

(1966) 08 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1519 of 1965

Ram Narain Singh

APPELLANT

Vs

Banaras Hindu University and Others

RESPONDENT

Date of Decision : 02-08-1966

Acts Referred:

Banaras Hindu University Act, 1915 — Section 11, 12
Constitution of India, 1950 — Article 226

Citation : AIR 1967 All 535

Hon'ble Judges : K.B. Asthana, J

Bench : Single Bench

Advocate : K.P. Agrawal, for the Appellant; Sidheswar Prasad, for the Respondent

Final Decision : Allowed

Judgement

K.B. Asthana, J.—This is a petition under Article 226 of the Constitution by Ram Narain Singh, who was a student of B. A. (Part III) in the Central Hindu College of the Banaras Hindu University. The petitioner has questioned the legality and the validity of the action taken by the Standing Committee of the Academic Council of that University expelling him from the University.

2. It appears that in the Birla Hostel attached to the college some incident took place in January. 1965. The Principal of the College submitted a confidential note dated 10-2-1965 to the Deputy Registrar (Academic) concerning the said incident. A copy of the said note, is Annexure "B"" to the counter-affidavit. According to the said note, the petitioner was found guilty of harassing one Devendra Nath Sharma, an inmate of the hostel, and is said to have admitted his fault. The Principal recommended that the incident having created a panic among young generation of the hostel inmates some serious action ought to be taken against all the culprits. He, however, recommended that the petitioner deserved leniency because of his confession at the very first instance. The Principal sent another communication to the Deputy Registrar (Academic) in continuation of his

note of February 10. 1965. In the case of the petitioner it was suggested that he be warned and a warning be sent also to his parents and further he be fined Rs. 25.

By a communication dated 9-3-1965 the Deputy Registrar (Academic) informed the Principal that the petitioner be awarded the punishment of removal from the Hostel, to Mahindravi Lodge and he be fined Rs. 25 and a letter be Issued to his guardian.

It appears that this communication from the Deputy Registrar (Academic) dated 9th March, 1965 had not reached the hands of the Principal when in the night between 10/11th March, 1965 another incident took place in which the petitioner was also alleged to be involved. The Principal by his letter dated 12-3-1965 intimated to the Deputy Registrar (Academic) that the petitioner again beat Devendra Nath Sharma of the same Hostel, that on an enquiry made by him and the Administrative Warden, the petitioner confessed before them that he called Sharma to his room on the night and as Sharma did not come, so he beat him, It was also communicated by this letter that the principal had gone to the Vice-Chancellor, who decided that the petitioner should be expelled from the Birla Hostel immediately and he may be given temporarily a room at the Mahindravi Lodge pending decision of the Standing Committee which was to meet on 12-3-1965. The Principal requested the Deputy Registrar (Academic) that this matter be also placed before the Standing Committee.

There is yet another report by the Principal dated 12-3-1965 to the Vice Chancellor which is to the effect that the petitioner could only be contacted at about 9 p.m. in the night and he showed his reluctance to leave the hostel but on the Chief Proctor's intervention he agreed to pick up his baggage and leave the room but since then he is absconding, and as he did not turn up his room had been put under hostel lock. In the meeting of the Standing Committee of the Academic Council held on 12-3-1966 the orders of the Vice Chancellor dated 8th March, 1965 awarding punishments to students on the earlier incidents in the Birla Hostel were put up and confirmed. The fine of Rs. 25 on the petitioner, his expulsion from the hostel and the issue of a warning to his parents was confirmed. The Standing Committee further resolved that besides the above punishment the petitioner may not be admitted to any College of the University in future. This was the action taken by the Standing Committee in regard to the earlier incidents. The proceedings then show that the Vice-Chancellor read out the letter dated 12th March, 1965 received from the Principal regarding further acts of indiscipline and grave misbehaviour on the part of the petitioner. This was the letter which the Principal had written to the Deputy Registrar (Academic) regarding the incidents of the night between 10/11th March, 1965 involving the petitioner. The Standing Committee then passed the following resolution :

"Resolved further that Sri Ram Narain Singh (Petitioner) be expelled from the University with immediate effect."

