

(2018) 04 PAT CK 0106

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5023 Of 2018

Divyanshu Bhardwaj

APPELLANT

Vs

Patna University Through And Ors

RESPONDENT

Date of Decision : 04-04-2018

Acts Referred:

Constitution Of India, 1950 — Article 22
Dental Council Of India, 1948 — Section 10(A)(4)

Citation : (2018) 4 PLJR 21

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Ashish Sinha, Akash Keshaw, Shakib Aiyaz, Yash Mathur, S. N. P. Sinha, Abhinav Srivastava, Digvijay Singh, Ujjwal Bhushan

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.
2. The petitioner had contested the election for the post of President of the Patna University Studentsâ?? Union, held in February, 2018. The results of the election were declared on 18.02.2018. He was declared elected to the post of the President. These facts are not in dispute. After declaration of the results of the elections, there is a practice/system of issuance of certificate as returned candidate, which has not been done immediately after the results were declared.
3. The Vice-Chancellor, subsequently, by office order, dated 13.03.2018, has cancelled the election of the petitioner to the post of President, which has been put to challenge in the present writ application. Following is the order passed by the Vice-Chancellor, which is at Annexure- P/20 to the rejoinder to the counter affidavit filed on behalf of respondents 1 to 4:-

1. President

The enquiry committee report on the allegations leveled against Divyanshu Bhardwaj, newly elected President, was thoroughly examined

and it is found very apparently that his candidature for the post of president has no academic arrear and from that point of view, his

candidature was valid. However, his candidature is not tenable because he took admission in the Himalayan University, Itanagar in the

same academic session (2014-17) during which he was the student of B. N. College, Patna University, Patna. It is clear cut violation of the

UGC directives vide public notice no. F. No. 1-6/2007 (CPP-II) dated 15.01.2016. Hence, his election to the post of president stands

cancelled. Initiatives will immediately be taken to cancel his admission in Patna University on the basis of above facts. At the same time,

initiatives will be taken to seek information from the Himalayan University, Itanagar to know how the university admitted him in 2014-17

session while he was given C.L.C. from B. N. College, Patna in 2016.

(Emphasis is added)

4. What is evident from the order under challenge is that it is based on an Inquiry Committee's report on the allegation levelled against the

petitioner. This is an admitted fact that the said Inquiry Committee's report was, at no point of time, made available to the petitioner. It is also

evident from the impugned order that his candidature has been found to be not tenable on the ground that he had taken admission in the Himalayan

University, Itanagar in the same academic session 2014-17 during which he was a student of B. N. College, Patna University, Patna which, according

to the Vice- Chancellor, was in violation of the UGC directives, issued vide Public Notice No. F.No. 1-6/2007(CPP-II), dated 15.01.2016. While

cancelling the candidature of the petitioner to contest the election by the impugned order, the Vice-Chancellor has observed in the order that

initiatives immediately be taken to cancel his admission in the Patna University on the basis of the said facts and initiatives would also be taken to seek

information from the Himalayan University, Itanagar to know as to how the University had admitted him in academic session 2014-17, while he was

given a college leaving certificate from B. N. College, Patna, in 2016.

5. It is the petitioner's case, which is not in dispute, that at, no point of time, any

notice was given to him by the Vice-Chancellor or any other

functionary of the University that the University, on the basis of any complaint, intended to cancel the petitioner's admission in the University or

cancel his candidature to contest the election for the post of President of the Students' Union.

6. Be it noted that for being eligible to contest the election of the Students' Union in the University, a candidate has to be a bona fide regular

student of the University Department/a constituent colleges.

7. The petitioner, on the strength of his admission in M. A. Political Science of the Departmental of the University, had contested the election. He had

taken admission in P.G. Course on the basis of his UG Degree which he claims to have received from the Himalayan University, Itanagar, after

pursuing such course for academic session 2014-17.

8. This is not in dispute that the petitioner was pursuing B.A. Political Science (Hons.) Course in B. N. College, a college under the Patna University

during academic session 2014-17. After he was promoted to Part-III of B. A. Political Science (Hons.) course, he had applied for a college leaving

certificate which was granted. According to the petitioner, he was simultaneously pursuing B. A. Political Science (Hons.) in the Himalayan

University, Itanagar.

