

Sube Singh and others v. State of Haryana and others
(S. S. Kang, J.)

Before S. S. Kang, J.

SUBE SINGH AND OTHERS,—Petitioners.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 6328 of 1986

January 29, 1987.

Constitution of India, 1950—Article 14—University student suspended—Suspension aforesaid—Whether amounts to a punishment—Suspension ordered without grating an opportunity of hearing to the student—Principle of the rule of audi alteram partem—Whether attracted to the case—Order of suspension—whether liable to be set aside.

Held, that the order of suspension of a student works as punishment. If a student misses or fails to attend the classes for a number of days in an academic year he becomes ineligible to take the examination of that particular year. Suspension of a student is different from suspension of government employee. The latter in the event of his exoneration is fully compensated by payment of full-salary and allowances whereas in the case of a student no compensation is possible for the loss of a year. The order of suspension, therefore, has adverse civil consequences for a student. It is well settled that an order which has evil civil consequences has to be passed after giving an opportunity of hearing to the affected party and the principles of audi alteram partem are attracted to the case. The order of suspension is, therefore, liable to be quashed.
(Para 10)

Petition under Articles 226/227 of the Constitution of India, praying that :—

- (a) *That this petition be admitted and after hearing the parties the impugned order (Annexure P. 2) be quashed by issuance of a writ of certiorari or any other writ, order or direction.*
- (b) *That exemption be granted from filling certified copies of documents Annexures P. 1 to P. 6.*
- (c) *That exemption be granted from serving the respondent with advance copies of the petition keeping in view the urgency of the matter as the examinations are starting in mid December, 1986.*

- (d) *That the respondents be directed to permit the petitioners to take the examinations, complete the sessinoals and attend the classes during the pendency of this petition be issuance of an appropriate writ, order or direction.*
- (e) *That any other writ, order or direction be issued to which the petitioners are found entitled in the facts and circumstances of this case.*

R. S. Cheema, Advocate, for the Petitioner.

M. S. Liberhan, Advocate, for Respondents Nos. 2 & 3.

I. D. Singla, Advocate, for Respondent No. 1.

JUDGMENT

(1) Whether the principle of *audi alteram partem* is applicable before passing orders of suspension and expulsion of a student from an educational institution ?” is the short but important question raised in this petition filed by Sube Singh and 13 other students of the Regional Engineering College, Kurukshetra, affiliated to the Kurukshetra University, Kurukshetra. It has risen in the following circumstances :—

(2) The petitioners are the students of various classes of Regional Engineering College, Kurukshetra — respondent No. 2.

(3) On may 21, 1985 an unfortunate incident took place in the precincts of the college. A case regarding this incident was registered in Police Station, Thanesar, District Kurukshetra. According to the allegations in the first information report, the petitioners and one Satya Paul Sirowa had caused injuries to one Mohinder Kumar, who was an ex-student of this college. It was further alleged that thereafter Mr. Mohinder Kumar, above-mentioned, went away from the college. He was again assaulted. Mohinder Kumar succumbed to his injuries.

(4) On that very evening Shri B. K. Kaul, Principal of the College, passed an order suspending the petitioners from the College with immediate effect. During the course of suspension, the petitioners were debarred from entering the College Campus including the hostels. A copy of this order has been appended as Annexure P. 1 to the writ petition.

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(5) On 23rd May, 1985 the College authorities passed another order expelling the petitioners and Satya Paul Sirowa, above-mentioned, from the College with immediate effect. This order was issued under the signature of Shri K. K. Aggarwal, Professor-in-Charge, on behalf of the Principal of the College. A copy of the order is appended as Annexure P. 2 to the writ petition. It is stated in the order that in view of the gravity of the situation following the murder of Mr. Mohinder Kumar and the non-availability of the concerned students suspended,—*vide* orders dated 21st May, 1985, the petitioners and Satya Paul Sirowa were expelled from the College with immediate effect. The entry of these students to the College Campus including the hostels was banned. The case was investigated by the police. The petitioners, Satya Paul Sirowa and ten other students were challenged for the murder of Mr. Mohinder Kumar. They were tried by the learned Additional Session Judge, Kurukshetra. The petitioners were acquitted of the charge of murder but were convicted under section 304 — Part-II, Indian Penal Code, and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 1,000 each. The petitioners have filed an appeal against the judgment of the learned trial Judge. The same has been admitted by this Court and they have been released on bail.

