

(1981) 08 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 438 of 1981

U.P. Singh

APPELLANT

Vs

Board of Governors, MACT, Bhopal and Others

RESPONDENT

Date of Decision : 26-08-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 35

Citation : AIR 1982 MP 59 : (1982) JLJ 653 : (1982) 27 MPLJ 75

Hon'ble Judges : G.P. Singh, C.J.; Faizanuddin, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari and N.C. Jain, for the Appellant; R.P. Verma, for the Respondent

Final Decision : Dismissed

Judgement

G. P. Singh, C.J.

This order shall also dispose of Misc. Petition No. 794 of 1981.

The petitioners in these petitions were students of Maulana Azad College of Technology, Bhopal. which is a Re-gional College of Engineering and Technology. The college is an autonomous body and is managed by a Board of Governors. On 11th Feb. 1981, at about 4.30 a. m., an incident happened in the college Hostel in which some students were assaulted by a group of students. Rods, cycle chains and swords were freely used in this incident. One student, namely, O. S. Ekta, suffered serious injuries. His right hand was practically severed and it had to be amputated. Another student M. U. Qureshi also suffered serious injuries. Two other students, Rajnish Bharil and M. V. Section Shastri. were also assaulted and suffered minor injuries. The Proctorial Committee, which is presided over by the principal of the College with his concurrence, passed an order on 11th Feb. itself expelling from the college and hostel four of the petitioners, U. S. Singh, Jawahar Singh, Ajaysingh Gaur and S. S. Niranjan. By another order passed on 14th Feb. 1981, five more students, including the four

remaining petitioners, M. G. Shrimali D. P. Gupta, N. K. Rathore, D. Section Gill and Rajesh Sharma, were expelled from the college and hostel. These orders mention that action against the petitioners was taken in connection with their grave involvement in the incident of 11th Feb. 1981 which resulted in serious injuries to some students. These are the orders which the petitioners challenge in these petitions under Article 226 of the Constitution.

The first information report of the incident was lodged by Rajnish Bharil at 7 a. m. on 11th Feb. 1981. A copy of the first information report was forwarded to the principal. Rajnish Bharil also gave a written statement in the form of a letter to the Principal on 11th Feb. 1981 in which the incident was described. M. V. S. Shastri also gave a similar letter on the same date to the Principal. All these three documents mention the names of the petitioners as forming the group who assaulted and caused injuries to Ekta, Qureshi, Bharil and Shastri. The proctorial Committee met at 11.30 a. m. on 11th Feb. 1981 and recommended the expulsion of U. P. Singh, Jawahar Singh, Ajaysingh Gaur and J. Section Niranjana and decided to continue further investigation in respect of others. As already stated, the Principal is the Chairman of the Committee. The order was "approved by him on 11th Feb. itself and the aforesaid four students were expelled. The Committee again met on 13th Feb. 1981 at 2.30 p. m. The Committee suspended M. G. Shri-mali, D. P. Gupta, R. K. Rathore, D. Section Gill and Rajesh Sharma for their involvement in the incident. They were required to show cause why they should not be expelled. As they were not available in the college campus, the notice was pasted on the notice board. The Committee met again at 10 p. m. and resolved to expel the aforesaid five students also. Consequently, the second order of expulsion was passed with the approval of the Principal.

There is no statute or statutory rule on the subject of expulsion of students. The College issued a Prospectus for the year 1980-81 which deals with many matters including the subject of students' discipline and punishment for acts of indiscipline. Clause 1 of para 3.14 provides that students are expected to maintain a high standard of discipline. It also enumerates certain acts of indiscipline. The enumeration is illustrative. Clause VII of para 3.14 provides for punishment for acts of indiscipline. This clause reads as follows:

"VII. A student who is found to have committed any act of indiscipline is liable to any one or more of the following punishments:--

(1) Warning (ii) Censure (iii) Fine (iv) Reduction/Cancellation of Scholarship/Stipend/Fellowship (v) Recovery in part or full of losses or damages to the college property or property of others caused by the delinquent student (vi) suspension from availing of any of the college amenities and services (sic) of from class (vii) Removal, rustication or expulsion from the college or hostel (viii) withholding of character certificate.

Ragging of junior students will invariably lead to expulsion from the college. The punishments are liable to be inflicted summarily at the discretion of the principal

whose decision shall be final."

The first contention raised by the learned counsel for the petitioners is that the orders passed against the petitioners do not record that the petitioners committed any act of indiscipline. It is argued by the learned counsel that Clause VII of para 3.14 comes into operation when a student is found to have committed any act of indiscipline and in the absence of any such finding the orders against the petitioners were invalid. In our opinion, there is no merit in this argument. The impugned orders clearly mention that the petitioners were being expelled for their grave involvement in the incident of 11th Feb. 1981 in which serious injuries were caused to some students. It is not disputed and it could not be disputed that the unruly behaviour of a group of students in assaulting other students with swords, rods and chains which resulted in grievous injuries was the highest act of indiscipline. The statement in the impugned orders that the petitioners were being expelled in connection with their grave involvement in the said incident clearly means that the Proctorial Committee and the Principal found them to have committed grave acts of indiscipline.

The next contention of the learned counsel for the petitioners is that the impugned orders are bad as the principles of natural justice were not followed. It is argued that power to expel students is a quasi-judicial power which has to be exercised after following the requirements of natural justice and omission to observe those requirements makes the orders of expulsion invalid and void. It is also submitted that if the matter was one of urgency, the petitioners could have been suspended and thereafter given opportunity of being heard. In the alternative, it is argued that the petitioners should have been given an opportunity of ex post facto hearing.

