
(1982) 07 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 312 of 1981

Arun Kumar Pateria and Another

APPELLANT

Vs

Vikram University, Ujjain and Others

RESPONDENT

Date of Decision : 02-07-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 38

Citation : AIR 1982 MP 217 : (1982) JLJ 781 : (1982) 27 MPLJ 484

Hon'ble Judges : K.N. Shukla, J;G.G.Sohani, J

Bench : Division Bench

Advocate : M. Bhatnagar, for the Appellant; L.P. Bhargava and Shri Kulshreshta, for the Respondent

Final Decision : Dismissed

Judgement

Shukla, J.

This is a petition under Article 226 of the Constitution of India.

Petitioners are students of B. E. (Bachelor of Engineering) Course, studying at Government Engineering College, Ujjain. Non-applicant No, 4 is the Principal of the said college.

Non applicant No. 4 issued charge-sheets to the petitioners alleging indiscipline, misbehaviour and other acts of misconduct. Petitioners filed replies denying the charges set out in the charge-sheets. Thereafter the Principal (respondent No, 4) passed an order dated 37-7-1981 (annexure 13) debarring petitioners from appearing in the main examination and the second supplementary examination for the academic session 1981. It is this order which has been challenged by the petitioners.

The grounds of challenge are that the impugned order is in contravention of the provisions of the Vishwavidyalaya Adhiniyam (Adhiniyam hereinafter) and the Ordinance made thereunder. The Principal did not afford personal hearing to the

petitioners and thereby committed a breach of the mandatory provisions of the Adhinyam and also contravened the principles of natural justice.

In the return filed by respondents 1. 2 and 3 several acts of gross misconduct have been alleged against the petitioner and the action taken against them is sought to be justified. It is pleaded that show cause notices had been duly served on the petitioners. An affidavit of the Principal of college (respondent No. 4) has been filed wherein it is stated that after obtaining replies to the charge-sheets, personal hearing was given to the petitioners and the impugned order was passed thereafter. Petitioners have filed a counter-affidavit denying the contents of the affidavit of the principal.

Learned counsel for the petitioners contended that the order dated 16-7-1981 (Annexure 13) was vitiated on account of non-compliance with the provisions of Sub-clause (2) of the Clause 33 of Ordinance No. 7 made under the Adhinyam. He drew our attention to the said clause which postulates that before inflicting any punishment, the head of the Institution shall give the student concerned an opportunity of personal hearing and record the reasons of inflicting punishment in writing. It was contended that Principal did not afford any opportunity of personal hearing to the petitioners nor did he record reasons of inflicting the punishment in writing.

As noted earlier, the Principal of the college has sworn an affidavit that immediately after the petitioners filed their replies to the charge-sheets, they were called and personally heard by him in respect thereof. Learned counsel for the petitioners strenuously argued that this was not a correct statement. He invited our attention to the fact that the replies were received in the office of the principal by the clerk concerned and not by the principal himself. Learned counsel contended that the endorsement of the receiving clerk on the replies falsified the affidavit of the Principal in the matter,

We are not impressed by this argument. According to the usual practice, papers, applications etc. are received by the receiving clerk of the office and then sent to the officer concerned; mere fact that the replies filed by the petitioners were received by the receiving clerk will not show that these replies never reached the Principal after they were filed or that the Principal had no occasion to afford personal hearing immediately thereafter, as alleged. Thus we do not find any reason to disbelieve the affidavit of the Principal on the matter of personal hearing.

Learned counsel then contended that the fact of affording personal hearing should have been placed on the record of the proceedings and in the absence of such a record it should be inferred that no personal hearing was given. There is no basis for this argument. No procedure has been prescribed under the ordinance about the manner in which record of such an enquiry has to be maintained. In the interest of maintaining proper discipline in Educational Institutions, it is necessary to strengthen the hands of Head of Institutions and

to arm them with sufficient powers so that those who are keen to study and improve their career should not be the victims of a handful of persons who may spoil the academic atmosphere by indulging in anti-social activities. Though in the instant case there were wild allegations against the Principal suggesting mala fides, we are satisfied that there is no material to show that the principal was actuated by malice or bad faith.

We are, therefore, unable to accept the contention of the learned counsel for the petitioners that the impugned order is vitiated due to alleged non-compliance with the provisions of Ordinance No. 7 made under the Vishwa-vidyalaya Adhiniyam 1973. The petition is, therefore, dismissed. There will be no order as to costs. The outstanding amount of security deposits, if any, may be refunded to the petitioners.