire history of the case and because the ends of justice do not demand such a course in this case.

30. Two facets of natural justice have been highlighted viz., (i) the vice of bias as voiding a tribunal's verdict and (ii) the legality of dichotomizing the adjudicatory process between the agency which bears, collects evidence and makes a report and the authority which decides, without further hearing, on the basis of the data contained in the report. Of course, in the course of the extensive submissions at the bar, questions like waiver, right to counsel etc., have also been debated. The learned Government Pleader, by way of answer, has also called in aid the principle that domestic tribunals -- the College Council is one such, according to him, -- enjoy considerable freedom, both from the obligation to observe all the canons of natural justice and from the subjection to close judicial X-ray and correction. Omitting some of the less important points discussed at the bar, one might set out the following four problems in natural justice as falling for consideration.

(1) What is a domestic tribunal and what is the extent of immunity, if any, enjoyed by it from the Court's scrutiny ? What is the measure of relaxation from the rigour of rules of natural justice permitted under the law to a domestic tribunal as distinguished from other tribunals and Courts?

(2) What is the degree of bias sufficient to destroy the validity of a decision by a domestic or other quasi-judicial tribunal?

(3) Can a party waive his objections based on violation of natural justice?

(4) When is a delegation of power to collect data and record conclusions permissible and what is the true scope and application of the rule that he who hears must decide?

31. At the threshold of the discussion, a few observations fall to be made as a key to my approach to the matters covered by counsel for the appellant. He began by exalting the principle of natural justice as a fundamental right, violation of which is fatal under the Indian Constitution. While I may wish for a large extension of the empire of natural justice even into administrative spheres -- within cautious limits -- and may even assent to the democratic proposition that

fair hearing is implicit in the now internationally accepted doctrine of the rule of law--with richer content than Professor Dicey had put into it-- I cannot persuade myself, after a full hearing and fair consideration of all that has been strenuously urged by Shri Paikadey, that the canons of natural justice can be canonised as a fundamental right guaranteed constitutionally. One may safely state that fundamental fairness must be observed even by administrative tribunals, domestic or other, and natural justice must therefore inform their operations. Even so, natural justice is not a fundamental right in our country where the founding fathers of the Constitution deliberately eschewed the expression "due process" found in the American Constitution. Nevertheless, its non-observance, in the context of the constitutional inhibition against arbitrary and unequal exercise of power in Article 14 and unreasonable restrictions on the freedoms enshrined in Article 19, may result in the contravention of fundamental rights. But we are not in those regions in this case.

32. Natural Justice, like modern physics, is expanding rapidly and becoming even, metaphysical, as an inevitable sequel to the insistence of civilised man on civilised processes for affecting a citizen's civil rights, i. e., on just means to reach just ends. But let us be clear that the obligations of the Principal and the College Council in dealing with a delinquent student cannot be equated with those of Courts and tribunals with detailed procedural prescriptions. Not because it is an administrative, as distinguished from a quasi-judicial, act--a false dilemma introduced into the law relating to natural justice, for it is largely the serious impact on civil rights like life, liberty, livelihood and reputation that impresses upon the exercise of that power the duty to act judicially. The judicial element is to be inferred from the nature of the power i. e., "that powers so far-reaching, affecting as they do individuals as well as property, are powers to be exercised judicially, and not ministerially....." Courts are more often faced with problems in applied natural justice, if I may say so, rather than with the classification of the power as judicial, ministerial and what not, The Supreme Court has clarified this feature recently in the decision reported in *Union of India (UOI) and Another Vs. P.K. Roy and Others*, thus:

"The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authorities, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case".

