

(1996) 02 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No. 1528 of 1988

Smt. Sulaika C.K.

APPELLANT

Vs

Karnataka Secondary Education Examination Board,
Bangalore and Another

RESPONDENT

Date of Decision : 01-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 1 KarLJ 620

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

Judgement

1. A very curious situation has arisen in the present writ petition which I shall briefly illustrate while narrating the facts, but the question thrown up is as to whether the petitioner who had done T.C.H. Course at the Farookha Teachers Training College at Mysore and was issued the necessary certificate, which, years later turned out to be questionable, can be visited with the consequences of such a situation. The lady concerned, completed the course in the year 1981 and thereafter was employed in Kerala as a teacher in the year 1983. Some time later, the Director of Public Instructions, Trivandrum, issued a notice to the petitioner alleging that she had secured employment as a teacher through misrepresentation in so far as the authorities had suspected the genuineness of her T.C.H. certificate. The reason for this was lacuna the matter was referred to the Karnataka Secondary Education Examination Board in Bangalore and the Board after checking the records informed the authorities that even though the petitioner had completed the second year T.C.H. examination, she had not passed one subject of the first year T.C.H. and that consequently, she had not completed the course which was why the T.C.H. certificate had not been issued to her. In sum and substance, the Board pointed out that the certificate produced by the petitioner had not been issued by the Board. Taking on from there, the authorities in Kerala proceeded with the enquiry and it is relevant for me to point out that at the earliest point of time the petitioner wrote back and informed them that she had joined the teachers training institute in question that she had done

the course, appeared for the examinations, that she had been declared to have passed and that the institute gave her the certificate. It was her case that she had no ground to suspect that there was anything wrong with the certificate and that therefore, it was unjust to level a charge against her that she had secured employment through misrepresentation. However, since the authorities in Karnataka had very specifically indicated that their investigation revealed that the petitioner had not successfully completed the course, the authorities in Kerala passed an order against the petitioner removing her from services. The petitioner has thereafter challenged the genesis of the action through the present writ petition because she has basically contended that some correspondence and comments between the authorities in Kerala and Karnataka, that she knows nothing about it and that, action has been taken against her on the basis of that material without giving her an opportunity to deal with the serious charges that were levelled against her. The relief asked for therefore is an unusual one but it is basically to the effect that whatever conclusions have been conveyed to the authorities at Kerala by the Board which are damaging to the petitioner should be quashed on the ground that these conclusions were arrived at without affording the petitioner any opportunity to deal with them.

2. On behalf of the Board the contention is that complaints were received to the effect that several students were found in possession of bogus certificates and that therefore the original records of the Board were checked. This is one such case where it is contended that the original records maintained by the Board which were produced in the Court indicate that the Board was justified in pointing out that no certificate could have been issued when the petitioner has not completed that particular subject. The learned Government Advocate has also produced the proforma of the various documents, such as, certificates, marksheets etc., issued by the Board and he points out that the subsequent investigation revealed that the signature of the Secretary on the petitioner's certificate does not appear to be genuine. All those aspects of the matter are however secondary in so far as the basic issue canvassed by the petitioner is as to whether she can be virtually condemned without being offered an opportunity to deal with the charges which are extremely grave.

3. Sri H.S. Jois, who appears on behalf of the petitioner, submitted that in the first instance the charge against the petitioner is virtually imputing a criminal offence to her in so far as it is contended that she misrepresented to the authorities in Kerala on the basis of a fabricated document. It is his case that the petitioner was a young student who in normal course joined the institute, that she did the course, completed it, that she has specifically averred that she did the requisite examinations and that she was informed that she had passed them which was why she was given a certificate at the end of the course. It is his case that only when the petitioner received a notice in 1983, that she came to know for the first time that the validity of that document is being questioned. He contends that the conclusions have been disastrous to the petitioner in so far as she has lost her job in the first instance and that she will also be left with a

serious stigma for the rest of her life on the basis of the so-called investigation that have been carried on without her having any knowledge of them and conclusions have been arrived at without taking into consideration the aspect of whether the petitioner has any explanation for what has happened. His basic submission is that the principles of natural justice which must apply to every such case necessarily required that the petitioner should have been given an opportunity to deal with the allegations made against her and that if this was not done, irrespective of what the records may show the petitioner cannot be visited with the consequence of anything which has taken place without her knowledge. Learned Government Advocate has submitted that if the records indicate that the petitioner has not passed the first T.C.H. examination, there is no question whatsoever of the Board having issued the certificate. He submits further that in this background, the conclusion that the certificate itself is a fabricated or a bogus document is perfectly justified and that since this is a case where the records speak for themselves and that there was no need to hold any enquiry. He seeks to defend the action of the Board on the ground that the Board has merely answered the query raised by the counter-parts in the adjoining State that the petitioner was nowhere in the picture and therefore there was no necessity for holding any enquiry.

