
(1989) 08 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No's. 9931 to 9940, 9941 to 9944, 9010 to 9017, 9058, 9059 and 8794 of 1989

Ram Narayan Sah Prabhat, Bangalore and others

APPELLANT

Vs

Bangalore University Bangalore and others

RESPONDENT

Date of Decision : 08-08-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka State Universities Act, 1976 — Section 12 (5), 37, 38, 62

Citation : AIR 1990 Kar 39 : (1989) ILR (Kar) 3253 : (1989) 2 KarLJ 438

Hon'ble Judges : N. Venkatachala, J

Bench : Single Bench

Advocate : S.G. Sundaswamy, Mohandas N. Hegde, P. Vishwanatha Setty and V.A. Mohan Rangam, for the Appellant; P.L. Kumaraswamy, P.D'souza and H.K. Vasudeva Reddy, for the Respondent

Judgement

1. Invalidation of Communication No. Ex. MPEC : HNGG: 89 dated May 12, 1989, of the Bangalore University ("the University") issued to the Principal of the B.M.S. College of Engineering, Bangalore ("the College"), by which the benefit of performance of 28 examinees in all their papers (Theory and Practical) of the IV Year B.F. Examination held by the University in February/ March, 1989 has been denied, is sought in these writ petitions.

2. Material facts and circumstances leading up to the communication, invalidation of which is sought, are :

28. Examinees named in the communication along with 10 other examinees were answering the Hydrology and Irrigation paper of three hours duration in Room No. 101 of the College from 2-00 p.m., on March 13, 1989, under a sealing arrangement, which was as follows :

Entrance

E83BA008 E83RA081 018401088 E82BA001

18 60 89 08

29 62 90 18

30 63 92 35

38 68 93 37

43 106 103 40

45 108 104 76

52 111 105 81

57 114 110 91 (Absent)

58

111 125

The University's Examination Vigilance Flying Squad ("the Squad"), which made a surprise check of the said room at about 3.30 p.m., gave to University's Registrar (Evaluation) a report of its check by means of a letter dated March 13, 1989, the terms of which, omitting its formal parts, read :

"Sir,

Sub:-- Large scale malpractice in Room No. 1, RMS (D) College of Engineering.

Rcf: (a) C.4.04 Hydrology and Irrigation Engineering IV Year 8.E. (Civil) Exam. March, 1989 Time 2-5 p.m.

This is to inform you that, when the Squad team entered Room No. 1 of the said College, we were perplexed to see that every candidate more or less was indulging in malpractice. The m.p. was rampant and this papers manuscript related to m.p. both printed/photostate/ written were strewn all over the room. When we started booking the cases students objected and obstructed and came in our way of booking.

Further I would like to write that in support of this we have seized the invigilators diary. In support of this i.e. w.r.t. rampant m.p. we have obtained the signatures from the room invigilators and the chief superintendent.

In total 38 candidates were writing their examinations, to that effect are enclosing a copy of the invigilators diary.

In view of the above facts. I request you to kindly declare the day's examination taken by the said students should be declared null and void.

Yours faithfully,"

3. The above letter led to the issuance by the Member-Secretary of the University's Mal-practice Enquiry Committee ("the Enquiry Committee") to each of the examinees, who have taken their examination in Room No. 101 of the

College, a common form of Charge Memo dated March 27, 1989, which read:

CHARGE

That on 13-3-1989 at Afternoon you being candidate for IVth Year B.E. examination in B.M.S. College of Engineering, Bangalore, were found in possession of printed/written material which you threw away when the University Squad entered into the room which amounts to mal-practice.

STATEMENT OF ALLEGATIONS IN SUPPORT OF THE ABOVE CHARGE

You were a candidate for IVth Year B.E. examination from B.M.S. College of Engineering, Bangalore, on 13-3-1989 in the Afternoon while you were writing the paper on the subject Hydrology and Irrigation Engg. found in possession of printed/written material which you threw away when the University Squad entered.

Thus you have committed a malpractice which is unbecoming of a student. The aforesaid charge is supported by the following list of document :

1. Report of the Squad endorsed by the Chief Superintendent and the Invigilators.

You are hereby requested to submit your statement of defence if any and to appear in person before the committee on 4 APR. 1989 at 2-00 p.m. in the Chamber of the undersigned, failing which the enquiry will be proceeded on the basis that you have no defence to offer."

4. Though the date of enquiry by the Enquiry Committee of the charge as against each of the examinees was fixed for April 4, 1989, as per the above Charge Memo, the Chairman of the Enquiry Committee received four letters one of Dr. Guru Murthy, Chief of the Squad, another of the Chief Superintendent and two others of invigilators, a day earlier, to wit, April 3, 1989.

5. The letter of Dr. Guru Murthy so received read :

"Dear Sir,

Sub :- Large Scale M. P, in Room No. 1 BMS(D) College of Engg.

Ref: C4.04 Hydrology and Irrigation Engineering IV Year B.E. (Civil) Exam. March 1989: 13-03-89 Time 2-5 p.m.

.....

This is in continuation of our Squad Team report made to the Registrar (Evaluation), Bangalore University, Bangalore-560001.

We the squad members were making our way towards Transportation Block and suddenly a few of us entered Room No. 101 and surprised to see more or less all the examinees were found copying. They started throwing chits outside the windows leaving their respective seats and created a lot of chaos and confusion. Such confusion was concentrated to many students except examinees sitting on

the right hand side rows comprising of Reg. No. 0 1840 1088-111 members (ref :invigilators Diary).

Then I asked the invigilators what is going on here and how did you allow the students for copying, They had no answer and said they are helpless. After that I went outside and requested the Chief Superintendent and Prof. B.N.V. Rao who were sitting outside to see what is happening inside Room No. 101. But they did not accompany us.

