

(1994) 08 MAD CK 0093
In the Madras High Court
Case No : Writ Appeal No. 780 of 1993

S. Bright Singh

APPELLANT

Vs

The Bharathiar University and Karunya Institute of
Technology, Coimbatore

RESPONDENT

Date of Decision : 30-08-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 08 MAD CK 0093

Hon'ble Judges : K.A. Swami, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : G.S. Thamby, for the Appellant; Haja Mohideen Giathi, for 1st
Respondent and R. Krishnamoorthy, for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Somasundaram, J.—The Appellant joined the Second Respondent college in the B.E. Degree course in August, 1991. The second Respondent college is affiliated to the first Respondent - University. According to the Appellant, he joined the second Respondent college on payment of Rs. 60,000/- as capitation fee and he underwent the first year B.E. Degree course during 1991-92 and passed all the subjects in the first year examination held in April, 1992. On 8.9.1992 when the Appellant was in the second year of the course, was served with a memo/order of the Principal of the second Respondent college dismissing him from the college. The said order dated 8.9.1992 reads thus:

Thiru Bright Singh, II year Civil student has been dismissed from the College and also expelled from the Hostel on 8.9.1992 onwards for the following reasons:

1. He has indulged in Ragging the I year students, beating the students in uncultured way, using abusive words against them, showing obscene pictures and threatening them for dire consequences."

2. In spite of the fact that he has been warned and fined Rs. 100/- for earlier

offences like throwing the purse of the lady student and for ragging the first years in August 1992, he has again indulged in these activities.

Thus he has given mental and physical torture to the I year students. It has been decided that after due enquiry that his continuance is detrimental for the smooth functioning of the College.

Therefore, he should not enter into the Hostel on any account or any reason and his entry or presence in the hostel is totally banned and prohibited and he has no access or connection with hostel hereafter.

Anybody who entertains or helps him the hostel or encourage him to enter or remain in the hostel will be dealt with very seriously and meet the consequences for their offence in this regard.

He should immediately vacates the hostel and leave the College premises immediately on receipt of this memo.

Aggrieved by the said order dated 8.9.1992, the Appellant filed W.P. No. 19131 of 1992 praying for the issue of a Writ of certiorarified mandamus to quash the order passed by the second Respondent, dated 8.9.1992 dismissing the Appellant from the college and expelling him from the hostel of the second Respondent and to direct the Respondents to reinstate the Appellant in the college and hostel of the second Respondent and to permit him to appear for the examination and to complete the B.E. Degree course. The Appellant challenged the order dated 8.9.1992 on the ground that no charge memo was served on him with regard to the allegations made against him and that no enquiry whatever was conducted before the order challenged in the Writ Petition was passed and that the order dated 8.9.1992 is invalid and liable to be quashed as it is violative of the principles of natural justice. The Learned Single Judge who heard the Writ Petition took the view that the minutes recorded by the Committee of enquiry sufficiently indicate that a fair enquiry that is possible with reference to the nature of the charges and the peculiar circumstances of the case has been conducted and that there is no violation of the principles of natural justice. Consequently, the Learned Single Judge did not countenance the plea of the Appellant and by order dated 15.4.1993 Writ Petition No. 19131 of 1992 was dismissed. This Writ Appeal is directed against the said order of the Learned Single Judge dated 15.4.1993 dismissing Writ Petition No. 19131 of 1992.

2. Before us, Mr. G.S. Thamby, the Learned, Adv. for the Appellant while reiterating the contentions urged before the Learned Single Judge, submitted that the second Respondent before passing the order dated 8.9.1992 dismissing the Appellant from the college has not framed any charge against the Appellant, that no charge memo was served on the Appellant, that no opportunity was given to the Appellant to state his case, that the statements of the affected students examined by the enquiry committee were not recorded by the enquiry committee in the presence of the Appellant, that the complaint against the Appellant was never explained to him and that therefore, the impugned order

dismissing the Appellant from the college is clearly violative of the principles of natural justice and it is illegal and liable to be quashed. The Learned Counsel for the Appellant also contended that the Appellant has been singled out for differential treatment and discrimination, because while two other students who were dismissed from the college for identical charges have been taken back by revoking the orders of dismissal passed against them, the Appellant alone was dismissed from the college.

