

13 SCOB [2020] HCD

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 3691 of 2014

Md. Shamsujjaman and others
..... Petitioners

-Versus-

**Bangladesh, represented by the
Secretary, Ministry of Education,
Ramna, Dhaka and others.**
..... Respondents

Mr. Imran A Siddiquee, Advocate with
Mr. Mohd. Shishir Monir, Advocate and
Mr. Syed Mohd. Raihan Uddin, Advocate
..... For the Petitioner

Mr. M. Khaled Ahmed, Advocate
..... For Respondent Nos. 2 and 3

Date of Hearing: 11.11.2018 & 12.11.2018

Date of Judgment: 14.11.2018

Present:

**Mr. Justice Zubayer Rahman Chowdhury
And
Mr. Justice Sashanka Shekhar Sarkar**

This concept of “administrative fairness” requires that an Authority, while taking a decision which affects a person’s right prejudicially, must act fairly and in accordance with law. We note, albeit with utmost regret and disappointment, that in the instant case, there has been a gross violation of the well-settled principles of natural justice, and that too by the Syndicate. In our view, failure to comply with the principles of natural justice leads to arbitrariness, which in turn, vitiates the impugned order. ... (Para-23)

JUDGMENT

Zubayer Rahman Chowdhury, J:

1. By an application under section 102 of the Constitution of the Peoples Republic of Bangladesh, the petitioners, being 10 in number, have challenged the order of their expulsion from the Shahjalal University of Science and Technology, Sylhet, as contained in Memo No. একা ৯৮/১২০(৭)/৫/১১৯৩ dated 16.03.2014, issued by respondent no. 3.

2. Subsequent thereto, by order dated 21.10.2014, the petitioners were allowed to sit for their examination. However, the authorities of Shahjalal University of Science and Technology, Sylhet (hereinafter referred to as the University) were allowed to withhold the examination result till disposal of the Rule.

3. The Rule is being opposed by respondent no. 3 by filing an affidavit-in-opposition. The petitioners, in their turn, have filed affidavit-in-reply as well as two supplementary affidavits.

4. Relevant facts necessary for disposal of the Rule are that petitioner no. 1 is a student of Department of Biochemistry and Molecular Biology, School of Life Sciences, who was admitted in 2010-2011 session; petitioner no. 2 is a student of Department and Food

Engineering and Tea Technology, School of Applied Sciences and Technology, who was admitted in 2008-2009 session; petitioner no. 3 is a student of Department of Social Work, School of Social Sciences, having been admitted in 2009-2010 session; petitioner no. 4 is a student of Department of Social Work, School of Social Sciences, having been admitted in 2009-2010 session; petitioner no. 5 is a student of Department of Bangla, School of Social Sciences, having been admitted in 2009-2010 session; petitioner no. 6 is a student of Department of Social Sciences, having been admitted in 2008-2009 session; petitioner no. 7 is a student of Department of Civil and Environmental Engineering, School of Applied Sciences and Technology, having been admitted in 2010-2011 session; petitioner no. 8 is a student of Department of Public Administration, School of Social Sciences, having been admitted in 2007-2008 session; petitioner no. 9 is a student of Department of English, School of Social Sciences, having been admitted in 2006-2007 session ; petitioner no. 10 is a student of Department of Social Work, School of Social Sciences, having been admitted in 2011-2012 session.

5. On account of an incident that took place on 13.12.2013, the Authorities issued the order of expulsion of the petitioners from the University. On that day, a human chain was formed by the teachers and students of the University condemning the heinous attack on the monument of the University, named “*ঢেড়না ৭১*”. Some miscreants attacked the teachers and students forming the human chain, causing injury to some. The said incident was published in both the national and local dailies. Following the incident, an inquiry committee was formed headed by one Professor Jahir Bin Alom. After conducting the inquiry, the Committee submitted its report to the Proctor, being the Member Secretary of the Committee, recommending action against certain students of the University, including the petitioners.

6. In pursuance of the report and recommendation of the Committee, the University Authority issued show cause letters, all dated 02.02.2014, upon the petitioners, asking them to submit reply within 15 days of receiving the said notice.

