

(2016) 05 OHC CK 0027

In the Orissa High Court

Case No : Writ Petition (Civil) No. 5938 of 2016

Himanish Mohapatra

APPELLANT

Vs

The V.C., Siksha 'o' Anusandhan University

RESPONDENT

Date of Decision : 20-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) AIR(Orissa) 185 : (2016) 2 ILRCuttack 538

Hon'ble Judges : Indrajit Mahanty and Dr. D.P. Choudhury, JJ.

Bench : Division Bench

Advocate : M/s. A.K. Mohapatra, B. Panda, A. Mohapatra, S. Samal, T. Dash, S. Nath, A. Barik, S. Barik and S.P. Mangaraj, Advocates, for the Petitioner; Mr. S.K. Dash, A.K. Otta, Mrs. A. Dhalasamanta, B.P. Dhal and S. Das, Advocates, for the Opposite Parties

Final Decision : Disposed Off

Judgement

Dr. D.P. Choudhury, J.—Challenge has been made to the arbitrary action of the opposite parties by passing the order of rustication against the petitioner on 13.1.2016.

Facts

2. The factual matrix leading to the case of the petitioner is that petitioner has completed four years course of B. Tech in Electrical and Electronics Engineering under the Institute of Technical Education and Research, Bhubaneswar (ITER) under the control of Siksha "O" Anusandhan University, a deemed University under UGC Act. After completion of 3rd year in B. Tech. course petitioner had to face unwarranted situation for which he has approached this Hon'ble Court in W.P.(C) No. 20240 of 2013 which was withdrawn on 19.6.2014, W.P.(C) No. 12392 of 2014 disposed of on 21.10.2014, W.P.(C) No. 21262 of 2014 disposed of on 27.11.2014 and lastly W.P.(C) No. 24487 of 2014 disposed of on 27.2.2015. By virtue of the order of the Court he had completed the course and appeared the back papers.

3. It is stated in the petition that on 9.1.2016 while the petitioner was appearing back papers, he came about 10 to 15 minutes later to the schedule time because of heavy traffic jam but he was not allowed to appear in the examination. It is alleged, inter alia, that petitioner was harassed in the examination hall and he could not appear at the examination as the examination papers were snatched and on tussle with the invigilator, the examination paper was torn away. Petitioner had to leave the examination hall with a shocking mind. All on a sudden on 13.1.2016 petitioner was communicated by the Registrar of the Deemed University rusticating him which is illegal and arbitrary manner because no show cause notice was issued to him and no enquiry was held to find out his guilt.

4. After receiving the order dated 13.1.2016 the petitioner made representation on 31.3.2016 to the opposite parties. But the opposite parties did not pay any response to his representation. Petitioner was harassed while appearing the back papers and such harassment was due to personal grudge of 2/3 staff of the College. Petitioner tried his best to settle the matter amicably but due to inaction on the part of the opposite parties he was compelled to file the present case. It is alleged that natural justice has been violated by not giving the petitioner an opportunity of hearing before passing the order of rustication on 13.1.2016. So, the petitioner was compelled to approach this Court for quashing of the order of rustication as well as with a direction to allow him to appear in the back paper examination which would commence very shortly.

5. Per contra, the Registrar of the opposite party University filed the counter admitting that the order of rustication was passed on 13.1.2016 for the following reasons:

- "(a) Outraging the modesty of women faculty member on invigilation duty, using slang and making obnoxious statements about her family;
- (b) being under influence of alcohol;
- (c) behaving violently with lady faculty members;
- (d) damaging University property (Examination sheets, etc.)"
- (e) damaging the property (Mobile phones) belonging to other students.

6. It is the case of the opposite parties that in obedience to the order of the Court the petitioner was allowed to appear in the examination on 9.1.2016 to clear the back papers but he reached the examination hall 10 to 15 minutes later. The opposite parties do not admit any sort of keeping previous grudge and mala fide intention to harass the petitioner. They also refuted the allegation of snatching examination papers and made tussle at the instance of the invigilator.

7. It is stated in the counter that the lady Invigilator submitted a report revealing the allegation against the petitioner to the effect that the petitioner being in drunken state reported late and entered inside the hall and clicked photograph of

the answer script. Due to objection by the Invigilator, the petitioner torn his question paper and answer script. It is alleged that the mother of the petitioner also entered in the Examination hall and petitioner was so violent, he not only attempted physical assault to the two lady invigilators, one staff but threw the mobile phones of others and tore the answer scripts of other candidates. An F.I.R. was lodged by the University against this incident. Due to such ugly incident, a decision was taken to rusticate the petitioner from appearing the examination on subsequent papers for the interest of the students and faculty members. Although the opposite parties refuted the allegations of the petitioner but the fact remains that the University has obeyed the order of the Court by allowing the petitioner to appear the back paper examination along with another student who also by virtue of order of the Court appeared at the Examination without any sort of disturbance. It is also submitted in the counter that if there is any occasion for allowing the petitioner to appear at the Examination, it is most desirable to make an alternative arrangement for the petitioner to protect and secure conducive atmosphere in the examination hall for other candidates and if necessary to take Police assistance as well.