As there was no alternative we went to Principal's Chambers and briefed the matter to him. By that time some students entered his room and started questioning the validity of the squad work.

Under such circumstances, it is impossible to book a particular case and the better way is to book "en masse", our personal safety is also involved on such occasions.

We drafted the letter charging with the case and have taken the signatures of the Chief Superintendent and the invigilators and in turn it has been handed over to the Controller of Examinations.

Whatever statement we have made in our earlier letter, stands now also.

Yours faithfully, Sd/-

Bangalore, (Dr. S. Gurumurthy) 3-4-1989. Squad Chief."

6. The letter of Sri H.R. Surya Prakash, Chief Superintendent, so received reads :

"Dear Sir,

After hearing the version of Prof. Gurumurthy and the question put to me by Hon"ble members of the Committee, I deny the allegations made by the former that I was called in and that I did not respond.

That to identify who was copying as put forth by Prof. Gurumurthy (who made an observation that four or five benches were definitely not copying), I plead that there are very good students among even old batches and it is difficult for me to mention who is wrong and who is right.

In my opinion I feel that the benefit of doubt may be given to all the students, since the squad member tells that some were copying and some were not copying.

The attestation I have made in the squad report is only as per the University pro forma giving the acknowledgment for the receipt of the Squad report only and not for any other purpose.

Yours faithfully, Sd/-

3-4-89 (H.R. Surya Prakash)"

7. The letter of Sri S. Girish, Invigilator in Room No. 101 of the College, so received read:

"Sri,

After hearing the arguments of Prof. Gurumurthy, I would like to state the following:

I was invigilating in Room No. 101 on 13-3-1989 in connection with IV Year Engg. Examinations in B.M.S. College of Engineering. The examination was going on in a perfect way and I did not notice any copying. The squad members entered the room No. 101 at 3-15 p.m. and I was issuing water to the students suddenly there was commotion in room, I could say what exactly the reason for this. After this both the invigilators i.e. myself and M. Thejaraj were asked to come to Principal's Chamber and sign a report in connection with this. We put our signature to the report only to acknowledge that we were the invigilators at that time in that room. Based on the oral instructions of my Chief Superintendent and Squad members we put our signature to the report.

This is all I would like to comment on the discussion on 13-3-89.

Thanking you Sir,

Yours sincerely, Sd/- (S. Girish)"

8. The letter of Sri S. Thejaraj, Invigilator of Room No. 101 of the College, so received read :

"Sir,

After hearing the arguments of the sitting members of the Committee I would like to make the following statements in accordance with the alleged copying in Room No. 101.

On that particular day 1, S. Thejaraj, was the invigilator in that room and had (not clear) in the classes in the diary and started of the work. I was engaged in issuing the additional book-lets and getting the signatures of the students who had taken the book-lets. All of a sudden there was chaos in the room for which it took enough time for me to understand the situation and the Chief Squad asked us to come to the Principal's Chamber. Even then half of the class were still writing and additional books were issued which can please be verified and necessary conclusion can be drawn.

After coming io the Principal's room we were asked to sign letter. To my dismay it was u letter of alleged mass copying report made by Chief Squad. We actually protested in this regard, they told that it is the acknowledgment. This is all I would like to comment on and I may not be considered as a witness.

Thanking you.

Yours faithfully, Sd/-

3-4-1989 (Thejaraj S)

9. The Enquiry Committee, which held the enquiry on April 4, 1989, the date fixed for such enquiry in the respective Charge Memos served on the examinees, mainly recorded the answers given to questions put to them and obtained their signatures thereto, thus :

"I. Have you received the article of charge?

Ans : Yes.

2. Have you gone through it?

Ans : Yes.

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

Ans : I deny the charge.

Sd/- Signature of the Candidate Date: 4-4-89."

10. The Enquiry Committee's Report, which refers to the charges levelled against the examinees and the evidence gathered by it respecting them, in so far as material, reads :

"The charge levelled against these 38 students was that on 13-3-1989 at about 3-30 p.m. or so, when the University squad entered B.M.S. College premises, they found that these students who were writing Hydrology and Irrigation Engineering in Room No. 101 were indulged in en masses copying. When they tried to sei/.c the material, the students obstructed in their duty and threw the entire material. Thus they collected the material and sent a report on 13-3-1989.

On receipt of the charge all the students appeared and they denied the charge. Their contention is that the entire report of (he squad is false.

The committee secured the presence of the invigilators, the Chief Superintendent and the Chief of the Squad and enquired, on 3-4-1989.

The invigilators, viz., Shri Thejaraj S. & S. Girish who were the persons on the spot also denied the allegation. Shri H.R. Surya Prakash who was in charge of this examination also supported the say of the invigilators whereas Shri S. Gurumurthy the Chief of the Squad supported his report.

The Chief of the Squad is Dr. S. Gurumurthy who is working as a Professor, has submitted this report on 13-3-89 immediately after this incident. In this report he said that they were-

"perplexed to see that every candidate more or less indulged in Malpractice. The copying was rampant and when the students saw them they threw all the material, printed, photostat and written. When they started to book the students they obstructed in their duly. Hence he requested the Registrar (Evaluation) to declare this examination as null & void."