When the petitioner came to know of the decision of the Standing Committee that he had been expelled with immediate effect from the University he applied to the Vice Chancellor for being permitted at least to complete the examination which was going on at that time. The Vice Chancellor permitted the petitioner to continue to appear in B.A. (Part III) Examinations of 1965 subject to the approval of the Standing Committee. Meanwhile some sort of representation had also been made by the brother of the petitioner to the University authorities for reconsidering the matter and allowing the petitioner to complete the examination, but the Standing Committee of the Academic Council rejected both the requests made on behalf of the petitioner. The permission for appearing in the examination granted by the Vice Chancellor was disapproved by a resolution dated 9-4-1965 and the representation made by the brother of the petitioner was rejected by a resolution dated 17-4-1966. At that material time the final examination of B.A. (Part III) of the University were going on and the petitioner had vet to appear In some of the papers.

Since he failed to get any relief from the University. the petitioner approached this Court under Article 226 of the Constitution and his petition was admitted by a Bench of this Court on 26-4-1966 and an interim order was passed directing the University to allow the petitioner to appear in the B.A. (Part III) Examinations of 1866, but the announcement of the result was ordered to be withheld by the University during the pendency of the petition.

3. Sri K. P. Agrawal, learned counsel for the petitioner, stated before me that the petitioner has appeared in all the papers in the B.A. (Part III) Examinations of the University in pursuance of the interim order passed by the Court.

4. On behalf of the petitioner two contentions were raised in support of the petition, The first contention was that the Standing Committee of the Academic Council of the University had no power and jurisdiction to punish the petitioner inasmuch as the Standing Committee as a delegate of the Academic Council could only perform those functions and exercise those powers which were conferred upon it by the statutes. It was submitted that there is no statute empowering the Standing Council of the Academic Council to award punishment to any student of the University on any charge of indiscipline which power vests only in the Academic Council.

It was further submitted that since under the Banaras Hindu University Act by its Section 11 it is the Academic Council which is the supreme authority in charge of the discipline of students and by Section 12 it is the Standing Committee which can only exercise such powers and such duties as may be vested by the Statute, any delegation of power to perform any function in respect of awarding punishment for breach of discipline by students to the Standing Committee by the Academic Council or any conferment of any such powers on the Standing Committee by the Ordinances would have no legal validity unless some Statutes were framed empowering the Standing Committee to perform any function or any duty in respect of the discipline of students. I think this contention of the

learned counsel is devoid of force.

5. It appears to me that the learned counsel has while advancing the above argument before me, completely lost sight of Statute No. 92 of the University relating to the duties of the Standing Committee of the Academic Council which by its Clause (X) confers upon the Standing Committee all duties and to do all such acts as may be necessary for the carry ins out of the decisions and directions of the Academic Council and to perform all such functions as may be delegated to it by the Academic Council under the Act, the Statutes of the Ordinances. It is not disputed that the Academic Council recommended for framing an ordinance conferring upon the Standing Committee the responsibility for the maintenance of discipline amongst the students of the University and authorising it to inflict various punishments on the students. Accordingly, an Ordinance was framed to the following effect :

"The Standing Committee of the Academic Council shall perform all such duties and do all such acts as it may deem necessary for maintenance of the discipline among the students of the University and on a breach of discipline it may award to the student or students concerned such punishments including rustication and expulsion from the University as it may deem proper."

Thus there is no existence of a validly framed Ordinance empowering the Standing Committee to award punishments to the students for any breach of the discipline which punishment includes rustication and expulsion from the University, This Ordinance, in my opinion, will be an Ordinance covered by Clause (X) of Statute 22. Thus the condition required by Section 12 of the Act is fulfilled as there is in the Statute a provision empowering the Standing Committee of the Academic Council to award punishments In students for acts of indiscipline. I, therefore, hold that the Standing Committee of the Academic Council had jurisdiction and power to punish the petitioner on proved misconduct and indiscipline.

6. The second contention of the learned counsel for the petitioner was that since the Standing Committee of the Academic Council, which is the punishing authority, and takes action against any student for alleged breach of discipline it acts quasi-judicially and, therefore, it is implicit under the law that the Standing Committee ought to afford the students proceeded against a reasonable opportunity to show cause against the action proposed and no such opportunity having at all been afforded to the petitioner by the Standing Committee before taking a decision by the resolution dated 12-3-1965 expelling the petitioner from the University, it acted in excess of its jurisdiction and against the well established principles of natural justice.

It is not disputed that when the matter came before the Standing Committee in regard to the various incidents in the Birla Hostel involving the petitioner and the other students, no notice of any kind or communication of any nature was sent by the Standing Committee itself to file offending students to show cause against

the proposed action, but what was contended by Sri Sideshwari Prasad, learned counsel for the University, was that in so far as the misconduct of the petitioner was concerned, he having admitted his guilt before the Principal and the Warden of the Hostel, no occasion arose for the Standing Committee to cause any notice to be served upon the, petitioner and the only question which remained to be considered by the Standing Committee related to the quantum of punishment and there was no requirement either under the statute or the Ordinance for any notice to show cause to be sent to the offending students merely for awarding of the punishment which is absolutely at the discretion of the Standing Committee.

