
(1996) 01 KAR CK 0064

In the Karnataka High Court

Case No : Writ Petition 15258-64, 15986-95 and 25431/95

Sandeep Singh

APPELLANT

Vs

University of Mysore and Others

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Karnataka State Universities Act, 1976 — Section 74 (3)

Citation : (1996) ILR (Kar) 1695 : (1996) 3 KarLJ 151

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : G.S. Kannur, in WP 15986 - 95/95 and c/w WP 25431/95 and Ravivarma Kumar, in WP 15258-64/95, for the Appellant;

Judgement

M.F. Saldanha, J.—This is a group of Writ Petitions which have been filed against orders passed by the Mysore University pursuant to certain charges levelled against the petitioners. The University Authorities had contended that in the course of the M.B.B.S. examination held in January 1992, that the petitioners had committed certain malpractices which basically consisted of a charge that certain answer books had been substituted. It was alleged against the petitioners that the answer books in question did not pertain to the ones that had been distributed for that particular examination and it is the case of the authorities that those answer books had somehow been obtained from outside and answers written on them and that they had thereafter been fastened on to the original answer books. Despite on investigation, it was not possible for the University to exactly find out how malpractice had occurred and the only evidence available was from certain intrinsic circumstances which I shall have an occasion to deal with such as the fact that the paper in relation to the answer books was different from the original one; the thread that was used for stitching was different and there were certain marks on the original books indicating that stitching that had once been done was removed and that they had been re-stitched. The authorities had passed certain earlier orders which came to be set aside by this Court, pursuant to which an enquiry was once again conducted against these twenty

petitioners and the order came to be passed pursuant to the report of the Malpractice Enquiry Committee dated 5.1.1995 whereunder the results of the paper in question were invalidated and the students were permitted to appear for the next ensuing exam. Though the University had taken a very serious view of what happened, the authorities took note of the fact that the incident pertains to the year 1992 and for a variety of reasons the order had been passed in the year 1995 by which time many things had changed and University therefore accepted the position that it would not be appropriate to debar the students from any subsequent exams. The order in question has been challenged through this batch of Writ Petitions on a variety of grounds which I shall deal with because the petitioners contend that the findings are unjustified and the second contention is that without prejudice to the aforesaid submission, even if the findings are justified that no action is warranted because of the long lapse of time.

2. On behalf of the University authorities, the contention is that this is basically a case of circumstantial evidence and in their defence, they have pointed out that these are professional examinations and that the Court must view them with a degree of undue rigorousness. Having regard to the age of the students and the fact that this was the M.B.B.S. exam, the authorities have also contended that there are limits with regard to how far investigative processes can go but if from the material that is available, it is possible to demonstrate that there is unimpeachable evidence to conclusively establish that the answer books had been substituted or tampered with, then the persons responsible for it can be none other than the students concerned. It is submitted that the University having taken the most lenient or best charitable view possible, this Court should not interfere with the decision. I need to record here that the learned Counsel representing University took the trouble of ensuring that his Officers remain present in Court; that all the answer books in question were shown to the Court and he has also shown them to the Learned Advocates representing the petitioners, who desired to take inspection of these records.

3. Petitioners Learned Advocates have initially challenged the jurisdiction of the Mysore University authorities as far as the passing of any orders against them are concerned. Reliance is sought to be placed on Section 62 of the Karnataka State Universities Act, 1976 and the petitioners Learned Advocate has submitted that all the petitioners were doing their M.B.B.S. course at a College in Davanagere which in turn comes under the Kuvempu University. They pointed out that for certain reasons namely, the fact that at that point of time the Kuvempu University was not equipped to take these examinations; that the same were held by the Mysore University and that if the authority conducting the examinations is Mysore University, it would not give that University the jurisdiction to pass any disciplinary orders concerning the petitioners. Reliance is sought to be placed on the wording of Section 62, whereunder, in respect of all such disciplinary action whether it is within the college or in relation to the conduct of examinations or otherwise the authority to take action vest in either the Vice-Chancellor, the Syndicate or the Principal. Learned Advocates submit