It is stated in the return that the incident that took place on 11th Feb. 1981 was an outcome of long standing rivalry of two groups of students, namely, Bihari and non-Bihari groups and the victims belonged to the non-Bihari group. The situation after the incident was tense and hence an emergency meeting of the proctorial Committee was called. A search was made for the petitioners, but they were not found in the hostel or anywhere also in the college campus and, therefore, they could not be intimated of the proceedings nor could they be served with a show cause notice. The Committee took the statements of Bharil and Shastri to which we have already referred and which are in form of letters addressed to the Principal. After enquiry, the Committee resolved to expel four students. Thus according to the return, the petitioners were absconding and not traceable and were not available anywhere in the campus and it was not possible to serve any show cause notice on them before imposing the punishment. It is further stated that the Committee on 13th Feb. 1981 before passing the second order of expulsion decided to issue show cause notice to five students proposed to be expelled but they also could not be found and the notice was affixed on the notice board. The Committee thereafter passed a resolution in its adjourned

meeting on the same day at 10 p. m. to expel these five students also.

There is no reason for us not to accept what is stated in the return. The situation after the incident in the college campus was tense and immediate action was needed. A search for the petitioners was made but none of them was available in the college campus. The petitioners were absconding. The Committee had with it the first information report and the two statements in the form of letters of Bharil and Shastri and acting upon them the Committee recommended the expulsion of four of the petitioners. In our opinion, having regard to the situation that was created by the incident and the fact that the petitioners were not available for being heard, it cannot be said that the expulsion order suffers from denial of natural justice. Similar is the position with respects to the second expulsion order. On 13th Feb. 1981 when the order was -passed, effort was made to search the five students against whom action was proposed. They were not traceable in the college campus and so the notice to show cause was affixed on the notice board. Having regard to the circumstances then prevailing, this was sufficient compliance with the rules of natural justice, it is well settled that the application of the rules of natural justice depends upon the situation or circumstances existing at the time when their application is called for. What is to be seen is whether the action taken is fair and honest. As stated by Krishna Iyer, J.: "Natural justice is no unruly horse, no larking land mine, nor a judicial cure-all. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances Of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating" The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, "The rules of natural justice must not be stretched too far" said Lord Denning M. R. "for only too often the people who have done , wrong seek to invoke "the rules of natural justice" so as to avoid the consequences" R v. Secretary of State (1973) 3 All ER 796 Tested in the light of these principles, in our opinion, no case of violation of natural justice is made out. The incident that happened on 11th Feb. 1981 called for immediate action. The petitioners were searched for being heard before any action was taken; they were not found. The authorities fairly and honestly expelled four of the petitioners and postponed action in respect of others with a view to make further investigation. When the Proctorial Committee decided to take action against the remaining five, they were again searched for being served with show cause notices but they were not found. Notices were pasted on the notice board and thereafter final decision was taken to expel them also. The petitioners were obviously absconding; they were not found in the college campus. They cannot complain of failure to follow the requirements of natural justice as their own act of absconding from the college campus made it impracticable for the authorities to notice them before taking final action. It cannot be lost sight of that the power of a Principal, which in the instant case was exercised on the recommendations

made by the Proctorial Committee is a power of summary expulsion, it is so mentioned in the prospectus. No detailed enquiry is required by the prospectus before any punishment for indiscipline is inflicted by the Principal, Having regard to all the circumstances of the case, in our opinion, the power of expulsion was fairly and honestly exercised and no case is made out for interference under Article 226 of the Constitution.

The alternative argument of the learned counsel for the petitioners that they should be given an opportunity of ex post facto hearing cannot also be accepted. The question of ex post facto hearing arises when there is no opportunity of hearing before action is taken. In the instant case, the petitioners were searched for being heard but they had absconded. It is for this reason that they could not be heard. The petitioners now cannot claim ex post facto hearing when because of their own action there was no prior hearing.

Before parting with the case we must state that we have assumed that a student can file a petition under Article 226 of the Constitution for quashing of an order of expulsion for acts of indiscipline if rules of natural justice have not been followed, even though there is no statute or statutory rule on the subject. Cases of use of unfair means in examinations stand on a different footing for examinations and punishment for use of unfair means in them are regulated by statutes and ordinances made under the Universities Act [The relationship of students with the college in the instant case is not governed by any statute but by a prospectus. It has been held that a college prospectus containing the outline syllabus of a course of study forms part of a contract between the college and its students -- See: O. Hood Phillips' Constitutional and Administrative Law, Sixth Edition, pp. 581 and 582 citing D. Mello v. Loughborough College of Technology. The Times, June 17, 1970. Professor Wade also expressed the view that in case of Universities incorporated by royal charter the relationship of the University with the students is contractual and the normal remedies in such cases are injunction, declaration or damages and not writs of certiorari or mandamus [Wade, Judicial Control of Universities (1969) 85 LQR 468 Wade's Administrative Law, 4th Edition, pp. 479, 480, 549; Herring v. Templeman (1973) 3 All ER 569]. There is, however, another line of reasoning that even the contractual relationship confers on the student a status deprivation of which can be remedied by issuance of prerogative writs of certiorari and mandamus [See; Garner, "Students -- Contract or Status?" (1974) 90 LQR 6; But see Wade's reply in the same volume at p. 157]. We need not, however, elaborate on these points for we have reached the conclusion that on the special facts of this case there was no denial of natural justice.

The petitions fail and are dismissed but without any order as to costs. Security amount be refunded to the petitioners.