This report is signed not only by the two invigilators but also by the Chief Superintendent. Shri Thejaraj, one of the invigilators said, that he was engaged in distributing additional papers when the squad entered the room and Shri Girish another invigilator said that he was engaged in supplying water to students when the squad visited the room. They simply said that everything was going on smoothly and further said that by looking to the squad members, there was a chaos in the room. They further said that the squad asked them to come to Principal's room and there they were asked to sign this report and accordingly they signed it thinking that it was only an acknowledgment of the report. In the report itself it is stated, by the squad chief that he obtained their signatures in support of this report. Neither the invigilators, nor the Chief Superintendent have made any endorsement to that effect in the report denying the report. One cannot believe, that these responsible teachers could have signed this report without going through the same. Dr. Gurumurthy the Squad Chief in his further statement dated 3-4-89 gave further details about the incident. None of these persons was able to deny it in specific words. Neither the Chief Supdt. nor the invigilators did make any protest against this report till to-day. If the report of the squad chief was false, then they should have made a protest to the concerned authorities. Their silence on this report itself goes to show that they were aware about the malpractice and mass copying. Besides they did not say a word that this report was submitted by the squad chief mala fide with an ulterior motive. That being so, there is no reason for the committee to discard this report and the allegations made therein.

Dr. Gurumurthy in his further statement dated 3-4-89 said :

"They started throwing chits outside the windows leaving their respective seals and created a lot of chaos and confusion. Such confusion was concentrated to many students except examinees sitting on the right hand side rows comprising of Reg . Nos. 18401088 -- 111 =10 members."

Taking advantage of this statement, Shri Suryaprakash in his statement said that it is difficult to identify who was right and who was wrong.

The students also raised the same plea and requested the committee to identify the persons who were guilty of malpractice. Lot of material is seized from the room. On reading the report of the squad one could realise their difficulty to identify the guilty. It is impossible for the committee to conned the material to any particular answer script. But the committee found that the entire material seized by the squad pertains to the same subject meant for the examination on that day. Some of the students orally told the committee that the squad seized this material which was kept outside the examination hall. At the same time they failed to assign any reason as to why the squad was to book a false case against them.

Some of the students who are involved in this inquiry also made certain written representation. Even in their representations made before the Committee, some

students copied the representation word by word. They asked the committee to tally with their answer scripts from the material seized. It is pertinent to note, that possession of the material pertaining to the subject itself amounts to a malpractice, as the mischievous student would bring such material expecting some questions in the examination. He will not be in a position to write the answer with the help of the material if the expected question does not occur. Besides it is impossible to connect the material from the lot to each particular paper. Every one of them said that he was innocent. But at the same time they failed to assign any reason as to why the squad booked a false case against them. The invigilators and the Chief Supdt. also said that there were some innocent students who were not indulging in malpractice. It was up to them to point out those students as they were the persons who were on the spot. Unfortunately they too were unable to give the names of those innocent students.

However the Chief of the squad, Prof. Gurumurthy was fair enough to say that the student being Nos.018401088 to 018401111 are innocent. The committee will have to accept his version. Therefore, the Committee recommends to exonerate all these 10 students from the charge.

The committee also recommends to deny, the benefit of the performance of the entire examination against all other 28 candidates.

1. Sd/- Chairman 2. Sd/- Member"

11. Relevant portion of the Note of the Registrar (Evaluation) sent to the Vice-Chancellor of the University on May 11, 1989, and the order made thereon by the Vice-Chancellor read:

"Sub:- Recommendations of the Malpractices Enquiry Committee

....

In the following cases, the Committee has recommended to exonerate/permit the students to appear for next examinations of May/June 1989

Sl.No.	Name of the candidate/	Year/	College	Nature of malpractice	Recommendations of Malpractice Enquiry Committee
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1.

38 cases of alleged mass copying at B.M.S. College of Engineering in the IVth Year B.E. examination held on 13-3-1989.

Mass copying

(a) To exonerate the 10 students belonging to 84 batch as the Squad Chief has stated in his report that these students were not copying.

(b) To deny the benefit of that examination in respect of other 28 students.

2 to

13 XX XX XX XX XX

The next examinations are scheduled to commence from 22-5-1989. Therefore it is requested that Vice-Chancellor may kindly accept the above recommendations of the Malpractices Enquiry Committee on behalf of the Syndicate in view of urgency by exercising powers u/s 12(5) of the K. S. U. Act, 1976.

Vice-Chancellor Sd/- Agrced. 11/5 Sd/- Registrar (Evaluation) 11/5"

12. Pursuant to the said order of the Vice-Chancellor, the Registrar (Evaluation), sent to the Principal of the College two communications dated May 12, 1989. The first of them read :

"Sub:-- Alleged malpractice case of IVth Year B.E. examination held on 13-3-1989

On accepting the findings and recommendations of the Malpractice Enquiry Committee by the Vice-Chancellor on behalf of the Syndicate u/s 12(5) of the K. S. U. Act the following students who were reported for alleged malpractice during the IV Year B. E.. examination held on 13-3-1989, are exonerated from the charge levelled against them.

Sl. No. Name of the candidate Reg. No.

1. Vijayaraj Urs T. S. 018401088
2. VanilGupla 018401089
3. Yamuna M. A. 018401090
4. Ayodhya Kumar Singh 018401092
5. Chandra Kumar Das 018401093
6. R. Jayarama 018401103
7. M. R. Muniyappa 018401 104
8. Muralidhar S. 018401105
9. Prasad C. S. 018401110
10. P. Prasuna Devi 018401111

The results and marks cards of these students will be sent shortly.

The students may please be informed accordingly.

Yours faithfully, Sd/-12/5 Registrar (Evaluation)"

The second of them read :

"Sub:-- Alleged Malpractice case of IV Year B. E. examination held on 13-3-1989

.....

On accepting the findings and recommendations of the Malpractice Enquiry

Committee by the Vice-Chancellor on behalf of the Syndicate u/s 12(5) of the K. S. U. Act, 1976, the following students who were reported for alleged malpractice during the IV Year B. E, examination held on 13-3-1989 are denied the benefit of performance of all papers (Theory and Practical) for which they had appeared during February/March 1989 examination.

Sl. No.

Name of Candidate

Reg. No.

1.

Brijesh Pratap Mathur

E 83 BA 008

2.

Narendra Prasad Singh

E 83 BA 018

3.

