

Court No. - 34

Case :- WRIT - C No. - 16044 of 2024

Petitioner :- Raunak Mishra

Respondent :- Banaras Hindu University And 3 Others

Counsel for Petitioner :- Atul Kumar Tiwari,Prakhar Saran Srivastava

Counsel for Respondent :- Hem Pratap Singh

Hon'ble Syed Qamar Hasan Rizvi,J.

1. Heard Sri Prakhar Saran Srivastava, learned counsel for the petitioner and Sri Ajit Kumar, learned Senior Advocate assisted by Sri Hem Pratap Singh, learned counsel for the respondent-University.

2. By means of the present writ petition, the petitioner has prayed for the following reliefs:

“(i) To issue a writ, order or direction in the nature of certiorari quashing impugned order dated 02.09.2023 passed by the respondent no.3.

(ii) To issue a writ, order or direction in the nature of certiorari quashing impugned order dated 20.11.2023 passed by the respondent no.2.

(iii) To issue a writ, order or direction in the nature of certiorari quashing impugned order dated 09.03.2024 passed by the respondent no.3.

(iv) To issue a writ, order or direction in the nature of certiorari quashing impugned order dated 16.03.2024 passed by the respondent no.4.

(v) To issue a writ, order or direction in the nature of mandamus commanding the respondents to restore all the academic privileges to the petitioner forthwith including permission to appear in the upcoming second semester examination.

(vi) To issue a writ, order or direction in the nature of mandamus commanding the respondent University to conduct a special supplementary examination of the M.A. First Semester for the petitioner at the earliest.

(vii) To issue any suitable writ, order or direction in additiona to and in supplement to refer to above, as this Hon’be Court may deem fit and proper in the facts and circumstances of the case.

(viii) Award the cost of the writ petition to the petitioner.”

3. By means of the instant writ petition, the petitioner challenges a series of orders issued by the respondent authorities, specifically the

order dated 02.09.2023 passed by respondent no.3 and communication/letter dated 20.11.2023 issued by respondent no.2, cancelling the petitioner's admission and debarring him from pursuing any course from the respondent-University in future; the order dated 09.03.2024 passed by respondent no.3 against the petitioner in respect of an incident dated 17.02.2024 and the order dated 16.03.2024 passed by respondent no.4, imposing ban for campus entry on the petitioner and any future association between the petitioner and the university.

4. The facts culled out from the pleadings are that the present controversy finds its origins in an order issued by the Registrar of the respondent university dated 08.10.2022, wherein the petitioner was suspended from the University for a period of six months, rendering him ineligible to appear in his scheduled semester examination due to his alleged involvement in fighting 'marpeet' with one student namely Mahendra Patel at Cyber Library. The petitioner, feeling aggrieved by this decision, challenged the order of suspension before this Court by way of writ petition bearing Writ-C No. 13741 of 2023.

5. This Court vide judgment and order dated 20.12.2023 passed in Writ-C No. 13741 of 2023, set aside the order dated 08.10.2022 passed by the Registrar, B.H.U. and the order dated 14.11.2022 passed by the Deputy Registrar (Academic), B.H.U. and permitted the petitioner to continue as a regular student. The operative portion of the aforesaid order is as under:

"VIII: Conclusions and Directions

81. The impugned order dated 08.10.2022 passed by the Registrar, BHU and the order dated 14.11.2022 passed by the Deputy Registrar (Academic), BHU are liable to be set aside and are set aside.

82. In wake of the aforesaid following directions are issued:

I. The petitioner shall be permitted to continue as a regular student in the University.

II. The University is commanded to devise a reform programme for students accused of misconduct in light of the judgements

rendered by this Court in Anant Narayan (supra), Mohammad Ghayas (supra) and Piyush Yadav (supra) and the UGC guidelines dated 12.04.2023.

III. The University shall incorporate the said reform programme in the first statutes of the BHU within 6 months (as per the undertaking given by the BHU before this Court). The University thereafter implement and monitor the reform programme.

