

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 20.03.2012

% **Judgment delivered on: 23 .03.2012**

+ **W.P.(C) 240/2010**

RUCHIKA YADAV AND ORS Petitioner

Through: Petitioners in person

versus

**PANDIT DEENDAYAL UPADHYAYA INSTITUTE FOR
PHYSICALLY HANDICAPPED AND ANR Respondents**

**Through: Mr. Rajiv Bansal with Ms. Swati
Gupta, Advocates
Mr. Mohinder J.S. Rupal for DU**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioners have preferred the present writ petition under Article 226 of the Constitution of India to seek the following substantive reliefs:

“(i) Issue a writ in the nature of mandamus or other suitable writ or order or direction directing the respondent nos.1 and 2 to issue marks sheet/provisional degree/original degree/character certificate to the

petitioners against the BPO Course.

- (ii) Issue a writ in the nature of mandamus or other suitable writ or order or direction directing the respondent nos.1 and 2 to quash all the false allegations that have been made against petitioners and give compensation for this.
- (iii) Award the compensation to the petitioner no.2 for academic loss suffered by him as he could not take admission in Master of International Business with Jamia Milia Islamia, New Delhi on account of withholding his result by respondent no.1.
- (iv) Issue a writ in the nature of mandamus or other suitable writ or order or direction to respondent no.1 to release the stipend amount of Rs.18,000.00 (for six months @ 3,000/-) month payable to the petitioner on account of having completed the internship.
- (v) Award the cost of this proceeding including the compensation for mental harassment and agony and academic loss as well as financial loss as this Hon'ble Court fit in the circumstance of the present writ petition.
- (vi) Issue a writ in the nature of mandamus or other suitable writ or order or direction to respondents to release the security deposit and caution money (Rs.5,000.00) which was deposited by the petitioner with the hostel administration of respondent no.2".

2. At the outset, I may observe that as on date, all the aforesaid reliefs stand granted to the petitioners, except the claim of damages made by the petitioners. They have been issued the mark sheets/provisional degree and

character certificates in relation to the course undergone by them at the respondent institute. The security deposit and caution money of Rs.5,000/- also stands released to the petitioners. So far as the allegations against the petitioners of their having adopted unfair means and of issuing threat to assault the practical examiners in the examination held on 23.08.2008 are concerned, the said enquiry proceedings have been dropped by the respondents, meaning thereby that the said allegations against the petitioners have not been pressed or proved by the respondents. The stipend claimed by the petitioners under prayer (iv) also stands released to the petitioners. It is only the award of compensation claimed by petitioner no.2 for academic loss allegedly suffered by him on account of withholding of his result by respondent no.1, which now remains to be adjudicated, apart from the aspect of costs.

3. At this stage itself, I may observe that the preliminary objection of learned counsel for the respondent is that since the present case raises highly disputed questions of fact, the award of compensation in exercise of jurisdiction of this Court under Article 226 of the Constitution of India is not permissible, and the remedy available to the petitioners lies in pursuing their claims in civil proceedings.

4. Petitioner no.2 appeared in person, on behalf of himself and on

behalf of petitioner nos.1 and 3, and made his submissions. The submission of petitioner no.2 is that on 21.08.2009, the respondent institute issued certificates to the petitioners certifying that they are bonafide students of Bachelor of Prosthetics and Orthotics of the Pandit Deendayal Upadhyaya Institute for Physically Handicapped (4 ½ years course). It was certified that the petitioners passed their final year annual examination on 15.12.2008 and that the petitioners had undergone compulsory six months internship training, which was completed on 17.08.2009. It was further certified that the result of the said examination was likely to be declared in the month of September/October 2009 by the University of Delhi, and that each of the petitioners bears good moral character.

5. On the same date, each of the petitioners were served with a memorandum requiring them to appear before the enquiry committee in connection with the alleged adoption of unfair means and threat to assault the practical examiners on 23.08.2008. The petitioners were required to appear before the enquiry committee on 25.08.2009.

6. According to the petitioners, the said allegations were made malafide and with a view to ruin the career and future prospects of the petitioners. These allegations had been made after a year of the alleged incident of 23.08.2008, and the aforesaid memorandum was issued to each

of the petitioners with a view to withhold their final result.

7. The petitioners have resorted to making scores of applications under the Right to Information (RTI) Act with a view to establish their innocence and to defend themselves in the said enquiry proceedings. The petitioners have, on the basis of the responses received to their RTI applications, sought to make out a case of contradictions in the stand of the respondents with regard to, inter alia, the alleged incident of 23.08.2008; the decision to initiate enquiry; the enquiry officer etc.

8. I do not consider it necessary to go into all those aspects in depth for the simple reason that the said enquiry stands dropped, meaning thereby that the petitioners are no longer tainted with the said charges. As aforesaid, the present exercise is only limited to determine whether or not, in the present proceedings, any damages can be awarded to the petitioners on account of issuance of the aforesaid memorandum on 21.08.2009, which led to withholding of the petitioners results for a period of about four months.