It behoves the Courts to avoid the extremes of making natural justice a ubiquitous bogie of the Administration and the nostrum in the hands of every afflicted litigant on the one hand and of emasculating its potency and applicability by verbal devices like administrative act, ministerial duty, privilege (not right), disciplined forces, domestic tribunals etc., on the other. Natural justice "unbound" is as bad as its being kept out of bounds. The warning sounded

by the Supreme Court in *Bharat Barrel and Drum Mfg. Co. Vs. L.K. Bose and Others*, at p. 365 is apposite in the context of the present case. Shelat J., speaking for the Court, made the following observations:

"It is now well settled that while considering the question of breach of the principles of natural justice the Court should not proceed as if there are any inflexible rules of natural justice of universal application. The Court, therefore, has to consider in each case whether in the light of the facts and circumstances of that case, the nature of the issues involved in the enquiry, the nature of the order passed and the interests affected thereby, a fair and reasonable opportunity of being heard was furnished to the person affected.

"Rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the legislature under which they have to act, and the question whether in a particular case they have been contravened must be judged not by any preconceived notion of what they may be but in the light of the provisions of the relevant Act". To adapt a famous passage of Sir Ivor Jennings, the intangible values of civilised procedure cannot easily be forced into a formal concept dignified by such a name as natural justice. Evershed M. R. rightly observed if I may say so with great deference, in *Abbott v. Sullivan* 1952 1 KB 189 at P. 195:

"The principles of natural justice are easy to proclaim but their precise extent is far less easy to define." In short, we must remember that while the College Council has a duty to act judicially, it is composed of laymen ignorant of the niceties of legal procedure, it consists not of the Principal alone but of a number of academic dignitaries--of the same College, though--and the subject of the enquiry is essentially an internal matter of discipline; furthermore, no procedural prescriptions regulating its deliberations exist except such as they, in their wisdom and sense of expediency, may devise. One cannot, at the same time, forget that in the present case the academic career of a student is at stake and the very seriousness of the consequence may instinctively insist on a scrupulous adherence to the quintessence of natural justice viz., a full opportunity at some stage being given to the student to meet the materials which might eventually be used to his prejudice and a fair consideration of the case in good faith and without a closed mind i. e., in a judicial spirit. From the days when God punished Adam we are told that principles of natural justice, in this sense, have been applied. But it is not the principles but the application thereof which create difficulties, because of varying factors present in the adjudicatory situation in the complex conditions of modern society. We are confronted, in the present case, with one such instance. The basic fallacy in the appellant's argument lies in forgetting the theory of relativity when dealing with different types of tribunals and situations. Expressed in the words of Lord Wright in *General Council of Medical Education V. Spackman* 1943 AC 627:

"Perhaps, it is not desirable to force It into any Procrustean bed". When Courts have declined to interfere with domestic tribunals or with professional and

academic bodies-- I do not refer here to the effect of contract on the exclusion of natural justice--what mattered has not been so much the inviolability of these areas to forensic probing as the judicial appreciation of the needs and circumstances, particular patterns, and situations in each case. Judges, like Caesar's wife, should be above suspicion, as Lord Justice Bowen beautifully expressed but, quasi-Judges enjoy, out of practical necessity, a certain measure of latitude. I agree with counsel for the appellant that all this flexibility in application must be subject to the anxiety of the Court to ensure administrative fair play. I confess that an element of uncertainty is injected into this unstandardised branch of the law and that is why the maze of case-law, Anglo-American and Indian, on natural justice and fair hearing, their ramifications and exceptions, is so puzzling sometimes that the only comfort lies in the thought that such a dynamic concept vitally bearing on human rights, and so sensitively regarded in the legal world, will naturally generate forensic ferment and diversity of judicial thought characteristic of progressive societies. All the same I pensively agree with Mr. Justice P. B. Mukherjea that:

"Disciplinary tribunals, on whose findings the whole life's career of a public servant depends, should not in fairness be allowed to remain in this state of primitive procedure, and distressing obscurity, which are not calculated to offer and foster that sense of security in the service which is fundamental in any ordered society". (Nripendra Nath Bagchi Vs. Chief Secretary, Govt. of West Bengal,

From all this, it follows that the true solution must be sought in legislative prescriptions of the minimum standards of, fair procedure to be followed by administrative tribunals and not in judicial exercise smitten by conscience and attuned to the exigencies of the case. With all the many exceptions wrought into the rule regarding bias one may, in unhappy" indefiniteness, state that natural justice is "the natural sense of what is right and wrong".

