
(1999) 09 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4411 of 1998

Sushil Kumar

APPELLANT

Vs

Maharishi Dayanand University and Others

RESPONDENT

Date of Decision : 29-09-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2000 P&H 72 : (2000) 124 PLR 481 : (2000) 1 RCR(Civil) 244

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : B.S. Rana, Ajai Lamba and Hemant Bassi, for the Appellant; B.L. Gupta, for the Respondent

Judgement

V.S. Aggarwal, J.—By this common judgment, the civil writ petitions bearing No. 4411 and 4357 of 1998 can conveniently be disposed of together. Though the facts are different but the question involved is identical.

2. In the case of Sushil Kumar (CWP No. 4411 of 1998), it has been asserted that petitioner Sushil Kumar was admitted in LL.B. Ist year of 5 years Course in Maharshi Dayanand University (for short "the University") in the session 1994-95. On 27-1-1998 there was a notice on the notice board of the Law Department that the petitioner has been ordered to be expelled for one year from the University in terms of the provisions of Statute 39(1) of the University Calendar, Volume I, by the Vice-Chancellor of the University. On the same duty, police came to the house of the petitioner alleging that he has hooted in the welcome party in the Mathematics Department and another student of the Law Department had caused knife injuries to the two students of the Mathematics Department. A case had been registered punishable u/s 324/34 of the Indian Penal Code. The petitioner made a detailed representation to the Chairman, Department of Law of the University. He submitted that he is innocent. Couple of affidavits were also filed in support of his claim. No action was taken on the representation of the petitioner. By virtue of the present writ petition, he assails

the expulsion order asserting that there was no proper identification of the offending students. No proper opportunity was given to the petitioner of being heard because no notice was issued to the petitioner before passing of the order of expulsion. Even his explanation has not been called. It has further been asserted that at least on the receipt of the representation, the matter should have been considered. In these circumstances, it was prayed that the petitioner should be allowed to continue the classes of LL.B. 4th Year and the impugned order expelling him for one year should be quashed.

3. The petition has been contested in the joint written statement filed by the respondents. It was pointed out that students of the Department of Mathematics had organised a welcome party on 21-1-1998 in the department. The petitioner and his companion Anuj Tyagi had indulged in rowdiness and hooted at the girl students. When challenged, Anuj Tyagi whipped out a knife and stabbed one Ajay and Yashpal. The injured students were removed by the other co-students to the Rohtak hospital in the emergency ward. On the basis of medico-legal report, a case was registered. The police started investigation. The photographs of the assailants were shown to the complainant and it was confirmed by him.

4. The Chief Security Officer of the University had submitted the report that Anuj Tyagi had used the knife during the scuffle while the petitioner was indulging in hooting. A reign of terror prevailed in the University. The entire atmosphere was surcharged with tension. The girl students were feeling insecure. Unless immediate and stern action had not been taken, there would have been large scale agitation and destruction of the University property. Vice-Chancellor was himself satisfied regarding the incident and involvement of the petitioner. He, therefore, expelled him for a period of one year.

5. It was pleaded that it was in the public interest not to hold any further enquiry in view of the statement made by the complainant before the University Authorities and the report submitted by the Chief Security Officer. To diffuse the situation, the petitioner was expelled. Plea was also raised that the expulsion order had been passed by the Vice-Chancellor.

6. In the case of Dushyant Gulla (CWP No. 4357 of 1998), the facts alleged are that he had passed B.A. Course in 1997. Entrance Test was held for M.A. Previous History. He was admitted and had joined the University. He was falsely implicated in a case punishable u/s 342, 366/376/511 of the Indian Penal Code. First Information Report was lodged at the instance of one Monica who is a student of M.A. Political Science. They knew each other. After recording of the First Information Report, the respondents without issuing any show cause notice expelled the petitioner for a period of three years. The petitioner submitted a representation narrating all the circumstances and that he had not abducted Monica. His two other co-accused were discharged by the Chief Judicial Magistrate, Rohtak. The order expelling him for a period of three years had been challenged on the ground that principles of natural justice have been avoided. No opportunity was given to the petitioner before taking the extreme steps. Even

the representation of the petitioner had not been decided. It was prayed, therefore, that the order expelling him for a period of three years be quashed. He should be allowed to continue with his studies.

