

(1967) 10 KL CK 0008
In the High Court Of Kerala
Case No : Writ Appeal No. 128 of 1967

University of Kerala

APPELLANT

Vs

Suresh Koshy George and Others

RESPONDENT

Date of Decision : 16-10-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala University Act, 1957 — Section 10(5), 19, 28

Citation : (1967) 10 KL CK 0008

Hon'ble Judges : K.K. Mathew, J; K. Sadasivan, J

Bench : Division Bench

Advocate : K. Velayudhan Nair, V.S. Moothathu, N.R.K. Nair, K.J. Joseph and T.K.M. Unnithan, for the Appellant; S. Easwara Iyer, C.S. Rajan, P. Sankarankutty Nair and E. Subramaniam, for the Respondent

Judgement

Mathew, J.—This is an appeal from the judgment of a learned Judge of this Court allowing a writ petition praying to quash the disciplinary proceedings in respect of the malpractice of a student in the written examination conducted by the University of Kerala.

2. in the academic year 1964-65 the writ petitioner was a student in the 1st year Degree Course of the Five Year Integrated Course of Engineering, in the Engineering College, Trichur. Mathematics is one of the subjects in the 1st Year Course, and students have to appear for two papers, Mathematics I and Mathematics II. In Mathematics I paper the writ petitioner secured 14 per cent of marks when the paper was valued by the Additional Examiner, and 64 per cent when it was valued by the Chief Examiner. In the said paper, the writ petitioner had answered questions Nos. I (a), V (a) and IX (a) IV (a) in the main answer-book, and secured respectively 0 mark, 2 out of 6.0 mark, and 0 mark from the Additional Examiner, Pages 6 to 11 of the main answer book were left blank. There were some additional answer books, certain pages of which were also left blank. Two of the additional answer books were also un-used and left blank. In the used additional answer books questions I (a) and IX (a), which the petitioner

had answered in the main answer book, and for which he secured zero mark, were found reanswered and for these he secured 100 per cent from the Chief Examiner. The Chief Examiner has stated that the difference arose because the Additional Examiner had not valued four additional answer books of the petitioner. The Chairman of the Board of Examinations, when he saw the difference in the marks reported the matter to the Board of Examiners in Mathematics for the Engineering Examination held in April 1965. The Board suggested that the University may take up the matter. The University thereafter called for the answer book of the writ petitioner and the answer book was handed over to the Dean of the Faculty of Science, who is the Convener of the Standing Committee for Examinations of the University. He noted that certain questions wrongly answered in the original answer were correctly answered in the additional answer books and full marks were awarded for those questions. He also found that the handwritings in the main book and the additional book were of the same candidate, but the manner the answers were written showed that the answers were written at different times. He suspected that the additional books were later inserted and suggested to the University that a high power committee be constituted to go into the whole matter. Consequently, a committee consisting of the Chairman of the Board of Engineering Examinations, who is the Dean of the Faculty of Engineering, Chairman of the Mathematics Section of the Engineering Examinations, the Dean of Faculty of Science, who is the Convener of the Standing Committee on Examinations, and the Registrar of the University, was constituted to go into the matter. The committee conducted an enquiry. They examined the Additional Examiner and the Chief Examiner. The writ petitioner was also allowed to take part in the proceedings. The Committee came to the conclusion that there was malpractice and that suitable punishment should be meted out to the candidate. However, since the Vice Chancellor was advised that there must be a formal enquiry, he appointed the 2nd respondent, a retired Principal of the University College, Trivandrum as enquiry officer for conducting the enquiry. He conducted the enquiry, and submitted a report to the Vice Chancellor. The finding in the report was that the writ petitioner was guilty of malpractice in that he subsequent to the valuation by the Additional Examiner had inserted the additional answer books. On the basis of the report a show cause notice was issued to the writ petitioner by the Vice Chancellor. The writ petitioner submitted his explanation to the show cause notice, and thereafter the Vice Chancellor passed the impugned order debarring the petitioner from appearing for any examination till April 1966. Ext. P 21 is a copy of the proceeding communicated to the writ petitioner, and Ext P-22 is a copy of the memo issued by the Principal of the Engineering College, Trichur, stopping the petitioner from pursuing his further studies in the 2nd year of the course. The writ applicant sought to quash these proceedings.

3. The learned Judge found that the appointment of the enquiry officer was not in conformity with the rules framed by the Syndicate. Ext R-5, that a copy of the report of the enquiry officer or the substance thereof was not supplied to the writ

petitioner before calling for his explanation, and so there was a failure to observe the principles of natural justice, and issued the writ quashing the proceedings.

4. Two questions arise for consideration in this appeal: (1) whether the appointment of the 2nd respondent as enquiry officer was in conformity with the rules, and if it was not in conformity with the rules, whether the appointment was liable to be attacked for any of the reasons alleged by the writ petitioner: and (2) whether the non-supply of a copy of the report of the enquiry officer was violative of the principles of natural Justice.

