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SURESH KOSHY GEORGE

v.

THE UNIVERSITY OF KERALA & ORS.

July 15, 1968

B [J. M. SHELAT AND K. S. HEGDE, JJ.]

Kerala University Act, 1957,—*Rules framed by Syndicate delegating power to Vice-chancellor to hold inquiries on malpractices during examinations—rules not followed—if inquiry invalid.*

Natural Justice—principles of—if require that inquiry report must be furnished with show-cause notice.

C As certain preliminary reports indicated that the appellant had indulged in malpractices during an examination, the Vice-Chancellor of the respondent University appointed the second respondent to conduct an enquiry. The second respondent submitted a report holding the appellant guilty of the malpractices and on the basis of this report, a show cause notice was issued to the appellant by the Vice-Chancellor. After the appellant had submitted his explanation in response to the notice, and not being satisfied with his explanation, the Vice-chancellor passed D an order debarring the appellant from appearing in any examination for a year. This order was subsequently approved by the Syndicate of the University.

The appellant challenged the Vice-Chancellor's order by a writ petition under Article 226 contending *inter alia* that (i) the rules framed by the Syndicate delegating its powers to the Vice-Chancellor required that for conducting the inquiry he should have appointed an officer E designated by the principal of the college in which the appellant appeared for his examination; this was not done in the present case and hence there was no proper inquiry; and (ii) the impugned order was invalid inasmuch as no copy of the report made by the second respondent was made available to the appellant before he was called upon to subnit his explanation in response to the show cause notice. A Single Bench of the High Court allowed the petition, but his decision was reversed in appeal by a Division Bench.

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On appeal to this Court,

HELD : Dismissing the appeal.

(i) The rules made by the Syndicate of the University under which the inquiry was ordered were not statutory rules but merely rules framed for guidance. The rule under which the Vice-Chancellor was required to request the principal of the concerned college to appoint an Inquiry G Officer merely laid down a convenient precedure. Hence the Vice-Chancellor cannot be said to have contravened any law in appointing the Inquiry Officer not designated by the principal. Furthermore, the principal in the present case was the father of the appellant; the Vice-Chancellor was therefore right in not appointing him but an independent person as the Inquiry Officer. [321 B-C, F-H]

H (ii) There was no breach of the principles of natural justice in the appellant not being furnished with a copy of the report of the second respondent before he was called upon to give his explanation. The appellant had been duly informed of the charge against him long before the inquiry began; the inquiry was held after due notice to him and in

his presence; he was allowed to cross-examimne the witnesses examined in the case and he was permitted to adduce evidence in rebuttal of the charge. No rule, either statutory or otherwise, required th Vice-Chancellor to make available to the appellant a copy of the report submitted by the Inquiry Officer. [322 B-C] A

Russel v. *Duke of Norfolk and others,* [1949] 1 All E.R. 108 (at 118); *Local Government Board* v. *Alridge,* [1915] A.C. 120, *De Verteuil* v. *Knaggs and Anr.,* [1918] A.C. 557; *Byrne and Anr.* v. *Kinematograph Renters Society Ltd. & Ors.,* [1958] All E.R. 579; *The Board of High School and Intermediate Education U.P.* v. *Bagleshwar Prasad and Ors.,* [1963] 3 S.C.R. 767 (775), referred to. B

B. Surinder Singh Kanda v. *Government of the Federation of Malaya,* [1962] *A.C.* 322; *General Council of Medical Education and Registration of the United Kingdom* v. *Spackman,* [1943] 2 All E. Reports, 337; *New Prakash Transport Co.* v. *New Savarna Transport Co.,* [1957] S.C.R. 98; distinguished. C

There is an erroneous impression evidently influenced by the provisions in Art. 311 of the Constitution particularly as they stood before the amendment of that Article that every disciplinary proceeding must consist of two inquiries, one before issuing the show cause notice to be followed by another inquiry thereafter. Such is not the requirement of the principles of natural justice. Law may or may not prescribe such a course. Even if a show cause notice is provided by law from that it does not follow that a copy of the report on the basis of which the show cause notice is issued should be made available to the person proceeded against or that another inquiry should be held thereafter. [326 G-327 A] D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 990 of 1968. E

Appeal by special leave from the judgment and order dated October 16, 1967 of the Kerala High Court in Writ Appeal No. 128 of 1967.

