

(1992) 08 KL CK 0018
In the High Court Of Kerala
Case No : O.P. No. 11380 of 1991 D

Sajil Venu

APPELLANT

Vs

Principal, S.N. College and Others

RESPONDENT

Date of Decision : 25-08-1992

Acts Referred:

Constitution of India, 1950 — Article 21, 39, 51A
Criminal Procedure Code, 1973 (CrPC) — Section 149, 150, 151, 154
Penal Code, 1860 (IPC) — Section 143, 147, 294, 377

Citation : (1992) 08 KL CK 0018

Hon'ble Judges : Chettur Sankaran Nair, J

Bench : Single Bench

Advocate : C.N. Radhakrishnan, for the Appellant; P.V. Madhavan Nambiar, for Respondents Nos. 1 and 3, General for Respondent No. 2, Govind K. Bharathan, for Respondent No. 4, P. Gopalakrishnan Nair and T.P.K. Nambiar, Amicus Curiae, for the Respondent

Judgement

Chettur Sankaran Nair, J.—Petitioner who was a second year B.Sc. student in the college under first Respondent, challenges Ext. P-5 order, dismissing him from the college. Petitioner and some of his friends are said to have entered room No. 45 in the college, where students were to assemble to take a University Examination, at or about, 1.45 p.m. on 25th September 1991 and behaved in an indecent manner to a girl student (Bindu). Petitioner and others made overtures to the girl nestling close to her and suggested that "they could do the job in five minutes", as they had known each other earlier. This incident upset Bindu, so greatly, that she wanted to leave the examination hall, without writing the University Examination. The attention of first Respondent Principal and others, including Prasad, V.V. and Padma Sudheer, fellow students of Petitioner, were attracted, when they found Bindu in tears. To cut a long story short, Petitioner and others were placed under suspension, and a commission was constituted consisting of three members of the teaching staff, to enquire into the charges against them. By Ext. P-1 Petitioner was informed of the charges against him,

and he was directed to submit his explanation to the same, if he so desired. He submitted Ext. P-3 explanation. By Ext. P-4 he was informed that Prof. M.S. Sudheeran, Chief Superintendent, K. Somasundaran, Lecturer in Mathematics and Invigilator in the examination hall; Prasad V.P. and Padmanudheer, V.M. (Students who had seen the incident) would be examined at the enquiry. He was asked to bring witnesses, if any, in his defence. Petitioner appeared at the enquiry. The enquiry commission found him guilty of the charges, by Ext. R-1 report dated 23rd October 1991. Based on Ext. R-1 report, Petitioner was dismissed from the college as noticed earlier. Upon that, he moved this Court.

2. Having regard to the number of cases of this kind coming before this Court at regular intervals, and the impact such have on campus life, notice was issued to the Advocate General and Standing Counsel for the Kerala, Mahatma Gandhi and Calicut Universities. Shri T.P.K. Nambiar, a senior Counsel of this Court and a former Law Teacher and Chief Examiner for Law, Kerala, Cochin and Andhra Pradesh Universities, was appointed as amicus curiae. The Indian Federation of Women Lawyers sought impleadment, submitting that the incident revealed in this case was not an isolated one, and that remedial measures are necessary against such acts of "sexual harassment". Incidentally, in an additional affidavit dated 25th February 1992 filed along with C.M.P. 4840/92 for" receiving Exts. P-7, P-8 and P-9, Petitioner stated that the Indian Federation of Women Lawyers impleaded themselves "as per the directions of this Court". This is an imprecise and misleading statement. They sought impleadment on their own. However, learned Counsel appearing for Petitioner, was not appearing earlier, submitted that the statement was mistakenly made.

3. Main contention: raised by Petitioner, is that principles of natural justice were not followed in holding the enquiry. Elaborating the point, Counsel submitted that identity of the girl was not disclosed in Exts. P-1 and P-2, and that the charge memo did not disclose how Petitioner's entry into room No. 45 was "unauthorised", or how he misbehaved. If Petitioner were in any doubt, he could have sought clarification from the enquiring authority or the college authorities. He made no complaint to anyone of any prejudice suffered by him.

