

(1965) 09 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 245 of 1965

Nripendranath Goswami

APPELLANT

Vs

Registrar, Gauhati University and Others

RESPONDENT

Date of Decision : 14-09-1965

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226, 4
Gauhati University Act, 1947 — Section 22, 5, 5(1)

Citation : (1965) 09 GAU CK 0001

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : S.K. Ghose and S.N. Bhuyan, for the Appellant; B.C. Barua, General and M.C. Pathak, Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G. Mehrotra, C.J.—This rule arises out of an application under Article 226 of the Constitution. The admitted facts are that the Petitioner Sri Nripendranath Goswami was conferred a degree of Bachelor of Arts by the Gauhati University in the Convocation which was held in April 1965. He, however, in November 1964 got admitted into the post graduate classes in the "Department of Political Science" of the University. The relevant facts thereafter are that some disturbances are alleged to have taken place in the University campus on the 4th May 1965, whereupon the Vice Chancellor tendered his resignation and the matter was placed before the emergent meeting of the Executive Council of the Gauhati University. The Executive Council decided that the degree of the Petitioner should be cancelled and further that he should be expelled from the University for taking active part himself and for instigating others to take part in the disturbances leading to the outbreak of violence on the part of the students in the Administrative Building of the University on the 4th May, 1964. This resolution of the Executive Council was communicated to the Petitioner by the Registrar. It is this resolution of the Executive Council which has been impugned by the present petition under Article 226 of the Constitution.

2. Mr. Ghose who appears for the Petitioner, has canvassed three points before us. His first contention is that the power to cancel the degree of the Petitioner and to expel him from the University could not be exercised by the Executive Council. It is the Court of the University which had power to cancel the degree of the present Petitioner. Secondly he contends that if it is held that the University has been given the power to cancel the degree of any student, such a power is a naked and arbitrary power, as no limitations have been placed on that power. No procedure has been provided under the rules as to how the University has to exercise such a power and further no guidance has been given in the Gauhati University Act (hereinafter called "the Act") itself for exercising such a power. The power thus should be struck down as it is violative of Articles 19 and 14 of the Constitution. Thirdly it is urged that having regard to the nature of the power and the circumstances of the case, there is a duty cast upon the authority when exercising such a power to act judicially and therefore the order of the Executive Council is amenable to a writ of certiorari by this Court. It is urged that as the principles of natural justice have been violated, in this case, inasmuch as no opportunity was given to the Petitioner to meet the charges or to explain his position, this Court should exercise its power under Article 226 of the Constitution and quash the resolution passed by the Executive Council.

3. The Advocate General who appears for the University, has contended that the University in exercising its power to cancel the degree acted in its administrative capacity and as such any order passed by the University is not amenable to a writ of certiorari by this Court. In those circumstances if the principles of natural justice have been violated, this Court under Article 226 of the Constitution will not interfere with the order of the Executive Council. He has also contended that even if it be held that the opportunity has to be given, having regard to the manner in which the Executive Council disposed of the matter, it must be held that adequate opportunity was given to the Petitioner.

4. In order to decide these points it is necessary to refer to some of the provisions of the Act. Section 5 lays down the powers which the University has got. Section 5(e) lays down that the University shall have the power to withdraw or cancel degrees, diplomas, certificates or other distinctions granted or conferred. Section 5(1) lays down that the University has power to supervise and control the residence and discipline of students of the University, and to make arrangements for promoting their health and general welfare.

5. Mr. Ghose's contention is that previously Sections 22 of the Act of 1947 provided that the first Statutes shall be those set out in the Schedule and they shall have effect as if duly enacted under the provisions of this Act. The first Statutes which were attached to the Act give certain powers to the Court. The provisions of Section 22 and the first Statutes which were attached to the Act have been deleted by the amending Act passed in 1960 and thus whatever powers were conferred under Sections 22 and the first Statutes under the Act of 1947 will no longer be exercisable by the Court. Section 11(1) of the amended

Act of 1960 provides:

11(1) Subject to the provisions of this Act and the Statutes the Court shall be the supreme body of the University and shall have powers of general superintendence over the affairs, concerns and properties of the University and shall exercise all the powers of the University not otherwise provided for, to give effect to the provisions of this Act.

