
(1959) 02 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 60 of 1957

Ramesh Chandra Sahu

APPELLANT

Vs

N. Padhy, Principal, Khallikote College

RESPONDENT

Date of Decision : 25-02-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Constitution of India, 1950 — Article 226
Orissa Education Code — Article 107

Citation : AIR 1959 Ori 196

Hon'ble Judges : R.L. Narasimham, C.J;G.C. Das, J

Bench : Division Bench

Advocate : A. Das and S. Misra, for the Appellant; N.V. Ramdas, for the Respondent

Final Decision : Allowed

Judgement

R.L. Narasimham, C.J.—This is a petition under Article 226 of the Constitution by an ex-student of the Khallikote College Berhampur, challenging the validity of an order passed by the Principal of that College, on the 25th March 1957, expelling the petitioner from that College. The order of expulsion was issued in the form of a notice which was put up on the notice-board of the College and reads as follows:

"The undersigned has come to know that Sri Ramesh Chandra Sahu of the First Year Class, Arts, has been misbehaving towards lady-students in and outside the college. It is most undesirable to have him as a student in the College. So, his name is removed from the rolls of the College from 25-3-57.

Students are severely warned that similar action will be taken against them if the undersigned is not satisfied with their character and conduct at any time.

Khallikote College Sd/ Narasingho Padhi, 25th March, 1957 Principal."

2. The petitioner challenged the validity of the aforesaid order on two grounds:

(i) The order was made mala fide on account of a grudge entertained against the petitioner by the Principal of the College. It was alleged that the Principal and some other members of the College staff were canvassing in favour of certain candidate in the last general election, whereas some of the students canvassed in favour of other candidate who were not liked by the College Authorities. The principal suspected that the petitioner was one of those who canvassed against the persons for whom the Principal and other College authorities were canvassing.

(ii) In any case, the order was passed arbitrarily and capriciously, against all rules of natural justice and without giving the petitioner an opportunity of being heard.

3. The Principal has emphatically denied the suggestion that he or any other College authority canvassed for any candidate in the General Elections or else that he had any grudge against the petitioner. As regards the second point, he urged that the order of expulsion was passed by way of a disciplinary measure and as such, outside the jurisdiction of this Court under Article 226.

4. The question as to whether the impugned order was passed mala fide or bona fide need not be considered in this application because the application can be disposed of on the second question. I would leave this question open.

5. As to the facts leading to the expulsion of the petitioner from the College there are two conflicting versions. The petitioner's version is that on account of a grudge entertained against him by the Principal and some members of the College staff he was assaulted by the Head-clerk of the College named Krushna Sahu, on the 31st March, 1957 and that a peon of the College snatched away his cycle. The petitioner complained against their conduct, to the Principal and also informed the Students' Union about it. A meeting of the Students' Union was convened on 25-3-57 and the petitioner also began to take steps for filing a criminal complaint against the said Krushna Sahu.

In the meantime, Krushna Sahu influenced the Principal who, on account of his own grudge against the petitioner for his election activities put up the aforesaid notice expelling the petitioner from the College. The allegation that he misbehaved towards lady-students was emphatically denied as false. It was further alleged that the Principal, on no occasion, informed the petitioner about these allegations and that he did not give him any opportunity to defend himself. When the petitioner's father, on coming to know of the order of expulsion made an enquiry from the Principal on the 26th March, 1957 as to the reasons for such in order, the Principal merely forwarded to him a copy of the aforesaid notice.

6. On the other hand, the affidavit filed by the Principal of the College is to the following effects. He had received oral complaints from Sri Raghunath Misra Sastry, Lecturer of the College, about the petitioner's misbehaviour in class-rooms towards lady-students. He instructed that lecturer to warn him and to keep watch over him. The College was closed from the 18th to the 21st of March, 1957 as the buildings were required for holding the High School Certificate

Examinations.

The Principal came to know that notwithstanding the closure of the College on these days the petitioner was daily going round the College buildings loitering in the premises and misbehaving towards lady-students who were appearing at the said Examination. The invigilators and the College authorities warned the petitioner and asked him not to enter the College as it was closed. They also brought the petitioner's conduct to the notice of the Principal.

He instructed them to turn out the petitioner if he again entered the College premises and misbehaved. The principal admits that on the 21st March 1957, the petitioner was forcibly removed from the College premises. He also admits that thereafter the petitioner went to the Principal and complained against the Head clerk, Krushna Sahu and against the College Peon. Then the Principal told the petitioner that he had no business to go to the College during those days, that he had received reports about his misbehaviour towards lady-students, and "warned him why he should not be expelled from the College for misconduct to which he pleaded innocence". Thereafter the Principal made further enquiries from the Head clerk, another clerk named Brunadban Patra, some members of the staff and also from the Superintendent in charge of the Centre and from the girl students and their parents who had complained to him about the gross misconduct of the boy during the four days of the Examination. From these enquiries he was satisfied that the petitioner had grossly misconducted himself and deserved exemplary punishment. Hence he passed the order expelling him from the College.

