IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELENGANA AND THE STATE OF ANDHRA PRADESH

***

W.P.No.22826 of 2014

Between:

Satish Nainala, S/o.Yellaiah.

… Petitioner

And

1. The English and Foreign Languages University,

A Central University established by an Act of Parliament,

Tankaka, Hyderabad rep. by the Registrar and others.

...Respondents

-

Date of Judgment pronounced : 04.03.2016

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

1. Whether Reporters of Local newspapers : No

May be allowed to see the judgments?

2. Whether the copies of judgment may be marked : Yes

to Law Reporters/Journals

3. Whether Lordship wishes to see the fair copy : No

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

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> HEAD NOTE:

! Counsel for the petitioner : Sri V.Raghunath

^ Counsel for respondents : Ms.K.Lalitha, learned Standing Counsel.

? Cases referred

1. (2013) 16 S.C.C. 116
2. (1980) 4 S.C.C. 480
3. AIR 1982 Calcutta 1
4. AIR 1987 Orissa 98
5. 1998 S.C.C. Online 383 (Allahabad)
6. (1973) 1 SCC 805
7. AIR 1963 A.P. 83
8. 2002(6) ALD 720
9. 1998 Law Suit (All) 745
10. AIR 1969 SC 198
11. AIR 1977 SC 615

12. (2012) 11 SCC 275

13. AIR 1968 SC 850

14. (1978) 1 SCC 248

15. (1981) 1 SCC 664

16. 2003 (8) SCC 311

17. AIR 1964 SC 1419

18. 1994 (2) SCC 481

19. (2010) 10 SCC 67

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.22826 of 2014

ORDER:

In this Writ Petition, the petitioner questions proceedings dt.28-07-2014 of 3rd respondent rejecting an appeal filed by the petitioner against order dt.06-05-2014 of 4th respondent rusticating the petitioner from 1st respondent-University for a period of four semesters.

2. The petitioner who claims to belong to the B.C-D community is a student of Ph.D course in the 1st respondent-University wherein he joined on 25-07-2011.

3. On 11-03-2014, glass doors of the 1st respondent-University library were broken forcibly.

4. Alleging that the petitioner is involved in the said act, a show cause notice dt.24-03-2014 was issued by 4th respondent to the petitioner to explain why disciplinary action should not be taken against him for breaking the glass door of the University library on that day and allowing a large number of students to barge into the library. He was asked to submit his explanation to

the said show cause notice by 5 p.m. on 27-03-2014.

5. On 27-03-2014, the petitioner submitted an explanation stating that he did not break any glass nor did he allow any students to barge into library on that day as alleged in the show cause notice dt.24-03-2014. But he stated that as a General Secretary of the Telangana State Association, as per the said organization's decision, he went and expressed solidarity with the Students Union's struggle for the reopening of the reading room which had been closed without any prior notice. He alleged that even issuing of the show cause notice itself is an act of harassment. He contended that the act of issuing show cause notice shows that 4th respondent wanted to curb the voices of Dalit, Bahujan, Minority and Adivasi students and Telangana Students on the campus by silencing their voices through repeated show-cause notices and thereby impeding their academic progress.

6. The Proctorial Board of 1st respondent University consisting of (i) the Proctor, (ii) Deputy Proctor, (iii) Dean, Students Welfare, Dean, School of Interdisciplinary Studies,(iv) Dean, Hostels, Professor attached to the Department of Training and Development, (v) Professor attached to the Department of English Literature, (vi) Provost of Hostel for women, (vii) Provost of hostel for men, (viii) Professor attached to the Department of Valuation and (ix) another Professor attached to the Department of English in Education was constituted to conduct enquiry into the incident as mandated by Ordinance 13 of the 1st respondent University.

7. On 09-04-2014 the said Proctorial Board had a meeting.

17 witnesses were examined in the said meeting. The Proctorial Board came to the conclusion that the petitioner, along with two other students, was guilty and a decision was taken unanimously to rusticate petitioner and two other students for varying periods. It was decided that petitioner be rusticated for 4 semesters. It was further directed in the said order that this punishment would result in withdrawal of all facilities available to him as per the University Rules and the campus itself is declared out of bounds for him.

