

(1973) 04 MP CK 0003

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 284 of 1973

Sudhir Kumar Suri

APPELLANT

Vs

Principal, Mahakoshal Arts Mahavidyalaya, Jabalpur

RESPONDENT

Date of Decision : 21-04-1973

Acts Referred:

Jabalpur University Ordinance — Section 10(1)

Citation : AIR 1973 MP 278 : (1977) ILR (MP) 529 : (1973) JLJ 827 : (1973) 18 MPLJ 815

Hon'ble Judges : G.P. Singh, J;A.P. Sen, J

Bench : Division Bench

Advocate : S.C. Datta, for the Appellant; A.P. Tare, for the Respondent

Final Decision : Dismissed

Judgement

Singh, J.

By this petition under Articles 226 and 227 of the Constitution the petitioner calls into question an order dated 25th March 1973 passed by the Principal, Mahakoshal Arts Mahavidyalaya, Jabalpur, rustivating him for a period of two years.

The petitioner was a student of M. A. (Final) Philosophy in Mahakoshal Arts Mahavidyalaya, Jabalpur. A complaint was made to the Principal on 21st March, 1973 by one Mrs. Renuka Gupta, a Lecturer in Government Science College, Jabalpur, that the petitioner molested her in the College Library. On this complaint, the Principal on 22nd March, 1973 issued a notice to the petitioner to appear before him and to explain why he should not be rusticated from the college on the ground of misconduct. As the petitioner denied the charge, the Principal constituted a committee for conducting an enquiry into the complaint against the petitioner. The committee consisted of Dr. V. S. Rao, Professor and Head of the Department of economics, Professor S. C. Verma and Professor D. K. Moitra. Dr. Rao was the Chairman of the Enquiry Committee. After making

necessary inquiry, the committee came to the conclusion that the complaint made by Mrs. Gupta was true and that necessary action be taken against the petitioner. It was on this report that the Principal passed the impugned order rusticating the petitioner.

The only contention raised by the learned counsel for the petitioner in support of this petition is that the principles of natural justice were not followed in the inquiry held by the committee and for this reason the order of rustication is invalid. Learned counsel argued that the petitioner was not shown the complaint made by Mrs. Gupta and that he was not given any opportunity to cross-examine her.

It would be convenient first to see as to what steps were taken by the Enquiry Committee. Dr. Rao, who was the Chairman of the committee, has filed an affidavit in support of the return of the respondent. The record of the proceedings of the committee has also been exhibited as Annexure R-III. The affidavit of the Chairman and the document Annexure R-III clearly show that the complaint of Mrs. Gupta, which is Annexure R-IV, was read over to the petitioner when he appeared before the committee and he was asked to explain the allegations against him. The petitioner denied the charge as false and pleaded that he was not present in the college at the time when the incident is said to have happened, and that he had gone to Ranjhi. The petitioner was asked to produce witnesses in support of his defence and he examined one R. G. Patel to prove his alibi. The Enquiry Committee later examined two other witnesses, who had not much to say on this point. It also appears that Mrs. Gupta was also examined by the Committee. The statement of Mrs. Gupta was, however, taken in the absence of the petitioner and he was not afforded any opportunity to cross-examine her.

The grievance of the petitioner that the complaint made by Mrs. Gupta was not made known to him must be held to be false in view of the affidavit of the Chairman of the Enquiry Committee. We accept the affidavit of the Chairman that the complaint (Annexure R-IV) was read over to the petitioner when he appeared before the committee. The complaint is a detailed one and mentions the name of the petitioner. The other allegation of the petitioner that Mrs. Gupta was not examined in his presence and that he was not given any opportunity to cross-examine her appears to be correct, and the only question is whether the inquiry is vitiated because of this.

Section 10 (1) of Ordinance No. 2 of Jabalpur University under which the Principal has exercised his powers to rusticate the petitioner reads as follows:

"10. (1) When a student of a college has been guilty of grave misconduct or persistent idleness, the Principal of the College may, after informing his guardian and according to the nature and gravity of the offence,--

(a) expel, (b) rusticate, or (c) with the approval of Vice-Chancellor, disqualify such student from being a candidate at the examination for which he was prosecuting a course at the College."