7. It is unnecessary for the purpose of this application to decide which of the above two conflicting versions is true, because the application can be disposed of on the facts as admitted in the affidavit of the Principal. But I should point out that there are admittedly some inaccurate statements of fact, in the affidavit filed by the Principal, dated the 3rd July 1957. Therein he tried to make it appear that from the 18th to the 21st March, 1957 the College was closed for the college students, that there was no need for any college student to go to the College at all during those days and that the petitioner, without any justification whatsoever, was loitering round the premises of the College for the purpose of misbehaving towards lady-students who came to appear at the examination that was being conducted at the College.

He went so far as to say in his affidavit "I told him that he had no business to go to the College during those days." The petitioner had, however, filed a counter-affidavit stating that though the College premises were used for conducting the High School Certificate Examination on those days a portion of the premises (namely the College Library and College Office) was open for students and fees were being received from students. He further stated that the First and Third Year Science classes were also held during those days. He further paid the fees in the College office on the 21st March 1957 and filed a receipt in support of this payment and also filed an affidavit. A counter to this affidavit was filed by Sri

Krushna Sahu, Head clerk of the College in which it was admitted that though the College was closed on the said dates for the purpose of conducting the examinations, fees were being received from students from 7-30 to 9-30 a.m.

The Head clerk has not, however, categorically denied the specific averment made by the petitioner in his affidavit to the effect that classes of the First and Third year Science Sections were being held even during those days. He merely filed as enclosures to his affidavit statements purporting to have been signed by the Head of the Physics Department and the Head of the Chemistry Department to the effect that no classes were held during the week from the 16th to the 24th March, but as these statements are not supported by affidavits from persons who were competent to speak about them, they cannot be taken as rebutting the positive averment in the petitioner's affidavit to the effect that the First year and Third year Science classes were held during those three days.

In any case, it is now clear that the sweeping statement made by the Principal in paragraph 6 of his affidavit dated 3-7-1957 to the effect that "there was no need for college students to go to the College from 18th to 21st March" is inaccurate inasmuch as he had himself issued notice to the students to pay fees from 7-30 to 9-30 a.m. even on those dates. The question as to whether this was a mere error due to inadvertence or to any other reason need not be considered in this application.

8. Assuming, without deciding, that the other statements of facts mentioned in paragraph 6 of the Principal's affidavit are correct the main questions to consider are:

(i) whether the rules of natural justice were observed in expelling the petitioner from the College.

(ii) whether this Court has jurisdiction to interfere with such an order of expulsion passed on the petitioner by the Principal by way of disciplinary measure.

The Principal had admitted that he has no personal knowledge of any instance of misconduct committed by the petitioner towards girl students of the College. He first heard about it from one of the lecturers, namely, Sri Raghunath Misra Sastry and directed him to warn the student concerned and to keep watch over him.

Again when it came to the notice that during the period from 18th to 21st March the petitioner was roaming round the College premises and causing annoyance to the girl students he admittedly did not send for him with a view to give him an opportunity to have his say. He stated that he merely instructed his clerks and peon to turn out the petitioner if he entered the College premises and misconducted. It was only when the petitioner, of his own accord, went to see the Principal on the 21st morning and complained against the conduct of the Head clerk that the Principal told him as follows (to quote his own words):

"I told him that he had no business to go to the College during those days and

that I received reports about his misbehaviour towards lady-students and warned him why he should not be expelled from the College for his misconduct, to which he pleaded innocence."

9. Mr. Ramdas ingeniously argued that this warning given by the Principal on the 21st March may be taken as sufficient to show that he gave the petitioner a reasonable opportunity to be heard in his defence, I am however unable to accept this argument. The Principal of a College may be expected to know the meaning of the word "warned". The affidavit of the Principal was drafted in the Sheristha of Sri Ramdas, an Advocate of this Court who also may be presumed to know the meaning of the word.

By no stretch of imagination can it be said that the warning given by the Principal to the student when the latter, of his own accord, went to him and complained against the conduct of the Head Clerk on the 21st March 1957, was tantamount to explaining to the student the complaints received against him and giving him an opportunity to be heard in his defence. On the other hand, the reasonable interpretation of the word "warned" would be that the Principal made it clear to the student that if the said misconduct was repeated the student was liable to be expelled from the College.