5. The Syndicate has framed certain rules for its guidance in the matter of disciplinary proceedings in connection with malpractice of candidates in examinations. Rule 1 (b) of those rules requires that if the University is satisfied that there is a prima facie case against a candidate it shall request the Principal of the College Centre where the candidate appeared for the examination to appoint an enquiry officer. Rule 2 provides that the Principal shall appoint an enquiry officer not below the rank of a Professor employed in the College to conduct enquiry into the allegations against the student. In this case the University has not requested the Principal of the College Centre where the candidate appeared for the examination to appoint an enquiry officer because the Principal of the College happened to be the father of the writ petitioner. The Vice Chancellor thought after taking legal advice that it would not be proper in the circumstances of the case to request the Principal to appoint an enquiry officer and so he appointed the 2nd respondent as the enquiry officer.

6. It was argued that this procedure was not justified as the Vice Chancellor was not authorised to appoint an enquiry officer. The Syndicate has been invested with power to take disciplinary proceedings against a student. Clause 3 (xxvii) of Chapter VII of the First Statutes reads:

"3 The Syndicate shall, in addition to the powers and duties conferred and imposed on it by the Act and subject to the provisions thereof, have and exercise, the following powers and functions:

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(xxvii) subject to the provisions in the Laws, to take cognizance of any misconduct by any student in a college or institution or in a hostel or approved lodging, or by any student who seeks admission to a University course of study or by any candidate for any University examination, brought to the notice of the Syndicate by the head of the institution or by a member of any Authority of the University or by the Registrar of the University or by a Chairman of a Board of Examiners or by a Chief Superintendent at any centre of examination and to punish such misconduct by exclusion from any University course in a college or in the University or from any Convocation for the purpose of conferring degrees, either permanently or for a specified period or by the cancellation of the University examination for which he appeared or by the deprivation of any University scholarship held by him or by cancellation of any University prize or

medal awarded to him or by such other penalty as it deems fit;"

Section 19 (v) of the Kerala University Act enables the Syndicate to delegate any of its powers. It was in pursuance of the power of delegation that the Syndicate delegated the power of punishment to the Vice Chancellor under Rules 7 and 8 of Ext. R-5 rules. Those rules provide that on receipt of the report of the enquiry officer the Vice Chancellor, after consultation with the sub-committee on discipline, shall take a provisional decision, that the provisional decision shall be communicated to the student, and he may be called upon to show cause, and that after receiving his representation, if any, pass the final order imposing the penalty. Rule 1 (b) as already stated requires the University to request the Principal of the College Centre where the candidate appeared for the examination to appoint an enquiring officer. The rule never contemplated a situation like the present one where the Principal of the College Centre happened to be the father of the delinquent candidate. The Vice Chancellor is the executive officer of the University, (See Section 10 (5) of the Kerala University Act and Rule (1) in Chapter II of the First Statutes) The executive power of the University is vested in the Syndicate (See Section 19 of the Kerala University Act). The Vice Chancellor passed the proceedings appointing the 2nd respondent as the enquiring officer and said that the proceedings will be placed before the Syndicate. The proceedings were placed before the Syndicate and the Syndicate approved the appointment at its meeting on 2-7-1966. Ext. R-10 is a copy of the proceedings of the Syndicate

7. It was argued that Ext. R-5 rules are statutory rules and no departure from Rule 1 (b) could have been made in the matter of appointing the enquiring officer even if the situation was one not contemplated or provided for by the rules, and that the only course in the circumstances for the Vice Chancellor to adopt was to get the rule amended by the Syndicate, and then proceed according to the amended rule. Unlike the jurisdiction of a domestic tribunal as in the case of a club or a voluntary association, where the basis of disciplinary jurisdiction is consent or usage, the Syndicate has been invested with disciplinary jurisdiction by the provisions of the First Statutes, passed in pursuance of the Kerala University Act. The power of the Syndicate to frame rules is contained in section 28 of the Act which reads:

"The Syndicate shall have power to frame rules and bye-laws not inconsistent with the provisions of this Act. the Statutes and the Ordinances, for the guidance and working of Boards and Committees and other bodies constituted under the provisions of this Act or the Statutes or Ordinances and for regulating the procedure and conduct of business at meetings of University authorities other than the Senate" The section does not give any power to frame rules for conducting disciplinary proceedings against candidates suspected to be guilty of malpractice. Then what was the power under which the Syndicate framed Ext. R-5 rules? We think that when the entire disciplinary jurisdiction was vested in the Syndicate that carried with it the incidental power to determine the manner