IV. The petitioner shall undergo the reform programme as devised by the University.

(II) Directions to the UGC

I. The UGC shall ensure circulation of guidelines dated 12.04.2023 to all universities within the jurisdiction of UGC.

II. The UGC shall create a system for monitoring the implementation of the guidelines dated 12.04.2023 by various universities as per law.

III. The UGC may also hold regular workshops and seminars to create a library of collective experiences of various universities in these matters. It will enable universities to gain from shared experiences and upgrade their programmes.

(III) Directions to Union of India

I. The Government of India shall facilitate the implementation of UGC guidelines dated 12.04.2023 in Central Universities as per law and in conjunction with UGC.

*83. The writ petition is **allowed** to the extent and the manner indicated above.”*

6. In pursuit of his academic goals, the petitioner appeared for the Post Graduate Admission Test (PGAT) conducted by the respondent university on 08.06.2023, as part of the admission process for the Master of Arts program. The petitioner qualified the said admission test. Based on his academic performance, the petitioner was offered admission to the ‘Master of Arts’ course and was allocated hostel accommodation on 07.11.2023 by the University

7. Submission of the learned counsel for the petitioner is that on 12.07.2023, the petitioner was served with a vague notice by the Standing Committee for Disciplinary Action of the University, summoning him to appear before the Committee on 13.07.2023 with regard to his alleged involvement in a protest that occurred at the Law

Faculty of the respondent-University on 14.03.2023 and 15.03.2023. He further argued that although in connection with the said protest, a First Information Report against the petitioner along with some other students was registered as Case Crime No. 160 of 2023 at Police Station Lanka, Varanasi, but the name of the petitioner was not charge-sheeted as nothing was found against the petitioner during investigation. It has been very emphatically argued on behalf of the petitioner that he was falsely implicated in the aforesaid case as is evident from the fact that he was ultimately exonerated vide police investigations, from all the allegations levelled against him related to the said incident.

8. The learned counsel for the petitioner further submitted that not only the police absolved the petitioner from the alleged charges, but the Chief Proctor of the respondent-University found him not involved in the aforementioned protest/incident and confirmed his non-involvement vide his report dated 12.07.2023 submitted to the respondent no.3.

9. It has been asserted on behalf of the petitioner that despite the fact that the Chief Proctor of the respondent-University vide his report dated 12.07.2023 as contained in Annexure No.7 to the Writ Petition, unequivocally absolves the petitioner of any participation in the alleged misconduct, the Standing Committee for Disciplinary Action of the University issued notice to the petitioner on the very day i.e. on 12.07.2023 summoning him to appear before the Committee on 13.07.2023. The petitioner in compliance of the said notice appeared before the Standing Committee on 13.07.2023 and categorically denied his any kind of involvement in the incident in question, but the respondent no.3 without taking into consideration the factual matrix of the matter, in an hypocritical manner passed an order on 02.09.2023 against the petitioner debarring him from admission in future in any course of study at the respondent-University holding him allegedly involved in protest/incident that occurred at the law faculty on

15.03.2023. The contention of the learned counsel for the petitioner is that the impugned retroactive debarment order dated 02.09.2023 which was received by the petitioner on 20.11.2023 is manifestly illegal and arbitrary, as the same was thrust upon the petitioner much after the date when he already got his due admission to the M.A. course and further after the completion of the process of allocation of hostel accommodation duly confirmed by the respondent-University on 07.11.2023.

10. The next argument advanced by the learned counsel for the petitioner is that the decision of the respondent-University to escalate its' earlier order of suspension to the order of debarment of the petitioner from all courses in future is wholly unjustified and lacks legitimate foundation, in the teeth of the fact that the earlier suspension order dated 08.10.2022 had already been revoked.