33. As a principle, nothing is more eloquent--as was spectacularly demonstrated in Dimes" case, Dimes v. Grand Junction Canal (1352) 3 HLC 759 --than that "if a member of such (judicial) a body is subject to a bias, whether financial or other, in favour of or against either party to the dispute or is in such a position that a bias must be assumed, he ought not to take part in the decision or even to sit upon the tribunal". But Lord Halsbury L. C. relieving licensing justices from the taboo of being objectors and judges at the same time, stated in Boulter v. Kent Justices 1897 AC 556 "I do not think they are a Court at all" Again, Collins M.R. said in R. v. Howard, 1902 2 KB 363 "the key to the position appears to be that justices in dealing with licences are not a judicial body The standard to be applied in considering the question of bias must be one which admits the right of the justices to be at one and the same time objectors and judges" In R. v. Nailsworth Licensing Justices; Ex parte, Bird 1953 WLR 1046, it was held that "Although it is undesirable for a justice who has signed a petition in favour of a matter to sit as a member of the committee adjudicating

thereon, it had not been established in that case that there was any such bias on the part of the justice concerned as would render her unfit to sit". (Marshall on Natural Justice, page 49). The holding in *Lennox Arthur Patrick, O'Reilly v. Cyril Cuthbert Gittens* AIR 1949 PC 313, is in similar strain:

"The jurisdiction of the Courts In regard to tribunals of a domestic nature has been discussed in many cases but their Lordships think that the observations which apply most directly to the present case are those contained in the judgment of Maugham J. as he then was, in the case of *Maclean v. Workers' Union* 19291 Ch 602 "It is not bound by the rules of evidence; it is indeed probably ignorant of them. It may act, and it sometimes must act, on mere hearsay, and in many cases the members present or some of them (like an English jury in ancient days) are themselves both the witnesses and the judges"

Their Lordships now turn to the question of bias "It is unreasonable to expect that the standard of impartiality and detachment in a domestic tribunal's members should be as impeccable as in Court's of Law, and therefore, I consider that the oft repeated maxim that justice must not only be done but appear to be done, should not be applied too rigorously in the case of domestic tribunals.....

I think the test should be whether the presence of prejudiced persons inject such an element of bias into the tribunal as to give rise to a reasonable suspicion that the trial was not a fair one"., " Again, Courts have made mention of the fact that when one out of many is biased the decision of the collective body is not necessarily voided (*T.P. Daver Vs. Lodge Victoria* No. 363, S.C. Belgaum, , *K.R. Chari Vs. Secunderabad Cantonment Board*, Civil Appeal No. 1579 of 1966 and *DeSmith* page 161). In the case dealing with nationalisation of motor transport, the Supreme Court has observed:

"It is also true that the Government on whom the duty to decide the dispute rests, is substantially a party to the dispute, but if the Government or the authority to whom the power is delegated acts judicially approval or modification is not open to challenge on a presumption of bias. The Minister is acting in his official capacity and unless there is reliable evidence to show that he is biased his decision will not be liable to be called in question". *H.C. Narayanappa and Others Vs. The State of Mysore and Others*,

The Principal, who is chairman of the College Council, is in no worse position than the Chief Minister in the Governmental set-up, from this angle. Before parting with this aspect. I must say that while dealing with domestic tribunals, we cannot over-rate its importance as is evident from the excerpt from the judgment of Lord Harman J. in 1958 2 All ER 579, extracted approvingly in., the judgment of Hegde J. (1968) 2 SCWR 117 at p. 125= *Suresh Koshy George Vs. University of Kerala and Others*, . "What then, are the requirements oi natural justice in a case of this kind? First, I think that the person accused of should know the nature of the accusation made; secondly that he should be given an

opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more".