Section 13 lays down the power of the Executive Council. Section 13(k) lays down that the Executive Council shall exercise all the powers of the University not otherwise provided for. Thus the residuary power has been given to the Executive Council. The Executive Council is the chief administrative body of the University. It is significant to note that Section 11 has been made subject to the provisions of this Act while Section 13 has not been made subject to the provisions of the Act. The effect of that is that the provisions of Section 13 will override the provisions of Section 11 and if Section 13 gives the residuary power to the Executive Council then such a power can only be exercised by the Executive Council which is the chief administrative authority of the University. In, our opinion, therefore there is no force in the contention that the Court was the only authority which could exercise the power of canceling the degree of the student. It is the Executive Council which has got the power to cancel the degree of a student or to take disciplinary action u/s 13 of the amended Act.

6. We also do not think that there is any force in the contention that the provisions of Section 4(e) and (1) are violative of Articles 19 and 14 of the Constitution. It is not necessary for us to go into the question whether the degree itself is a property which is covered by the provisions of Article 19 of the Constitution. It is sufficient to point out that the University has got the power to confer a degree. The University has also got the power to provide for the academic requirements of the students who have joined the University and the University also has, got power to maintain the discipline of the University. That being so, when in order to give effect to such powers certain additional powers have been given to the University, then in order to decide the question as to whether those powers are unguided or not, the entire provisions of the Statutes will have to be examined and if the entire provisions are taken into ads count, there will be sufficient guidance available in the Statute for exercising such a power. If in any particular case it is done arbitrarily, it is open to the person aggrieved to come up to this Court. In the present case the question whether the exercise of that power is arbitrary or not does not arise because obviously no opportunity was given to the Petitioner and thus the question whether the opportunity was given or not may also enter into the decision of the question as to whether the exercise was arbitrary or not. As we are inclined to accept the contention of the Petitioner that the order suffers from the infirmity that no opportunity was given to the Petitioner to give his explanation, the question whether there has been fair opportunity or whether the act was an arbitrary act need not be examined in this particular case.

7. The next question to be examined is whether in exercising such a power the Executive Council has to act judicially so as to give power to this Court under Article 226 of the Constitution to issue a writ of certiorari. The principles have been very clearly explained in various decisions of the Supreme Court and it is not necessary at this stage to examine each case in detail. It is sufficient to point out that the principle which has been accepted in all the cases by the Supreme Court is the dictum of Lord Atkin given in *Rex v. Electricity Commissioners* 1924 1 KB 171 . It is not necessary that the authority which has to act in a certain manner should necessarily be a court. If from the examination of the entire scheme of the Act and from the circumstances of the case it appears that a duty is cast upon the authority to act judicially, then the order passed by such an authority though the authority itself may be an administrative or a ministerial authority, is amenable to a writ of certiorari. When the statute expressly provides for the procedure and the manner in which the authority has to act, no difficulty arises. The difficulty only arises in the cases where a certain power is conferred on the administrative authority in the statute and there is a complete absence of the procedure for exercising such a power. In those class of cases the entire scheme, the rights which are involved and the penalty which can be imposed by the authority or the nature of the order which the authority passes are all matters which come into consideration in order to determine whether the authority has to act judicially or not. The matter has been dealt with by their Lordships of the Supreme Court in the case of *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, The law is enunciated at page 1115 of, the report and the following passage is apposite:

As was pointed out in *Local Government Board v. Alridge* 1915 AC 120 all that is required is that the other party should have an opportunity of adequately presenting his case. But what the procedure should be in detail will depend on the nature of the tribunal. There is no doubt that many of the powers of the Committee under Chap. VI are of administrative nature; but where quasi-judicial duties are entrusted to an administrative body like this it becomes a quasi judicial body for performing these duties and it can prescribe its own procedure so long as the principles of natural justice are followed and adequate opportunity of presenting his case is given to the examinee.

Another passage at p. 1113 of the report is apposite:

Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided,

the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively.

One of the broad principles which has been laid down in some of the cases is that if the decision is to be guided by the matters of policy, then obviously it is an administrative act. But when the matter is not purely dependent upon policy but certain other objective facts have got to be considered, in that case it cannot be said that merely because the act is to be done by an administrative body, it is an administrative act and that authority is not called upon to act judicially. The matter has also been exhaustively dealt with in an unreported decision of this Court in Gauhati Municipal Board, Gauhati v. State of Assam Civil Rule No. 306 of 1964 dated 21-5-1965: (AIR 1966 Gau 120). It is true that the primary duty is cast upon the University to maintain the discipline of the University. It is also true that the University has been given power to confer the degree. But when the order of cancellation of the degree and the punishment awarded to a student affects his further career in life, in such circumstances it is all the more incumbent on the authorities to give an opportunity to the student to explain his conduct and from the very nature of the punishment, from the very nature of the power which the University has to exercise and from the very nature of the circumstances under which such a power can be exercised, it must be inferred that there is a duty cast upon the University to act judicially and if that is so, there is a clear violation of the principles of natural justice in this case.