in which the jurisdiction is to be exercised and the power, if necessary, to frame rules to regulate it. The rules for that reason are not statutory rules, but merely rules framed for the guidance of the Syndicate. Since the whole disciplinary jurisdiction was vested in the Syndicate, the Syndicate could have appointed any person as enquiring officer, as the situation was one to which it was thought Rule 1 (b) should not be applied. In other words, as the rules were not statutory rules the Syndicate need not have followed Rule 1 (b) and could have appointed any person as enquiring officer. The Vice Chancellor when he appointed the 2nd respondent appointed him in his capacity as the executive officer of the University and even though his action was not previously authorised by the Syndicate it was subsequently approved by that body in Ext. R-10. It was said that since the act of the Vice Chancellor was without previous authority from the Syndicate the act was void and such an act cannot have been ratified or approved. We do not think that the action of the Vice Chancellor was void. Although without previous authority, the act must be deemed to have been done on behalf of the Syndicate and so its approval was sought and obtained. The fact that Ext. R-10 proceedings were passed after the writ petition was filed is immaterial as the Vice Chancellor when he appointed the 2nd respondent as the enquiring officer had directed the matter to be placed before the Syndicate. We also think that violation of the provisions of Rule 1 (b) of the Rules in the matter of making the appointment of the enquiring officer cannot give rise to a justiciable issue in a writ proceeding, as the rules are not statutory. A Division Bench of this Court has considered the question whether violation of the Rules of the P. S. S. Scheme can give rise to a justiciable issue in a writ proceeding, and the Court held that the rules not being statutory, their violation cannot be made the subject of complaint in a writ petition, (See the decision in *Joseph v. Naravana Iyer*, W. A. No. 188 of 1963 : 1964 Ker LT (SN) 18). The writ petitioner never raised any complaint before the enquiring officer, that he has no authority to conduct the enquiry. He participated in the enquiry, adduced evidence, and took the chance of a report in his favour. Since this point was not raised in the counter-affidavit of the University, the learned Judge had no occasion to pass upon the question whether he should in the exercise of his discretion entertain the question of the jurisdiction of the enquiring Officer. The fact that the writ petitioner never demurred to the jurisdiction of the enquiring officer, at the time of the enquiry would probably have disentitled him to raise the question in the writ proceedings. We think that there is little substance in the contention of the writ petitioner that the alleged defect in the appointment of the 2nd respondent was fatal to the proceedings,

8. Coming to the next point it was argued that the non-supply of a copy of the enquiry report to the writ petitioner was fatal to the validity of the proceedings. In *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, the Supreme Court has indicated how High Court should view disciplinary proceedings taken by a University against a student in the matter of malpractice in examination. The Court observed:

"In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or appellant No. 1 set up Enquiry Committees to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but oases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is justification to do so, Courts should be slow to interfere with the decisions of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Articles 226, the High Court is not sitting in appeal over the decision in question; its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunals must scrupulously follow rules of natural justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary Courts of law. In the present case, no animus is suggested and no mala fides have been pleaded. The enquiry has been fair and the respondent has had an opportunity of making his defence. That being so, we think the High Court was not justified in interfering with the order passed against the respondent,"

Two things are clear from the above observations:

(1) that the University must observe the principles of natural justice, and (2) that if there is the slightest evidence to support a finding of guilt High Court should not interfere. The question whether the non-supply of a copy of the report was against the principles of natural justice has to be decided with reference to the nature and the character of the enquiry, and the rules under which the disciplinary proceedings were purported to be conducted. The rules did not provide for supply of a copy of the report of the enquiring officer to the student. We are not saying that that is conclusive. If the failure to give a copy of the report violated natural justice, the fact that the rules did not provide for it may be immaterial. The question then is whether there is any principle of natural justice which required that the writ petitioner should have been given a copy of the report of the enquiring officer. It has been held (whether rightly or not) that the requirements of natural justice are not immutable, but vary according to the nature of the enquiry, the tribunal, and other circumstances. This question was considered in a judgment of this Court in *Nandakumaran v. Principal*.

Government Victoria College, Palghat. 1965 Ker LT 27. There the following observations of Tucker L.J. in *Russell v. Duke of Norfolk* 1949 1 All ER 199 were quoted:

"There are in my view no words which are of universal application to every kind of enquiry 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 *Board of Education v. Rice*. 1911 AC 179 Lord Loreburn L. C observed;

"Comparatively recent statutes have extended, if they have not originated the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds.

It will, I suppose, usually be of an administrative kind: but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. ... The Board is in the nature of the arbitral tribunal, and a court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the court is satisfied either that the board have not acted judicially in the way I have described, or have not determined the question which they were required by the Act to determine, then there is a remedy by mandamus and certiorari."

