

(1982) 01 OHC CK 0008

In the Orissa High Court

Case No : Original Jurn. Case No. 2965 of 1981

Sibaram Panda and Others

APPELLANT

Vs

Collector, Cuttack and Others

RESPONDENT

Date of Decision : 21-01-1982

Acts Referred:

Citation : AIR 1982 Ori 117 : (1982) 54 CLT 152

Hon'ble Judges : R.C. Patnaik, J;N.K. Das, J

Bench : Division Bench

Advocate : S. Misra 1, J.M. Mohanty, G.P. Mohapatra, S.K. Nayak, 2 and S.B. Misra, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Das, J.—Petitioners are students of the Orissa School of Engineering, Cuttack. After completing Diploma Course in Engineering they were undergoing a Condensed Course for Diploma in Automobile, Mechanical, Instrumental and Control. In Sept 1981 there was a tension in the school. It is said that the Principal managed to get an application from students making allegations against the petitioners. Some criminal cases were started. On 3-12-1981 transfer certificates issued to the petitioners by the Principal containing a notice that the Managing Committee decided to issue compulsory transfer certificates to the petitioners and others for misconduct and indiscipline. Petitioners contend that mere allegation has been treated as sufficient proof of and justification for such punitive action. It is, therefore, prayed to quash the transfer certificates issued by the Principal.

2. In the counter, it has been averred that the transfer certificates have been issued in the best interest of the institution and to control law and order situation for the purpose of maintenance of discipline in the institution. Certain allegations were made by the members of the staff and students for highhanded action and misconduct of the petitioners. As the atmosphere of the institution was surcharged with rowdiness it was considered that issuing of show cause notice

would frustrate the very purpose for which the action was proposed. The Principal made a report to the Managing Committee which, after considering the report, thought it proper to issue transfer certificates to the petitioners.

3. Mr. Mishra, the learned counsel for the petitioner contends that the transfer certificates issued by the Principal cannot be sustained inasmuch as no opportunity was given to the petitioners to show cause and rules of natural justice have been violated. No inquiry was held. The petitioners have been prejudiced thereby inasmuch as the actions are punitive in nature.

4. The only question for consideration is, whether the petitioners have been deprived of a reasonable opportunity to show cause and if the rules, of natural justice have been violated. It is contended by the learned Additional Government Advocate that this is an action by the Principal or the Managing Committee to maintenance of discipline and it necessarily entails unfettered discretion in the Principal or the Managing Committee to take such action. It was the Principal who was to decide whether and under what circumstances the transfer of a student becomes necessary and, as such, there should be no question of any obligation to follow the rules of natural justice.

This Court in *Ramesh Chandra Sahu v. N. Padhy*, Principal, Khallikote College, Berhampur, AIR 1959 Orissa 196 has held that both the English and American authorities seem to be agreed that even in disciplinary matters the head of an educational institution has no absolute discretionary power and that he must act reasonably and the aggrieved student must get an opportunity of being heard and of establishing his innocence, if he so desires. In the instant case, no opportunity has been given to the petitioners to explain or to prove that they are innocent. In the case of *Raman and Raman Ltd. Vs. The State of Madras and Others*, , it has been observed that the source of the power does not affect the character of the things done in exercise of that power. Even if a power, as that of the Principal, had been conferred under a statute, that by itself would hardly have been conclusive on the question whether the act would be purely an administrative act precluding the application of rules of substantial justice; for, as is well settled, that would always remain dependent on the nature of the things that are to be done in course of the administrative act. It is observed in *Ridge v. Baldwin* (1963) 2 WLR 935 at 943 (HL) that although there may be no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the Legislature. Following the decision of the Supreme Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, held that the dividing line between an administrative power and a quasi-judicial power is thin and is being gradually obliterated and further that the principles of natural justice apply in exercise of administrative powers as well. In order to judge the nature of the administrative power exercised by the Principal emphasis must lie on the word "decide" and obviously there could be no obligation on the part of the student to withdraw from the institution unless the decision of the Principal is there. The Supreme Court also in *State of Orissa v. Dr.*

(Miss) Binapani Dei, AIR 1967 SC 1269 observed that if there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case. Also in Kraipak's case the Supreme Court observed that the concept of rules of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. Kraipak's case has also been followed by the Supreme Court in Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, .

The Supreme Court observed that in recent years the concept of quasi-judicial power has been undergoing a radical change and what was considered as an administrative power some years back is now being considered as a quasi-judicial power. In determining whether a power is a quasi-judicial power, one has to look into the nature of the power conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. This Court was considering a similar question in Deba Prasanna Mishra v. Principal, S.C.B. Medical College, ILR (1971) Cut 433. Relying on the aforesaid decisions, this Court held that if the students are prejudicially affected by any order of any authorities of the educational institution, then in these cases rules of natural justice should be followed and reasonable opportunity should be given to the persons punished otherwise the order becomes annulity.

In Wiseman v. Borneman (1969) 3 All ER 275 at page 278, Lord Morris stated :

"The conception of natural justice should at all stages guide those who discharge judicial function is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be applied which, in any particular or set of circumstances, are right and just and fair. Natural justice, it has been said, is only "fair play in action". Nor do we wait for directions from Parliament. The common law have abundant riches : there may, we find what Byles, J., called "the justice of the common law" (Cooper v. Wandsworth Board of Works (1863) 14 CBNS 180 at p. 194)."

In Deba Prasanna's case, it was contended that the relationship of the authority

and of the student was a matter of contract and the power exercised by the authority in rusticating the students without holding any inquiry or without giving reasonable opportunity does not amount to be arbitrary. This Court negated such a contention. This Court held that the authority should have to decide before taking any action prejudicial to the interest of the students. Various decisions of the Supreme Court were cited before this Court in Deba Prasanna's case (ILR 1977 Cut 433) and after full discussion thirteen principles have been laid down in that case. It appears that in the instant case those principles have not been followed.

5. The undisputed facts of this case disclose that no reasonable opportunity was given to the petitioners before the punitive action was taken against them, Reliance has been placed by the Malak Singh and Others Vs. State of P and H and Others, . The facts and circumstances in that case were completely different. The question arose whether inclusion of name of a person under the Punjab Police Rules in the surveillance register amounted to a punishment. It was held that nobody would have any access to such register. History sheets and surveillance registers had to be and were confidential documents. The nature and character of the function involved in the making of an entry in the surveillance register was so utterly administrative and non-judicial, that it was difficult to conceive of the application of the rule of audi alteram partem. It would be contrary to the public interest to reveal the information in the history sheet particularly the source of information.

Reliance is also placed by the Opposite Parties on Abhay Kumar Yadav Vs. K. Srinivasan and Others, . This was a case of arbitration which was to be followed by hearing. A student was debarred from entering the premises of the institution and from attending the classes till the pendency of criminal case against him. It was held that it was a suspension order in the nature of a preventive action and was not a final order and, as such, prior notice was not necessary. Those two decisions are, therefore, distinguishable.

Judging the facts and circumstances of this case in the light of the decisions of the Supreme Court as well as of this Court, as discussed, we hold that the orders and the issuance of certificates for transfer of the petitioners are hit by violation of rules of natural justice and are, therefore, not sustainable.

6. In the result, the writ petition is allowed and Annexure 3 series are hereby quashed. In the circumstances of the case, there will be no order as to costs.

K.C. Patnaik, J.

I agree.