8. This decision was communicated to the petitioner by reference No.EFLU/PO/2014/179 dt.06-05-2014 of the Proctor.

9. Although in these proceedings, it was mentioned that the punishment would end by 31-12-2015, learned counsel for the petitioner fairly stated that each semester would be for six months and so the punishment of rustication imposed on petitioner would end only on 05-05-2016.

10. This was questioned by the petitioner in W.P.No.15345 of 2014.

11. In W.P.M.P.No.19008 of 2014 in W.P.No.15345 of 2014, on 03-06-2014, this Court directed that the petitioner shall not be evicted from the hostel premises till submission of the thesis, which has to be submitted within the stipulated time i.e. before 31-07-2014.

12. In the counter affidavit filed by the respondents in that Writ Petition, it was stated that the thesis would be considered independently without being influenced with this incident.

13. In the above order, this Court observed that in matters of discipline and internal affairs of University, normally Court should not interfere by taking a technical view of the matter, that the larger interests of academic community are more important than individual interests of students although the interest of individual students should also be taken into account. It however directed that the petitioner should filed appeal before the Vice Chancellor and the same should be considered at the earliest, preferably, within ten days from the date of receipt of a copy of it's order. It directed that the respondents should permit the petitioner to avail library facility on condition that the petitioner abides by an undertaking given by him.

14. Thereafter, the petitioner filed an appeal before 3rd respondent which is the competent authority under Section 36 of the English and Foreign Languages University Act, 2006 (Act 7 of 2007) on the following grounds:

> *"(a) The appellant humbly submits that he is not involved in the act of breaking the glass door of the library nor was he involved in allowing a large number of students to barge into the library of the university.*
>
> *(b) The appellant has been a serious student of Ph.D. course since the month of July, 2011 and at no point of time there was any adverse report or remark against him.*
>
> *(c) The appellant was not given notice of any enquiry nor was any proceedings conducted in his presence and the order of Appeal was passed without further notice to him after he submitted an explanation dated 27-03-2014 denying the accusation.*
>
> *(d) The appellant also submits that according to Rule 5 of Ordinance 13 titled "EFL University Students Disciplinary and Conduct Rules", due opportunity is required to be given to the student charged to defend himself and in the present case such opportunity has not been given to him.*
>
> *(e) The constitution of Proctorial Board is not in accordance*

with the Regulation No.22 of the EFLU."

15. However, the said appeal was dismissed by 3rd respondent on 28-07-2014. It held that petitioner, in his appeal filed on 21-07-2014, had stated that he was not even present in the library when the glass door was broken which is contrary to the stand taken by him in the explanation dt.27-03-2014 to the show cause notice dt.24-03-2014 that he was present there and expressed solidarity with the Students' Union's struggle. The appellate authority held that the due opportunity had been given to the petitioner in the form of show cause notice issued by the Proctor and instead of using that opportunity to explain, the petitioner denied any role in the matter and showed utter contempt for the authority of the University's statutory bodies by questioning their constitution and also threatened the university authorities with dire consequences. It was also stated that the petitioner showed no inclination to cooperate with the process of any enquiry and so the only course open to the Proctorial Board was to question the witnesses and gather evidence and arrive at a conclusion on that basis. It observed that the appellate authority examined the files and also questioned the members of the Proctorial Board and other persons who had first hand knowledge of the incident and found that there is more than satisfactory material that the petitioner not only participated in the incident but played a lead role in committing the act as well as in inciting others. It also noted that the petitioner had used every opportunity to defame the University, its authorities and officials and brought disrepute to the very institution that has provided the petitioner with knowledge and sustenance. It also accused him of showing no respect to the spirit of the order passed by the

High Court (which expressed its desire that the issue be sympathetically dealt with by the appellate authority) in view of the stand and tone in the appeal which indicated no repentance or request for pardon and no feeling for wrong committed by him. It also held that the petitioner not only committed acts of mindless vandalism but had willfully attempted to create lawlessness, violence and chaos in the university.