4. It is necessary to appreciate the law, governing enquiries held by academic bodies, and the extent of application of principles of natural justice to such enquiries. Requirements of natural justice vary from context to context, and are not infinite or inflexible. As observed by the Supreme Court in Chingleput Bottlers Vs. Majestic Bottling Company,

There are no Inflexible rules of natural justice. Each case turns on its circumstances.

In Hounslow London Borough Council v. Twickenham Garden Developments Ltd. (1971) 1 Ch. 233, it was observed:

The principles of natural justice are of wide application and great Importance, but they must be confined within proper limits and not allowed to run wild,

In Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, the Supreme Court indicated that principles of natural justice do not govern an enquiry held by an academic body, in the same manner or to the same extent, they would govern other enquiries. Academic authorities are in locoparentis to students, and they hold a moral responsibility towards them, as a guardian to a ward does. While they must act fairly and reasonably, in a broad sense, they are not bound by the rules of procedure that bind a Court or a tribunal enquiring into a charge. They are the masters of their own procedure. The person against whom charges are made, must know what the charges are, and such person must be granted a reasonable opportunity to defend himself. In the words of Lord Russell of Killowen in Fairmount Investments Ltd. v. Secretary to State for Environment (1976) 1 W.L.R. 1255 all that is needed is:

a fair crack of the whip.

That is the law laid down in Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, in re H.K. (an infant) 1967 2 A.B. 617, Norwest Holst Ltd. v. Secretary of State for Trade 1978 1 Ch. 201, Pearlberg v. Varty (1972) 1 W.L.R. 534, Regina v. Race Relations Board Ex parte Selvarajan (1975) 1 W.L.R. 1686, Herring v. Templeman and Ors. (1973) 3 All. E.R. 769, Rex v. Newport (Salop) Justices (1929) 2 K.B. 416, Mansell v. Griffin (1908) 1 K.B. 160, G.B. Ghatge Vs. Emperor, , University of Ceylon v. Fernando (1960) 1 All. E.R. 631 and a long catena of other decisions,

5. Academic bodies enjoy a position of primacy in matters relating to internal administration. It is primarily a matter in their domestic jurisdiction See Thorne v. University of London 1966 (2) Q.B. 237, Patel v. University of Bradford Senate 1979 (1) W.L.R. 1066 (C.A.), Thomas v. University of Bradford 1987 (1) A.C. 795 (H.L.), Oakes v. Sidney Sussex College 1988 (1) All. E.R. 1004. That, is not to say that Courts will not interfere, if the procedure adopted by the authority is so grossly unfair, as to produce unjust results. Courts will intervene then, and only then. Prof. H.R. Wade (85 LQR 1969 471) said:

...certiorari might be breaking loose from its moorings.... Private or domestic tribunals have always been outside the scope of certiorari, since their authority is derived solely from contract.... Natural justice is now a hard worked doctrine, and its foothold in the law needs to be clearly understood.

The apex Court has summed up the position in Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, thus:

These authorities were in loco-parantis to all the students, male and female living in the hostel and the responsibility...was greater because their guardians had entrusted them to their care...the authorities could not dismiss the matter as of small consequence.... The committee called the girls privately and recorded their statements. Thereafter the student named by them were called. The complaint against them was explained to them. The written charge was handed over to them, and they were asked to state whatever they had to state in writing. The

committee was not satisfied with the explanation, and thereafter made the report. We think that under the circumstances of the case, requirements of natural justice were fulfilled.... However unsavoury the procedure may appear to a judicial mind, these are facts of life which are to be faced. The girls who were molested would not have come forward to give evidence in any regular enquiry.... Under the circumstances, the course followed by the Principal was a wise one.

Petitioner knew what the charges were. Ext. P-4 informed him of the evidence against him and the witnesses to be examined to support the charges. Petitioner said, what he could, in his defence. He had no grievance regarding procedural unfairness at the enquiry, or at any time, till the punishment was imposed on him. In the circumstances, it is clear that such requirements, as were necessary to be followed, were followed at the enquiry.

6. Relying on the decision in *K. Sathyashankara Shetty v. Mangalore University* AIR 1992 Kar 79 Counsel for Petitioner argued that Petitioner was entitled to the right of cross examination, and that the safeguards of a trial had to be observed in enquiries of this nature. With great respect, the decision cited, postulates requirements that were considered unnecessary by the Supreme Court in *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, The decision of the Supreme Court was not noticed either.

