Karnataka High Court Smt. N.S. Nagalakshmi vs Vidya Vardhaka Sangha And Anr. on 10 August, 2005 Equivalent citations: 2005 (6) KarLJ 106 Author: S Nayak Bench: S Nayak, C Kumaraswamy JUDGMENT S.R. Nayak, J. 1. The Managing Committee of Vidya Vardhaka Sangha, the first respondent herein, initiated disciplinary proceedings against Smt. N.S. Nagalakshmi, the appellant herein, while she was serving as Principal of the V.V.S. Pre-University College for Women, situated in I Block, Rajajinagar, Bangalore by issuing two charge memos dated 9-4-2004 and 1-7-2004. 2. The validity of those charge memos was assailed by the appellant before this Court by filing Writ Petition No. 46496 of 2004, on the grounds: (i) that the Managing Committee of the first respondent is not competent to initiate disciplinary proceedings against her in terms of the provisions of the Karnataka Education Act, 1983 (for short, 'the Act'); and (ii) that, even assuming but not admitting that the Managing Committee of the first respondent has power to initiate disciplinary proceedings against her, the Managing Committee itself ought to have framed the charges against her and since the charges are framed by the Enquiry Committee, the disciplinary proceedings are vitiated. 3. In addition to the above grounds raised in the writ petition, as could be seen from the order of the learned Single Judge, one more contention was raised in the course of the argument before the learned Single Judge. The third contention is that the constitution of the Managing Committee of the first respondent is defective and not in conformity with Section 42 of the Act. The learned Single Judge having dealt with all the three contentions in detail but not finding any merit in any of the contentions dismissed the writ petition by his order dated 22-3-2005. Hence, this writ appeal by the aggrieved petitioner-delinquent. 4. After the writ petition was disposed of on 22-3-2005, the Disciplinary Authority conducted the enquiry against the appellant in pursuance of the charge memos dated 9-4-2004 and 1-7-2004, completed the enquiry and passed final order on 4-4-2005 removing the appellant from service as a disciplinary measure. Therefore, the appellant has filed an LA. in this writ appeal to amend the prayer for quashing of the order of the Disciplinary Authority dated 4-4-2005. The Court has not yet passed any order on that application. 5. We have heard Sri M.S. Bhagwat, learned Counsel appearing for the appellant and Sri Kasturi, learned Senior Counsel appearing for the respondents. Sri Bhagwat, reiterated the same contentions which were urged before the learned Single Judge. In support of the contention that the Managing Committee of the first respondent has no power to initiate disciplinary proceedings against the appellant, Sri Bhagwat would draw our attention to the definition of the term 'Governing Council' as defined in Section 2(17), the definition of the term 'Managing Committee' in Section 2(19), the provisions of Sub-section (4) of Section 41, Section 42, Section 46(l)(c) and would maintain that since the appellant is undeniably the head of the institution, only the Governing Council of the first respondent-management could initiate disciplinary proceedings and not the Managing Committee of the first respondent. In support of the 2nd contention, Sri Bhagwat would contend that Sub-rule (4) of Rule 17 of the Karnataka Private Educational Institutions (Discipline and Control) Rules, 1978 (for short, 'the Rules'), is saved by Section 146 of the

Karnataka Education Act, 1983, and in terms of Sub-rule (4) of Rule 17, the Disciplinary Authority itself is required to frame charges and since the charges are framed by the Enquiry Committee, the conduct of the enquiry on such a charge against the appellant is vitiated. Sri Bhagwat would also reiterate the 3rd contention noted above before us, but, we told him in clear terms that the 3rd contention raised by him in the course of the argument before the learned Single Judge is ex facie untenable for want of pleading as well as proof. The question whether the Managing Committee of the first respondent is properly constituted is undeniably a question of fact and if the appellant wanted to urge that point as a ground of attack against the impugned action, the appellant should have laid the factual matrix in that regard and raised specific ground in the grounds of writ petition. We have carefully perused the pleadings of the appellant in the writ petition including the grounds. No pleading is laid nor any ground is raised with regard to the defective constitution of the Managing Committee. Therefore, simply, because, without the support of the pleading and material evidence, in the course of the argument a point was urged and that was referred to by the learned Single Judge, it cannot be said that we are legally bound to consider such plea raised before us. Therefore, we refrain from considering the 3rd point urged before us, and for doing so, in our view, we are fully fortified by the well-established principles governing the writ jurisdiction of this Court under Article 226 of the Constitution of India and the procedural law. 6. Countering the argument of Sri Bhagwat, Sri Kasturi, learned Senior Counsel would contend that since admittedly there is no Governing Council in the first respondent-institution and that the appellant was appointed as the head of the institute only by the Managing Committee of the first respondent, the ground raised now by her is ex facie untenable. It was highlighted that the entire affairs of the respondent-institution are taken care of and managed by the Managing Committee and therefore, the charge memos issued by it to the delinquent cannot be faulted on the ground of want of competence. It was also pointed out by Sri Kasturi that the respondent-institute is a charitable institution and therefore, by virtue of the provisions of Sub-section (4) of Section 42 of the Act, the Managing Committee constituted to manage the affairs of the 1st respondent-institution in terms of the provisions of the Karnataka Societies Registration Act, 1960 and the by-laws framed thereunder should be regarded as a 'Managing Committee' for the purpose of the Act also. Therefore, the learned Senior Counsel would maintain that the power of the Managing Committee to take disciplinary proceedings against the appellant cannot be doubted under any circumstance. Meeting the argument of Sri Bhagwat that the Managing Committee itself should have framed the charges against the appellant, in the first place, Sri Kasturi would contend that the records placed before the Court would clearly show that the Managing Committee itself had applied its mind on the charges to be framed against the appellant-delinquent and having decided on the charges to be framed against the delinquent, it forwarded the files and papers to be Enquiry Committee, a member of the Bar in the instant case, to put the allegations in a legal frame effectively. According to Sri Kasturi, the requirement that the Disciplinary Authority itself shall frame charges is sub-

