
(2002) 08 AP CK 0046

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 11526 and 11531 of 2002

Sri Sai Educational Society and Another

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Andhra Pradesh Educational Institutions (Establishment, Regulation, Administration and Control of Institutions of Higher Education) Rules, 1987 — Rule 11, 9
Andhra Pradesh Intermediate Education Act, 1971 — Section 9

Citation : (2002) 5 ALD 239 : (2003) 2 ALT 88

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : B. Nalin Kumar, for the Appellant; Government Pleader for Higher Educational, for the Respondent

Final Decision : Allowed

Judgement

A. Gopal Reddy, J.—Heard the learned Counsel for the petitioners as well as learned Government Pleader for Higher Education on behalf of respondents.

2. Rule Nisi.

3. As the issue involved in both the writ petitions and the subject-matter of the dispute is one and the same, it is felt expedient and convenient to dispose of both the writ petitions by this common order.

4. The 1st petitioner in both the writ petitions is the society registered under the A.P. (Telangana Area) Public Societies Registration Act and established Junior Colleges and imparting education in Nalgonda District since from 1993-94 onwards. The 4th respondent granted provisional permission/provisional affiliation to the 2nd petitioner in W.P.No. 11526 of 2002 by order dated 17-11-1993. Similarly, the 2nd petitioner in W.P.No. 11531 of 2002 was granted provisional permission/ affiliation by the 4th respondent by proceedings dated 16-12-1994. It is stated that the 2nd respondent-college in W.P.No. 11526 of

2002 is having total strength of 700 students both in 1st and 2nd years. Similarly, the 2nd petitioner-college in W.P.No. 11531 of 2002 is having a total strength of 725 students both in 1st and 2nd years. While so, the 3rd respondent issued a show-cause notice dated 7-2-2002 signed on 11-02-2002 stating that the management of 2nd petitioner colleges in both the writ petitions claimed the scholarships with bogus caste certificates for 1998-99, 1999-2000 and 2000-2001 and the M.R.O. signature was forged by the management with the aim of misappropriating the scholarship amounts in the name of S.C. students to which the petitioners-colleges submitted its explanation stating that the colleges are not concerned for preparation of bogus caste certificates and not forged the signature of M.R.O. as alleged. When the M.R.O. issued the caste certificate, it is for the Assistant Social Welfare Officer to conduct verification at the time of release of scholarship amounts and the petitioners are in no way concerned with the said bogus caste scholarships and requested not to initiate action for cancelling the affiliation of the colleges in the interest of the students. Being not satisfied with the explanation offered by the petitioners, further show-cause notice dated 26-3-2002 signed on 30-3-2002 was issued by the 3rd respondent reiterating the same allegations mentioned in the first show-cause notice, to which the petitioners submitted their explanation on 9-4-2002. Being not satisfied with the explanation so offered by the petitioners, the 3rd respondent through impugned proceedings dated 30-5-2002 cancelled the affiliation of the petitioners-colleges. Questioning the same the present writ petitions are filed contending that the impugned order has been passed in utter violation of principles of natural justice basing on the uncommunicated report of the District Collector and also the instructions of the Commissioner, Social Welfare to which the petitioners are not parties. The petitioners were not given reasonable opportunity of being heard in the matter. u/s 9 of the Board of Intermediate Education Act, 1971 (for short "Act 2/71") the Board of Intermediate (BOI) conferred power either to grant affiliation or withdraw affiliation/recognition. The impugned order passed by the 3rd respondent without reference to the Intermediate Board is without jurisdiction. Rule 9 of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 (for short "the Rules") issued under G.O.Ms.No. 29 Education (Rules) dated 5-2-1987 deals with the power to grant or withdraw recognition/ affiliation, which stipulates the Board of Intermediate Education shall be the competent authority for granting or withdrawing of temporary/permanent recognition/affiliation for all educational institutions imparting intermediate education. Rule 11 deals with the conditions for withdrawal of permission/recognition/ affiliation. Before withdrawal of permission/ recognition/affiliation the educational agency shall be given an opportunity to rectify the alleged defects. If the impugned order passed by the 3rd respondent is allowed to stand, the careers of 700 and 725 students of the 2nd petitioner-Colleges in WP No. 11526 and WP No. 11531 respectively will be at stake. Therefore, the entire action of the authorities is in violation of Article 19(1)(a) of the Constitution and contrary to the provisions under the Act, 1971

and the rules made thereunder which cannot be sustainable and the same has to be set aside.

