

(1998) 03 AP CK 0055

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2862 of 1998

Saint Joseph Education Society

APPELLANT

Vs

Sri Krishnadevaraya University

RESPONDENT

Date of Decision : 04-03-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1998) 5 ALT 370

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : C.V. Nagarajuna Reddy, for the Appellant; P.V.R. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

G. Bikshapathy, J.—This writ petition is filed by the petitioner-Saint Joseph Education Society, Anantapur, seeking a Writ of Certiorari for quashing the order of the respondent-Sri Krishnadevaraya University, represented by its Registrar, Anantapur, Anantapur District, in No. SKU/Exams/36/97, dated 16-01-1998.

2. The case of the petitioner is that the petitioner-Society is, running both High School and Degree College. Right from the inception of the College, it was being allotted examination centre in respect of degree examinations. There was no complaint whatsoever against the College. The examinations for the degree classes for March, 1997 were held without any complaint whatsoever. However, the Controller of Examinations of the respondent sent a letter dated 7-7-1997 to the Principal, CVLNR Degree College, Anantapur to collect the explanation from the concerned for taking further action. The respondent-University informed the petitioner about the alleged malpractices that have occurred in the examination centre at the College of the petitioner in March, 1997. Certain malpractices, as alleged, are as follows:

(1) Removal of some pages of one answer book and insertion into another

answer book.

(2) Register numbers of candidates were tampered with and some of the Register numbers have been inter-changed by over writing.

(3) Striking off the answers entirely (or majority of answers) in some answer scripts by persons other than the Examinees, which is evident by the ink used for striking off, resulting in the failure of deserving candidates.

It is the case of the petitioner that it has replied all the communications" satisfactorily enclosing necessary material. However, without giving any further opportunity, the respondent-University passed orders on 16-01-1998 cancelling the examination centre at the College for the ensuing examinations of 1998. The said orders are assailed in this writ petition by the petitioner-Society.

3. Learned Counsel for the petitioner submits that the order of the University is wholly illegal and arbitrary offending Article 14 of the Constitution of India. He also submits that the enquiry was conducted behind back of the petitioner and even the report of the Enquiry Committee was not furnished to the petitioner, on which basis, the impugned order has been passed. Therefore, the impugned orders are in gross violation of principles of natural justice. Learned Counsel for the petitioner also submits that even in administrative decisions, the petitioner is entitled for reasonable opportunity as it affects the status of the institution, when once the examination centre is withdrawn by the respondent-University. He lastly submits that even on merits, such an order could not have been passed as it is understood that the Enquiry Committee did not directly attribute the malpractices to the institution and that these alleged malpractices could have taken place outside the examination centre viz., at the spot valuation centre, Chief Superintendent Office, etc. For these reasons, the impugned orders are liable to be quashed.

4. On the other hand, it is the case of the University that the writ petition itself is not maintainable as the petitioner has no vested right to claim the examination centre. It is purely the decision of the University to establish the examination centres depending upon the convenience of the University. Therefore, in the absence of any vested right, the petitioner has no claim for examination centre. It is stated that on 5-7-1997 a complaint was received from a student of B.A. Class, who appeared for April, 1997 examination, to the effect that number of malpractice's took place whereby answer sheets were interchanged and marks were also interpolated. Therefore, the respondent-University called for the necessary information from the petitioner-Society in respect of- various incidents that were alleged to have taken place. The University also constituted a Committee to enquire into the alleged malpractices. The University, after considering the material furnished by the petitioner-Society and also the Enquiry Report, placed the matter before the Executive Council of the University and a decision was taken by the Executive Council to cancel the examination centre at the College in the meeting held on 8-10-1997. It is also stated that the enquiry

report need not be furnished to the petitioner, as the right of the petitioner to have examination centre is not a vested right and in such a circumstance affording an opportunity to the petitioner is not called for. Hence it cannot be said that there is violation of principles of natural justice. It is also submitted that the College committed number of irregularities on previous occasions when the examinations were held. The details were brought out in para-3 of the counter-affidavit. Therefore, keeping in view the previous record of the institution and the report of the Enquiry Committee and the relevant material, the impugned orders were passed and the same cannot be said to be illegal or arbitrary.

5. Learned Counsel for the petitioner has made an earnest effort to take this Court on the merits of the case to establish that in fact no malpractices had taken place and that the impugned action is wholly illegal and biased. I am not prepared to go into the merits of the case sitting under Article 226 of the Constitution of India as a very limited jurisdiction is conferred upon this Court as to whether the action taken by the respondent-University is valid in law. Learned Counsel for the petitioner submits that by withdrawing the examination centre, it will have a telling effect on status of the college and it stigmatizes the College with disrepute. Therefore, the learned Counsel for the petitioner stresses mainly that reasonable opportunity should be given. He also states that even though no vested right is infringed, yet, if an administrative order is passed having the effect on the functioning of the College, it is incumbent on the part of the authority to give reasonable opportunity. He relies on the judgment of the Supreme Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, . It is a case of disciplinary enquiry against a Government employee. The Supreme Court observed that an order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with basic rules of justice and fairplay. The authorities against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. It further observed that the rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial Tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. There is no dispute about the proposition. When the order of the State is likely to prejudice a person and deprives the vested rights, it is incumbent on the part of the authority to give an opportunity to the persons. But the question that falls for consideration is whether the petitioner-Society has got any vested right to claim the examination centre. No provision has been brought to the notice of this Court under which the petitioner could claim either a legal right or a constitutional right to have the examination centre. Moreover, it cannot be said that by withdrawing the examination centre, the petitioner was subjected to civil consequences. Learned Counsel for the petitioner also relied on the judgment of the Supreme Court in *Tata Cellular Vs.*

