

**(1990) 07 KAR CK 0080**

**In the Karnataka High Court**

**Case No :** Writ Petition No's. 8623 and 8624 of 1990

Shivashankar Tallur and another

APPELLANT

Vs

The Mysore University and others

RESPONDENT

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**Date of Decision :** 23-07-1990

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Karnataka State Universities Act, 1976 — Section 62

**Citation :** AIR 1991 Kar 169 : (1991) 4 KarLJ 383

**Hon'ble Judges :** N.Y. Hanumanthappa, J

**Bench :** Single Bench

**Advocate :** Mr. B.S. Patil, for the Appellant; Mr. V.C. Brahmarayappa, for the Respondent

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## **Judgement**

1. Petitioners are the students of Malnad Engineering College, Hassan at relevant time were studying third semester B.E. As usual, they appeared for the third semester examination which was held by the Mysore University during the month of September 1989. After examinations were over, at the time of valuation of concerned valuer found malpractices alleged to have been committed by the petitioners and other students of the University. The same was brought to the notice of the first respondent-University, which in turn, in exercise of power conferred u/s 62 of the Karnataka State University Act, 1976, issued show cause notices dated 15-11-1989 to the petitioners. The charge levelled against the first petitioner reads thus:

"1) That you have committed malpractice of inserting drawing sheet by getting the printed matter xeroxed. 2) quality of the drawing sheet are differed with other sheets and 3) size and style letter are differed with other sheets."

The charge levelled against the second petitioner reads thus :

"You have committed a malpractice of inserting the answer script which had not been issued to you by the University for writing the examination."

In the show cause notices also mentioned the statement of imputations including the witnesses which the University desires to examine and the documents to be relied upon by it. The statement of imputations alleged against both the petitioners respectively are as follows:

"STATEMENT OF IMPUTATION :

The Drawing sheets are printed in the Mysore University Press and supplied to the students at the time of examination. The drawing sheets supplied by the University are of a thicker variety as could be seen from the specimen copy maintained in the University Press. The answer scripts of this candidate contains Drawing sheets which are thinner than the drawing sheets supplied by the University and does not match with the other Drawing sheets supplied by the University. The report of the Director of Printing Press who has compared them is to the fact that the printed matter of thin drawing sheet is got xeroxed and is inserted in place of the ones that had been originally issued to the candidate.

List of Witnesses: 1) The Director Mysore University Printing Press, Mysore :

2) Valuer.

List of Documents :

1. Sample of Drawing Sheet printed and supplied to the examinee for writing the examination.

2. The Drawing sheet of this candidate."

"STATEMENT OF IMPUTATIONS :

The candidate was issued the answer script printed in University Press. The composing of the matter outer-sheets printed by the University show that the words "For Use of Examiners only" is not so bold. The first four lines in instructions to the candidate No. 1 end together in the same alignment. The use of the word Grand Total is not so very bold. The use of the words Grand Total in words in the answer script printed by the University ends at a distance of about 1/2 a.c.m. to the left of the block. In the undertaking that is in Italic Size the punctuation xeroxed is before the inverted comma and the margin line found in the paper inserted to the answer script is pencil drawn while it is machine drawn in the answer script printed and supplied by the University.

On a comparison of the answer scripts of this candidate that is now given for valuation shows the following differences are noticed :

1. the word in for use of Examiners only is more bold than the one printed by the University:

2. the last word book in the fourth line of the instructions to the candidates No. 1 is not in alignment with the remaining three lines above it.

3. the word Grand Total is more prominent than the words printed in the

University Press :

4. the punctuation full stop at the end of the undertaking is found after the inverted comma;
5. the Grand Total in words at the end extends even beyond the block for noting the marks secured ;
6. the inner sheets used are different from the inner sheets that are given along with the University Printed outersheets.

LIST OF WITNESSES :

1. The Director, University Printing Press, Manasagangotri, Mysore;
2. Dr. K. A. Padmaji, Co-ordinator, EPC, UOM S.V. Raman, Asst. Registrar, UOM., Mysore; A. Niranjan, Superintendent, EB, UOM, Mysore; L. Charly, FDC, EX, UOM., Mysore ;
3. Prof. Shashikanth. Prof. N.I.E., Mysore;
4. N. S. Gangadhar, Registrar (Evln), UOM. Mysore.