16. Petitioner has questioned the said order in this Writ Petition.

17. On 03-08-2015, W.P.No.15345 was dismissed as infructuous in view of this development.

18. Challenging the order dt.28.7.2014 of the 3rd respondent, this Writ Petition has been filed.

CONTENTIONS OF COUNSEL FOR PETITIONER

19. Learned counsel for the petitioner contended that the petitioner had denied the allegations made in the show cause notice dt.24-03-2014 by his explanation dt.27-03-2014 and without conducting any further enquiry, the respondents cannot pass the impugned order. He denied that witnesses had given statements about his presence and involvement in the incident which took place

11-03-2014. He also denied that he threatened the University authorities with dire consequences. He stated that the enquiry by the Proctorial Board was conducted behind his back and the appellate authority had not acted properly in examining the files, questioning the members of the Proctorial Board and other

persons who are alleged to have knowledge of the incident before passing the impugned order.

20. He relied on clause 5 of Ordinance 13 which states that no punishment shall ordinarily be imposed on a student unless he is found guilty of offence for which he has been charged by a Proctorial or any other inquiry "*after following the normal procedure and providing due opportunity to the students charged for the offence to defend himself*" and contended that NALSAR University of Law, Hyderabad and Jawaharlal Nehru University had framed detailed Regulations and 1st respondent University should also have followed e similar procedure. He also contended that statements of the witnesses were collected behind petitioner's back, that the petitioner was not allowed to cross examine the witnesses whose statements were recorded and this resulted in gross miscarriage of justice. He relied upon **Union of India and others Vs. Sanjay Jethi and another, Jawaharlal Nehru University Vs. B.S.Narwal, Ram Narayan Keshori and others Vs. University of Calcutta and others, Pradip Kumar Sahoo Vs. Utkal University and others** and **Azam Meer Khan Vs. Aligarh Muslim University and others.**

21. It is also contended that the Proctorial Board itself was improperly constituted since some of the members of the Proctorial Board as per Regulation 22 were not members of the said Board. According to him, one Dean from Foreign Languages, one Dean from English Language, one Dean from Distant Learning and the Security Officer were not part of the Proctorial Board constituted as per office order No.EFLU/admn./F.2151/2013/816 DT.23-09-2013. According to

Counsel for petitioner, this also vitiates the order dt.06-05-2014.

RESPONDENTS' CONTENTIONS

22. Counter affidavit has been filed by the respondent Nos.1 to 4 opposing grant of any relief to the petitioner and insisting that the petitioner along with two others was responsible for the breakage of glass door for the university's library and trespassing into it and allowing large number of students to barge into the library thereby damaging university property and peaceful academic atmosphere on 11-03-2014 at 12.45 p.m. It is alleged that a police complaint was also lodged on that day with Osmania University Police Station. Reference is made to the show cause notice issued by 4th respondent and the petitioner's explanation thereto dt.27-03-2014. It is stated that the Proctorial body met on 09-04-2014, examined the statements of 17 witnesses and came to a conclusion that the petitioner along with two students were guilty and resolved to rusticate them. Thereafter, order dt.06-05-2014 was issued rusticating the petitioner. It is also stated that on 29-05-2014, 4th respondent also issued a notice directing petitioner to vacate the room in his occupation by 06-06-2014. It is stated that the order passed by the appellate authority is a well considered order and there is no illegality or irregularity in the order and it was passed after considering the entire evidence on record and after putting on notice the petitioner and after providing opportunity for personal appearance to the petitioner. It was stated that the petitioner did not choose to appear for the hearing and so he cannot complain about violation of principles of natural justice. It was also stated

that the petitioner was openly admonishing the witnesses with dire consequences and so the witnesses were examined separately and their statements were recorded.