C. Narayanaswamy

E 83 BA 029

4.

A. G. P. Nataraja

E 83 BA 030

5.

C.J. Rajendra

E 83 BA 038

6.

Ravi Kumar

E 83 BA 043

7.

K. V. Ravishankar

E 83 BA 045

8.

Shankar Chawan

E 83 BA 052

9.

Sridhar K. G.

E 83 BA 057

10.

K. R. Manjulu Devi

E 82 BA 040

11.

N. Srinivasa

E 82 BA 076

12.

Suresha T. D.

E 82 BA 081

13.

Srinivasa S.

E 82 BA 125

14.

Srinivasa Raju N.

E 83 BA 058

15.

Sudhakar S.

E 83 BA 060

16.

Sireddi Adinarayana

E 83 BA 062

17.

B. R. Subendra Kumar

E 83 BA 063

18.

Syed Shakir Hussain

E 83 BA 068

19.

Ram Narayana Sahprabhat

E 83BA 081

20.

B. R. Kiran

E 83 BA 106

21.

Md. Aleemuddin

E 83 BA 108

22.

Ramcsh K. S.

E 83 BA 111

23.

Sudarshan Babu S. L.

E 83 BA 114

24.

Anand A.

E 82 BA 001

25.

A. Arun Kumar

B 82 BA 008

26.

Girish H S.

E 82 BA 018

27.

S. N. Krishnamurthy

E 82 BA 035

28.

M. Laxmikanth

They are permitted to appear for June 1989 examination in IV Year B. E. in all papers for which they had appeared during Feb/March 1989. They are also permitted to pay the examination fee for the said year till 20-5-1989 without any time.

The students may please be informed accordingly.

Yours faithfully, Sd/- Registrar (Evaluation)"

While the first communication exonerated 10 examinees from the charges levelled against them, the second communication finds 28 examinees guilty of the charges levelled against them and denies to them the benefit of performance of all papers (Theory and Practical) for which they had appeared during February/March 1989 examination. It is the second communication ("the impugned communication") the invalidation of which is sought in these petitions, as adverted to at the outset.

13. The impugned communication, as would become apparent from the narrated facts and circumstances, has sought to give effect to the Vice-Chancellor's order expressing his agreement to the Registrar's Note, by which he was requested to accept, in exercise of his powers under S. 12(5) of the Karnataka State Universities Act, 1976 ("the Act"), the Enquiry Committee's recommendation to deny to 28 of the examinees, who were found guilty of the malpractice of "mass copying" in their IV Year B. E. Examination, the benefit of that examination. Enquiry Committee's recommendation adverted to in the "Note", it is obvious, is that found in the Enquiry Committee's Report made on the basis of a common enquiry held by it respecting a similar charge, that is, the charge that each of the thirty-eight examinees was found in possession of printed/written material and threw them away when the Squad entered the room where they were writing the examination paper on the subject of Hydrology and Irrigation Engineering.

14. According to learned counsel for the petitioners, the impugned communication calls to be invalidated since it gives effect to the order of the Vice-Chancellor made in the purported exercise of a power not vested in him -- that order, in turn, being the result of the Vice-Chancellor's agreement to the submission "Note" of his Registrar in the usual form "agreed" without application of his mind though he was under a duty to act judicially because of the legal authority conferred on him to determine a matter affecting the right of a person. Further, such "Note" of the Registrar (Evaluation) having been based on the Enquiry Committee's Report of an enquiry held with ulterior disregard to the prescribed rules of procedure and containing errors apparent on the face of the record, it was argued, could not have been acted upon by the Vice-Chancellor. But, the learned counsel for the University sought to refute the arguments of the petitioners' learned counsel.

15. From the arguments advanced for invalidation of the impugned

communication as also the arguments advanced for its sustenance, the points, which need determination in these writ petitions, would be the following :

(1) Has the enquiry been held by the Malpractices Enquiry Committee on the examination mal practices alleged against the examinees (the petitioners and others) disregarding the provisions of the Ordinances as to the manner in which it ought to be held. If so, is that enquiry invalid and ineffectual.

(2) Does the report of the Mal-practices Enquiry Committee stand vitiated due to errors apparent on the face of the record.

(3) Is the Vice Chancellor invested under sub-section (5) of Section 12 of the Act with the power of imposing a penalty on an examinee for a malpractice falling under the items at Serial Nos. 2 and 3 of the Schedule to Ordinance 8.17 of the Ordinances. If not, is his order dated May 11, 1989, purported to have been made u/s 12(5) of the Act sustainable in law.

(4) Had the Vice-Chancellor acted in accordance with law in expressing his agreement to a "Note" put up by the Registrar (Evaluation) indicating the recommendation of the Enquiry Committee as to the penalty to be imposed respecting examination malpractices on several examinees. If not, what is the value of such agreement in law.

(5) Is the impugned communication liable to be invalidated, as sought for.

16. Mention of the material Statutory provisions, reference to which would become necessary for a proper appreciation of the said points, could be made here :

Sub-section (5) of S. 12 of the Act, which empowers the Vice-Chancellor of the University in an emergency requiring immediate action, reads :

"In case of any emergency which, in his opinion, requires immediate action the Vice-Chancellor shall take such action as he deems necessary and shall at the earliest opportunity thereafter report the action taken to such Authority or body as would in the ordinary course have dealt with the matter :

.....(Provisos are omitted as unnecessary for the present case)....."

Sub-section (6) thereof enables the Vice-Chancellor to exercise such other power as may be prescribed by the Statutes, Ordinances and Regulations.