So, in the scheme of things "interest" as an objectionable factor is secondary in importance in the case of quasi-judicial tribunals--a consequence of the rule of necessity. That is why in cases under the Industrial Disputes Act and Shops and Establishments Act, for instance, a person who has an interest in the subject matter holds the enquiry or takes the decision and yet the order is upheld, if otherwise passed in good faith. The attention of bias when a plurality of persons constitutes a tribunal and only a few out of them are tainted by bias has also been taken note of in some decided cases already adverted to by me.

34. Pecuniary interest provokes peculiar sensitivity in the Court, as Dimes" case 1852 3 HLC 759 has shown, although I am not too sure whether its rigour should apply in the same degree to quasi-judicial tribunals and administrative bodies and domestic enquiries. However, that question does not arise here and we need only consider personal and official bias. The ruling already referred to i.e. H.C. Narayanappa and Others Vs. The State of Mysore and Others, , shows that "official" bias cannot avail the petitioner "unless there is reliable evidence to show that he (the principal) is biased". Mere likelihood of bias stemming out of official association with the cause is insufficient. There is no reliable evidence of actual, substantial official bias entertained by the Principal, although it would have been desirable for him to have detached himself from the council deliberations. As for personal bias, much has been alleged and urged against the Principal and duly denied by him. The learned Single Judge has rejected this ground and there is nothing on record so strong as to induce dissent on my part. It might not be out of place, in this context, to say that Lord Hewart's classic dictum on the subject in Rex v. Sussex Justices; Ex parte McCarthy 1924 1 KB 256 to the effect that

"Nothing is to be done which created even a suspicion that there has been an improper interference with the course of justice"

stands eroded by later pronouncements; for instance, Slade J. observed in Reg v. Camborne Justices; Ex parte, Pearce 1955 1 QB 41, after surveying the authorities on the subject in the following words:

"In the judgment of this Court the right test is that prescribed by Blackburn J. in Reg. v. Rand 1866-1 QB 230, "namely, that to disqualify a person from acting in a judicial or quasi-judicial capacity upon the ground of interest (other than pecuniary or proprietary) in the subject-matter of the proceeding, a real likelihood of bias must be shown". There has been some debate on this subject in a recent ruling reported in Metropolitan Properties Co. (F. G. C.), Ltd. v. Lannon 1968 1 WLR 815. Of course, actual bias, if it is proved, is fatal, but short of that, what is the quantum of interest that will disqualify a quasi-judicial body is best expressed in a passage in the judgment of Widgery J. in the ruling referred to.

"As Sir Derek put it in a vivid phrase; the question here is whether the

Chairman's interest in Regency Lodge and all that goes with it would be such as to put him in a position of instinctive opposition to the landlords in the present case".

The "real likelihood" test or the "instinctive opposition" approach is the true one, in my view, and any insignificant and remote interest will be insufficient to invalidate. Judged by this token, Ext. P3 is not vulnerable because I do not think "a reasonable person would think it likely "in all the circumstances" that there was bias. (See *Reg. v. London Rent Assessment Panel Committee, Ex parte Metropolitan Properties, Co. (F. G. C.) Ltd.* (Lord Denning M. R., Danckwerts and Edmund Davies L. JJ.)

35. Waiver, as an answer to violation of natural justice, was pressed by the learned Government Pleader. According to him, the appellant had agreed before Govindan Nair J. to the College Council (its composition being known to him from the earlier affidavits of the Principal) taking the decision on the report of the Inquiring Officer; so that he must be taken to have consented to the Council proceeding to judgment on the report; and all breaches of natural justice implied in this procedure must be deemed to have been waived. I have already held that negation of natural justice does not sound in denial of fundamental rights but it does sound in jurisdiction, according to many rulings of the House of Lords and the Supreme Court. And consent can neither create jurisdiction nor cure defects, jurisdictional. Yet, the authorities have upheld the application of waiver. Dr. Amnon Rubinstein in *Jurisdiction and Illegality* has brought out this incongruity thus:

