
(1990) 02 MAD CK 0027
In the Madras High Court
Case No : Writ Petition No. 381 of 1990

S. Chenthil Kumar and another	Vs	APPELLANT
Director of Technical Education, Madras and others		RESPONDENT

Date of Decision : 15-02-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1991 Mad 223

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : B.S. Gnanadesikan, for the Appellant; V. Sridevan, Special Government Pleader and Mrs. Prabha Sridevan, for the Respondent

Judgement

Srinivasan, J.—The petitioner is challenging the proceedings in PPT/BE/NP 89-90/458 dt. 30-11-1989 and PPT/BE/89-90/482 dt. 6-12-

1989. Though the writ petition refers to them as proceedings, on the file of the third respondent, actually they were issued by the fourth

respondent, the Principal of the Institute.

2. It is the case of the petitioners that there were ill-feelings between them and the Principal, who is the fourth respondent for quite some time and

as the fourth respondent was indulging in malpractices, according to them, they had been taking proceedings through appropriate authorities against

the fourth respondent and certain enquiries were pending against them at their instance. In fact, a suit was also filed by the first petitioner against the

fourth respondent in the Court of the District Munsiff, Tirupattur for restraining the fourth respondent from dismissing the first petitioner from the

institute. The details are given in paragraphs 1 to 10 of the affidavit filed in support of the writ petition, which according to the petitioners disclose

that the fourth respondent was actuated by notice (sic). According to the petitioners, they received the two impugned communications. One informed them that they were not permitted to continue their studies in the higher semester as specific orders were issued by the Chairman, Board of Examinations, the second respondent herein preventing them from continuing their studies. This was by the communication dated 30-11-1989 issued by the fourth respondent. The other communication, dated 13-12-1989 referred to an order dated 6-12-1989 whereby the petitioners were informed that they were being punished for the malpractices indulged during the examinations held in October/November, 1989 and that the punishment was that the examination held in October, 1989 was cancelled and they were debarred from writing examinations in April, 1990, October 1990 and April, 1991. They were also prevented from joining the institution or write any examination during the said period.

3. The petitioners claimed to have issued a notice through their lawyer on 26-12-1989 to the second respondent calling upon him to give the relevant particulars as to whether any proceedings was initiated against them and if so details thereof, and whether any punishment was awarded to them and if so, the reasons therefore. According to the petitioners no reply was received by them which necessitated the filing of the present writ petition.

4. The fourth respondent has filed a detailed counter-affidavit in which he refuted the various allegations pertaining to mala fide. As regards the proceedings taken against the petitioners and the punishment awarded to them, the counter-affidavit states as follows :

The Boards Diploma Examination for V Semester Mechanical Engineering Course commenced on 17-10-89 forenoon. Both the petitioners have registered for the examination and their hall tickets were also issued to them.

On 17-10-89 forenoon, they appeared for the paper Heat Power Engg. II. It was reported by the external invigilator of hall No. 6 that Thiru S.

Chenthilkumar (Regn. No. 124051) petition No. 1 of V. Semester Mechanical Engineering Course had some written materials concealed in his

pockets and when he was asked to hand over the same, he had declined and ran away from the hall threatening also the internal invigilator. A

written report was given by both the invigilators. Similarly, C. Parthiban (Regn.

No. 124076) Petition No. 2 had some written materials concealed in his socks and when he was trying to take the material put he was caught by the external invigilator, C. Parthiban had declined to hand over the material used abusive languages and threatened the invigilators. He ran away from the hall pushing aside all those who prevented him. A report was given by the invigilators of Hall No. 4 regarding the conduct of C. Parthiban in the examination hall. Later both the petitioners along with some other students made an unlawful assembly and disturbed the conduct of exams. A police complaint was lodged on them with adequate witnesses.

Based on the report given by the invigilators show cause notices were issued on the same day to the two candidates directing them to appear for an enquiry at 5.30 p.m. on that day viz., 17-10-1989. But both the candidates have refused to receive the show cause notices and also refused to appear for the enquiry, when summoned to the Principal's room. Witnesses such as additional Chief Superintendent (from another institution) of Examinations and two other staff members were present: The dependent made endorsement in the show cause notice that the petitioners refused to receive the show cause notice and those witnesses signed the same. Hence, a report was sent to the Chairman, Board of Examination regarding the malpractice and conduct of the above two candidates duly signed by the Chief Superintendent, when none of the petitioners turned up for enquiry at 5:30 p.m. on 17-10-89.

Both the petitioners have deliberately indulged in malpractice in spite of the fact, detailed written instructions were also given at the start of the examination by the invigilators in the hall warning them against any kind of malpractice in the examination.

On 28-11-88 a letter was received from the Chairman, Board of Examination requesting the Principal not to admit the students who had indulged in malpractice in October 89 examinations without prior permission from. the Chairman's Office (Vide Lr. No. 85436/M3/89 dated 25-11-89.

The contents of the above letters were communicated to the petitioner by this respondent in his Memo No. PPT/B.E./M.P.89-90/458 dt. 30-11-89 by recorded delivery.

In letter No. 85436/M3/89 dated 29-11-89, the Chairman Board of Examination, communicated the punishments awarded to the candidates who

had indulged in malpractice in October '89, Exam. The same was received on 4-12-89. The notice informing the punishment (can calling October

89, examinations and debarring them for 3 subsequent attempts) awarded to the petitioners was displayed on the notice board on 6-12-89. The

punishment awarded to the petitioners was also communicated, to them individually in this office Memo. No. PPT/BE/89-90/482 dated 6-12-89

by registered post with acknowledgment due. The registered letters were returned undelivered with remarks.