8. The petitioner filed rejoinder to the counter filed by the opposite parties stating that the order of rustication dated 13.1.2016 was passed in violation of Academic Regulations of B. Tech in the University in question for which principles of natural justice has been violated. It is also stated that the report of the Invigilator is baseless and the order of rustication dated 13.1.2016 against the petitioner is illegal, void and cannot be sustained in law and the same is liable to be quashed.

Submissions

9. It is submitted by Dr. A.K. Mohapatra, learned Senior Advocate that the order of rustication passed on 13.1.2016 by the opposite parties is illegal, improper and same violates the natural justice of the petitioner. He further submitted that the authorities before passing the order of rustication had to give notice to the petitioner to hear him. But in the instant case, without observing such principle of natural justice, the opposite parties have acted aggressively in passing the order of rustication. It is further submitted by the learned counsel for the petitioner that no Regulation of the University has been followed in this case while passing the order of rustication. According to him, the order of rustication is absolutely showing miscarriage of justice when no opportunity was given to the petitioner of being heard before passing such harsh order for the petitioner. He further submitted that the opposite parties have erred in law by passing the order of rustication without following the Regulation of the University. He further submitted that the opposite parties are only showing their anxiety for compliance of the order of this Court passed in the earlier writ petitions but actually they are harassing the petitioner. So, he submitted to allow the writ petition with cost.

10. Mr. S.K. Das, learned counsel for the University submitted that the action of the petitioner in the Examination Hall of the College was very much unbecoming

and disturbing for other students. He also submitted that no natural justice has been violated in this case for which he submitted to reject the writ petition.

11. Points for consideration:-

The main point for consideration of the case is -

(i) Whether there is violation of natural justice by the opposite parties.

Discussions

Point No.(i) :

12. It is admitted fact that the petitioner was a student of ITER College and prosecuting Engineering course. It is also admitted fact that due to some unavoidable circumstances the petitioner had to file writ petitions before this Court as stated above and in those cases petitioner was allowed to appear in back papers. It is also undisputed fact that petitioner appeared in the Examination but due to some actions of the College authorities he has to leave the place of Examination. It is admitted fact that rustication order was passed on 13.1.2016 by debarring the petitioner to show cause and of being heard.

13. The word natural justice is very wide term and it has been interpreted by the Hon"ble Apex Court at various times and in different context.

It is reported in (1995) 5 Supreme Court Cases 482 (LIC of India and another v. Consumer Education & Research Centre and others) where Their Lordships observed at para-23:-

"23. Every action of the public authority or the person acting in public interest or any act that gives rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element (sic that) becomes open to challenge. If it is shown that the exercise of the power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, simpliciter, do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons."

14. It is also reported in (1998) 8 Supreme Court Cases 194 (Basudeo Tiwary v. SIDO Kanhu University and others) where Their Lordships observed at para-10:-

"10. In order to impose procedural safeguards, this Court has read the requirement of natural justice in many situations when the statute is silent on this point. The approach of this Court in this regard is that omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing - it may be implied from the nature of the power - particularly when the right of a party is affected adversely. The justification for

reading such a requirement is that the Court merely supplies omission of the legislature (Mohinder Singh Gill v. Chief Election Commissioner: (1978) 1 SCC 405).

15. In the case reported in 2006 (4) SCALE 154 (Ranjit Singh v. Union of India & others) where Their Lordships have observed at para-22:-

"In view of the aforementioned decisions of this Court, it is now well settled that the principles of natural justice were required to be complied with by the Disciplinary Authority. He was also required to apply his mind to the materials on record. The Enquiry Officer arrived at findings which were in favour of the Appellant. Such findings were required to be over turned by the Disciplinary Authority. It is in that view of the matter, the power sought to be exercised by the Disciplinary Authority, although not as that of an appellate authority, but akin thereto."

In A.I.R. 2006 SC 2064 (P.D. Agrawal v. State Bank of India & Ors) Their Lordships have taken same view as has been taken in the case of Ranjit Singh v. Union of India & others (supra).