(6) The petitioners have assailed orders Annexures P. 1 and P. 2 to this writ petition.

(7) The writ petition is resisted by the respondents. A written statement has been filed on behalf of respondent No. 3 the Principal of the College — in which the material factual averments made in the writ petition are not denied. It is admitted that following the murder of Mr. Mohinder Kumar the petitioners were suspended and they were ordered to vacate the hostels. The orders could not be served on the petitioners personally because they were not available and they had not left behind their contact address with the Professor designated for this purpose. It is further averred that the notification expelling the petitioners from the College was issued after the report of the Inquiry Committee for this purpose had been received by the College authorities. It is further contended that the petitioners evaded the service of notices and, in fact, went underground without leaving any contact addresses. The inquiry was conducted by the Inquiry Committee by observing principles of natural Justice.

(8) It is vigorously contended by Shri R. S. Cheema, learned counsel for the petitioners, that before passing the impugned orders Annexure P1 and P2 — suspending and expelling the petitioners — they were not served with any notices. The permanent addresses of the petitioners were available with the College-authorities because every student while seeking admission to the college has to submit his permanent address. The College-authorities did not try to contact the petitioners or serve the notices of suspension of any impending inquiry. No notice was affixed at the College Notice Board even. The respondents have not produced copies of any notice purported to have been issued to the petitioners. The averments in the written statement regarding the holding of domestic inquiry against the petitioners are extremely vague. It is not mentioned as to who constituted the Inquiry Committee; when its meeting was held and it is not disclosed as to who were the witnesses, if any, who were examined by the Inquiry Committee. The Enquiry report has not been produced in this Court even during the hearing of the writ petition. It has not been produced with the written statement. The orders of suspension and expulsion have serious and graves consequences for a student. These have been passed in utter and flagrant violation of natural justice and cannot be sustained. It is further contended that Satya Paul Sirowa, who was similarly situated as petitioners Nos. 10 and 11, has been permitted to take his examinations.

(9) Shri M. S. Liberhan, learned Advocate General, Haryana, appearing for the respondents, has countered the arguments of Shri R. S. Cheema, and has contended that in the writ petition there is no challenge by the petitioners to the orders of their suspension. The petitioners after committing a heinous crime, made good their escape and were not available in the College or in the hostel. Further more, the order of suspension has been passed as an interim measure to expedite the inquiry and it was not passed by way of punishment. He further contended that the petitioners after committing a heinous crime in the College campus rendered themselves liable to disciplinary action. After committing the crime they absconded and did not leave behind any address where they could be served. An inquiry was held against their conduct and they were held guilty by the Inquiry Committee.

(10) It is true that it has not been specifically averred in the writ petition that the orders of suspension be set aside. However, a general prayer is there that any other writ, order or direction be

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issued to which the petitioners are found entitled. The order of suspension has been appended and a reference thereto has been made and a reference thereto has been made in the body of the writ petition also. It cannot be said that the absence of a specific prayer for quashing order Annexure P1 has in any way prejudiced the respondents and they have been denied an opportunity to defend this order. The second plea on this aspect of the case put forth by Shri M. S. Liberhan cannot be accepted. For a student the order of suspension works as punishment. If a student misses or fails to attend the classes for a number of days in an academic year, he becomes ineligible to take examination of that particular year. Suspension of a student is different from the suspension of a Government employee. The latter in the event of his exoneration is fully compensated by payment of full salary and allowances. In the case of a student, however, he in the case of his exoneration cannot be compensated for the loss of a year. So the order of suspension has adverse civil consequences for a student. It is well settled that an order which has evil civil consequences has to be passed after complying with the principle of *audi alteram partem*. It has not been argued and indeed it could not be argued that the statutes of the College or the University expressly rule out the application of this rule to the disciplinary proceedings. A Division Bench of this Court in *Rakesh Kumar v. The State of Punjab and others* (1), had an occasion to consider this matter. Therein also an order of suspension of a school student had been assailed on the ground that the same had been passed in violation of the principles of natural justice. The challenge to the order had been upheld by the Division Bench. It was observed:—