Sub-section (1) of Section 62 declares that the final Authority responsible for maintenance of discipline among the students of the University shall be the Vice-Chancellor. But, sub-section (2) thereof carves out two exceptions to such final authority of the Vice-Chancellor in the matter of maintenance of discipline among students. The first exception relates to investing in the Syndicate the authority to impose the punishment of debarring a student from examination/s on consideration of the report of the Vice-Chancellor, while the second exception relates to investing in the head of the College or Hostel or Institution concerned

the authority to impose the punishment of rustication of a student from such College, Hostel or Institution.

Ordinances pertaining to malpractices in the University Examinations (obviously made under Sections 37 and 38 of the Act), as seen from its heading, relate to maintenance of students' discipline envisaged under S. 62 of the Act. Malpractices Enquiry Committee, under Clause 6 of Ordinance 8.2, is the one appointed by the Syndicate. Enumeration of various malpractices is made under Ordinances 8.3 to 8.12. An examinee being found, while in the examination Hall, in possession of any book, portions of a book, manuscript material or any other matter not permissible to be brought into such Hall is one of them. So also, an examinee being found copying in such Hall is another of them. Ordinance 8.14 declares that the Vice-Chancellor and the Syndicate shall impose penalties taking into account the provision of S.62 of the Act. Ordinance 8.17 further declares that the penalties shall be imposed by the Vice-Chancellor or the Syndicate for various types of malpractices as detailed in the Schedule annexed. That Schedule reads :

Penalties

Sl.No.

Nature of malpractice

Penalty to be imposed

1.

XX

XX

2.

Possession of Manuscript/printed or typed matter, books or notes.

To deny the benefit of performance of the examination for which the candidate has appeared and debar him/her for a further number of chances extending up to two

1

Possession of Manuscript/ printed or typed matter, book or notes and found copying.

To deny the benefit of performance of the candidate for which the candidate has appeared and debar him/her for a further number of chances extending up to three more examinations.

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XX.

Ordinance 8.15(1) forbids (the Vice-Chancellor and the Syndicate empowered to impose penalty under Ordinance 8.14) from imposing on a candidate (examinee) any penalty except on an enquiry to be held as provided for in the subsequent clauses of that Ordinance. Ordinance 8.15(2) requires that a Malpractice Enquiry Committee shall frame a definite charge and communicate it in writing to the candidate concerned together with the statement of allegations affording him reasonable time to file a written statement of his defence and also to state, whether he wishes to be heard in petition. Ordinance 8.16 requires the Malpractices Enquiry Committee enquiring into a malpractice, to take documentary evidence and oral evidence thereon in the course of enquiry. At the same time, it entitles the candidate (examinee) concerned to cross examine the witnesses examined in support of the charge and to give evidence in defence. It entitles the person presenting the case in support of the charge, as well, to cross-examine the candidate and the witnesses examined in defence. Then, Clause (a) of Ordinance 8.16 requires the Malpractices Enquiry Committee, on conclusion of its enquiry, to submit a report to the Vice-Chancellor with findings on the charges together with all documents and further to recommend to him the penalty which may be imposed by him. on established charges. Clause (b) thereof requires the Vice-Chancellor, who receives the report under Clause (a), to report the matter to the Syndicate if the proposed penalty has to be imposed by the Syndicate under S. 62 of the Act.

17. I shall now proceed to consider the aforestated points which need determination in these writ petitions :

Point (1) :

This point relates to the manner in which enquiry has been held in the instant case by the Malpractices Enquiry Committee and the value to be attached in law to such enquiry. A common enquiry on a similar charge of examination malpractices levelled against as many as 38 students (examinees) has been held by the Malpractices Enquiry Committee. As seen from Ordinance 8.15(1), no penalty could be imposed against a candidate (examinee) without an enquiry being held by a Malpractices Enquiry Committee in accordance with that Ordinance and Ordinance 8.16. Further, Ordinance 8.16(a), as seen therefrom, makes it amply clear that such penalty to be imposed on an examinee by the Vice-Chancellor should depend on the recommendation of the Malpractices Enquiry Committee to be made to him in its report. As such, a recommendation of the Malpractices Enquiry Committee as to the imposition of penalty, if accepted, would necessarily result into a examinee suffering civil consequences, in that, it would put him to ignominy and cause prejudicial effect on his career. This situation appears to have obviously weighed with the University in prescribing under the said Ordinances for the manner of enquiry to be held, to wit; by providing for procedural safeguards to, the examinee/s to be charged with the offence of examination malpractice / s, which oblige the Enquiry

Committee, among others, (i) to frame a definite charge and communicate it in writing to the examinee furnishing its basis, enabling him to meet such charge effectively, if he so chooses, by way of filing written statement and/or representing in person [Ordinance 8,15(2)]; and (ii) to consider documentary evidence and take oral evidence on the charge in the presence of the examinee charged with the offence of malpractice, affording him adequate opportunity of meeting or contradicting such documents or oral evidence produced against him and of cross-examining the witness/as on such evidence [Ordinance 8.16].

