

(2007) 01 GAU CK 0082
In the Gauhati High Court

N. Malla (Prof.) and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 1 GLR 534 : (2007) 2 GLT 246

Hon'ble Judges : T. Vaiphei, J;D. Biswas, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D. Biswas, J.—Both the appeals arise out of a common judgment and order dated 13.9.2002 passed by a learned Single Judge of this Court in WP(C) Nos. 174 (SH)/01 and 233 (SH)/01. The Writ Appeal No. 33(SH)/2002 is also being disposed of by this common judgment which has been preferred against the judgment and order dated 7.10.2002 passed in W.P.(C) No. 225(SH)/1999. We have heard Ms. A. Paul, learned Counsel for the appellants and Mrs. S. R. Sen, learned Counsel for the respondents.

2. The writ petitioner in WP(C) 174 (SH) 01, on conclusion of disciplinary proceedings initiated against him, was imposed with the penalty of stoppage of increments for five years, penalty debarring him from the membership of any statutory body and the penalty imposing restriction upon him in holding higher position under the CAS etc. The orders passed by the authority have been challenged in this petition. The writ petitioner in WP(C) 233 (SH)/01 was imposed with the penalty of compulsory retirement from service with effect from 12.10.2001 after conclusion of a disciplinary proceedings initiated against him. In this petition, the orders placing him under suspension, initiation of the departmental proceedings and imposition of the penalty of compulsory retirement have been challenged.

3. The learned Single Judge by the common judgment dismissed the writ

petitions W.P.(C)Nos. 174(SH)/2001 and 233(SH)/2001. W.P.(C) No. 225(SH)/1999 was disposed of as infructuous. Being aggrieved thereby, the writ petitioners have preferred the appeals now proposed to be disposed of by this common judgment.

4. The petitioner in WP(C) 174 (SH)/01 has been serving in the North Eastern Hills University since 1988. He joined the services of the University as a Lecturer in the Department of Philosophy headed by Prof. Mrs. S. Miri, wife of the acting Vice-Chairman Sri Mrinal Miri. A fact finding Committee consisting of Prof. Mrs. T. Ao and Prof. Mrs. B. Lyndem was constituted to enquire into the allegations of violation of the procedure for admission to the Ph.D. Programme in the Department of Philosophy. The said Committee submitted its report on 14.6.2000 which was rejected by Prof. L.K.S. Lyngdoh, Pro Vice-Chancellor and a One Man Committee headed by Mr. B. Massar, A.S. (Retd.) was constituted to enquire into the allegations. By the letter dated 13.9.2000, the writ petitioner was directed to appear before the Vice-Chancellor in connection with the report submitted by Massar Committee. The petitioner requested the authority to furnish him with a copy of the report. The request was refused on the ground that it was confidential. Thereafter, the petitioner was served with a show cause notice vide letter dated 16.9.2000 by the Vice-Chancellor asking him to explain as to why a disciplinary proceedings will not be initiated against him. It is submitted that the Vice-Chancellor had no authority to issue any show cause notice as his wife is the Head of the Department of Philosophy, and the North Eastern Hills University Act does not authorize him to issue any such notice without being authorized by the competent authority provided under the Act. The petitioner could not reply to the show cause notice as he was denied a copy of the enquiry report on the basis of which the disciplinary proceedings was proposed. Thereafter, the petitioner was placed under suspension vide letter dated 26.9.2000. The suspension order has been indicated on the ground that it could not be issued without first furnishing him with a copy of the report and, that too, by an authority subordinate to the appointing authority. Thereafter, the petitioner was served with a copy of the order dated 13.12.2000 whereby he was informed that the Executive Council of the University in its meeting held in December, 2000 decided to initiate disciplinary proceedings against him and Mr. M.D, Raptap I.A.S. (Retd.) was appointed as the Inquiry Officer to enquire into the six charges framed by the authority. The further case of the petitioner is that he has been victimized as he had pointed out certain irregularities in the admission process to the Ph.D. Programme.