"But, from the start, some difficulties arose: If bias and disqualification HO to jurisdiction these defects cannot be consented to or waived. Faced with the consequences of this rule, the Courts recoiled from the proposition that even the party who tacitly waived the objection available to him, and even the party "benefiting" by the interest or bias, could raise the nullity of the proceedings; "it would be unreasonable that (the parties) should lie by and await the result of the proceedings, and raise no difficulty until after they have seen the decision, and can determine whether or not it is satisfactory to themselves" (*Corrigal v. London and Blackwall Ry. Co.*, (1843) 5 Man and G 219 at p. 247). "If there be anything like consent", said Denman C. J. "It would be monstrous to say that the presence of the magistrate vitiated the proceedings" (*R. v. Cheltenham Commissioners* (1841) 1 QB 467 at p. 475). But if waiver or consent could cure the defects, how could these be considered as going to jurisdiction ?"

It would be both unnatural and unjust to convert natural justice into a shackle which cannot be shaken off even by a party for whose benefit it is invoked. If such be the law, many persons will be subjected to great delay, expense and intolerable inconvenience if they must suffer, willy-nilly, the inexorable processes of natural justice. (Vide Marshall.; *Natural Justice* page 191).

36. It is interesting to notice that the House of Lords in *Dimes*" case 1852 3 HLC

759, ruled that violation of natural justice made the order voidable, not void, but *Ridge v. Baldwin* 1963 2 WLR 935 found the same august Court hold that "a decision given without regard to the principles of natural justice is void" The real reason--or partly the reason--for these divergencies in the decisions, is perhaps, what Lord Reid hinted at in 1963-2 WLR 935. "We do not have a developed system of administrative law --perhaps because until fairly recently we did not need it. So it is not surprising that in dealing with new types of cases the Courts have had to grope for solutions" Marshall in his *Natural Justice* (page 51) quotes Cockburn L. J., as upholding express and implied waiver as valid pleas:

"..... although Colonel Smyth may have been interested so as to incapacitate him from acting, yet as the parties were aware of the objection and waived it, he had jurisdiction to make the order".

All that I can say is that the House of Lords in *Dimes*" case 1852 3 HLC 759 , and the Supreme Court in *Dr. Prem Chand's* case, and the *Manak Lal Vs. Dr. Prem Chand*, and *T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum*, , to mention a few, have laid down the law that waiver and consent operate in this field also, although it is not clear how if the order is void (Cf. *Ridge v. Baldwin* 1963 2 WLR 935 already cited and *Mohammed Nooh* AIR 1958 SC 86) and the interested member is disqualified *The Andhra Pradesh State Road Transport Corporation, Hyderabad and Another Vs. Sri Satyanarayana Transports (Private) Ltd., Guntur and Others*, para 9) consent can breathe life into it. If waiver is permissible, and it is (at least if the species of violation relates to bias), the appellant by agreeing to Ext. P1 has waived his objections on the ground of bias to the further consideration by the College Council.

37. Based on the ruling reported in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, the learned advocate for the appellant has vehemently urged that the basic principle that "he who hears must decide" has been breached and invalidity of the order is the result. The Inquiring Officer alone heard the student and the Council considered the report without inviting him to offer his explanation. I am constrained to observe that it would have been more correct to ask the student to show cause at the final council consideration stage. But illegality does not follow on the failure to take this step, if the holding in *Moideenkutty Vs. State of Kerala*, were correct. Ansari C.J., speaking for the Court stated the law thus:

"We come to the third ground of the decision not being really of the deciding authority inasmuch as the order rests on the office report. One of us have in *Raghava Menon v. Inspector General of Police, Kerala*, A. S. No. 220/60, decided on Oct. 13. 1960 *Raghava Menon Vs. Inspector General of Police, Kerala*, held that the rule of "authority, who hears, must decide" does not preclude administrative tribunals from reasonably delegating some of their functions. What is required of such authorities is that they must conscientiously apply their mind to the records of the case and reach their own conclusions on the material

so placed. Judged from the aforesaid standard, we feel the rejection orders in the case, either of the original authority or of the appellate authority, are not so tainted. The appellate authority has called for the Collector's explanation, a note has been put on it and a conclusion been reached on the materials placed before the authority. In these circumstances, the appellate order cannot be said to be one not conscientiously reached on the record before it; nor can the original order be said to be otherwise. This ground also therefore fails",