stantially complied with. Sri Kasturi would also submit that simply because the Enquiry Committee framed the charges on the basis of the materials supplied and resolution passed by the Managing Committee but without anything further, the charges could not be condemned as unauthorised. Be that as it may, Sri Kasturi would submit that on that count no prejudice is sustained by the delinquent and the delinquent has utterly failed to make out any prejudice on account of the fact that the charges are framed by the Enquiry Committee. Alternatively, Sri Kasturi would urge that from a careful reading of the provisions of the Sub-rule (4) of Rule 17 of the Rules it cannot be said that that sub-rule mandates that the Disciplinary Authority itself, in physical terms, shall frame the charges under all circumstances. On the other hand, the provision made in the Sub-rule (4) empowering the Enquiry Committee to fix time-frame for the delinquent employee to submit the written statement to the charge memo would clearly indicate that if authorised by the Disciplinary Authority, even the Enquiry Committee can also frame the charges and that is what has been done by the Enquiry Committee. 7. Having heard the learned Counsels for the parties, the only thing to be seen by us is whether there is any merit in either of the first two contentions raised by Mr. Bhagwat in the course of the argument? 8. It is true, in terms of Sub-section (4) of Section 41 of the Act, the Governing Council is the Competent Authority to appoint the head of the institution and also take disciplinary action against him according to the prescribed rules, if any. This position is manifested by the provisions of Clause (c) of Sub-section (1) of Section 46 of the Act also as per which the Managing Committee of the institution has the power to take disciplinary action against the teachers and other employees except the head of the institution. The terms 'Governing Council' and 'Managing Committee' are defined under the Act. Sub-section (17) of Section 2 defines the term 'Governing Council' to mean any person or body of persons permitted or deemed to be permitted under the Act to establish or maintain a private educational institution; or commerce institution or tutorial institution and includes the governing body, by whatever name called, to which the affairs of the said educational institution are entrusted. Sub-section (19) of Section 2 of the Act defines 'Managing Committee' to mean the individual or the body of individuals entrusted or charged with the management and administration of a private educational institution and where a society, trust or any association manages more than one such institution, includes the Managing Committee of each such institution. The Act does not enact any provision to constitute Governing Council as defined under Sub-section (17) of Section 2 of the Act, whereas, Sub-sections (2) and (3) of Section 42 of the Act specifically deal with the constitution and the term of the 'Managing Committee'. At this stage itself, it is appropriate to notice the provision of Sub-section (4) of Section 42 of the Act, because, the respondent-educational institution, it is said, is a charitable institution. The argument of Sri Bhagwat is that after the Act came into force, the Managing Committee, as envisaged under Section 42 of the Act was not constituted. Of course, there is no pleading nor ground to support the above contention urged by Sri Bhagwat in the course of arguments. Be that as it may, even assuming that after the Act came into force, the Managing

