
(2015) 01 MAD CK 0096

In the Madras High Court

Case No : W.A. Nos. 1484 to 1486 of 2014 and M.P. Nos. 1, 1 and 1 of 2014

Registrar

APPELLANT

Vs

Annavaajjala Aghamaarsh

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Citation : (2015) 2 MLJ 36

Hon'ble Judges : M. Venugopal, J.; Satish K. Agnihotri, J.

Bench : Division Bench

Advocate : K.M. Vijayan, Senior Counsel for A. Saravanan, for the Appellant;
Velmurugan, Advocates for the Respondent

Judgement

M. Venugopal, J.

1. The Appellant has preferred these instant Writ Appeals before this Court as against the common order dated 11.09.2014 passed by the Learned Single Judge in W.P.Nos. 482 to 484 of 2014.

2. The Learned Single Judge, while passing the common order dated 11.09.2014, in W.P.Nos. 482 to 484 of 2014 (filed by the 1st Respondent/Petitioners), in paragraph 13, had observed that "Therefore, it is clear that the Petitioners in these writ petitions were not even informed of the charges that they are obliged to answer. Many of the requirements of principles of natural justice, I admit, could be dispensed with in cases of this nature. The question as to whether, who were examined as witnesses, whether full opportunity was given to cross-examine them, whether documents were produced, etc., may all stand at the fringe of the principles of natural justice. But, the most fundamental requirement, namely that of, putting the delinquents on notice, of the charges against them, can never be dispensed with." and also, in paragraph 14, had, inter alia, observed that "... even assuming that there was a wrong mentioning of the dates, the doubt created, on the basis of wrong mentioning of the dates, cannot be cleared so easily, especially, in view of the fact that the petitioners

were not even put on notice of the charges" and resultantly held that despite the fact that the allegations against the Petitioners are very serious, the ultimate conclusion cannot be approved due to the absence of the most fundamental requirement and allowed the writ petitions.

3. According to the Learned Senior Counsel for the Appellant (Institute)/1st Respondent, the Learned Single Judge had committed an error in the order dated 11.09.2014 that the circular dated 10.09.2013 was issued by the Appellant to the 1st Respondent (in all the Writ Appeals) is vague and has not specified the nature of allegation upon which the proposed enquiry was to be conducted.

4. The Learned Senior Counsel for the Appellant contends that the Learned Single Judge in the order dated 11.09.2014 should have observed the fact as stated in the Report dated 16.09.2013 wherein the Enquiry Committee had formed a view that a special enquiry was to be conducted to obtain adequate details so that an appropriate punishment would be given to the students who was involved in the alleged malpractice.

5. Further, it is represented on behalf of the Appellant that the Learned Single Judge had wrongly interpreted the view of the Enquiry Committee which was not a conclusive one but an observation that the enquiry is still pending so as to obtain adequate details about the students involved and the quantum of punishment to be inflicted and further, the same does not point out any specific students and is a general statement seeking extension of enquiry.

6. Expatriating his submissions, the Learned Senior Counsel for the Appellant projects an argument that the Learned Single Judge, in para 4 of the order dated 11.09.2014, had wrongly observed that the Petitioners accepted the allegations made against them and gave letter to the same on 24.09.2013. However, the fact of the matter is that the enquiry was completed on 13.09.2013 and the said enquiry was only a preliminary one and was conducted in respect of students who had allegedly indulged in malpractice of examination and as such, it could not be construed as a conclusive enquiry.

7. The stand taken on behalf of the Appellant before this Court is that the Learned Single Judge had rendered a wrong finding to the effect that the principles of natural justice were not followed and in fact, the Appellant had made ardent efforts to ensure that the students were provided with a fair opportunity to present their case as no innocent should be punished for no wrong of his.

8. The Learned Senior Counsel for the Appellant submits that the Learned Single Judge although considered the act of impersonation and the malpractice by impersonation as a serious issue failed to uphold the same considering the seriousness of issue involved.

9. The Learned Senior Counsel for the Appellant strenuously contends that the Hon"ble Supreme Court had expressed a view that in case of malpractice, the

principles of natural justice have no place and the students suspected of being guilty of foul play or unfair means are not at all entitled to any notice or opportunity of personal hearing and in this regard, he relies on the decision of the Hon"ble Supreme Court in Controller of Examinations and Others Vs. G.S. Sunder and Another, .