that it is open only to the authorities of the University to which the petitioners belong, to take action against them if at all it is so warranted. They therefore submitted that this Court should strike down the entire proceedings as being noneast in so far as the authorities of the Mysore University have no jurisdiction to institute disciplinary proceedings or pass any such orders against the petitioners. The petitioners Learned Advocates have tried to emphasize the fact that as far as Section 62 is concerned, the entire wording of the Section proceeds on the footing that the powers are vested under the various authorities of "the" University which they submit can only be construed as Kuvempu University and no other. In reply, the University Counsel has pointed out to me that Section 74(3) of the very Act has made a special provision for holding of examination, etc, by the Mysore University in respect of students who originally belonged to that University or in respect of such areas as have come under Kuvempu University for such period of time as it becomes necessary for the Kuvempu University to make arrangements to take over. He has also produced a copy of the Memorandum of Understanding between the two bodies and he submits that it is by virtue of this provision, for the purpose of holding examinations, that the Mysore University virtually steps into the shoes of Kuvempu University. The second submission is that in so far as the exams, were conducted by the authorities of the Mysore University that it is they alone who have the power to take all action that may emanate in relation to its examination such as, evaluation, punishment for malpractices, etc.,.

4. I do not need to labour elaborately with this aspect because the law is very clear in so far as, since the Kuvempu University was set up subsequently and arrangement was required to be made during the transitory period for the conduct of examinations and there is more than sufficient legal sanction investing authorities of the Mysore University for the conduct of examinations. The petitioners learned Advocates are right with regard to their submission that in all other areas of disciplinary action that the jurisdiction would remain with the authorities of the Kuvempu University but they overlook the fact that this is an artificial situation whereunder the examinations are conducted by the Mysore University. It would be wholly incongruous for any Court to hold that in respect of the exam conducted by the authorities of the Mysore University, the disciplinary authorities of some other University should conduct a malpractice enquiry. The conduct of the examination is one integrated exercise and everything in relation thereto from the commencement of setting of question papers, holding of the examination, evaluation and action in relation to any malpractice that has taken place, are all functions which are part and parcel of holding of the exam. and I am in total agreement with the learned Counsel representing the University when he pointed out that the Mysore University had every right to conduct the enquiry and to pass appropriate orders thereunder. The challenge to the jurisdiction would therefore necessarily have to fail.

5. As far as the merits are concerned, the petitioners learned Advocates made two fold submissions. In the first instance, they contended that when this Court

disposed of earlier proceedings; that the University authorities were given an opportunity of holding a fresh enquiry but the Court specified that the time lag etc., were factors which the authorities should take into consideration. They have submitted that the petitioners proceeded to do their subsequent exams; that some of them have even completed the course and one or two of them have gone to other parts of India and these are the factors which the Court obviously had in mind and which the University authorities should have considered while deciding as to whether at all to hold a fresh enquiry after such a long lapse of time. Even if one were to exclude the time spent in the litigation etc., one factor remains that there has been an abnormal delay as far as the holding of the malpractice enquiry is concerned and as far as the final disposal of the matter is concerned. This Court had an occasion recently to record the fact that enormous prejudice is caused to the career of the student if a malpractice enquiry is delayed. In the first instance it is nothing more than a charge against a student which has got to be substantiated and until and unless the enquiry is held and orders are passed, the student is faced with uncertainty. It affects not only the subsequent course of studies but more importantly the subsequent examinations, It is for this reason that I have taken the view in a recent judgment that as far as such enquiries are concerned, that they must be held and completed within a period of two months from the date of the incident. It follows by necessary implication that if the time frame is not adhered to, the affected parties would be eligible in those cases to point out to the authorities that they are precluded from taking up the matter at any future point of time. This is very necessary for variety of reasons and it is therefore, that this Court has taken such a view. The additional ground that needs to be pointed out is that there are several disputed facts which come into play in these malpractice enquiries and if the enquiry is held at a very belated stage, the evidence which the University desires to marshal would undoubtedly suffer and it is equally difficult for the parties against whom the allegations made to repudiate their charges or to produce the evidence because of the abnormal delay. It is for these reasons that the Court has taken such a view. I need to refer here even to the present case, where the petitioners learned Advocates vehemently contended that this aspect of the matter ought to have been taken into consideration by the University while deciding whether at all to proceed de novo. They have gone to the extent of pointing out that if this had not been done, that the enquiry would be vitiated. The enquiry will be vitiated only if there is a basic legal infirmity. These are procedural aspects that emanate out of the Courts' directions and to my mind, it is not as though the University authorities have overlooked the directions of the Court. It is for this reason and having regard to the seriousness of the case, that the enquiry was held again, but they have given full benefit to the petitioners when it came to the question of punishment which had been considerably scaled down only because of the long time lag.

