
(1993) 09 PAT CK 0018
In the Patna High Court
Case No : C.W.J.C. No. 1603 of 1993 (R)

Shashi Bhushan Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-09-1993

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1994) 42 BLJR 541 : (1994) 2 PLJR 55

Hon'ble Judges : S.B. Sinha, J;N. Roy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Narayan Roy, J.—In this writ petition, the petitioner has prayed for issuance of writ of mandamus commanding upon the respondent No. 2 to issue the marks-sheet to the petitioner and also for writ of certiorari quashing the order dated 10-10-1991, as contained in Annexure-6 to this writ petition, by which the petitioner was rusticated from the college. The petitioner has also prayed for quashing the order dated 12-5-1993 passed by respondent No. 2 by which the appeal filed by the petitioner has been rejected.

2. The petitioner who is a student of Bihar Institute of Technology, Sindri, (hereinafter to be referred to as the B.I.T. for short) has been rusticated for full three academic years, by order dated 10-10-1991 passed by the Director, B.I.T., Sindri.

3. The case of the petitioner is that while he was preparing for appearing at the final examination of the engineering college, a show-cause notice was given to him on 14-9-1991 stating therein that since he was guilty of beating one girl student of the institute, namely, Miss Sonel Srivastava, at Sindri Town Railway Station, he was required to explain as to why disciplinary action should not be taken against him. A copy of the show-cause notice is Annexure-1 to the writ petition.

The petitioner pursuant to the show-cause notice, aforesaid, filed his show-cause stating therein that on the date of the alleged occurrence, i.e., 1-4-9-1991, he was not present at Sindri Town Railway Station and hence he has not done any thing as alleged. However, the petitioner apprehending that he may not be allowed to appear at the final examination of the engineering college, preferred a writ petition, being C.W.J.C. No. 2136 of 1991 (R), before this Court with a prayer that he may be allowed to appear at the final examination, which was going to be held from 22-10-1991. In that writ petition on 8-10-1991 a notice was issued to respondent No. 2 and in the meanwhile it was directed that the petitioner may be permitted to appear at the 5th year B.Sc. Mining Engineering Examination, which was scheduled to be held from 22-1-1991, without prejudice to the rights and contentions of the respondents, subject to the result of that writ petition. However, it was made clear that till the disposal of the writ petition, the result of the petitioner shall not be published. That writ petition was admitted on 19-1-1991.

4. Pursuant to the aforesaid direction, the petitioner appeared at the final examination. Again the petitioner filed a petition in the aforesaid writ petition (C.W.J.C. No. 2136 of 1991/R) for publication of the result, since he had done well in all the subjects. The petitioner has also prayed for therein that atleast the petitioner be informed that whether he has failed in any paper or not, so that he may appear at the supplementary examination. Pursuant to the petition aforesaid, this Court vide order dated 12-12-1991 directed the respondent No. 2 to intimate the petitioner as to whether he has failed in any subject within three weeks from the date of receipt of a copy of that order. The concerned respondent thereafter intimated the petitioner that he has not failed in any subject. The aforesaid writ petition was, however, finally disposed of by a learned Single Judge of this Court on 16-1-1992 with the following directions:

In the facts and circumstances of this case, I am of the opinion that there should be no difficulty for formally and officially publishing the result of the petitioner and I direct the concerned respondents to do so within two weeks from the date of receipt/production of a copy of this order.

5. It appears that somehow or the other the result of the petitioner was not published. It has been stated in the writ petition that the petitioner was served with an order dated 10-10-1991, as contained in Annexure-6 to this writ petition, by which he was rusticated from the Institute for full three academic years. The petitioner thereafter again came to this Court C.W.J.C. No. 425 of 1992(R) challenging the order dated 10-10-1991. C.W.J.C. No. 425 of 1992(R) was, however, dismissed on 19-2-1992 with a direction to the petitioner to approach the higher authorities. The petitioner thereafter filed his representation on 17-3-1992 before the competent authority. Meanwhile, it is stated, the result of the petitioner was published vide Notification dated 24-2-1992 declaring that he has passed in Lit Class. The petitioner once again moved this Court in C.W.J.C. No. 397 of 1993(R) as his appeal so filed was not disposed of. A Bench of this

Court on 13-4-1993 disposed of that writ petition and directed the Chairman of the Governing Body of the Institute to pass appropriate reasoned order at the earliest.

6. Pursuant to the direction of this Court given in C.W.J.C. No. 397 of 1993(R), the Chairman of the Governing Body of the Institute has disposed of the appeal of the petitioner vide order dated 12-5-1993, by which the appeal filed by the petitioner was rejected, giving rise to this writ petition.

7. Mr. A.K. Sinha, learned Counsel for the petitioner, states that the order as contained in Annexure-6 and the order dated 12-5-1993 have been passed arbitrarily and contrary to the direction of this Court given in different writ petitions filed by the petitioner. Thus, according to Mr. Sinha, the action of the respondents is violative of Article 14 of the Constitution and as also against the principles of natural justice. It is further stated on behalf of the petitioner that the petitioner since passed the final examination in 1st class, he has been selected in Coal India Limited for mining engineering, and his appointment in Coal India Limited has been made subject to production of marks-sheet. But according to the petitioner in absence of the marks-sheet, he is not in a position to join on that post. Mr. Sinha further submitted that the order as contained in Annexure-6 was not communicated to the petitioner earlier and the same was served upon him on 31-1-1992 and before passing of the order (Annexure-6) no proper opportunity was given to the petitioner, nor he was heard in the matter. Mr. Sinha has also contended that in view of Ordinance No. IV of the Ranchi University, it is the Vice-Chancellor alone who can award punishment on the students for breach of the discipline or misbehavior, whose fees and forms have been accepted. In this connection, he has drawn my attention to paragraph 26 of the writ petition, where he has quoted the aforesaid Ordinance. Mr. Sinha further contended that once this Court has directed the respondents to publish the result, the respondents were duty bound to publish the result of the petitioner and since the respondents have published the result subsequently, they have no authority to withhold the marks-sheet.

