
(2013) 02 MP CK 0038
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4908/2005

Prof. Satya Prakash

APPELLANT

Vs

Jiwaji University and Another

RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:

Citation : (2013) ILR (MP) 827 : (2013) 2 JLJ 440 : (2013) 2 MPHT 215 :
(2013) 1 MPJR 267 : (2013) 2 MPLJ 359

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Judgement

Sujoy Paul, J.—By filing this petition under Article 226 of the Constitution, the petitioner, Vice Chancellor of Jiwaji University, Gwalior, has challenged the order dated 15.10.2005, whereby by invoking Section 13(1) of M.P. Vishwavidyalaya Adhiniyam, 1973 (for short "the Adhiniyam"). The Chancellor has directed him to relinquish the post of Vice Chancellor with immediate effect. Brief facts necessary for adjudication are as under:-

The petitioner was appointed as Vice Chancellor of the said University by order dated 02.01.2002 for a period of four years. He was served with a show cause notice (Annexure P-2) dated 30th August, 2005. The petitioner submitted his reply (Annexure P-8) dated 18.09.2005. In this reply, the petitioner prayed for following relief:-

24. The noticee reiterates that-

(i) The noticee hereby denies all the charges against the noticee as being false and without any basis and prays that the inquiry be dropped immediately.

(ii) In case, the Hon''ble Chancellor decides to proceed with the inquiry then all the evidence on which the Hon''ble Chancellor relies shall be examined in the presence of noticee and the noticee or his counsel shall be permitted to cross-examine the witnesses and thereafter,

(iii) the noticee shall be permitted to examine himself and to examine his defence witnesses. Thereafter,

(iv) a personal hearing should be given to noticee and then the matter be dropped.

It is, therefore, humbly prayed that this reply may kindly be accepted and all further proceedings with regard to the said cause notice may kindly be dropped at this stage only.

2. The said reply was followed by a supplementary reply to the said show cause notice. This supplementary reply is dated 26th September, 2005 (Annexure P-9). The petitioner prayed that in the show cause notice, there are reference of certain complaints on the strength of which show cause notice was issued. The petitioner prayed that the copies of complaints be provided to him with a view to provide him a reasonable opportunity to show cause. It is prayed that the complaints be provided to the petitioner immediately and, thereafter, he be given a reasonable opportunity to show cause and till such time, the aforesaid documents are provided, the reply be treated as a tentative reply. It is further stated that an investigation must have been done on the complaints preferred against him. The said investigation report be also provided to him at the earliest and, thereafter, a reasonable time be provided to him to put forth his defence. Yet another request dated 04.10.2005 (Annexure P-10) was made to the Chancellor requesting him to provide the copy of complaint referred in the opening paragraph of the show cause notice. It is again prayed that the investigation report be also provided to him so that he can file an effective reply to the show cause. It prayed that in absence of these documents, the reasonable opportunity is denied to him. In para 5 of this reply, the petitioner again stated as under:-

(v) It may kindly be appreciated that unless the Hon"ble Chancellor examines the evidence, on which he relied, in my presence and permits me to cross-examine the witnesses, it will not be possible for me to examine my evidence in rebuttal.

In the aforesaid circumstances, I very humbly pray that I may even now be supplied with the copies of the complaints and investigation report and the evidence of which the Hon"ble Chancellor relies be examined in my presence and I be permitted to cross-examine them and thereafter I be permitted to examine myself and my defence evidence. It may kindly be appreciated that unless this is done, the stage of personal hearing would not arise. It is in this context that my humble submission before the Hon"ble Chancellor is that the aforesaid necessary procedure may kindly be followed and thereafter my personal hearing be made.

2. This is not in dispute between the parties that the provisions of the Adhiniyam will govern the field. Shri K.N. Gupta, learned senior counsel has advanced two fold submissions:-

(i) The documents referred in the show cause notice and investigation report are not provided to the petitioner and in absence thereof the reasonable opportunity of defence is denied to the petitioner.