3. On the other hand, Mr. R. Krishnamurthy, learned senior counsel for the second Respondent, relying on the decisions in

(a) Hira Nath Mishra and Ors. v. The Principal, Rajendra Medical College, Ranchi and Anr. 1974 1 SCJ 223,

(b) in Writ Petition No. 1506 of 1991 as confirmed by the judgment dated 20.3.1991 in Writ Appeal No. 370 of 1991.

(c) Murugan, M. v. Director of Higher Secondary Education 1989 2 L.W. 206 and

(d) Leo Francis Xaviour Vs. The Principal, Karunya Institute of Technology, Coimbatore and another, .

contended that the enquiry conducted by the second Respondent through the enquiry committee appointed for that purpose is fair and proper and in accordance with the well settled principles of natural justice and that no exception could be taken to the same. The Learned Senior Counsel further contended that the Appellant cannot expect to have an enquiry conducted in the present case as in the case of an enquiry conducted against a workmen or a Government servant in the disciplinary proceedings, and that the nature of the allegations and the charges put against the Appellant justify the manner in which the enquiry was conducted by the second Respondent in the present case. The Learned Senior Counsel also invited our attention to the minutes of the enquiry committee meeting held on 7.9.1992 and submitted that there is a substantial compliance of the principles of natural justice before the impugned order was passed dismissing the Appellant from the college and therefore the order dated 8.9.1992 and the order of the Learned Single Judge is illegal not liable to be interfered with in this Writ Appeal.

4. In the Light of the rival contentions of the counsel for the parties, the following points arise for consideration in this Writ Appeal.

1. Whether the Appellant was given an opportunity to meet the allegations made against him and whether the order dated 8.9.1992 passed by the second Respondent dismissing the Appellant from the college is violative of the principles of natural justice and whether it is liable to be quashed?

2. To what relief if any, the Appellant is entitled to?

5. Point Number 1. No doubt as pointed out by the Division Bench of this Court in Bright Son Jose Vs. Madurai Kamaraj University and Another, . a regid and

mechanical insistence of a full fledged enquiry of examination and cross-examination of witnesses in matters relating to internal discipline of educational institutions under the guise of observing the principles of natural justice may not be conducive for the effective functioning and preservation of the structure of our educational institutions. The Apex Court and the High Courts have repeatedly held that it is not necessary to comply the strict rules of principles of natural justice in the matter of disciplinary proceedings initiated by an educational institution against a student. However, in such matters relating to internal discipline of educational institutions, as pointed out by the Apex Court in *Hira Nath Mishra and Ors. v. The Principal Rajendra Medical College, Ranchi* and Anr. 1974 1 SCJ 223, the educational institutions have to devise a just and reasonable plan of enquiry which on the one hand would not expose the innocent individual students who were victims of harassment by the delinquent student and on the other, secure reasonable opportunity to the delinquent student who is the accused of certain acts of misconduct. The Appellants in the decision of the Supreme Court referred above, who were male students of Rajendra Medical College, Ranchi, on the night between 10th and 11th June, 1972, entered into the compound of the hostel for girl students of the same college without clothes on them. They went near the windows of the rooms of some of the girls and tried to pull the hand of one of the girls. Some five of these boys then climbed up along the drain pipes to the terrace of the girls hostel where a few girls were doing their studies. On seeing them the girls raised an alarm following which the students ran away. The girls recognized four out of these male students - three of them being the Appellants in the above appeal before the Supreme Court and the fourth being one Upendra Prasad Singh. On 14th June, 1972, a complaint was received by the Principal from 36 girls students residing in the girls hostel alleging the above facts. The Principal decided to hold an enquiry and entrusted the enquiry to three members of the staff viz., Dr. J. Sharan, Dr. B.B.P. Roy and Dr. (Miss) M. Quadros. The four students were directed to present themselves at 4.30 P.M. on 15th June, 1972, in the Principal's room in connection with the enquiry. Accordingly, they attended at the time of enquiry which was conducted by the enquiry committee in the room itself-the principal having left the place. The students were called one after other in the room and to each one of them the contents of the complaint were explained, due care being taken not to disclose the names of the girls who had made the complaint; They were also given a charge which ran as follows:

A complaint has been lodged that you trespassed into the premises of the girls hostel at late night of 10th/11th June, 1972, made unauthorised entry into the junior girls hostel. Further you have been accused of gross misconduct. You are, therefore, asked to show cause why disciplinary action should not be taken against you for the misconduct.