In *Local Government Board v. Alridge* 1915 AC 120 these observations were quoted and applied. That case raised the issue whether the respondent there had had a fair hearing. In a public enquiry, which had been held in accordance with the statute, he and his witnesses had been heard orally, but after the enquiry the board's inspector submitted his report to the board who decided the matter after considering the facts and the evidence given at the inquiry and the inspector's report. The respondent claimed that he should have seen the report and been heard orally by the officer of the board who actually decided it. He had been offered the opportunity of submitting a further written statement but had not availed himself of it. The House of Lords reversing the majority decision of the Court of Appeal held that the work of decision had been done judicially and fairly in the sense indicated by Lord Loreburn, and that failure to disclose the contents of the report was not of any consequence.

In *Leeson v. General Medical Council* 43 Ch. D. 366 (384) Bowen L. J. said:

"There must be due inquiry. The accused person must have notice of what he is accused. He must have an opportunity of being heard, and the decision must be honestly arrived at after he has had a full opportunity of being heard. With

respect to the charge made, the charge of which he has notice, it is a charge of infamous conduct in some professional respect, and the particulars which should be brought to his attention in order to enable him to meet that charge ought to be particulars of conduct which, if established, is capable of being viewed by honest persons as conduct which is infamous. That is all. We have seen that these conditions have been fulfilled by the inquiry and by the tribunal which institutes it. The functions of the court of law are at an end."

What is meant by opportunity of being heard was considered by Lord Denning in *Kanda v. Government of Malaya* 1962 A.C. 322 (337). His Lordship said:

"If the right to be heard is to be a real right. . . it must carry with it a right to know the case against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them."

We think, these conditions have been satisfied in the present case. It is not a principle of natural justice that in every case where an enquiry is conducted by an inquiring officer a copy of the report of the enquiry should be given to the student. If he knew the case and the evidence against him, and was given a fair opportunity to correct and contradict them, then, the requirements of natural justice are satisfied. In the absence of a statutory rule we do not think that the supply of a copy of the report to the writ petitioner was an essential requirement of natural justice. It is not alleged that any material which was not disclosed at the enquiry was used for the purpose of arriving at the conclusion. The ultimate finding of the enquiring officer was communicated to the delinquent by the Vice Chancellor by his show cause notice. The delinquent filed a representation against the provisional finding in the show cause notice and in that he referred to the evidence and circumstances in his favour and explained the evidence and circumstances against him. Before he filed the representation he never complained to the University that he should be given a copy of the report in order to prepare his representation. No doubt, in the representation he stated that unless a copy of the report is given it is not possible for him to explain fully. Whatever that might be if there is a principle of natural justice that a copy of the report of the enquiring officer or the substance of the report should be given to a delinquent student when he is asked to show cause, then it was necessary to have observed it. The learned Judge has distinguished his decision reported in *Jacob Mathew v. Professor of Medicine* 1966 Ker LT 866 where he said:

"There is little to substantiate either the case of any bias against the inquiry officer or the charge that he did not conduct the proceedings judicially. From the nature of the charge and the nature of the enquiry and the petitioner's attitude and conduct, the omission to furnish a copy of the enquiry report to the petitioner cannot be regarded as in any way vitiating the proceedings."

by saying,

"There I found that the failure to furnish the report had not resulted in any

prejudice or failure of justice. In so doing, I took into account the nature of the charge, the nature of the enquiry and the petitioner's attitude and conduct. On being informed of the enquiry and the conclusions arrived at, the petitioner in that case did not demand a copy of the enquiry report. The omission to furnish the same was not made a ground of complaint, in the main affidavit of the petitioner. In the present case, the petitioner complained about the failure to give a copy of the enquiry report at the earliest opportunity in answer to Ext. P-19. The point was also expressly raised in the petitioner's affidavit in support of the writ petition."

We think that if it is a principle of natural justice that the report of the enquiring officer should have been communicated to the writ petitioner, it was immaterial whe-the the failure to supply a copy of the report has resulted in any prejudice and no distinction can be founded upon the presence or absence of prejudice. Lord Denning said in *Annamunthodo v. Oilfield Workers' Trade Union* 1961 3 All ER 621.

"Counsel for the respondent union did suggest that a man could not complain of a failure of natural justice unless he could show that he had been prejudiced by it. Their Lordships cannot accent this suggestion. If a domestic tribunal fails to act in accordance with natural justice, the person affected by their decision can always seek redress in the courts. It is a prejudice to any man to be denied justice. He will not of course, be entitled to damages if he suffered none. But he can always ask for the decision against him to be set aside." In this case, as we have said, no demand was made when the show cause notice was served on the writ petitioner that unless a copy of the report is given, it is not possible to make an effective representation. We are of opinion that in the circumstances of this case the failure to furnish a copy of the report to the writ petitioner did not violate any principle of natural justice, nor was there any prejudice to him on account of the failure to give a copy of the report to him.

We, therefore, set aside the order passed by the learned Judge and allow the appeal, but in the circumstances, we make no order as to costs.