5. A common counter-affidavit has been filed on behalf of respondents 1, 3 and 4 stating that on publication of news item on 1-12-2001 alleging misappropriation of post-metric scholarships in certain colleges of Suryapet, Nalgonda District the Commissioner of Social Welfare, Andhra Pradesh sent two Directors with a team of officers for conducting detailed enquiry in the matter. The report reveals that the petitioners-colleges claimed bogus scholarship in the name of bogus SC students and on verification it is found that the institutions from the academic year 1998-1999 to 2000-2001 produced 50% of bogus caste certificates. The District Collector (Social Welfare), Nalgonda sent a letter dated 08-01-20002 informing that the signatures of concerned M.R.O. was forged, official seals were fabricated by the principles and managements of the institutions with the aim to misappropriate scholarship amounts in the name of SC students. Further, it was reported that in the name of fictitious students scholarship amounts were claimed and received by the respective colleges. In view of the said report and the letter of the District Collector, a show-cause notice dated 7-2-2002 was issued to the petitioners, to which the petitioners submitted its explanations on 20-2-2002 justifying their action. The petitioners never requested for supply copy of the enquiry officer's report or the letter of the District Collector. As the explanation offered by the petitioners were not convincing, further show-cause notice dated 26-3-2002 was issued to which the petitioners submitted their explanations repeating what was stated earlier. After careful consideration of the entire material on record and keeping in view the explanation submitted by the petitioners, impugned orders were issued on 30-5-2002 disaffiliating the petitioners-colleges with immediate effect. The report of the Commissioner, Social Welfare discloses that the Principals and the management of the petitioners-colleges were actively involved in the scam hence criminal prosecution was ordered. The report also states that the signatures of candidates on scholarship applications with that of admission applications and acquittance are not tallying and the management might have forged the signatures. As per rules the scholarships have to be distributed in the presence of Assistant Social Welfare Officer and a public representative. It was not done in the present case. The signature of Assistant Social Welfare Officer was not found on the acquittance as mark of having attended for disbursement of scholarship to SC students. The Deputy Director of Social Welfare seized the records of the petitioners-colleges and the investigation is going on. The report further states that the Principals and management of the petitioners-colleges themselves have forged the signatures of M.R.O. In view of the same, impugned order passed by the 3rd respondent is perfectly justified and do not warrant any interference by this Court.

6. Petitioners filed their replies reiterating the same stand taken in the affidavit filed in support of the writ petitions and also stated that when forgery, misappropriation and fabrication of records are alleged, personal hearing is a

must. The petitioners were not given sufficient opportunity to explain about the forgery, misappropriation and fabrication of records etc. In the absence of any details including the report of the Commissioner and letter of the District Collector etc., petitioners-colleges cannot be disaffiliated when the matter is pending investigation both at the Government level and also in the criminal Court. Imposition of extraordinary penalty of disaffiliation is unwarranted and the authorities ought to have waited till the outcome of the criminal prosecution. As the impugned order affects large number of students, the same is liable to be set aside.

7. Learned Counsel for the petitioners, Sri B. Nalin Kumar urged the following grounds:

1. The impugned order passed by the 3rd respondent is in utter violation of principles of natural justice. When the basis for issuing show-cause notice is the report of the Commissioner, Social Welfare and the letter of the District Collector, the same has to be supplied to the petitioners. When the petitioners-colleges submitted explanation disowning their involvement 2nd show-cause notice was repeated for the very same allegations for which the petitioners submitted its explanations but the respondents did not consider the same.

2. When the entire enquiry is still pending with the Government and also in the Criminal Court, disaffiliating the petitioners-colleges is not warranted.

3. Under the Act, 1971, the Board of Intermediate only can pass orders. Hence, the impugned order passed by the 3rd respondent is without jurisdiction.

4. As per Rule 9 of the Rules issued in G.O. Ms. No.29, dated 5-2-1987 the Board of Intermediate Education is the competent authority and affiliation can be withdrawn if the institution fails to fulfill the stipulations mentioned in Rule 11 but not otherwise.

8. Elaborating his first contention, the learned Counsel relied on the passage from Wade's Administrative Law 8th Edition page 506 under the caption The right to know the opposing case and contends that uncommunicated report of the Commissioner and the letter of the District Collector cannot form basis for cancelling the affiliation and placed reliance on the judgments in State Bank of India and others Vs. D.C. Aggarwal and another, , D. Manikyamala v. Principal, Andhra Medical College 1990 (3) ALT 355 (DB), S.L. Kapoor Vs. Jagmohan and Others, .

