

(2008) 04 AHC CK 0022
In the Allahabad High Court
Case No : Criminal M.C. No. 3740 (C) of 1994

Manoj Tewari

APPELLANT

Vs

Mahendra Singh Sodha and Others

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Uttar Pradesh State Universities Act, 1973 — Section 13(6), 19, 9

Citation : (2008) 3 ACR 3100

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Surya Kant, for the Appellant; Amit Dwivedi, Umesh Candra, K. Chandra and I.B. Singh, for the Respondent

Judgement

Tarun Agarwala, J.—Heard Sri Surya Kant, the learned Counsel for the applicant and Sri Amit Dwivedi, the learned Counsel for the opposite party No. 1.

2. The applicant was a student of Master of Arts in Arab Culture in the University of Lucknow. The Admission Committee of the University, by an order, cancelled his admission in M.A. This led to the filing of Writ Petition No. 1595 (MS) of 1994, which was allowed by a judgment dated 4.10.1994. The writ court found that the basic principles of natural justice was not complied with by the University and accordingly quashed the order of expulsion. The writ court passed the following operative order :

Without going into the merits of other contentions raised on behalf of the Petitioner, I am fully satisfied that the impugned order of expulsion is liable to be quashed as no opportunity was given to the Petitioner and is in violation to the principles of natural justice. The petition is liable to be allowed on this ground alone.

I accordingly quash the decision of the admission committee passed in the meeting held on 25.7.1994 communicated by letter dated 27.7.1994 cancelling

the Petitioner's admission in M.A. Part I (Arab Culture) and debarring him to take admission for three years.

3. It transpires that the University filed a Special Appeal No. 34 of 1995. An application for interim relief was also filed which was rejected by an order dated 9.2.1995. The order of the appellate court dated 9.2.1995 is quoted hereunder :

...In the present case, prima facie, in our view, the material which was obtained behind the back of the Petitioner-Respondent from Gorakhpur University and was taken into consideration while making the final decision should have been made known and available to the Petitioner-Respondent so as to meet the least requirement of fair play. In view of this, prima facie, as we have expressed, we do not find that any good ground is made out for staying the operation of the judgment of the learned single Judge. The application for interim relief is, therefore, rejected. We would, however, like to clarify and provide that it would be open for the Appellant, if it so chooses, to hold a fresh enquiry, in accordance to law.

4. It has come on record that the special appeal was subsequently dismissed for want of prosecution on 23.9.1999. It has also come on record that a SLP was preferred before the Supreme Court of India by the Lucknow University, which has also been dismissed as not pressed.

5. It transpires that based on the interim order dated 9.2.1995, the University, through the Proctor, issued an order dated 22.2.1995 revoking the suspension of the applicant till the conclusion of a fresh enquiry. It transpires that subsequently the applicant was again suspended on charges of forgery in the mark sheets and was issued a show cause notice requiring him to show cause, as to why, he should not be expelled. The applicant challenged the show cause notice by filing Writ Petition No. 384 (M/S) of 1995 which was eventually dismissed by a judgment dated 5.4.1995. The writ court held that the Proctor had the jurisdiction and the authority to pass an order of suspension. The writ court further directed the University authorities to conclude the disciplinary proceedings against the applicant. The operative portion of the order dated 5.4.1995 is quoted hereunder :

Before parting with the case it will be in the interest of justice to direct the University authorities to conclude disciplinary proceedings against the Petitioner at the earliest possible so as to enable him to pursue his further studies in case the charges levelled against him are ultimately dropped.

6. From the record, it transpires that pursuant to the notice dated 22.2.1995, the applicant asked for certain documents which is alleged to have been supplied. The applicant sought further time to file the reply and eventually, when no reply was submitted, the Vice Chancellor issued an order dated 5.10.1996 reiterating the earlier order of expulsion dated 25.7.1994.

7. In the meanwhile, a contempt application u/s 12 of the Contempt of Courts

Act was filed by the applicant in December, 1994 against the Vice Chancellor and other officers/authorities of the Lucknow University. The opposite parties in the counter-affidavit have contended that there is now wilful disobedience on their part or on the part of any officer or authority of the University and pursuant to the order of the writ court as well as pursuant to the interim order of the appellate court and subsequent order of the writ court passed in Writ Petition No. 384 of 1995, the University had made a fresh enquiry and, after complying the principles of natural justice, had passed a fresh order expelling the applicant from the Lucknow University. Consequently, the opposite parties submitted that no wilful contempt is made out against him or against any other officer.

8. The learned Counsel for the applicant submitted that the interim order of the appellate court dated 9.2.1995 merged with the final order dated 23.9.1999 when the special appeal was dismissed, and therefore, no cognizance could be taken of the interim order dated 9.2.1995. The learned Counsel further submitted that the authorities of the University were required to comply with the order of the writ court dated 4.10.1994 which stood affirmed by the appellate court when the special appeal of the University was dismissed. The learned Counsel submitted that since the expulsion order was set aside, the applicant was required to be given admission in the Master of Arts which has not been done till date, and therefore, even after a lapse of almost 14 years, wilful disobedience of the order of the writ court still continues.

