

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.386 of 2018

In
Civil Writ Jurisdiction Case No.9471 of 2017

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Jitender Singh Tomar, son of Sri Balbir Singh Tomar, Resident of Mohalla- G-102, Shakurpur, P.S.- Netaji Subhash Place, Delhi- 34

... .. Appellant/s

Versus

1. Tilka Manjhi Bhagalpur University, Bhagalpur, through its Vice Chancellor
2. The Vice-Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur
3. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur
4. The Examination Controller, Tilka Manjhi Bhagalpur University, Bhagalpur
5. The Principal Bishwanath Singh Institute of Legal Studies College, Munger, Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. P.K. Shahi, Sr. Advocate. Mr. Kush Sharan, Advocate Mr. Vikas Kumar, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, Sr. Advocate Mr. Ashhar Mustafa, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-04-2018

Seeking exception to an order passed on 23.01.2018 by a Bench of this Court in C.W.J.C. No. 9471 of 2017, this appeal has been filed under Clause 10 of the Letters Patent.

Before dealing with the legal issues involved in the matter, it would be appropriate to take note of the facts of the case in brief.



The appellant herein is an elected representative and it seems that at some point of time he was the Law Minister in the National Capital Territory of New Delhi and presently is a member of the Legislative Assembly. Be it as it may be, it is his case that, he took admission in LL.B Part-I for the Session 1994-95 with the University in question, namely, the Tilka Manjhi Bhagalpur University and passed the LL.B. examination in 2nd Division in the year 1996. He was issued with a provisional certificate in the year 2011. Thereafter, he applied for enrolment with the Bar Council of Delhi and vide Enrolment No. D/134 of 2011 he was granted enrolment as an Advocate. When things were so standing, as indicated hereinabove, a writ petition was filed in the High Court of Delhi being Writ Petition (Civil) No. 1056/2015 by one Santosh Kumar Sharma and it was alleged in the said writ petition that the so-called certificate of having acquired the LL.B. Degree from the University in question is a forged and fabricated one. It seems that based on the facts that came to its notice, the University conducted an internal inquiry into the matter and as is evident from Annexure-C, available in the record of the writ petition, an Inquiry Report was submitted *prima facie* finding that the certificate was forged. Thereafter, a detailed inquiry was conducted and the



University by its order dated 18.05.2017 cancelled the certificate of the appellant and the said cancellation led to filing of the present writ petition. In the writ petition it was the case of the petitioner that before cancelling his certificate and before taking the impugned action, the principles of natural justice have been violated inasmuch as certain documents which were called for by him were not granted. Witnesses were examined behind his back and in violation to the principles of natural justice as the entire action is taken behind his back, the same is unsustainable in law. The matter was heard by the learned Writ Court and on 23.01.2018 with regard to the grievance of the petitioner pertaining to violation of the principles of natural justice, the findings recorded by the learned Writ Court reads as under:-

“The petitioner has been able to make out a case that there has been some infraction of the principles of natural justice in taking decision of cancellation of the petitioner’s LL.B. Degree with the issuance of the notification No. 98 of 2017. It is the case of the petitioner that certain documents, which were essential for him to inspect and examine for the purpose of preparation of his effective reply to the show cause notice were not made available to him. It is also his case that decision of the University is based on, inter alia,



evidence collected on examination of certain persons, behind his back.”

From the aforesaid, it is clear that the learned Writ Court recorded a categorical finding based on the material that came on record that the inquiry has been conducted in a manner which indicates violation of the principles of natural justice. Documents sought for were not supplied and evidences collected behind the back of the petitioner were used to hold him guilty of the allegations levelled against him in the matter of forging or obtaining a forged certificate with regard to the course/examination in question. Having held so, instead of remanding the matter back to the University for causing an inquiry, the Writ Court from Paragraph 2 onwards went to consider various aspects of the matter, certain orders passed by the Bar Council of India under Section 36(B)(I) of the Advocates Act, 1961. in B.C.I. Tr. Case No. 129/2016 keeping the enrolment of the petitioner in abeyance pending inquiry into the matter and thought it appropriate, that is, instead of relegating the matter for inquiry by the University, the Writ Court took upon itself the task of conducting the inquiry into the matter and directed the University and the parties to file all the affidavits and documents and is now proceeding to conduct the inquiry in the writ petition itself. At this stage, the petitioner has



filed the appeal and at the time of admission it was the case of the appellant that once the learned Writ Court found the impugned action taken to be in violation to the principles of natural justice, the learned Writ Court instead of causing the inquiry itself should have relegated the matter back to the University for conducting the inquiry, as a fact finding inquiry which includes examination of witnesses and their cross-examination before the Writ Court would not be possible.