The recent decision of the Supreme Court in *Suresh Koshy George Vs. University of Kerala and Others*, silences the appellant's submission regarding furnishing of the enquiry report and a second opportunity to be heard. But, if under guise of a report, new material is used against the student he should be given a chance to challenge and correct or contradict it. Such improper assistance has not been derived by the College Council from the report which, according to the petitioner is in his favour, but which, on a plain reading, virtually accepts the evidence of the "prosecution" witnesses, winding up dubiously in half-hearted favour of the petitioner. Even as early as the case reported in *Pradyatkumar Bose v. Honourable Chief Justice of Calcutta High Court Pradyat Kumar Bose Vs. The Hon"ble The Chief Justice of Calcutta High Court*, delegation of the power to collect the evidence and make a report has been upheld by the Supreme Court: "It is well recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report What cannot be delegated except where the law specifically so provides--is the ultimate responsibility for, the exercise of such power".

The need for a two-tier hearing is a creature of Article 311 of the Constitution and not necessarily of natural justice. *Suresh Koshy George Vs. University of Kerala and Others*,

38. The law is indulgent to domestic tribunals, depending on a variety of factors. Domestic tribunals are associations or bodies, voluntary and contractual like clubs, or statutory, like the Bar Council or Medical Council, but essentially, they exercise jurisdiction over members and others within the organisation or institution or profession i.e., over insiders as against outsiders. Such limited, internal jurisdiction is not interfered with by Courts except upon substantial violation of fair procedure, assuming that natural justice has not been excluded by contract or other law. More so is the case when academic and professional bodies are involved. The observations of Gajendragadkar, J. (as he then was) in *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, are pertinent in this connection:

"In dealing with petitions of this type,. it is necessary to bear in mind that educational institutions like the Universities set up Enquiry Committees 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

The enquiry has been fair and the respondent has had an opportunity of making his defence. That being so, we think the High Court was not justified in interfering with the order passed against the respondent".

While scrupulous adherence to the rules of procedure and the principles of natural justice, in the sense of acting in good faith after giving a reasonable opportunity to be heard, is insisted upon, Courts "fear to tread" and decline "to rush in" to quash decisions of responsible academic bodies. This does not mean a licence for doing injustice being judicially accorded to such bodies but a fair expectation that they will not deviate ordinarily from the path of fair-play. If they palpably do, the writ must go. The ultimate test is the response of the judicial conscience to the doings of these bodies, in the given case, remembering the incurable wound on the career and the indelible stain on the character of the student that may follow upon an unjust accusation and verdict.

39. Although Mr. Paikaday only made a feeble reference to the right to counsel before an administrative tribunal, and the earlier rulings of our Courts do not generally concede such a right except in cases which are complicated and involve elaborate evidence and difficult legal propositions, the recent decision of the Court of Appeal in *Pett v. Grey Hound Racing Association Ltd.* 1968 (2) WLR 1471, puts new life into this demand. Lord Denning M. R. in the above case, which relates to the expulsion of a trainer from the Racing Association, set out the proposition in the following words:

Now the point arises: Has the trainer a right to be legally represented ?

On such an inquiry. I think that he is entitled not only to appear by himself but also to appoint an agent to act for him ... Once it is seen that a man has a right to appear by an agent, then I see no reason why that agent should not be a lawyer. It is not every man who has the ability to defend himself on his own. He cannot bring out the points in his own favour or the weaknesses in the other side. He may be tongued-tied or nervous, confused or wanting in intelligence. He cannot examine or cross-examine witnesses. We see it every day. A magistrate says to a man: "You can ask any questions you like"; whereupon the man immediately starts to make a speech. If justice is to be done, he ought to have the help of someone to speak for him. And who better than a lawyer who has been trained for the task ? I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He also has a right to speak by counsel or solicitor". Maugham J. had

once expressed a different view in 1929 1 Ch 602. Lord Denning, when his attention was drawn to this view, stated:

"All I would say is that much water has passed under the bridges since 1929. The dictum may be correct when confined to tribunals dealing with minor matters where the rules may properly exclude legal representation. (In *re, MacQueen and the Nottingham Caledonian Society* 1861 9 CBNS 793--seems to have been such a case.) but the dictum does not apply to tribunals dealing with matters which affect a man's reputation or livelihood or any matters of serious import. Natural justice then requires that he can be defended, if he wishes, by counsel or solicitor."