(ii) No oral evidence was led by the department to prove its case. The petitioner's valuable right to lead evidence and to establish that he is innocent is also infringed and taken away.

He also relied on the judgment of the Supreme Court in SLP (c) 24314 of 2008 (Professor A.D.N. Bajpai Vs. State of Madhya Pradesh and others). By relying on Section 14(3)(4) of the Adhiniyam it is stated that the reasonable opportunity of show cause has not been given to him.

3. Per Contra, Shri Nitin Agrawal, learned counsel for the respondent No. 2 submits that the relevant material was provided to the petitioner. Petitioner has not shown any prejudice being caused to him because of non-supply of the documents demanded by him. He relied on following judgments:-

(i) Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways),

(ii) State of Tamil Nadu Vs. Thiru K.V. Perumal and others,

(iii) State of U.P. Vs. Harendra Arora and Another,

(iv) State of Uttar Pradesh and Others Vs. Ramesh Chandra Mangalik, .

Further reliance is placed on the judgment of this Court rendered in Shrikishan Mittal Vs. UCO Bank and Others, . On the strength of these authorities, it is stated that mere non-supply of documents will not render the proceedings as invalid. One has to show that such non-supply has caused prejudice. Shri Agrawal submits that this aspect has not been dealt with by the Supreme Court in the case of Professor A.D.N. Bajpai (supra) and, therefore, the said judgment cannot be pressed into service by the petitioner. On the contrary, the consistent stand of learned senior counsel of the petitioner, is that the petitioner reserved his right to file detailed reply after receiving the documents. Unless those documents are supplied to him, he was unable to file detailed reply on merits. The replies by the petitioner were tentative reply. It is further argued that non-supply of documents has an adverse impact on the petitioner and grave prejudice is caused to petitioner. Petitioner was deprived from filing an effective and adequate reply in absence of those documents. It is further stated that in the proceedings, no evidence is recorded by respondent No. 2 nor the petitioner was afforded with an opportunity to lead evidence.

4. Shri Tapan Trivedi, learned counsel appearing for the respondent No. 1, has stated that the petition is mainly directed against the order of respondent No. 2 and he is a formal party. No other point is pressed by the learned counsel for the parties.

5. I have heard the learned counsel for the parties and perused the record.

6. Before proceeding further, it is apt to quote the relevant portion of Section 14 of the Adhiniyam:-

14. (1) xxx xxx xxx

(2) xxx xxx xxx

(2-A) xxx xxx xxx

(3) If at any time upon representation made or otherwise and after making such enquiries as may be deemed necessary, it appears to the Kuladhipati that the Kulapati:

(i) has made default in performing any duty imposed on him by or under this Act; or

(ii) has acted in a manner prejudicial to the interests of the University; or

(iii) is incapable of managing the affairs of the University the Kuladhipati may, notwithstanding the fact that the terms of office of the Kulpati has not expired, by an order in writing stating the reason therein, require the Kulpati to relinquish his office as from such date as may be specified in the order.

(4) No order under sub-section (3) shall be passed unless the particulars of the grounds on which such action is proposed to be taken are communicated to the Kulpati and he is proposed to be taken are communicated to the Kulpati and he is given a reasonable opportunity of showing cause against the proposed order.

(5) xxx xxx xxx

(6) xxx xxx xxx

The aforesaid provision and the Adhiniyam nowhere prescribes the meaning of "reasonable opportunity of showing cause". This aspect was dealt with by the Apex Court in Para 10 of Professor A.D.N. Bajpai (supra). The said para reads as under:-