At that time the Principal had not made up his mind as to whether the allegations against the petitioner were really true.

In the Litter portion of his affidavit (paragraph 6) the Principal says that after his meeting the student on the 21st March he made further enquiries from several other persons and then was "satisfied from enquiries that the boy had grossly Misconducted himself and deserved exemplary punishment". These enquiries were obviously made without giving intimation to the boy and admittedly behind his back, and they did not relate to any fresh acts of misconduct after the 21st March but only to those alleged to have taken place prior to the 21st March. After satisfying himself about the guilt of the petitioner the Principal admittedly did not send for him, inform him about the results of the enquiries and ask him to show cause why he may not be expelled.

He merely put up a notice on the 25th March 1957 directing the expulsion of the boy from the College and giving the reasons for such expulsion. The order of expulsion was not specifically communicated to the boy; it was expected that he would know about it by seeing the notice board. The circumstances under which the order of expulsion was passed and the manner in which it was noticed leave an uneasy impression in my mind that the primary object in passing the order was to publicly disgrace the petitioner. If the primary aim was merely to take disciplinary action in the usual way the Principal would surely have sent for the boy, given him an opportunity to have his say and then, if the explanation was not satisfactory communicated the order of expulsion to him.

10. At the time of admission of every student in the College an undertaking is obtained from him if he is a major or from his guardian if he is a minor, to the

following effect:

"I undertake to see that my son/daughter/ ward abides by the rules of the College and the hostel attached to it. I also undertake to withdraw him/her from the College and/or hostel should the Principal decide that such withdrawal is necessary in the interest of the institution.""

This undertaking is mentioned in Article 107 of the Orissa Education Code and as the Principal, in LAIS counter-affidavit has not challenged the statement in paragraph 15 of the writ petition it may be taken that the petitioner's father also had given such an undertaking. Hence, if the Principal wanted to take action in the normal way, and expel the petitioner because of his misconduct towards some lady students and thus set an example for others, one would expect him first to intimate this fact to the father of the boy and direct him to withdraw the student from the College. The Principal's explanation for not following this normal procedure is very strange. He stated in paragraph 12 of his affidavit as follows:

"Notice to a parent for the good conduct by way of advice is given in cases where it is thought necessary in the interests of the Student that he would leave the institution, whereas punishment is inflicted in the interests of the institution as a Measure of discipline."

This explanation is not at all satisfactory. If the withdrawal of a student from the College is considered necessary in the interests of the institution, it must be based on some instances of misconduct on the part of the student which affect the institution. It would, therefore, necessarily amount to disciplinary action. The distinction sought to be made in the affidavit between the interests of the institution on the one hand and the interests of discipline on the other, is quite unreal.

Under ordinary circumstances one would have expected the Principal of the College to have first contacted the boy, apprised him of the allegations made against him and heard from him what he had to say. If, ultimately, he decided that the boy's removal from the College was necessary he would surely have communicated that decision to the father of the boy and asked him to withdraw the boy from the College. If, however, the father of the boy would take no further steps to withdraw the boy, then the extreme penalty of expulsion may be justified. The use of the word "decide" in Article 107 of the Education Code is very significant. There must be first a decision by the Principal that the withdrawal of the boy from the College is necessary and it is only after coming to such a decision that he should take further steps. A "decision" necessarily involves hearing all parties concerned.

11. The next question is whether the Principal of the College is subject to the jurisdiction of this Court under Article 226 of the Constitution, in respect of any disciplinary action taken by him against a student of the College. The answer to this will depend on whether the Khallikote College is a public institution and

whether the Principal of the College is a public or quasi-public official. On behalf of the Principal the printed Calendar of the College for 1954-55 was filed. It gives a complete history of the College. In 1856 there was a school known as Berhampur Zilla School started by Government at Berhampur, for imparting English Education.

In 1878 First Year Arts Courses were opened and they were affiliated to the University of Madras. In 1883 the management was transferred to a local committee and the institution was known as the Native College, Berhampur. In 1893 when the College was about to close down due to lack of funds, the Raja Bahadur of Khallikote came to the rescue of the institution with a liberal grant of one lakh of rupees. Another charitable minded gentleman also gave a donation of Rs. 8000/-, and then the College was named as the Khallikote College, Berhampur.

"The College has since that time been managed by a Committee of influential citizens of the district with the help of Government grants and income from fees, contributions and donations from the students, their parents and the General Public".

This would show that it is a public institution. The fact that the principal donor was the Rajah Bahadur of Khallikote and the College was named after him would not make it purely private institution. Funds have been collected from several other persons including the general public.