9. Adverting to the 3rd and 4th points the learned Counsel contended that Section 9(ii) of the Act, 1971 authorizes the Board to grant affiliation or withdraw the affiliation or recognition. Accordingly the rules were framed in G.O.Ms.No.29 Education (Rules) dated 5-2-1987. As per Rule 9, the Board of Intermediate Education shall be the competent authority for granting or withdrawing of temporary/permanent recognition/affiliation for all educational institutions imparting intermediate education and it can be withdrawn only in case the

conditions mentioned in Rule 11 are violated but not otherwise.

10. Supporting the order passed by the 3rd respondent the learned Government Pleader for Higher Education contends that in view of the scholarship scam an enquiry was ordered by the District Collector and accordingly the records of the respective colleges were verified. The petitioners are aware of the enquiry conducted by the officials of the Social Welfare Department, as they have visited the colleges and verified the scholarship forms in the presence of the petitioners. In view of the same, the same was referred in the show-cause notice and the petitioners having submitted its explanations without any demur cannot contend violation of principles of natural justice when an adverse order is passed against them.

11. By placing reliance on the judgments in *Grosos Pharmaceuticals (P) Ltd. and Another Vs. The State of Uttar Pradesh and Others*, *Suresh Koshy George Vs. University of Kerala and Others*, *Secretary, Central Board of Excise and Customs and Others Vs. K.S. Mahalingam*, and *Ch. Anita and Others Vs. State of Andhra Pradesh and Others*, the learned Government Pleader contends that the petitioners having not demanded the report of the Commissioner and Collector mentioned in the show-cause notice, and the said enquiry conducted is preliminary to find out whether there is misappropriation of scholarship amounts by the petitioners-colleges, cannot now contend violation of principles of natural justice. It is further argued by the learned Government Pleader that the 3rd respondent is the competent authority under the Act, 1971 to issue orders on behalf of the Board of Intermediate Education as held by this Court in *Gowthami Co-op. Junior College, Gannavaram Vs. Commissioner and Secretary, Board of Intermediate Edn., Hyd.*. The enquiry alleged to be pending is only for laying criminal prosecution. The scholarship amounts were granted in favour of students on fictitious names. Unless the rules prescribe for personal hearing, it is not open for the petitioners to contend that they are entitled to personal hearing by placing reliance on the judgments of the Apex Court and also this Court in cases 4 to 7 cited supra.

12. In view of the above rival contentions, the points that emerge for consideration in these writ petitions are:

1. Whether the impugned order passed by the 3rd respondent cancelling the affiliation and disaffiliating the petitioners-colleges is in violation of principles of natural justice? And

2. Whether the 3rd respondent is having jurisdiction to cancel the affiliation if so whether affiliation can be cancelled on any other ground otherwise than under Rule 11?

13. It is "relevant to notice here that large-scale misappropriation of scholarship amounts were published in the local newspapers, which necessitated for ordering enquiry. Accordingly, the Commissioner, Social Welfare Department, Hyderabad deputed two Joint Directors with a team of officers to inspect the colleges, who

inspected the records of the colleges and sent report to the District Collector (Social Welfare). The report discloses that the petitioners-colleges are claiming bogus scholarships in the name of SC students and 50% bogus caste certificates were produced by the two institutions from 1998-99 to 2000-2001 by forging the signatures of M.R.O. and fabricating the seals of the officials apart from seeking scholarships in the fictitious names. Basing upon the said report the District Collector directed the 3rd respondent to take necessary action for cancelling the affiliation in favour of the petitioners-colleges. Accordingly, show-cause notices were issued to which the petitioners submitted its explanations. Dissatisfied with the explanation offered by them, final show-cause notice was issued with identical allegations and affiliation was cancelled by order dated 30-5-2002. The petitioners submitted their explanation without any demur nor demanded the report of District Collector and instructions of the Commissioner, Social Welfare basing on which show-cause notice was issued.

14. In D.C. Aggarwal's case (supra) the point fell for consideration was whether the disciplinary authority while imposing punishment can act on material which is neither supplied nor shown to the delinquent. The High Court allowed the LPA quashing the order passed by the disciplinary authority. While affirming the order passed by the High Court the Apex Court held that CVC report being the material prepared behind the back of the delinquent employee without his knowledge or supplying any copy to him the High Court was justified in quashing the order.