S. V. Gupte, A. S. Nambiar and *Lily Thomas,* for the appellant. F

V. S. Seyid Muhammad, P. Keshava Pillai for *M. R. K. Pillai,* for respondents Nos. 1 and 3.

The Judgment of the Court was delivered by

Hegde J. This appeal by special leave from the decision of the Division Bench of the Kerala High Court arises from the disciplinary action taken by the Kerala University against the appellant. He was a student in the 1st year Degree Course of the Five Year Integrated Course of Engineering, in the Engineering College, Trichur during the academic year 1964-1965. The Vice Chancellor of the said University came to the conclusion that he was guilty of malpractice during the examination held in April 1965 and consequently debarred him from appearing in any examination till April, 1966. G H

In the examination in question the appellant had to appear in two papers in Mathematics. In this case we are concerned with

A the Mathematics I paper. The Additional Examiner who valued that paper awarded the appellant 14% marks but the Chief Examiner gave him 64% in that paper. The appellant had answered questions Nos. 1(a), 5(a), 9(a) and 4(a) in the main answer book and secured 0, 2 out of 6, 0 and 0 marks respectively from the Additional Examiner. Pages 6-11 of his main answer book were
B 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 book questions 1(a) and 9(a) which the appellant had already answered in the main answer book and for which he had secured 0 marks from the Additional Examiner were found
C re-answered and for these he secured 100% marks from the Chief Examiner. The Chairman of the Board of Examinations, noticing this unusual feature reported the matter to the Board of Examiners in Mathematics. The Board suggested that the University should take up the matter. The University thereafter called for the answer books of the appellant and the same was handed over to the Dean of the Faculty of Science who is the Convener of the
D Standing Committee for Examinations of the University for scrutiny. That official suspected that the additional books must have been inserted after the Additional Examiner had valued the paper and therefore suggested to the University that a high powered committee should be constituted to go into the matter. Accordingly a committee consisting of the Chairman of the Board of
E 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. That committee after inquiry in which the Additional Examiner, the Chief Examiner as well as the appellant were examined came to
F the conclusion that the appellant was guilty of malpractice which called for disciplinary action. Consequently the Vice Chancellor ordered a formal inquiry as required by rules. He appointed the second respondent, a retired Principal of the University College, Trivandrum as Inquiry Officer for conducting the inquiry. After inquiry the second respondent submitted a report holding the ap-
G pellant guilty of malpractice during the examination in question. He opined that subsequent to the valuation of the paper by the Additional Examiner, the appellant had inserted additional answer books with the collusion of the Chief Examiner. On the basis of that report a show cause notice was issued to the appellant by the Vice Chancellor. The appellant submitted his explanation in
H response to that notice. Not being satisfied with that explanation the Vice Chancellor passed an order debarring the appellant from appearing for any examination till April, 1966. The same was subsequently approved by the Syndicate. The Order of the Vice

Chancellor was impugned before the High Court in a Petition under Art. 226 of the Constitution. A Single Judge of the High Court who heard the matter at the first instance allowed the petition and set aside that order but his decision was reversed in appeal by a Division Bench of that High Court. The appellant appeals to this Court against that decision.

Before the High Court as well as in this court the impugned order was assailed on two grounds *viz.*—(1) the formal inquiry required under the rules should have been conducted by an officer designated by the Principal of the College in which the appellant appeared for his examination *i.e.* Examination Centre and hence there was no proper inquiry and (2) the impugned order was invalid inasmuch as no copy of the report made by the second respondent was made available to the appellant before he was called upon to submit his explanation in response to the show cause notice issued to him by the Vice Chancellor.

Those contentions appealed to the learned Single Judge but the Judges of the Division Bench found no merit in them. Those very contentions have again been repeated before us.

Before examining those contentions, it is necessary to mention a few more facts. The Kerala University is governed by Kerala University Act, 1957. The Engineering College, Trichur is affiliated to the Kerala University. Under s. 19(N) of the Kerala University Act, the control over the discipline of the students is vested with the Syndicate of the University. Cl. (V) of that section empowers the Syndicate to delegate any of its powers to the Vice Chancellor. Cl. 3(xxvii) of Chapter VII of the 1st Statutes says :

> "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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> ....
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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 examination or from any University course in a

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."

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Admittedly the Syndicate delegated the above power to the Vice Chancellor under Exh. R. 5, a set of rules framed by the Syndicate. These rules are not statutory rules. They are merely rules for guidance. They could not have been framed under s. 28 of the Kerala University Act. No other provision in that Act empowers the Syndicate to frame rules. But the delegation of powers made under those rules is valid as no fixed procedure is prescribed in that regard. Those rules provide that on the receipt of a complaint against a student the Vice Chancellor should get an inquiry made in respect of that complaint by an officer designated by the Principal of the College in which the concerned student appeared for his examination. They further provide that on receipt of the report of the Inquiry Officer the Vice Chancellor after consultation with the sub-committee on discipline should take a provisional decision, that decision should be communicated to the student who should be called upon to show cause against the provisional decision and after receiving his representation, if any, the Vice Chancellor should pass appropriate final orders.