Taking note of the aforesaid submission that was made at the time of admission, we *prima facie* were of the view that the aforesaid contention of the appellant seems to be correct and, therefore, noticed the University and asked them to show-cause as to why the order passed by the learned Writ Court proposing to conduct the inquiry in the writ petition be not interfered with and the inquiry entrusted to the University.

The University has now filed a detailed counter affidavit and during the course of hearing it has been pointed out to us that no prejudice has been caused to the appellant in the matter of conduct of an inquiry and the action taken by the University. The material adduced were already within the notice of the appellant as they were part of the record in the writ petition that was pending before the Writ Court at Delhi, and,



therefore, it is tried to be argued that in the absence of prejudice being shown and demonstrated if the inquiry conducted by the University which is found to be unsustainable, now by the Writ Court is not a correct finding.

We have considered the rival contentions and we propose to deal with the issue based on the material available on record.

Before proceeding to consider various aspects of the matter, we may take note of the fact that the finding recorded by the learned Writ Court, as is reproduced hereinabove, holding the action taken against the appellant to be in violation of the principles of natural justice has not been challenged by the University and the University has not filed any appeal against the aforesaid order. That being so, this finding has attained finality as far as the University is concerned and the University now cannot contend or try to demonstrate before us that as no prejudice has been caused to the appellant, documents were already available with him, therefore, the question of further inquiry into the matter does not arise and the action of the University should be approved.

We are not inclined to accept the aforesaid contention of the University for two reasons; one that the order



passed by the Writ Court indicates that after going through the entire records, the Writ Court found that relevant documents were not supplied to the petitioner and as it is clear that 16 witnesses were examined in the inquiry proceedings and they were not subjected for cross-examination by the petitioner. That being so, it is a case where evidence collected behind the back of the petitioner has been used against him for holding him guilty of the allegations levelled against him and this being the factual position, the question of prejudice not being caused is of no consequence in the matter. We have no hesitation in holding that in recording a finding that the inquiry conducted behind the back of the petitioner is unsustainable being in violation to the principles of natural justice, the learned Writ Court has not committed any error and we cannot accede to the stand of the University taken before us.

Having held so, we are now required to consider as to whether we should approve the procedure being followed by the learned Writ Court in conducting the inquiry itself in a proceeding under Article 226 of the Constitution of India or the appeal should be allowed and the University directed to conduct the inquiry afresh in accordance with law.

Normally, if an inquiry which does not involve



examination of witnesses or examination of complicated question of law and facts, we could have permitted the Writ Court to cause the inquiry and come to a conclusion but in this case we find that apart from documentary evidences, 16 witnesses have been examined in support of the allegation made against the petitioner and if 16 witnesses are to be examined, the petitioner would have a right to cross-examine these witnesses based on the statement to be given by them before the Writ Court in form of an affidavit. Once there is requirement of cross-examination of the witnesses and it is a fact finding inquiry in its complete sense, we are of the considered view that a Court exercising extraordinary jurisdiction under Article 226 of the Constitution cannot be converted into a trial court or a Tribunal where evidences are recorded, cross-examination of witnesses undertaken and findings are recorded with regard to disputes on fact.

In our considered view, the learned Writ Court in the peculiar facts and circumstances of the case having come to the conclusion that the inquiry conducted against the petitioner was in violation to the principles of natural justice should have allowed the writ petition, remanded the matter back to the University for proceeding in the matter in accordance with law



and if the Writ Court found that the question of staying the order passed by the Bar Council or granting relief to the petitioner in making use of the degree/certificate was not proper or appropriate, pending finalization of the case, the Writ Court could have very well in exercise of its extraordinary jurisdiction prevented the petitioner from using the so-called alleged certificate till conclusion of the inquiry by the University. They could have taken care of all the anxiety which was taken note of by the learned Writ Court and which prompted the learned Writ Court to conduct the inquiry itself.

In our considered view, taking note of all these circumstances, we allow this appeal and quash the order of the learned Writ Court so far as it directs to proceed with the inquiry. We direct that the matter be remanded back to the University. The University shall cause an inquiry into the matter in accordance with law, give opportunity to the appellant to defend himself in the inquiry and till an inquiry is not conducted, the appellant shall be prohibited from using the degree/certificate in question. The degree/ certificate shall not be used by the appellant for any purpose till inquiry by the University is not completed or the appellant is not exonerated of the allegations in accordance with law. Appellant should



cooperate in conduct of the inquiry and we direct that the inquiry be concluded and brought to its logical conclusion within a period of three months from the date of receipt of certified copy of this order. Till decision in the matter, as indicated hereinabove, the order cancelling the degree/certificate shall be kept in abeyance. The petitioner shall appear before the Registrar of the University along with the certified copy of this order on 16th of May, 2018.

With the aforesaid, the Letters Patent Appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

P.K.P./-

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