15. A Division Bench of this Court in D. Manikyamala's case (supra) held that adverse conclusion reached by the Director of Tribal Welfare against the petitioners is based upon some enquiries made by him in some villages and some statements collected by him behind the back of the petitioners and no opportunity was afforded to the petitioners to show-cause as to why the enquiries conducted, the statements recorded and the documents collected should not be acted upon.

16. In S.L. Kapoor 's case (supra) while considering the supersession of Municipal Committee, New Delhi the Supreme Court observed as under:

"..... If there was any correspondence between the New Delhi Municipal Committee and any other authority about the subject-matter of any of the allegations, if information was given and gathered it was for entirely different purposes. In our view, the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a "double opportunity" that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met....."

17. The Supreme Court in *Grosons Pharmaceuticals case* (supra) while considering the blacklisting of small-scale industry engaged in manufacturing and sale of drugs registered with the Directorate of Industry (Stores Purchase Section), Kanpur, which was an approved contractor for supply of drugs to the Government departments held as under:

".....It is true that an order blacklisting an approved contractor results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principle of audi alteram partem which is one of the facets of the principles of natural justice. The contention that it was incumbent upon the respondent to have supplied the material on the basis of which the charges against the appellant were based, was not the requirement of the principle of audi alteram partem. It was sufficient requirement of law that an opportunity of show-cause was given to the appellant before it was blacklisted. It is not disputed that in the present case, the appellant was given an opportunity to show-cause and it did reply to the show-cause which was duly considered by the State Government. We are, therefore, of the view that the procedure adopted by the respondent while blacklisting the appellant was in conformity with the principles of natural justice".

18. A Division Bench of this Court in *Ch.Anitha's case* (supra) while considering non-furnishing of enquiry report to the students whose admission was cancelled expelling them from college held as under:

".....When the petitioners received the show-cause notices, they did not demand from the Principal or other higher-ups in the Education Department to furnish copy of the enquiry report submitted by the Regional Joint Director of School Education or any other documents they might have thought them to be necessary in order to give effective reply to the show-cause notices. It is also necessary to notice that the enquiry conducted by (he Regional Joint Director of School Education is in the. nature of a preliminary enquiry preceding issuance of the show-cause notices on 11-12-2000. It is true that the Principal did not furnish copies of the preliminary enquiry report submitted by the Regional Joint Director of School Education to the petitioners. But, as pointed out supra, the show-cause notice specifically refer to the statements given by the petitioners in response to the questionnaires. The petitioners are the authors of the replies to the questionnaires. It is not the case of the petitioners that the replies to the questionnaires were obtained by the Principal against their will and volition or practicing or exercising coercion or under influence.....

.....In view of the same, there is no violation of audi alteram partem rule and fair hearing was given to the affected students before their admissions were cancelled...."

19. From the conspectus discussion of the law laid down by the Apex Court as well as this Court it emerges that principles of natural justice does not have a rigid formula. The principles of natural justice are flexible and whether they were

observed in a given case or not depends upon the facts and circumstances of each case. The rules of natural justice are not embodied rules and they cannot be imprisoned within the straight-jacket of a rigid formula. Earlier the Courts have recognized two principles of natural justice, namely, (1) *nemo debet esse judex in propria causa*. (No man shall be a judge in his own cause or the deciding authority must be impartial and without bias); (2) *audi alteram partem* (No man should be condemned unheard). However, due to rapid development and growth of Constitutional Law as well as Administrative Law, a third principle of natural justice also evolved, namely, speaking orders i.e., all orders should be supported by reasons. Giving of reasons in support of an order is considered to be one of the facet of principles of natural justice for the reason that the party affected by the decision has a right to know not only the result of the enquiry but also the reasons in support of the decision. Speaking orders are necessary if the judicial review is to be effective. The condition of recording reasons is imposed as a safeguard against the arbitrary exercise of power by the authorities concerned. In the light of the same, it has to be seen whether the authority while passing the order in exercise of its statutory power has acted in a fair and reasonable manner and observed principles of natural justice. In the present case, the future of large number of students is at stake and the cancellation of affiliation will entail civil consequences. When the future of the students at large is in jeopardy the fairness in action requires observing of principles of natural justice.

20. The petitioners, no doubt, submitted its explanation without demanding for the report of the Commissioner which is the basis for issuance of show-cause notice but the show-cause notice do not contain any particulars on which action proposed to be taken and the petitioners colleges are to be answered for the alleged misappropriation.

