Supreme Court of India
Hira Nath Mishra And Ors. vs The Principal, Rajendra Medical ... on 4 April, 1973
Equivalent citations: AIR 1973 SC 1260, (1973) IILLJ 111 SC, (1973) 1 SCC 805
Author: D Palekar
Bench: A Alagiriswami, D Palekar
JUDGMENT D.G. Palekar, J.

1. This is an appeal by special leave by three students of Rajendra Medical College, Ranchi from an order of the Patna High Court dated November 21, 1972 dismissing a Writ Petition filed by them for quashing the Order dated 24-6-1972 passed by the Principal of that College expelling them from the college for two academic sessions i.e. 1972-73 and 1973-74.

2. The appellants were Second Year students of the college and lived in a Hostel attached to the college. There was another Hostel for girl students. On the night between 10th and 11th June, 1972 some male students of the college were found sitting on the compound wall of the girls Hostel. Later they entered into the compound and were seen walking without clothes of them. They went near the windows of the rooms of some of the girls and tried to pull the hand of one of the girls. Some five of these boys then climbed up along the drain pipes to the terrace of the girls Hostel where a lew girls were doing their studies. On seeing them the girls raised an alarm following which the students ran away, The girls recognized four out of these male students-three of them being the present appellants and the fourth being one Upendra Prasad Singh.

3. On 14-6-1972 a complaint was received by the Principal from 38 girl students residing in the Girls Hostel alleging the above facts. The Principal decided to hold an enquiry and entrusted the enquiry to three members of the staff viz. Dr. J. Sharan, Dr. B.B.P. Roy and Dr. (Miss) M, Quadras. The four students were directed to present themselves at 4.30 p.m. on 15-6-1972 in the Principal's room in connection with the enquiry. Accordingly, they attended at the time of enquiry which was conducted by the Enquiry Committee in the room itself - the Principal having left the place. The students were called one after other in the room and to each one of them the contents of the complaint were explained, due care being taken not to disclose the names of the girls who had made the complaint. They were also given a charge which ran as follows:

A complaint has been lodged that you trespassed into the premises of the girls hostel at late night of 10th/11th June, 1972, made unauthorised entry into the Junior Girls Hostel. Further you have been accused of gross misconduct. You are, therefore, asked to show cause why disciplinary action should not be taken against you for the misconduct.

You are directed to file your reply immediately to the Enquiry Committee and appear before the Committee as and when required.

Non-compliance will lead to ex-parte decision.

Each one of the students was given paper and pen and asked to write down whatever he had to say. The students uniformally denied having trespassed into the girls Hostel or having misbehaved with

them as alleged. They added that they were in their own Hostel at that time.

4. It appears that before the students had been called in the afternoon, the Enquiry Committee had called 10 girls of the Hostel who were party to the complaint and their statements in writing had been recorded. The Enquiry Committee also found that though there were many more students the girls could identify only these four students by name, The girls belonged to the same college and hence they had known these students. The statements of the girls had not been recorded in the presence of the appellants as it was thought it was unwise to do so.

5. After making the necessary enquiry and considering the statements of the four students who did not intimate that they wished to lead any evidence, the Committee came to the unanimous conclusion that the three appellants and Upendra were four out of the students who had taken part in the raid that night. The Committee was of the view that the students were guilty of gross misconduct and deserved deterrent punishment. They further recommended that they may be expelled from the college for a minimum period of two calendar years and also from the Hostel. Acting on this report which was given on 21-6-1972, the Principal of the college issued the Order on 24-6-1972 in these terms:

I have carefully perused your reply to the show cause notice issued against you and the report submitted by the Enquiry Committee consisting of Dr. J. Sharan, Dr. B.B.P. Roy and Dr. (Miss) M. Quadros.

You have been found guilty of the charges which are of very serious nature. You are, therefore, expelled from this college for two academic sessions i.e. 1972-73 and 1973-74. You are further directed to vacate the hostel within 24 hours and report compliance to the Hostel Superintendent.

6. It was against this Order that the appellants and Upendra filed the Writ Petition in the High Court. Their chief contention was that rules of natural justice had not been followed before the Order was passed against them expelling them from the college. They submitted that the enquiry, if any, had been held behind their back; the witnesses who gave evidence against them were not examined in their presence, there was no opportunity to cross-examine the witnesses with a view to test their veracity, that the Committee's report was not made available to them and for all these reasons the enquiry was vitiated and the order passed by the Principal acting on the report was illegal. The High Court held that rules of natural justice were not inflexible and that in the circumstances and the facts of the case, the requirements of natural justice had been satisfied. The petition was, therefore, dismissed.

6-A. The appeal to this Court is sought to be supported on the very grounds which did not find support with the High Court.