23. It was contended that the petitioner was given opportunity as provided under Rule 5 of Ordinance 13, but he failed to avail that opportunity and even though an opportunity of personal hearing before the appellate authority was given to petitioner, he did not avail the same. It is specifically alleged that the petitioner threatened the Vice Chancellor and the Proctor that he would foist a false case under the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act,1989 against them, that he had been continuously creating nuisance before and after filing of the Writ Petition and that he had a history of misconduct and indiscipline. It was denied that the impugned order has been passed on extraneous considerations.

24. It was denied that the Proctorial Board was not properly constituted. Alternatively, learned counsel for respondents relied on Section 41 of the English and Foreign Languages University Act, 2006 which stated that no Act or proceedings of any authority or other body of the University shall be invalid merely by reason of the existence of a vacancy or vacancies among its members. She contended that assuming for the sake of argument without conceding that there is any defect in the constitution of the said Board, petitioner cannot benefit from it in view of Sec.41. It was stated that the petitioner was continuously creating nuisance by bringing outsiders into the hostel and when questioned, he was threatening the staff with dire consequences and several complaints were filed on 23-10-2014, 20-11-2014, 22-11-2014, 01-12-2014 and 26-05-2015 against him. It is

contended that the conduct of the petitioner is aimed at destroying the academic atmosphere of the University and targeting the administration of the University and because of his actions, the reputation of the University in the eye of the public has been lowered. It is also contended that any lenient view taken in favour of petitioner would cause irreparable damage to the academic reputation of the University apart from being unfair to the student community of the University campus and it would be very difficult for the University to function as per its mandated Statutes, Ordinances and Rules and enforce its disciplinary processes.

25. Learned counsel for respondents relied on **Hira Nath Mishra and others Vs.The Principal Rajendra Medical College, Ranchi and another**, **Sardar Anmol Singh Vs. Registrar, Osmania University, Hyderabad, A.P. and another**, **R.Seshagiri Rao and others Vs. University of Hyderabad and another**, **Anup Pratap Singh Vs. Principal, Udai Pratap Mahavidyalay (Autonomous)** and **Suresh Koshy George Vs. University of Kerala and others**.

REPLY AFFIDAVIT

26. A reply affidavit was filed by the petitioner denying the allegations made against him in the counter-affidavit filed by the respondents. It is contended that the respondents are raising extraneous allegations which have nothing to do with the present proceedings with an intention to victimize him for expressing solidarity with the Student Union. He stated that although a police complaint was lodged in relation to the incident, he replied to it and the elected Students' Union also

replied that it had called for the protest and the petitioner had nothing to do with it. He denied that he threatened anyone as alleged by the respondents. He denied that any notice was given to him to be personally present and that he did not choose to appear. He reiterated that he was not given due opportunity to defend himself to appear before the Proctorial Board in person and that the enquiry was conducted by it in haste, behind his back and so it's decision is vitiated. He denied admonishing witnesses with dire consequences. He also denied that he was asked to appear before the appellate authority. He alleged that fresh accusations were made which are untrue and since he belonged to O.B.C. community, he could not have threatened to file a case under the S.C. & S.T. (POA) Act, 1989. He stated that there is no evidence that he had indulged in any act of vandalism. He also accused the respondents of acting malafide and misusing power.

THE POINT FOR CONSIDERATION

27. Therefore the point for consideration is:

"Whether the action of 3rd respondent in rejecting the appeal filed by petitioner on 28-07-2014 confirming the order dt.06-05-2014 of the 4th respondent rusticating the petitioner for four semesters is proper or not?"

THE CONSIDERATION BY THE COURT

28. Before I deal with the respective contentions, it is pertinent to take note of the observations of the 3 Judge Bench of the Supreme Court in **Varanasya Sanskrit Vishwavidyalaya and another Vs. Dr.Raikishore Tripathi and another** that in a matter touching either the discipline or the administration of the

internal affairs of a University, Courts should be most reluctant to interfere and they should refuse to grant any injunction unless a fairly good *prima facie* case is made out for interference with the internal affairs of the educational institutions. This principle has been reiterated in **Vice- Chancellor, Guru Ghasidar University Vs. Craig Macleod** that maintenance of discipline in the University is equally important for a conducive academic environment and that the larger interests of the academic community are more central than the individual interests of a student.

