

(1990) 06 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 435 of 1990

Rajiv Kundra

APPELLANT

Vs

University of Bangalore

RESPONDENT

Date of Decision : 01-06-1990

Acts Referred:

Constitution of India, 1950 — Article 51A
Karnataka State Universities Act, 1976 — Section 62 (2) (b)

Citation : (1990) ILR (Kar) 1995

Hon'ble Judges : Balakrishna, J

Bench : Single Bench

Advocate : S. Shivaswamy, for the Appellant; M.N. Seshadri, for R-1 to R-3 and R-5, for the Respondent

Judgement

Balakrishna, J.—The petitioner, who belongs to a London based family, came to India for "education" in M.S. Ramaiah Medical College, Bangalore, which is affiliated to Bangalore University. He was admitted to the college as a student of medicine leading to a degree In M.B.B.S. He joined the college in 1985, His quest for education started on an uneven keel and did not run smooth as he planned it to be. After initial "break-through" in the first year examination, it appears he was caught on the wrong foot after the second year examination. Though he claims to have passed in the first year M.B.B.S. examination in all the subjects, subsequent discovery during the course of the pendency of the Writ Petition points the other way. What really brought more information on the adventure of the petitioner is the withdrawal of the marks card from him by the Bangalore University. The pugnacious submissions of the learned Counsel for the petitioner starting with a bang and ending in a whimper was on account of the disturbing information from the University that the petitioner had defacto failed in one of the subjects in the first year M.B.B.S. examination. Rattled by the information, the learned Counsel appearing for the petitioner after initial flush of belligerence, abandoned the first relief. Against this back drop, the case of the petitioner requires a close look.

2. It is contended by the learned Counsel appearing for the petitioner that the Syndicate of the University has no jurisdiction to rusticate the petitioner from the college without a report from the Vice Chancellor and that u/s 62 of the Karnataka State Universities Act, 1976 (hereinafter referred to as "the Act"), no punishment can be imposed without giving the delinquent a reasonable opportunity to show cause against the proposed action. It is further submitted that the University did not issue any show cause notice and muchless there was a hearing or an enquiry and therefore the order of rustication is void ab initio. In essence the grievance made out is that there is violation of Rules of natural justice.

3. Another important contention urged on behalf of the petitioner is that the marks card which was originally issued to the petitioner was a genuine one and that there was no justification for withdrawing the marks card from the petitioner and in issuing a revised one in its place. Interestingly enough it is submitted "In any event, the petitioner is not responsible even if there is a mistake in the original document and he further submits that in the event of there being any mistake in the original marks card, the respondents are estopped from correcting the marks card especially after the petitioner was deprived of an opportunity to appearing for failed subjects during the examination held in July 1989 thus making the petitioner waste one academic year in relation to chose subjects." Inter alia the petitioner also urged as follows:-

"The petitioner submits that the entire proceedings are mala fide, engineered by certain malcontents who are inimically disposed towards the petitioner as is obvious from the fact that no action is taken, no proceedings have been commenced even as against the Registrar (Evaluation) who has signed the original marks card."

The petitioner went to the extent of asserting, "The marks card having been originally sent from the Registrar (Evaluation) to the Principal of the College who in turn handed it over to the petitioner and the petitioner obtained the said marks card from the university through the Principal and consequently there can be no ground for stating that a fake marks card had been presented." In the second para of the Writ Petition, the petitioner boldly asserted that he appeared for the examination in the First Year Medicine and passed in all the subjects and that he appeared for the Second Year Examination in M.B.B.S. Part II which was conducted in July 1988 and passed in all the subjects excepting Pathology.