In this connection the learned counsel for the University referred to certain regulations relating to maintenance of discipline and award of punishment for misconduct of students. Particular reference was made to Regulation No. 13 printed at page 422 of the Banaras Hindu University Calendar, Part VI which was handed over by the learned counsel for the perusal of the Court. This Regulation deals with the jurisdiction of the Principal, Chief Proctor and Dean of Students. This is what is stated in the marginal note, but I find that it also deals with the jurisdiction of the garden of the Hostel. For convenience of reference I would quote the said Regulation:

"All cases of indiscipline within the premises of the College and Institutions of the University shall be dealt with by the principal of the College or the head of the Institution concerned. Cases of indiscipline in the hostel and the approved lodges shall be investigated by the Wardens and the Senior Wardens. Cases of indiscipline outside the precincts of College Institution/Hostel/Approved Lodge shall be dealt with by the Chief Proctor. In all these cases the Officers conducting the enquiry shall take such disciplinary action as may be within their power, and shall send a copy of their report to the Dean of Students for entry in the Conduct Book. The Dean of Students shall finally submit these cases for further action to the Vice-Chancellor/Pro Vice-Chancellor "

It was submitted on behalf of the University that the Principals of the Colleges and the Wardens of the Hostels are the authorities who in the first instance held an enquiry and it is these authorities before whom the question of affording an opportunity to the offending students would arise and once they arrive at their findings after holding an enquiry, the question of punishment, if a serious misconduct is made out, is left to the higher authorities. Learned counsel emphasized that in fact in case of the petitioner for the misconduct in which he was involved on the night of 10/11th of March, 1965 an enquiry at the spot was held by the principal and the Warden, before whom the petitioner admitted beating of Sri D. N. Sharma, thus he was afforded an opportunity and since he confessed his guilt, no further occasion arose to afford him a second opportunity.

It was then submitted that the principal having brought the matter to the notice of the Vice-Chancellor and having sent the communication to the Deputy Registrar (Academic) along with his report and opinion in the matter, it was open to the Standing Committee of the Academic Council, which was the Supreme

Body in regard to the award of punishment for breach of discipline to be taken into consideration the factual part of the report and award the punishment which it thought was deserved in the circumstances.

On the other hand, it was submitted by Sri K. P. Agrawal, appearing for the petitioner, that what is implicit in the principle of natural justice which apply to quasi judicial proceedings is that an opportunity should be afforded by the punishing authority to show cause against the action proposed and since one of the elements constituting the proposed action is the punishment itself, the petitioner ought to have been called upon to show cause why the punishment of expulsion from the University be not awarded to him for the misconduct imputed to him. Learned counsel for the petitioner also contended that the show cause would not only be confined to the proposed punishment for it was open to the petitioner to plead before the Standing Committee that he had not made any admission or confession before the Principal or that on the facts admitted by him the severe punishment of expulsion from the University was not deserved under those circumstances. In this connection learned counsel appearing for the University has drawn my attention to certain annexures of the counter affidavit which contain some factual reports of the misconduct of the petitioner and other students. The contents of these annexures no doubt reveal that the petitioner was bent upon misbehaving with the junior student Devendra Nath Sharma and had been using every sort of coercive methods to force the boy to fulfill his improper desires. If the allegation contained in those reports were established certainly the petitioner deserved the severest punishment.

But in so far as the facts of the case before me are concerned they go to show that the only material before the Standing Committee were the contents of the letter of the Principal dated 12-3-1965 in which the misconduct alleged against the petitioner was that he beat Devendra Nath Sharma when the latter refused to come to his room, at 9 p.m. in the night. There is nothing else in that letter which could throw any light on the motives of the petitioner in calling Devendra Nath Sharma to his room. There is nothing in the counter affidavit to show that the reports signed by Devendra Nath Sharma to which I have referred just above which are annexures to the counter affidavit were submitted to the Standing Committee for receiving their considerations. Even assuming that they were submitted before the Standing Committee then they would have revealed circumstances other than which were shown in the letter of principal dated 12-3-1965. The principal had not reported that the petitioner had admitted during the enquiry all those acts which were attributed to him by Devendra Nath Sharma in his various reports. Thus if the action taken by the Standing Committee was as a result of considering such reports also, then it is obvious that their judgment was influenced by circumstances which the petitioner was not called upon to -explain even before the Principal.