29. In the present case, it was alleged that the petitioner was one of the persons responsible for breaking the glass door of the University library on 11-03-2014 and he had instigated other students to do the same and a show cause notice dt.24-03-2014 was issued to him. This charge was denied by petitioner in his reply dt.24-03-2014. The petitioner in the said reply, however, stated that as the General Secretary of the Telangana Students' Association and as per the said Organisation's decision, he went and expressed solidarity with the Students Union's struggle for reopening of the Reading room that was closed without any prior notice and that it was his right to express solidarity for the Student Union's rightful demand.

30. Clause (5) of Ordinance 13, which deals with Rules of Discipline and proper conduct of students of the 1st respondent University states that before any punishment is imposed on a student, he has to be found guilty of an offence for which he has been charged by Proctorial Board or other enquiry after following

normal procedure and providing due opportunity to the student charged of the offence to defend himself.

31. Learned counsel for petitioner contends that in the enquiry conducted by the Proctorial Board, certain witnesses were examined in his absence and he was not allowed to cross examine them and therefore principles of natural justice were violated.

32. According to respondents, since the petitioner was openly admonishing the witnesses with dire consequences, the witnesses were examined separately and independently and their statements were recorded. In the counter-affidavit, the respondents had alleged that the petitioner had threatened the Vice Chancellor and the Proctor that he would foist false cases under Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act against them also. In the order dt.28-07-2014 also, the 3rd respondent referred to the threats made by the petitioner to the University authorities. This is no doubt denied by the petitioner.

33. The question arises whether the University was bound to record statements of the witnesses in the presence of petitioner and allow the petitioner to cross examine the witnesses in the light of the allegation made by the respondents.

34. As far back in 1973, the Supreme Court in **Hira Nath Mishra** (6 supra) held that the doctrine of natural justice cannot be imprisoned within strait-jacket of a rigid formula and its application depends upon several factors. In that case, disciplinary action was taken against male students of a college

on the ground that they trespassed into the premises of a girl's hostel and walked without wearing clothes before the female students. In that case also, evidence of girl students, who had witnessed the conduct of male students, was recorded in the absence of the male students. When it was contended for the male students that there has been a violation of natural justice, the Supreme Court rejected the said plea on the ground that the girl students would not have ventured to make their statements in the presence of the male students involved because if they did, they would have most certainly exposed themselves to retaliation and harassment thereafter since the college authorities were in no position to protect the girl students outside college precincts. Therefore there was nothing wrong in the college authorities recording the statements of the girl students in the absence of the male students and acting on the basis of such evidence. It was also held that the male students cannot demand that the report containing the evidence of the girl students be given to them. It followed it's earlier Constitution Bench judgment in **Union of India Vs. P.K.Roy**.

35. The principle that rules of natural justice are flexible and are not cast in a rigid mould has been reiterated time and again by the Supreme Court in **Maneka Gandhi Vs. Union of India and another** and **Swadeshi Cotton Mills Vs. Union of India** etc.

36. To insist that evidence of witnesses who spoke about violence indulged in by a student and who is also alleged to have threatened them as well as the Vice Chancellor, the Proctor should be recorded in his presence, and he be allowed to cross-examine the witnesses who deposed against him, would be a travesty of justice since in such an environment

witnesses would not depose freely and would feel intimidated and may not even come forward to depose. This would be counter productive to the very purpose of ensuring that discipline in the university is maintained.

37. The decision in **Sanjay Jethi** (1 supra) cited by the learned counsel for petitioner has no application to the present case since it related to the proceedings against a member of the Armed forces where allegations of bias figured.

38. In **B.S.Narwal** (2 supra) cited by learned counsel for petitioner, the Supreme Court rejected a plea of a student who invoked principles of natural justice in the matter relating to assessment of his academic performance. It held that in academic matters such right may not be implied and in non-academic matters a right to be heard *may* be implied. It however did not state that such a right *shall* be implied in all situations.

