
(1994) 07 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 3888 of 1993 (R)

Manoj Kumar Singh and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 08-07-1994

Acts Referred:

Citation : (1994) 07 PAT CK 0008

Final Decision : Dismissed

Judgement

1. Heard the learned counsel for the parties and with their consent, this application is being disposed of at the admission stage itself.
2. This writ application is directed challenging the validity of the action of the respondents in rusticating the petitioners from Bihar Institute of Technology, Sindri for two academic years asking them to take admission in the second year with 1993 batch in the Sessions of 1994-95.
3. The petitioner No. I of the present writ application is pursuing B.Sc. Engineering Course in electronics in the aforesaid Institute and he has passed first year Engineering Examination after which he has been prosecuting study in the Second year course. Similarly the petitioner No, 2 is pursuing B.Sc. Engineering Course in Mining in the said Institute and he has after passing the first year Engineering examination been prosecuting the study in the second year course.
4. In order to appreciate the rival contentions of the parties to this case, it is necessary to state a few facts giving rise to the present writ application.
5. On 20-8-1993 an incident of assault had occurred within the campus of the Bihar Institute of Technology in pursuance of which, a criminal case was instituted, vide Sindri P.S. Case No. 101/93 under Sections 147, 148, 149, 323, 324 and 307 of the Indian Penal Code in which two petitioners along-with others were made accused. On coming to know about the institution of the aforesaid case, the petitioners left hostel and on 30th of August, 1993 the petitioners

surrendered before the Chief Judicial Magistrate, Dhan-bad and accordingly granted bail on furnishing bail bond of Rs. 3,000/- of two sureties of the like amount.

6. The Director of the Bihar Institute of Technology, Sindri (hereinafter called the Institute) set up an enquiry Committee and the recommendations of the said enquiry committee were considered by the Disciplinary Committee, in pursuance of which the petitioners were served with the order of punishment of rustication for two academic years under Memo No. 1922, dated 1-9-1993. According to the petitioners, no notice or show cause was issued to them prior to the aforesaid order passed on 1-9-1993, which fact is denied by the respondents stating that notices were issued to them. As they were not available in the campus, the notices were pasted on the doors of their rooms in the hostel and telegrams were also sent to their guardians asking about the whereabouts of the petitioners.

7. Be that as it may, as against the aforesaid order of punishment, the petitioners submitted a representation to the Director on 9-9-1993 and when no action was taken on the basis thereof, the petitioners preferred an appeal before the Chairman-cum-Commissioner, North Chotanagpur Division, Hazaribagh on 10-9-1993, as the Commissioner of North Chotanagpur Division, Hazaribagh is an ex-officio Chairman of the Governing Body of the Institute.

8. It appears that the appeal filed against the order dated 1-9-1993 and the representation received by the Director against the said order were considered in the Governing Body Meeting held on 30-9-1993 and though there was lack of quorum in that meeting, the Chairman and other members present decided that these candidates including the petitioners should be given an opportunity of explaining their cases before the enquiry committee. Show cause notices were accordingly issued to the petitioners and on receipt of which, they submitted their written statement and also appeared personally before the enquiry committee, wherein their statements were recorded along with others involved students. The enquiry committee after conducting the aforesaid enquiry, its order dated 19-10-1993, recommended that there was no need to modify the earlier order of rustication for two academic years. The aforesaid recommendation of the enquiry committee along with the other papers were placed before the Disciplinary Committee on 20-10-1993. After deliberation on the issue of punishment to be imposed on them i.e. the petitioners and other students, the said Disciplinary Committee also came to the conclusion that there was no need to modify the earlier order. The Governing Body of the Institute held a meeting on 17th November, 1993 in order to take a decision on the aforesaid issue and after a detailed discussion and on consideration of records, the Governing Body felt that there was no reason to interfere with the orders passed in the case of the petitioners i.e. the Governing Body maintained the order of punishment on, the petitioners of rustication of two years. Being aggrieved by the aforesaid action on the part of the respondents, rusticating the petitioners from the Institute for two academic years, the petitioners have preferred this writ

application.

9. We have heard Mr. Chandra Shekhar, the learned Senior counsel appearing on behalf of the petitioners and also Mr. Alok Lal, representing the respondents.

10. Mr. Chandra Shekhar, the learned Senior counsel appearing on behalf of the petitioners submits that a disciplinary proceeding against the students on the ground of misconduct is a quasi judicial proceeding and that in such cases the principle of natural justice must be observed. The learned counsel further submits that the impugned actions against the petitioners have been taken without affording them reasonable opportunity of hearing. He further submits that the petitioners had no knowledge of the accusations levelled against them in the aforesaid proceeding and were also not given the opportunity of acquainting themselves with the documents produced in the case and were also not given the opportunity to cross-examine the witnesses produced in the aforesaid disciplinary proceeding against them.