“It is an elementary rule of natural justice that before any order affecting party's interest is passed he must be heard. The principle is expressed by the maximum *audi alteram partem*, in this case a vital decision was being taken from the point of view of the boy and the matter fell for the application of the principles of natural justice. In such a case when the Principal in dealing with one of his students, had considered a matter which was sub judice and did

(1) A.I.R. 1965 Pb. 507.

not relate to the discipline of the institution itself, the principle of audi alteram partem could not be lightly dispensed with and it behoved the authority to hear the student who was adversely affected by the impugned order passing it. The absence of an opportunity provided to the petitioner amounted to a denial of justice and a violation of an essential principle of natural justice. Hence the suspension order should be quashed.”

The ratio of the above decision is fully applicable to the facts of the present case.

(11) There is no cogent evidence on the file to hold that any inquiry had been held by the College-authorities in the conduct of the petitioners. It will be interesting to note that the incident had taken place on 21st May, 1985. The petitioners had been suspended on the evening of that day. The orders of expulsion had been passed within 48 hours. The report of the Inquiry Committee has not been placed on the file. It has not been produced even during the course of hearing of the writ petition. The copies of the notices issued to the petitioners have also not been appended to the written statement nor produced in the Court during the course of hearing of the writ petition. From the facts and circumstances of the case it becomes clear that no inquiry was held against the petitioners. Even if for the sake of arguments it is accepted that an inquiry was held, that inquiry will not satisfy the principles of fairness and justice. The students who were facing the grave criminal charge, could not be expected to defend themselves in an inquiry which is held within such a short time. They will have no time to prepare their defence and to project their own version, if any, of the incident or explanation regarding their conduct.

(12) The plea of the petitioners Nos. 10 and 11 that they had been discriminated against has not appealed to me. It has been explained by the respondents that Satya Paul Sirowa has been allowed to take the examination under the orders of this Court. It is true that the orders were passed in writ petition which pertained to unfair means and it had nothing to do with the incident leading to the suspension and expulsion of the petitioners, yet the authorities may have thought it fit to permit Satya Paul Sirowa to take the examination in pursuance of the direction issued by this Court in that petition. This will not entail any discrimination.

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(13) Consequently, the writ petition is allowed and the impugned orders Annexures P1, dated 21st May, 1985, and P2, dated 23rd May, 1985, are quashed. The College-authorities however, shall be at liberty to proceed against the petitioners in accordance with law. It is needless to say that they will afford the opportunity of hearing to the petitioners and that the principles of natural justice shall be observed in letter and spirit. If the respondents decide to take any action against the petitioners, they shall observe the principles of natural justice and shall afford full opportunity to the petitioners, There shall, however, be no order as to costs.

S.C.K.

Before J. V. Gupta, J.

FATEH CHAND,—*Petitioner.*

versus

BALBIR SINGH,—*Respondent.*

Civil Revision No. 3486 of 1986

February 2, 1987.

Constitution of India, 1950—Schedule VII List II Entry 5—East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(hh) and 13-A—Landlord retiring from service of the New Delhi Municipal Committee as an Assistant Secretary—Service under the Municipal Committee—Whether can be said to be ‘in connection with the affairs of the State’—Such landlord—Whether covered within the meaning of a ‘specified landlord’ in terms of Section 2(hh) of the Act and as such entitled to claim eviction of the tenant under Section 13-A thereof.

Held, that municipalities have been created all over the State to enable them to discharge their functions and provide civil amenities to its citizens and for that purpose the States have been given powers under Entry 5, List II of Schedule VII of the Constitution of India, 1950, to make laws. Though a person employed in a municipality may not be deemed to be in public service or in the State service as such but he would certainly fall in the category of those who are serving in connection with the affairs of the State. Therefore, it has to be held that an employee of a Municipal Committee