

16.02.2023

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WPA 2103 of 2023

Akshay Karmakar

Vs.

Visva Bharati & Ors.

Mr. Kalyan Bandopadhyay
Senior Advocate,
Mr. Suman Sengupta
Mr. Dibjoyti Chakraborty
Mr. Rahul Kumar Singh
... For the petitioner.

Mr. Jayanta Narayan Chatterjee
Ms. Moumita Pandit
Mr. Supreem Naskar
Ms. Jayashree Patra
... For respondent nos. 1-5.

Let the supplementary affidavit filed today by the petitioner in Court be taken with the records.

The petitioner has challenged an order dated January 16, 2023, issued by the Proctor of Visva-Bharati which confirmed a proposed suspension order against the petitioner. The relevant part of the said order is quoted below:

“...1. The letters of apology dated 12.01.2023 and 16.01.2023 tendered by (i) Debductta Mete (ii) Akshay Karmakar (iii) Mritunjoy Das (iv) Suprio Kumar Saha (v) Amalendu Das (vi) Sourav Bandhu Das and (vii) Pratyush Mukherjee are unacceptable as they have not sought apology in accordance with the verdict

passed by the Hon'ble Justice Kausik Chanda of Calcutta High Court on 11.01.2023 in WPA Nos.531,534,539, 551, 555,562 of 2023. The Committee also took into account the Order passed by the Hon'ble High Court in WPA No.1234 of 2023.

2. The order of proposed suspension issued on 23.12.2022 by the Proctor in respect of the seven students namely (i) Debdutta Mete (ii) Akshay Karmakar (iii) Mritunjoy Das (iv) Suprio Kumar Saha (v) Amalendu Das (vi) Sourav Bandhu Das and (vii) Pratyush Mukherjee is hereby confirmed with immediate effect and will continue until further order. None of the above noted seven (7) students will be allowed to take part in any academic activities including appearing for any examination of the University and none of them will be awarded any degree/certificate/mark-sheet/citation/transcript etc. until further order."

Before advertng to the legality of the said order dated January 16, 2023, the backdrop of the same needs to be narrated. On December 23, 2022, the university issued a show cause notice to the petitioner.

The relevant part of the said show cause notice is quoted below: -

“As directed by competent authority of the university and as per the resolution of the Executive Council of Visva-Bharati in its meeting held on 14.12.2022, your studentship in Visva-Bharati is being proposed to be suspended for the duration of one year with effect from 15.01.2023 due to your involvement in the unlawful confinement of the Vice-Chancellor of Visva-Bharati in his office chambers for over ten hours accompanied by physical, mental and verbal abuse as well as vandalism and destruction of university property including CCTV and peripherals on 23.24 November 2022.

Moreover, you also participated in physically and violently preventing the Vice Chancellor from leaving his official quarters ‘Purbita’ for 20 days.

You may submit your representation against the proposed suspension, within 10 (ten) days of receiving this communication, failing which it will be presumed that you have nothing to say in your defence and

proposed suspension will be treated as confirmed.”

In response to the said show cause notice, the petitioner by his reply dated 26th December 2022, denied the allegations made against him and ultimately approached this Court by filing WPA No.539 of 2023 (Akshay Karmakar v. Visva Bharati & Ors).

When the matter was taken up for hearing, learned Senior advocate appearing on behalf of the petitioner submitted that the petitioner is willing to tender his apology in terms of a settlement arrived at between the representatives of the students and the university authority on January 05, 2023. In view of the stand taken by the petitioner, the Court directed to the petitioner to submit a letter of apology within 48 hours from that date to the Proctor of the university. It was further directed that upon acceptance of the apology letter, the university would refrain itself from taking any punitive action against the petitioner.

It should be mentioned herein that by the said settlement dated January 05, 2023, it was agreed that the students would “tender unconditional apology if any act on their part had brought disrepute to the institution and hurt the dignity of the university authority.”

The university also consented to the said order.

The petitioner, thereafter, by a letter dated January 12, 2023 submitted a letter of apology before the university. The said letter of apology is quoted below: -

“As directed by the Hon’ble High Court by an order dated January 11, 2023 in WPA 539 of 2023 I tender apology if any act on my part had brought disrepute to the institution and hurt the dignity of the authority.”

Significantly it appears that the petitioner by a further letter dated January 15, 2023 submitted another letter before the Proctor of the university. Said letter is also quoted below: -

“I have already apology in terms of the order of the Hon’ble High Court passed in WPA 539 of 2023. Despite not being involved in any kind of indiscipline activities which is further evident from the order dated January 6, 2023 passed by Judicial Magistrate 1st Court, Bolpur, Birbhum in C Case No. 1598 of 2022 I tender unconditional apology in view of your email dated January 13, 2023 and January 14, 2023. I further inform you that I have never indulged in any disruptive activities viz Verbal and physical abuse,

damage to university property and as student of the university most certainly shall not indulge in any such activities. I always concentrate in academic activities and will continue to do so in future.”

