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Court No. - 18

Case :- WRIT - A No. - 1886 of 2023

Petitioner :- Vinay Kumar Pathak

Respondent :- State Of U.P. Thru. Addl. Chief Secy Technical Educ.
Deptt. U.P. Civil Secrett. Lko. And 4 Others

Counsel for Petitioner :- Anand Swarup Rai

Counsel for Respondent :- C.S.C.,Alok Kumar Pandey,Shubham
Tripathi,Utsav Mishra

Hon'ble Pankaj Bhatia,J.

Heard Shri L.P Mishra, Senior Advocate assisted by Shri Anand Swarup Rai, learned counsel for the petitioner and Shri Asit Kumar Chaturvedi, Senior Advocate assisted by Shri Utsav Misra and Shri Alok Kumar Pandey, learned counsel for the respondents.

The present petition has been filed challenging the order dated 01.02.2023 where by the respondent no.2 has ordered for constituting an Enquiry Committee in pursuance to the letter of the University Grants Commission (hereinafter referred to as "U.G.C.") dated 21.11.2022. The said petition filed by the petitioner is sworn by an affidavit signed by one Suryakant Tiwari as pairakar of the petitioner and the Vakalatnama is signed by the petitioner himself. The first preliminary objection was raised by the learned Senior counsel appearing for the respondent that the affidavit filed in the present petition is contrary to the law laid down and explained by Full Bench of this Court in the case of *Syed Wasif Husain Rizvi vs. Hasan Raza Khan & 6 Ors* rendered in *Consolidation No. 534 of 2002*, thus, the petition is liable to be dismissed on that score alone.

I intend to deal with the preliminary objection raised before proceeding to pass an order on merits.

Dr. L.P. Mishra, Senior Advocate, learned counsel for the petitioner drew my attention to the provisions of Chapter IV Rule 10 of Allahabad High Court Rules, 1952 (hereinafter referred to as "High Court Rules, 1952") which provide for the person who makes an affidavit before this Court. He also argued that even in Chapter XXII of the High Court Rules, 1952, although the requirements of filing an affidavit is satisfied, there is no specification who can file an affidavit.

In light of the said two provisions, he argues that the petition filed and supported by the affidavit of a pairakar is in accordance with the provisions of the High Court Rules, 1952. He further argued that the technicality should not come in the

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way of exercising of powers under Article 226 of the Constitution of India as it is well settled with the procedure is hand maid of justice.

To test the arguments of learned counsel for the respondent in light of the Full Bench Judgment it is essential to see the import of the Full Bench Judgment. It is interesting to note that the matter referred to the Full Bench and crystallized in the Judgment itself "as to whether a writ petition under Article 226 of the Constitution of India can be filed by a power of attorney holder." The Full Bench had the occasion to consider the meaning of power of attorney, the provisions contained in Chapter 22 of the High Court Rules, 1952, provisions contained in C.P.C. and the various precedents as discussed in the said Judgment.

On a plain reading of the said Judgment, it can be clearly discerned that the argument of the learned counsel for the respondent is a flawed argument for the reason that the issue raised before the Full Bench was with regard to the right of a power of attorney holder (donee) to institute and contest the proceedings at the instance of a person who has executed the power of attorney and known as the 'donor'.

In the present case, the petition has been filed by the petitioner himself, the petition has not been filed through a power of attorney holder and only the affidavit of the pairokar has been shown in support of the affidavit.

This view is clear from the findings recorded by the Full Bench itself in the case of **Syed Wasif Husain Rizvi (supra)** and as noticed in the Judgment which are as under:-

"..... We clarify that there can be no dispute about the principle which has been laid down by the Division Bench to the effect that the petitioner in the exercise of the writ jurisdiction under Article 226 of the Constitution must pursue a claim, right or cause of action personal to him or her. However, when the petitioner seeks to do so through the holder of a power of attorney, the donee of the power of attorney is no more than an agent who acts for and on behalf of the donor, for the reason that the donor is, for some reason, unable to present himself or herself before the Court in order to pursue the proceedings. The donor of the power of attorney may be incapacitated from doing so temporarily for reasons or exigencies, such as exigencies of service or station or, for that matter, an ailment which immobilizes him or her from pursuing the proceedings personally. The important point to be noted, as a matter of principle, is that when the donor authorises the donee to act on his or her behalf, the donee acts as an agent and is subject to the limitations which are created by the instrument by which he is authorised. The donee does not pursue a claim or right personal to him but it is the donor who espouses his own personal right through the holder of a power of attorney."