The expression "reasonable opportunity of hearing" has not been defined in the Act. Therefore, the same has to be interpreted keeping in view the fact that an order made u/s 14(3) of the Act has grave adverse impact not only on the image, reputation and integrity of the person holding the high office of the Vice-Chancellor, but also the institution of which he is the academic and administrative head, and in consonance with the expansive meaning given by the courts to the rule of audi alteram partem. The rules of natural justice in the context of Section 14(3) and (4) of the Act would mean that the Vice-Chancellor is made aware of the specific allegations on which an inquiry is proposed to be made and he is also informed about the material/evidence sought to be used against him at such inquiry and is given an opportunity to controvert/rebut such material/evidence. The Vice-Chancellor can also ask for an opportunity to lead evidence to prove that the allegations levelled against him are false and baseless and that he is innocent. The Chancellor is required to evolve an appropriate mechanism by

which the Vice-Chancellor gets an effective opportunity to challenge the grounds enumerated in the show cause notice. After receiving reply of the Vice Chancellor, the Chancellor has to consider the entire record of inquiry as well as the defence put forward by the Vice Chancellor and then pass a speaking order.

7. The Apex Court has taken note of judgment of the Supreme Court in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, , the relevant portion of the said judgment reads as under:-

11.....He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom in enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

8. The Apex Court also relied on the judgment of the Supreme Court in the case of Sayeedur Rehman Vs. The State of Bihar and Others, , the relevant portion of the same reads as under:-

12.....we are, however, clear that if the order, dated April 22, 1960, is to be reconsidered then the appellant must be afforded adequate opportunity of hearing and presenting his case. This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties. The President of the Board of Secondary Education would be deciding a controversy affecting the rights of the parties before him if and when he chooses to reconsider the order, dated April 22, 1960, whatever be the source of his power to do so - a point left open by us. He is required to decide in the spirit and with a sense of responsibility of a tribunal with a duty to mete out even-handed justice. The appellant would thus be entitled to a fair chance of presenting his version of facts and his submissions

on law as his rights would be directly affected by such proceeding. The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering the order, dated April 22, 1960, is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties.

9. By taking stock of the said judgments, the Apex Court opined in Para 13 that the documents forming part of the show cause notice were not provided to the petitioner therein. It is held that without adverting to the grievance of the petitioner regarding non-supply of copies of documents forming part of the show cause notice and without recording a finding that the documents were not relevant or were not being relied upon for taking action prejudicial to him, the Chancellor passed the order which runs contrary to the rule of audi alteram partem.

10. It cannot be doubted that in the first page of show cause notice, the respondent No. 2 has specifically referred about various complaints received against the petitioner. On a bare perusal of the show cause notice shows that the action against the petitioner was initiated on the basis of certain complaints. However, admittedly, copies of complaints and the investigation report desired by the petitioner were not supplied to him. The respondent No. 2 in his final order (Annexure P-1) dealt with this aspect. In Para 22 of the impugned order, the respondent No. 2 has referred about the request of the petitioner for supply of the documents coupled with the request of leading evidence. However, in this paragraph, the respondent No. 2 has partially dealt with the request of the petitioner. It is stated that the petitioner had prayed for an opportunity, whereby the witnesses of the other side be examined in their presence and they be permitted to be cross-examined. However, there is no whisper about the petitioner's request to lead his own evidence in this paragraph. Thereafter, by placing reliance on Section 14(3)(4) of the Adhiniyam, the respondent No. 2, opined that the show cause notice is replied by the petitioner and a supplementary reply was also filed. He further opined that providing the copies of complaints is not the legal requirement. The only requirement is to inform the gist of it. It is held that the said gist was provided to the petitioner and all the relevant record was in possession of the Vice Chancellor himself, therefore, it was not felt necessary to record evidence of any witness. Hence, there was no question of any cross-examination of any witness. In the light of rival contentions, the question is whether the opportunity provided to the petitioner by respondent No. 2 amounts to a "reasonable opportunity".