Grants have also been obtained from Government. When the Utkal University was first constituted in 1943 by the Utkal University Act, 1943, the Khallikote College was one of the five colleges that were affiliated to the University. See Law 1 Ch. xxx of the Statute. The other provisions of the said Chapter of these statutes, especially laws 5 and 6, described in detail the various other matters which the University enforced on all the Colleges affiliated to the University including the Khallikote College.

In the Orissa Education Code also there are various provisions (see Section 1 Ch. III) applicable to all Colleges affiliated to the University whether managed by Government aided or unaided. Khallikote College's status has been admitted by the Principal to be that of a "private aided institution" (see para 13 of the affidavit). For the purpose of the Education Code and the Statutes of the Utkal University it is a private aided college as distinguished from a Government College, but the use of the word "private" does not mean that it is an entirely private institution not amenable to any control either of the University or of the Government.

The position of this College is very similar to that of the Pachiappa's College, Madras, which was held to be a public institution in *C. D. Sekkilar v. Krishnamoorthy* AIR 1952 Mad 151. That college also owed its origin to the endowments made by the late Pachiappa Mudali which were subsequently augmented by donations from generous members of the public. Doubtless,

Pachiappa's College was governed by a scheme made by the High Court of Madras u/s 92, C. P. C. and I there is no such scheme dealing with the management of the Khallikote College.

Though Mr. Ramdas ingeniously argued that the absence of such a scheme would render the aforesaid Madras decision inapplicable to the present case, I do not think it is material. There can be no doubt that the purpose for which funds were collected for the College was "charitable purpose" within the meaning of Section 2 of the Charitable Endowment Act, 1890. The mere fact that nobody found it necessary to apply to this Court for framing a scheme u/s 92, C. P. C. as was done in the case of Pachiappa's College, will not make any difference so far as the public nature of the College is concerned. The two are exactly on the same footing and following the reasons given by the learned Judge of the Madras High Court in AIR 1952 Mad 151, I would hold that the Khallikote College is a public institution and the Principal of the College holds an office which may be called a public or quasi-public office.

12. Mr. Ramdas then cited *Joseph Mundassery v. St. Thomas College* AIR 1954 TC 199, where it was held that St. Thomas College, Trichur, was a private educational institution and that the mere fact that it was affiliated to the Madras University would not make it a public institution. But it appears that the said institution was owned and financed by one person, namely, His Grace the Bishop of Trichur and it was not in receipt of any aid or contribution either from the State or from the Central Revenues.

But Khallikote College, as already stated, has received contribution not only from the Raja Bahadur of Khallikote but also from several other persons belonging to the public and is admittedly also in receipt of grant-in-aid from Government. These facts distinguish it from St. Thomas College, Trichur.

13. The next and most important question is --how far this Court is justified in interfering with an order of expulsion passed as a disciplinary measure by the Principal of an Educational Institution against a student.

14. The English law on the subject has been summed up in Halsbury, Third Edition, (Vol. 3) at page 593:

"In cases where a pupil is being educated in pursuance of a contract, the Headmaster has authority to expel him if his conduct is such that he could not any longer be permitted to remain without danger to the school; but such authority must be exercised honestly and reasonably and not wantonly or capriciously. The Headmaster must take into consideration the interests not only of the particular boy, but of the whole school though it is sufficient for him to have reasonable grounds for believing that the boy committed any offence imputed to him."

The three decisions relied on in support of the above passage are: (i) *Fitzgerald v. Northcote* (1865) 176 ER 734, (ii) *Hot v. Governors of Hailey-bury College*

(1888) 4 TLR 623 and (iii) *Wood v. Prestwitch*, (1911), 104 LT 388. If the facts of these three cases are carefully scrutinised it will be found that in all of them, where there was allegation of misconduct against a student there was some sort of enquiry and the head of the educational institution gave the student an adequate opportunity to have his say before passing an order of expulsion. In (1888) 4 TLR 623, it was urged on behalf of the head of an educational institution, that he had an absolute discretion as far as disciplinary action against the boys was concerned. Field, J. negated such a contention in the following terms:

"Such a power would be far too great and dangerous, viz., that any boy at school should be liable to be branded for life by expulsion simply because the matter, on his sole authority and discretion--however distinguished he may be--had come to the conclusion that such a course was necessary for the well being of his school. Such absolute discretion can never be permitted.""

So long as the Head of the Institution acts reasonably and honestly, his action is justifiable in law courts. I think it is clearly implicit in the aforesaid decision that before such an extreme order like an order of expulsion from a school is passed there must be some sort of enquiry and the student concerned must get an opportunity to have his say and to establish his innocence. In (1865) 176 ER 734, there is a very interesting note by the Editor regarding the circumstances under which an aggrieved party is entitled to be heard, and those circumstances where he is not entitled to be heard. I may quote the following passage:

"Nothing is more clear than that there may be an absolute discretionary power of removal even from an office, if it is held *ad libitum*, or *durante bene placito*, in which case the party is removable, even, without any hearing."

