
(1957) 12 AHC CK 0040
In the Allahabad High Court
Case No : Sp. A. No's. 338 to 340 of 1955

Virendra Kumar Agarwal

APPELLANT

Vs

The District Inspector Of Schools Moradabad and others

RESPONDENT

Date of Decision : 23-12-1957

Acts Referred:

Citation : (1958) 28 AWR 200

Hon'ble Judges : Mootham, C.J.;Srivastava, J

Bench : Division Bench

Advocate : Sri J.N. Chaterji, for the Appellant; Sri D.P. Uniyal and Sri Shabd Saran, for the Respondent

Final Decision : Allowed

Judgement

Mootham, C.J.—These are appeals from three orders of Mr. Justice Mehrotra dated 14-3-1955, dismissing three petitions u/Art. 226 of the Constitution.

2. In the year 1954 Virendra Kumar Agarwal, the Appellant in Appeal No. 338, was a student of the Shyam Sunder Memorial Intermediate College, Chandausi, and Keshan Lal and Jitendra Prakash Rastogi, the Appellants in Appeals Nos. 339 and 340, were students of the Hind Intermediate College, Sambhal. The three Appellants sat for the Intermediate Examination in March, 1954. On 8-5-1954, before the results of the Examination were announced, the Principal of the Hind Intermediate College was assaulted by several men including, it is alleged, the three Appellants. The Principal received a number of injuries and made a report at the Police Station Sambhal. The Station Officer informed the Superintendent of Police who at once got in touch with the District Inspector of Schools, Moradabad, and on the following morning, that is on the 9th May, the District Inspector of Schools went to Sambhal and had an interview with Sri B. D. Kala, the Principal of the Hind Intermediate College and also, it appears, with the police authorities. After making certain enquiries the Inspector sent a report to the Education Department. On 25-3-1954, the Inspector made an order rusticating the three Appellants for three years, and at about the same time the

Board of High School and Intermediate Education made an order (which is not before us) withholding the examination results of the three Appellants. The Appellants then filed three petitions in this Court in which they challenged the legality of the orders of rustication and the validity of the order of the Board withholding their examination results. Those petitions were dismissed by the learned Judge. Appeals were then filed against the orders of dismissal but were dismissed by this Court on 21-1-1957, for default. On the application of the Appellants the appeals were subsequently ordered by the Court on 7-11-1957, to be restored to the list for hearing and we have now heard argument on them.

3. We are of opinion that these appeals must be allowed. The order of rustication was made by the district Inspector of Schools in purported exercise of his powers u/R. 96, Cl. (r) of the Education Code. That clause reads thus:

(r) A head of an institution may punish a boy in a manner suited to the offence, e.g., by detention after school or college hours or expulsion from the institution. If in his opinion the fault committed is of such a nature as to deserve a severer punishment, he should report the circumstances to the Inspector, stating for what period the boy should in his opinion be debarred from read-mission to any institution, and the Inspector may then pass an order of expulsion only from the institution or for rustication for a specified period.

4. A note attached to this rule makes it clear that rustication means that a boy will not be admitted to any institution until the expiry of the period of rustication and that it is accordingly a more serious punishment than expulsion which merely debars his readmission to the institution from which he is expelled. Now there can be no doubt that it is the Principal of a college who is primarily responsible for the maintenance of discipline in that college, and he has been given a wide power of punishment including that of expulsion.

5. If however he considers that the fault committed is of so serious a nature as to justify an order of rustication, he has to make a report of the circumstances to the Inspector and he has also to state the period for which in his opinion the culprit should be rusticated ; and it is then only that the Inspector is empowered to pass an order of-rustication or, if he thinks that to be unduly severe, of expulsion. The powers conferred upon an Inspector by R. 96, Cl. (r), are in our opinion intended as an extension of, and not as a substitute for, the disciplinary powers of the Principal on whom, as we have said, rests the responsibility for the maintenance of discipline. The rule does not in our judgment confer upon the Inspector a power to pass an order of rustication unless the Principal is of opinion that such an order is necessary and requests the Inspector to make it.

6. Now Virendra Kumar Agarwal was not a student of the Hind Intermediate College, Sambhal, but of Shyam Sunder Memorial Intermediate College, Chandausi, and there is no evidence at all that the Principal of that College made any report to the Inspector or asked that this Appellant be rusticated. In an affidavit filed by Sri W. C. Chowfin, the District Inspector of Schools, the latter

said in paragraph 7.

That as one of the students, namely Virendra Kumar Agarwal, was a student of S. M. College, Chandausi, I got into touch with the Principal of that College and intimated to him about the proposed action I wanted to take, namely that of rustication, with which the "Principal agreed." No reference is made to this conversation in the affidavit filed by the Principal himself, Sri K. Kumar, and in any case we do not consider that the mere concurrence of the Principal in an order which the Inspector proposes to make is enough to vest the Inspector with power to make an order of rustication. In our view the rule requires that the initiation of the making of an order of rustication must come from the Principal.

7. In the case also of the two other Appellants who were students of the Hind Intermediate College it appears to be the fact that no proposal was made by Sri B. D. Kala that these students be rusticated. In this affidavit Sri Kala states only that he made a report of the incident to the Education Department on 9-5-1954. That report has not been filed, and although Sri Chowfin in his affidavit states that the report contained a recommendation for rustication that statement is clearly inadmissible in evidence. Sri Chowfin himself made a report to the Deputy Director of Education which is Annexure "A" to his affidavit, and it is we think significant that this report contains no mention of any request being made by the Principal either of the Hind Intermediate College or the Principal of the Shyam Sunder Memorial Intermediate College for the justification of the Appellants, but that it does state in the clearest terms that the suggestion that they be rusticated for a period of three years was made to Sri Chowfin by the police.

8. Upon the facts before us we are not satisfied that the circumstances were such as to justify the Inspector making orders for the rustication of the Appellants. He no doubt took the action which he did because he considered it necessary for the maintenance of discipline in the two Colleges, but that in our opinion is not enough. Unless the Principal of a College is himself of opinion that an order of rustication is called for, and asks that it be made, R. SO (r) does not empower the Inspector to pass such an order.

9. The order of the Board withholding the Appellant's results at the Intermediate Examination of 1954 is not, as we have said, before us. The learned Standing Counsel does not contend that that order was intended to be of indefinite duration and we are of opinion that it was therefore intended to be effective only during the period of rustication. Had those orders been valid that period has now expired, and we are therefore of opinion that in any event the Board is no longer justified in withholding the results and must now declare them.

10. In the result therefore these appeals are allowed. The orders of rustication passed upon the Appellants are set aside and the Secretary of the Board of High School and Intermediate Education is directed to publish the results of the Appellant's examination held in March, 1954.

11. The Appellants are entitled to their costs.