7. In the written statement filed, it was pointed out that on 4-9-1997 at 3-45 P.M. a police party along with some local residents of the Housing Board Colony, Rohtak, had brought one Monica, a student of M.A. Political Science (Previous), to the Supervisor of Girls Hostel No. 2. It was reported that the police on a tip-off by the residents of the colony had raided the house and rescued Monica. Ms. Monica gave a written complaint alleging that while she was proceeding to her department on 4-9-1997, the petitioner offered to take her to the library on a scooter. On his way, on the pretext of collecting his identity card, he took her to the said house and tried to rape her. She had raised an alarm which attracted other persons. On receipt of the complaint, the warden reported the matter to the Chief Warden. Subsequently, the police party along with Chief Security Officer of the University visited the house. The knife and identity card of the petitioner were recovered. Monica was handed over to her parents at Rewari. In the meantime, the news had spread in the campus. The girl students were feeling highly insecure and requested the Vice-Chancellor to take immediate action against the culprits. Local Women Organisations had also taken up the matter and were agitating. There was mounting tension in the campus of the University. The Vice-Chancellor used his extraordinary powers under Statute 39 of the Maharshi Dayanand University Act, Volume I. The petitioner was expelled for a period of three years. After the Incident, the petitioner and his companions had absconded. It came to light that the petitioner was arrested on 9-9-1997. Since the petitioner was absconding, no show cause notice was issued or explanation could be called. It has further been pleaded that the Vice-Chancellor could review or revise his decision on the recommendation of the Head of the Department. The representation did not disclose any extenuating circumstance.

8. The main controversy agitated has been as to whether before expelling the petitioner for a specific period, a show cause notice must have been issued or not? The learned counsel for the petitioner insisted that the orders in question would not stand scrutiny for the reason that no opportunity of being heard had been granted before the petitioners were expelled.

9. The attention of the Court had been drawn towards Statute 39 of the Statutes applicable to Maharshi Dayanand University, Rohtak. Statute 39(1) of the said University gives certain powers to the Vice-Chancellor as an authority to take disciplinary action. He can delegate all or such of his powers as he deems proper to the Chief Warden/Dean, Students Welfare/Proctor and to such other persons as he may specify in this behalf. He can expel a student for a specific period. In addition to that, vide Statute 39(2) of the Statutes, the Head of the Department is also competent to take disciplinary action and report the matter to the Vice-Chancellor but that power is confined to imposition of fine not exceeding Rs. 100/- ; to suspend a student from classes up to one month; or to record adverse

entry in the character certificate to be issued at the time of student leaving the department. Whenever there is an order of rustication or expulsion under the Statute, the matter has to be reported to the Registrar immediately after the order has been passed by the Vice-Chancellor. It has to be accompanied by a certificate that the student has been given adequate and reasonable opportunity to explain his position in writing before the order was passed by the Vice-Chancellor. Statute 39(6) of the Statutes permits the Vice-Chancellor to revise or review his orders within 10 days.

10. The argument of the respondents learned counsel that if the Vice-Chancellor has to pass an order expelling a particular student, then he need not issue a show cause notice, indeed, has to be stated to be rejected. The Scheme of the Statute, a brief resume of which has been given above, indicates that opportunity of being heard is well enshrined in the Statute. Needless to state that even if not there, to be a valid order it should be presumed that such an opportunity had to be granted.

11. Learned counsel for the petitioner relied on the decision in the case of Rakesh Kumar Vs. The State of Punjab and Others, . In that case, the Principal of a Government Multi-purpose Higher Secondary School had suspended Rakesh Kumar from the rolls of the school, He was refused admission to appear in the annual examination. Before passing the suspension order, no opportunity was given to him. The order as such was quashed holding that it was necessary to give him an opportunity of being heard. The same view prevailed in the subsequent decision in the following year in the case of Devinderpal Singh Sandhu Vs. K.L. Kapur and Another, . Herein also, no notice of proposed action had been given to the student. The Court even held that the order was passed not on merits but because of extraneous considerations. The order of rustication/expulsion was quashed. Supreme Court in the case of Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, , was also concerned with a similar situation and held as under :--

"..... But what the procedure should be in detail will depend on the nature of the tribunal. There is no doubt that many of the powers of the Committee under Chap. VI are of administrative nature; but where quasi-judicial duties are entrusted to an administrative body like this it becomes a quasi-Judicial body for performing these duties and it can prescribe its own procedure so long as the principles of natural justice are followed and adequate opportunity of presenting his case is given to the examinee."