4. On the other hand, the learned Standing Counsel appearing for the University submitted in an elaborate statement of objections that on verification of the records maintained by the University subsequent to the filing of the Writ Petition, it is established that the petitioner did not pass in Bio-Chemistry of first year M.B.B.S. examination wherein the petitioner had secured only 3 marks in the said subject as divulged in the original marks list. It is also submitted that the tabulation register which is prepared on the basis of the original marks list was tampered and the marks originally entered as 3 became 13 with the interpolation

of the figure 1 before the figure 3 by making surreptitious entry. The tampering was noticed after the Writ Petition was filed by the petitioner and it is alleged that fraud has been committed on the University inasmuch as the tabulation register has been tampered and the petitioner even though has not passed the first year M.B.B.S. examination in all the subjects and though ineligible for taking the second year examination contrived to appear for the second year examination and therefore the petitioner is the beneficiary of a fraud played on the Institution. It is also pointed out that on account of tampering, the aggregate of marks became 31 instead of 21 and the total marks in theory + viva + Internal Assessment became 79 instead of 49 and that in the remarks column exemption is indicated in the subject of Bio-Chemistry though the petitioner has actually failed in the subject. One more discrepancy pointed out is that the words "Bio-Chemistry" are in different handwriting and different ink. Lastly it is pointed out that the marks in Viva and Internal Assessment according to the original marks list are 19 and 9 respectively and subsequent to tampering the marks have become 29 and 19 respectively.

5. The University issued a marks card dated 29-8-1988 In respect of the results of the second year M.B.B.S. Part II examination taken by the petitioner in the month of July 1988 and according to it the petitioner has passed in Pharmacology, Micro-Biology and Forensic Medicine. The same marks card also discloses that the petitioner has failed in Pathology. On 1-9-1989, the father of the petitioner addressed a letter to the Registrar (Evaluation) with a request to announce the result of the petitioner for the second year M.B.B.S. in respect of Register No. C 4155 complaining that his son's result had not been announced though the results of other candidates of the same batch had been announced. One K.S. Manjunath who was holding charge of the office of respondent-3 at the relevant time directed the office to check up and verify. Verification brought out information which is both shocking and sensational, The tabulated sheet relating to the petitioner was missing from the tabulation register whereas all other sheets were intact. Sensing foul play, on the very same day, the Registrar instructed Dr. Ramakrishna who is the Chief Tabulator to talk to him personally. On meeting the Registrar, he was directed to look into the matter and to prepare a fresh tabulation sheet after carefully verifying the marks and other details entered in the original marks list. On doing so, it was found that the marks card which had been originally issued as per Annexure-A dated 29-8-1988 had been fraudulently obtained and did not reflect the correct marks obtained by the petitioner as recorded in the original marks list. Another fact came to light in the course of investigation. One set of marks list supposed to be in the custody of the case worker (theory in respect of all the 4 subjects of IInd year M.B.B.S. pertaining to the petitioner) was missing. Fortunately, the second set of the same marks list which was in the custody of respondent-3 was made available to Dr. Ramakrishna for the purpose of tabulation. The original marks list of Internal Assessment and Viva were also made available. On the basis of the original marks list, Dr. Ramakrishna completed the tabulation containing the following

