

(2022) 04 CAL CK 0091
In the Calcutta High Court
Case No : W.P.A. No. 1129 of 2022

Nur Afsar Mandal

APPELLANT

Vs

Visva Bharati And Ors.

RESPONDENT

Date of Decision : 28-04-2022

Acts Referred:

Citation : (2022) 04 CAL CK 0091

Hon'ble Judges : Moushumi Bhattacharya, J

Bench : Single Bench

Advocate : Debabrata Ray, Gazi Faruque Hossain, Chandra Paul, Soumik Mondal, Sarbani Mukhopadhyay, Soumya Majumder, Victor Chatterjee

Final Decision : Allowed

Judgement

Moushumi Bhattacharya, J

1. The petitioner prays for cancellation of an order passed by the Registrar (Acting), Visva-Bharati University on 13.08.2019 by which the petitioner's engagement as Casual Labourer with Temporary Status (CLTS) at the University was discontinued with effect from 01.08.2017. The impugned letter of discontinuation was stated to be pursuant to an order of the competent authority dated 01.08.2017 and in line with the recommendations made by the Enquiry Committees referred to in the impugned letter.

2. Learned counsel appearing for the petitioner submits that the letter of discontinuation has been issued without giving an opportunity of hearing to the petitioner and without the petitioner being given a chance to lead evidence. A show cause Notice was issued upon the petitioner on 27.04.2019 and was replied to by the petitioner on 08.05.2019. Counsel places the reply by which the petitioner requested the Acting Registrar of the University to supply a copy of the complaint filed against the petitioner on the basis of which the petitioner was suspended on 01.08.2017 and copies of the Reports filed by the Enquiry Committees dated 01.08.2017 and 05.08.2017. Counsel submits that the prayer

for extension of time to file the reply, after being furnished with these documents, was not responded to and the impugned letter of discontinuation was issued on 13.08.2019. Counsel submits that the petitioner has not been informed of the nature of the complaint and the impugned letter should be set aside on the ground of breach of the principles of natural justice. Counsel relies on the Service Rules for Non-Academic Employees of Visva-Bharati to urge that the petitioner has a right to the Enquiry Reports and to lead evidence.

3. Learned counsel appearing for the respondent University submits that this is a fit case where the disciplinary authority was entitled to dispense with the enquiry in exercise of discretionary powers conferred upon it as it was not practical to hold an enquiry or disclose the Reports of the Committees to the petitioner. Counsel dwells on the limited scope of judicial review in cases of suspension and the fact that the Court does not act as an appellate authority to substitute its view in place of the decision taken by the disciplinary authority. Counsel relies on an affidavit filed by the Assistant Registrar of the respondent University to bring on record the social background of the girl child of the Santosh Pathsala under the University. Counsel submits that the girl student belongs to the OBC category and lives with her mother. It is further submitted that the mother of the girl child appeared before the three-member Committee set up by the University and refused to lodge any complaint with the police authorities in view of the social stigma which may be caused to the family. Counsel submits that the University administration took the decision to suspend the petitioner since a full-fledged investigation by the police might traumatize the child.

4. From the submissions made by learned counsel appearing for the petitioner and the University, the issue germane to the present proceeding is whether the petitioner's service could have been discontinued without following due process. The documents on record which would reflect only a part of the facts – the remainder of the facts being submitted by counsel – are the show cause Notice, the petitioner's reply to such Notice and the impugned letter of discontinuation. The nature of the complaint and the alleged offence committed by the petitioner has been stated in the affidavit which has subsequently been filed on behalf of the University but without the actual documents in support of the statements made. No other documents have been submitted in this proceeding pointing to the facts which have been vigorously urged on behalf of the respondent. The fact that the petitioner was discontinued from his engagement in a summary manner in order to avoid causing trauma to the child is not borne out from the documents before the court.

5. This court is hence invited to form an opinion on the probability of the social stigma and trauma being caused to the child without any corroborating evidence to that effect. The University has not produced any evidence to even indicate the exact nature of the alleged offence including the proven involvement of the petitioner in the commission of it.