A reading of the above provision shows that the Ordinance does not provide as to what kind of inquiry must be held by the Principal before taking disciplinary action against the student guilty of misconduct. The section provides no special form of procedure and, therefore, the Principal must adopt that procedure which is suited to the facts and circumstances of the case. It is true that the Principal must follow the principles of natural justice before holding that the charge of misconduct is proved, but the requirements of natural justice do not have any fixed content and they depend upon the circumstances of the case, the nature of inquiry, the rules under which the tribunal is acting and the subject-matter that is being dealt with. The following observations of the Privy Council in *Ceylon University v. Fernando* (1960) 1 WLR 223 are relevant on this point:

"Their Lordships do not propose to review these authorities at length, but would observe that the question whether the requirements of natural justice have been met by the procedure adopted in any given case must depend to a great extent on the facts and circumstances of the case in point. As Tucker L. J. said in *Russell v. Duke of Norfolk* (1948) 65 TLR 225. "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth." In the earlier case of *General Medical Council v. Spackman*, 1943 AC 627. Lord Atkin expressed a similar view in these words: Some analogy exists, no doubt, between the various procedures of this and other not strictly judicial bodies, but I cannot think that the procedure which may be very just in deciding whether to close a school or an insanitary house is necessarily right in deciding a charge of infamous conduct against a professional man. I would, therefore, demur to any suggestion that the words of Lord Loreburn L. C. in *Board of Education v. Rice* 1911 AC 179 afford a complete guide to the General Medical council in the exercise of their duties."

"With these reservations as to the utility of general definitions in this branch of the law, it appears to their Lordships that Lord Loreburn's much quoted statement in 1911 AC 179 still affords as good a genera] definition as any of the nature of and limits upon the requirements of natural justice in this kind of case. Its effect is conveniently stated in this passage from the speech of Viscount Haldane L. C. in *Local Government Board v. Arlidge* 1915 AC 120 where he cites it with approval in the following words : "I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In 1911 AC 179 he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The Board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to

those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view."

"From the many other citations which might be made, "their Lordships would select the following succinct statement from the judgment of this Board in *De Verteuil v. Knaggs* 1918 AC 557 : " Their Lordships are of opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice."

"The last general statement as to the requirements of natural justice to which their Lordships would refer is that of Barman, J. (as he then was) in *Byrne v. Kinematograph Renters Society Ltd.* 1958) 1 WLR 762 of which their Lordships would express their approval. The learned Judge said this:--"What then are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not myself think that there really is any thing "more." (pp. 231-232)."

In *Fernando's* case (1960) 1 WLR 223 disciplinary action was taken against a student by the Vice-Chancellor of University of Ceylon and the question was whether the principle-- of natural justice were satisfied. It was argued that witnesses were not examined in presence of the student and he had no opportunity of cross-examining them and, therefore, there was violation of the requirements of natural justice. The Privy Council negated this contention and pointed out that the mere fact that the witnesses were not examined in presence of the student and that he had no opportunity to question them on the statements made did not in itself involve any violation of the requirements of natural justice; (See pp. 233 and 234). The Supreme Court in *State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad*, , has also held that right to cross-examine is not a necessary attribute of natural justice, and that the rules of natural justice vary with the varying constitution of statutory bodies. In that connection their Lordships said:

"Rules of natural justice require that a party against whom an allegation is being inquired into should be given a hearing. *Bakshi Gulam Mohammad* was certainly given that. It was said that the right to the hearing included a right to cross-examine. We are unable to agree that that is so. The right must depend upon the circumstances of each case and must also depend on the statute under which the allegations are being inquired into. This Court has held in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , that the rules of natural justice vary with the varying constitution of statutory bodies and the rules prescribed by the Act under which they function and the question whether or not any rules of natural justice had been contravened should be decided not under any preconceived notions, but in the

light of the statutory rules and provisions." In view of these principles, we are clearly of opinion that the petitioner cannot succeed simply by showing that Mrs. Gupta was not examined in his presence and that he was not given opportunity to cross-examine her.

The only question in the case of inquiries conducted under Sec. 10 of Ordinance No. 2 is whether a fair opportunity was given to the student concerned to meet the charge of misconduct. Now, the Enquiry Committee, which the Principal constituted, was a responsible and independent body consisting of three professors. They read over the complaint to the petitioner and thus the nature of accusation was clearly made known to the petitioner. He was also given opportunity to state his case and to produce whatever defence he wanted to produce. The petitioner denied the charge and pleaded alibi. A witness produced by him was also examined. It is here pertinent to notice that the petitioner did not say in his defence that he was not known to Mrs. Gupta, and that she could not have identified him. The statement of Mrs. Gupta, which was taken later by the Enquiry Committee, did not contain any new material which was not contained in the complaint. Therefore, it cannot be said that any fresh material was brought before the committee of which no notice was given to the petitioner. Moreover the facts of the case are very simple. The petitioner was known to Mrs. Gupta. The petitioner and Mrs. Gupta were sitting in the library consulting books. Suddenly, the petitioner rose from his seat, went to Mrs. Gupta, molested her and ran away, although he was chased by Mrs. Gupta and some others. There could be no question of any mistaken identity, as the petitioner was known to Mrs. Gupta. From the facts and circumstances of the case, we are of opinion that the petitioner has a fair opportunity to meet the charge against him and there was no violation of any principle of natural justice on the ground that Mrs. Gupta was not examined in his presence and that he had no opportunity to cross-examine her.

The petition fails and is dismissed with costs. Counsel's fee Rs. 100/-. The outstanding amount of the security deposit, if any shall be refunded to the petitioner.