9. The respondents have filed their counter-affidavit. In the counter-affidavit, the stand of the respondent is that the present writ petition is not maintainable to claim damages. That apart, the respondent states that the incident of 23.08.2008 indeed took place. The respondent further states that

notices were issued to the petitioners for appearing before the enquiry committee on 25.08.2009, 04.11.2009, 27.11.2009 and 17.12.2009, but the petitioners did not appear before the said committee even on one occasion. However, keeping in view the professional interests and career of the petitioners, and in the hope that the petitioners would improve their conduct, the respondents had decided not to take any adverse action against the petitioners.

10. Learned counsel for the respondent submits that the allegation of bias or malafides against the respondent and its officers is wholly misplaced. *He submits that in fact the petitioners have been accommodated out of turn in an unprecedented manner, inasmuch, as, though the petitioners were sent for internship to various hospitals/organizations, the petitioners insisted that they would be undergoing internship training within the institute.*

11. Mr. Bansal submits that this unreasonable demand of the petitioners was also met and they were permitted to undergo internship training within the institute, which is an unprecedented step. In this regard, reference is made to the file noting of 17.02.2009 which has been filed by the respondent and is available at page 790 of the record.

12. Mr. Bansal further states that the petitioners have not suffered any

loss or damage as their results were withheld only for a period of about four months, and the results were declared on 01.02.2010. None of the petitioners have disclosed as to how they have suffered any damage, as it is not even stated what steps were taken by them to seek admission in any other institution. They have also not shown or established that they were denied admission in any other course on account of their results being not available for four months.

13. The respondents rely upon the judgments of the Supreme Court in *Smt Nilabati Behera alias Lalita Behera v. State of Orissa & Ors.*, (1993) 2 SCC 746, and *Rudul Shah v. State of Bihar*, AIR 1983 SC 1086, to submit that since there are disputed questions of fact arising in the present case, the award of damages could not be justified in writ proceedings.

14. Since the respondents have dropped the enquiry proceedings on the allegations made against the petitioners, in my view, it is not open to the respondent to still contend that the petitioners had resorted to adoption of unfair means or to issue threat of assault to any examiner on 23.08.2008. If the respondents are permitted to adopt such a stand, the same would be violative of the principles of natural justice, as it would tantamount condemning the petitioners without granting them an opportunity of meeting the allegations against them. Whatever may have been the reasons for the

respondents to have taken their decision to drop the enquiry proceedings against the petitioners, once the said proceedings have been dropped, it has to be taken that the allegations against the petitioners have not been proved and the said allegations cannot once again be heaped on the petitioners as done by the respondents in their counter-affidavit. It is, therefore, made clear that the said allegations contained in the memorandum dated 21.08.2009 shall in no way come in the way of the petitioners at any stage, and shall not mar their prospects. The same shall not be looked into as they already stand dropped.

15. At the same time, it appears that the respondents have been accommodating the petitioners as, for instance, in the matter of their undergoing internship. The office noting relied upon by the respondents is relevant and reads as follows:

“Shri Chandan Kumar Chandan, Ms. Ruchika Yadav & Ms. Priyanka Sarpal has cleared their IV year examinations. As per the curriculum they have to place for 6 months internship in any institute/hospital or Organisation in Delhi.

The above students have not accepted the internship placed by the Institute in different hospitals/organizations in Delhi to learn Prosthetics & Orthotics. They have insisted to do their internship in PDUIPH. The matter was discussed with the

Director, of the institute and the above students were placed for internship in PUDIPH w.e.f. 17.2.2009. They will mark their attendance in a separate register with Assistant Manager (W).

Submitted for information and approval.

*(S.C. Ranga)
Head of the Department
BPO”*

This office noting was approved and implemented by the respondents.

16. Pertinently, this approval was granted on 17.02.2009. This clearly shows that even till as late as February 2009, the respondent authorities had no malice in their conduct, qua the petitioners. Else there was no reason for the respondent to accommodate the petitioners in the aforesaid manner. Even otherwise, the petitioners have not been able to make out a case of malafide against the respondents. The pleadings in that respect are wholly lacking. The petitioners have not even impleaded the concerned officers against whom malafides are alleged. It is well settled that officers, against whom allegations of malafides are made, should be personally impleaded as party respondents in the petition so that they have an opportunity to meet the specific case against them. That not having been done, I am not inclined to agree with the submission of the petitioners that any of the officers of the

respondents acted malafide against the petitioners while issuing the memorandum dated 21.08.2009.

17. I find force in the submission of learned counsel for the respondents that the award of damages in the present case is not warranted as the petitioners have failed to make out a clear case of breach of fundamental rights, which could be stated to have resulted in the sufferance of damages. Moreover, how the said conduct of the respondents in issuing the memorandum dated 21.08.2009 and in withholding the mark sheets of the petitioners for four months impacted their prospects has not been disclosed. There are indeed several disputed questions of fact which arise in the present case. No specific averments have been made and no documents in this regard have been placed on record.