11. The Apex Court had an occasion to consider Section 14(3)(4) of the Adhiniyam in the case of Professor A.D.N. Bajpai (supra). Professor A.D.N. Bajpai was Vice Chancellor of Awadesh Pratap Singh Vishwavidyalaya, Rewa and was directed to relinquish the charge before completion of his tenure. The reproduced paragraph of the judgment of Professor A.D.N. Bajpai (supra), makes it crystal

clear that the Apex Court has applied the principles of natural justice and held it is necessary to inform the other side about the material/evidence, which is sought to be used against him. The said material was held to be relevant material/evidence. It is not in dispute that the entire action against the petitioner is founded upon and initiated pursuant to certain complaints. Considering the said backdrop, the petitioner prayed for supplying the said documents/complaints to enable him to file an effective and adequate reply. It was denied on the ground that gist of it has been supplied to him. However, it was not the stand of respondent No. 2 that those documents/complaints were not relevant. This is settled principle that justice is not only to be done but it should appear to be done. The petitioner also prayed for an opportunity to lead his own evidence after recording of the evidence of the other side. However, this request of the petitioner was at all considered.

12. No doubt, mere non-supply of documents will not vitiate the proceedings. The ratio of the judgments cited by Shri Agrawal is on the same aspect, i.e., one has to show the prejudice in cases of non-supply of documents. However, I am unable to accept the contention of Shri Agrawal that judgment in Professor A.D.N. Bajpai's case cannot be pressed into service. In Professor A.D.N. Bajpai's case, the same provision of the Adhinyam was considered and interpreted by the Supreme Court. Thus, the said judgment is a binding precedent and the ratio decidendi of the said judgment is also applicable in the present case.

13. At the cost of repetition, it can be referred that in Professor A.D.N. Bajpai (supra), the Apex Court held that non-supply of the relevant documents and not providing opportunity to lead evidence amounts to denial of reasonable opportunity. In view of stand of the petitioner in his reply, it is clear that the petitioner reserved his right to file a detailed reply after perusing the complaints and other relevant documents. He also reserved his right to lead evidence and cross-examine the witnesses of the other side. If the relevant material is not provided to him, prejudice is certainly caused to him because it deprived him to put forth his defence in effective and adequate manner.

14. Thus, in the opinion of this Court, prejudice is certainly caused to the petitioner because the complaints aforesaid were not provided to him. The petitioner is further prejudiced when no evidence was led by the other side nor he was permitted to lead any evidence. The impugned order (Annexure P-1) does not deal with the prayer of the petitioner to lead his own evidence in rebuttal. The respondent No. 2 only opined that since petitioner was afforded with an opportunity to show cause and in turn, he submitted his reply, the requirement to "provide reasonable opportunity" is satisfied. It is opined on the strength of the finding that the relevant documents were also in possession of the University and the finding are based on documentary evidence. However, admittedly, the complaints were not provided to the petitioner by stating that it is not a legal requirement. When the Adhinyam does not define what is "reasonable opportunity", it has to be seen as per the principles of natural justice

whether the documents demanded by the petitioner are relevant documents and whether non-supply of these documents caused any prejudice. Petitioner has established the relevance of the documents by referring to the show cause notice itself where those documents are specifically referred and relied upon for the purpose of taking action against the petitioner. In the impugned order also it is not the stand of the respondent No. 2 that those complaints were not relevant documents. The stand of respondent No. 2 is that it is not a legal requirement to provide those documents.

15. In my opinion, this finding runs contrary to the principles of natural justice and law laid down by the Apex Court in Professor A.D.N. Bajpai's case. Since the entire action was founded upon certain complaints, in all fairness, the respondents should have provided copies of those documents to the petitioner. The petitioner's valuable right to lead evidence is also taken away by the respondent No. 2 which was held to be a right flowing from Section 14(4) of the Act by the Supreme Court in Para 10 of the judgment in Professor A.D.N. Bajpai (supra). Thus, in my opinion, decision making process is vitiated. On the basis of aforesaid analysis, the petition deserves to be allowed. Accordingly, the impugned order Annexure P-1 dated 15.10.2005 is set aside. The parties shall bear their own costs.