You are directed to file your reply immediately to the enquiry committee and appear before the committee as and when required.

Non-compliance will lead to ex parte decision.

Each one of the students was given paper and pen and asked to write down whatever he had to say. The students uniformly denied having trespassed into the girls hostel or having misbehaved with them as alleged. They added that they were in their own Hostel at that time. Thereafter, the enquiry committee called 10 girls of the hostel who were party to the complaint and their statements in writing had been recorded in the absence of the Appellants as it was thought it was unwise to do so. After making the necessary enquiry and considering the statements of the four students who did not intimate that they wished to lead any evidence, the Committee came to the unanimous conclusion that the three Appellants and Upendra were four out of the students who had taken part in the raid that night. The Committee was of the view that the students were guilty of gross misconduct and deserved deterrent punishment. They further recommended that they may be expelled from the college for a minimum period of two calendar years and also from the Hostel. Acting on this report which was given on 21st June, 1972, the Principal of the College issued the order on 24th June, 1972, in these terms:

I have carefully perused your reply to the show cause notice issued against you and the report submitted by the Enquiry Committee consisting of Dr. J. Sharan, Dr. B.B.P. Roy and Dr. (Miss) M. Quardros.

You have been found guilty of the charges which are of very serious nature. You are, therefore, expelled from this college for two academic sessions i.e. 1972-73 and 1973-74. You are further directed to vacate the hostel within 24 hours and report compliance to the Hostel Superintendent.

As against the said order dismissing the Appellants from the college, they filed the Writ Petition before the High Court, contending that rules of natural justice had not been followed before the order was passed against them expelling them from the college. The High Court held that the rules of natural justice were not inflexible and that in the circumstances and facts of the case the requirements of natural justice had been satisfied. In the appeal filed before the Apex Court, the Apex Court while repelling the contention of the Appellants that the rules of natural justice had not been followed before the order was passed against them, expelling from the college, observed as follows:

(8). The High Court was plainly right in holding that principles of natural justice are not inflexible and may differ in different circumstances. This Court has pointed out in *Union of India (UOI) and Another Vs. P.K. Roy and Others*, that the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon several factors. In the present case the complaint made to the Principal related to an extremely serious matter as it involved not merely internal discipline but the safety of the girl students living in the Hostel under the guardianship of the college authorities. These authorities were in loco parents to all the students male and female who were living in the

Hostels and the responsibility towards the young girl students was greater because their guardians had entrusted them to their care by putting them in the Hostels attached to the college. The authorities could not possibly dismiss the matter as of small consequence because if they did, they would have encouraged the male student rowdies to increase their questionable activities which would, not only, have brought a bad name to the college but would have compelled the parents of the girl students to withdraw them from the Hostel and, perhaps, even stop their further education. The Principal was, therefore, under an obligation to make a suitable enquiry and punish the miscreants.

(9). But how to go about it was a delicate matter. The Police could not be called in because if an investigation was started the female students out of sheer fright and harm to their reputation would not have cooperated with the police. Nor was an enquiry, as before a regular tribunal, feasible because the girls would not have ventured to make their statements in the presence of the miscreants because if they did, they would have most certainly exposed themselves to retaliation and harassment thereafter. The college authorities are in no position to protect the girl students outside the college precincts. Therefore, the authorities had to devise a just and reasonable plan of enquiry which, on the one hand, would not expose the individual girls to harassment by the male students and, on the other, secure reasonable opportunity to the accused to state their case.

(10). Accordingly, an Enquiry Committee of three independent members of the staff was appointed. There is no suggestion whatsoever that the members of the committee were anything but respectable and independent. The Committee called the girls privately and recorded their statements. Thereafter the students named by them were called. The complaint against them was explained to them. The written charge was handed over and they were asked to state whatever they had to state in writing. The Committee, were not satisfied with the explanation given and thereafter made the report.

(11). We think that under the circumstances of the case the requirements of natural justice were fulfilled.

