

(2006) 03 KAR CK 0042
In the Karnataka High Court
Case No : Writ Petition No. 14592 of 2005

Vinod Manjunath Dhareshwar

APPELLANT

Vs

Karnataka State Open University and Another

RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Citation : (2006) 3 KCCR 144 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : T.N. Raghupathy, for the Appellant; V. Narayana Swamy, for Respondents-1 and 2, for the Respondent

Judgement

N.K Patil, J.—In the instant case, petitioner questioning the legality and validity of the proceedings of the Malpractices and Lapses Enquiry Committee, dated 11th March, 2005 vide Annexure-D in Proceedings No. KSOU/EB/MPLEC/2004-05 on the file of the second respondent, has presented the instant writ petition.

2. The grievance of the petitioner in the instant writ petition is that, petitioner herein had registered himself for M.A. (Economics) in correspondence course from the respondents-Karnataka State Open University (hereinafter called "University") and in the month of July/August 2003, petitioner appeared for M.A. (Previous) Degree Examination and secured a "pass". Accordingly, the respondents-University issued the marks-card produce at Annexure-A, declaring the petitioner as "pass" in M.A. (Previous) Degree Examination with Register No. 09809854. Thereafter, petitioner appeared for M.A. (Final) Examination held in the month of June/July 2004 and when he was awaiting for the result of the said examination, to his shock and surprise, he received a show-cause notice dated 9th February, 2005 vide Annexure-B stating that, petitioner bearing Reg. No. 09809854 has been charged for insertion of additional sheets during M.A. (Final) Examination held during June/July 2004 and he is imputed for suspected Malpractice and the Examiner is the witness. Therefore, he was called upon to submit his written statement of defence, if any, by 16th February, 2005 and to

specifically state as to whether he desires to be heard in person. It was further stated therein that, if petitioner's reply does not reach before the stipulated date, it would be presumed that, he has nothing to say in that regard and further action would be taken against him ex parte and in case he desires to have a personal hearing, he should appear on 18th February, 2005 at 11.45 A.M. in the Chambers of the Registrar (Evaluation), Karnataka State Open University, Manasagangotri, Mysore-6. The said show-cause notice has been sent by Registered Post Acknowledgment Due (RPAD) from the office of the Registrar of the Karnataka State Open University. From a perusal of the acknowledgement cover, it can be seen that, on the basis of the address which was available with the respondent-University, on the cover, the address is mentioned as Sri Vinod Manjunath Dhareshwar, H.No. 1438-D, Near Kodibeer Temple, Karwar (N.K) Pin 581 301 and the date is mentioned as 11th February, 2005. Thereafter, the same has been re-directed to the changed address, namely Sri V.B. Naik Compound, "Shivshakti", Near Gown Shankar Temple, Hubbuwada-6 and the seal indicates that, the said cover has been received by the petitioner on 16th February, 2005. Immediately on receipt of the said show-cause notice through Registered Post Acknowledgement Due, the petitioner has sent a reply to the show-cause notice dated 17th February, 2005, vide Annexure-C through courier service. When things stood thus, the University, without conducting the Enquiry in strict compliance of the existing rules of malpractice of the respondent-University, the Malpractice and Lapses Committee has taken a decision to impose punishment of invalidating the result of the M.A. (Final) Examination of the petitioner and further debarred the petitioner from taking up any of the University Examinations for 1+2 more attempts (i.e., subsequent sessions of Examinations) from the time of the invalidated examination stated above and thereafter, the candidate is eligible to take the University examinations to be held in the month of May/June 2007, subject to the provisions of the KSOU Rules and Regulations. Being aggrieved by the said impugned order, communicating the decision taken by the Malpractices and Lapses Enquiry Committee dated 11th March, 2005 vide Annexure-D, petitioner felt necessitated to present the instant writ petition.

3. I have heard learned Counsel for petitioner and learned Counsel for respondent-University. After careful perusal of the impugned order dated 11th March, 2005, it is manifest on the face of the order that, the Malpractices and Lapses Enquiry Committee has committed a grave error of law much less material irregularity in proceeding to pass the impugned order, invalidating the performance of the petitioner in respect of the M.A. (Final) (Economics) Examination appeared in the month of June/July 2004 bearing Registration No. 09809854 and debarring the petitioner from taking any of the University Examination for 1+2 more attempts. It is significant to note that, the show-cause notice issued by the first respondent herein is dated 9th February, 2005 and the same has been received by the petitioner on 16th February, 2006 and immediately on the next day itself, petitioner has sent a reply to the show-cause notice on 17th February, 2005 through courier service to respondent-University.

It is pertinent to note that, in the show-cause notice issued by the University, it has been specifically stated that, the petitioner is required to submit his written statement of defence and also specifically stated that, the petitioner has to state specifically whether he has to be heard personally. The Malpractices and Lapses Enquiry Committee, without considering the reply given by the petitioner, wherein he has stated that he is not involved in the Malpractices in the said examination, has passed the impugned order. There is no reference regarding the reply given by petitioner nor whisper regarding the consideration of the reply given by the petitioner in the decision taken by the Malpractices and Lapses Enquiry Committee. As per the recommendation of the Malpractices and Lapses Enquiry Committee, the punishment imposed is invalidation of result of M.A. (Final) (Economics) Examination held during June/July 2004 and debar of the petitioner from taking any of the University Examinations for 1+2 more attempts and that petitioner is eligible to take the University Examinations commencing from May/June 2007. However, from the show-cause notice issued, it can be seen that, it has been specifically stated that, the witness is the "Examiner". After careful reading of the impugned order passed by the respondent-University, on the basis of the recommendation submitted by the Malpractices and Lapses Enquiry Committee, nowhere it is seen that, the said examiner is examined. Without examination of the sole witness, i.e., the Examiner, the Malpractices and Lapses Enquiry Committee has proceeded to impose the punishment as stated supra. The manner in which the said authority has proceeded to come to the impugned conclusion is contrary to the existing regulations of the Malpractices and Lapses Enquiry Committee. The said Committee, without conducting proper enquiry and without affording sufficient opportunity to petitioner, has passed the impugned order and the same cannot be sustained.

4. Yet another reason for which, the impugned order passed by second respondent is liable to vitiate is, for non-compliance of the principles of natural justice. In the show-cause notice, it is specifically pointed out that, if the petitioner desires to be heard in person, he may say so in his written defence. But, it is significant to note that, when the authority received the reply sent by petitioner as early as on 17th February, 2005 and impugned order has been passed on 11th March, 2005 with gap of more than twenty days, the said authority ought to have issued one more notice before passing the impugned order to have his say in the matter. Therefore, contrary to the reasons assigned in the show-cause notice, without examining the sole witness of Examiner, the authority has proceeded to pass the impugned order. Therefore, I am of the considered view that, at any stretch, the impugned order passed by the authority is not sustainable,

5. Having regard to the facts and circumstances of the case, the writ petition filed by the petitioner is allowed. The impugned order dated 11th March, 2005 bearing No. KSOU/EB/MPLEC/2004-05 vide Annexure-D, is hereby set aside and the matter stands remitted back to respondents for consideration afresh and to take appropriate decision in accordance with law, after affording an opportunity

to petitioner, in strict compliance of the existing regulations pertaining to Malpractice, as expeditiously as possible, within an outer limit of four months from the date of receipt of a copy of this order. Further, the petitioner herein is directed to appear before the second respondent on 18th April, 2006. The second respondent is directed to give further date for appearance by the petitioner before the Competent Authority and proceed with the matter in accordance with law, as stated supra.

6. With these observations, the writ petition filed by petitioner stands disposed of.