LIST OF DOCUMENTS :

1. Sample of the answer scripts printed and supplied to the examinee for writing the examination;
2. The answer scripts of this candidate."

After serving show cause notices, the University appointed a retired District Judge as an Enquiry Officer, who held the enquiry, namely, the evidence was led in presence of the petitioners and records were also examined in their presence. Petitioners were made known clearly in the show cause notices that if desired to be heard in person may avail of the same. After holding the enquiry, the Enquiry Officer submitted his report to the Syndicate and the Syndicate passed orders at Annexures E and F, which are stated as "Memo", dated 28-2-1990 and 1-3-1990 respectively, a copy of which reads as follows :

"UNIVERSITY OF MYSORE

No. Ex. REP. MPL 395 89-90 Office of the

Registrar (Evolution), "Crawford Hall", Mysore-570005 Dated : 28-2-1990

MEMO

Pursuant to the decision of Syndicate which may on 17-2-1990 Sri Shivashankar Talluru, M.C.E., Hassan, was found to be guilty) of Malpractice during the II SS RE Examination of Sept. 89 and he is penalised as follows :

The result of the 11 SS R.E. Examination of the candidate bearing Reg. So. 74448 is invalid. Further, he is debarred from taking any University Examinations

up to Feb. Mar. 1994. The candidate is permitted for Aug./ Sept. 1994 Examination and onwards.

Sd -Registrar (Evaluation)"

The Memo dated 1-3-1990 runs in like terms. These two Memos at Annexures E and F are now under challenge in these writ petitions by the petitioners on the following grounds :

(1) As soon as they the petitioners received Annexures E and F, they requested the authority concerned as at Annexure-G requesting him to supply copy of the decision of the Syndicate which met on 17-2-1990. Though received, requisite information was not supplied to them. Non-supply of the same convinced that the enquiry that was conducted by the Enquiry Officer as vitiated This conclusion has been based on the following grounds :

(i) Both the petitioners were innocent of the allegations made against them. No proper opportunity was given to them by the Enquiry Officer either to look into the alleged insertion of the Xerox copies as mentioned in Annexure-A or inserting separate answer script as explained at Annexure-B, They were not allowed to examine their witnesses or to cross-examine the witnesses of the University.

(ii) They were not supplied with copies of the documents which the University relied upon.

(iii) The allegations made against them were quite ambiguous and the charges levelled were vague.

(iv) After completion of the so-called enquiry, the authority should have supplied to these petitioners copies of the enquiry report which the University did not do,

(v) After receipt of the enquiry, before taking a decision regarding the quantum of punishment as required under the provisions of Section 62 of the Karnataka State University Act, a second show cause notice should have been given to them.

2. According to the petitioners, since the University authorities failed either to follow the requirements procedures contemplated or to comply with the mandatory requirements, the entire enquiry has been vitiated, thus the punishment imposed against them debarring both the students from taking any University examinations up to February/ March 1994 is quite illegal, unreasonable and excessive in nature. In support of the above contentions. Sri B. S. Patil. Advocate for the petitioners relied upon a decision of this Court in Arun Kumar Agrawal v. Bangalore University reported in 1977 (2) Kar LJ 334, wherein it is stated thus at 1977 Kar LJ 366:

"What the proviso to sub-section (2) of S. 62 contemplates is that the student concerned is entitled to be given an opportunity of showing cause against the punishment that is sought to be imposed against him.

That an enquiry was held before the punishment was imposed and that the

student was given an opportunity of participating in the proceedings is not sufficient compliance with the proviso to sub-section (2) of S. 62 of the Act, inasmuch as the said proviso requires the authority concerned of giving an opportunity to the student concerned of showing cause against the action proposed to be taken against him. The expression "action proposed to be taken against him" clearly indicates the punishment proposed to be imposed must be intimated to the student concerned. His say in the matter should be taken before the punishment is ultimately imposed."

Further he relied on a decision of this Court rendered in *Gandhi Chailshtori Mohamood v. Vice Chancellor, Karnataka University* reported in ILR (1986) Kar 1659, which dealt with the scope of S. 62(2) of the Karnataka University Act, including the powers of the Syndicate/Vice-Chancellor. Thus, the petitioners requested that the Memos at Annexures E and F be quashed, their answer papers be valued impartially, their results be declared and they be permitted to prosecute their studies of next semesters.

