

(1987) 06 MAD CK 0023

In the Madras High Court

Case No : Writ Petition No's. 1948 of 1987 and 2193 of 1987

R. Satheesh rep. by father and natural guardian, C.
Rajendran and M. Murugan

APPELLANT

Vs

Director of Higher Secondary Education, College Road,
Madras-34, The Head Master, Government Higher Secondary
School, Thuckalay, Kanyakumari District and The Chief
Superintendent for Higher Secondary Examinations
Government Higher Secondary School, Thuckalay

RESPONDENT

Date of Decision : 17-06-1987

Acts Referred:

Citation : (1987) 06 MAD CK 0023

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant; J. Kanakaraj, Additional
Government Pleader, for the Respondent

Judgement

Mohan, J.—These cases illustrate how students, who ere to prosecute their studies, after gaining valuable admission in schools, instead of doing that, merely fritter away the valuable time, by indulging in some misbehaviour and when ultimately thrown out of the school, come to this Court as if the Writ Jurisdiction is a panacea for all "mis-deeds". The affidavits more often than not are bereft of details just to gain some interim orders so that notwithstanding the "mis-deeds" the study could be further prosecuted and eventually, when the Writ Petitions come up for disposal, the law's delays being notorious, they escape unscathed. Now to the facts as disclosed in the affidavit in W.P. No. 1948/87, which has been preferred by the father of the student; the petitioner's son Satheesh is studying Plus 2 Second year in the second respondent school. The last working day of the academic year 1986 87 was 25-2-1987. The petitioner's son attended classes upto 24-2-1987. On 25-2-1987 the petitioner's son had been to school to collect the hall ticket for appearing for the ensuing examination which was to commence on 2-3-1987. There he was informed by the Headmaster that his Transfer

Certificate had already been sent to him by registered post, for which no reason was disclosed in spite of demand by the petitioner's son. On his return, the petitioner's son received the registered post containing the Transfer Certificate along with a letter stating that the Transfer Certificate has been issued for Compulsory reason" as per the decision taken in the Teachers' meeting held on 24-2-1987. When he contacted the second respondent to know the reason, the 2nd respondent refused to give any reason. It was under these circumstances, left with no other option, he had preferred this Writ Petition (W.P. No. 1948 of 1987).

2. The grounds on which the issuance of the Transfer Certificate is attacked can be stated in the words of the petitioner himself and therefore I extract hereunder paragraph 7 of the affidavit filed in support of the Writ Petition No. 1948 of 1987.

7. I state that if for any reason my son is liable to be expelled from the school and the transfer certificate has to be issued compulsory, he should have been informed about the reason for the same and should have been called upon to give his explanations. The 2nd respondent could have also informed me and called upon me to give explanation. But the second respondent without any reason and without giving any reasonable opportunity arbitrarily came to the decision and has sent the compulsory transfer certificate.

3. The writ petition was admitted on 27-2-1987 and by an interim order in W.M.P. No. 3049/87, the 2nd respondent was directed to permit the petitioner's son to appear for the ensuing examination. On the strength of the order he wrote the examination. In W.P. No. 2193/87, the petitioner is different and the facts slightly differ. However, there also, the grounds raised are identical and therefore I need not traverse them once over again. The said W.P. No. 2193/87 was admitted on 6-3-87 and the petitioner therein also has obtained interim order in W.M.P. No. 3399/87 for taking the ensuing examination.

4. The learned Additional Government Pleader, appearing for the respondents, after notice, produced all the relevant records.

5. The only point on which the petitioner's counsel in both the writ petitions rests his cases is that the issuance of the Transfer Certificate is opposed to all canons of law, because at no stage, the petitioner or his son was ever informed of the reason for issuing the Transfer Certificate. This argument is applicable to both the writ petitions.