The Supreme Court, in the above decision held that the minimum requirements of natural justice were fulfilled in that case, by (a) handing over the written charge to the delinquent students and (b) by asking them to state whatever they had to state in writing with regard to the charges levelled against them.

6. Now let us proceed to examine whether the second Respondent in the present case, has fulfilled the minimum requirements of natural justice as pointed out by the Apex Court in the decision referred above, before passing the order dated 8.9.1992 dismissing the Appellant from the college. Admittedly, in the present case, no charge was framed against the Appellant, not to speak of handing over the same to the Appellant and that no opportunity was given to the Appellant to state whatever he had to say in writing. The Appellant was not put on notice

about the acts of misconduct alleged against him and he was not given an opportunity to state his case. Another significant fact which cannot be lost sight of in the present case is that the impugned order does not even refer to the enquiry conducted by the enquiry committee appointed by the second Respondent on 7.9.1992 and the finding of the enquiry committee. A perusal of the file produced by the Learned Senior Counsel for the second Respondent and the minutes of the enquiry committee meeting held on 7.9.1992 shows that the enquiry committee first recorded the statements of three affected students who were subjected to ragging and harassment that thereafter the Appellant was sent for by the enquiry committee and he was identified by the three affected students and that when the Appellant was asked to give a statement by the enquiry committee admitting the guilt, he refused to give any statement before the enquiry committee. As already pointed out that in the present case, on the basis of the statements recorded from the three affected students the Appellant was not served with any charge memo and he was not asked to state his case by submitting his explanation. We are of the view that the minimum and basic requirements of the principles of natural justice are (a) notice of the case not be met and (b) reasonable opportunity to explain. On a careful examination of the minutes of the enquiry committee meeting held on 7.9.1992 and the order dated 8.9.1992 passed by the second Respondent dismissing the Appellant from the college, we are inclined to hold that both the basic requirements of the principles of natural justice referred above, are not fulfilled by the second Respondent before passing the order dated 8.9.1992, because the second Respondent admittedly failed to secure reasonable opportunity to the Appellant and serving a charge memo on the Appellant and asking him to state his case with regard to the allegations levelled against him. Therefore, it has to be held that the enquiry in the present case and the punishment of expulsion imposed on the Appellant by the order dated 8.9.1992 is clearly vitiated by violation of the principles of natural justice.

7. Let us proceed to consider the decisions relied on by the learned Senior Counsel for the second Respondent in support of his contention that the impugned order is not violative of principles of natural justice and that there is a substantial compliance; of the requirements of the principles of natural justice before the second Respondent passed the order dated 8.9.1992 dismissing the Appellant from the college. The first decision relied on by the learned Senior Counsel is the order of Srinivasan, J, in *Leo Francis Xaviour Vs. The Principal, Karunya Institute of Technology, Coimbatore and another*, . In the above decision, the Learned Judge has recorded a finding on the facts and circumstances of that case, in para 8 of the order as follows:

A perusal of the file produced by the first Respondent shows that an enquiry has, been held and the Petitioner was given sufficient opportunity to have his say. The principles of natural justice have been complied with and no complaint can be made by the Petitioner that the action was taken behind his back.

As already pointed out, on a careful consideration of the file and the minutes of the enquiry committee meeting held on 7.9.1992, we have already given to the conclusion that the second Respondent in the present case, has not fulfilled the basic requirements of the principles of natural justice by serving a charge memo on the Appellant and giving an opportunity to the Appellant to state his case, with regard to the allegations made against him. Therefore, the above decisions in *Leo Francis Xaviour Vs. The Principal, Karunya Institute of Technology, Coimbatore* and another, is not helpful to the second Respondent as it is clearly distinguishable on facts.

8. The next decision relied on by the Learned Senior Counsel is in *Murugan, M. v. Director of Higher Secondary Education 1989 2 L.W. 206*, In that case, Mohan, J., as he then was, on a consideration of the facts and circumstances of that case, recorded a finding that the basic requirement of law that the students should be afforded an opportunity to put forth his case; was satisfied and that the delinquent student himself, during the enquiry accepted his guilt in that case, Therefore, we are of the view that the decision in *Murugan, M. v. Director of Higher Secondary Education 1989 (2) L.W. 206* is also clearly distinguishable on facts and not helpful to the second Respondent.

