

(2009) 02 CAL CK 0038
In the Calcutta High Court
Case No : M.A.T. No. 397of 2008

Jadavpur University and Others

APPELLANT

Vs

Subhamoy Singh Roy and Others

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 2 CALLT 420

Hon'ble Judges : Surinder Singh Nijjar, C.J; Biswanath Somadder, J

Bench : Division Bench

Advocate : Chameli Majumder and Mr. Debabrata Roy, for the Appellant; Arunava Ghosh and Mr. Agniswar Dutta Gupta for Writ Petitioner/Respondent Mr. Ashok Banerjee and Mr. P.K. Ganguly for Respondent No. 2 Mr. A.S. Roy, N.C. Mondal and Ms. Sunanda Sil for Respondent No.3 and Mr. Kishore Datta, for the Appearing Parties

Final Decision : Dismissed

Judgement

Re: An appln. for Amendment (CAN7817/08)

1. The application for amendment of the cause title as allowed. Office is directed to make necessary amendments in the cause title of the appeal.

Re: An appln. for Stay (CAN 6180/08)

2. We have heard the learned counsel for the parties, at length. A perusal of the judgment of the trial Court prima facie shows that the trial Court has come to the firm conclusion that the Enquiry Commission has miserably failed to observe two limbs of natural justice, namely Audi Alteram Partem (nobody shall be condemned unheard) and nemo debet esse judex in propria sua causa (nobody shall be judge of his own cause). It is also denied that the order challenged by the petitioner was a non-speaking order bereft of any reasons. These conclusions of the trial Court are based on an elaborate discussion of the factual situation as narrated in the pleadings of the parties. The one man Enquiry Commission came

to the following conclusion:

After going through all the documents, I am constrained to observe that plagiarism in its worst form has been committed in this, case tarnishing not only the image of the university but also putting the entire scientific community into shame.

Such an act should not go unpunished. However, the exact nature of the disciplinary action to be taken in respect of each one of them should be decided by the appropriate body of the University.

3. The report was placed before the Executive Council on 16th May, 2007. On that date a resolution was adopted that apart from the punishment to be inflicted on the discredited authors of the theses, the three supervisors be debarred from acting as supervisor of any PhD candidate under the University in future. Since one of the supervisors was working in the Calcutta University, his case was referred to the aforesaid University. With regard to the other two supervisors, the matter was referred to the disciplinary authority of the Jadavpur University. The trial Court also notices that the petitioner is agreeable to subject himself to a fresh round of proceeding before the University, if his substantial rights are protected by the University adopting adequate safeguards. Numerous grounds were pleaded by the petitioners challenging the procedure adopted by the University. It was stated by the petitioner that no charge sheet was issued to him; witnesses whose statements have been held against him were not examined in his presence; the statements and documents relied upon by the Commission were not made available to him; no opportunity was given to the petitioner to produce any witnesses in support of any justification that he may wish to give ; even a copy of the final report of the Commission was not made available. It was produced for the first time along with the affidavit of the University filed in the writ proceeding. Apart from the aforesaid, upon reading the enquiry report a submission was made on behalf of the petitioner that it is bereft of any cogent reasons in support of the conclusions. It was also argued that the enquiry report is based on no evidence with particular reference to the allegations that the petitioner had indulged in plagiarism. The trial Court, thereafter, elaborately discussed the justification given by the petitioner in support of the grievances narrated above.

4. A perusal of the judgment also shows that the trial Court considered the entire issue on the basis of the law settled by the Supreme Court in a number of landmark judgments. The Trial Court notices-

1. Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen,
2. S.L. Kapoor Vs. Jagmohan and Others,
3. Vasant D. Bhavsar Vs. Bar Council of India and Others,
4. S.N. Mukherjee Vs. Union of India,

5. Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

6. Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,

5. For the purpose of disposal of the present stay application, it is sufficient to notice only the observations made in the case of ECIL v. B. Kamnagar (supra).

26. The reason why the right to receive the report of the Enquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own finding on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

6. The trial Court concludes that the proceeding conducted by the University do not Conform to the law laid down by the Supreme Court in the aforesaid judgments. The trial Court notices the submissions made on behalf of the

University as well as the judgments cited by the University in support of the submissions. It was stated that there has been substantial compliance of the rules of natural justice. There was no document entitled charge-sheet setting out the heads of charges. Therefore, there was no ground to presume that either the candidates or the guides have not been made aware what he was charged with or could have any doubt in that regard. In any event, the trial Court could not re-appreciate the evidence that was led before the enquiry officer in proceedings under Article 226 of the Constitution of India. It was also submitted that the present case falls under the exclusionary rule to the rules of natural justice. In that there has been a writ admission of copying by the petitioner. In such circumstances, merely because copy of the enquiry report has not been supplied to the petitioner, would not lead to the irresistible conclusion that the entire enquiry proceedings have been vitiated. Accepting such a conclusion would reduce rules of natural justice to a mechanical ritual which has been disapproved by the Supreme Court in the case of EC/Lease (supra).

7. Upon consideration of the rival submissions the trial Court has come to the conclusion that the University has failed to discharge its obligations for conducting proceedings against the petitioner and other parties in conformity with the rules of natural justice. The trial Court has also come to the conclusion that it would be in the interest of justice to permit the University to proceed afresh so that the entire issue can be resolved.

8. The University in its appeal takes strong exception to the conclusions reached by the trial Court. Consequently a prayer is made for stay of the judgment during the pendency of appeal.

9. Keeping in view the importance of the issues involved as well as the enormity of the consequences which would befall the petitioners and the guides, the Court had suggested to the University to reconsider the entire matter by placing the same before the Executive Council. Learned counsel for the University had made sincere efforts to persuade the University to accept the suggestions made by the Court. Ultimately, however, the learned counsel is constrained to convey to the Court that the University is not inclined to conduct fresh investigation into the matter as directed by the trial Court.

10. In view of the aforesaid situation, we have examined the entire issue. We are of the considered opinion that no useful purpose would be served by staying the judgment of the Trial Court as no irreparable damage would be done to the University. On the other hand, the balance of convenience lies clearly in favour of the petitioner and the guides. Consequently the application for stay is dismissed. We, however, admit the appeal.

11. The appellant is permitted to prepare and file requisite number of informal paper books, out of Court, within a period of six weeks from date.

12. Since the respondents have entered appearance, service of notice of appeal and all other formalities be dispensed with and the appeal be treated ready as

regards service. As soon as the paper books are filed, parties mention the appeal for early hearing.