8. A counter-affidavit has been filed in this case on behalf of the respondents, wherein it has been stated that the petitioner is a habitual offender and right from his entry in the Institute he started creating problems for girl students and in November, 1986, he misbehaved with another girl student, namely, Miss Reena Sarawgi, and created problem on caste line in the hostel. For these acts, the petitioner was expelled for one academic session vide order dated 28-8-1987. It has also been stated in the counter-affidavit that against the order of expulsion passed against the petitioner in 1987, the petitioner had come to this Court in C.W.J.C. No. 1540 of 1987(R), which was dismissed as withdrawn on 25-1-1988. It has further been stated in the counter-affidavit that again on 14-9-1991 this petitioner slapped a girl student, namely, Miss Sonal Srivastava, for which he was served with show-cause notice and ultimately he has been rusticated from the Institute, which is the subject-matter of this writ petition. In

the counter-affidavit it has been further stated that this petitioner submitted a false report before the enquiry officer that on 14-9-1991 on which date he was alleged to have assaulted Miss Sonal Srivastava, was not present at Sindri and he was at Dhanbad with Sri S.K. Kashyap, a Scientist of C.R.M.S., Dhanbad, who was appointed as a guide, as claimed by him. In the counter-affidavit it has been stated that on enquiry it was found that a forged certificate was produced before the enquiry officer.

Annexure-A to the counter-affidavit is a letter written by Sri S.K. Kashyap to the H.O.D. (Mining) B.I.T., Sindri stating therein that he was not appointed as the Project Guide, nor the petitioner was with him on 14-9-1991. Annexure-A further states that his signature was forged by the petitioner by filing a certificate before the enquiry officer.

9. It has been further stated in the counter-affidavit that in C.W.J.C. No. 2136 of 1991(R), the petitioner has suppressed the fact before passing the order dated 16-1-1992 that he has been rusticated for full there academic years and thus by suppression of fact, the order dated 16-1-1992 was obtained by the petitioner. In paragraph 21 of the counter-affidavit it has also been stated that the petitioner has accepted his guilty, before the enquiry officer for the allegations committed on 14-9-1991. In paragraph 30 of the counter affidavit it has been categorically stated that the restication order dated 10-10-1991 was given to the petitioner and his guardian and the same was also displayed on the notice board of the Institute.

10. Mr. Banerjee, learned Government Pleader No. 2 appearing on behalf of the respondent-State, thus stated that in the facts and circumstances of this case, the petitioner is not entitled to get any relief from this Court. He also urged that in view of the past records of the petitioner, he deserves no sympathy.

11. I find that the order of rustication as contained in Annexure-6 to this writ petition was also challenged by the petitioner in C.W.J.C. No. 425 of 1992(R) and this Court did not interfere with the order of rustication (Annexure-6) and that writ petition was dismissed, merely with a direction that the petitioner may agitate the matter before the appropriate forum. By this writ petition, the petitioner has again challenged the order of rustication (Annexure-6). In my opinion, once the writ petition where the order of restication was challenged has been dismissed, this writ petition for challenging the same order of rustication (Annexure-6), is hit by the principles of constructive res-judicata.

12. Now the only challenge in this writ petition is so far the order passed by the Chairman of the Governing Body of the Institute (respondent No. 2) as contained in Annexure-13 to the writ petition.

13. By order dated 12-5-1993 the Chairman of the Governing Body of the Institute-cum-Commissioner, North Chhotanagpur Division, has dismissed the appeal of the petitioner considering the past conduct of the petitioner.

14. I find that the Chairman of the Governing Body of the Institute has passed a reasoned speaking order, as I have noticed above that the petitioner at the initial stage also when he was admitted in the Institute was rusticated for one year in 1987 on the ground of misconduct and misbehaviour with a girl student of the Institute and that order was not interfered with by this Court, which was challenged by this petitioner. Again I have noticed above that the petitioner had indulged in such activities by assaulting Miss. Sonal Srivastava, another girl student of the Institute. Not only this, the petitioner has also forged and fabricated one certificate alleged to have been issued by Sri S.K. Kashyap, a Scientist of C.M.R.S., Dhanbad.

15. Now with reference to the contentions raised on behalf of the petitioner I must notice here that even if he has passed the final examination in 1st class and seemed a job in the Coal India Limited, he deserves no sympathy by this Court, as he has a chequered bad antecedent in the Institute.

16. This Court on several occasions in several writ petitions have given relief to the petitioner on compassionate ground. But in this case, I am not persuaded to grant any relief to the petitioner owing to his past antecedents and I do not find any reason to interfere with the order impugned, nor I am persuaded to issue any direction for giving marks-sheet to the petitioner, till the order of rustication operates.

17. So far the contention of Mr. Sinha that since the petitioner has already filled up the forms etc. no punishment can be inflicted on him by the respondents, save and except by the Vice-Chancellor of the Ranchi University is concerned. In this connection I have already held above that so far the order of rustication is concerned, the dismissal of the earlier writ petition filed by the petitioner, i.e. C.W.J.C. No. 425 of 1992(R) operates as bar so far this writ petition is concerned for giving relief on the question of rustication of the petitioner and in that view of the matter that chapter is over and the petitioner cannot raise any grievance against the order as contained in Annexure-6 and thus this point is now not available to the petitioner.

18. In the result, I find no merit in this writ petition and the same is dismissed.