But so far as the disciplinary power of heads of institutions over students is concerned, the Editor observed as follows:

"But undoubtedly the Courts rather lean against an arbitrary discretionary power of removal or expulsion, and it is only yielded to where expressly conferred by a founder. In such a case, no doubt where the trustees have, by the foundation, the power to remove at their discretion, they may remove without assigning any reason, if they do not act from corrupt or improper motives. But where there is not such a power and the power is to remove for neglect, misbehaviour or other good cause, the trustees have not a power of arbitrary dismissal; but only for just cause, which they are bound to exercise in a mode of proceeding according to principles of right, and to general rules applicable to the administration of justice by the Law of England."

The earlier decision in *R. v. Darlington School*, reported in (1844) 6 QB 682 was distinguished on the ground that there under the Charter granted by Queen Elizabeth the trustees of the Grammar School had absolute discretion of appointing and removing the Masters and Ushers from the said school.

15. The English decisions dealing with disciplinary action by heads of educational institutions thus lay down that where there is absolute discretionary power conferred by the founder, an order of punishment may be passed even without hearing; but heads of Educational Institutions have ordinarily no such absolute discretionary power, and that they must act reasonably "in accordance with the general rules applicable to the administration of justice by the Law of England". This necessarily implies that where misconduct is alleged against a student there must be some sort of enquiry and the student must get an opportunity to have his say and establish his innocence.

16. Apart from the aforesaid decisions, there are innumerable other English decisions in which the rules of natural justice embodied in the well-known maxim *aude alterem partem* have been insisted upon, irrespective of whether the authority which passed an order by way of disciplinary action was a quasi-judicial tribunal or a purely administrative authority. In *R. v. Gaskin* (1799) 101 ER 1349 a disciplinary order of dismissal passed by the Rector of some Parishes against a Parish Clerk was set aside, in a mandamus proceeding, on the ground that the first principle of Justice, namely *aude alterem partem* was not observed. Again in the well known *Dr. Bentley's* case reported in (1723) 92 ER 818, the University of Cambridge was directed to restore the Degree of Doctor of Divinity which was taken away from Dr. Bentley, on the ground that the said doctor was punished without getting an opportunity to defend himself. Mr. Ramdas, however, tried to distinguish this case by pointing out that the order of punishment was passed by the Vice-Chancellor's Court in the University of Cambridge.

The use of the expression "Vice-Chancellor's-Court" in the report of the case does not show that it was a court of justice as ordinarily understood. It was the authority which had the jurisdiction to pass an order of punishment. But the King's Bench held on mandamus that the person affected by the order should have been given an opportunity of being heard. In *R. v. Chancellor, Scholars and Masters of Cambridge University* 93 ER 698, this right of hearing was described in the following picturesque language:

"The laws of man and God both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man upon such an occasion that even God himself did not pass sentence on Adam before he was called upon to make his defence."

Then the famous passage in the Bible where Adam was asked to explain his misconduct was quoted.

In *Cooper v. Wandsworth Board of Works* (1863) 143 ER 414, it was pointed out that the principle of *aude alterem partem* was not limited to judicial proceedings but should be applied to "many exercises of a power which in common understanding would not be at all more a judicial proceeding than would be the act of the district board in ordering a house to be pulled down". In that judgment, Byles J. while referring to *Dr. Bentley's* case (1723) 92 ER 818,

observed:

"It seems to me therefore that whether the Board acted judicially or not, they have acted against the whole of current of judicial authorities and have omitted to do that which justice required! and contravened the words of the statute."

He further observed that the action of the Board was wrong because "although there were no positive words in a statute requiring that a party shall be heard, yet justice of common law will supply the omission of the Legislature". Again, in *Board of Education v. Rice*, 1911 AC 179, it was pointed out that even administrative decisions by public bodies invested with statutory powers should be exercised in good faith and that they must "fairly listen to both sides for this is a duty lying upon every one who decides anything"". It was further observed that such bodies should "give a fair opportunity to those who are parties in the controversy, for correcting or contradicting any relevant statement prejudicial to their view".