9. The third decision relied On by the Learned Senior Counsel is the order of *Bakthavatsalam, J.* dated 27.2.1991 in Writ Petition 1506 of 1991 as confirmed by the Division Bench by the judgment dated 20.3.1991 in Writ Appeal No. 370 of 1991. In writ Petition 1506 of 1991; the Petitioner was issued a show cause notice, on 27.11.1990, framing three charges against him. The Petitioner also submitted his explanation on 10.12.1990 and the grievance of the Petitioner in that case was that his explanation was not considered before directing him to appear before the enquiry committee which according to the Petitioner reveals the predetermined mind of the second Respondent, in that case to expel the Petitioner. On the facts of that case, *Bakthavatsajam, J.* found that the Petitioner has been given sufficient opportunity to submit his explanation and that he has also given a statement before the enquiry committee practically admitting his guilt. In these circumstances, *Bakthavatsalam, J.* found that the order of expulsion was not violative of the principles of natural justice and consequently dismissed the Writ Petition. The above order in W.P. 1506 of 1991 was confirmed by a judgment in Writ Appeal 370 of 1991 dated 20.3.1991. The principle laid down by *Bakthavatsalam, J.* in W.P. 1506 of 1991 as confirmed in W.A. 370/91, has no application to the facts of the present case, because, admittedly the second Respondent in the present case has not served any charge memo on the Appellant and did not give an opportunity to the Appellant to state his case with regard to the case put against the Appellant. In these circumstances, inasmuch as no written charge memo was handed over to the Appellant asking him to state whatever he had to state in writing in respect of the charges levelled against him and no opportunity was given to the Appellant to meet the case put against him, we have no hesitation in holding that the order dated 8.9.1992 dismissing the Appellant from the college was passed by the second Respondent without

fulfilling the basic requirements of the principles of natural justice and therefore, it is illegal and liable to be quashed. On a careful consideration of the minutes of the enquiry committee meeting held on 7.9.1992, the nature of the enquiry conducted in the present case, and the materials available on record, we are unable to accept the contentions of the learned Senior Counsel for the second Respondent that there is substantial compliance of the requirements of the principles of natural justice before the second Respondent passed the order dated 8.9.1992 and that the said order is not violative of the Principles of natural justice and illegal. Point Number 1 is answered accordingly.

10. Point Number 2. It is seen from the file produced before us by the learned Senior Counsel for the second Respondent, that on 23.9.1992, the father of the Appellant Thiru. Y. Sam Daniel, B.E. applied for the issue of the Transfer Certificate of his son for personal reasons. On that day itself, the second Respondent college issued the Transfer Certificate to the Appellant, on 23.9.1992 the college also issued a Conduct Certificate to the Appellant stating that the Appellant was a student of the college during the years 1991-1992 and that during the said period his conduct was fair. It is also represented by Mr. G.S. Thamby, Learned Counsel for the Appellant that on the basis of the Transfer Certificate and the Conduct Certificate issued to the Appellant, he had joined another private Engineering College at Coimbatore and that he is pursuing further studies in the B.E. Degree course. In these circumstances, the question of directing the second Respondent to readmit the Appellant in the second Respondent college and hostel as prayed for by the Appellant in the Writ Petition and granting any relief other than the relief of setting aside the order of dismissal dated 8.9.1992 does not arise in these proceedings arising under Article 226 of the Constitution. If the Appellant is having any money claim against the second Respondent, it is open to him to take appropriate action according to law before the civil court and all the defences of the second Respondent are also left open. For all the reasons stated above, we are unable to agree with the conclusion arrived at by the Learned Single Judge in the order under appeal, that the enquiry conducted by the second Respondent against the Appellant is fair enquiry and that the order dated 8.9.1992 is not violative of the principles of natural justice and therefore, the order under appeal is liable to be set aside.

11. Accordingly, we pass the following order in this Writ Appeal.

(a) The Writ Appeal is allowed and the order under appeal is set aside.

(b) Writ Petition 19131 of 1992 is allowed in part and the order of the second Respondent dated 8.9.1992 challenged in the said Writ Petition is set aside.

(c) The Appellant is not entitled to the other reliefs claimed in Writ Petition 19131 of 1992 and to that extent the writ petition is dismissed, subject to the observations made in para 10 of this judgment There will be no order as to costs.