7. Earlier on 26.12.2013, the Inquiry Committee issued letters to petitioner nos. 1 and 2 only, asking them to appear before the Committee on 30.12.2013. However, the petitioners refrained from appearing before the Committee.

8. Subsequent thereto, on 27.02.2014, at its 183rd Meeting, the Syndicate of the University took a decision approving the temporary suspension order of the petitioners. However, on the very same day, the Syndicate also passed the order of expulsion of the petitioners. Accordingly, in pursuance of the decision of the Syndicate, the impugned letters dated 16.03.2014 were issued to all the petitioners, communicating the orders of their expulsion from the University.

9. The petitioners filed applications before the Vice-Chancellor of the University with a prayer for cancelling the suspension order. However, there was no response from the other end. The petitioners issued a Notice Demanding Justice requesting the concerned respondents to cancel the expulsion order. However, no steps were taken by the respondents in that regard. Being constrained, the petitioners moved this Court and obtained the instant Rule.

10. Mr. Imran A. Siddique, Mr. Mohd. Shishir Monir and Mr. Syed Raihan Uddin, the learned Advocates appear on behalf of the petitioners, while contesting respondent nos. 2 and 3 are being represented by Mr. M. Khaled Ahmed, the learned Advocate.

11. Having placed the instant application as well as the various documents annexed thereto, Mr. Siddique submits that the issue involved in the instant writ petition concerns the violation of the principle of natural justice as well as the denial of the due process of laws to the petitioners, as guaranteed under the Constitution. Elaborating his submission, Mr. Siddique submits that from a plain reading of the show cause notices dated 02.02.2014, as evidenced by Annexure B series, it is evident that save and except mentioning the date of occurrence, the notice does not specify the time, place and manner of occurrence, nor does it disclose the extent of damage or the number of persons who suffered injuries on account of such incident, which indicates a gross non-application of mind on the part of the respondents. He submits that on the basis of some vague and unspecified allegations, the University Authorities issued the show cause notice upon the petitioners, which prevented them from giving a proper reply to the same.

12. Mr. Siddique submits that it is now well settled that mere issuance of a show cause notice will not amount to fulfillment of the legal requirement of issuance of such notice. He submits that such a notice must contain the specification as to the time, place and manner of occurrence as well as the specific allegations against the persons to whom the notice was issued, so as to enable him to give an effective reply to the same. He further submits that although the said show cause notice makes a reference to a report prepared by the Inquiry Committee on the basis of which the show cause notice was issued, the copy of the said report was never provided to the petitioners.

13. Referring to Annexure E series, being the impugned order dated 16.03.2014, Mr. Siddique submits that the said order was passed expelling the petitioners for life (আজীবন বহিষ্কার) from the University, without giving them any opportunity of a personal hearing. The learned Advocate forcefully submits that these aspects of the case, i.e., the vague and unspecific show cause notice, the non-service of the inquiry report to the petitioners and the admitted failure of the University Authority to give personal hearing to the petitioners before passing the impugned order tantamounts to a gross violation of the principle of natural justice and on that count alone, the Rule is liable to be made absolute.

14. In support of his contention, Mr. Siddique has referred to a number of decisions, to which we shall advert in due course.

15. On the other hand, Mr. M. Khaled Ahmed, the learned Advocate appearing on behalf contesting respondent nos. 2 and 3 submits that the University Authorities took the action of expelling the petitioners from the University following a heinous attack that took place on the campus on 13.12.2013. He submits that in order to maintain discipline in the University and to ensure the security and safety of the teachers, students and staff of the University, the authorities took the decision to expel the petitioners as their involvement with the incident in question was proved through the investigation conducted by the Inquiry Committee.

16. Mr. Ahmed submits that the contention of Mr. Siddique with regard to the show cause notices being vague and unspecific is not correct in view of the fact that the petitioners submitted detailed replies to the show cause notice. Therefore, accepting, but not conceding that there may have been lack of some material particulars in the said show cause notice, that was not sufficient to prevent the petitioners from submitting a detailed reply to the same. He submits that the University Authorities considered the replies of the petitioners and found the same to be unsatisfactory, following which the orders of expulsion was passed by the highest body of the University, namely the Syndicate.