Committee of the respondent- institution is not reconstituted in the manner as prescribed under Sub-sections (2) and (3) of Section 42 of the Act, nevertheless, the governing body of the respondent-institution which existed before the Act came into force should be deemed to be a Managing Committee constituted under Section 42 of the Act by virtue of the provisions of Sub-section (4) thereof. 9. The first contention of Sri Bhagwat is untenable and requires to be rejected in limine on first principle itself. Even according to the appellant, there never existed Governing Council to manage the affairs of the respondent-educational institution as defined under Sub-section (17) of Section 2 of the Act before or after the Act came into force. It is an admitted position that the affairs and management of the respondent-educational institution have been attended to/taken care of by the Managing Committee only. There is no other body except Managing Committee in the respondent-educational institution which is entrusted with the management and affairs of the respondent-educational institution. It is also admitted that the appellant was also appointed by the Managing Committee only and not by any other body. The appellant being an appointee of the Managing Committee of the respondent-educational institution and being a beneficiary of its action, cannot now turn round and contend that the disciplinary action should have been initiated by the Governing Council, a non-existing and imaginary entity. If the respondent-educational institution, in terms of the Act, has necessarily to constitute 'Governing Council' as defined under Sub-section (17) of Section 2 of the Act, it is for the statutory authorities to take appropriate action and insist that the management shall constitute a 'Governing Council' for its institution. Since, admittedly, there is no Governing Council before or after the Act came into force, the point now raised by the appellant is totally untenable and liable to be rejected. 10. This takes us to the second contention raised by Sri Bhagwat based on Sub-rule (4) of Rule 17 of the Rules. Sub-rule (4) of Rule 17 reads as follows.– "17(4) The Disciplinary Authority shall frame definite charges on the basis of the allegations on which the enquiry is proposed to be held. Such charges, together with a statement of allegations on which they are based shall be communicated in writing to the employee and he shall be required to submit within such time as may be specified by the Enquiry Committee, a written statement of his defence and also to state whether he desires to be heard in person". 11. If we read the provision of Sub-rule (4) as a whole, it is our understanding that the term "shall" occurring in that sub-rule mandates that the Disciplinary Authority shall frame definite charges on the basis of the allegation on which the enquiry is proposed to be held. In other words, the emphasis is on the definite charges and not on the question as to who shall frame the charges. In the instant case, admittedly, on the basis of the resolution passed by the Managing Committee and the records, information and particulars supplied by the Managing Committee, the Enquiry Committee framed the charges. Having gone through the materials placed before the Court, we are satisfied that the Advocate who constituted the Enquiry Committee, on his own or on his subjective satisfaction, has not framed any charge against the appellant-delinquent. All the charges framed by him are on the basis of the satisfaction already recorded by the Managing Committee and

the particulars and information already collected by the Managing Committee. Alternatively, it needs to be noticed that Sub-rule (4) of Rule 17, in terms, does not require that in each and every case the Disciplinary Authority alone shall frame the charges. We say this, because, the second sentence under Sub-rule (4) of Rule 17 empowers the Enquiry Committee to grant time to a delinquent to file written statement of defence to a charge memo. If it is the requirement of Sub-rule (4) of Rule 17 of the Rules that the Disciplinary Authority alone shall frame charges against a delinquent, then, the Enquiry Committee would not have been empowered to fix a time-frame before which a delinquent should file written statement of his defence to a charge memo. The power so granted to the Enquiry Committee would indicate that if the Disciplinary Authority so desires, it may authorise the Enquiry Committee to frame the charges, of course, on the basis of the resolution passed by the Managing Committee and on the basis of the materials collected by the Disciplinary Authority. Be that as it may, it is now well-settled that in the domain of disciplinary proceedings what is of essence is that the Delinquent Officer or employee should be served with definite charges, he should be given a fair opportunity to file his statement of defence and to effectively participate and defend himself in the departmental/domestic enquiry. It is not that this Court under Article 226 of the Constitution should interfere with the disciplinary proceedings/action taken against a delinquent whenever it finds any irregularity or flaw in the conduct of the enquiry. The Court, in order to step in under Article 226, should be satisfied that on account of any violation of the procedure in the conduct of the enquiry, the delinquent has sustained substantial prejudice. Showing of the prejudice is a must for this Court to step in under Article 226 to interfere with disciplinary action. This principle is well-settled. There is no need for us to dilate on this aspect further.
12. As already pointed out, during the pendency of these proceedings, the Disciplinary Authority passed final order dated 4-4-2005 removing the appellant from service as a disciplinary measure. The Act provides an effective and comprehensive remedy against the said order passed against the appellant. Under Section 94 of the Act, an appeal lies to the Educational Tribunal. The power conferred upon the Educational Tribunal is quite wide which is comparable to power of an Appellate Court. The Educational Tribunal has power to go into questions of fact as well as questions of law. The questions whether the conduct of the enquiry is regular in terms of the bye-laws or the statute or principles of natural justice and whether the charges are proved by the management by adducing substantive legal evidence and whether the disciplinary action taken against the appellant, in the facts and circumstances of the case and evidence on record, could be justified in terms of law are the questions which could be properly dealt with by the Educational Tribunal in an appeal that may be preferred by the appellant herein against the order of the Managing Committee dated 4-4-2005. Therefore, we leave open all those questions to be dealt with by the Educational Tribunal in the event of the appellant preferring an appeal. Any of the observations made by us in this judgment or by the learned Single Judge in the impugned order, should not weigh with the Educational Tribunal in decision-making and it should decide the appeal on the basis of merit and

the materials placed before it by the respective parties. 13. In the result and for the foregoing reasons, we dismiss the appeal, however, with no order as to costs.