17. The limit of interference by a Court with the decision of a domestic tribunal was considered in *General Medical Council v. Spackman* 1943 AC 627 and it was reiterated that the person against whom disciplinary action is taken should be given an opportunity of a full and fair hearing. Similarly, in *Nakkuda Ali v. M. F. de S. Jayaratne* 1951 AC 66 though it was held that the decision of the Controller of Textiles in cancelling a license was an executive action and not a judicial action, yet, as the aggrieved party was given an opportunity of being heard before the order of cancellation was passed, the rules of natural justice were not violated. I may quote the following passage (at page 82):

"If the respondent felt bound to act on this suspicion, it was not because he had come to entertain it through any denial of natural justice, or without reasonable cause, but because the appellant himself either could not or would not produce the explanation that would have dissolved it."

18. Mr. Ramdas then relied on the observations of Goddard C. J. in *Rex v. Metropolitan Police Commissioner* reported in (1953) 2 All ER 717, which were reiterated in *Ex parte Fry* (1954) 2 All ER 118, to the effect that where disciplinary powers were exercised by the superior authority it would be very undesirable that the order should be interfered with in a writ of certiorari. There was reference in those decisions to a military officer, a police officer and a school master, exercising disciplinary powers over persons placed in their charge.

These observations of Goddard C. J. will not, however, help the opposite party very much. He was only referring to the limited jurisdiction in issuing writs of certiorari against tribunals which exercised judicial or quasi-judicial functions. He did not expressly state that even the authorities exercising purely administrative functions by way of passing disciplinary orders against students were not bound by rules of natural justice so far as the right of the aggrieved party to be heard, before an adverse order was passed against him, was concerned.

On appeal against his decision, the Court of Appeal disposed of the matter on some other grounds. Hence the observations of Goddard C. J. will not support the extreme view put forward by Mr. Ramdas that in respect of disciplinary matters the head of an educational institution was not bound to give an opportunity to the pupil to be heard before an order of expulsion is passed against him. I think the English authorities are decidedly in support of the opposite view.

19. The American Law on the subject has been fully summarised in an excellent article in the Harvard Law Review, Vol. 70, 1406:

There is some conflict in the decisions as to whether an aggrieved student is entitled to cross-examine witnesses on whose statements disciplinary action is proposed to be taken against him. But all Courts are unanimous that the student concerned must be given an opportunity of being heard. The divergence of view is mainly as to whether the burden will lie on the student to establish his innocence or on the College authorities to prove his guilt. The writer of the article sums up the position thus:

"Although the formalities of a trial in a law Court are not necessary, and although the exigencies of school or college life may require the suspension of one reasonably thought to have violated disciplinary rules, it seems fairly clear that a student should not have the burden of proving himself innocent. The fiduciary obligation of a school to its students not only should prevent it from seeking to hide the sources of its information, but demands that it affords the student every means of rehabilitation. If it has not done so, this opportunity should be given by the Courts."

20. To sum up, therefore, both the English and American Authorities seem to be agreed that even in disciplinary matters the head of an educational institution has no absolute discretionary power and that he must act reasonably and the aggrieved student must get an opportunity of being heard and of establishing his innocence, if he so desires.

21. The Indian decisions doubtless show some divergence of view, as to whether the head of an educational institution, or a university, acts judicially or administratively while taking disciplinary action for expulsion of a pupil who is guilty of malpractice. But there is no decision, brought to my notice, which supports the view that the pupil concerned is not entitled to be heard in his defence before the order of expulsion is passed against him. In the Madras decision (AIR 1952 Mad 151) cited above, the High Court refused to interfere with the order of expulsion because some of the acts of misconduct were committed by the student in the presence of the Principal himself.

In *Dipa Pal Vs. University of Calcutta*, , which was a case of misconduct by students while sitting for the University Examination, a distinction was made between the two classes of breach of discipline by students. Thus, where the invigilators or other persons present in the Examination Hall detect a student

using unfair means, they may be justified in expelling him straightway from the Hall and the question of any enquiry or investigation into the acts of misconduct may not arise. But where such misconduct is subsequently inferred from some other circumstances, a due enquiry should be held and the delinquent student should be given an opportunity to defend himself. Bose J. observed:

"To brand a candidate with the stigma of adopting unfair means at the examination, or in other words finding him guilty of dishonesty and mis-conduct and thereby causing irreparable injury to the character and reputation of such a candidate without giving him or her any opportunity to explain, is contrary to all notions of justice and good sense."

It was held that such a decision would be in the nature of a quasi-judicial decision. The view of the Calcutta High Court was followed in *Sadhu Ram v. Principal, Rajindra College, Bhatinda* AIR 1954 Pepsu 151, which was also a case of expulsion of a student for misconduct. Similarly, in *B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others*, , the same view was taken.

