
(1997) 09 AP CK 0078

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6568 of 1997

R.V.S.S.R. Pavan Kumar

APPELLANT

Vs

Board of Intermediate Education, Nampally, Hyderabad and
Another

RESPONDENT

Date of Decision : 09-09-1997

Acts Referred:

Andhra Pradesh Intermediate Education Act, 1971 — Section 9

Citation : (1998) 3 ALD 761

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : Mr. L. Narasimha Reddy, for the Appellant; Mr. V. Prabhakar Rao, for the Respondent

Judgement

1. The petitioner, a student of first year Intermediate in M.P.C. group in Sadhana Junior College, Yellandu, Khamrnam District, appeared for the examination and passed. He wanted to improve his performance in the first year, therefore, he took the supplementary examination during September/ October, 1996 with Hall Ticket No.8652210, He wanted to appear for the second year examination, and accordingly paid the examination fee on 10-2-97. However, the result of the supplementary examination was not announced. He approached the respondent No.2-Principal, Sadhana Junior College, to know as to why his result was not declared. He learnt that Respondent No.1-Board of Intermediate Education, had declared him and certain others not eligible for appearing for second year examinations to be held in March, 1997. He also learnt that a punishment had been imposed on him preventing him from taking the examinations in addition to debarring him for two years for appearing such examinations after the alleged show cause notice issued to him in January, 97. The petitioner has pleaded that he neither indulged in any malpractice during the examination nor received any show cause notice in regard to such allegation. He also pleaded that no such order inflicting punishment on him is communicated to him. It is contended by the petitioner that any such proceedings inflicting such a punishment on him, is

illegal, arbitrary and opposed to principles of natural justice, and therefore, vitiated. Having been prevented from taking the second year examinations in April, 97 he has come up with this writ petition for directions to the respondents to permit him to appear in the second year Intermediate examinations.

2. In the counter-affidavit filed by the respondents it is disclosed that a case of malpractice u/s 9 of the A.P. Board of Intermediate Education Act (Act 2 of 1971) was booked against the petitioner as he indulged in malpractice while writing Mathematics Paper-1 of the Intermediate Public Examinations on 28-10-96, and a spot explanation of the petitioner was taken, and the matter was reported to the Malpractice Scrutiny Committee by the Chief Superintendent of the Examination Centre alongwith the answer script of the petitioner. After thorough examination of the answer script, the Malpractice Scrutiny Committee recommended punishment under Item No.3 of Section 9 of the Andhra Pradesh Board of Intermediate Education Act, and accordingly cancelled the Intermediate Public Examination - October, 1996 for him, besides debarring him for two subsequent exams to be held in March, 97 and October, 97. Therefore, the contentions of the petitioner are repelled justifying the action of the respondents as above. By filing reply to the counter-affidavit, the petitioner denied the allegations and contended that no show cause was issued to him, much less he was communicated with any such decision imposing punishment on him.

3. Having due regard to the questions involved in the writ petition, the learned standing Counsel for the respondents Mr. Prabhakar was called upon to produce the case file relating to the petitioner and the alleged action taken against him for the alleged malpractice in the examination. Accordingly, he has submitted the file RC No.20/C254/ OCT 96.

4. Having heard both sides and having perused the case file submitted by the learned standing Counsel for the respondents, this Court is not able to support the action of the respondents. The allegation whether the petitioner is involved in malpractice or cannot be the subject-matter of the writ petition, nor this Court can give a finding on that. Only the procedure adopted in taking any action by the respondents in accordance with Section 9 of the Andhra Pradesh Board of Intermediate Education Act (Act 2 of 1971) conformance to the principles of natural justice which are to be examined to sustain or quash such an action.

5. In the first place, the respondents have not satisfactorily established that an opportunity was given to the petitioner before taking any action. As rightly pointed out by Mr. Reddy, learned advocate for the petitioner, the proceedings of October, 1996 dated nil, while mentioning the registration numbers of several candidates, including the petitioner, has stated that the candidates mentioned in annexure - 2 are requested to contact the Principal and collect the show cause notice during the last week of January, 1997. Further more, in the letter dated 3-3-97 addressed by the Principal of respondent No.2-College to the petitioner's advocate, the Principal for the first time has come out with a defence that the petitioner had received the show cause notice dated 13-3-97 on 17-3-97 and he

had tried to serve the same upon the petitioner on 19-3 -97, but he refused to receive the same. No such defence is taken in the counter-affidavit. Furthermore, the endorsement on the back of the memo dated 13-3-97 does not show as to who made it, when it was made, and the context in which it was made. The proceedings stated above asking the candidates to collect the show cause notice by January, 1997 is inconsistent with the conduct of the Principal of the College in stating that he tried to serve the notice on 19-3-97 on the petitioner, but the petitioner refused to receive it. Even such a defence or conduct is coming for the first time in view of the letter addressed by the Principal of the College to the petitioner's advocate. It does not go to the reason or the relevancy that the Principal himself will try to serve the show cause notice on a student. It is not his stand or counter statement that such a procedure was adopted to all such candidates. These circumstances leave a doubt whether really any such show cause notice was served on the petitioner in respect of the proposed action.

6. The contention of the petitioner that any action taken against him by the respondents was not communicated to him is also justified as the respondents have not produced any thing to show that such proceeding imposing punishment was communicated to the petitioner. Under the circumstances, there has been a total violation of the principles of natural justice. The petitioner is being condemned for his alleged involvement in malpractice in allowing another candidate to copy from his paper on the date of examination. It not only condemns the candidate, but spoils his education career as a whole. The respondents having failed to comply with the principles of natural justice, and therefore, the alleged action of the respondents can neither be recognised in law nor allowed to be enforced.

7. The learned Counsel for the petitioner Mr. Reddy has rightly pointed out that the respondents have not pointed out the particular provision under the Act by which the proposed action was taken against the petitioner. This Court is not in a position to examine it for want of definite case made out by the respondents. At any rate, the alleged action taken against the petitioner by the respondents, cannot be maintained or supported.

8. The learned standing Counsel for the respondents pleaded that the respondents may be permitted to take appropriate action against the petitioner according to law. It is for them to decide. This Court does not intend to say anything in that regard. If the law permits, they can take appropriate action. However, with such alleged proposed action, the right of the petitioner to appear for any immediate examination for such a paper or papers cannot be prevented. Such an implication of this order should be emphasised. The petitioner shall be permitted to take the second year Intermediate examination for any next ensuing examinations. He shall not be prevented from taking the examinations on the basis of the alleged impugned action of the respondents.

9. The writ petition is accordingly disposed of. No costs.