entries:-

Subjects

Theory

I.A.+Viva Total

Prac+IA total

Pharmaco-logy

Section-A 05

Section-B 12

$10 + 17 = 44$

$20 + 05 = 25$

Total 17

Pathology

Section-A 10

Section-B 08

$10 + 17 = 45$

$14 + 05 = 19$

Total 18

Micro-

Section-A 09

Biology

Section-B 18

$10 + 25 = 62$

$22 + 05 = 27$

Total 27

Forensic

Section-A 20

Medicine

Section-B 20

$12 + 30 = 82$

$25 + 07 = 32$

Total 40

Based on the said tabulation, it is submitted on behalf of the respondents that in Pharmacology, the petitioner scored only 44 marks as against 75 as per Annexure-A and in Micro-Biology (Theory; Viva and Internal Assessment), the petitioner had secured 62 marks as against 75 shown in Annexure-A. However, the marks in Pathology and Forensic Medicine as entered in Annexure-A were found to be correct. It was further discovered by respondent-3 that his facsimile had been misused in Annexure-A. Suspecting fraud by the petitioner played on respondent-1, the Registrar (Evaluation) called upon the Principal of M.S. Ramaiah College by letter dated 5-9-1989 to secure the original marks card in question along with the list of marks as entered in the college records for the purpose of verification and further action. Respondent-4 by letter dated 19-9-1989 enclosed a xerox copy of the marks card of the petitioner and confirmed that the marks entered in the college records are the same. Being convinced that the original marks card (Annexure-A) had been obtained fraudulently, a revised marks card dated 4-10-1989 (Annexure-B) was issued to the petitioner and in the said marks card it is stated that a bona fide mistake had crept in inasmuch as the marks in Micro Biology (Practicals) scored by the petitioner is shown as 30 marks instead of 27 marks which is borne out by the original marks list. Immediately action was taken by the University transferring the case worker from the concerned Section. Respondent-3 processed the papers and placed a note before the Syndicate for further action. The Syndicate by a resolution dated 8-11-1989 resolved to book a police case against the petitioner for alleged involvement in malpractices and also resolved to take action to rusticate the petitioner u/s 62(2)(b) of the Act. After the Syndicate accorded approval, a complaint was lodged before the jurisdictional police and the resolution of the Syndicate was brought to the notice of the Principal of M.S. Ramaiah College who in turn passed an order rusticating the petitioner from the college vide Annexure-C.

6. It is submitted on behalf of the University that there is collusion between the petitioner, officials of respondent-1 and persons interested in him, in fraudulently obtaining the marks card with a view to benefit the petitioner. It was submitted that the removal of the tabulation sheet relating to the petitioner from the tabulation register, the non-availability of first set of marks list (theory papers) from the concerned Section, tampering of marks in the tabulation register and misuse of facsimile show that fraud has been committed on the University at the behest of the petitioner in collusion with the officials of the University and persons interested in the petitioner. Pertinently it is submitted that the records of respondent-1 do not disclose the issue of blank marks card from the concerned section for recording the marks obtained and it had been misused for the wrongful gain of the petitioner. It is therefore submitted that the petitioner is not even entitled to seek relief under Article 226 of the Constitution since he is the beneficiary of the fraud. Lastly it is submitted that the averments of the petitioner disclose that he had knowledge of the missing documents and that "he

has been active in and had access to the confidential records pertaining to the Institution". The petitioner being a student having had stealthy access to the confidential documents and having failed to disclose the source of information of knowledge or knowledge regarding the missing of relevant documents has not approached the Court with clean hands and therefore the action should fall at the threshold and no relief should be granted to the petitioner.

7. I heard the arguments of the learned Counsel appearing for the parties to the Writ Petition. The learned Counsel appearing for the petitioner relented from his aggressive posture and no doubt gave up his claim for relief in so far as quashing of the revised marks card is concerned and also in so far as re-issue of the original marks card is concerned. At the time of conclusion of the arguments, the learned Counsel for the petitioner submitted that the petitioner would be satisfied if the order of rustication is struck down. This does not, however, deter the Court from referring to the shocking state of affairs in which both the student and the University are involved.

If the foundation of every State is education of the youth, the debased conduct and instinct that we often encounter today in the field of learning does not bear testimony to education in the real sense. The day we allow education to become organised hypocrisy, the Nation's doom becomes less uncertain. There can be no compromise on values if the youth of the Nation are expected to be the trustees of posterity. Though knowledge through education is power; imagination and vision are no less important. Facts do not cease to be facts just because they have been ignored for a pretty long time.

8. No University can afford to shelter sharper and coxcombs in the garb of students or officials whatever their number. The University is not meant to be a sanctuary for depredators even if they are in a minority. The University can ill afford apoplexy at the helm of affairs and anaemia at the extremities, it is never too late to launch a crusade in the centre of learning. I have thoroughly examined the original records made available by the University which include the tabulation register, original marks list, the marks cards in question and the tinkered and tampered documents. It is a fact that the original tabulation sheet relating to the petitioner has been torn off the record whereas all the other sheets are absolutely intact. It is a fact that the marks entered in the withdrawn marks card do not tally with the marks entered in the original marks list preserved by the University. It is also true that the petitioner had failed in Pathology in the first year M.B.B.S. examination and nevertheless, though ineligible, he had taken the second year M.B.B.S. examination. The symptoms are clear and the malady is chronic. They expose the quality of education and character of the individuals whoever they are. Whether the student is the culprit, whether the conniving officials are the delinquents, whether it is a game of proxy allowing access to confidential records, is a matter to be investigated and none susceptible to temptation of collateral consideration should go with impunity. Whether it is an organised crime revealing only the tip of the ice-berg is to be