It has now to be seen whether the Malpractices Enquiry Committee has conducted the common enquiry on charges levelled against 38 examinees in the manner prescribed by the aforesaid Ordinances. Admittedly, the Report of the Squad, to which a reference is made in the Charge Memo issued to the examinees, was not furnished to them. A copy of such report ought to have been furnished to the examinees to comply with the requirement of Ordinance 8.15(2). But, the non-furnishing of the same along with the Charge Memo cannot be regarded as having prejudicially affected the examinees as there is nothing to show that despite a demand made to the Malpractices Enquiry Committee in that regard by the examinees, they were denied such copy. Then, what has been done by the Malpractices Enquiry Committee in gathering evidence respecting charges, on the face of Ordinance 8.16, is rather puzzling and uncomprehensible. While the enquiry date given to the examinees was 4-4-1989, that on 3-4-1989, a day earlier, the Enquiry Committee has secured the presence of the Chief of Squad Dr.Guru Murthy who had reported about the malpractices for which 38 examinees were charged, and made him make a statement as contained in the letter dated April 3. 1989 adverted to earlier, giving evidence on charges, respecting which enquiry was being held, and on his previous report, behind the back of the examinees: Similarly, letters dated April 3. 1989 of the concerned Superintendent of Examinations, Invigilators, adverted to earlier, have been obtained, though the contents of those letters contradict the evidence of the Chief of the Squad given in Support of the charges. However, there is no explanation forthcoming on behalf of the Malpractice Enquiry Committee as to why the evidence by way of letters from the witnesses respecting the charges levelled against students was got behind their back and without affording them an opportunity to cross-examine the witnesses on the evidence given by them. admittedly, the said letters or the documents referred to in the report have not been even shown to the examinee charged with malpractices, before they were made the basis of the report by the Enquiry Committee. Thus, the Malpractices Enquiry Committee. I cannot help holding, has held the common enquiry on charges of examination malpractices levelled against the 38 examinees with inter disregard to the manner prescribed under Ordinance 8.16. It is well established that an enquiry on a charge against a person entailing civil consequences cannot be held by a Committee with power to recommend a penalty without affording a fair hearing to such person, that is of correcting or contradicting the evidence adduced against his interests and to his prejudices *Tulsipur Sugar Co. Ltd. Vs.*

The Notified Area Committee, Tulsipur, In the instant cases, since the common enquiry of the Malpractices Enquiry Committee is held in utter disregard to Ordinance 8.16 which is a special form of procedure prescribed incorporating a rule of natural justice relating to fair hearing the same (enquiry) is invalid and ineffectual.

POINT(2) :

This point relates to the Malpractices Enquiry Committee's Report being vitiated due to errors apparent on the face of the record. Severe criticism levelled against the report related to reliance placed by the Enquiry Committee on two letters of the Chief of the Squad, which contain conflicting versions of mass copying alleged to have been resorted to by the 38 examinees. What was sought to be made out was that the evidence of the Chief of the Squad, as contained in one of his letters being altogether different from the one contained in another, the same should not have been relied upon, to find the 28 examinees guilty of malpractice alleged against them. The criticism so leveled cannot be discarded as one not well founded. The first letter dated March 13, 1989, of the Chief of the Squad, excerpted earlier, tells that every candidate in the examination Hall, more or less, was indulging in a malpractice (without mentioning the nature of malpractice) and the papers relating to malpractice both printed/photostated, written were strewn all over the room and action should be taken to declare the day's examination taken by all the 38 students in the room as null and void. When it comes to his letter dated April 3, 1989, excerpted earlier, it tells that more or less all the examinees in the room were found copying and started throwing chits outside the windows leaving their respective seats and creating a lot of chaos and confusion, but "such confusion was concentrated to many students except examinees sitting on the right hand side rows comprising of Register Nos.018401088--111 = 10 members". When the versions of the Chief of the Squad in the said two letters are examined, there is a reference to malpractice of copying in the second letter, while there is no such reference in the first letter. Further, the first letter mentions that the printed/photostated, written manuscripts were strewn all over the room, the second letter mentions that the students started throwing chits outside the windows leaving their respective seats. Furthermore, while the first letter states that all the 38 candidates in the room, more or less, were indulged in mal-practice, the second letter relieves 10 examinees sitting on the right hand side rows with certain register numbers, as shown in the seating arrangement in the room, adverted to earlier, from the charge of malpractice. However, I find it unnecessary to hold that the conflicting versions in the said two letters relied upon by the Malpractices Enquiry Committee for finding that certain examinees were guilty of malpractice of mass copying, while certain others were not guilty of such malpractice, makes them unreliable. I link so for the reason that the two letters and the other materials, which are relied upon in the enquiry report, have to be regarded as no evidence at all, in that, the same were brought on record of the enquiry behind the back of the examinees charged with the malpractice of mass copying and without affording them (the

examinees) any opportunity of correcting or contradicting such evidence adduced against their interests and to their prejudice, indeed disregarding the statutory provision in Ordinance 8.16. If the evidence found in the two letters of the Chief of the Squad and the other material secured by the Malpractices Enquiry Committee behind the back of the examinees is discarded, as sought to be done, the report of the Malpractices Enquiry Committee has to be regarded as one based on no evidence at all, which is an error apparent on the face of the record, resulting in manifest injustice to the examinees. Hence, the enquiry response stands vitiated due to an error apparent on the face of the record, which has resulted in manifest injustice to the examinees. (See P. Kasilingam Vs. P.S.G. College of Technology,

POINT (3) :

This point relates to the power of imposing a penalty for an examination malpractice of which a student may be found guilty, by the Vice-Chancellor in exercise of the power purported to have been vested in him under sub-section (5) of S. 12 of the Act. In the instant cases, examination malpractices alleged against the examinees fall within the description of malpractices described in Serial Nos. 2 and 3 of the Schedule to Ordinance 8.17 of the Ordinances, that is, being in possession of manuscript or the printed or typed matter, books or notes, and being in possession of manuscript, printed or typed matter, book or notes, and found copying. Penalty to be imposed for the said malpractices is indicated in the corresponding column of the Schedule as denying the benefit of an examination for which a candidate has appeared and debar him/her for a further number of chances extending up to two more or three more examinations. Ordinance 8.17, which refers to the said penalties, declares that they shall be imposed by the Vice-Chancellor or the Syndicate, as the case may be. Again Ordinance 8.14 declares that the Vice-Chancellor and the Syndicate shall impose penalties taking into account the provision of S. 62 of the Act. I have already pointed out that the very Ordinances pertaining to malpractices in the University examinations are purported to have been made for giving effect to the provisions of S. 62 of the Act. Sub-section (1) of S.62 of the Act, as pointed out earlier, invests the final authority in the matter of maintenance of discipline among the students of the University in the Vice-Chancellor, while sub-section (2) thereof makes an exception in investing the power of imposition of punishment of debarring a student from examination/s in the Syndicate and another exception in investing the power of imposition of punishment of rustication of a student from a College, Hostel or Institution in the Head of such College, Hostel or Institution. Thus, I am not left in doubt that when it comes to the imposition of penalty of denying a student the benefit for performance of an examination for which he has appeared, for malpractices referred to in Serial Nos. 2 and 3 of the Schedule to Ordinance 8.17, the Vice-Chancellor has to impose such penalty in exercise of that specified power vested in him in that regard under S.62(1) read with Ordinances 8.14 and 8.17 of the Ordinances. When there is a specified provision in the Act and when there are specific provisions in the Ordinances