7. Petitioner did cross examine some of the witnesses and he did not ask for an opportunity, to cross examine any other. A matter of substance cannot be made, a matter of fetish. Nor, can a matter affecting discipline be approximated to a game, played according to rules, for its own sake. The enquiry and the findings made, are not vitiated.

8. The matter does not end with the Petitioner, or his grievances or the incident involved. As pointed out by the Advocate General, Counsel for first Respondent Principal, Standing Counsel for Universities, Counsel for Addl. fifth Respondent and Sri T.P.K. Nambiar who appeared as amicus curiae, this case reveals only the tip of the ice berg. This and other cases, that have come up before this Court, reveal a malady that has invaded campus life. Counsel submit, that perversions of sadistic and sexual hues, have infiltrated into academic institutions, making its unwholesome impact. For one thing it is said, many bright young men and women dread to go to colleges, particularly professional colleges. For another, it is said that the fabric of morality is damaged to such an extent, that it takes its toll on the quality of academic life. For a third thing, it is said that acts which clearly constitute criminal offences, cease to be so, consequence wise, merely because they are committed inside the premises of a college where police is forbidden. The learned Advocate General submits that police are not prevented from entering a college, but that by convention, they are not expected to enter unless called in by Principals. The counter-affidavit filed on behalf of second Respondent, State reads:

...a principle has been evolved whereby the police will enter into the campus as and when requisitions are made by the head of the institutions.

A very unusual principle indeed, if one can call it a principle. This dispensation, virtually insulates those who commit crimes. According to Ms. Molly Jacob, Counsel for Indian Federation of Women Lawyers, the State, by its inaction in not prosecuting wrong doers, is guilty of gender discrimination. She relied on the decision of the U.S. Supreme Court in Meritor Savings Bank v. Mechelle Vinson 477 U.S. 57 to support her contention that gender discrimination exists, wherever there is sexual harassment. According to her, girl students to whom lecherous overtures are made by some with impunity are victims of gender discrimination. Police won't act because of the "principles evolved", and Principals would not call the Police, as that would jeopardise their own existence, amidst a motely crowd acting like outlaws, submits Counsel. Additional fifth Respondent referred to several instances of "ragging". Some of them mentioned in C.M.P. 13138/92 are extracted below:

(1) One Albert Sebastian...joined degree course in Engineering...he was subjected to ragging.... It was his first brush with raw brutality and sexual perversions.... He is now a lunatic. Hence a lunacy O.P. 110/91 was filed....

(2) ...a fresh entrant to the Calicut Medical College was undressed by senior students...was inserted into his penis.... He left the medical field....

(3) ...Abdul Zamad committed suicide...they forcibly undressed him and asked him to lick the genitals of two, and they were asked to pass urine into his mouth.... Due to torture he committed suicide....

(4) ...certain law students under the influence of drugs attacked a lady lecturer....

(5) Soji Joseph, paralysed from waist down...made to drink urine...showed a picture of a naked woman and made to say it was his mother. Displaying obscene postures in a magazine, he was asked to imitate...forced his genitals to touch the picture of the naked woman.

(Quoting Indian Express 1st August 1989)

(6) ...was made to write imposition of obscene words made to stand on a platform...when he fell down he was subjected to other atrocities.

(Quoting Manorama 30th September 1991)

(7) ...made to drink water from a closet with the help of straws.

Reference was also made to several incidents, which were the subject matter of reported cases and unreported writ petitions, involving acts of sexual abuse.

9. State of Kerala has referred to similar incidents and cases charged, by Police in some instances. The following are some of those:

(1) Outraging the modesty of two girls, Pushpalatha and Lizzy.

(2) Tearing the marklist of one Sudheer.

(3) Stripping one Babu.

(4) Registration of charges under Sections 143, 147, 294(b) and 377 I.P.C. etc. against Karunan, Tijo, Sajeew, Anvor C. Thomas, Rajappan and others.

(5) Registration of case against 23 students...since withdrawn, as "problem was settled".

(6) Registration of Crime No. 27/92 of Mannarkkad Police in respect of indecent acts committed against Thomas George.