17. Mr. Ahmed further submits that the Rules of the University do not provide for issuance of a show cause notice. Nevertheless, the University Authority issued the show cause notice to the petitioners and therefore, according to Mr. Ahmed, there was compliance with the principles of natural justice. On being asked as to whether the Inquiry Report had been furnished to the petitioners, Mr. Ahmed replied in the negative.

18. The moot question that requires to be answered in this writ petition relates to the legality or otherwise of the expulsion order of the petitioners, issued by the University.

19. On account of an incident which took place on 13.12.2013 at the campus of the University, which was widely reported in the national and local dailies, the University formed an Inquiry Committee. Upon conducting an investigation, the Committee prepared a report and submitted the same to the Proctor. On the basis of the said report, each of the petitioner was issued with a show cause notice, to which they replied. However, after considering their respective replies, the Syndicate passed the impugned expulsion orders on 16.03.2014.

20. Let us now refer to the show cause notice, dated 02.02.2014, issued to petitioner no. 1, which reads as under:

“প্রাপক

তারিখঃ ০২/০২/২০১৪

নামঃ মোঃ সামসুজ্জামান

বিভাগঃ বি.এম.বি

রেজিঃ ২০১০৪৩৩০৪৩

শাবিপ্রবি, সিলেট।

গত ১৩/১২/২০১৩ ইং তারিখে বিশ্ববিদ্যালয় ক্যাম্পাসে ছাত্র ও শিক্ষকদের উপর হামলা এবং মোটর সাইকেল ও বাইসাইকেল পোড়ানো ঘটনার জন্য গঠিত তদন্ত কমিটির প্রতিবেদন ও সুপারিশ এর ভিত্তি করে গত ৩০/০১/২০১৪ ইং তারিখে শৃঙ্গলা বোর্ডের সভায় নিম্নলিখিত সিদ্ধান্ত গৃহীত হয়।

১। আপনার বিরুদ্ধে অভিযোগ এর সত্যতা মেলায় বিশ্ববিদ্যালয় থেকে আপনাকে সাময়িক ভাবে বহিস্কার করা হয়েছে। আপনাকে কেন স্থায়ী ভাবে বহিস্কার করা হবে না এ ব্যাপারে আপনার লিখিত বক্তব্য ১৫ (পনের) দিনের মধ্যে নিম্নস্বাক্ষরকারী নিকট জমা দিতে হবে।

২। নির্ধারিত সময়ের মধ্যে লিখিত বক্তব্য জমা না দিলে বিশ্ববিদ্যালয় বিধি মোতাবেক যথাযথ ব্যবস্থা গ্রহণ করা হবে।

ধন্যবাদান্তে,

প্রক্টর ও সদস্য সচিব, শৃঙ্গলা বোর্ড

শাবিপ্রবি, সিলেট।”

21. It is to be noted that the other nine petitioners were also issued with an identical show cause notice.

22. From a plain reading of the show cause notice, quoted above, it is apparent that the said notice is anything but satisfactory. To begin with, the show cause notice was the first step in the initiation of a proceeding which would culminate with the expulsion of the petitioners from the University, and that too for the rest of their life. Therefore, he said process would tantamount to causing an academic death to the respective petitioners, not to speak of their future career. The Syndicate, being the highest Administrative body of the University, in issuing the expulsion orders of the petitioners, was also acting as a quasi

judicial body. It was, therefore, imperative for the Authorities to comply with the requirements of the principles of natural justice. This is also the dictate of our Constitution, as enshrined in Article 31, relating to the concept of the due process of law.

23. This concept of “administrative fairness” requires that an Authority, while taking a decision which affects a person’s right prejudicially, must act fairly and in accordance with law. We note, albeit with utmost regret and disappointment, that in the instant case, there has been a gross violation of the well-settled principles of natural justice, and that too by the Syndicate. In our view, failure to comply with the principles of natural justice leads to arbitrariness, which in turn, vitiates the impugned order.