6. The second legal ground on which the petitioners learned Advocates attacked the conduct of the enquiry is that they demonstrated to the Court that the

enquiry committee was set up; the students were called and that it was pointed out to them precisely what the case of the University was and they were asked for their explanations. Strictly speaking, it is submitted that this does not conform to the rules of natural justice and an additional ground was raised namely, that the members of the enquiry committee had put certain questions to the various petitioners in the form of cross-examination, in sum total, the argument was that this exercise would not come within the legal definition of an enquiry which enquiry in turn must be fair and within the bounds of the rules of natural justice and it was therefore submitted that the entire proceedings should be quashed. I have carefully examined the record of the enquiry as also the report and I find that there has been substantial compliance with the rules of natural justice in so far as the Court cannot overlook the fact that this enquiry was proceeded by an earlier one; the petitioners were more than well aware of what the charges levelled against them ; they have infact cross-examined some of the witnesses and they have also put forward their answers to the questions put to them by the committee. Through a string of decisions, the Courts both in England and in India have held that it is within the jurisdiction of the panel in such instances to put questions to the persons who appear before it; it is open to the parties to refuse to answer these questions or to put forward such clarifications as they desire but mere putting of those questions cannot be construed as an infirmity. Further more, a detailed examination on the case law relating to the enquiry has to be conducted within the domain of the educational field which indicates that the Courts have made a basic distinction between these enquiries and other enquiries such as any normal disciplinary proceedings, and the Courts have repeatedly pointed out that these enquiries conducted by College, Boards, Universities etc., are not on par with the normal disciplinary proceedings neither are they to be construed as being required to follow the procedures prevalent in criminal trials nor judicial proceedings. It is for good reason that this distinction has been made and having regard to the settled position in law, to my mind, the challenge as far as this head is concerned will also have to fail. I also need to add here that the enquiry in question in these circumstances is limited to a fact finding exercise and even though an adverse order made have serious consequence, this is all that is required of the authority. Before parting with this head, however, it would be advisable having regard to the experience of this Court in several such cases. It is for the Universities to take serious note of the fact that there are several basic procedural and legal requirements which cannot be bypassed in this proceedings and since all these Bodies are represented by competent Counsel who normally appear for them, it would be desirable to consult them and correct advice sought at the time when any of these proceedings are contemplated.

7. Petitioners learned Advocates have seriously challenged the findings on another head because it is their contention that the enquiry was that they have termed as as "en masse enquiry" and they have stated in these circumstances that where the career of 20 different individuals are involved, the enquiry

committee has not proceeded person wise or paper wise and that a general allegation was made and a general finding has been recorded. For instance, learned Advocates submitted that the evidence is not common in all cases in so far as not all of the papers were found different, and not all of the paper books had retching marks and not in all of them was the thread different. They therefore submitted that the facts may establish tampering in certain cases and that there can be no carry over of this aspect to the remaining cases. On this ground, they have also pointed out that certain evidence has not been specifically dealt with by the committee such as the fact that the Principal had admitted that answer books of this type of paper were used by the University in certain examinations. As far as the factual challenge is concerned, they pointed out that the evidence cannot conclusively, definitely and cogently prove the guilt of each one of the 20 persons and in the absence of such individual findings, the general order passed will have to fail. The position has been defended by the University Counsel who has submitted that initially 28 students were hauled up as a part of the batch involved in the malpractice and this was pursuant to the evidence which the University had. He stated that after scrutiny, it was found that in 20 of the cases only punishment was warranted. He also demonstrated that since this was a general pattern or planned operation, that the University has proceeded against the entire batch of students in respect of whom any traces, of the operation were evident. It is on this ground that the passing of the general order had been justified.