(7) Punishment imposed on thirteen medical students for....

10. It is unnecessary to consider whether the incidents cited, stand proved. But, the existence of a certain state of affairs, has to be acknowledged. One cannot turn the Nelsons eye, to ground realities that exist. In the words of Justice Benjemin Cardozo:

...the great tides and. currents which engulf the rest of men, cannot turn aside and pass judges by.

11. Sri T.P.K. Nasnbiar pointed out that there are two types of indiscipline, academic and non-academic, and that the University Statutes take note of only academic indiscipline, like irregularities committed during examinations. Universities are helpless in dealing with acts of non-academic indiscipline, like sexual harassment and physical violence occurring in premises of academic institutions. Though such acts amount to cognizable offences, police do not intervene, due to the policy adopted by the Government, as revealed in their counter-affidavit, submits Sri Nambiar. There is where the argument of Counsel for additional fifth Respondent, assumes importance. She submitted that though criminal offences do not cease to be such, merely because they are committed by students in premises of colleges, for all practical purposes they cease to be criminal offences because, law enforcement agencies are virtually forbidden by the State from taking cognizance of such incidents. There is force in the submission. Crimes committed in educational institutions cannot be kept out of the pale of laws, for reasons more than one.

12. Educational institutions, particularly institutions of higher learning have a great role to play in the life of an elitist society. Great values must prevail in an academic institution. It cannot be "Hamlet, without the prince of Denmark". In Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, the Apex Court said:

Education lays the foundation of good citizenship...an instrument to awaken the child to Intellectual and cultural pursuits...kindle the flame for pursuit of excellence.

The skyline the constitution reveals, is the same. Article 39(ff) directs the State

to protect childhood and youth:

against exploitation, and moral and material abandonment.

The magnificent Article, 51-A, reminds us of the duty;

to cherish and follow noble ideals...to develop humanism...and to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher and higher levels of endeavour and achievement.

These great values should be dear to us, and we are beholden to cherish them in every walk of life. The stand of expediency advocated in the counter-affidavit of second Respondent cannot be approved. Wrongdoers cannot have their way, as they often seem to have, free from fetters of law and civilisation. As Counsel for some of the Respondents submitted, if police arrogate to themselves the role of spectators and no more, violence which invariably follows college elections, will take its toll and many valuable and innocent lives will be lost. This must be prevented. Academicians and prominent persons in public life, have voiced their concern over such happenings.

13. Court must act in a situation of this nature, as it involves abdication of public duties on the part of government machinery and it will not be acting outside its jurisdiction, in doing so. As Lord Diplock said:

Judges must aspire to a solution, that is compatible with social agreement, or atleast that does not contradict it.

[Geelong Harbor Trust Commissioners v. Gibbs Bright and Co. 1974 (2) W.L.R. 507].

14. Experience shows that the majority of young people cherish high values, and that it is only a minority that indulge in unlawful activities. It is refreshing to notice a report (Malayala Manorama dated 16th July 1992) about the manner in which the senior students of the Maharajas College, Ernakulam welcomed their juniors. It is reported that with lighted lamps and warmth of affection, the juniors were welcomed to the college. This nobility of character must be appreciated. The vagaries of a small minority, should not impair the quality of life in educational institutions. The evil must be rooted out. Universities and functionaries of colleges are public law functionaries *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, and they are bound to implement the laws of the land.

15. True, it is for the Government and Legislature to make laws, or amend laws to strengthen existing University Statutes, making them effective in matters of discipline. This Court will not issue a writ of mandamus to compel the State to initiate legislation. But, where there is failure to exercise a public duty, on the part of the State or Police, they are liable to be compelled to perform their duties. The situation prevailing, as revealed from the pleadings shows that the State has failed in its public duty.

16. The stand taken by the State in its counter-affidavit, that police should not enter college premises, unless called in by the Principals, is clearly illegal. In its application, it would imply interference with the statutory duties and powers inhering in the police under Sections 149, 150, 151 and 154 Code of Criminal Procedure and other similar provisions. Laws of the land must run, and no islands can be countenanced in this area. If the possibility of a power being abused, is reason to interdict exercise of that power, then no power can be exercised, for, all powers are capable of abuse. If there is abuse, it must be contained or remedied, as it should be. The inertia on the part of the State, spells out breach of a constitutional obligation, and negation of a constitutional protection. Right to life, guaranteed by Article 21 of the Constitution of India comprehends much more, and far more, than animal existence.