made under the Act empowering the Vice-Chancellor to impose a penalty of denying a candidate the benefit of his examination performance for a malpractice alleged to have been committed by him, he cannot resort to any other general power, such as, the one vested in him under S. 12(5) of the Act --a power exercisable in an emergency in that, it is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all and all other modes of performance are necessarily forbidden See *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, For the said reason itself. I am constrained to hold that the Vice-Chancellor, who was invested under S. 62 of the Act and Ordinances 8.14 and 8.17 with the power of imposing a penalty on the examinees concerned for the malpractices mentioned in Serial Nos. 2 and 3 of the Schedule to Ordinance 8.17, alleged against them could not have had recourse to the exercise of a general power supposed to have been vested in him under S. 12(5) of the Act. From this it follows that the order dated May 11, 1989, purported to have been made by the Vice-Chancellor under S. 12(5) of the Act is without authority of law and is unsustainable in law.

POINT (4):

This point relates to the Vice-Chancellor expressing his agreement to a "Note" put up by the Registrar, referring to the recommendation of the Enquiry Committee as to the penalty to be imposed respecting examination malpractices on several examinees. It has to be stated in this context that the agreement so expressed by the Vice-Chancellor was not questioned on behalf of the examinees as one vitiated for want of bona fides or honesty on his part. According to learned counsel appearing for examinees, the Vice-Chancellor had expressed his agreement to a "Note" without application of his mind, ignoring the nature of power exercisable by him in imposing a penalty on an examinee. It was pointed out that the power of imposing a penalty invested in a person under a law as would entail civil consequences to the person against whom such penalty has to be imposed enjoins upon him the duty to act judicially. It was, therefore, their argument that when the agreement is expressed to the "Note" put up before the Vice-Chancellor by the Registrar as to the recommendation made in the report of the Enquiry Committee without even making available that report and the documents relied upon therein for being seen by the Vice-Chancellor in sustaining the recommendation, it is difficult to think that the Vice-Chancellor had acted judicially in agreeing to the "Note" of the Registrar. Hence, the said argument of learned Counsel, in my view, calls to be upheld.

When the Supreme Court was dealing with a case relating to change of date of birth of a person made without giving her an opportunity of explaining her case, in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, it has been observed by Shah. J., as to when the duty to act judicially would arise thus (at p. 1271) :

"It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers".

Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

Again; the Supreme Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, when had an occasion to clarify the position in the matter of a person's duty to act judicially, has observed thus :

"The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously."

In the instant cases, as seen from the manner in which the agreement is expressed by the Vice-Chancellor respecting the recommendation of the Malpractices Enquiry Committee indicated therein, it becomes obvious that he has, in expressing such agreement, not applied his mind to the relevant facts in reaching a decision of his own, obviously not being informed of the nature of power exercisable by him in such matter. Hence, in my view, the order made by the Vice-Chancellor by way of expressing his agreement to the recommendation contained in the Registrar's "Note" cannot be regarded as an order made having regard to the nature of judicial power invested in him under S.62 of the Act and Ordinances 8.14 and 8.17 and consequently it becomes un-sustainable in law.

POINT (5)

When the enquiry held by the Malpractices Enquiry Committee, its report and the order made by the Vice-Chancellor agreeing in the "Note" of the Registrar, in the purported exercise of power under S. 2(5) of the Act stand vitiated in law as being void for the reasons stated in dealing with points (1) to (4) above, the impugned communication flowing from them has to be invalidated as a consequence thereof. The invalidation of the impugned communication. I have to make it clear, has to necessarily accrue to the benefit of all the examinees mentioned therein having regard to the common nature of the matter.

18. Before parting with these cases, I have considered it to be my duty to place on record my views on copying and mass-copying indulged in by students-examinees in their University examinations, which have acquired notoriety in recent years. In the light of what I have heard and seen in dealing with hundreds of cases relating to such copying during the past one year.

with the object of curbing the copying indulged by examinees, either individually or collectively in University examinations held invariably in the Colleges to which