6. The learned Additional Government Pleader would urge that this is a case in which the behaviour of both the students was incorrigible. The petitioner's son Satheesh (W.P. No. 1948/87) took photographs of girl students without their knowledge. That was objected to by the parents on their coming to know of the same. The parents gave many complaints and one went to the extent of saying, that, unless such a student is sent out of the school, the life of other students in the school would be jeopardised. Concerning this, there was an enquiry on 24-2-1987 on the basis of a complaint given by Prateep Kumar, brother of Leena

a student. During that enquiry the petitioner Satheesh himself accepted orally his guilt. As he refused to give a confession in writing as to his guilt, the Enquiry Committee, considering the interest of the school, decided to issue Transfer Certificate for compulsory reasons. Accordingly, it was issued. Therefore, it cannot be contended that the student Satheesh was unaware of the reasons for the issuance of the Transfer Certificate. In the other case, on 25-2-1987, there was an enquiry concerning his (Petitioner in W.P. No. 2193/87) snatching of a circular from the school peon and tearing it into pieces. When the Petitioner Murugan was sent for to participate in the enquiry, he did not attend. The Committee found that concerning the above incident, of tearing the Circular, two students have narrated the same in writing. Besides, the petitioner Murugan had disobeyed the order of the Headmaster, which was admitted by him in writing on 12-9-1986. Under those circumstances the Enquiry Committee held that there was no other option except to issue the Transfer Certificate. Therefore the Learned Additional Government pleader submits that the contention of the learned counsel for the petitioner is not sustainable in law since the student Satheesh, son of petitioner in W.P. No. 1948/87 attended the enquiry and admitted, while the petitioner in W.P. No. 2193/87 did not attend at all. Hence both the Writ Petitions are liable to be dismissed. Therefore, there has been every compliance with the principles of natural justice. The students know fully well the reasons for being issued the Transfer Certificate.

7. Mr. R. Subramanian, learned counsel for the petitioner, wanted to peruse the records and it was accordingly permitted. Even after the perusal, the original stand that there is a violation of principles of natural justice is persisted. It is under these circumstances, the Court will have to carefully weigh the rights of the parties and the scales of justice must be held even between conflicting interests. These conflicting interests are:

- (1) The right of a student to prosecute his studies;
- (2) The right of the Institution to maintain discipline.

It is well settled by now that a student, so long as he behaves himself properly, in a disciplined way in other words, as a student ought to behave, has every right to prosecute his studies. Such a right cannot be interfered with. As against this, should there be any act of indiscipline which is not conducive to the interests of the Institution, and which will pollute the educational atmosphere of the Institution or the calm of the Institution, certainly, the school authorities have every right to see that such a student who would not behave himself in a disciplined way is expected from the school. Apart from the fact that such an indisciplined student is not only an undesirable element who spoils his own future, his conduct and character will have deleterious effect on others as well.

Upon the education of the people of the country, the fate of the country depends" (White paper on the Education Act of 1944 quoted by Lord Denning in *Smith v. Inner Lord in Educational Authority* 1978-1-All E.R. 411 at 417.

In this connection, it requires to be remembered that the students are of impressionable age; sometimes they take all adventurism; sometimes they become victims of unguided enthusiasm; sometimes they become the victims of vicious circumstances. In all these cases, could it be said by the Court--No you shall not take action against this person, because his right to prosecute the study will be hindered? I should answer this question in the negative. To put it briefly, it is the educational authorities who alone should have every control over the students and take such action as is warranted in the circumstances. Court would no doubt come to the rescue of the student where they are victimised, or to use the phraseology of Labour Law, they are singled out for some hostile treatment. Normally speaking, I do not expect such victimisation or hostile treatment, in an educational institution, because, it is controlled and run by enlightened persons. The students come there to receive light and education. That being so, these are totally alien to such an atmosphere. Be that so, in this case, what has happened? Take W.P. No. 1958/87- the case of Satheesh, From the records produced by the Government Pleader, I find that there have been complaints against this boy stating that he had been taking photographs secretly of the girl students with ulterior motives. Firstly, I find the complaint of one Prateep Kumar against this boy stating that he had taken photograph of his sister Leena clandestinely. Similar is the complaint of one Karunakaran Nair about the photograph having been taken of his daughter L. Shylaja. It is further seen in the complaint that this student Satheesh is blackmailing girl students with such photographs. One Neelakantan Pillai also made such complain that his daughter N.S. Renuk Devi had been photographed by Satheesh. There had been complaints from some many other parents. The said Renuka Devi herself complained that Satheesh had taken photographs clandestinely and proper action must be taken. Shylaja equally says so. Renuka Devi says that she was broken-berated ,, because she had been photographed by Satheesh only with a view to bring shame on her and her future itself was spoiled. In addition to this, the Assistant Head Master also had given a complaint that on 16-2-1987 Satheesh came without wearing proper dress and, when he was questioned, he abused the Assistant Head Master. Of course, if the matter had remained there, it would have been a different story. But the records produced clearly show that on 24-2-87 at 1:45 P.M., the Staff Council met to enquire into various complaints against Satheesh. Though Satheesh orally confessed about his taking photographs, when he was asked to give it in writing, he refused to do so. This has been clearly recorded in the proceedings of the Staff Council. The Head Master has signed on 24-2-1987. The other members of the Council numbering 11 had also signed. In spite of all these, without even disclosing this, the petitioner would complain before this Court, taking advantage of the nuances of law, as if nothing had happened and that Transfer Certificate came to be issued as a bolt from the blue. This is the tenor of the affidavit which prompted this Court to admit the Writ Petition and grant interim stay as well. It was this affidavit which gave him this interim advantage. If facts are as stated above, can this court still hold that there is a violation of principles of natural justice, namely, there is a failure to adhere to