9. This is to be kept in mind that the objection of the University to the petitioner's candidature to contest the election, as is evident from the stand

taken on their behalf in the counter affidavit, is that the petitioner could not have pursued the UG Course simultaneously, one under the Patna

University and the other under the Himalayan University, Itanagar, for the same course. This is also, however, not in dispute that the petitioner is

holding UG Degree, issued by the Himalayan University, Itanagar, which has been the basis for his admission in P.G. Course in the Patna University,

i.e. M.A. in Political Science.

10. Whether the petitioner's admission to P.G. Course, in Patna University, on the basis of the degree which he obtained from Himalayan

University, Itanagar, was proper or not and whether he could have pursued the courses simultaneously at two places, are the disputes which the

University could have decided in a fair and reasonable manner and in accordance with law, which I find lacking in present case, as would be evident

from the discussions in succeeding paragraphs.

11. In the present case, one of the questions, which this Court is required to determine is as to whether the impugned action of the University in

cancelling the petitioner's candidature on the ground mentioned in the impugned order is unsustainable, being in breach of the principles of natural justice.

12. The action which the Vice-Chancellor has taken by passing the impugned order is said to be based on the complaint which the University had

received on 18.02.2018, addressed to the Vice-Chancellor of the University, in respect of irregularity/illegality in allowing the petitioner's admission to

M. A. course. The complaint so made to the Vice-Chancellor was admittedly not made available to the petitioner. It transpires that the petitioner was

asked to appear before the Inquiry Committee, constituted by the University for the purpose of explaining his position along with all relevant

documents on 24.02.2018. The said letter dated 23.02.2018, written by the Chairperson of the said Inquiry Committee does not, however, refer to the

subject-matter of the inquiry. Since the contents of the letter dated 23.02.2018 are relevant, the same is being reproduced herein below:-

??

?

24.02.2018 10.30 ?

???

13. A message, through e-mail, was also sent to the petitioner on 23.02.2018, directing him to appear before the Inquiry Committee to the following

effect:-

??You are directed to appear before the Enquiry Committee at Patna University in Pro Vice-Chancellor's Office Chamber on 24.02.2018 at

10.30 a.m. Kindly find a letter in attachment.??

14. No purpose was indicated in the said notice for calling the petitioner before the Inquiry Committee, as is manifest from the aforesaid

communications.

15. It seems that the petitioner had felt some difficulty in appearing before the Inquiry Committee on 24.02.2018 and had accordingly requested for

some time. He, however, appeared before the Inquiry Committee.

16. It is the case of the University that a questionnaire was given to him and he was required to give answers which he did not do despite having taken time for the same. The Inquiry Committee submitted its report on 10.03.2018 which has been brought on record by way of Annexure-R1/12 to the counter affidavit.

17. Mr. Anil Kumar Sinha, learned counsel appearing on behalf of the petitioner has made two-fold submissions assailing the impugned order. He has, firstly, submitted that the action of the Vice-Chancellor, in cancelling the petitioner's candidature, is patently in breach of principles of natural justice. His second limb of the argument is that the Statute has been framed by the University for conduct of the Students' Union which, inter alia, provides detailed and definite mechanism for grievance redressal, if someone has any grievance against the process of election or election of a candidate.

18. Drawing my attention to the Article 22 of the said Statutes, he contends that the Grievance Redressal Cell is to be constituted by the Vice-Chancellor with the members as indicated therein and no Committee other than the Grievance Redressal Cell could have gone into the question of validity of election of the petitioner as President of the Students' Union. He, in addition, has submitted that under the said Article, the Vice-Chancellor has appellate jurisdiction in such controversies arising out of the conduct of the election and for that reason also the decision which has been taken by the Vice-Chancellor is bad and illegal.

19. Defending the allegation of irregularity in petitioner's admission in M.A. in Political Science, in Patna University on the ground that he could not have obtained the degree from the Himalayan University, Itanagar, on the basis of being a student of UG course in the said University for the academic session 2014-17; he has relied on certain communications of the University Grants Commission to contend that there was no such provision which proscribed a student from not pursuing two degrees simultaneously, through regular/distance mode in two different Universities. He also contends that it is evident from the impugned order itself that the decision of the University to the effect that a student could not pursue two studies/courses at two places simultaneously was taken by the University in 2016, in the light which the petitioner had obtained the College Leaving

Certificate, since he was already pursuing the course in the Himalayan University, Itanagar.