unravelling. Whether there is justification for an imputation that a veritable mafia which has feathered its nest in the University is at work and is deeply entrenched in the system and merit has been the casualty more often than not in the process, demands prompt investigation and action. No price is too high to combat this evil which is plaguing the system. Susceptibilities and vulnerabilities ought to be held at bay as unwelcome intruders in the academy of learning, lest it becomes a centre of organised brigandage. Today's education is a matter of grave public concern. While impartially and fearlessly enforcing academic discipline and standards against the students and affiliated colleges in conformity with the University Regulations, an equally onerous responsibility is imposed on the University in being answerable to the people in regard to the conduct of its own officials who cannot and dare not claim to be above the law. Proof of action taken to weed out the culprits from the University without whose collaboration or collusion, malpractices cannot be generally engineered, is eagerly awaited. The members of the public have the right to information in regard to the Management of the affairs of the University when public interest is affected and it is no exaggeration that education indeed is a matter of far reaching public interest and consequence. The citizen is entitled to know whether action has been taken and if action has been taken, then what action has been taken so that the lingering doubts of scandalous immunities are banished from the mind of the public. Inaction or ineffectiveness may afford a basis for the belief that incompetent, ill trained and ill-equipped graduates would come out of the assembly line of the University to join the hordes of their kindred in a market Society, posing grave harm and little good to the nation. The day may not be far off when action may be brought against the University on the basis of harmful products being turned out by the University entailing "manufacturer's liability" and for breach of "duty of care" which is owed to the Society at large. Potential danger and harm are not beyond the orbit of reasonable foreseeability in the form of potentially dangerous Teachers or Doctors or Engineers or Lawyers or Scientists as the case may be. I am conscious of the fact that judicial free-wheeling should not ignore social realities and academic susceptibilities. I am not using sentiments to wrest the law; but, on the other hand, I am recognising the principle of morality, ethics and discipline in the academic field because the epidemic is becoming endemic. A well established judicial policy could provide a fitting answer to the malady.

Marauding, which I reckon as another name for malpractice, cannot be halted by an ostrich-like attitude and certainly not by philandering. Academic values are not negotiable. The disturbing question is whether at this rate, are we heading towards the ultimate in profanity? Is qualitative education a mirage? The academic landscape by and large presents a disenchanting spectacle indeed. We get the culture we deserve.

When gangrene sets in the administrative system, the appropriate remedy is surgery. Otherwise, the call of malpractice cannot be eradicated. The petitioner has indicated in his averments his special knowledge of similar instances as if, his

is not the only instance on the point. The University would do well to probe into those cases too without letting the grass grow under the feet. If the image of the University is to remain untarnished, internal access whether direct or otherwise to the confidential records and susceptibility to tampering have to be blocked by firm action instances of malpractice both during and after the examination is becoming rampant and they warrant drastic counter-measures. The task is formidable and begins with the cleaning of the Augean stables. The Nation would be poorer if the University fails in its duty to prevent the production of pettifoggers. Article 51A of the Constitution of India envisages as one of the fundamental duties of every citizen of India:

"to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement."

If this expectation is to come true, the University is under a moral obligation to create the necessary climate not only in the colleges affiliated to it but also within its own edifice and put an end to felony in education. Education should scale new heights of refinement.

According to Ralph Waldo Emerson in "Society and Solitude":-

"The true test of civilisation is, not the census, nor the size of cities, nor the crops, - no, but the kind of man the country turns out."

9. Having had the benefit of hearing the arguments of the learned Counsel appearing for the parties and having examined the original records, I am convinced that the University would do well to vigorously pursue the matter and bring to book the culprits in this sad episode. I may add that suspension pending enquiry is not unwarranted.