3. As an answer to the above contentions. Sri Brahmarayappa, learned Counsel for the Mysore University, very vehemently argued that these are not the cases where the matter be dealt with compassionately or mercy be shown. According to him, the University, before taking a decision to debar these two petitioners and several other students who had involved in similar malpractices, had complied with the principles of affording an opportunity of hearing to all the students who had involved in a scandal of malpractice of the year.

4. Sri Brahmarayappa, contended that the petitioners were not only made known about the nature of the enquiry before its start but they were also informed much earlier about the witnesses which the University desires to examine and the documents to be relied upon. In order to see the justice is done, by holding a fair enquiry the University thought fit to appoint a person who is well versed in judicial matters and then appointed a retired District Judge as an enquiry Officer, who in turn conducted the enquiry, namely recording the statements of witnesses, marking of documents, etc., in presence of the petitioners. On the basis of materials so collected in the evidence, the Enquiry Officer submitted his report to the Syndicate, which in turn, after applying its mind to each and every allegation and after scrutinising the evidence adduced, came to the conclusion that the charges levelled are proved. Then, in order to maintain both discipline and standard, the syndicate in view of the given circumstances felt that it is just and proper to debar those two students and others similarly placed from taking any examinations up to February-March 1994.

5. Sri Brahmarayappa submitted that as far as the earlier decision which Sri Patil has relied upon namely 1977 (2) KarLJ 334 is concerned wherein the scope of provisions of S. 62 of the Act was explained, the same in view of the changed circumstances does not apply to the case on hand. He fairly submitted that the position which was existing then the direction given in the said decision was quite right, and, if any such provision was existing as on the date of the rustication the

University would have definitely applied its mind to the principles laid down in the said decision. He submitted that even the principles laid "down in the decision reported in ILR (1986) Kar 3659. *Gandhi Chailshtori Mohamood v. Vice Chancellor, Karnataka University*, has no application to the case of the petitioners as in the said case this Court was requested to decide about the scope of Section 62(2) of the Karnataka State Universities Act together with the powers of the Syndicate and the Vice-Chancellor, particularly in the case of emergency. According to him, it is not sure whether it was the Vice-Chancellor who took a decision of debarring the students or it was the Syndicate who took such a decision and passed orders.

6. It is further contended by Sri Brahmarayappa that the petitioners were parties to the fraud committed during the month of September, 1989. Being beneficiaries to the said fraud they cannot request this Court to consider that the entire enquiry followed and order passed are vitiated due to non-compliance of natural justice and equity, etc. In support of this contention, he relied on an earlier decision of this Court reported in ILR (1973) Kar 955 in the case of *d. Ramanujam v. the Dean, Bangalore Medical College* therein it is held thus :

"5. The evidence in these cases discloses a disturbing state of affairs. There is a clear evidence that the marks cards obtained by the petitioners do not represent the real marks secured by them in their examinations. On the strength of these fraudulent marks cards, the petitioners have secured admission in the Medical College. The authorities have correctly taken action in cancelling their seats. The contention for the petitioners that the University has not cancelled or withdrawn the marks cards given to the petitioners and therefore the College authorities are bound to act upon them, cannot be accepted. We are satisfied that there has been a fraud committed by somebody in order to secure admission of the petitioners to the Medical Colleges. It is not necessary for us to hold as to who is responsible for that fraud. The fact remains that the petitioners are the beneficiaries of the fraud and the jurisdiction of this Court under Art. 226 of the Constitution cannot be invoked for the benefit of the beneficiaries of the fraud."

In addition to this, Sri Brahmarayappa relied upon other two decision of this Court, namely *Kumar Lima v. Board of Pre-University Education* reported in , wherein the Division Bench (Justice Bopanna) of this Court while exercising the scope of this Court under Article 226 of the Constitution in interfering in the matter pertaining to disciplinary proceedings, held that (ILR (1988) Kar 2586) :--

"20. The jurisdiction conferred on this Court is a discretionary jurisdiction and this Court must be satisfied that the parties have approached this Court with clean hands. Our conclusion is also buttressed by the further fact that the appellants did not seek to avail themselves of the opportunity given to them to file any additional statement after examining the answer scripts by themselves."