5. The case of the writ petitioner in W.P.(C) No. 233 (SH)/2001 is that he has been serving in the University since April, 1979 and was appointed as Professor in the year 1987. He was also appointed as Head of the Department of Philosophy for more than two terms and as Dean in the School of Humanities and Education for a period of three years. Besides, he was also a member of the Executive Council of the University, etc. Persons with vested interest, in order to dislodge him from the position, started spreading rumor that some teachers

including the petitioner were instrumental in circulating information about violation and irregularities in the procedure for admission to Ph.D programme, Philosophy. Influenced by the circulation, a group of students threatened the head of the Department of Philosophy Prof. (Mrs.) S. Miri on 7.6.2000. A fact finding committee comprising of Prof. (Mrs.) T. Ao and Prof. (Mrs.) B. Lyndem constituted by Prof. L.K.S. Lyngdoh, Pro-Vice-Chancellor looked into the matter. The Committee submitted its report on 14.6.2000. The said report was rejected and the petitioner was placed under suspension by the order dated 16.9.2000. The order of suspension is challenged as a nullity as it was issued by the Registrar of the University, neither his appointing authority nor disciplinary authority. According to the writ petitioner, the Executive Council did not ratify or regularize the order of suspension presumably passed on the basis of Massar Committee Report. The copy of the Massar Committee Report was also not furnished to the writ petitioner. The petitioner was served with the article of charges dated 13.12.2000 and asked to submit a written statement within ten days, which he complied with by filing written statements on 21.12.2000 and 3.8.2001. The petitioner challenged the legality and validity of the Massar Committee Report and the initiation of the proceedings without any authority of law and in violation of the rules and statute framed under the Act on vague and uncertain charges. The appointment of Mr. M.D. Raptap as Inquiry Officer has been challenged for want of jurisdiction on the part of the Vice-Chancellor. According to the writ petitioner, the departmental proceedings could not have been initiated on the basis of the Massar Committee Report as he was already exonerated by the first fact finding committee.

6. In Writ Petition (C) No. 225 (SH)/1999, the petitioner Prof. N. Malla challenged the order dated 4.10.1999 placing him under suspension. The said writ petition was dismissed as infructuous since the order of suspension merged with the order of compulsory retirement imposed upon the writ petitioner. There remains nothing left for adjudication in the connected writ appeal.

7. Before we address the issues raised in all the three appeals, it would be pertinent to mention here that the powers of judicial review under Article 226 is available to superior Courts for the purpose of examining the correctness of the decision making process and not the decision. If there is violation of any rules and regulations including procedural safeguards and principles of natural justice, the Court may in its discretion interfere with the decision rendered in disciplinary proceedings. Interference with such decision is, however, permissible if the decision is based on no evidence. In High Court of The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, , the Hon"ble Supreme Court held that interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution, if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by

the authority, on the very face of it, is wholly arbitrary or so capricious that no reasonable person could have arrived at such a conclusion. It is further held that the disciplinary committee is the sole judge of the facts. In *State of Punjab v. V.K. Khanna and Ors.* reported in (2001) 2 SCC 330 it has been held that the test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collected and necessary conclusion drawn therefrom. It has been further held that general allegation of personal vendetta without any definite evidence cannot be said to be sufficient assertion worth acceptance in a Court of law. There must be positive evidence in order to decry an administrative action on the ground of mala fides and arbitrariness. In *Bank of India and Another Vs. Degala Suryanarayana*, it is held that strict rules of evidence are not applicable to departmental proceedings. Only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charges. Mere conjectures and surmises cannot sustain a finding of guilt. Various decisions alike have also been relied upon by Mr. Sen, learned Counsel for the respondents. Keeping in mind the principles available in the judgments referred to above, we would now proceed to examine the issues.

8. The charges framed against the writ petitioner Shri Xavier P. Mao (Writ Petition (C) No. 174 (SH)/2001) read as follows:

ARTICLE-I

Mr. Xavier P. Mao, Lecturer in the Department of Philosophy of the University was present in all the meetings of the Faculty on admission of candidates to the Ph.D. Programme, 2000. The decision on screening out Mr. Henshet Phom from the list of candidates for the interview was taken in the meeting of the Admission Committee held on 3.4.2000. Mr. X.P. Mao was present in the meeting and hence was a party to the decision on screening out Mr. Henshet Phom. But Mr. X.P. Mao raised his protest against screening out Mr. Henshet Phom at a meeting of the Faculty held on 4.5.2000. Prof. N. Malla supported him and with his support, Mr. X.P. Mao raised unnecessary, flimsy objection to disrupt the Ph.D. admission, 2000 and to discredit the Head of the Department of Philosophy.

ARTICLE-II

Mr. Xavier P. Mao while holding a responsible position as a teacher in the University, consented to be "appointed" as the Adviser of the NEHUSU and the Naga Students' Union without obtaining the prior approval of the appropriate and competent authority of the University. Mr. Mao even did not inform the Dean of the Students' Welfare of the University about his appointment as Adviser of these two students' organizations. By this act of his, Mr. X.P. Mao has violated the Ordinance OE-5.

