

Court No. - 25

Case :- WRIT - C No. - 6215 of 2019

Petitioner :- Shahzaman Khan

Respondent :- Aligarh Muslim University And 2 Others

Counsel for Petitioner :- Anoop Trivedi

Counsel for Respondent :- Shashank Shekhar Singh

Hon'ble Ajay Bhanot,J.

Heard Sri Anoop Trivedi, learned counsel, assisted by Sri Abhinav Gaur, learned counsel for the petitioner and Sri Shashank Shekhar Singh, learned counsel for the respondent University.

Learned counsel for the petitioner submits that by the order dated 25.06.2016 passed by the respondent no. 3 the petitioner has been expelled from the rolls of the University for a period of ten years with immediate effect. The petitioner has also been debarred from further studies or admission or re-admission in the University with immediate effect. The University campus and other institutions are placed out of bounds for the petitioner for a period of ten years in terms of the order dated 25.06.2016.

The petitioner is aggrieved by the order dated 25.06.2016 and has asserted the same in the instant writ petition.

Learned counsel for the petitioner submits that the order visits with recurring penal consequences. The order has been passed in violation of principles of natural justice. The order places reliance on a report submitted by the "Discipline Committee" indicting the petitioner for indiscipline and other misconduct interms of the Aligarh Muslim University Students Conduct and Discipline Rules, 1985. The report has not been furnished to the petitioner. The report is adverse to the petitioner but the petitioner was not given any opportunity to tender his defence against the said report. The respondents have passed the impugned order dated 25.06.2016 by adopting a procedure not known to law.

Sri Shashank Shekhar Singh, learned counsel for the respondent University in his usual fairness could not dispute the fact that the petitioner was afforded an opportunity of hearing before the order dated 25.06.2016 was passed. The counsel could not contest the submission that the material adverse relied upon against the petitioner while passing the impugned order was not served upon the petitioner with a view to enable him to tender his defence to the same.

However, learned counsel for the respondent University caveats

his submissions with the fact the petitioner could not be afforded an opportunity of hearing as he was absconding.

Be that as it may, the respondent University has not shown anything in the record that it made honest effort to serve a show cause notice upon the petitioner or to furnish the adverse material against the petitioner to him. These facts have not been disputed by learned counsel for the respondent University.

In the light of the aforesaid facts, with the consent of parties a post decisional hearing in the matter would meet the ends of justice.

It is well settled that the principles of natural justice are not cast in any strait jacket formula. The requirements of natural justice are adapted to the facts of the case to subserve the ends of justice. In the evolution of the law of natural justice, the Hon'ble Supreme Court has applied the concept of post decisional hearing in appropriate cases. In the case of **Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and others**, reported at **(2015) 8 SCC 519**, the Hon'ble Supreme Court held thus:

"38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the Courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straight-jacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the Courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the Courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on."

In view of the facts of the case and position of law laid down by the Hon'ble Supreme Court, a post decisional hearing would subserve the interest of justice. A mandamus is issued to the respondent No.2 to execute the following directions:

(i) The matter is remitted to respondent no. 2.

(ii) The respondent no. 2 shall provide all the material adverse to the petitioner and relied against him or is proposed to be relied against him.

(iii) The petitioner shall be given an opportunity of tendering a written statement of his defence. The respondent no. 2 shall afford an opportunity of hearing to the petitioner.

(iv) The respondent no. 2 shall pass a reasoned and speaking order after hearing the petitioner.

(v) The exercise shall be completed within a period of four months from the date of receipt of a certified copy of this order.

The petitioner undertakes to cooperate to the proceedings before the respondent no. 2. The proceedings may be held at any other premises apart from the University campus. The order impugned in the instant writ petition shall abide by the final order passed by the respondent no. 2.

It is clarified that this Court has not interfered with the order dated 25.06.2016 assailed in the writ petition nor has the Court gone into the veracity of the assertions on merits made by the petitioner. It is for the competent authority to do so after independent application of mind.

With the aforesaid directions the writ petition is disposed of.

Order Date :- 26.2.2019

Pravin