9. The learned Counsel for the applicant submitted that the order dated 5.10.96 passed by the Vice Chancellor was without any authority of law and is liable to be ignored. The learned Counsel submitted that only an authority of the University, as defined u/s 19 of the U.P. State Universities Act, 1973, was alone competent to pass an order on the expulsion of the applicant and that the Vice Chancellor, being only an officer, as defined u/s 9 of the Act was not authorised nor competent to pass an order of compulsion.

10. The learned Counsel further submitted that the order dated 5.10.1996 only reiterated the earlier order of 1994 which order was quashed by the writ court by a judgment dated 4.10.1994, and therefore, submitted that once an order has been quashed, it does not exist any longer and consequently there was no occasion for reiterating or reviving the said order. The learned Counsel, therefore, submitted that wilful defiance of the judgment of the writ court was writ large. The learned Counsel also submitted that once the Proctor withdrew the expulsion order by order dated 22.2.1995, it was the bounden duty of the University authorities and officers of the University to grant admission/readmission to the applicant which was not done for reasons best known to the University authorities.

11. In the light of the aforesaid submissions, the learned Counsel submitted that this Court by order dated 9.11.2005 and again on 4.10.06 came to the conclusion that a prima facie case of wilful disobedience of the order of the writ court was made out and that the charges against the opposite parties should be

framed.

12. Having considered the submissions of the learned Counsel for the applicant at some length and upon hearing the learned Counsel for the opposite parties and upon perusing the record and earlier orders of this Court, this Court is of the opinion that no wilful disobedience of the order of the writ court has been made out against the opposite parties. The order of expulsion was quashed by the writ court on the sole ground that the principles of natural justice was not followed by the University and that an opportunity ought to have been given to the applicant. Once an order was quashed by the Court, it become open to the authorities of the University to pass a fresh order after giving an opportunity of hearing to the applicant. No specific order from the Court was required. Consequently, even though, the appellate court, by an order dated 9.2.1995 directed the University to hold a fresh enquiry in accordance with law, this Court is of the opinion that notwithstanding the aforesaid order, the University authorities had the inherent power to redecide the matter after granting an opportunity to the applicant before taking a fresh decision.

13. In the present case, an opportunity was given to the applicant which he failed to avail. In spite of opportunity and time being granted, no reply came forward and consequently, the Vice Chancellor issued an order dated 5.10.96 reiterating the earlier order of 1994, by which the applicant was expelled from the University.

14. In view of the aforesaid, it is immaterial to go into this controversy, as to what would be the effect of the interim order dated 9.2.1995, passed by the appellate court in special appeal after having merged with the final order. In my opinion this controversy loses its efficacy at this stage. In any case, there was a further direction of the writ court in the judgment dated 5.4.95, passed in Writ Petition No. 384/MS/1995 to conclude the disciplinary proceedings.

15. The order of 5.10.96 reiterated the earlier order of expulsion. The earlier order of expulsion was quashed by the writ court. When an order is quashed, it is no longer in existence. Once the order is not in existence, the question of reiterating the said order or making any amendment in said order does not arise.

16. However, by reiterating the order, no wilful disobedience of the order of the writ court can be culled out. The order dated 5.10.1996 is not happily worded. The Vice Chancellor could have passed the same order afresh, may be a verbatim order but could not reiterate an order which was no longer in existence. Considering the fact that the Vice Chancellor may not be aware of the legal consequences that follows when an order is quashed, this Court is not inclined to dwell or deliberate on this aspect of the matter any further.

17. The submissions of the learned Counsel for the applicant that the Vice Chancellor, being an officer of the University, had no authority or power to pass the order dated 5.10.96, is bereft of merit. Wide powers have been given to the Vice Chancellor u/s 13 (6) of the U.P. State Universities Act, 1973. In my view

and in view of the provision of Section 13 (6) of the U.P. State Universities Act, 1973, the Vice Chancellor was fully competent to pass an order where orders are required to be passed in urgent cases, which needs immediate action. This urgency is fortified by the fact that the applicant in the meanwhile had initiated contempt proceedings, and therefore, it became necessary for the Vice Chancellor to take remedial steps and, after providing opportunity to the applicant, an order was passed by the Vice Chancellor.

18. Much stress was laid by the counsel for the applicant with regard to the fact that after the Proctor had withdrawn the order of suspension, consequential order of readmission was not passed. Upon perusing the record, I find that the applicant was again suspended which order was challenged by the applicant in Writ Petition No. 384 of 1995 and which was dismissed by judgment dated 5.4.1995. Consequently, the submission raised by the learned Counsel for the applicant is patently misconceived and erroneous.

19. The learned Counsel for the opposite parties placed reliance upon a decision of the Supreme Court in J. Parihar Vs. Ganpat Duggar and others, in which it has been stated that where an order has been passed on the basis of a direction issued by the Court, in such a situation, a fresh cause of action arises, in which if the applicant was aggrieved, the appropriate remedy was in an appropriate forum for the redressal of his grievance but such cause could not be availed in the contempt jurisdiction alleging wilful violation of the order of the writ court. In my opinion, the aforesaid judgment is squarely applicable to the present facts and circumstances of the case.

20. In view of the aforesaid, this Court is of the opinion that no wilful contempt is made out against the opposite party No. 1 or against any other officers or authority of the University. Consequently, contempt proceedings are dropped, notices are discharged and the contempt application is rejected.