7. The High Court was plainly right in holding that principles of natural justice are not inflexible and may differ in different circumstances. This Court has pointed out in Union of India v. P.K. Roy that the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon several factOrs. In the present case the complaint made to the

Principal related to an extremely serious matter as it involved not merely internal discipline but the safety of the girl students living in the Hostel under the guardianship of the college authorities. These authorities were in loco parentis to all the students-male and female who were living in the Hostels and the responsibility towards the young girl students was greater because their guardians had entrusted them to their care by putting them in the Hostels attached to the college. The authorities could not possibly dismiss the matter as of small consequence because if they did, they would have encouraged the male student rowdies to increase their questionable activities which would, not only, have brought a bad name to the college but would have compelled the parents of the girl students to withdraw them from the Hostel and, perhaps, even stop their further education. The Principal was, therefore, under an obligation to make a suitable enquiry and punish the miscreants.

8. But how to go about it was a delicate matter. The Police could not be called in because if an investigation was started the female students out of sheer fright and harm to their reputation would not have cooperated with the police. Nor was an enquiry, as before a regular tribunal, feasible because the girls would not have ventured to make their statements in the presence of the miscreants because if they did, they would have most certainly exposed themselves to retaliation and harassment thereafter. The college authorities are in no position to protect the girl students outside the college precincts. Therefore, the authorities had to devise a just and reasonable plan of enquiry which, on the one hand, would not expose the individual girls to harassment by the male students and, on the other, secure reasonable opportunity to the accused to state their case.

9. Accordingly, an Enquiry Committee of three independent members of the staff was appointed. There is no suggestion whatsoever that the members of the Committee were any thing but respectable and independent. The Committee called the girls privately and recorded their statements. Thereafter the students named by them were called. The complaint against them was explained to them. The written charge was handed over and they were asked to state whatever they had to state in writing. The Committee were not satisfied with the explanation given and thereafter made the report.

10. We think that under the circumstances of the case the requirements of natural justice were fulfilled. The learned Counsel for the respondents made available to us the report of the Committee just to show how meticulous the members of the Committee were to see that no injustice was done. We are informed that this report had also been made available to the learned Judges of the High Court who heard the case and it further appears that the counsel for the appellants before the High Court was also invited to have a look into the report, but he refused to do so. There was no question about the incident. The only question was of identity. The names had been specifically mentioned in the complaint and, not to leave anything to chance, the Committee obtained photographs of the four delinquents and mixed them up with 20 other photographs of students. The girls by and large identified these four students from the photographs. On the other hand, if as the appellants say, they were in their own Hostel at the time it would not have been difficult for them to produce necessary evidence apart from saying that they were innocent and they had not gone to the girls Hostel at all late at night. There was no evidence in that behalf. The Committee on a careful consideration of the material before them came to the conclusion that the three appellants and Upendra had taken part

in the night raid on the girls Hostel. The report was confidentially sent to the Principal. The very reasons for which the girls were not examined in the presence of the appellants, prevailed on the authorities not to give a copy of the report to them. It would have been unwise to do so. Taking all the circumstances into account it is not possible to say that rules of natural justice had not been followed. In Board of Education v. Rice 1911 AC 179 Lord Loreburn laid down that in disposing of a question, which was the subject of an appeal to it, the Board of Education was under 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. He did not think that the Board was bound to treat such a question as though it were a trial. The Board need not examine witnesses. It 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-More recently in Russell v. Duke of Norfolk 1949 1 All ER 109 at p. 118 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." More recently in Byrne v. Kinematograph Renters Society Ltd. 1958 2 All ER 579 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".

11. Rules of natural justice cannot remain the same applying to all conditions. We know of statutes in India like the Goonda Acts which permit evidence being collected behind the back of the goonda and the goonda being merely asked to represent against the main charges arising out of the evidence collected. Care is taken to see that the witnesses who gave statements would not be identified. In such cases there is no question of the witnesses being called and the goonda being given an opportunity to cross-examine the witnesses. The reason is obvious. No witness will come forward to give evidence in the presence of the goonda. However unsavoury the procedure may appear to a. judicial mind, these are facts of life which are to be faced. The girls who were molested that night would not have come forward to give evidence in any regular enquiry and if a strict enquiry like the one conducted in a court of law were to be imposed in such matters, the girls would have had to go under the constant fear of molestation by the male students who were capable of such indecencies. Under the circumstances the course followed by the Principal was a wise one. The Committee whose integrity could not be impeached, collected and sifted the evidence given by the girls. Thereafter the students definitely named by the girls were informed about the complaint against them and the charge. They were given an opportunity to state their case. We do not think that the facts and circumstances of this case require anything more to be done.

12. There is no substance in the appeal which must he dismissed. The appeal is dismissed. There shall be no orders as to costs.