8. Section 17 of the Act provides as follows:

17. (1) The University shall include a Residence, Health and Discipline Board and such other Boards as may be prescribed by the Statute Sections

(2) The constitution, powers and duties of the Residence, Health and Discipline Board and of all other Boards of the University shall be prescribed by the Ordinances

An ordinance u/s 17(b) of the Act was passed in the Annual meeting of the Court held on the 6th October 1953 regarding the constitution, power and duties of a Residence, Health and Discipline Board. The ordinance (B) is that the Board shall exercise the following powers:

(i) To inspect the Halls of the University;

(ii) To advise the Executive Council in matters relating to the management of the Halls;

(iii) To assign students to the different Halls;

(iv) To deal with cases of indiscipline and make appropriate recommendations to the Executive Council,

This shows that the Board constituted under the Ordinance had the power to deal

with cases of indiscipline. It is argued on behalf of the University that this Board has power only to deal with indiscipline amongst the students residing in Halls. The language of the section and ordinance is in widest terms and is not limited to the students residing in halls. Apart from this, if the cases of indiscipline of the boys residing in Halls are to be examined by the Board before taking action and in these cases the University has to act judicially, there is no reason why in other cases the authority is not required to act judicially before taking action.

9. The Advocate General has referred to two Allahabad cases (1) Ram Chandra Roy v. University of Allahabad (S) AIR 1956 All 46 and (2) Mukand Madhav Singh Vs. Agra University and Another, He has also referred to the cases of R. v. Metropolitan Police Commissioner 1953 2 All ER 717 and Ex parte Fry 1954 2 All ER 118 . I was no doubt a party to the decision in the first Allahabad case cited above. But the facts in that case are distinguishable. There was an inquiry held by the committee and the only question which was raised before the Allahabad High Court was as to whether there was a violation of the principles of natural justice. No doubt Justice Bhargava who decided the case, made certain observations which are wider in terms. But in view of the decisions of the Supreme Court in later cases it cannot be said that those observations lay down the correct law. The same thing applies to the English decisions relied upon by the Advocate General. In those cases also there was some sort of inquiry. But even apart from that if the contention is that it lays down that where-ever the question of discipline is involved the High Court can never infer that the authority has to act judicially, then in our opinion the law laid down is contrary to the law laid down by the Supreme Court. It is not necessary in that view to refer to the earlier decisions of the Supreme Court. The leading case is that of Province of Bombay Vs. Kusaldas S. Advani and Others, But it is not necessary to go into the detailed examination of those cases.

10. The next point urged by the Advocate General is that having regard to the circumstances it should be held that there was a fair opportunity given to the Petitioner. We do not think that any opportunity at all was given to the Petitioner to explain his position. The question as to whether the opportunity which was given was a fair opportunity or the rules of natural justice were complied with will only arise in cases where opportunity has been given. In the cases where no opportunity has been given this question does not arise. Reference also may be made to two cases (1) Ramesh Kapur v. Punjab University AIR 1965 Punjab 120 (FB) and (2) University of Madras and Another Vs. R. Nagalingam, I would like to refer to a passage from the judgment of the Madras High Court case at page 109:

It was contended that when an academic authority imposes on its pupil a punishment it is doing a mere administrative act, the propriety of which could not be called in question in proceedings under Article 226. The absence of any rule or regulations prescribing the procedure to be followed in such cases, has been claimed as vesting in the University an absolute power to do what it liked.

We cannot however subscribe to the proposition that the absence of rules prescribing the procedure for taking disciplinary action against the student, can vest an arbitrary power in the authority. But at the same time it must be realised that it is not every act of the statutory authority that could be called into question, under the extraordinary powers vested to this Court under the Constitution.

We are in complete agreement with the proposition that the absence of the procedure cannot be taken to be a ground for inferring that the authority has not to act judicially. The power of punishment does not carry with it the power to give punishment arbitrarily without affording an opportunity to the person who is held to be guilty to give an explanation for his conduct.

11. In the result, we allow this petition, quash the order of the Executive Council of the Gauhati University. But we make no order as to cost of this petition.