4. I do concede at the very outset that this was virtually a post-mortem operation and that the petitioner at that point of time had long since left the institution and that the Board Authorities in the first instance had nothing to do with her and possibly did not know even about her whereabouts, though, there were references which came from Kerala that the petitioner was employed as a teacher at a particular place. That last aspect of the matter is hardly of significance because to my mind, a further investigation was absolutely essential at that point of time. The authorities ought to have known that since the enquiry relates to the petitioner, the conclusions of any adverse report which would have emanated from them would reflect on the petitioner and that she would be at the receiving end and therefore, they ought to have investigated further into the matter for the purpose of ascertaining one very important aspect of the case namely, the question as to whether there was any material to indicate that the petitioner was responsible for what had happened and secondly, as to who precisely may be held guilty for what has been discovered. This investigation was of paramount importance because it would have led to all important conclusion which would have indicated as to whether the petitioner's participation in what had happened was established. If this had been done, it would have been open for the authorities to hold that the petitioner knew and had reason to believe that the T.C.H. certificate in her possession was not a genuine document and if that was the case, the action that was to follow may have been justified. Having regard to the facts of the case there was an equally good possibility of the petitioner having been an innocent victim of what had happened. This Court has come across a large number of institutions, the activities of which, the less said the better. This Court has had occasion to pass strictures on such institutions as

also the persons running them for a variety of malpractices all of which can be categorised as downright fraudulent criminal activities. In this background and in the face of the sworn averments of the petitioner that she had done absolutely nothing wrong at any point of time that can be categorised as irregular or illegal, to my mind, it was very necessary to have established her participation or knowledge in what had happened before recording any adverse verdict at any level. This aspect of the matter is crucial because unless such an investigation takes place, there is a strong possibility of the wrong party being punished and possibly of an innocent party being victimised. I had asked the learned Government Advocate as to whether this particular institute is still functioning and I was informed that it is still running under political patronage. It is still not too late for the authorities to investigate into the matter, and to order a prosecution against the persons running that institute, including their political godfather. There can be no doubt about the fact that since the incident is of 15 years old that the persons who have been in-charge at all levels having changed or even if they are the same that it may be extremely difficult to find any material at this late stage to proceed. The discretion as to hold on such an enquiry and take action for purposes of ascertaining whether something had gone wrong within the office of the Board or at the level of the institute or at both these levels which is probably the case, is left entirely to the Board. They may consider the feasibility angle while taking this decision.

5. As the case now stands, it is very necessary to uphold the objection canvassed on behalf of the petitioner which is very simply and basically to the effect that she cannot be condemned without there being conclusive material against her and more importantly without giving her a chance to deal with that material. This case has been taken up on more than one date of hearing and I have applied my mind very seriously to it for the simple reason that assuming that some fraud had taken place, it is very necessary that a serious view be taken of the matter. The issue before this Court is however slightly different namely as to whether on the basis of this referred material action against the petitioner was justified. Undoubtedly she had no opportunity at any stage to deal with any of these charges and to this extent therefore the action taken against her will have to be quashed. This Court is only concerned with that part of the material that was communicated to the authorities at Kerala because the prayer is confined only to that material and to my mind the petitioner is justified in asking for a prayer that the action in question should be quashed. The second part of the matter and the more serious aspect is as to whether in the course of the hearing of this petition anything has emerged to indicate that the petitioner had a hand in what had happened. As far as this aspect goes, because it is interrelated to the first one, I need to record that there is absolutely nothing that emerges to indicate that the petitioner even had knowledge or had reason to believe that there was anything wrong with the certificate in question. As a necessary consequence, the position that emerges is that if the petitioner acted in good faith as it appears to be the case, that she was fully justified in pointing out to the authorities at the earliest

point of time that no action or steps were warranted against her. The document in question normally is of presumptive value and unless there is conclusive material and good ground and unless the proper procedure is followed before that document is revoked, it would have to be acted upon. The situation is undoubtedly peculiar, but the Court needs to take cognizance of the situation wherein at a late stage some investigation is carried out and serious action is sought to be taken on that basis. In situations such as those it needs to be carefully examined as to whether the action which is to be taken against a particular person alone is warranted or not. It is in this background that I am inclined to uphold the submissions canvassed on behalf of the petitioner. I am aware of the fact that there are occasions when an adverse presumption is drawn particularly in cases of malpractice but to my mind, before such a presumption is drawn, there must be such grounds for reaching such a conclusion. Such grounds are totally absent against the petitioner and under these circumstances, the result is inevitable.

6. The petition accordingly succeeds. Rule is made absolute. The communications that have emanated from respondent 1 to the authorities in Kerala and vice versa against the petitioner are accordingly quashed for the reasons set out in this judgment.

7. The petition accordingly stands disposed of. In the circumstances of the case there shall be no order as to costs.

8. Learned Government Advocate is permitted to file memo of appearance within three weeks.