ARTICLE-III

Mr. Xavier P. Mao as the "Adviser" of NEHUSU and the Naga Students" has leaked information regarding the screening out of Mr. Henshet Phom from the list of the candidates for interview for admission to Ph.D. Programme, 2000. Also Mr. Mao misinformed and misrepresented the Procedure followed in the Department of Philosophy for screening out Mr. Henshet Phom from the list of candidates for interview for admission to Ph.D. programme. Thus, he has instigated and provoked the students to agitate against the Head of the Department of Philosophy. Mr. Mao in collusion with Dr. N. Malla, a Professor of the Department of Philosophy spread, disinformation among students and provoked them to disrupt the interview for admission to the Ph.D. programme, 2000 held on 20.5.2000. Spreading of misinformation and distorted facts by Mr. X.P. Mao and Prof. N. Malla led to the incident of 7th June, 2000 in which, two unknown young men barged into the office room of Prof (Mrs.) S. Miri, Head of the Department of Philosophy and threatened to kill her. This act of Mr. X.P. Mao is unbecoming of a teacher of the University.

ARTICLE-IV

Mr. X.P. Mao in collusion with Dr. N. Malla, a Professor in the Department of Philosophy of the University made a deliberate attempt to confuse and agitate the young students of the University, falsely propagating that non-admission of Mr. Henshet Phom to the Ph.D. programme, 2000 was in violation of the Ordinance of the University. The conspiracy plotted by Dr. Malla and Mr. X.P. Mao prompted a section of the students of the University to disrupt the proceedings of the Interview Committee held on 20th May, 2000. By instigating the students to interfere with and take a partisan attitude about the Department's policy, Mr. X.P. Mao in collusion with Prof. N. Malla has shown disloyalty and disregard for the authority besides, corrupting young minds of students. Willful propagation and misrepresentation of facts by Mr. Mao in collusion with Prof. N. Malla led to the incident of 7th June, 2000 threatening the life of Prof (Mrs.) Sujata Miri, Head of the Department of Philosophy. This act, unbecoming of a University teacher was designed to disrupt and destabilise the academic atmosphere in the Department of Philosophy and of the University.

ARTICLE-V

Mr. X.P. Mao in collusion with Dr. N. Malla, a Professor in the Department of Philosophy, made attempts to defame the authority(s) of the University by making press statements without taking permission from the concerned authority. Their letter to the Editor, "The Shillong Times" dated 6th December, 2000 showed their utter disrespect to the highest Academic Body of the University and was a blatant at damaging the image and integrity of Prof. Mrinal Miri, the Vice-Chancellor.

ARTICLE-VI

On 20.5.2000 i.e., the day of interview for admission to the Ph.D. Programme in the Department of Philosophy. Sri X.P. Mao shouted at the Head and the faculty

that they were "dictators" and "chamchas" respectively. Sadly the episode took place in full presence of all the agitated students in the corridors. This further instigated the students. Mr. Mao's unwarranted statement "it is not a new thing for VCs to be killed" is nothing but a direct threat to the life of the Vice-Chancellor of the University. This is an act which is grossly unbecoming of any civilized person, particularly a teacher of the University. Thus, Mr. Mao is guilty of misconduct and misbehaviour.

9. The charges framed against Prof. N. Malla (Writ Petition (C) No. 233(SH)/2001) read as follows:

ARTICLE-I

During his terms as Head of the Department of Philosophy and Dean, School of Humanities and Education in 1999, Prof. N. Malla had the Ph.D. proposal (synopsis) of Mr. Abinash Panda approved in the faculty meeting held on 20th October, 1998 without Mr. Panda having been admitted into the Ph. D. programme as provided for under Ordinance OC-4. The objection to the irregular procedure adopted by Prof. Malla was raised by a member of the faculty of Philosophy namely Dr. C.R. Agera in the meeting of the Board of Post-Graduate Studies held on 22nd October, 1998. Prof. N. Malla, in his capacity as Chairman of the Board of Post Graduate Studies, brushed aside the valid objection of Dr. C.R. Agera, Dr. Agera requested the Chairman to record his note of dissent to be forwarded to the School Board. Prof. Malla, without much ado, reminded Dr. Agera that he was not only the Chairman of the Board of Post Graduate Studies, but also the Chairman of the School Board, and that the Ph.D. proposal of Abinash Panda would be approved by the School Board too. Abinash Panda would be approved by the school Board too. True to his promise, Prof. Malla had the Ph.D. proposal of Abinash Panda passed in the School Board as well. Thus, Prof. Malla deliberately misused his power as Head of the Department of Philosophy, as Chairman of the Board of Post-Graduate Studies in Philosophy and Chairman of the School Board of Humanities and Education to get Mr. Abinash Panda admitted to the Ph.D. programme of the University. This act of Prof. N. Malla clearly puts a huge question mark on his integrity as a teacher of the University and as Head of some of the Statutory Bodies of the University.