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It has been further clarified by the Full Bench in the following terms:-

".... In other words, the petition which is instituted under Article 226 of the Constitution is not by the power of attorney holder independently for himself but as an agent acting for and on behalf of the principal in whose name the writ proceedings are instituted before the Court."

Thus, from the observations made by the Full Bench, itself, the law as clarified by the Full Bench is that when the petition is instituted through the power of attorney holder, the conditions specified will apply, the said will not apply, when the petition is filed by the person himself and which is supported by an affidavit which in conformity with the mandate of Chapter IV Rule 10 of the High Court Rules, 1952.

Thus, the said objection merits rejection and is accordingly rejected.

Coming to the submissions made by learned counsel for the petitioner that under the provisions of U.G.C. Act, no power is conferred upon the Commission to direct an enquiry in respect of matters other than the matters specified in Section 12 of the U.G.C. Act whereas, in the present case, the fact finding enquiry has been setup against the petitioner who was earlier the Vice Chancellor of the University in question. He further argued that the U.G.C. even in its communication dated 21.11.2022 never authorized the respondent University to carry out either a fact finding enquiry or an enquiry of any nature, whereas, the respondents have erred in constituting an Enquiry Committee in the light of the communication dated 21.11.2022. He further argued that even in terms of the mandate of U.P. State Universities Act, 1973 (hereinafter referred to as "1973, Act") no power is conferred on a Vice Chancellor to conduct an enquiry that too against the erstwhile Vice Chancellor.

In support of the said statement, learned counsel for the petitioner relied on the powers and duties of the Vice Chancellor as clarified under Section 13 of the 1973, Act.

Learned counsel for the respondents argues that it is only a fact finding enquiry and nothing more and the same cannot be equated with an enquiry as is being argued by the learned counsel for the petitioner. He also placed reliance on the Judgment of the Hon'ble Supreme Court in the case of **University Grants Commission and Another vs. Neha Anil Bobde(Gadekar)** reported in **(2013) 10 SCC 519** wherein he emphasized on paragraph no.23 which had analyzed the power of the Commission, to hold that the power of the Commission is far and wide.

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"23. This Court in *University of Delhi v. Raj Singh* 1994 Supp. (3) SCC 516 dealt with the powers of UGC elaborately and held as follows:

"20. The ambit of Entry 66 has already been the subject of the decisions of this Court in the cases of the *Gujarat University v. Krishna Ranganath Mudholkar* 1963 Supp 1 SCR 112 and the *Osmania University Teachers' Association v. State of Andhra Pradesh* (1987) 4 SCC 671. The UGC Act is enacted under the provisions of Entry 66 to carry out the objective thereof. Its short title, in fact, reproduces the words of Entry 66. The principal function of the UGC is set out in the opening words of Section 12, thus:

"It shall be the general duty of the Commission to take ... all such steps as it may think fit for the promotion and coordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities" It is very important to note that a duty is cast upon the Commission to take "all such steps as it may think fit ... for the determination and maintenance of standards of teaching". These are very wide-ranging powers. Such powers, in our view, would comprehend the power to require those who possess the educational qualifications required for holding the post of lecturer in Universities and colleges to appear for a written test, the passing of which would establish that they possess the minimal proficiency for holding such post. The need for such test is demonstrated by the reports of the commissions and committees of educationists referred to above which take note of the disparities in the standards of education in the various Universities in the country. It is patent that the holder of a postgraduate degree from one University is not necessarily of the same standard as the holder of the same postgraduate degree from another University. That is the rationale of the test prescribed by the said Regulations. It falls squarely within the scope of Entry 66 and the UGC Act inasmuch as it is intended to co-ordinate standards and the UGC is armed with the power to take all such steps as it may think fit in this behalf.