By the order impugned dated January 16, 2023, the university declined to accept the said apology letters dated January 12, 2023 and January 15, 2023. According to the university, the petitioner did not tender apology in terms of the order dated January 11, 2023, passed in WPA No.539 of 2023.

Before I proceed to discuss the merits of the case it is necessary to record the stand of the university before this Court in this case. The university has maintained its earlier stand that it is not at all willing to continue with the suspension order against the petitioner.

If a simple letter of unconditional apology is written to the university by the petitioner, he will be allowed to continue with his studies and take examinations by revoking the suspension order.

Mr. Kalyan Bandopadhyay, learned Senior Advocate appearing for the petitioner has sought to attack the order dated January 16, 2023 on two-fold grounds. Firstly, Mr. Bandopadhyay referred to the letters dated January 12, 2023 and January 15, 2023

to suggest that the petitioner has tendered apology in terms of the order passed by this Court on January 11, 2023 in **WPA 539 of 2023 (Akshay Karmakar vs. Visva Bharati & Ors.)** He submits that the university ought to have accepted the said letters and lifted the suspension issued against the petitioner.

Secondly, it has been submitted by Mr. Bandopadhyay that the university has no legal competence to impose the order of suspension. He has drawn the attention of this Court to a complaint lodged by the university under Section 200 of the Code of Criminal Procedure, 1973, before the Chief Judicial Magistrate at Bolpur against some of the students over the alleged incidents of confinement of the Vice-Chancellor, vandalism and destruction of university property on November 23, 2022 and November 24, 2022. The learned Magistrate ultimately upon receipt of the police report, dropped the complaint by an order dated 12th December, 2022.

Mr. Bandopadhyay has further drawn the attention of this Court to the Visva-Bharati Act, 1951 and the Statutes of the University. He submits that the said Act does not provide any provision for suspension of a student. It only speaks of suspension of teaching staff of the university. By referring the **Statue 20 O(3)**, it has been submitted by Mr. Bandopadhyay that where

any student of university commits any misconduct within the precincts of the university or commits any offence in relation to any examination conducted by the university, the university is competent to take disciplinary action against such student for such misconduct.

In the present case, the university has not initiated any disciplinary action against the petitioner. Without the initiation of a disciplinary proceeding, the university could not have suspended the petitioner. By referring to the **Statute 47**, Mr. Bandopadhyay submits that in the matter of discipline and disciplinary action of a student, it is the Vice-Chancellor of the University who is empowered to take appropriate action and the Vice-Chancellor can delegate such powers to the Proctor or any authority of the University to be exercised under the direction and supervision and control of the Vice-Chancellor. There is no provision in the Statutes of the University which empowers the University to suspend a student.

It has been further submitted by Mr. Bandopadhyay that the University could not have imposed any punishment upon the petitioner without any conclusive disciplinary proceedings. The impugned order whereby the petitioner has been suspended, amounts to a punishment without initiating any

disciplinary proceedings. Therefore, the said order cannot be sustained in the eye of law.

Mr. Bandopadhyay in support of his submission referred to paragraphs 25, 26 and 29 of a judgment reported at **(2020) 10 SCC 670 (Ankita Kailash Khandelwal and Others Vs. State of Maharashtra and Others)**. The said paragraphs are quoted below: -

“25. We are, thus, called upon to consider the competing claims in such a way that the individual rights of the appellants to pursue their courses of study are secured and, at the same time, the conduct of prosecution also runs smoothly and without any interference and possibility of witnesses getting won over. In that view, it must be noted:

25.1 The appellants before us are three lady doctors who are pursuing postgraduate medical course (MD) in Gynaecology and Obstetrics and have completed two years out of three years of course. The course is well coveted and considered to be a specially course in that field. |The appellants do not appear to be original residents of Mumbai and, as such, it cannot be said that they or their families have deep-rooted presence in Mumbai.

25.2. As noticed by this Court in Sumit Mehta, if the law presumes an accused to be innocent till his guilt is proved, the appellants as presumably innocent persons, are entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution and are entitled to pursue their course of study so long as exercise of said right does not hamper smooth conduct and progress of the prosecution.

25.3. The stand taken by the state through the affidavit filed by the Deputy secretary, Medical Education and Drugs Department, Government of Maharashtra, is that the appellants can prosecute their postgraduate course in future after conclusion of the trial. Said submission and the observation by the High Court in para 11 of the order, in our view, are not correct. Even a convict is allowed to have academic pursuits which undergoing sentence and develop his potential as a human being to the fullest. The State apparatus

must facilitate such pursuits rather than hamper any attempts in that behalf. The appellants, therefore, by any standard, are entitled to continue their courses of study subject to the caveat expressed earlier.