Left without instructions for petitioner I and "refused" for petitioner No. 2. Subsequently, copies of the memo dated 6-12-89 were sent to the

parents of the petitioners in this office letter No. PPT/B.E./89-90/486 & 487 dated 13-12-89 by reg. post".

5. The contentions in the counter-affidavit are substantiated by learned counsel for the fourth respondent by producing the relevant records. It is

seen therefrom the external invigilator, who was in charge of the invigilation duty at the examination hall made a report on 17-10-1989 that he saw

the petitioners having small bits of papers in their pockets and when he questioned them, they ran away after slinging abuses against him. It is the

case of the fourth respondent that the petitioners brought some more people and created troubles at the place of examination soon after their

malpractices were found out. Hence the fourth respondent decided to hold an enquiry immediately and issued a notice to the petitioners requiring

to be present at 5:30 p.m., for the enquiry. According to the fourth respondent, the petitioners refused to accept the notice and he was therefore

obliged to hold enquiry in their absence.

6. The arguments of learned counsel for the petitioners is that in the background of the allegations of mala fides made against the fourth respondent

this Court should consider whether the fourth respondent had acted bona fide in sending a notice for enquiry proceedings through a personal

messenger even assuming that his case was true without issuing a notice by registered post. According to learned counsel there was no urgency for

holding the enquiry on the very same day and the petitioners must have been given sufficient opportunity to take part in the enquiry and state their

case.

7. I would have accepted the argument of learned counsel for the petitioners but

for the fact that the records prove that there was an urgency for holding an enquiry immediately. The records show that the students who were all present at the time of the incident were examined and the external invigilator as well as the Chief Superintendent were also present at the time of enquiry. It is seen from the records produced by the fourth respondent that number of persons had given evidence to substantiate the version contained in the complaint made by the invigilators against the petitioners herein. That makes out that the petitioners and a few others tried to cause disturbance at the centre of the examination. If that is so, then, there was certainly an extraordinary urgency hold an enquiry immediately so that the morale of the other students shall not be affected. Hence there was nothing wrong and in my view it was quite proper for the fourth respondent to have held the enquiry immediately at 5:30 p.m. on the very same day and issued notice to the petitioners to appear at the said enquiry. In that situation the only way in which the notices could have been issued to the petitioners was by sending them through personal messengers and that had been done by the fourth respondent.

8. If the petitioners had refused to accept that notices and appear at the enquiry, they , must blame themselves therefor. Hence there is no force in the contention of the petitioners that an enquiry could have been held leisurely on a later date after sending a notice by registered post to the petitioners.

9. Learned counsel for the petitioners placed reliance on the fact that they were allowed to write the examination on the next day and complete the examinations held in October, 1989. There is no substance in this contention in view of the fact that the fourth respondent by himself could not have taken a decision to stop them writing the examination. The fourth respondent had necessarily to forward the papers to the second respondent, who was the punishing authority and the decision should be taken only by the second respondent. Hence the petitioners could not be prevented from writing the examination and completing the same in October, 1989.

10. The next contention put forward by learned counsel for the petitioners is that the second respondent ought to have issued a notice before making an order of punishment against the petitioners. As I have held that the petitioners had refused to accept the notices issued by the fourth

respondent for appearing at the enquiry, there is no question of the second respondent issuing another notice before passing an order of punishment. The fourth respondent has forwarded the relevant records to the second respondent, which make out a clear case against the petitioners and having regard to the conduct of the petitioners as made out by the records, the second respondent was well within his jurisdiction in passing an order of punishment as he had done.

11. Reliance is placed by learned counsel for the petitioners on the judgment of the High Court of Jammu and Kashmir in *Surindra Pal v, Govt.*

Medical College, AIR 1965 J&K 23. It was held in that case that if any civil rights of a person are affected by the order of an administrative body

such orders are quasi-judicial and not purely of administrative character. Therefore, the High Court could in such cases interfere, when the

principles of natural justice are violated. From the facts of the case it is seen that no notice was issued to the person concerned even for the

enquiry. The only case put forward by the authorities was that the student's father was asked through a messenger to bring the student on the day

of the enquiry. A vague statement to that effect was made it was not accepted by the Court. Hence, in that case it was found that there was no

notice at all even for the enquiry. Consequently the Court took the view that the proceedings were vitiated and quashed the same. The ruling in that

case will not have any bearing on the facts of the present case.

12. Learned counsel draws my attention to the judgment of the Rajasthan High Court in *Ranjeet Singh v. The University of Rajasthan* AIR 1966

Raj 223. That was also a case of a University cancelling the examination of the petitioner therein without giving any opportunity to him to be heard.

The Court held that the University had not followed the proper procedure and no opportunity was afforded to the petitioner in that case. My

reasons as regard the judgment of the Jammu and Kashmir High Court will hold good with reference to this judgment also. In these circumstances,

I am of the view that having regard to the grave misconduct of the petitioners which has been proved by sufficient evidence in an enquiry held by

the fourth respondent, the punishment awarded is proper and no principle of natural justice has been violated in this case as no notice was issued to

the petitioners. Consequently this writ petition has to fail and it is dismissed. In

the circumstances, there will be no order as to costs.

13. Petition dismissed.