12. There, indeed, is little controversy with the said proposition. The maintenance of moral standard is inherent in the very idea of education. Every educational institution has strived to improve the moral standard of the student. Laxity in such enforcement will defeat the purpose for which the University stands for. It is also to be remembered that preservation of discipline is a domestic matter with which University Authorities only are left to decide. Only when there are mala fides, absurd order ignoring the statute or violating the

basic principles of natural justice, the Court will interfere. It is also to be remembered that the Vice-Chancellor generally would have the interest of the institution in mind and in day-to-day dealing cater to the needs of the young students.

13. In *Board of Education v. Rice* 1911 AC 179, Lord Loreburn laid down that in disposing of a question which was the subject of 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 a duty which lay on every one who decided anything. He did not think that the Board was bound to treat such a question as though it were a trial. The Board need not examine witnesses. It could, be thought, obtain information in any way it thought best. But always giving a fair opportunity to those, who were parties to the controversy, to correct or contradict any relevant statement prejudicial to their view. In *Russel v. Duke of Norfolk* (1949) 1 All ER 109, Tucker LJ held as under :--

"There are in my view no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirement of natural justice, must depend on the circumstances of the case, the nature of the inquiry....."

14. Supreme Court even in *Union of India (UOI) and Another Vs. P.K. Roy and Others*, , pointed that doctrine of natural justice cannot be imprisoned within a strait-jacket of a rigid formula. Its application depends on several factors.

15. On the strength of these principles, the learned counsel urged that even if an opportunity of being heard had to be given, in the peculiar facts, it could not be given before the order expelling the petitioner had been passed. He relied on the well known decision of the Supreme Court in the case of *Swadeshi Cotton Mills Vs. Union of India (UOI)*, . In paragraph 26 of the judgment, the Supreme Court held as under :--

"Well then, what is "natural justice"? The phrase is not capable of a static and precise definition. It cannot be imprisoned in the strait-jacket of a cast-iron formula. Historically, "natural justice" has been used in a way "which implies the existence of moral principles of self-evident and unarguable truth". In course of time, judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to "equity and good conscience", Legal experts of earlier generations did not draw any distinction between "natural justice" and "natural law". "Natural Justice" was considered as "that part of natural law which relates to the administration of justice". Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules."

16. It was further held that even if the statute is silent, the principles of natural justice necessarily had to be observed and it was held as under :--

".....Where the statute is silent about the observance of the principles of natural

justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced. The presumption is also weak where what are involved are mere property rights. In cases of urgency, particularly where the public interest is involved, pre-emptive action may be strategic necessity. There may then be no question of observing natural justice. Even in cases of pre-emptive action, if the statute so provides or if the Courts so deem fit in appropriate cases, a postponed hearing may be substituted for natural justice. Where natural justice is implied, the "extent of the implication and the nature of the hearing must vary with the statute, the subject and the situation. Seeming judicial ambivalence on the question of the applicability of the principles of natural justice is generally traceable to the readiness of judges to apply the principles of natural justice where no question of public interest is involved, particularly where rights and interests other than property rights and vested interests are involved and the reluctance of judges to apply the principles of natural justice where there is suspicion of public mischief and only property rights and vested interest are involved."

17. Similarly, in the case of *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, , the question considered was that when the emergency so require, an order could be passed and an opportunity of being heard could be given afterwards. The precise findings in this regard are as under :--

".....Again, it is necessary to say that pre-decisional natural justice is not usually contemplated when the decisions taken are of an interim nature pending investigation of enquiry. Ad interim orders may always be made ex parte and such orders may themselves provide for an opportunity to the aggrieved party to be heard at a later stage. Even if the interim orders do not make provision for such an opportunity, an aggrieved party has, nevertheless, always the right to make an appropriate representation seeking a review of the order and asking the authority to rescind or modify the order. The principles of natural justice would be satisfied if the aggrieved party is given an opportunity at his request. There is no violation of a principle of natural justice if an ex parte ad interim order is made unless of course, the statute itself provides for a hearing before the order is made as in Clause 8-A. Natural justice will be violated if the authority refuses to consider the request of the aggrieved party for an opportunity to make his representation against the ex parte ad interim orders."

