
(1978) 10 KL CK 0006
In the High Court Of Kerala
Case No : Writ Appeal No. 75 of 1976

The Principal, Government Engineering College, Trichur	APPELLANT
Vs	
John K. Kurien and Another	RESPONDENT

Date of Decision : 24-10-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1979 Ker 150

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Advocate : Govt. Pleader, for the Appellant; P.M. Kuruvilla and Jose Vithayathil, for the Respondent

Final Decision : Allowed

Judgement

Gopalan Nambiyar, C.J.—The appeal is against the judgment of a learned Judge of this Court to quash the order of suspension from the College passed against the two writ petitioners and the order of expulsion from the hostel passed against them, in view of their involvement in the ragging incidents at the Government Engineering College, Trichur during the year 1975. The ragging incidents complained of were on the 5th and 6th Nov. 1975. A preliminary enquiry was done by the Warden of the hostel who was a Professor to the College. Charge was framed and served on the students concerned and their statements in answer to the charge framed were also taken. An enquiry was conducted by two Professors of the College, one of being the warden himself. Victims of ragging were examined in the presence of the writ petitioners and were Cross examined by them. At the end of the enquiry a report was submitted which was considered by the College Council and by Ext. R. 2 proceedings the College Council accepted the enquiry report and passed the proceedings leading to the suspension of the petitioners till the next semester in June 1976, and to their expulsion from the. College hostel. In Ext. R2 proceedings the College Council stated as follows :--

"(i) Based on the enquiry commission's report and other evidence it was recommended that the following students (who were kept under suspension from 6-11-1975) may be suspended from the College till the beginning of the next semester in June 1976 and permanently dismissed from the Engineering College Hostel as a punishment for the ragging incidents.

1. Sri. John K. Kurien III Semester (Electrical)

2. Sri. Aaobaila Thomas III " (Chemical 8. Sri, Thomas Rajan III " (Chemical

2. The learned Judge who heard the writ petition was of the view that the College Council had referred to the Commission's Report "and other evidence" in support of its finding, that there was nothing to show what the "other evidence" looked into by the Council was; and that En so far as the "other evidence" was kept secret and not disclosed or made dear either to the writ petitioners or to the Court, the principle of natural justice had been violated and the resultant action of suspension and expulsion cannot be sustained.

3. We are unable to sustain the reasoning or the judgment of the learned Judge. We think that in "the circumstances and against the background of the facts which we have detailed the College Council's reference to the Commission's Report and "other evidence" can only have reference to the Enquiry Report and to the evidence collected at the enquiry. We do not think it is reasonable to understand that the College Council referred to and acted upon certain undisclosed and secret evidence. There is no foundation in the pleadings for coming to such a conclusion. The files were made available to us by the learned Government Pleader. And, we are satisfied, having regard to the nature of the complaint that had to be enquired into, and in particular, to the principles laid down by the Supreme Court in *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, and by the recent decision of this Court in O. P. Nos. 2740, 2741, 2742 of 1978 etc., that the enquiry has been fairly conducted in accordance with the principles of natural justice which have been recognised to have application in this sphere of enquiries. The learned Judge has referred to the decision in *Glynn v. Keele University* (1971) 1 WLR 487 The applicability of the rules of natural justice in matters of academic discipline has come in for a good amount of discussion. As Professor Wade remarks in his "Administrative Law" (4th Edn. P. 478), the Courts have in general held that academic disciplinary proceedings require the observance of the principles of natural justice, but equally they have refused to apply unduly strict standards, provided the proceedings are substantially fair. In the English Courts, the pronouncement in *Herring v. Templeman* (1973) 3 All ER 569 has highlighted this aspect. The principle of the decision in some of the earlier decisions, came in for critical comment in the journals (See for instance, 85 Law Quarterly Review p. 468, 1971 Canadian Bar Review 624, 1974 Law Quarterly Review p. 6), in particular, in our country the Supreme Court has recently laid down the principle in *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, , that the principle of natural justice does not apply in its full

vigour to those enquiries. In view of this, we cannot accept the reasoning or the conclusion of the learned Judge that the enquiry offended the principle of natural justice. We think the enquiry was fair and there was substantial compliance with natural justice.

4. Counsel for the Respondent submitted that the matter has now become infructuous as the period of suspension and expulsion visited on the writ petitioners has expired. We do not think that the submission made by counsel for the writ petitioners is correct. We granted an adjournment to enable the Government Pleader to obtain specific instructions whether, in view of the developments, and the expiry of the period of suspension and expulsion, this appeal had to be pressed. The Government Pleader submitted that his instructions were to press the appeal. Along with this writ appeal, on C. M. P. No. 3710 of 1976 (Ker) an order of interim stay of suspension of the judgment of the learned judge for three weeks was passed on 9-3-1976. On 29-3-1976 the following order was passed :--

"The stay order on 9-3-1976 is extended until further orders."

But the stay ordered on 9-3-1976 and continued by this order will not preclude the respondents from moving the Calicut University for permission to sit for the examination fixed to commence on the 8th April, 1976."

This was on 29-3-1976. We felt difficulty to understand as to how the writ petitioners against whom the order of suspension and expulsion became effective by reason of the stay order of this Court, could write the examination. But we were informed that O. P. No. 2147 of 1976 (Ker) was filed in this Court by the writ petitioners for a writ of mandamus directing the respondents to permit them to sit for the third examination commencing on the 8th April 1976 and for other reliefs. On C. M. P. No. 7060 of 1976 a learned Judge of this Court passed an interim order on 5-4-1976 which is as follows :

"The respondents shall allow the petitioners to sit for the examination commencing on the 8th April 1976, provided that the result of their examination shall be subject to the result of this O. P. and shall be withheld until further orders. Issue carbon copy to the petitioners at their cost immediately." We are surprised and distressed that the writ petition still remains on the file of this Court, and no attempt has been made to vacate the interim order or to expedite the hearing of the petition. And we marvel at the ingenuity with which the writ petitioners wrote the Semester, without attending the College -- as we are told with an application for exemption from attendance, which still awaits orders. Counsel for the Respondents submitted that the respondents have written the examination and that the results have also been published, (contrary to the direction in the order noticed above), and that the writ petitioners have passed so far, six semesters and written the seventh. The result of the seventh is awaited. These are matters which we cannot, and do not propose to, consider in this writ petition. We are concerned only with the validity of the action taken

against the writ petitioners and evidenced by Ext. R2. On that, we have little doubt for reasons already explained that the decision of the learned Judge cannot be sustained. We allow this appeal, set aside the judgment of the learned Judge and direct that O. P. No. 5604 of 1975 will stand dismissed. We make no order as to costs.

5. Issue carbon copies of this judgment to Counsel.