the principle of AUDI AULTERAM PARTEM (hear the other side)? Bearing in mind what I have stated earlier. I feel that the principles of natural justice do not exist in the abstract. It cannot be extended to illegal extremes devoid of all circumstances. As Tucker, L.J. remarked in *Russell v. Duke of Norfolk* and others 1945 I All E.R. 109 at 118.

The requirement of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, The Subject matter that is being Dealt with, and so forth.

It cannot be stated in every case that there must be a memorandum of charge, an enquiry and finding arrived at like a Court or a judicial proceeding. What is the basic requirement of law? He should be afforded an opportunity to put forth his case. It cannot be suggested for a moment that the entire records have been created for the purpose of this case when the student himself admitted before the Head Master orally, may be because he was in a tight corner. Now he cannot turn round and say that he knew nothing at all as to the reason for the issuance of Transfer Certificate. He had behaved himself in a manner so unworthy to be a student of any institution. In a country like ours where women's emancipation is advocated and equality of sex is claimed, to subjugate the innocent girl students to the torturous course of taking clandestine photographs, black-mailing them and humiliating them is certainly not expected of a student. He behaved in a manner to be condemned all round. I cannot think that law is so abstract as to shut its eyes to the hard reality as had happened in this case. It was not even suggested before me that no such enquiry ever took place on 24-2-1987. How can the Staff Council consisting of Headmaster and 11 others say something false, which will be beyond one's comprehension and it will be a flight of imagination to suggest that all of them conspired to send him away. The girl students and their parents, who felt insulted and humiliated by the intolerable conduct of the petitioner's son requested the least, namely transfer of the student, which had been done, that too in order to protect him from the wrath of the parents. Therefore, Tarn of the view that, instead of protecting the rights of the petitioner, his conduct, as disclosed by the records, exposed him to the peril of the anger of the parents, whose mental tranquillity has been very much disturbed because of clandestine photographs of the girl students taken by the petitioner. Therefore, I consider, in an institution like a school, if by and large, the Court is able to conclude there has been a substantial compliance of natural justice, which in this case is much more, it should refuse to interfere on mere technicalities of law.

8. Turning to W.P. No. 2193/87 the position is the same. On 25-2-1987 at 200 p.m. the Staff Council met under the Presidentship of Head Master and, when the petitioner Murugan was sent for to participate in the enquiry relating to his snatching of a circular from the school peon and tearing of the same, he did not attend. Here again the records clearly show he had disobeyed the orders of the Head Master "in writing". If this is a ground for which he had been issued

Transfer Certificate, I feel that there is every compliance of natural justice. Educational institutions are not like Tribunals. Therefore, insisting meticulously upon the educational institutions to follow the procedures, namely, issuing memorandum of charges, conducting an enquiry and arriving at a finding, in such cases will be too much to ask for. For all these reasons, I have not the slightest hesitation to dismiss both the Writ Petitions. Accordingly, both the Writ Petitions are dismissed, with costs payable to 2nd respondent (Head Master) by each of the petitioners at Rs. 1,000 because the affidavits in both the cases are discreetly silent as though nothing had happened in the Staff Council Meeting and both petitioners were not aware of anything and in addition to that both the petitioners, besides their counsel persisted in their stand even after perusing the records. The examination papers of the petitioners need not be valued and if they had been valued already, they will be of no use.