18. "The same has been the view adopted subsequently by the Supreme Court in the case of *Haryana Warehousing Corporation Vs. Ram Avtar and another*, . It was held as under :--

".....Besides providing for a post facto hearing, a concept which is not unknown to the principles of natural justice, the speaking order which is passed can also be subjected to judicial review, as has been done in the present case. The

passing of speaking order, however, does not mean that before the authority concerned comes to the conclusion of stopping a person at the efficiency bar stage, an opportunity of hearing must be given to him. Consideration of all materials before taking the decision is sufficient compliance of the requirement."

19. Having pondered, thus, it is obvious that the conclusions are straightforward. Normally, even if a statute does not provide an opportunity of being heard, an adverse order affecting the civil rights should be passed after giving an opportunity of being heard to the concerned person. However, there can be emergent situation. Since the principles of natural justice cannot be confined in one formula, an opportunity of being heard in a situation that may arise can even be given after the order is passed. This can be adjudicated keeping in view the facts of the case. Herein, in the case of Sushil Kumar, the following order had been passed :--

"In terms of provisions of Statute 39(1) of the University Calendar Volume I, the Vice-Chancellor, M.D. University, Rohtak, has ordered the expulsion of the following candidates for one year with immediate effect:--

S.No. Name of the candidate Father's name Class Regd. No.

1. Mr. Anuj Tyagi Sh. Shyam Lal Tyagi. LLB. 2nd Yr.(Five years Course) 96. RUR-151

2. Mr. Sushil Kumar Sh. Ishwar Singh LLB. (IV Year) (Five years course)." 94 RUR -108

20. In the case of Dushyant Gulia, the order reads as under :--

"The Vice-Chancellor exercising his powers under Statute 39(I) of M.D. University Calendar Volume I has expelled Mr. Dushyant Gulia, a student of M.A. (Previous) History, Roll No. 520 for a period of three years with immediate effect."

21. The said orders, as noticed above, had been passed by the Vice-Chancellor. It transpires from the written statement in both the matter that, in view of the nature of the acts, the* atmosphere in the University was surcharged. Petitioner Sushil Kumar was identified from the photograph while Dushyant Gulia had been brought by the local residents and the police. Thereafter, in the case of Dushyant Gulia, it is specific that he ran away. No notice could be served upon him. In the case of Sushil Kumar, the emergency required to take immediate stern action to maintain discipline in the University. In the facts like this, it is also not possible to serve a prior show cause notice and, therefore, to state that because prior notice had not been given and the order so passed should be quashed would not be correct. The peculiar facts of this case have to be examined in the light of the circumstances and day-to-day dealings in the University.

22. In that event, the learned counsel relied upon the decision of the Supreme Court in the case of H.L. Trehan and Others Vs. Union of India (UOI) and Others, , wherein the question about the post-decisional opportunity had been

considered. The Supreme Court held that the post-decisional opportunity of hearing does not subvert the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting & proper consideration of the representation at such a post-decisional opportunity. These observations must be taken to be confined to the facts of the cited case. Herein, the conditions of service of the staff were changed to their disadvantage without giving them an opportunity of being heard. The rules of natural justice were violated. It was this fact that prompted the Supreme Court to make the abovesaid observations. Obviously, the situation like the one created by the petitioner was not before the Supreme Court in that case. Therefore, the observations necessarily would also confine to the peculiar facts. It is in the fitness of things, therefore, that post-decisional opportunity should have been granted. While making these observations, the Court is conscious of the fact that sufficient time had elapsed, but the respondent-University will take care and decide the matter within one month by holding a fact finding enquiry. The same has to be held; keeping in view the decency and discipline in mind. The petitioner can be heard in this regard.

23. During the course of arguments, it was pointed out that in the case of Dushyant Gulia he has since been acquitted by the Court. This Court is not expressing any opinion. It is for the authorities to keep in mind all the relevant factors and pass appropriate order. Nothing said herein shall be taken as an expression of opinion.

24. For these reasons, both the writ petitions are disposed of in the terms that in the peculiar facts it was not necessary to give a show cause notice before expelling the petitioner but the petitioner should be given a post-decisional hearing as indicated above.