

(1999) 08 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7724 of 1998

Y. Nalini Kanth

APPELLANT

Vs

Controller of Examination, Nampally, Hyderabad and another

RESPONDENT

Date of Decision : 20-08-1999

Acts Referred:

Citation : (1999) 5 ALD 452

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : Mr. K.V. Subba Reddy, for the Appellant; Mr. T.V.P. Prabhakar, SC for Intermediate Board, for the Respondent

Judgement

1. The petitioner herein is a student of Science group studying in Second Year Intermediate in Nalanda Junior College, Hyderabad. The father of the petitioner initially sworn an affidavit in support of the writ petition filed for a writ of mandamus challenging the action of the respondents debarring him from writing intermediate examinations by order dated 4-11-1997 as illegal arbitrary and violative of natural justice. Subsequently, the petitioner herein filed WP MP No.31771 of 1998 seeking amendment of the prayer by challenging the impugned order dated 29-6-1998 passed by the respondents cancelling the performance of the candidate at the Intermediate Public Examinations October, 1997 besides debarring him for two subsequent examinations i.e., March 1998 and October, 1998.

2. The grievance of the petitioner is that the impugned order was passed without giving him an opportunity to explain his case and was passed without serving a show cause notice which is against to the principles of natural justice. The brief facts are as follows:

The petitioner herein appeared for first year Intermediate Examination in the year 1996-97 and passed the same. As he wants to improve his performance he took up the supplementary examinations. On 4-11 -1997 while the petitioner

was writing the Chemistry examination Special Squad of the Intermediate Board visited the examination hall and caught the petitioner copying in the examination. Accordingly, the Special Squad seized the Hall Ticket of the petitioner and asked him to leave the examination after taking spot explanation from him. In the spot explanation the petitioner requested the authorities to pardon him for his mistake. However, the matter was referred to the malpractice screening committee. The malpractice Screening Committee on verification of the entire material found that the petitioner has copied the forbidden material in his answer sheet and accordingly recommended punishment under item No.3 of the Scale of Punishment to the candidates resorted to Malpractice Rules, 1981 by cancelling the performance of the candidate at the Intermediate Public Examinations October, 1997 besides debarring him for two subsequent examinations i.e., March and October, 1998.

3. The question that arises for consideration is whether the impugned order passed by the respondent herein is in accordance with law. Counsel for respondent produced the record and also filed counter to the effect that before passing the final orders a show-cause notice was issued to the petitioner on 18-6-1998 through the Principal of the concerned college and the petitioner herein has not offered any explanation to the show-cause notice and finally the impugned order was passed which is in accordance with law. Learned Counsel for respondent was directed to produce the evidence with regard to acknowledgment of service of show-cause notice to the petitioner. The respondent herein has failed to produce the said acknowledgment. It follows that the petitioner was not served with the show-cause notice and has no opportunity to offer his explanation and apart from that before inflicting the punishment against the petitioner the fairness demands that the petitioner should have been given a further opportunity to explain with regard to proposed punishment. The entire procedure adopted by the respondent herein suffers from the voice of arbitrariness and it violates the principles of natural justice.

4. Learned Counsel for the petitioner vehemently argued that the action of the respondent herein by imposing extreme punishment of cancelling the performance and debarring him for two subsequent examinations is not only arbitrary but it is violative of principles of natural justice and the same suffers from non-application of mind. It is further submitted that under the said Scale of Punishment, 1981, the instant case falls under item 2(b) which reads as follows:

Copying from the Cancellation of performance forbidden material in the subject concerned and debarring for one subsequent examination.

5. Whereas the impugned order was made by exercising power under Clause 3 of the Act of Punishment, 1981.

6. Learned Counsel for petitioner has drawn my attention to the judgment in A. Ramakoteswara Rao v. The Vice Chancellor, Nagarjuna University, Guntur, 1990 (3) ALT 1, wherein it is held that "It is needless to say that an extremely serious

punishment has been imposed on the petitioner which is enough to ruin his life if it is implemented as such. Nevertheless it is not the gravity of the punishment with which the Court is concerned. But it is the manner in which the decision has been arrived at by the University authorities, which cannot stand to scrutiny of law. The petitioner has been condemned unheard. He has not been informed of the allegations."

7. Learned Counsel for petitioner further drawn my attention to the judgment in R.V.S.S.R. Pavan Kumar Vs. Board of Intermediate Education, Nampally, Hyderabad and Another, , wherein it is held as follows:

"The contention of the petitioner that any action taken against him by the respondents was not communicated to him is also justified as the respondents have not produced anything to show that such proceeding imposing punishment was communicated to the petitioner. Under the circumstances, there has been a total violation of the principles of natural justice. The petitioner is being condemned for his alleged involvement in malpractice in allowing another candidate to copy from his paper on the date of examination. It not only condemns the candidate, but spoils his education career as a whole. The respondents having failed to comply with the principles of natural justice, and therefore, the alleged action of the respondents can neither be recognised in law nor allowed to be enforced."

8. In a decision of High Court of Delhi in Vibhu Kapoor Vs. Council of Indian School Certificate Examination and Another, , it is held as follows:

"We are also of the view that the impugned decision is liable to be struck down as being violation of the elementary rules of natural justice. The petitioner or his father were never given any charge by the first respondent. They were never heard by the first respondent. No enquiry as to how the answers in the two copy books could be more or less similar was held. The action was taken on a mere suspicion by the Awarding Committee. The Awarding Committee did not even care to examine the invigilators. No enquiry was held as to whether it was possible for the examinees in the time that was to be available to either of the two candidates to copy or permit copying sitting in the examination hall when the seats of the two candidates were at a considerable distance, suspicion cannot be the basis of action. It is not alleged that petitioner has copied from Vineet Mago. It appears to be a case in which Vineet Mago either copied from petitioner's copy book or was helped to copy. There seems to have been no detailed enquiry. No details are pleaded or brought to our notice. The impugned action, therefore, must be held to be arbitrary and is struck down."

9. The Apex Court in S.L. Kapoor Vs. Jagmohan and Others, , held that "the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. The

person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met."

10. In *Annamunthodo v. Oilfields Workers Trade Union*, 1961 (3) All ER 621, Lord Denning observed as follows:

"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 accept 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."

11. By an interim order in WP MP No.9421 of 1998 dated 23-3-1998 the petitioner was permitted to write the second year Intermediate examinations and pursuant to the said direction the petitioner has appeared for the examination. However, the result of the petitioner was not declared. Having regard to the circumstances of the case, I hereby set aside the impugned order passed by the respondents herein and direct the respondents to value the script of the petitioner for the October, 1997 examination (Chemistry) and declare the results of the petitioner for second year intermediate examination.

12. With the above direction, the Writ Petition is allowed. No costs.