

09-06-2023
AKG
Ct. 238

WPA 13201 of 2023
Soma Mukhopadhyay
Vs.
The State of West Bengal & Ors.

Mr. Debashis Saha
...for the Petitioner

Mr. Swapan Kr. Datta,
Mr. Tapas Kr. Dey
...for the State

Mr. Nilotpal Chatterjee,
Mr. Amrita Lal Chatterjee
...for University of Calcutta

Mr. Vivekananda Bose,
Mr. Ratikanta Pal
...for the Respondent Nos. 8 & 9.

Mr. Saptangsu Basu,
Ms. Mrinalini Majumdar
...for Governing Body

In this writ petition, the petitioner challenges a notice dated May 2, 2023, issued by a preliminary enquiry committee of Bagnan College, Howrah.

Mr. Debashis Saha, the learned advocate representing the petitioner, argues that the impugned notice is mala fide. The college Principal harbours a vindictive attitude towards the petitioner. The petitioner was suspended from the college's governing body at the behest of the Principal, but this suspension order has been temporarily stayed by the Court. Additionally, it is claimed that a member of the enquiry committee is a learned advocate who previously represented the Principal in a disciplinary proceeding against the petitioner. It is contended that this preliminary enquiry has been initiated solely to

harass the petitioner. Mr. Saha prays for stay of the enquiry proceedings.

Mr. Saptangsu Basu, the learned senior advocate representing the college's governing body, submits that there are various allegations against the petitioner, including embezzlement of funds and illegal admission of students. These allegations were discussed in meetings of the governing body, where the petitioner was present, thereby making the petitioner fully aware of the allegations that are being investigated. Mr. Basu further argues that the purpose of this preliminary enquiry is only in nature of fact finding exercise to ascertain the truth of the allegations.

He submits that only after the enquiry report is received, the governing body will decide whether to proceed further against the petitioner. He also contends that a preliminary enquiry does not require strict adherence to the principles of natural justice. He further argues that even in the absence of a statutory provision, the governing body can conduct a preliminary enquiry without causing prejudice.

To support his submission, Mr. Basu relies on a judgment reported at **(2007) 1 SCC 477 (Rajasthan Housing Board Vs. G. S. Investments)**.

Mr. Vivekananda Bose, the learned advocate

representing the college Principal, adopts the petitioner's submission.

Mr. Swapan Kr. Datta, the learned senior advocate representing the State, argues that this writ petition is premature. Given the gravity of the allegations against the petitioner, it is necessary to establish the facts by forming a preliminary enquiry committee.

The show-cause notice dated May 2, 2023, initiating the preliminary enquiry against the petitioner, however, is worth quoting:

“This is to inform you that a Preliminary Enquiry Committee has been constituted by the Governing Body of Bagnan College, Howrah in its meeting, dated 01.12.2022, by appointing three members including the Chairman and two other members to conduct the Preliminary Enquiry against four teaching staff of Bagnan College including you for alleged several violations of rules and regulations, irregular/illegal activities and disputes, etc.

In terms of the said meeting the three members of the Preliminary Enquiry Committee have been appointed by the President of the Governing Body of the Bagnan College, Howrah, dated 22.12.2022. The members of such committee have accepted such appointments and started their functions. The said Preliminary Enquiry Committee held several meetings. Further, the members of such Committee considered the statements of disputes and allegations including the documents submitted on behalf of the College Authority against the said four teaching staffs including you in the meetings held on 29.01.2023,

19.01.2023, 09.04.2023 and 23.04.2023 respectively.

After considering the various aspects of the matter, the members of the said Committee felt necessary to request you to remain present with your all relevant original academic and service related documents and for your personal hearing before such Preliminary Enquiry Committee.

Accordingly, the undersigned being the Chairman and one of the members of such Committee requests you to remain present before such Preliminary Enquiry Committee on 14.05.2023 (Sunday) at 12.30 P.M. at the Bagnan College premises (at Extended IQAC Room) with your all relevant original academic and service related documents and for your personal hearing. You are hereby requested further to submit a set of self-attested photocopies of all original documents to the undersigned on that date of hearing.

Look forward to your co-operation

With warm regards,

Yours sincerely,”

Upon reading the show-cause notice dated May 2, 2023, it is evident that no specific allegations are made against the petitioner. The notice is too vague, and no enquiry, even of a preliminary nature, should have been initiated based on such a notice.

I am of the opinion that regardless of the subject matter of the discussions in the governing body meetings, the notice dated May 2, 2023, should have specified the allegations against the petitioner for which the preliminary enquiry was being conducted. It was also highly unusual and

inappropriate to ask the petitioner to produce her original academic and service-related documents against herself. Consequently, the notice dated May 2, 2023, and the subsequent notice dated June 1, 2023, are set aside.

WPA 13201 of 2023 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)

Later:

Immediately, after the order was passed, Mr. Basu, the learned senior advocate, on instruction informed the court that the enquiry committee will withdraw the notices dated May 2, 2023, and June 1, 2023. In light of this, the notices dated May 2, 2023, and June 1, 2023, are treated as withdrawn by the enquiry committee, granting the college the liberty to act in accordance with the law.

(Kausik Chanda, J.)