10. The Learned Senior Counsel for the Appellant also cites the decision of this Court in Vijayakant Vs. Tamil Nadu Legislative Assembly, , whereby and whereunder, it is observed that "There is no strait-jacket formula to apply Principles of Natural Justice universally in all cases".

11. The Learned Senior Counsel for the Appellant submits that the Learned Single Judge had failed to take into account of a fact that the Appellant had complied with the minimum requirements of the "principles of natural justice" by affording an opportunity to the Respondents to present their case with all materials by following a systematic procedure of "Enquiry".

12. The Learned Senior Counsel for the Appellant contends that the Learned Single Judge had failed to consider the point that the 1st Respondent in all the Writ Appeals had accepted before the Learned Single Judge to accept the refund of fee by the Appellant and to get transferred to a different College is estopped to go against their promise.

13. Conversely, it is the submission of the Learned Counsel for the 1st Respondent (in all the Writ Appeals) that the Learned Single Judge, in the impugned order dated 11.09.2014, had discussed the principles of natural justice and other applicable judgments and rightly applied the same and that the same may not be displaced by this Court.

14. The Learned Counsel for the 1st Respondent strenuously contends that the Appellant had failed to follow their own procedures in regard to the conduct of enquiry in so far as the present cases are concerned and in reality, the Learned Single Judge, in the impugned order dated 11.09.2014, had rightly pointed out the lapse on the part of Appellant.

15. The Learned Counsel for the 1st Respondent takes a plea that the Appellant had admitted that the enquiry had not concluded, but the Appellant expelled the 1st Respondent (in all the Writ Appeals) from the University without any valid reason.

16. It is the prime submission of the Learned Counsel for the 1st Respondent that the Learned Single Judge, in the order dated 11.09.2014, had rightly pointed out that the 1st Respondent (in all the Writ Appeals) were neither informed by the Appellant in respect of the charges by means of a show cause notice nor provided an opportunity to submit their explanations and further, they were shown the doors, without any courtesy and in this regard, the Appellant was rigid, adamant and acted with a motive to send the students out of the college.

17. The Learned Counsel for the 1st Respondent brings it to the notice of this Court that the Learned Single Judge, while passing the order dated 11.09.2014, in paragraph 16, had, inter alia, observed that "... At the most, they can be only re-admitted to the first year of the course for the current academic year. Hence, the respondents are directed to admit the petitioners" and in fact, the 1st Respondent in all the Writ Appeals had suffered a mental agony and also lost one year of their education.

18. At this stage, this Court pertinently points out that Principles of Natural Justice are not the Edicts of a Statute. Also that, natural justice is a form of justice in its abstract moral sense as distinct from a legislation or statute or a decision by a Court of Law. Moreover, the object of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.

19. It is to be noted that ordinarily the ingredients of fair hearing are: (i) prior notice; (ii) right to make representation; and (iii) right to be heard. It is true that rules of natural justice are not the embodied rules and in fact, the principles of natural justice supplement the law and not supplant the law.

20. The main grievance of the 1st Respondent (in all Writ Appeals) is that the Appellant had not conducted any proper enquiry which clearly reflects the violation of principles of natural justice. Also that, it is represented on behalf of the 1st Respondent (in all the Writ Appeals) that the Enquiry Officer had never served any copy of the complaint to them at any point of time. Moreover, a copy of the proceedings of the Enquiry Report was not served on them. Therefore, the order of expulsion passed on the 1st Respondent (in all the Writ Appeals) is liable to be set aside as the same was issued without any justifiable reason and without conducting any enquiry. It is also represented on behalf of the 1st Respondent that the statement/letter dated 24.09.2013 from the 1st Respondent (in all the Writ Appeals) had been obtained in duress by the Appellant.

21. At this stage, this Court worth recalls the decision of the Hon'ble Supreme Court in *S.L. Kapoor Vs. Jagmohan and Others*, , it is observed as follows:

"The requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. The person proceeded against must know legations which might lead to a certain action being taken against him. If that is made known the requirements are met."