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In this case the Principal of the College in which the appellant appeared for his examination was not requested to appoint an Inquiry Officer. The Inquiry Officer was directly appointed by the Vice Chancellor himself. The reason for this course is obvious. The Principal in question was the father of the appellant. The Vice Chancellor, therefore, thought it proper that he himself should appoint some independent person as the Inquiry Officer. We have earlier seen that the rule under which the Vice Chancellor was required to request the Principal of the concerned college to appoint an Inquiry Officer is not a statutory rule. That rule merely laid down a convenient procedure. Hence the Vice Chancellor cannot be said to have contravened any law in appointing the Inquiry Officer. It cannot be said and it was not said that the steps taken by the Vice Chancellor were in contravention of the principles of natural justice. The second respondent as mentioned earlier is a retired Principal of an Engineering College, a responsible person and highly qualified for the task entrusted to him. His disinterestedness was never challenged at any stage of the inquiry. In our opinion, the Divison Bench of the High Court rightly negatived the contention that by appointing the second respondent as the Inquiry Officer, the Vice Chancellor had either breached any statutory rule or contravened any principle of natural justice.

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The only other contention that was taken before the Division Bench and repeated in this Court was that inasmuch as the Vice Chancellor did not make available to the appellant a copy of the report submitted by the second respondent before he was called upon to make his representations against the provisional decision taken by him, there was breach of the principles of natural justice. The appellant had been duly informed of the charge against him long before the inquiry began; the inquiry was held after due notice to him and in his presence; he was allowed to cross-examine the witnesses examined in the case and he was permitted to adduce evidence in rebuttal of the charge. No rule either statutory or otherwise was brought to our notice which required the Vice Chancellor to make available to the appellant a copy of the report submitted by the Inquiry Officer. It is not the case of the appellant that he asked for a copy of that report and that was denied to him. The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions.

In *Russel* v. *Duke of Norfolk and others*(1), Tucker, L.J. observed :

> "There are, in my view, no words which are of universal application to every kind of inquiry 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. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

In *Local Government Board* v. *Alridge*(2) Viscount Haldane L.C. observed :

> "My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must become to in the spirit and with the sense of responsibility of a tribunal whose duty

(1) [1949](1) All E.R. p. 108 (at 118). (2) [1915] A.C. p. 120.

A it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same. In the case of a Court of law tradition in this country has prescribed certain principles to which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribu-
B nal. In modern times it has become increasingly common for Parliament to give an appeal in matters which really pertain to administration rather than to the exercise of the judicial functions of an ordinary Court, to authorities whose functions are administrative and not in the ordinary sense judicial. Such a body as the Local Government Board has the duty of enforcing obligations
C on the individual which are imposed in the interests of the community. Its character is that of an organization with executive functions. In this it resembles other great departments of the State. When, therefore, Parliament entrusts it with judicial duties, Parliament must be taken, in the absence of any declaration to the con-
D trary, to have intended it to follow the procedure which is its own and is necessary if it is to be capable of doing its work efficiently. I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In *Board of Education v. Rice*(1) he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under
E a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on everyone who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The Board had no power to administer an oath, and need not examine witnesses. It
F could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view. If the Board failed in this duty, its order might be the subject of *certiorari* and it must itself be the subject of
G *mandamus*."

In the above case the Local Government Board acted solely on the basis of a report submitted by one of the Housing Inspectors of the Board after a public inquiry. The House of Lords held that the procedure adopted did not contravene the principles of natural justice. In *De Verteuil v. Knaggs and Anr.*(2) the
H Judicial Committee of the Privy Council observed while considering the scope of the powers of the Governor under s. 2 of the Immigration Ordinance of Trinidad :

(1) [1911] A. C. 179. (2) [1918] A.C. 557.

> "Their Lordships are of opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice."

In *Byrne and anr. v. Kinematograph Renters Society Ltd. & ors.*(1) Lord Harman J. observed :

> "What, then, are the requirements of natural justice in a case of this kind ? First, I think that the person accused should know the nature of the accusation made; secondly that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more."