11. Learned counsel for the petitioner further submitted that the respondent no.3 / Deputy Registrar (Academic) passed an order on 09.03.2024 imposing complete ban against the petitioner from entering the university premises, for his alleged participation in some protest that was caused following an accidental death occurred near the University campus on 17.02.2024. Thereafter, the respondent no.4 / Deputy Registrar (General Administration) passed an order on 16.03.2024 against the petitioner whereby the respondent-University withdrew all the privileges that were available to the petitioner as a student of the University. The contention of the learned counsel for petitioner is that the petitioner was not at all involved in the said incident, as is evident from the fact that the petitioner is not named in the First Information Report dated 18.02.2024 lodged with regard to the said incident dated 17.02.2024, having Case Crime No. 58 of 2024, moreover, the Report dated 19.02.2024 by the Chief Proctor of the respondent-University also does not even indicate the name of the petitioner. The said report only

provides that consequent to an accidental death around 200 students gathered in protest and created ruckus and blocked the main gate. His assertion is that the petitioner has been falsely embroiled without any basis or proof. The petitioner contends that the sequence of punitive actions taken by the respondent university reflects a pattern of vindictive and arbitrary conduct, seemingly motivated by personal animosity rather than any legitimate disciplinary concern. In support of his contention, he relied upon the earlier judgment and order passed by this Court dated 20.12.2023 in Writ-C No. 13741 of 2023 (Raunak Mishra versus Banaras Hindu University and others), whereby the punishment orders dated 08.10.2022 passed by the Registrar, BHU and the order dated 14.11.2022 passed by the Deputy Registrar (Academic), BHU were set aside with the direction to the respondent University to continue the petitioner as a regular student.

12. The learned counsel for the petitioner further submits that following the receipt of the impugned order on 20.11.2023 summarily cancelling his admission to the M.A. course, by respondent no. 2, without any notice or opportunity of hearing, the petitioner preferred a representation to respondent no.3 on 23.11.2023 and sought immediate redress of his grievances but the university authorities did not paid any heed to the same and the same is still pending for consideration.

13. Per contra, the learned counsel appearing for the respondent-University defending the disciplinary action taken against the petitioner vide impugned orders i.e. 02.09.2023, 20.11.2023, 09.03.2024 and 16.03.2024 submitted that the same were passed on the recommendation of the Standing Committee on disciplinary action and were duly approved by the Vice Chancellor of the University. He further submits that the opportunity of hearing was provided to the petitioner through e-mail letter dated 12.07.2023 to appear before the Standing Committee to which the petitioner submitted his explanation

also. He contends that the petitioner was found involved in the incident of *marpeet* at cyber library on 15.05.2022 as reported by the Chief Proctor of the University, consequently, the matter was referred to the Standing Committee for Disciplinary Action and the said Committee after due deliberation passed the order dated 08.10.2022 suspending the petitioner for a period of six months. Further, in view of his involvement in the protest at Law Faculty, an F.I.R. was lodged against the petitioner along with other students and as such the order dated 02.09.2023 has rightly been passed by the University, debarring the petitioner and other students found involved in the said act of indiscipline, from admission to any course of the University in future. He further asserted that regarding the incident that took place on 17.02.2024, another F.I.R. was lodged against the students as per the report of the Chief Proctor wherein the petitioner was also reported to be involved in the aforesaid incident and in that connection the petitioner along with other students were wanted by the Police. In view of the same, the order dated 09.03.2024 and 16.03.2024 passed by the respondent-University banning the petitioner and other students reportedly involved in the said act of high indiscipline and detrimental to the academic atmosphere of the University, from entering into the premises of University and the withdrawal of the privileges as alumnus of the University, does not suffer from any illegality or infirmity, rather the same are absolutely just and proper.

14. Having heard the learned counsel for the parties and perusing the material available on record, this Court finds that admittedly the admission of the petitioner in M.A. course and the allocation of hostel accommodation was made on 07.11.2023 and the order dated 02.09.2023 that was communicated to the petitioner through the letter dated 20.11.2023, debarring the petitioner from future admission to any course was passed retroactively and without affording any opportunity

of hearing to the petitioner. Further, once this Court vide judgment and order dated 20.12.2023 passed in Writ-C No. 13741 of 2023 (Raunak Mishra versus Banaras Hindu University and others) set-aside the punishment orders dated 08.10.2022 passed by the Registrar, and the order dated 14.11.2022 passed by the Deputy Registrar (Academic), with the direction to the respondent University to continue the petitioner as a regular student, the decision of the respondent-University to escalate its' earlier order of suspension to the order of debarment of the petitioner from all courses in future is wholly unjustified and lacks legitimate foundation.