18. It is well settled principle of law that when a disputed question of fact arises and there is a clear denial of any tortuous liability, remedy under Article 226 of the Constitution may not be proper. It is only in the case where there is negligence on the face of it and consequent deprivation of fundamental right that the writ courts can award compensation in exercise of writ jurisdiction.

19. In *Rudul Shah* (Supra), where compensation was awarded, the Supreme Court was faced with a situation where the petitioner who was

acquitted by the Court of Session was released from jail more than 14 years after he was acquitted. The petitioner approached the Court asking for his release on the ground that his detention in the jail was unlawful and claimed compensation for the illegal incarceration. The petitioner was released from jail and as regards the compensation for illegal detention the Court held that though Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of Courts, however, in order to rectify the *grave injustice* perpetrated upon the petitioner by illegally detaining him in jail for 14 years after his acquittal, which violated his fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India, the Court in the exercise of its jurisdiction under Article 32, can pass an order for the payment of money if such an order is in the nature of compensation *consequential upon the deprivation of a fundamental right*. The order of compensation passed was in the *nature of a palliative*, leaving the petitioner the liberty to file a suit for compensation, wherein the nice points of facts and law would be adjudicated upon.

20. In *Nilabati Behera* (Supra), a writ petition was filed under Article 32 of the Constitution for determining the claim of compensation consequent upon the death of petitioner's son in police custody. In view of the denial by

the State that death was due to police harassment when the deceased was in police custody, the Supreme Court gave a direction to the District Judge, to hold an inquiry into the matter and submit a report. The District Judge reached the conclusion that it was a case of custodial death. In view of the dispute as to the correctness of the findings in the report of the District Judge, the matter was examined afresh by the Supreme Court in the light of the objections raised. The Court also reached the same conclusion on a reappraisal of the evidence adduced at the enquiry. Upon the factum of custodial death being proved, the Supreme Court proceeded to award compensation. It observed that monetary compensation, for contravention of the fundamental rights guaranteed under the Constitution, by recourse to Articles 32 and 226 would be justified, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers.

21. In *Chairman, Grid Corporation of Orissa Ltd. (Gridco) and Ors. v. Sukamani Das (Smt.) and Anr.* (1999) 7 SCC 298 the question which arose for consideration was, whether the High Court can under Article 226 of the Constitution award compensation for death caused due to electrocution on account of negligence, when the liability was emphatically denied on the ground that the death had not occurred as a result of negligence, but because

of an act of God or of acts of some other persons. The Supreme Court held that it is the settled legal position that where disputed questions of facts are involved, a petition under Article 226 of the Constitution is not a proper remedy. Therefore, questions as to whether death occurred due to negligence or due to act of god or of some third person could not be decided properly on the basis of affidavits only, but should be decided by the civil court after appreciating the evidence adduced by the parties.

22. Similarly, in *Tamil Nadu Electricity Board v. Sumathi and Ors.*, (2000) 4 SCC 543, it was held that when a disputed question of fact arises and there is clear denial of any tortuous liability, remedy under Article 226 of the Constitution may not be proper. The Supreme Court carved out an exception to this general rule by observing that, it should not be understood that in every case of tortuous liability, recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution.

23. In *Mr. Gatakala Venkateswarlu vs. Union of India & Anr.*, 128 (2006) DLT 1, a writ petition under Article 226 had been filed in the nature of a recovery claim on account of the failure of the respondents to take necessary steps for forwarding the application of the petitioner for

compensation to the United Nations Compensation Commission. Since the case involved disputed questions of fact, which required a recording of testimony, this Court dismissed the writ petition with liberty to the petitioner to file a civil suit.

24. The Supreme Court in *S.P.S Rathore vs. State of Haryana*, (2005) 10 SCC 1, observed that the Courts while exercising jurisdiction under Articles 32 and 226 can award compensation for the violation of fundamental rights guaranteed by the Constitution but such a power should not be lightly exercised. The issue before the Supreme Court was whether the High Court was correct in directing the District Judge to conduct an enquiry so as to ascertain the truth of the averments made by one of the Respondent regarding forceful withdrawal of complaints filed by her, under Article 226 of the Constitution. Relying upon its earlier decisions, as mentioned above, the Supreme Court held that the “*The sparing exercise of power under Article 32 or Article 226 of Constitution of India for issue of directions to conduct enquiry to determine compensation in glaring and clear cases of rape by police officials, custody death, illegal detention of poor and helpless cannot be resorted to in the case of present nature.*”. Accordingly, the impugned judgment of the High Court was set aside.

25. In view of the above discussion, the petitioners are not entitled to award of any damages in the present proceedings. The present case is not of the nature that warrants the exercise of such power. The power of a writ court, as discussed above, is to be used sparingly in appropriate cases of violation of fundamental rights, which may be in the nature of custodial death, or damage to the life and liberty of a person on the failure of the State to take adequate precautions. It cannot be exercised for every infraction of any right which results in damages.

26. Accordingly, this petition is disposed of leaving the parties free to agitate their claims in appropriate civil proceedings, if they are so advised. Parties are left to bear their respective costs.

(VIPIN SANGHI)
JUDGE

MARCH 23 , 2012
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