
(1992) 05 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 155 of 1989

Subrata Das

APPELLANT

Vs

Principal, G.C. College, Silchar and Others

RESPONDENT

Date of Decision : 08-05-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 1992 Guw 118

Hon'ble Judges : Manisana, J;M. Sharma, J

Bench : Division Bench

Advocate : M.K. Sarma and D.K. Das, for the Appellant; A.S. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

Manisana, J.—The petitioner Shri Subrata Das was a student of the 2nd year Degree (Arts) in G. C. College, Silchar. There were allegations against him for taking part in the incident of 26-9-88 in the office of the Principal. Therefore, a show cause notice was issued to him as to why disciplinary action should not be taken against him. The petitioner replied to the show cause notice. The Governing Body considered the show cause statement submitted by the petitioner in the meeting held on 28-11-89 and resolved that the Principal incharge should issue transfer certificate to the petitioner Shri Subrata Das by striking his name off the College Roll with immediate effect. Accordingly, the Principal incharge issued the impugned notice dated 1-12-88 to the effect that the name of the petitioner had been struk off the College Roll and a transfer certificate had been issued to him.

2. The only question which arises for our consideration is whether, before the issue of the impugned notice striking the name of the petitioner off the College Roll and the issue of transfer certificate, observation of the principles of natural justice was required .

3. Dr. M.K. Sharma, learned Counsel for the petitioner has contended that in view of para-4 of Chapter-IV of the Assam Education Department Rules and Orders, the application of any of the rules of natural justice has been excluded.

4. Para-4 of Chapter-IV of the aforesaid Rules and Orders is in the following words ;

"The head of an institution may with the previous approval of the governing body or managing committee, order any undesirable and troublesome scholar to leave the institution without assigning any reason if such action is considered to be necessary for the good of the institution. And in such a case a transfer certificate, free of transfer fee shall be issued."

5. In de Smith's Judicial Review of Administrative Action, Fourth Edition, at page 225, it is stated thus :

"As we have seen, the courts have sometimes held the exercise of disciplinary functions to be non-judicial and therefore not subject to the rules of natural justice. But "discipline", like "privilege", is an unwieldy analytical concept. That the courts ought not to interfere in certain disciplinary situations is clear enough. A parent reduces his child's pocket-money, a school teacher gives a pupil a detention; the courts will have nothing to do with these matters for reasons of public policy and because the damage sustained is too trivial. It is equally clear that they should and will be prepared to set aside some disciplinary decisions for non-observance of procedural requirements."

It has further been stated :

"It is now clear that disciplinary proceedings in higher educational institutions have to be conducted in conformity with natural justice, provided at least the penalty imposed or liable to be imposed is severe, and, probably, that not only academic performance is being taken into account."

6. In *Glynn v. Keele University* (1971) 2 All ER 89 : (1971) 1 WLR 487 a student who had been fined and rusticated for exhibiting himself nude on the campus was able to show that the Vice-Chancellor had failed to observe the requirements ;of natural justice.

7. In *Wade's Administrative Law*, Sixth Edition, at page 569, it is stated in the following words:

"Before being expelled for failure in the examinations or for misconduct they are entitled to be treated fairly and given a hearing -- though clearly this does not apply to the conduct of examinations themselves. In one case students expelled for failure in examinations succeeded in showing that they had not been treated in accordance with natural justice by the examiners, but this was because the examiners had themselves decided that they be asked to withdraw after taking into account personal factors as well as examination marks."

8. A "hearing" will normally be an oral hearing. But in some cases it may suffice

to give an opportunity to make representations in writing, provided that any adverse material is disclosed and provided, as always, that the demands of fairness are substantially met. In various situations it may be possible to dispense with oral hearings. It has been held that a statutory board, acting in an administrative capacity, may decide for itself whether to deal with applications by oral hearing or merely on written evidence and argument, provided that it does in substance "hear" them; and that dealing with an appeal on written communications only is not contrary to natural justice. The visitor of a college may similarly deal with an appeal on written submissions only and a student may be rusticated from his college without an oral hearing, if he been told the nature of the complaints against him and given a fair opportunity to state his case in writing, (see pages 543 and 544 of Wade's Administrative Law, Sixth Edition).

9. In *R.S. Dass Ors. Vs. Union of India (UOI) and Others*, the Supreme Court has held that the principle of audi alteram partem is a basic concept of principles of natural justice. No one should be condemned without hearing is the essence of justice. Courts of Law apply this principle to ensure fair play and justice in judicial and quasi-judicial matters. Of late these principles have been extended even to administrative actions also. However, the application of the audi alteram partem rule is not applicable to all eventualities or to cure all ills. Its application is excluded in the interest of administrative efficiency and expedition. Sometimes legislation itself excludes the application of the rule.

10. In *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, the Supreme Court has held that if a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority.

11. In *Carborundum Universal Ltd. Vs. Central Board of Direct Taxes, New Delhi*, it has been held by the Supreme Court that the legal position is that where a statutory provision does not exclude natural justice the requirement of affording an opportunity of being heard can be assumed, particularly when the proceedings are quasi-judicial. Exclusion, however, can either be by a clear provision or inferred from the scheme, as also the nature of power which is being exercised.

12. In view of the discussions above, in the matter of academic discipline, if the punishment imposed is severe, there shall be compliance with the principles of natural justice. But the question, whether the application of any or all the principles of natural justice are to be excluded, depends on the particular case.

13. The next question which, therefore, arises for consideration is whether in view of use of the expression "without assigning any reason" in para-4 of Chapter-VIII of the Assam Education Department Rules and Orders, application of audi alteram partem rule or any of the principles of natural justice has been excluded.

14. In *S.N. Mukherjee Vs. Union of India*, the Supreme Court has held :

"Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement."

15. In *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, the Supreme Court has held that the expression "without assigning any reason" implies that the decision has to be communicated, but reasons for the decisions have not to be stated; but the reasons must exist, otherwise the decision would be arbitrary.

16. In view of the above decisions of the Supreme Court, requirement to record reasons is one of the principles of natural justice. Therefore, although the expression "without assigning any reason" has been used in para-4 reason must exist; otherwise, decision would be arbitrary and that reason must be recorded. However, the question as to whether application of audi alteram partem rule shall, or shall not, be excluded in view of para-4 of the above rules will not be required to be considered in the present factual position. The maxim audi alteram partem has many facets. Two of them are: (a) notice of the case to be met; and (b) opportunity to explain. The petitioner was given notice to show cause as to why disciplinary action should not be taken against him. He gave reply to the show cause notice. The minutes of the meeting of the Governing Body indicates that the Governing Body considered the show cause reply on 28-11-88 and resolved to issue the impugned notice after recording reasons. In other words, the petitioner was given notice of the case to be met and opportunity to explain that is to say,-- the petitioner was given fair opportunity of the nature of the complaint against him as well as fair opportunity to state his case in writing. Therefore, there was sufficient compliance with the rules of natural justice keeping in view the principles discussed above, although there was no oral hearing.

17. For the foregoing reasons, the petition is dismissed with a direction that the College authority of any College to which the petitioner seeks admission shall not refuse his admission, save and except Gurucharan College, Silchar. No costs.