How far in our country "fair hearing" involves this right is at least debatable and is certainly not to be taken for granted, in view of the Supreme Court's observations in *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd.*, , *Bharat Barrel and Drum Mfg. Co. Vs. L.K. Bose and Others*, and many other decisions of various other High Courts striking a contrary note. The appellant's alleged grievance traceable to right to counsel being declined, is, to say the least, chimerical in this case and I see no force in it at all.

40. Quoting a passage from the ruling reported in *Omar Salay Mohamed Sait Vs. Commissioner of Income Tax, Madras*, at p. 1252 which runs:

"On no account whatever should the tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all and if it does anything of the sort, its findings even though on questions of fact will be liable to be set aside by this Court". (This is a ruling u/s 66 (1) of the Income Tax Act, 1922).

Shri Paikadey pressed before us that if there is no evidence at all to support the finding of the authority, there is no doubt about its invalidity. But if there is no reliable evidence, in the view of the High Court, the writ will not issue. Absence of evidence is for the Judge under Article 226 but the adequacy of it is for the tribunal. Evidence, unless there be specific statutory provision, does not mean, in this context, only what is admissible and proved under the Indian Evidence Act; it embraces everything that appeals to commonsense as having probative force, untrammelled by technical rules. Lord Denning M. R. in a recent decision *T.A. Miller Ltd. v. Minister of Housing and Local Government* 1968 1 WLR 995, has this to say on the subject:

"A tribunal of this kind is master of its own procedure, provided that the rules of natural justice are applied. Most of the evidence here was on oath, but that is no reason why hearsay should not be admitted where it can fairly be regarded as reliable. Tribunals are entitled to act on any material which is logically probative, even though it is not evidence in a Court of law: See *Reg v. Deputy Industrial Injuries Commissioner, Ex parte Moore* 1965 1 QB 456. During this very week in Parliament we have had the second reading of the Civil Evidence Bill. It abolishes the rule against hearsay, even in the ordinary Courts of the land. It allows first-

hand hearsay to be admitted in civil proceedings, subject to safeguards. Hearsay is clearly admissible before a tribunal. No doubt in admitting it, the tribunal must observe the rules of natural justice, but this does not mean that it must be tested by cross-examination. It only means that the tribunal must give the other side a fair opportunity of commenting on it and of contradicting it: See *Board of Education v. Rice* 1911 AC 179 at p. 182: 1965-1 QB 456. The Inspector here did that. Mr. Fogwill's letter of November, 19, 1964, was put to the witnesses and they contradicted it. No application was made for an adjournment to deal further with it. In these circumstances I do not see there was anything contrary to natural justice in admitting it".

In the instant case, there is some evidence, circumstantial, in support of the conclusion and I am unable to interpose my judgment on this evidence since its quality and quantum are within the exclusive domain of the College Council except where it acts irrationally, perversely or mala fide (epithets with which the appellant has liberally peppered his submissions unavailingly, as we see it.)

41. Shri Paikadey, learned counsel for the appellant, invoked the passage in *Calcutta Dock Labour Board Vs. Jaffar Imam and Others*, that:

"Any attempt to short-circuit the procedure based on considerations of natural justice, must, we think, be discouraged if the rule of law has to prevail, and in dealing with the question, of the liberty and livelihood of a citizen, considerations of expediency which are not permitted by law can have no relevance whatever".

Obviously, I agree heartily with this high mandate but enough has been said as to why we are not interfering with the College Council's decision, A hard case, I agree; but I cannot assent, for that reason, to bad law.