Sri Brahmarayappa, in support of his contention submitted that the scope in enquiry proceedings relating to students' malpractice, etc. shall not to be

equated to that of domestic enquiry. In support of this he relied upon a decision of this Court rendered in Writ Petition Nos. 2666 to 2669 of 1988 on 21-7-1988 in the case of M. Prakash v. The Vice Chancellor, Bangalore University, wherein Justice Bopanna held as follows :

"7. The disciplinary action against the University students cannot be equated to the domestic enquiry under the Industrial Disputes Act. The University is the seat of learning and in order to maintain the purity in the examination held by it the principles of natural justice should not be unduly extended by this Court. Therefore, the explanation given by the student at the earliest instance assumes importance and since that is not satisfactory, there is no need to interfere with the action of the University assuming that the principles of natural justice is violated."

Lastly he relied upon a decision of this Court rendered in Writ Petition No. 17186 of 1987 and Writ Petition No. 3677 of 1988 on 26-9-1988 in the case of Anil Kumar v. The Bangalore University. Thus Sri Brahmarayappa concluded that as far as the Mysore University is concerned, the orders under challenge are first of its kind.

7. Regarding the quantum of punishment awarded to these students debarring them in taking any University examination till the end of February-March 1994 is just, "according to Sri Brahmarayappa. He also clarified that in case of students who gave clue and assisted to trace out the scandal and gave full co-operation in concluding the enquiry, have been awarded with lesser punishment of debarring them for four semesters. The said lesser punishment is only in the case of five students out of 61 students involved in the malpractice for the year. The sum and substance of the arguments of Sri Brahmarayappa is that in view of nature of offence proved as committed that the punishment imposed not only warranted under the given circumstances but a just and most reasonable one. Neither sympathy nor equity shall weigh in the case of such students, because if such practice is allowed unpunished it will spread like an epidemic and in future the entire University atmosphere of different facilities will be polluted and the slogans like discipline and standard of education and purity of examinations will become farce.

8. After hearing both sides, perusing the answer script which Sri Brahmarayappa produced including the so-called sheets alleged to have been inserted, I am of the view that it is a case of malpractice committed not only by these two petitioners but also by other 59 students during that year. Regarding the decisions cited by both sides, there cannot be any dispute. But in none of the decisions there is any indication to show as to what will be the just and reasonable quantum of punishment. Sri Brahmarayappa, fairly conceded that in such matters of course this Court has not fixed the quantum of punishment. However, Sri B. S. Patil argued that in the earlier decisions under similar circumstances what this Court did was debarring from appearing for a particular examination. According to him, in the instant case, punishment levied is quite

unjust, unreasonable and highly excessive.

9. On the material made available there is no other go but to arrive at a conclusion that the petitioners had involved in malpractice. But it is not these two petitioners alone who were involved: like them, there were 59 others. When the scandal had gone on in such a systematic manner during that particular year, blame cannot be thrown exclusively on the students. But the concerned staff shall have to be blamed for it. Without their active co-operation and connivance such things would not have taken place. Of course, all these things as to whether the said racketing took place purely because of ingenious method adopted by these petitioners or there was any collusion, has to be investigated and enquired into by the C.B.I., to which authority it is submitted now the entire enquiry has been referred to. However, it is sufficient for the present to hold that everything was not right with the colleges and the University during the year in question. Hence, I am of the view that though the decision taken by the syndicate to debar the students in taking examinations on the ground that the guilt alleged as proved, as proper one, but regarding the quantum of punishment imposed, in view of the circumstances explained above/I have to hold that it is most arbitrary, unreasonable and excessive. Because while imposing punishment the authorities, who have got powers to impose punishment, shall see that always punishment shall not be deterrent one. It shall not be purely in the nature of punitive one but the punishment shall also be in the nature of reformatory one. In such matters the power to punish and reformatory approach shall go hand in hand, so that the students now who have been held guilty shall not be frustrated and become antisocial. Since no guidelines are fixed in the Statute or Regulations to impose the quantum of punishment, coupled with peculiar circumstances of the case. I think ends of justice will be met, if the punishment imposed by the syndicate debarring these two petitioners in taking any University Examinations up to February/March 1994, is reduced to February/March 1991. Accordingly, these petitions are disposed of.

10. Order accordingly.