20. Mr. Abhinav Srivastava, learned Counsel, appearing on behalf of the Patna University, has, on the other hand, contended that it is evident from the records that the petitioner secured admission to M.A. in Political Science in the Patna University. He has further submitted that evidently the petitioner secured admission to M.A. Political Science course in Patna University on the basis of B. A. (Hons) degree which he had irregularly obtained from the Himalayan University, Itanagar. According to him, since his admission itself in the Patna University in M.A. course could not be upheld, the Vice-Chancellor was right in his decision to cancel his candidature itself. He has submitted that this has been the practice of the University not to allow the students registered with the University to pursue more than one course, simultaneously.

21. Responding to the submission made on behalf of the petitioner, on violation of principles of natural justice, he contends that in view of the facts which are admitted and evident, the petitioner cannot make out a case of prejudice having been caused to him because of non-compliance of principles of natural justice. He has drawn my attention to Clause 9 of the General Ordinances for Admission to the various Courses of Studies of the Patna University in order to submit that the said Ordinance confers upon the Vice-Chancellor the power to cancel admission of the student admitted to any course. According to him, whereas there is requirement of issuance of notice for cancellation of admission, in his opinion such cancellation is necessary in the best interest of the institution or the University, but there is no such stipulation in Clause (c) thereof which confers upon the Vice-Chancellor power to cancel the admission if it is found at any later point of time that any document submitted or statement made by him in support of his admission is not genuine or correct. He has submitted that since there is no specific requirement of issuance of notice, if the case falls in sub-clause (c) 3 of Clause 9, the same connotes by implication that compliance of principles of natural justice has been waived off in such circumstances. He has also submitted that before being admitted in the Himalayan University, Itanagar, the petitioner had not obtained migration certificate, which is a condition precedent for admission to any University other than the University where a student was pursuing his course earlier. He has also submitted

that it cannot be said that there has been no compliance of principles of natural justice at all in the background of the fact that the petitioner had

appeared before the Inquiry Committee and he was supplied with a questionnaire by the Inquiry Committee, constituted by the Vice-Chancellor which

he deliberately avoided to answer.

22. Before adverting to the submissions advanced on behalf of the parties, in the background of the admitted fact, this is to be kept in mind that in the

present case, the order of the Vice-Chancellor cancelling candidature of the petitioner for his election to the post of President is under challenge.

Though there is reference in the said impugned order, dated 13.03.2018, of irregularity in petitioner's admission in B.A. (Hons.) in the Himalayan

University, Itanagar, and his admission in the Patna University on the basis of degree used by the Himalayan University, Itanagar, till passing of the

order impugned, the petitioner's admission in the P.G. course of Patna University was not cancelled. As a matter of fact, though there is a

statement made in the counter affidavit that the petitioner's admission in Patna University has also been cancelled, the order cancelling the admission

was not annexed with the counter affidavit. The original records of the University have been produced by the learned counsel for the University to

substantiate that the petitioner's admission has been cancelled. There can, however, be no dispute about the fact that the order cancelling the

petitioner's admission has not been communicated to him. It is however, stated on behalf of the University that a notice cancelling the

petitioner's admission to P.G. course was notified in the Department.

23. I would reject, at the very outset, the submission advanced on behalf of the University that there would not be requirement of compliance of

principles of natural justice if any action was to be taken under clause (c) of Clause 9 of the Ordinance. Clause 9 of the Ordinance is being

reproduced herienbelow, which reads thus:-

â??9.(a) No applicant shall be admitted who, in the opinion of the Vice-Chancellor, should not be admitted in the best interest of the institution or the University.

(b) the Vice-Chancellor shall have the power to order the cancellation of admission of a student admitted to any course, without assigning any reason, if

in his opinion such cancellation is necessary in the best interest of the institution

or the University, but before doing so a notice shall be served on the student concerned to explain, why such an action should not be taken.