11. The learned counsel for the respondents, however, rebuts the contentions of the learned counsel for the petitioners and submits that the petitioners were issued show cause notices prior to issuance of order dated 1-9-1993 but as they had left the hostel without proper permission from the authority concerned the same could not be served on them but telegrams were sent to the guardians of the petitioners for informing of their whereabouts and the show cause notices were pasted on the doors of the rooms of the petitioners. He further submits that the petitioners were given another opportunity to explain the position filing their show cause against the notices issued, vide Memo Nos. 2209 and 2211, both dated 5-10-1993 and the petitioners replied to the show cause notices in writing and in person too, wherein they never raised any objection that they had no knowledge about the accusations levelled against them. The learned counsel also submits that the enquiry committee gave all reasonable opportunity to the petitioners in the aforesaid enquiry proceeding and thereafter found them guilty as per Code of Conduct and guilt of the Institute. Accordingly, he submits that the petitioners were given due opportunity to explain and also an opportunity of hearing and, therefore, the submission of the learned counsel for the petitioners that the principle of natural justice have been violated in the instant case is baseless and incorrect.

12. Upon hearing the learned counsel for the parties and upon going through the records, we hold that a disciplinary proceeding against the students on the ground of misconduct is a quasi judicial proceeding and that in conducting such proceeding against the students, the principle of natural justice must be observed. It is also well settled that subject to the above quasi judicial obligation, it is within the jurisdiction of the educational institution or the committee set up by it to decide all the relevant questions in the light of the evidence adduced before it and it would not be reasonable to import into such enquiry all considerations which govern criminal trials in the Courts of law.

13. In this connection, reference may be made to the decision of apex Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, , and also a decision of the apex Court in the case of The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others, : It has been held in the aforesaid two decisions of the apex Court that in dealing with the validity of the impugned order passed by the University under Article 226 of the Constitution, the High Court is not sitting in an appeal over a decision on this question. Its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence, the High Court may be justified to quash the order but the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether the probabilities and circumstantial evidence do not justify the said conclusion. The enquiry held by the Domestic Tribunal, in such cases, must, no doubt, be fair and the students must be given adequate opportunity to defend themselves in holding such enquiry. It is further held, in those cases, that when an inference of proof that a fact in dispute has been held established, there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case.

14. At this stage, we can also appropriately refer to the decision of Controller of Examinations v. G. S. Sunder, reported in 1993 Supp (3) SCC 82, wherein it has been held that the authorities-in-charge of Education whose duty is to conduct examination fairly and properly, know best how to deal with situations of this character. One cannot import fine principles of law and weigh the same in golden scales. In the present system of education, the system of examinations is the best suited to assess the progress of the students so long as they are fairly conducted. Inference by Court in every case may lead to unhappy results making the system of examination a farce. Unhealthy practices which are like poisonous weeds in the field of education must be rooted out in order that the innocent and the intelligent students are not affected.

15. We have carefully considered the ratio of the aforesaid decisions. In our opinion, the principles laid down in the aforesaid cases are also applicable to the facts of the present case. Although the present is not a case of malpractices adopted in the examination but still the present is a case relating to indiscipline caused by the petitioners in the Institute.

16. In the back ground of the aforesaid legal position, it is necessary to consider in the present case as to whether there is any violation of principles of natural justice as alleged by the counsel appearing for the petitioners. On perusal of the records of the case and also the proceedings of the Governing Body held on 17th

November, 1993, we find that the petitioners were fully aware of the accusation levelled against them in the aforesaid proceeding and they submitted their show cause explaining their position against the show cause notice issued on 5-10-1993. In the said show cause filed by the petitioner No. 1 before the respondents, there is not even a single whisper that he was not aware of the accusations levelled against him in the proceedings. Besides in the statements adduced before the enquiry committee, nothing has been stated by the petitioners that they were not aware about the accusations levelled in the proceedings against them and in fact they had submitted detailed statements trying to absolve themselves from the aforesaid incident that took place on 20-8-1993. It is thus established that the petitioners were aware of the charge against them and were also given opportunity to submit their show cause and were also given personal hearing during which their statements were recorded, which were also signed by the petitioners.

17. In view of the aforesaid position and also in view of the records of the case and also in the light of the principles laid down in the aforesaid decisions of the apex Court, we hold that there has been sufficient compliance of the requirement of natural justice in the present case, as the petitioners were informed of the charges levelled against them in the case and that they were also given adequate opportunity of meeting the charges levelled against them and stating their own cases. In the aforesaid circumstances, it cannot be held that the enquiry proceeding conducted against the petitioners is violated on the ground that the petitioners were not given an opportunity of hearing. Besides there being also circumstantial evidence in support of the allegations against the petitioners, it cannot be said that the decision of the authority in rusticating the petitioner is not supported by any evidence.

18. Now coming to the last submission of the learned counsel for the petitioners that the punishment awarded against the petitioners is disproportionate to the misconduct alleged, we have given our anxious consideration to the same. Reference may also be made to the decision of the Apex Court in the case of Union of India (UOI) Vs. Parma Nanda, , where it has observed as follows:--

"It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

19. In view of the ratio of the aforesaid decision of the Apex Court, we feel that it is not a fit case where we should interfere with the punishment imposed by the competent authority. Besides on the facts and circumstances of the case, we cannot hold that punishment awarded to the petitioners is severe and out of proportion to the misconduct. It has been held by the Apex Court in the case of Hind Construction and Engineering Co. Ltd. Vs. Their Workmen, that a Tribunal should not interfere with the kind or severity of punishment except in very extraordinary circumstances. We find that in the instant case no extraordinary circumstances exist which calls for a change of alteration in the punishment awarded to the petitioners in the present case.

20. In view of the aforesaid findings, we find no merit in the present writ application and accordingly we dismiss the same but Without COSTs.