16. With due respect to the decision, it is found in the aforesaid case the Hon''ble Apex Court was considering the role of the Disciplinary Authority in a Disciplinary Proceeding. The Disciplinary Authority has to apply his mind to the materials on record and take a decision. Now advertng to the present case the action of the opposite parties has been taken only basing on the report of the Invigilator as available from counter and no enquiry appears to have been held. So, the natural justice in this case is also otherwise not followed by the opposite parties.

17. "Natural Justice" is an expression of English common law. In one of the English decisions, reported in (1915) AC 120 (138) HL, Local Government Board v. Arlidge, Viscount Haldane observed, "? those whose duty it is to decide must act Judicially. They must deal with the question referred to them without bias and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must come to the spirit and with the sense of responsibility of a tribunal whose duty it is to meet out justice."

18. From the aforesaid discussion, it is crystal clear that Hon''ble Apex Court and Common Law have interpreted the natural justice to the extent that any notice to the person concerned and based on principle of audi alteram partem giving chance to the affected party excludes the arbitrariness and illegality attached to the order or the judgment. On the other hand, if a statutory notice or any notice is not issued to the person affected to hear him before awarding punishment that amounts to violation of natural justice.

19. In the instant case, Annexure-2 which is the impugned order passed by the opposite parties is described hereunder:

Siksha "o" Anusandhan University

(A Deemed University Declared U/S 3 of the UGC Act, 1956)

Accredited by NAAC of UGC with "A" Grade

Office Order

No.(Estt.) Regr /128/SOAU

Dated the 13th January, 2016

Sri Himanish Mohapatra, Regn. No. 1141014120, EEE student, Institute of Technical Education & Research (ITER) who while appearing as per Court's orders at the special examination in the Institute on 9th January, 2016, having committed serious acts of indiscipline and grievous offences of-

- outraging the modesty of women (lady faculty member) on invigilation duty, using slang and making obnoxious statements about her family;
- being under the influence of alcohol;
- behaving violently with lady faculty members;
- damaging University property (Examination sheets, etc)
- damaging the property (Mobile phones) belonging to other students; is permanently rusticated from the Institute (ITER)/University with immediate effect. Consequently Sri Mohapatra is debarred from entering into the premises of the Institute/University.

By order of the Vice-Chancellor

Sd/-

Registrar"

From the aforesaid office order, it appears that serious allegations have been made by the opposite parties against the petitioner. It is clear from the aforesaid order that petitioner was permanently rusticated from the Institute on such serious allegations and all the allegations pertain to the special examination held on 9.1.2016 when petitioner was appearing in the examination. It is revealed from the petition that on 31.3.2016 petitioner has made representation countering the allegations for which he was rusticated by the opposite parties. From his representation it appears that he has all respect for the lady Invigilator who is of the age of his mother. He has also taken plea that he is suffering from nervous disorder (Bells Apsy) and was being treated in Bangalore and also in AMRI Hospital, Bhubaneswar. On going through the representation of the petitioner, we are of the view that due to serious nervousness and psychological pressure, he has failed to appear in the Examination under the circumstances stated therein. In spite of the circumstances, no order appears to have been passed by the opposite parties to revoke the rustication order. Learned counsel for the opposite parties clearly admitted that before rustication order was issued

no opportunity was given to the petitioner of being heard. We are not entering into any sort of adjudication of the facts raised by both the parties but we are shocked to find out that the opposite parties have passed the rustication order on 13.1.2016 without issuing notice to the petitioner or without giving the petitioner of being heard resulting violation of the natural justice which is the parameter for enforcing Articles 14, 19 and 21 of the Constitution. So, in the facts and circumstances of the case, we are of the view that the impugned order dated 13.1.2016 has been passed in violation of the Natural justice. Point No.(i) is answered accordingly.

Conclusion

20. Since natural justice has been violated in this case, we have no hesitation to hold that the impugned order suffers from illegality. Since the principle of audi alteram partem has not been followed in this case by the opposite parties, the office order of rustication dated 13.1.2016 is liable to be quashed. We have no hesitation to quash the same and accordingly we order so. When the rustication order dated 13.1.2016 is quashed, the petitioner should be given chance of clearing the back papers when admittedly he has completed four years Degree course. We, therefore, direct the opposite parties to allow the petitioner to appear at the special Examination to clear up the back papers on following conditions:

(1) While he will appear the back papers he is to be escorted by his mother or father to the Examination Hall since he has got nervous disorder as found from his representation and his parents will remain present during examination in the Hall.

(2) He will appear the Examination alone in a room so as to avoid disturbance to other students and the Opposite Parties shall arrange security personnel outside the Examination Hall while he will appear at the Examination.

21. Necessary compliance of the order made by the opposite parties be filed within a period of two months and list the matter before this Court on 28.7.2016. The writ petition is disposed of accordingly.