Also, in the aforesaid decision, at page 137, it is held as follows:

"The principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill

comes from a person who has denied justice that the person who has been denied justice is not prejudiced.

Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. Therefore, merely because facts are admitted or are indisputable it does not follow that natural justice need not be observed."

22. Also, this Court aptly points out the decision of the Hon"ble Supreme Court in *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, wherein it is held that "Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all etc."

23. Furthermore, in the decision of the Hon"ble Supreme Court in *Additional District Magistrate (City) Agra Vs. Prabhakar Chaturvedi and Another*, , it is observed and held that "When a delinquent voluntarily admitting in writing that due to carelessness and fault he could not deposit in the Post Office Account of the employees the amount received by him for this purpose from the employer"s office and moreover, stating to the Enquiry Officer that he had not to give any documentary or oral evidence and in such circumstances his subsequent request to examine four more witnesses rightly rejected by the Enquiry Officer."

24. That apart, there is no such thing as a moral technical infringement of natural justice. Of course, the requirements of natural justice must depend on the facts and circumstances of a given case.

25. There is no two opinion of a very vital fact that copying in examinations and impersonation other persons in the examinations are so serious in nature and in so far as the 1st Respondents (Petitioners in W.P.No. 483 and 434/2014) are concerned, it is their case that they were not informed of the charges which they were called upon to answer, in the enquiry to be held on 13.09.2013. In so far as the 1st Respondent /Petitioner (in W.P.No. 482/2014) is concerned, he was not caught red- handed but he was included based on the statements made by the other two persons in the enquiry that took place on 13.09.2013 and more so, he was issued with a circular requiring him to appear for the enquiry. Only based on the enquiry that held on 24.09.2013 and 25.09.2013 wherein the concerned individuals were required to attend the enquiry, an order dated 26.09.2013 was issued suspending the 1st Respondent (Petitioners), followed by a Report dated 29.09.2013 holding the 1st Respondents (Petitioners) guilty of malpractice. Subsequently, based on the Enquiry Committee"s recommendation, the expulsion was ordered.

26. In so far as the present cases are concerned, formal charge sheets containing imputations/accusations against the 1st Respondents (Writ Petitioners) were not issued by the Appellant alleging commission of misconduct/ malpractice, after all a charge sheet is not an order and a reply is to be called for

and as and when the charge sheet is issued to the concerned deviant/delinquent as the case may be. Moreover, a charge sheet is a prima facie material constituting the misconduct/ offence committed by a certain individual/ individuals for proceeding further in the matter.

27. It cannot be gainsaid that the object of holding an enquiry is to protect person/persons from arbitrary and capricious exercise of power by the concerned authority and from imposing punishments in violation of principles of natural justice.

28. Be that as it may, on a careful consideration of respective contentions and in view of the fact that the 1st Respondent (in all the Writ Appeals) had taken a plea that notice of charges levelled against them were not provided and the proceedings of the Enquiry Report were not served on them and also the order of expulsion passed by the Appellant was issued without conducting any proper enquiry and by violating the principles of natural justice and also this Court, on an overall assessment of the entire attendant facts and circumstances of the present case in an integral manner, without expressing any opinion one way or other on the merits of the subject matter in issue and also not delving deep into the same, simpliciter, to prevent an aberration of justice and to promote substantial cause of justice, disposes of the Writ Appeals, by directing the Appellant/Institute to conduct a de novo enquiry against the 1st Respondent in all the Writ Appeals, in the manner known to law and in accordance with law, of course by adhering to the principles of natural justice, by providing necessary opportunities to them and also by following the well established enquiry procedures. Viewed in that perspective, this Court is of the considered view that the observations of the Learned Single Judge, in para 16 of the order dated 11.09.2014, to the effect that "... At the most, they can be only re-admitted to the first year of the course for the current academic year. Hence, the respondents are directed to admit the petitioners" are hereby set aside by this Court, in furtherance of substantial cause of justice. Liberty is granted to the 1st Respondent (in all the Writ Appeals) to raise all factual and legal pleas before the concerned authority at the time of conducting de novo enquiry and to seek appropriate remedy, if they so desire/advised. No costs. Consequently, connected Miscellaneous Petitions are closed.