15. The contention of the learned counsel for petitioner bears merit that once the petitioner was found not-involved in the incident that occurred at law faculty on 15.03.2023, as is evident from the fact that the name of the petitioner was dropped by the police after investigation and moreover the Chief Proctor of the respondent-University also submitted a report on 12.07.2023 denying the involvement of the petitioner in the said incident. Insofar as the incident dated 17.02.2024 is concerned, the petitioner is not named in the First Information Report dated 18.02.2024, moreover, the Report dated 19.02.2024 submitted by the Chief Proctor of the respondent-University also does not even indicate the name of the petitioner, then any action against the petitioner based upon the said incidents is absolutely baseless and unjust.

16. Taking into consideration the material available on record this Court is of the considered view that such a major punishment of debarment was passed by the respondent University in utter violation of principles of natural justice by depriving the petitioner of due opportunity of hearing before passing the impugned orders. Lack of prior notice and absence of a fair hearing amounts to violation of the principles of natural justice, rendering the order unsustainable in the eyes of law.

17. In the case of **State of U.P. versus Shatrughan Lal and another** reported in **JT 1998 (6) SC 55**, the Hon'ble Supreme Court has been pleased to hold that:

"One of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence."

18. Strict adherence to basic norms of natural justice is essential rather inescapable while taking decision affecting rights of a person as observed by the Hon'ble Supreme Court in the case of **Ram Chander versus Union of India** reported in **(1986) 3 SCC 103**:

"It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. Both the Privy Council as well as this Court have in a series of cases required strict adherence to the rules of natural justice where a public authority or body has to deal with rights."

19. It is a well settled proposition of law that any exercise of power prejudicially affecting another must be in conformity with the rules of natural justice. The authority taking action must be impartial and without any interest or bias of any type; where the said authority is exercising judicial or quasi-judicial power, the authority concerned must give full opportunity to the affected person to produce all the relevant evidence in support of their case and must disclose all material placed before it on the basis of which the allegations made against them are founded and the said authority cannot utilise any such material unless the opportunity of hearing is given to the party against whom it is sought to be utilised. The authority must give opportunity to the party concerned to rebut the evidence / material against him and further to put forward, explain and substantiate his own version.

20. There is no doubt that the authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In such a situation, the Writ Court in exercise of the power conferred under Article 226 of the Constitution of India is justified to quash any proceeding if it finds that initiation / continuance of it amounts to abuse of the process of court or quashing of the same would otherwise serve the ends of justice.

21. On the basis of foregoing analysis, the impugned orders dated 02.09.2023, 20.11.2023, 09.03.2024 and 16.03.2024 are found to be unsustainable in the eyes of law and as such are liable to be set-aside and are hereby set aside.

22. It is the categorical averment of the learned counsel for the petitioner that the petitioner moved a representation dated 23.11.2023 before the respondent no.3 but of no avail. As such, in the interest of justice, liberty is granted to the petitioner to move a detailed representation afresh before the Vice Chancellor of the respondent-University (respondent no.1) raising all his pleas for redressal of his grievances along with certified copy of this order, at the earliest. In case such a representation is received by the respondent no.1, the Vice Chancellor of the respondent-University is directed to consider and decide the same after affording due opportunity of hearing to the petitioner enabling him to put forward, explain and substantiate his own version; strictly in accordance with law by adhering to the principles of natural justice which are essential and inescapable while taking decision affecting the rights of a student. It is expected that the authority aforesaid shall take decision on the aforesaid representation as expeditiously as possible and preferably within a period of 15 days

from the date of production of the said representation along with certified copy of this order.

23. Accordingly, the writ petition is **disposed of** with the aforementioned observations and directions.

Order Date :- 01.08.2024

Jitendra/Abhishek Gupta