24. From a plain reading of the show cause notice, it appears that the show cause notice merely states that an incident took place at the University Campus (বিশ্ববিদ্যালয় ক্যাম্পাস), without mentioning the exact place of the occurrence. Moreover, the said notice reveals that an attack took place on some teachers and students and some motorcycles and bicycles were burnt. However, there is no mention of the time of the incident nor is there any details or names of the teachers and students, who were alleged to have been injured, nor is there any mention of the extent and nature of the injuries sustained by them. There is also no mention of the number of motorcycle and bicycle that were alleged to have been burnt on that day at the place of occurrence. It is on the basis of such vague, unspecific and indefinite allegations that the show cause notices were issued upon the petitioners.

25. Furthermore, the show cause notice clearly states that an Inquiry Committee conducted the inquiry and submitted a report and thereafter, pursuant to the recommendations of the Committee, the decision to issue the impugned orders of expulsion was taken by the Syndicate. Admittedly, no such report was either annexed with the show cause notice itself nor was it served upon the petitioners to a later stage, thereby preventing them from giving a proper reply to the allegations brought against them, in the show cause notice.

26. The impugned order itself, as evidenced by Annexure E to the writ petition, reads as under :

“অফিস আদেশ

গত ১৩/১২/২০১৩ ইং তারিখে ‘চেতনা ৭১’ এ হামলার ঘটনায়, আয়োজিত মানববন্ধনে আক্রমণ ও শিক্ষকদের গাড়ী পুড়িয়ে দেয়ার ঘটনা তদন্ত কমিটি কর্তৃক প্রমানিত হওয়ায় ও দোষী সাব্যস্ত হওয়ায় শৃঙ্গলা বোর্ডের ২৭-০২-২০১৪ তারিখের সভার সুপারিশের আলোকে নিম্নোক্ত অভিযুক্ত ১০ (দশ) জন ছাত্রকে এ বিশ্ববিদ্যালয় থেকে আজীবন বহিস্কার করা হয়েছে। তবে গত ১৩-১২-২০১৩ তারিখের পূর্বে সমাপ্ত পরীক্ষার অর্জিত ডিগ্রী বহাল থাকবে।

গত ২৭/০২/২০১৪ তারিখে অনুষ্ঠিত সিন্ডিকেটের ১৮৩ তম সভার অনুমোদনের প্রেক্ষিতে বিশ্ববিদ্যালয় কর্তৃপক্ষের অনুমোদনক্রমে এ আদেশ জারী করা হলো। অবিলম্বে এ আদেশ কার্যকর হবে।”

27. On a perusal of the impugned order dated 16.03.2014, it is apparent that the concerned respondent, in a very mechanical manner, issued the order expelling the petitioners from the University for life. Admittedly, the said order was passed without affording an opportunity of personal hearing to each of the petitioners. This un-assailed position of the case establishes the fact that the petitioners were condemn unheard. That by itself is a gross violation of the principle of natural justice, not to mention the non-observance of the due process of law.

28. Let us now refer to the decisions referred to by the learned Advocates of the contending sides.

29. In the case of Government of Government of Bangladesh and others vs. Md. Tajul Islam, reported in 49 DLR (AD) (1997) 177, the Apex Court, while deciding the issue of adequacy of a show cause notice issued in relation to cancellation of a license, observed as under :

“It is well settled that a show cause notice is not a technical requirement or an idle ceremony. The notice must not be vague or in bare language merely repeating the language of the statute.”

30. The Court went on to observe as under :

“The principle of a meaningful show cause has been highlighted when a person is called upon to meet explain some charges brought against him.”

31. In the case of Bangladesh Muktijoddha Kalyan Trust and another Vs. Md. Arshad Ali and others, reported in 14 BLC (AD) (2009) 180, the Appellate Division held as under :

“We are of the view in the background of the principle of natural justice or, in other words, in the background of the universal principle that, one should not be condemned unheard and that also because of the universally accepted concept of transparency and fairness, the authority in imposing punishment on an employee would be required to serve the second show cause notice accompanying the inquiry report to enable the officer or the person against whom the authority is going to take action, which may not be favourable to such officer or person, to enable him to explain the facts obtained against him in the course of inquiry and to put forward his case as regard the facts obtained against him in the course of inquiry.”