For performing its general duty and its other functions under the UGC Act, the UGC is invested with the powers specified in the various clauses of Section 12. These include the power to recommend to a University the measures necessary for the improvement of University education and to advise in respect of the action to be taken for the purpose of implementing such recommendation [clause (d)]. The UGC is also invested with the power to perform such other functions as may be prescribed or as may be deemed necessary by it for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of such functions [clause (j)].

....."

He has further placed reliance on the Judgment of the Hon'ble Supreme Court in the case of *Government of Maharashtra and Others vs. Deokar's Distillery* reported in (2003) 5 SCC 669, wherein the issue considered by the Hon'ble Supreme Court was whether consequential order can be challenged without challenging the impugned order and the Hon'ble Supreme Court was of the view that unless the impugned order is challenged, the consequential order cannot be challenged. The Supreme

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Court held in paragraph No.38 as under:-

"38. This apart, the High Court has also not right in rejecting the writ petition of the respondents at the threshold. The High Court has failed to notice another important factor that the statutory provision under Article 309, namely, the Notification dated 10.12.1998 and the consequential administrative instructions/orders issued for carrying out the executive function under Section 58A of the Prohibition Act and Article 162 namely, the circular letter dated 30.7.1999 had not been challenged by the respondents herein and, therefore, they were not entitled to challenge the demand notice which was merely a consequential communication. The High Court, therefore, is not right in quashing the demand notice issued by appellant No.4, namely, the Sub-Inspector of State Excise, in charge of the manufactory of the respondent, without examining the validity of or quashing the Rules of 1988 and the consequential circular letter dated 30.7.1999 issued by appellant No.2, namely, the Commissioner, since the demand notice was merely a consequential communication issued in furtherance of the Rules of 1998 and the circular letter dated 30.7.1999"

He further relied upon the Supreme Court Judgment in the case of ***Ayaubkhan Noorkhan Pathan vs. State of Maharashtra and Others*** reported in **(2013) 4 SCC 465**, wherein the Supreme Court had the occasion to consider the scope of the phrase "person aggrieved" and the Supreme Court in paragraph Nos. 9 and 10 held as under:-

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide : State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; Saghir Ahmad & Anr. v. State of U.P., AIR 1954 SC 728; Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal & Ors., AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh, AIR 1996 SC 2736; and Tamilnad Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar & Ors., (2009) 2 SCC 784).

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a

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person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: Shanti Kumar R. Chanji v. Home Insurance Co. of New York, AIR 1974 SC 1719; and State of Rajasthan & Ors. v. Union of India & Ors., AIR 1977 SC 1361)."

He further places reliance on the Judgment of this Court in the case of Deepak Yadav vs. State of U.P. and Others decided on 05.08.2022, wherein learned Single Judge has held in paragraph Nos.44 and 45 as under:

"44. It is further noticed that mere conducting preliminary inquiry cannot amount to harassment as at this stage the petitioner is not subjected to any adverse consequences as a result of the said inquiry. The Vigilance inquiry is a fact finding inquiry where only veracity of the allegations are sought to be tested and it is only when the allegations are found to be correct then only disciplinary proceedings are initiated and the petitioner is given charge sheet.

45. Considering the aforesaid facts, this Court does not find any reason to interfere with the impugned order, whereby open Vigilance inquiry is sought to be initiated against the petitioner."

The submissions of learned counsel for the respondents based upon the said Judgments is also wholly erroneous for the reason that the present petition is filed seeking relief in the nature of writ of prohibition on the ground that the enquiry proceedings are without jurisdiction. The law with regard to issuance of writ of prohibition has held the field since the case of **The State Of Uttar Pradesh vs Mohammad Nooh; AIR 1958 SC 86.**

In the present case, prima-facie neither from the communication dated 21.11.2022 of the U.G.C. were the respondents authorized to institute an Enquiry Committee nor are they authorized by virtue of provisions of Section 13 of 1973, Act or under any other statutory and non statutory provision to constitute and hold an enquiry of the nature which has been directed in the order dated 01.02.2023.

In view of said submissions, the matter requires consideration.

Learned counsel for the respondents may file their counter affidavit within four weeks.

Two weeks thereafter, shall be available to the learned counsel for the petitioner to file rejoinder affidavit.

List thereafter.

Until further orders, the enquiry as proposed in the order dated 01.02.2023 shall remain stayed.

Order Date :- 3.3.2023

Piyush/-