ARTICLE II

At its faculty meeting held on 5th May, 1999, the Department of Philosophy decided to recommend the admission of Mr. Yoshihay Yobin to the Ph. D. programme. Prof. N. Malla, along with six other members of the faculty was present in the meeting, and hence was a party to the decision to admit Mr. Y. Yobin. But, in his letter No. F.37/SHE/99-2001 dated 20th May, 1999 he objected to the admission of Yobin on malicious and flimsy grounds. As a result of Prof. Malla's objection, Mr. Yobin's admission was inordinately delayed causing hardship and mental suffering to him. The malicious intention of Prof. Malla's objection to Mr. Yobin's admission is clear from the fact that he lied blatantly

about it to Mr. Yobin as evident from the latter's letter to the Head of the Department of Philosophy dated 27th September, 1999. The sole purpose of Prof. Malla's delinquent behaviour in this case was to malign the Head of the Department and to tarnish the image of the Department and of the University in general.

ARTICLE-III

Prof. N. Malla, in collusion with Mr. Xavier P. Mao, a Lecturer in the Department of Philosophy of the University made a deliberate and persistent attempt to confuse and agitate the young students of the University falsely propagating that not granting admission to Mr. Henshet Phom to the Ph.D. programme, 2000 of the University. The conspiracy plotted by Prof. Malla and Mr. Xavier P. Mao prompted a section of the students of the University to try and disrupt the proceedings of the University to try and disrupt the proceedings of the Interview Committee held on 20th May, 2000. By instigating the students to take a partisan attitude towards the admission procedure of the Department the two teachers led them to interfere with the proceedings of the Interview Committee by intruding into the Committee room on several occasions. The Interview Committee meeting was held on 20th May, 2000. By this act of his, Prof. Malla along with Mr. Xavier Mao., has been preaching disloyalty, disregard and disrespect among students to their own teachers and thus corrupting young minds. Deliberate false propagation and misrepresentation of facts by Prof. Malla in collusion with Mr. Xavier Mao, led to the incident of 7th June, 2000, in which two identified youths walked into Prof. Sujata Miri's room and threatened to kill her. This act was the culmination of the conspiracy started by Prof. Malla along with Mr. Xavier Mao regarding the issue of non-admission of Mr. H. Phom to the Department's Ph.D programme. It had the affect of disrupting the academic atmosphere of the Department and indeed of the entire University.

ARTICLE-IV

Prof. N. Malla has been attempting to destabilize the Department and malign the Head of the Department by persistently raising unnecessary and untenable objections to the proceedings of faculty meetings. He has also made the work of the Head of the Department and the members of the Faculty extremely difficult and awkward by awarding inflated marks to the students before the marks were moderated by the Moderation Committee. Thus, Professor Malla once again vitiated the academic atmosphere of the Department and caused disruption in its normal activities.

ARTICLE-V

During his submission to the Massar Committee, Prof. Malla made an unsubstantiated statement on the appearance of an Intelligence Officer on the Campus of the NEHU who was allegedly inquiring into an "anti Christian" course being taught in the Department of Philosophy by Professor Sujata Miri. Prof. Malla did not indicate the date and year and venue of his meeting with the

Intelligence Officer. It is obvious that such a statement was designed to provoke the religious sentiments of students and, through them, of the public in general with a view to destabilizing the work of the Department and creating a potentially dangerous atmosphere in the community.

ARTICLE-VI

Prof. Malla kept in his possession confidential documents, such as the panel of examiners, which he is not entitled to do, as a Professor. Moreover, Prof. Malla submitted a copy of this confidential document to the Massar Committee disclosing top secret information relating to the examinations of the University. Such betrayal of confidentiality relating to Examination matters was not only irresponsible in the extreme, but could do irreparable damage to the image of the University.

ARTICLE-VII

Prof. Malla, in collusion with Mr. Xavier P. Mao, made attempts to defame the authorities of the University by making press statements intended to disinform the public without taking permission from the concerned authority. The letter to the Editor, "The Shillong Times" dated 6th December, 2000, showed their utter disrespect to the highest Academic Body of the University besides attempting to damage the image and integrity of the Vice-Chancellor, Prof. M. Miri.