Be that as it may, the main question which calls for determination is whether the interrogation by the Principal of the petitioner relating to the incident in the night

between 10/ 11th March of 1965 and the reported admission by him would amount to affording an opportunity to the petitioner by the punishing authority. It was contended for the University that the petitioner having admitted the beating of his junior colleague, it would not have served any useful purpose if the Standing Committee had also afforded an opportunity to him for there remained nothing to enquire in regard to the misconduct of the petitioner. This line of argument of the learned counsel for the University involved that the enquiry made by the Principal were a part of the proceedings carried on by the Standing Committee for judging whether the petitioner was guilty of misconduct deserving the punishment of expulsion from the University. I have to consider then how far this argument advanced on behalf of the University is tenable.

7. It is now the established law by the highest authority of the Supreme Court that when any University Body or Authority considered the cases of students for punishing them for some misconduct, then they exercise judicial power. It is well established that it is implicit that in exercise of such a power principles of natural justice must be adhered to. It is not disputed by the learned counsel for the University that the only body or authority in the University which can award the punishment of expulsion from the University is the Standing Committee of the Academic Council. Thus it is the Standing Committee who for such a purpose is constituted as a punishing authority. A fortiori it is the Standing Committee which is to afford an opportunity to the student proceeded against to explain his conduct and then to arrive at its conclusion for punishing him. It may be that it is open to the Standing Committee to have a detailed enquiry made through a smaller body authorised by it or through any other responsible officer, I do not express any final opinion on that. The problem then is whether the principal and the Warden of the hostel when they interrogated the petitioner soon after the incident can be held to have conducted the inquiry on behalf of the Standing Committee. In my opinion the answer to such a question would be in the negative.

8. As I read the relevant provisions in the Act, the Statute, the Ordinances and the Regulations, there appears to be in the dispensation of jurisdiction some sort of dichotomy regarding cases of misconduct and punishment of the students of the University. How far the regulations which have been referred before me by the learned counsel for the University contained in the Calendar Part VI are valid for to certain extent they do overlap and cover the field of power of the Standing Committee of the University is not a question which ought to engage my attention in this petition. I will assume for the purpose of deciding the instant case that the said Regulations are valid.

It is clear that the punishment of exclusion or rustication from the University cannot be awarded to the student of the University by any other body or authority of the University except the Standing Committee of the Academic Council. The incident of the 10/11th March, 1965 for which the petitioner has been punished was an act of indiscipline committed in the hostel and under

Regulation 13 it was to be investigated by the Warden Since the Warden was present when the Principal interrogated the petitioner, it can be deemed that the investigation was carried on by the Warden and it was for the Warden under Regulation 13 to take the necessary disciplinary action as was within his power. I do not find any material on record showing that the Warden took any disciplinary action. It was the principal and the Vice-Chancellor who took action. Obviously the Vice-Chancellor acted on the report of the Principal. The Vice-Chancellor has the power to expel a student from the hostel and that power was exercised by the Vice-Chancellor. I do not find that any report was submitted to the Dean for an entry against the petitioner in the Conduct Book as provided by Regulation 13. I do not also find anything on the record to show that the Dean of Students submitted the case to the Vice Chancellor for further action However, the omission to submit the case before the Dean of Students and the omission by the Dean of Students to submit the case to the Vice Chancellor will merely be an irregularity The case of the petitioner did ultimately receive the consideration of the Vice-Chancellor and it appears that in regard to the earlier incidents the Vice Chancellor after taking such action as was within his powers referred the matter to the Standing Committee I express no opinion whether the Vice Chancellor after having punished the petitioner by immediate expulsion from the hostel had any authority to refer the matter to the Standing Committee of the Academic Council. His action may be justified for the reason that it is the Standing Committee of the Academic Council who under the Act and Statute of the University is the final body for maintaining discipline amongst students and punishing them for misconduct. There is thus according to the Regulations a demarcation of jurisdiction in the sense that in the first instance it is the Principal, the Warden or the Chief proctor who has to take action of reported cases of indiscipline of students as the case may be depending on the place where the acts complained of were committed, after they find that the student had committed an act of indiscipline they can award punishment as lies in their power, they have to submit a report to the Dean of Students and it is the Dean of Students who in his turn has to submit the case to the Vice-Chancellor, who is empowered to take further action in the matter. In my view the inquiry which is contemplated to be held by the Principal or the Warden finishes when they have taken disciplinary action. If the Vice-Chancellor considers any further action to be taken and in his wisdom he decides to place the matter before the Standing Committee, then a fresh enquiry is initiated.