such examinees belong, the University has constituted a Squad comprised of teachers and others called "Flying Squad" for giving surprise visits to the College -- the Centres of the Examinations. and to bring to book, to use the language of the University, the culprits. that is the erring examinees. Members of the Flying Squad, either as a whole or in groups, in the course of discharge of the duties entrusted to them, give surprise visits to different examination Centres of the University's constituents Colleges. When they visit some Colleges and enter the rooms where the examinees will be writing their examination papers, they invariably find certain individual examinees copying down from text-books, manuscripts, pamphlets or the neighbour's answer scripts. On such occasions, they will seize the answer script and the Admission Ticket of the examinee concerned disabling him to attend to the remaining papers of his examination, with the co-operation of the Invigilators and the examination Superintendents of the Colleges concerned and report such cases to the University for enquiries being held thereon by the examination Malpractices Enquiry Committee and for appropriate punishment or penalty being imposed upon them by the University. When the members of the Flying Squad try to enter certain Colleges where the examination Centres are located, they will come across many a time fortification of the examination Centre created by the friends of the examinees or their supporters who would raise an alarm of the entry of the members of the Flying Squad, such alarm being intended to alert the copying examinees and make them throw away the books or the manuscripts, or the like, before the members of the Flying Squad could enter the examination rooms. When entry is made by the members of the Flying Squad into certain rooms, in such a situation, there would be utter confusion and chaos prevalent. Certain examinees will even obstruct the members of the Flying Squad from proceeding to book the cases of malpractice indulged by examinees in such rooms. The Invigilators or the Superintendents of the Examinations or others of the College concerned will not be able to extend their help or co-operation to the members of the Flying Squad because of the fear or reprisal from the examinees concerned or their friends or associates. Certain instances of the Squad members being threatened or manhandled or assaulted by the persons who will have formed a fortification around the College or by the examinees themselves, have become a matter of common occurrence. The rampant copying that takes place among examinees, particularly in Law Examinations, makes the valuers of the answer scripts of such examinees as well as the genuine and honest examinees award either no marks at all or negligible marks for the answers found in the answer scripts, proceeding on the assumption that every one of them will have produced the answers by copying in one way or the other. Why copying is rampant in Law Examinations is not far to seek, in that, most of the examinees will be those in employment and attending the Evening or Morning Colleges for some-how or the other obtaining a degree in Law, even without attending the classes, which appear to have been allowed by several Law Colleges. For the rampant copying that is indulged by examinees in examinations conducted by the University, the University has become the target of the deprecatory criticism from the public, persons in

authority and parents of the examinees concerned. The University, in its eagerness and anxiety to get over such criticism, has thought it fit to take every opportunity to punish the examinees whenever complaints of indulgence of examination malpractice by them is reported by the members of the Fixing Squad, so that such punishments or penalties may act as deterrents for the future examinees taking the University examinations and prevent them from recourse to copying in such examinations. This approach of the University, as I have found it, has failed to yield the expected results, in that, the punishments awarded become unsustainable not only for the reason that the enquiries held and the decision taken in such matters would not be in consonance with the provisions of the Act and the Ordinance, but also for the reason that the Invigilators and the Superintendents of the examination Centres, who will be cited as witnesses by the University to support the charges of malpractice, would not be in a position to support such charges for their own reasons including reprisal from the examinees of their own College in the event of their supporting such charges. In a grave situation as the one the University's predicament in such matters is quite understandable, for, it had gone to the extent of fixing the promulgation of the Karnataka Conduct of Examinations and Prevention of Malpractices Ordinance. 1988. The approach that is being made by the University to take every opportunity of punishing the examinees on the complaints made against them by the members of the Flying Squad, notwithstanding the fact that such complaints remain unestablished as required under the Act and the Ordinances made thereunder has made me think that it is an approach of desperation and may not have a salutary effect on the image of the University and surely cannot have any deterrent effects on other examinees taking future University examinations. The University, I feel, must realise that deterrent punishments awarded to persons guilty of crimes even under the Indian Penal Code or other, enactments are not yielding the expected results. When it comes to the students-examinees, the deterrent punishments imposed upon them for the examination malpractices committed by them may harden them instead of improving their future way of life. Besides, such deterrent punishments awarded to certain examinees can have no good effect or little good effect on other examinees who may intend to take future University examinations. What is to be noted in this context is that as crimes are committed, so also the examination malpractices are committed, because of the environment in which offenders would be placed at the moment. If the environment around the examinee gives him the impression that there is the fortification of the place where he is taking the examination or that the Invigilators or the examination Superintendents cannot take action against him for various reasons including the fear of reprisal from him or his friends, such examinee will make himself bold to copy either from the text-books or manuscripts or pamphlets which may be available, or become available, to him or by garbing from the examinee sitting by his side his answer script. Such environment may also encourage all the students in the examination Hall or the Examination Centre to have recourse to copying which is known as "mass-copying" indulged by examinees. It is, therefore, my

considered view that the University when conducts examination for students of different colleges, if conducts their examinations in Colleges different from their own, the copying and mass-copying by such students may be eliminated to a great extent because of the strange environment in which they will be placed and their natural uneasiness to take chances of copying in places not familiar to them, where they are watched by strange Invigilators and the Superintendents of examination Centres. Further, elimination of copying or mass-copying could also be achieved if students taking examinations in different subjects are interspersed by making appropriate seating , arrangements for them in the examination Halls or Centres. Such measures, though preventive, if resorted to by the University. could, in rm view, bring out better results than the curative measure which is being resorted to now. In fact, the constituent Colleges of the University probably would welcome such measures, for they could be saved from the blame of acquiescence or of rendering support to examinees in their copying for furthering their own interests of getting good results to their Colleges. The parents of good students, in that event, could get rid of their botheration that their children could be charged for examination malpractice because of other students around them indulging in examination malpractice. Though the implementation of measures suggested may involve some sort of inconvenience to students, they should feel happy, for they would be freed from the blemish of passing by copying in their examination. From the point of view of the University, conduct of its examinations in the suggested way may involve a little extra preparatory work and consequential extra-expenditure. But. the conduct of examinations in that way would necessarily save the University of the enormous expense involved in maintaining its Flying Squad and the blemish attached to the keeping of the Flying Squad.

However, the suggestion of change of environment of an examinee taking the University examination, which I have made, I want to make it clear, in its very nature, cannot have a binding effect on the University and it is ultimately for the University, in its wisdom, either to accept or not to accept it (the suggestion).

19. In the result. I allow these writ petitions, invalidate the impugned communication as a void one and quash the enquiry proceedings including the impugned communication. I also direct the respondents to permit the examinees to have the benefit of papers of February; March 1989 examination and subsequent examinations taken by them pursuant to the interim orders of this Court.

20. However, I do not propose to make any order as to costs in the circumstances of these cases.

21. Petitions allowed.