The decision of the Judicial Committee in *University of Ceylon* v. *Fernando*(2) appears to go much further than what was laid down in the aforementioned cases. For the purpose of this case it is not necessary to take assistance from the ratio of that decision. Suffice it to say that in the case before us there was a fair inquiry against the appellant; the officer appointed to inquire was an impartial person: he cannot be said to have been biassed against the appellant; the charge against the appellant was made known to him before the commencement of the inquiry; the witnesses who gave evidence against him were examined in his presence and he was allowed to cross-examine them and lastly he was given every opportunity to present his case before the Inquiry Officer. Hence we see no merit in the contention that there was any breach of the principles of natural justice. It is true that the Vice Chancellor did not make available to the appellant a copy of the report submitted by the Inquiry Officer. Admittedly the appellant did not ask for a copy of the report. There is no rule requiring the Vice Chancellor to provide the appellant with a copy of the report of the Inquiry Officer before he was called upon to make his representation against the provisional decision taken by him. If the appellant felt any difficulty in making his representation without looking into the report of the Inquiry Officer, he could have very well asked for a copy of that report. His present grievance appears to be an after thought and we see no substance in it.

Mr. S. V. Gupte, the learned counsel for the appellant, in support of his contention that the failure of the Vice Chancellor to make available to the appellant a copy of the report submitted by the Inquiry Officer is an infringement of the principles of natural justice, placed strong reliance on the decision of the Judicial

(1) [1958] All E.R. 579. (2) [1960] (1) All E.R. 631.

A Committee in *B. Surinder Singh Kanda* v. *Government of the Federation of Malaya*(1). Therein, at the instance of the Commissioner of Police, a preliminary inquiry was held against S. S. Kanda. Thereafter a formal inquiry was ordered. On the basis of the conclusions reached at the formal inquiry Surinder Singh Kanda was dismissed. Kanda challenged his dismissal in an action B brought in the High Court of Malaya. During the pendency of that proceeding, it came to light that the report made by the Board which held the preliminary inquiry, a report which was highly prejudicial to Kanda had been placed in the hands of the officer who held the formal inquiry but neither the copy of that report nor its substance had been made available to Kanda. That report was likely to have prejudiced the Inquiry Officer against Kanda. Under C those circumstances the Judicial Committee came to the conclusion that the inquiry held was not fair and consequently quashed the order dismissing Kanda. The ratio of that decision has no application to the present case. The decision of the House of Lords in *General Council of Medical Education and Registration of the United Kingdom* v. *Spackman*(2) does not bear on the D question under consideration. Therein the House of Lords held that the General Medical Council was not right in declining an opportunity being given to Dr. Spackman to show that the conclusion of the Divorce Court that he was guilty of infamous conduct was not correct. In that case the General Medical Council took action against Dr. Spackman solely on the basis of the conclusions reached by the Divorce Court in *Pepper* v. *Pepper*. E Dr. Spackman wanted to negative the court's finding of adultery by tendering evidence which though available was not called in the divorce proceedings. The House of Lords held that the Council's refusal to take fresh evidence prevented their being the due inquiry required by s. 29 of the Medical Act, 1858 and therefore an order of *certiorari* was granted.

F The scope of the principles of natural justice as explained by the English Courts was adopted by this Court in a large number of cases. See *New Prakash Transport Co.* v. *New Savarna Transport Co.*(3) and *Nagendra Nath Bora* v. *The Commissioner of Hill Divisions*(4).

G Before closing this case we would like to recall the observations made by Gajendragadkar J. (as he then was) speaking for the Court in *The Board of High School and Intermediate Education U.P.* v. *Bagleshwar Prasad and ors.*(5). His Lordship observed :

H "In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the

(1) [1962] A.C. 322. (2) [1943] (2) All E. R. 337.
(3) [1957] S.C.R. 98. (4) [1958] S.C.R. 1240 (1261).
(5) [1963] (3) S.C.R. 767 (775).

Universities or appellant No. I 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 cases 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 Art. 226, the High Court is not sitting in a 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 Tribunal, 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."

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There seems to be an erroneous impression in certain quarters evidently influenced by the provisions in Art. 311 of the Constitution particularly as they stood before the amendment of that article that every disciplinary proceeding must consist of two inquiries, one before issuing the show cause notice to be followed by another inquiry thereafter. Such is not the requirement of the principles of natural justice. Law may or may not prescribe such a course. Even if a show cause notice is provided by law from that it does not follow that a copy of the report on the basis of which the show cause notice is issued should be made available

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A to the person proceeded against or that another inquiry should be held thereafter.

For the reasons mentioned above the appeal fails and is dismissed with costs.

B R.K.P.S. *Appeal dismissed.*