In the instant case the Vice-Chancellor did refer the letter of the principal dated 12-3-1965 in respect of the incident in the night between 10-11th March, 1965 to the Standing Committee The Standing Committee while taking cognizance of the contents of that letter imputing misconduct to the petitioner, to my mind, would be Initiating a fresh and independent enquiry. In fact, as appears to me, in regard to the incident dated 10/11th March 1965 involving the petitioner, the Principal or the Warden do not seem to have exercised any power vested in them under Regulation 13 as the Principal just forwarded his report to the Vice-

Chancellor presumably because an enquiry involving the petitioner and other students relating to the earlier incidents was already pending before the Standing Committee. When the Standing Committee considered the fresh Incident of 10-11th March, 1965 which imputed some misconduct to the petitioner, it could use the information contained in that letter only after affording an opportunity to the petitioner to explain his conduct. The Standing Committee did not do so.

I do not agree with the contention of the learned counsel appearing for the University that nothing else remained for the Standing Committee to consider. On the facts as reported by the Principal it was incumbent in law to call for an explanation from the petitioner or asking him to show cause. I think the Standing Committee was required to serve a notice on the petitioner to show cause why on the alleged admission made by him before the Principal he should not be expelled from the University. The proper view to take would be in the circumstances of the instant case, that the contents of the letter of the Principal dated 12-3-1965 ought to have been treated by Standing Committee as a complaint laying information before it of misconduct committed by the petitioner in the Birla hostel in the night of 10/11th March, 1966, It had no greater value. The learned counsel for the University attempted to show that what was contained in the letter of the Principal dated 18-3-1965 was of the nature of a finding of fact recorded at an enquiry. I do not think that is so.

When it is the Standing Committee alone which has been vested with any power to deal with a student for any misconduct imputed to him with a view to award punishment or expulsion it is only that body who has to hold that inquiry in respect of the alleged misconduct before awarding the punishment or exclusion from the University. It is the established law that one of the necessary ingredients giving validity to the proceedings in an enquiry is to afford an opportunity to the person proceeded against to explain his conduct before the person or the body, holding the enquiry. I have already demonstrated above that in the circumstances of the instant case it cannot be said that the Principal or the Warden held an enquiry under the authority of the Standing Committee against the petitioner with a view to judge his actions as deserving of severe punishment or expulsion from the University. I am, therefore, compelled to hold, though very reluctantly, that the order of the Standing Committee dated 12-3-1965, expelling the petitioner from the University cannot be allowed to stand as it has been passed in violation of the well established principles of natural justice. That order deserves to be quashed.

9. The question as to what direction be given after quashing of the order of expulsion of the petitioner from the University has caused me some serious anxiety as mentioned in the earlier part of the judgment, the petitioner had appeared in some of the papers in final examination of B. A. (part III) before the order of expulsion from the University was passed, and he appeared in rest of the papers on the basis of an interim order of this Court. Thus he has appeared

at the final examination of 1965 of B. A. (part III) of the University. I am told that if he passes the examination, he would be entitled to the degree of the University and he will have to seek fresh admission to the higher classes in the University, if he wants to pursue higher study. It is not the case that the University would be compelled to admit him to next higher class, if he succeeds in the examination. Learned counsel for the University contended that now that the petitioner has appeared it may be that the University announces his result and the expulsion order he allowed to stand.

But there is legal difficulty in the way of the University to announce the result. If the expulsion order is not quashed and a direction is not issued that it ought not to be acted upon, in my view, the University would not be entitled to announce the result, as in those circumstances, the petitioner will not be deemed to have appeared in the examination, he having been expelled from the University on 12-3-1965. However. It was pointed out that there would arise some difficulty if the petitioner falls. I think even in those circumstances there is no legal compulsion on the University to readmit him to the final classes in (B. A. Part III). These circumstances, as they stand, lead to this that it is possible for the University to get rid of the petitioner without holding a fresh Inquiry and then pasting an order of expulsion. I am, therefore, not inclined to issue a direction that a fresh inquiry be held against the petitioner by the Standing Committee and he he afforded an opportunity to meet the charges of misconduct brought against him.

10. For the reasons given above, I allow this petition and quash the order of the Standing Committee of the Academic Council dated 12-3-1965 expelling the petitioner from the University, the subsequent order disallowing the petitioner from appearing in the examination, and direct that the result of the petitioner shall be announced. In the circumstances of the case. I make no order for costs.