8. As far as this head is concerned, in the first instance, I need to record that the jurisdiction of the High Court as far as this area goes is extremely limited. This is not an appeal proceeding and in exercise of the power of judicial review, this Court will limit its examination only to the extent of deciding as to whether the malpractice committee has generally followed the right procedure and whether the findings are justified. Undoubtedly if the procedure has gone abundantly wrong, the Court should interfere, but the Court will not dissect each and every bit of material for purpose of recording its own findings. The record has been scrutinized. The learned Counsel representing the University went to the extent of even producing the individual answer books and all other material and an examination of this, would justify the findings that have been recorded by the University. To my mind, there was no special reason why individual findings be recorded or individual orders should have been passed in respect of each of the 20 students. The material that was produced before the enquiry committee justifies the action against all of them in relation to the common malpractice that was alleged. Under these circumstances, the challenge on the ground that individual appreciation was not done or individual orders were not passed will also have to fail.

9. As far as the order of punishment is concerned, the University has taken note of the time lag and the fact that the order has been passed very late and therefore shown utmost leniency to the petitioners. It is only the paper concerned that has been invalidated and they have been permitted to appear for

the next ensuing examination. In this view of the matter, to my mind, no interference is called for as far as the impugned order is concerned and therefore, this batch of Writ Petitions is liable to fail.

10. There is however one other aspect of the matter pointed out by the petitioners learned Advocates in respect of which certain directions are necessary. First of all, they pointed out that the petitioners have all proceeded with their career and that secondly, it will be necessary for this Court to direct that none of the subsequent examinations that have been done by them, whereby they might have completed the course, started other courses in other Universities or completed their housemanship etc., should be affected by virtue of the order passed by this Court. This would be very necessary in so far as even though the petitioners will technically be required to reappear for one paper, that cannot be construed as a factor which invalidates any of the subsequent action. This position is therefore clarified and the University authorities or the Medical Council of India or any other authorities shall not take a contrary view as far as this aspect of the matter is concerned. It is also clarified that if the petitioners have undertaken any other course or are doing housemanship etc., they shall not be disturbed as far as those positions are concerned by virtue of the present order.

11. It is also pointed out to the Court that the examination conducted by the Mysore University at that point of time is no longer being done for the reason that the Courses themselves have subsequently been altered. As a consequence of the disciplinary order would be that the petitioners would have to repeat that one paper and for this purpose, since the University is primarily responsible for the delay, it will be necessary that the University shall hold a special examination for these 20 petitioners preferably within a period of three or four months so that the petitioners will have enough time to prepare for the exam. and get through it successfully. It is not possible for this Court to direct as to when the examination should be held except to point out that, it should be done expeditiously and the special examination shall not be abnormally delayed, the latest being that it should be conducted with the next batch of examination. The petitioners shall all be eligible to appear in the one paper concerned irrespective of what course they are doing and irrespective of the fact that they may or may not be still pursue, their studies with their Universities. The last direction that is required to be given is that if any of the results of the subsequent examinations have been withheld because of the pendency of these enquiry proceedings, that those results should be declared within a period of one month from today. With these directions, the petitions to stand disposed of Rule is discharged. There shall be no order as to costs.

12. Learned Advocates who represent the petitioners pointed out that a direction to declare the withheld results within one month may be too late because it is necessary for some of them to take the ensuing examinations which are to be held in the month of February 1996, if the last date for the examination has

elapsed, the authorities shall permit the petitioners to pay their fees and to take the examination; but it will be equally necessary for them to announce the withheld results for the purpose of deciding in which particular paper they may have to appear. Learned Advocate who appears for the University had assured the Court that the results will be communicated to the petitioners at the very earliest and the University shall endeavour to do this within a period of two weeks from today.

13. It is clarified, that the requirement whereby the petitioners have to re-do the examination is confined to the re-appearance in the theory paper alone and as far as the marks available for the practicals, Viva etc., are concerned, the old assessments will hold good.