22. The Allahabad decisions show a sharp divergence of opinion as to whether such orders are quasi-judicial orders or purely administrative orders. Thus in *Ram Chander v. Allahabad University*, (S) AIR 1956 All 46, a Division Bench held that an order of the Vice-Chancellor of the Allahabad University expelling a student for misconduct was not a judicial or quasi-judicial order and that the student was not entitled to cross-examine the witnesses on whose statements the order of punishment was passed against him. Their Lordships, however, did not go to the extent of saying that the student was not entitled to be heard before the order of expulsion was passed.

In fact there was an enquiry held against that student and it appears that the student admitted the facts alleged against him. Hence this decision will not be an authority for the extreme contention put forward by Mr. Ramdas. In a later Division Bench decision of the same High Court reported in *Jogendra Raj Kishore Vs. University of Allahabad and Others*, , there are doubtless some observations to the effect that where the Vice-Chancellor of the University expelled a student for misconduct, it was not necessary that he should be given an opportunity of being heard.

But even in this case the observations of Bose J. in *Dipa Pal Vs. University of Calcutta*, regarding the distinction between the aforesaid two classes of misconduct, namely, those acts of misconduct in the presence of the authorities for which a student may be straightway expelled from the Examination Hall on the one hand and those acts of misconduct based on enquiry held by the authority concerned. In the latter case, they seem to accept the view of Bose J. that the student should be given an opportunity of being heard before action is taken against him.

There is a third case of the Allahabad High Court of the same year, reported in *Ghanshyam Das Gupta and Others Vs. Board of High School and Intermediate*

Education U.P., Allahabad, , where some students were alleged to have been guilty of unfair practices while answering examination papers and were punished after an enquiry though they were not apprised of the charges framed against them nor were they given an opportunity to cross-examine witnesses who might have deposed against them or to defend themselves. The case was first heard by two Judges of the Allahabad High Court, Brijmohan Lal J. and Raghbir Dayal J., who both held that the order of punishment was not a quasi-judicial order but a purely administrative order.

But he differed as to whether the student was entitled to be given an opportunity of being heard before the order of punishment was passed. The case was referred to a third Judge, Aggarwalla J., who was inclined to take the view that the order was a quasi-judicial order, though he felt himself bound by the concurrent opinions of the two other Judges in regard to this question. But he agreed with one of the two Judges that the authorities though acting administratively were bound to give the students an opportunity of being heard either orally or by means of a written explanation and that the failure of the Examination Committee to give such an opportunity vitiated the order.

He also quoted with approval the observations of Bose J. in *Dipa Pal Vs. University of Calcutta*, regarding the distinction between the two classes of misconduct. In a later single Judge decision of the same High Court reported in *Son Pal Gupta Vs. The University of Agra and Another*, , it was held that natural justice requires that the Vice-Chancellor of a University debarring a student from appearing at an examination on the ground of adopting unfair means, must give him an opportunity to defend himself.

23. Mr. Ramdas then invited my attention to *Ramesh Chandra Chaube Vs. Principal Bipin Behari Intermediate College, Jhansi*, , where the Court refused to interfere with the order of the Principal of a College declining to readmit a student in the second year of his term. No reasons were given for such refusal but it appears that in the previous year disciplinary action was taken against the pupil after he was personally informed by the Principal that he was a Communist.

Subsequently, when the pupil gave an undertaking in writing not to take part in subversive activities, the disciplinary order was cancelled. This case is already distinguishable on facts. The questions of admission or re-admission to an educational institution stands on a different footing from the expulsion from an institution as pointed out in *C.D. Sekkilar Vs. R. Krishnamoorthy*, .

Moreover, the grounds on which action was taken against the pupil by the Principal had already been communicated in the previous year to the student and though at that time this undertaking was accepted as sufficient for not taking further action, it was always open to the authorities concerned to change their view so far as punishment was concerned. The decision shows clearly that the learned Judges of the Allahabad High Court were not inclined to interfere with such orders in exercise of their powers under Article 226. They did not say that

they did not have jurisdiction is interfere.

24. Thus a review of the Indian decisions shows a divergence of view as to whether an order of expulsion or rustication passed by the head of an educational institution against an offending pupil would be a quasi-judicial act or purely administrative act. The majority view which is based on the judgment of Bose J. in *Dipa Pal Vs. University of Calcutta*, seems to be that it is a quasi-judicial Act. But whether it is a quasi-judicial act or administrative Act, the majority view of the High Courts (even that of Allahabad High Court as reflected in the decision of Aggarwalla J.) seems to be that the student concerned should get a reasonable opportunity of showing cause against the proposed punishment.

The English and American decisions cited above also support the view that even in respect of such administrative acts the rules of natural justice embodied in the maxim *audi alterem partem* should be complied with.