21. It is well settled that truth or correctness of the charges is not. subject-matter of judicial review prior to conclusion of the departmental enquiry. But insofar as vagueness of the charges is concerned, the same is observed to be accepted. A reading of the show-cause notice as mentioned above do indicates that the charges are not specific and clear. Showcause notice do not point out clearly the, precise charge against the petitioner"s colleges, which they are expected to meet. It is not the case of the respondents that, the show-cause notice is accompanied by statement of particulars with regard to irregularities committed by the petitioners colleges and the allegations are general in nature, to the effect that the petitioners-colleges are claiming scholarships in the name of bogus certificates from the years 1998-99 to 2000-2001 and further, the M.R.O. signature was forged with the aim of misappropriating the scholarship amounts in the name of SC students. What role the petitioners-colleges played, which of the certificates are bogus caste certificates produced by them all these years, which of the amount claimed against the names of SC students and which of the certificates were tampered with the signatures of M.R.O. are not furnished in the initial show-cause notice nor in the second show-cause notice to be answered by the petitioner colleges. In the absence of the same, it is not open

for the respondents to contend that the petitioners submitted its explanation and they are aware of the bogus caste certificates and no prejudice is caused to them if affiliation is withdrawn.

22. It is well settled that in the absence of any particulars in the show-cause notice or in the order impugned the same cannot be supplemented by way of counter-affidavit as held by the Apex Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, When the order impugned is not a speaking order nor any reasons were assigned for cancellation of affiliation or disaffiliating the petitioners-colleges. The respondents tried to justify their action by giving reasons in the counter stating that the report of the Commissioner, Social Welfare clearly stated in respect of petitioners' colleges the signatures of candidates on scholarship applications, college admission applications and acquittance are not tallying. The report further states that the college Principal and the management might have forged the signatures on applications and particulars on acquittance. Though as per rules scholarships to students have to be disbursed in the presence of Assistant Social Welfare Officer and a public representative, it was not done. The signature of Assistant Social Welfare Officer was not found on the acquittance as mark of having attended for disbursement of scholarships to SC students. A random check was conducted and irregularities were detailed in the counter. None of the said allegations were disclosed either in the show-cause notice nor reasons were assigned for cancellation of affiliation. The cancellation of affiliation or disaffiliation will have civil consequences for the reason when the future of the students at large is in jeopardy, the fairness in action requires observance of principles of natural justice. In view of the same, the impugned order cannot be sustained. Point No.1 is answered accordingly.

23. Point No.2: I proceed to consider the next argument presented on behalf of the petitioners, namely, whether the impugned order passed by the third respondent is without jurisdiction and the same is contrary to the stipulations mentioned in Rule 11 of the Rules or not.

24. u/s 9(ii) of the Act 2/ 71, the Board shall have power either to grant affiliation or withdraw affiliation/ recognition of any college or other educational institution in the State. Rule 9 of the Rules authorises the competent authority either to grant or withdraw temporary /permanent recognition/affiliation for all educational institutions imparting intermediate education as per Clause (ii) of Sub-section (1) Section 9 of Act 2/71. Conditions for withdrawal of permission/ recognition/affiliation are enumerated in Rule 11 of the Rules. Sub-rule (1) of Rule 11 contemplates withdrawal of affiliation if institution failed to fulfil any of the conditions prescribed while granting permission/ recognition/affiliation.

25. This Court in *Gowthami Co-op. Junior college (supra)* categorically held that the third respondent is the competent authority to issue orders on behalf of the Board of Intermediate Education. In view of the same, the contention of the learned Counsel for the petitioners that the third respondent is not competent

and has no jurisdiction to withdraw the affiliation is devoid of any substance. Equally, the contention that the competent authority can withdraw the affiliation/ disaffiliate only under the conditions enumerated under Rule 11 cannot be accepted for the reason, Rule 11 mandates withdrawal of recognition/ affiliation, if the institution fails to fulfil any of the conditions prescribed either permanently or for a specified period. The Board has no option except to withdraw the permission if the colleges fail to fulfil the conditions prescribed, whereas Section 9(ii) of the Act 2/71 does not restrict the power to withdraw the affiliation or recognition if there is any large scale irregularities or mismanagement of the institution were noticed after granting recognition. When there is a power to grant affiliation or recognition, then the same can be withdrawn if it is not enumerated under the rules,

26. In view of answering point No. 1 in affirmative, the writ petitions have to be allowed and are accordingly allowed. The impugned orders are set aside. However, it is made clear that if the third respondent wants to proceed with disaffiliation of the petitioners-colleges, it is open for them to give fresh show-cause notices with specific allegations and can take appropriate action according to law. No costs.