39. In **Ram Narayan Keshori** (3 supra) the Calcutta High Court no doubt held that a right to cross-examine the witnesses should be given to a student in proceedings initiated against him for adopting unfair means in examinations. But such is not the fact situation here. Even otherwise, the Supreme Court in **Ram Preeti Yadav v. U.P.Board of High School and Intermediate Education** held that in cases of mass copying in examinations, principles of natural justice need not be strictly complied with. So the decision in **Ram Narayan Keshori** (3 supra) is no longer good law.

40. The decision in **Azam Meer Khan** (5 supra) also will not come to the aid of petitioner since in that case, the show cause

notice itself was not served on the petitioner thereby depriving him of an opportunity to submit an explanation to it.

41. Therefore I reject the contention of the learned counsel for petitioner that there has been a denial of natural justice in the facts and circumstances having regard to the serious allegation of intimidation leveled by respondents against petitioner.

42. The statements of the Security Guards and other witnesses examined by the Proctorial Board were produced before this Court by the respondents. Some of them clearly spoke about the violence indulged in by the students in the University library. The petitioner was clearly identified as a person directly involved in the violence resulting in destruction of the University Library glass door along with two other students Mohan Dharavath and Subash Kumar. The Proctorial Board in its meeting held on 09-04-2014 took note of this evidence and recommended that the petitioner be rusticated for four semesters. Therefore it cannot be said that there is no material on the basis of which the Proctorial Board could have come to the decision that the petitioner was responsible for the act of vandalism of destroying the glass door of the University Library and deserved the punishment of rustication for four semesters. I am of the opinion that the 1st respondent did not err in accepting the said recommendation and passing the order dt.06-05-2014 against the petitioner. I am also of the opinion that the 3rd respondent considered all the material on record and rightly confirmed the order dt.06-05-2014 of the

1st respondent in its proceeding dt.28-07-2014.

43. The punishment imposed on the petitioner cannot also

said to be disproportionate to the proved misconduct.

44. As regards the plea raised by the petitioner about defect in constitution of the Proctorial Board is concerned, assuming that the said Proctorial Board was not constituted properly, still in view of Section 41 of the English and Foreign Languages University Act, 2006 (which states that no act or proceedings of any body of the University shall be invalid merely by reason of existence of a vacancy among its members), it has no merit. Therefore the said plea is also rejected.

45. Even assuming that there is any substance in the petitioner's contentions, having regard to the fact that the rustication of the petitioner has been in force from 06-05-2014 till date for more than 22 months, and the rustication would cease from 05-05-2016,

I am of the opinion that it is not a fit case to interfere with the orders of rustication passed by the respondent Nos.1 and 3.

46. I n **Than Singh Vs. Superintendent of Taxes** a Constitution Bench of the Supreme Court held that power under Article 226 of the Constitution of India is discretionary and supervisory in nature and it is not issued merely because it is lawful to do so.

47. In **State of Maharastra Vs. Prabhu** , the Court held that the Court has to maintain the social balance by interfering where necessary for sake of justice and refusing to interfere where it is against the social interest and public good.

48. In **Ritesh Tewari Vs. State of Uttar Pradesh,** the Supreme Court has reiterated the above principles and held that

a Writ Court should interfere only to advance justice and not to thwart it and the extraordinary power in the Writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice.

49. In this view of the matter and particularly in view of the decisions of the Supreme court in **Varanasya Sanskrit Vishwavidyalaya** (11 supra) and **Vice- Chancellor, Guru Ghasidar University** (12 supra) that maintenance of discipline in the University is important for a conducive academic environment and larger interests of academic community are more central than the individual interests of the petitioner, this Court is not inclined to grant any relief to the petitioner.

50. Therefore the Writ Petition is dismissed. No costs.

51. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-03-2016

Kvr/Vsv

Note :

LR Copy to be marked : **YES**

B/o.

Vsv/*