25.4. It is a matter of record that as observed by the High Court in para 15 of its order dated 9-8-2019, the statements of all materials witnesses have been recorded under Section 164 of the Code. In fact, the High Court went to the extent of ensuring that such statements are recorded so that witnesses could not be won over by the appellants after they were enlarged on bail. Therefore, the apprehension that the witnesses could be influenced is not quite correct.

25.5. The majority of witnesses to be examined by the prosecution appear to be in permanent employment of the College and the Hospital. It will be difficult to imagine that three lady doctors who do not otherwise belong to Mumbai will be able to influence any such witnesses by their mere presence in the College and the Hospital.

25.6. The appellants require to put in the last year of their course and as stated by Mr. Siddharth Luthra, learned Senior Advocate, the actual period that they need to undergo by way of training is only nine months. It is, thus, a question of putting those nine months in one scale and see whether the other scale becomes so weighty that the request to allow them to pursue their courses must be rejected.

26. Another issue raised is about the Order of Suspension passed against the appellants. The facts on record indicate that the report of the Anti-Ragging Committee and the Order of Suspension were issued on the same date i.e. on 27-5-2019. The submission of Mr. Siddharth Luthra, learned Senior Advocate, that the Order of Suspension was not based on the report of the Anti-Ragging Committee merits acceptance because of following features viz. (a) the outward number for the Order of Suspension is NDN/172 while that of the report of Anti-Ragging Committee is NDN/183, which means the Order of Suspension was issued earlier to the report of the Anti-Ragging Committee; (b) both the communications are under the signature of the Dean of the College and the Hospital and yet, the Order of Suspension does not make any reference to the report of the Anti-Ragging Committee; (c) the Order of Suspension is based purely on the registration of FIR registered against the appellants which is why "*taking cognizance of this*" the Order of Suspension was passed; and (d)

when a request for revocation of suspension as made, it was rejected on 25-10-2019 because of order dated 9-8-2019 of the High Court and not because of the report of the Anti-Ragging Committee.

.....

29. As stated hereinabove, the Order of Suspension does not even record any such finding or prima facie view. As a matter of fact, the Order of suspension was not passed by virtue of power entrusted under Section 6 (1) of the 1999 Act but was based on the grounds that the appellants were creating hurdles in the enquiry by the police and that there was an FIR against them. We, thus, conclude that the Order of suspension is not referable to Section 6 (1) of the 1999 Act. Apart from Section 6 (1) as aforesaid, no other statutory provision has been referred to or relied upon.”

I have no quarrel with the proposition of law as submitted by Mr. Bandopadhyay, learned Senior advocate.

It does not appear that there was any disciplinary proceeding in contemplation, no charge sheet has been issued against the petitioner.

Mr. Jayanta Narayan Chatterjee, learned advocate appearing for the University also did not cite any provision which empowered the University to impose the order of suspension without initiation of a disciplinary proceeding.

There cannot also be any dispute with regard to the proposition of law as laid down in **Ankita Kailash Khandelwal (supra)**.

I am, however, not inclined to go into the legal aspect of the matter in view of the stand taken by the

petitioner before this Court on January 11, 2023 in WPA 539 of 2023 (Akshay Karmakar v. Visva Bharati & Ors.). The petitioner, after agreeing to tender unconditional apology in the earlier round of litigation cannot raise the legal issues before this Court at this stage. The arguments of Mr. Bandopadhyay also become irrelevant in view of the consistent stand taken by the University expressing its unwillingness to continue with the suspension order provided the petitioner tenders an unconditional apology.

It is beyond comprehension what really prompted the petitioner to write a further letter on January 15, 2023, after tendering his unconditional apology by letter dated January 12, 2023. The letter dated January 15, 2023 was wholly uncalled for. It diluted the character of tendering an apology unconditionally, which prompted the university not to accept the same.

Tendering an apology to a teacher may not necessarily compromise a student's self-dignity. It must be remembered that apologizing for one's mistakes is an important part of personal growth and development. It can be a way to demonstrate humility and show that one is willing to learn from his mistakes. Apologizing also helps to repair relationships and restore trust, both of which are important in a learning environment.

I also keep it on record that some other students, who had been similarly suspended by the University, tendered unconditional apology to the University. Accordingly, the university lifted the suspension order issued against them.

In that view of the matter, I do not feel that the petitioner should be indulged to continue with his legal battle before this Court. Instead, he should be asked to write another letter to the university by which he would withdraw his letter dated January 15, 2023 and treat the letter dated January 12, 2023 as his only letter of apology.

Needless to mention that if such letter is written by the petitioner before the University within 48 hours from date, the University will revoke the suspension order against the petitioner forthwith and allow him to resume his studies and take the upcoming examinations.

With the aforesaid observations, WPA 2103 of 2023 is disposed of.

There will be no order as to costs.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)