In The Bangalore University, Bangalore and Another Vs. B.P. Puttaraju and Others, a Division Bench of this Court consisting of K. Jagannatha Shetty and M.N. Venkatachallah, JJ considered the question whether the Vice-Chancellor upon suspending the students pending enquiry against their misconduct could prevent them from attending classes and deny them the hostel facilities. In para-8 it was observed:-

"What the Vice-Chancellor did in the instant case was, to give effect to the order of suspension as otherwise the order of suspension would be ineffective. The suspended students, if permitted to attend classes and enjoy all the privileges of other students, it is as good as not keeping them under suspension. The Courts of law should always avoid an interpretation that tends to this kind of strange results or that leads to anomalous results. The consequential directions issued by the Vice-Chancellor, in our opinion, are consistent with the power conceded to him by the learned Single Judge to suspend the students pending enquiry into misconduct. Such directions are also quite necessary to effectuate the exercise of that power. The apprehension that such students would be deprived of their attendance and the Syndicate has no power to come to their relief even if they

are exonerated ultimately in the enquiry is, in our Judgment, no ground to deny such power to the Vice-Chancellor...."

I may also refer to certain pithy observations made in the same case:-

"Education is not just filling the mind with facts and figures. The parents put their children in the University with a fond hope that they would enrich their knowledge and develop their faculties. They want that education for their children by which character is formed, a strength of mind built up and intellect expanded. It is generally accepted that intelligence is not a birth right of a few individuals. It is rarely inherited. It is on the other band, mostly cultivated and acquired by perseverance. aS Swami Vivekananda said:

"All knowledge is within (the) mind. Who saw knowledge in the stone or astronomy in the star? It is all in the human being.....

Every drop has the whole of the ocean in it. That is the mind of man."

10. Now I shall deal with the question whether the order of rustication is violative of law and natural justice.

11. Section 62 of the Act provides:-

"62. Discipline:-

(1) The final authority responsible for maintenance of discipline among the students of the University shall be the Vice-Chancellor. His discretion in that behalf shall be carried out by the heads of colleges, hostels and other institutions.

(2) Notwithstanding anything contained in Sub-section (1) -

(a) the punishment of debarring a student from examination shall, on the report of the Vice-Chancellor, be considered and imposed by the Syndicate; and

(b) the punishment of rustication from a college or a hostel or an institution shall be imposed by the Head of the College or hostel or institution concerned."

12. According to this provision, the punishment of rustication of a student from a college shall be considered and imposed by the Syndicate on a report furnished by the Vice-Chancellor. The material on record shows that there was to report from the Vice-Chancellor to the Syndicate and further before the order of rustication was passed no reasonable opportunity was afforded to the petitioner to show cause against the proposed action of rustication. Obviously and unmistakably there is a violation of the mandate contained in Section 62(2) of the Act due to the absence of a report from the Vice-Chancellor to the Syndicate. I, therefore, hold that the order of rustication cannot be sustained in the circumstances of the case because of non-compliance with the mandatory provision of law. As often stated, natural justice in general is a condition of procedural reasonableness. In this regard, the decision of the Supreme Court in Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, is of relevance:-

"There must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them."

Applying the ratio of the said decision apart from non-compliance with the statutory mandate, I hold that the order of rustication passed on the petitioner is bad in law.

13. In the result, for the foregoing reasons, the Writ Petition is partly allowed and the impugned order of rustication under Annexure-C only is quashed. However, it is made clear that the respondents are at liberty to take action in accordance with law against the petitioner for any alleged malpractice or violation of law.

14. While disposing of this Writ Petition, I must observe that the malpractice apparent in this case is not a sporadic occurrence to remain complacent with by a mere spasmodic burst of rhetoric. There ought to be an undeclared war on criminality in the sphere of education. After all, unpolluted education is the sheet-anchor of national character.

I make it plain that the action of the University in recovering the original marks-card from the petitioner is fully justified and similarly the action of issuing a revised marks-card portraying the performance of the petitioner in true light without prevarication.