10. By the order dated 8.2.2001 (Annexure-III to the writ petition), it was decided that the disciplinary proceedings against both the writ petitioners would be disposed of by a common proceeding. It was further decided that the Executive Council of the University would function as the disciplinary authority. This order was issued by the Vice Chancellor, Respondent No. 3, in exercise of his powers u/s 12 of the NEHU Act. On completion of the common disciplinary proceedings, the penalties, as indicated hereinbefore were imposed. After careful consideration of the provisions of Section 12, we are unable to discern any legal flaw in this order. The petitioners cannot challenge the legality and validity of the said order, having participated in the common disciplinary proceedings.

11. It would appear that both the writ petitioners participated in the disciplinary proceedings submitting their statements of defence on 13.12.2000 and 21.12.2000. Both of them denied the charges. The copy of the report: of the Massar Committee along with annexures were also furnished to them before the enquiry had actually started. On 17.3.2001, the charges were explained to the petitioners, and they were also allowed to inspect documents. The petitioners were informed that they could appoint their defence assistants and to submit list of documents and witnesses, if any. Accordingly, the petitioners inspected the documents on 19.3.2001 and also furnished documents in support of their defence on 30.3.2001. Preliminary objection raised challenging the appointment of Prof. A.N. Roy as presenting officer was disposed of by the Executive Council. The approval of the Executive Council in appointing Prof. A.N. Roy as the presenting officer was communicated by the University on 17.4.2001. In the

same letter, the approval of the Council in appointing the Inquiry Officer was communicated. It further appears that the writ petitioners actively participated in the departmental proceedings, cross-examined the witnesses produced on behalf of the disciplinary authority and also examined witnesses in support of defence. We do not find any lapses in the procedure adopted in the departmental proceedings. The petitioners were given full opportunity to defend themselves ensuring all procedural safeguards available including the principles of natural justice. In the absence of statutory rules and regulations governing the disciplinary proceedings, authority may proceed to hold enquiry and such an enquiry cannot be faulted with if it is done following the broad principles of disciplinary proceedings and in keeping with the principles of natural justice. The Executive Council of the University in its meeting held on 29.8.2001 decided that till the University frames its own rules and regulations, corresponding Central Government Rules would be applicable wherever needed and the action taken on such contingencies shall stand rectified. The learned Single Judge relying upon a decision of the Hon'ble Supreme Court in *Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others*, overruled the objection raised on this count.

12. The inquiry report submitted shows that the article of charges framed against both the petitioners have been proved. We have gone through the enquiry report and we find that adequate evidence have been adduced on behalf of the departmental authority to prove the different charges. Witnesses, namely Prof. C.R. Agera, Prof. Jagat Pal and others deposed supporting the charges. Their statements available on record have also been examined by us. We find that the Inquiry Officer has dealt with the evidence on record and, thereafter, tendered his opinion declaring the charges proved. Upon perusal of the evidence of the witnesses on record, it cannot be said to be a case based on no-evidence. The learned Single Judge has extensively dealt with this aspect of evidence in the judgment under appeal. The rigours of Evidence Act, standard of proof and the volume of evidence required in a Court of law are not required in a disciplinary proceeding. Adequacy and sufficiency of evidence cannot be questioned. The Court shall refrain from interfering with the decision taken if there is some amount of evidence, and the decision is not contrary to law or, neither absurd nor unreasonable. Viewed from this angle, we fully endorse the view of the learned Single Judge that there is evidence on record to justify the decision taken by the disciplinary authority.

13. The learned Single judge also considered the report of the first fact finding committee comprising of Prof. (Mrs.) B. Lyndem and Prof. (Mrs.) T. Ao and also the report of the second fact finding committee headed by Mr. B. Massar, IAS (Retd.) The report of the fact finding committee stands to lose its significance when the matter has been enquired into by the Inquiry Officer in a regular departmental proceedings. The question of bias has to be tested with reference to the evidence tendered before the Inquiry Officer. If the evidence is sufficient enough for the purpose of proving a charge, the element of bias, howsoever

grave it may be, will be of no consequence unless it is shown that the witnesses have been influenced by the authority. Relationship of the Head of the Department of philosophy with the Vice-Chancellor alone cannot be a ground for condemning the decision taken in a department proceedings based on available evidence.

14. The other contentions that the article of charges etc. were not authenticated by the competent authority, jurisdictional error in holding common proceedings and in appointing presenting officer, relevancy of the Massar Committee report have been extensively dealt with by the learned Single Judge. We are unable to persuade ourselves to the view that the decision making process is vitiated resulting in violation of natural justice. We find no merit in all the three writ petitions.

In the result, the writ appeals are dismissed.