17. If as alleged by fifth Respondent, genital organs of a person are subjected to torture, or if genital organs of one is to be introduced into the mouth of another with equal abandon, or if Soji Joseph is made to mime sexual postures, or if private spaces in the body of a girl are to be explored at will, that would be treating them as worse than animals, and not as citizens endowed with the right under Article 21. Even animals enjoy greater dignity in their existence. No citizen of this country can be treated, or permitted to be treated as a sub human object against notions of human dignity, prevailing in civilised societies. History will not forgive such lapses. Instances, such as those mentioned by Respondents, should make any sensitive person, bend his head in shame. A report in the "Mathrubhuim" dated 11th June 1982 [Annex R-2 (g)] states that the President of India, had expressed unhappiness over an incident, similar to one mentioned by fifth Respondent. A student of a Medical College in the State of Karnataka, is said to have committed suicide due to the mental agony suffered by him on account of ragging. Pursuant to the views expressed by the President, it is reported that the Ministry of Education, Government of India, advised all the State Government and Universities to take necessary action to put an end to this evil. It is doubtful, whether anything significant has been done in this direction. What touched deeply, the human sensitivity of the head of the State, must persuade the legislature and executive to act. If State is to condone, criminal acts in the nature alleged by Respondents, visibly or vicariously, it will not only be forfeiting its claim to be called a just Government, but will also be violating Article 21.

18. It is declared that the stand taken in the counter affidavit of second Respondent is illegal, and that Police will be free to exercise powers available to them for prevention and investigation of crimes, irrespective of whether the crimes are committed or apprehended in a college campus or elsewhere. Police shall exercise their powers in accordance with law, and the State shall not interfere with the legitimate exercise of statutory powers for prevention or punishment of crimes available under Sections 149, 150, 151 or 154 of the Code of Criminal Procedure and all other laws in that behalf. The State and the Respondent Universities, shall also require heads of educational institutions to

report all instances involving physical assault in any form, in their knowledge, occurring in college and hostels to Police promptly and without failure. The State will also consider whether directions should not be issued, through the appropriate agency, to college authorities:

- (a) to constitute vigilance committees in colleges and hostels at the time of admission and elections;
- (b) to house fresh entrants in separate hostels; under the supervision and protection of Wardens and ensure that the Wardens are present in the hostels, as often as possible and always at nights;
- (c) to take preventive measures to avoid violence during or after elections.

19. A greater involvement of parents and teachers in the affairs of students is essential. The teacher-taught axis does not seem to be strong or emotive.

20. One more matter remains for consideration and that relates to the punishment imposed on Petitioner. Counsel for Petitioner submits that the punishment of dismissal is unduly harsh and submitted that the punishment imposed in the majority of cases cited, is only one of suspension for a few weeks or so Essentially these are matters in the domain of the Principal. It is not possible to say that the first Respondent acted arbitrarily. In fact, he acted dutifully, bearing in mind his responsibility towards the students in his care. While Petitioner should not be subjected to unduly harsh a punishment, justice must be meted out to the victim also. Considerations of discipline that should prevail, and the effect of punishment on discipline must also be borne in mind while modulating punishments. Having regard to the totality of circumstances, while affirming Ext. P-5-the punishment of dismissal is varied to debarment/suspension till 31st March 1993, if Petitioner wishes to continue studies in the same college. If however, lie is able to secure admission in some other college, the punishment aforesaid will not stand in his way of pursuing studies in that college. The writ petition is accordingly disposed of. A copy of this judgment will be furnished to the Advocate General, who will convey the declaration and directions herein to the State Government and the Director General of Police, for appropriate action. A report will be filed regarding the action taken in the matter by the Advocate General by 12th October 1992. Call on 13th October 1992 for consideration of the report.

I record appreciation of the help rendered by Counsel appearing for all the parties, and particularly Shri T.P.K. Nambiar, who appeared as amicus curiae and assisted the Court.