6. The decisions shown on behalf of the respondent University exhort that strict

adherence to the fine print of natural justice may be done away with for swift and effective action. In *Hira Nath Mishra vs. The Principal, Rajendra Medical College, Ranchi*; AIR 1973 SC 1260 the Supreme Court was of the view that the report prepared by the Committee was rightly kept from the appellants and confidentially handed over to the Principal of the College as it would have been unwise to have the girl students examined in the presence of the appellants (the boys who had been charged with the incident). In *Indian Railway Construction Co. Ltd. vs. Ajay Kumar*; (2003) 4 SCC 579, the Supreme Court drew the boundaries of judicial review of a decision made by the disciplinary authority for dispensing with the enquiry. A similar note of caution was sounded by the Supreme Court in *Ajit Kumar Nag vs. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia*; (2005) 7 SCC 764 where it was reiterated that the disciplinary authority's assessment of the circumstances and appropriate action should not be interfered with lightly. The Supreme Court referred to *Union of India vs. Tulsi Ram Patel*; (1985) 3 SCC 398 and *Satyavir Singh v. Union of India*; (1985) 4 SCC 252 to affirm that the exigencies of a situation in certain cases require prompt action and not taking such action may lead to matters spiraling out of control. In *A.S.Motors Private Limited vs. Union of India*; (2013) 10 SCC 114 the Supreme Court agreed with the view taken by the Madhya Pradesh High Court and held that absence of mala fides against those making the decision and the failure of the appellant to disclose any prejudice indicated that the procedure was fair and in substantial compliance of the principles of natural justice.

7. The proposition urged is that the need for prompt action would outweigh the need to comply with the nitty-gritties of natural justice under certain exceptional situations. The justification is preventing escalation of trouble by those who would take advantage of an expanded time-frame by swift action. The underlying logic is to remove the troublemakers from the zone of conflict before the conflict assumes unmanageable proportions. The decisions cited must however be seen through the facts-prism of the case at hand.

8. The petitioner before this Court was show-caused on 27.04.2019 informing the petitioner that an Enquiry Committee consisting of 3 members was formed vide order dated 01.08.2017 of the Registrar which has recommended for the removal of the petitioner. The Notice also disclosed the fact that the 3-member Enquiry Committee was followed by a 1-member Enquiry Committee vide order dated 05.08.2017 of the Registrar which had agreed with the recommendation of the earlier Committee. The petitioner replied to the show-cause notice on 08.05.2019 asking for the relevant documents and papers for leading evidence including the complaint filed against the petitioner and the reports of the two Enquiry Committees. The petitioner also sought for 15 days time to reply to the show-cause notice. The impugned communication of discontinuation of the petitioner's services as a Casual Labourer with Temporary Status (CLTS) at the University was issued on 13.08.2019, discontinuing the petitioner's engagement with effect from 01.08.2017 "following the order issued by the Competent Authority dated 01-08-2017 and in line with the recommendations made by

the Enquiry Committees as referred to the above.” (Extract of the impugned letter).

9. This is the only correspondence between the petitioner and the University. The argument of the University that the petitioner did not deny the fact of the complaint cannot be accepted since the complaint was not disclosed to the petitioner at all. Hence, the contention that the petitioner admitted to the charge – by failing to refute it – is based on presumption and without any material to support the stand taken on behalf of the University. The absence of any document stating the involvement of or culpability of the petitioner in the alleged offence strengthens this view. The alleged heinousness of the offence which apparently deserved summary dismissal is not borne out from the records before the Court. The contention that the victim girl would suffer ignominy and trauma if subjected to cross-examination would hold equally true for the petitioner whose dismissal from service may be seen as stigmatic – in the absence of an opportunity to meet and defend the charge against him. There is also nothing on record to substantiate the apprehension of the University that the petitioner’s continued engagement would have escalated matters and the petitioner hence had to be removed in as short a time as possible. The spectre of threat and intimidation of the complainants are equally unfounded. Moreover, the need for quick action is belied in particular in light of the show-cause notice dated 27.04.2019 which refers to two successive orders passed by Enquiry Committees dated 01.08.2017 and 05.08.2017 recommending the petitioner’s removal.