(c) The admission of any student admitted to any course in the University may be cancelled if it is found at any later point of time that any document submitted or statement made by him in support of his admission is not genuine or correct.â??

24. In my view, this has been consistent opinion of the Court that even in absence of specific provision of giving an opportunity of hearing, a hearing is required to be given if the decision of the administrative quasi judicial body is going to adversely affect the person concerned. Reference may be made, in this regard, to a Supreme Courtâ??s decision, in the case of *Swamy Devi Dayal Hospital and Dental College v. Union of India and Others*, reported in 2014 (13) SCC 506, paragraph 15 of which reads thus:-

â??It is trite that even in the absence of specific provision of giving hearing, the hearing is required in such cases unless specifically excluded by a statutory provision. In such a situation the proviso to sub-section (4) of Section 10-A has to be liberally construed to encompass the cases of renewal of permission as well.â??

25. However, it is evident from the materials on record that even in the order impugned, no notice was given to the petitioner at any point of time

showing intention of the University either to cancel his candidature for the post of President of the Studentsâ?? Union or his admission in M.A.

Political Science course in Patna University.

26. The principles of natural justice are so fundamental in nature that its application is implicit in every decision-making function.

27. On perusal of the impugned order, it is evident, which has already been noticed, that it is based on an inquiry conducted by a Committee which

was admittedly not a Committee, constituted for redressal of the grievance under the Statute for Studentsâ?? Union. If the election was to be called

in question even on the ground of validity of his candidature, in my opinion, the University was bound by the provision of the Statute which prescribes a

definite grievance redressal mechanism. No procedure was undertaken by the University as stipulated under the Statute for cancellation of his

candidature. I reiterate the well settled legal principle that where a power is required to be exercised by a certain authority, in certain way, it shall be

exercised in that manner alone or not at all. All other modes of performance have been held by Supreme Court to be necessarily forbidden, in case of

Hukum Chand Shyam Lal v. Union of India and Others (AIR 1976 SC 789).

28. This is also an admitted fact that the complaint filed by the students of the University, which is said to be the basis of setting in motion an inquiry

by a Committee, constituted by the University, was not served upon the petitioner at any point of time.

29. In my view, therefore, the impugned order, dated 13.03.2018, cannot be sustained. Under the Statute the Vice-Chancellor is rather the appellate

authority. It is not known under which law he exercised his power to cancel the petitioner's candidature for the post of President of the

Students' Union.

30. The impugned order, dated 13.03.2018, therefore, cannot be sustained, merely on two grounds:-

(a) The gross violation of principles of natural justice, as has been discussed above, and

(b) The order is beyond jurisdiction, having not been passed in accordance with the provisions contained in the Statute for the Students' Union of

the Patna University.

31. The manner, in which the petitioner's admission has been cancelled, also cannot be approved, the same also having been done without

complying with the principles of natural justice, he having not been given any opportunity to justify his admission in the Himalayan University, Itanagar

and subsequent admission to P.G. Course in Patna University.

32. I, therefore, hold that cancellation of the petitioner's admission, as has been done by the University, cannot be the basis for the University to

take any action or pass any order without giving the petitioner due opportunity of hearing.

33. While setting aside the impugned order, I observe that it will be open to the Vice-Chancellor of the University or any other person aggrieved to

raise his grievance against the election of the petitioner before duly constituted Committee in accordance with the Statutes. It will also be open to the

Vice-Chancellor to proceed, on the basis of the complaint which the University had received leading to passing of the impugned order. Any dispute in

respect of the election of the petitioner will have to be decided in accordance

with the provisions under the Statute. In respect of the dispute over legality/validity of the petitioner's admission to M.A. Political Science Course in P.G. Department of the Patna University, it will be open to the

Vice-Chancellor to proceed and pass appropriate order, but only after giving the petitioner due opportunity of explanation and hearing.

34. Consequence of the election of the petitioner must follow as there should be no hindrance in giving him responsibility of the post of President in view of setting aside of the impugned order.

35. This application is allowed.

36. Let the original records of the University, produced by Mr. Abhinav Srivastava, be returned back to him.

37. If any action is to be initiated against the petitioner, the Court expects that the petitioner shall co-operate and not cause any hindrance or obstruction in any such enquiry or proceeding.