25. It is indeed very difficult to decide whether a particular order is quasi-judicial or administrative. Several tests have been laid down and these have been reiterated in a very recent decision of the Supreme Court reported in *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, . I am grateful to Mr. Ramdas for fairly placing this decision though some of the observations contained therein may go against the interests of his client. The main test laid down therein is whether the authority concerned is required to act judicially, but the divergent views expressed by their Lordships of the Supreme Court emphasise the difficulty of deciding this question.

But the language of Article 107 of the Orissa Education Code quoted above supports the view that it is a quasi-judicial order. The expression used is "decide" and there can be no "decision" as pointed by Lord Loughborough in 1911 AC 179 (182) unless "the authority concerned fairly listens to both sides, for this is a duty lying upon every one who decides anything". It is unnecessary to consider whether the provisions of the Orissa Education Code are merely administrative or statutory. Even if they are only administrative the authorities of the Khallikote College are bound by them, inasmuch as by accepting grant-in-aid from Government they agreed to abide by its provisions.

Hence, when the said Article requires that by virtue of the undertaking between the Principal and the guardian of a pupil, the guardian is under an obligation to withdraw his ward if the Principal decides that such withdrawal is necessary in the interests of the institution, it seems reasonable to infer that while passing an order expelling the pupil which is a more severe form of punishment than mere withdrawal, there should be a decision to that effect by the Principal, I am, therefore, inclined to think, following the view of Aggarwalla J. in *Ghanshyam Das Gupta and Others Vs. Board of High School and Intermediate Education U.P., Allahabad*, that the order of expulsion passed by an educational institution would be in the nature of a quasi-judicial act and the Principal must hear the student concerned and give him an opportunity to defend himself. It may be that an

elaborate enquiry, as before a regular judicial Tribunal, may not be necessary but the elementary rules of natural justice should be observed.

26. Even if the order of expulsion be held to be an administrative order, Rules of natural justice will have to be observed. In this connection I may quote the following observations of the Chief Justice of India in the aforesaid Supreme Court decision *Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others*, :

"To say that action to be taken u/s 53A is an administrative action is not to say that the State Government has not to observe the ordinary rules of fairplay. The reference to the observations made by Fortesque J. in Bentley's case (1723) 92 ER 818 about God asking Adam and Eve whether they had eaten the forbidden fruit appearing in the judgment of Byles J. in (1863) 143 ER 414 is apposite. The decision in the last mentioned case clearly establishes that in some cases it may be necessary to give an opportunity to a party to have his say before an administrative action is taken against him, but that is quite different from the well ordered procedure involving notice and an opportunity of hearing necessary to be followed before a quasi-judicial action, open to correction by a superior Court by means of a writ of certiorari can be taken. The difference lies in the manner and mode of two procedures. For the breach of the rules of fairplay in taking administrative action, a writ of certiorari will not lie."

These observations show that even in respect of an administrative action "in some cases" it may be necessary to give an opportunity to a party to have his say. Doubtless, for breach of this rule of natural justice by an administrative order, a writ of certiorari will not lie. But the powers of this Court under Article 226 are wider than the powers of certiorari exercised by the High Court in *K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.*, and *Bassappa v. Nagappa* AIR 1951 SC 440. Once it is held that the educational institution is a public institution and the Principal is a quasi-judicial officer and it is further found that he did not observe the rules of natural justice when he passed a drastic order of punishment on the pupil concerned that order may be quashed and a direction prohibiting him from giving effect to his order, would be permissible under Article 226 of the Constitution.

27. In this case we are concerned with an order of expulsion passed by the Principal of the Khallikote College on the reports of other persons. It is not a case of any lesser form of punishment inflicted by the Head of the institution either on the basis of reports received from other persons or in respect of acts of misconduct committed in his presence. I wish, therefore, to make it clear that this decision should not be taken as authority for the view that against every order of punishment passed as a disciplinary measure by the head of an educational institution the aggrieved pupil must be given an opportunity to defend himself.

Instances may certainly arise such as when an invigilator detects a student using

unfair means in an Examination Hall, and finds it necessary to expel him forthwith. Similarly if a student in a lecture hall is seen misbehaving in the presence of the lecturer the latter may be justified in expelling him from that class for that day, without holding an elaborate enquiry. But an order of expulsion from an institution based on reports of misconduct from third persons should not be passed unless the delinquent pupil himself is fully heard. Such an order carries with it a great stigma against the pupil and would have far-reaching consequences on his entire future career.

28. I would, therefore, allow this application, quash the order of expulsion passed by the Principal on the 25th March, 1957 and issue a direction to him to forbear from enforcing that order.

29. The petition is allowed with costs. Hearing fee is assessed at Rs. 200/- (Rupees two hundred).

G.C. Das, J.

30. I agree.