10. Rule 52 of the Service Rules for Non-Academic Employees of the Visva-Bharati, as approved on 13-14.11.1976, lays down the procedure for imposing major penalties (under Rule 49 (v) to (ix)) and provides for a notice embodying a copy of the charges and the synopsis of relevant facts on which the charges are based to be delivered to the employee concerned requiring him to submit within a specified time a written statement of his defense including an opportunity of a personal hearing; Rule 52(4). Sub-rule (6) further provides for sufficient time for the employee to prepare his defense before the authority holding the enquiry and be assisted by his colleagues as he may choose. Rule 52(8) gives the employee proceeded against, the right to cross-examine witnesses and inspect the record of evidence and submit a list of witnesses. Sub-rule (9) gives the employee the right to seek production of documents in the possession of the University. Rule 53 takes the procedure forward by empowering the disciplinary authority to take certain actions based on the report of the enquiry committee.

11. The above indicates that the procedure framed by the Rules preserves the right to a hearing and embodies fair play in action. The University must hence establish that the circumstances were compelling enough for it to circumvent and depart from the procedure laid down in the Rules. The show-cause notice followed by the impugned notice of discontinuation suggests that the University gave short-shrift to the Rules without any material to justify the same.

12. The rules of natural justice preserve and uphold justice in its most

fundamental form; that a person must be heard before he is condemned. It also entails that the person must know the charge in order to defend himself. Both these require that the material which has been or is proposed to be used against the person charged must be disclosed to him. (Refer: Managing Director, ECIL, Hyderabad vs. B. Karunakar; (1993) 4 SCC 727 where supply of a copy of enquiry report was held to be an integral part of the inquiry). Fair play in action is the law's most recognizable face, it evens the scales of injustice and strengthens its moral core. Subverting the rules of natural justice unsettles the very bedrock on which laws are built and shakes the constitutional foundation of equal protection of the laws. Attractive as it may sound, rough and ready justice serves only those who mete it out and not the person at the receiving end. Fair play is all about points and counter-points between two opposing parties and not a volley of unidirectional projectiles, ricocheting and bouncing in the dark echo-chamber of procedure.

13. In *Hira Nath Mishra*, the fact that the incident had occurred was already established and the only question was of the identity of the delinquents whose names had also been mentioned in the report and identified by the complainants. The Supreme Court in *Indian Railway Construction* made it clear that the power to dismiss an employee cannot be at the expense of the prescribed rules and the decision to dispense with the enquiry should be backed by contemporaneous circumstances. *Ajit Kumar Nag* contemplated a situation spiralling out of control following the suspension of a civil servant and the Supreme Court noted that prompt action sends a message of deterrence. The Supreme Court noted in *A.S.Motors* that the material on the basis of which action was taken had been disclosed to the appellant and that the appellant had failed to show any prejudice suffered by him. None of these authorities fit the fact situation in the present case where not even the complaint was disclosed to the petitioner, let alone the material or the enquiry reports which recommended his dismissal.

14. The courts in several of the well-known decisions have read down the rules of natural justice appropriate to the particular facts of the case. In *Board of Education v. Rice*, 1911 AC 179, it was held that the Board need not examine witnesses but could obtain information in any way it thought best but give a fair opportunity to those who were parties to the controversy to correct or contradict any statement prejudicial to their view. In *Russell v. Duke of Norfolk*, (1949) 1 All ER 109, the Court opined that the requirements of natural justice cannot be put into a one-fit-all straightjacket although the universal standard of a person having a reasonable opportunity of presenting his case must remain. *Byrne v. Kinematograph Renters Society Ltd* (1958) 2 All ER 579 formulated the essence of the requirements of natural justice in that first, the person accused must know the nature of the accusation made; second, he should be given an opportunity to state his case; and third, the tribunal must act in good faith. The authorities establish, beyond doubt, that compliance of the rules of fair procedure is the gold standard, dilution of or a departure from the rules is an aberration, which must be justified by an emergent fact-check of the ground realities.

15. The facts in the present case do not justify the impugned action. It is vigilante-justice without the factual bulwark to support it. This Court, being equally in the dark (as the petitioner) on the material forming the basis of the charge and the perceived exigency, is therefore unable to accept that the University had good grounds to summarily discontinue the services of the petitioner.

16. W.P.A. 1129 of 2022 is allowed in terms of prayer (b) (i). The impugned communication dated 13.08.2019 and the orders of suspension are set aside. The Writ Petition is disposed of accordingly.

Urgent photostat certified copies, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.