Union of India, That was a case where the Supreme Court has confirmed the power of judicial review even in the matters relating to the contractual powers of the Government bodies in order to prevent arbitrariness or favouritism. The Supreme Court said that the judicial quest in administrative matters to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set-right by judicial review. The power of judicial review in respect of administrative actions also can be invoked when the order suffers from illegality, irrationality or procedural impropriety. In my opinion, this decision's of no help to the case of the petitioner. The principle that passes through the administrative action is that the authorities should not act to the prejudice of the person thereby affecting his rights without proper opportunity. Therefore, if an administrative order is passed, and if it does not have the effect of infringing the right either legal or constitutional, such an order is not justiciable by the Court. Admittedly, in the instant case, the decision was taken by the respondent-University not to continue the examination centre in the petitioner-College for various reasons. So long as the right of the petitioner is not affected, it cannot complain of infringement of its civil rights. So also the decision of the Supreme Court in *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, relied on by the learned Counsel for the petitioner cannot be of any assistance. What was stated in the decision of the Supreme Court was that an administrative order, which involves civil consequences, must be made consistent with the rule expressed in the Latin Maxim *audi alterant partem*. It means that the decision maker should afford to any party to a dispute an opportunity to present his case. But, however, that rule has been further relaxed. Now the "fairness in action" or "fair procedure" are the requirements of administrative actions. But, however, the Supreme Court was very categoric that if an administrative decision, unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would judicially be called at least a privilege, does not involve the duty to act fairly consistent with the rules of natural justice. Therefore, the rule of "fairness in action" and "fair procedure" is required to be followed only when it affects one's personal right or property right etc., as observed by the Supreme Court *supra*. Admittedly, in this case, to have an examination centre is neither personal right nor a property right nor it can be said a privilege conferred upon the institution. It is purely administrative decision of the University to establish certain centres. At what places the centres are to be established is for the respondent-University to decide and not for the petitioner to claim. Simply because the University has been conducting the examinations for the students of the college in the very same college for the last several years, it cannot be said that a privilege is conferred upon the college nor does it get converted into a vested right. On the other hand, learned Counsel for the University submits that principles of natural justice cannot be invoked in the instant case inasmuch as no right of the petitioner is being taken away by the University by withdrawing the examination centre. He relies on the decisions of

the Supreme Court in Suresh Koshy George Vs. University of Kerala and Others, ; The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others, and C.V.R.M. Junior College v. Secretary, Board of Intermediate Edn. 1997 (2) An.W.R. 140 : 1997 (3) ALD 102 I need not refer to those decisions inasmuch as the principles of natural justice is not an invariable rule of requirements at all times, but it depends on the facts and circumstances of each case depending on the consequences that would flow from the action initiated by the authorities. Learned Counsel for the petitioner submits that even the report; of the Enquiry Officer was in favour of the petitioner and, therefore, the impugned order ought not to have been passed. I have perused the enquiry report. Even though the Enquiry Committee found that malpractices did take place, but yet it observed that malpractices may be possible at any stage viz., at the invigilators" level, Chief Superintendent"s Office, during transportation or at the Examination Section of the University or at the time of Coding. This observation cannot go to the advantage of the petitioner, as the University assessed the overall situation and found in the interest of the discipline not to establish the examination centre for May/April, 1998. Therefore, in a case this nature, the petitioner cannot complain that the report of the Enquiry Committee was not furnished and principles of natural justice has been violated, even otherwise the report was in favour of the petitioner and lastly, the learned Counsel for the petitioner submits that even for March/April, 1998, the petitioner-College was selected for holding the practical examinations, but at the same time in respect of other theory examinations, it was denied the opportunity. This contention also is of no assistance to the petitioner. There is no rule that if the practical examinations are held in a particular College, the theory examinations shall also be held in the same College. It is the convenience of the University and the petitioner cannot be said to be aggrieved in any manner by withdrawing the examination centre. Lastly the learned Counsel for the petitioner also submits that by withdrawing the examination centre, the prestige and status of the institute will tarnish and that the students will tend to withdraw from the College on account of the stigma attached to the institution by withdrawing the examination centre. This is only a myth of the petitioner. Merely because the examination centre is withdrawn, it cannot be said that the name and fame of the College will be diminished.

6. For the foregoing reasons, I find no merit in the writ petition and it is liable to be dismissed. Accordingly the writ petition is dismissed. No costs.