32. In the case referred to above, the Apex Court was deciding a case where, admittedly, the Inquiry Report had not been enclosed with the second show cause notice.

33. Admittedly, in the instant case, no Inquiry Report was ever served upon the petitioners.

34. In the case of Borhanuzzaman and others vs. Ataur Rahman Chowdhury and others, reported in 46 DLR (AD) (1994) 94, the Apex Court held as under :

“When the report of the enquiry forms the basis of the allegations against the Managing Committee a copy of the report is an indispensable tool in its hands in giving a suitable reply to the show cause notice, because a report may contain both favourable and adverse matters against the Managing Committee which has every right and justification in relying upon the favourable contents in the report in its reply.”

35. The contention of Mr. Ahmed, the learned Advocate appearing for the University, that the Rules do not provide for issuance of show case notice annexing the Inquiry Report has been answered by the Apex Court in the case of Bangladesh Agricultural Development Corporation vs. Saidul Huq Bhuiyan, reported in 8 BLC (AD) (2003) 49. While dealing with a similar issue, the Apex Court held that even though the Regulations of the Corporation did not make any provision for supplying the inquiry report along with the show cause notice, the Corporation was still required to supply the inquiry report, without which the concerned official was being “seriously handicapped” in making an effective reply to the second show cause notice.

36. Let us now refer to some decisions from our neighboring jurisdiction, cited by Mr. Siddique.

37. In the case of State of Uttar Pradesh vs. Md. Sharif (dead, through legal representative), reported in AIR 1982 SC 937, the Court held that the absence of the particulars as to date and time of the alleged misconduct having not been mentioned in the charge sheet, the person concerned was prejudiced by such omission in the matter of his defense at the inquiry.

38. In the case of Board of Technical Education, UP and others vs. D. Kumar and others, reported in AIR 1991 SC 271, the Court held:

“notices served on the students were so vague and imprecise that they could not effectively defend themselves in the inquiries.”

39. In the instant case, the petitioners are on a much better footing in as much as they were never given an opportunity to appear before the Inquiry Committee.

40. In the case of Sawai Singh Vs. State of Rajasthan, reported in AIR 1986 SC 995, the Court held as under :

“But a departmental enquiry entailing consequences like loss of job which now-a-days means loss of livelihood, there must be fair play in action in respect of an order involving adverse or penal consequences against an employee, there must be investigation to the charges consistent with the requirement of the situation in accordance with the principles of natural justice in so far as these are applicable in a particular situation.”

41. In his turn, Mr. Ahmed has referred to two decisions from our own jurisdiction; the first being the celebrated case of Zakir Ahmed vs University of Dhaka, reported in 16 DLR (SC) (1964) 722 on the point that the Rules do not provide for issuance of any show cause notice before any disciplinary proceeding against a delinquent student. However, the reliance of Mr. Ahmed on Zakir Ahmed’s case appears to be misplaced in view of the following observation made by the Court:

“We are not impressed by the argument that such interference by Courts of law with orders passed by educational institutions in the interest of maintenance of discipline would defeat the very purpose for which these institutions exist or that it would stultify the powers of the authorities in charge of educational institutions or prevent them from taking any action against students’ misconduct. The Universities and educational institutions generally are armed with abundant powers of disciplinary action against the recalcitrant students and the Court are, in no way, minded to deprive them of their powers but all that they are entitled to instant upon in the interest of fairness is that the minimum requirements of fairness must be observed by them before such action is taken, for, it is equally important to remember that unfair action may cause greater harm to the prestige of the heads of educational institutions who are expected to be in *loco parentis* to the students and may seriously undermine the authority which they claim to possess over the students place in their charge.”

42. Mr. Ahmed has next referred to the case of Vice Chancellor, University of Dhaka and others vs. A.K.M. Muid and others, reported in 69 DLR (AD) (2007) 403 with regard to judicial review of the administrative decisions taken by the University. Mr. Ahmed, relied on paragraph 27 of the judgment which reads as under:

“The court should refrain itself from interfering with the internal administration of an authority if such authority does not contravene the law and it can interfere only in those cases where there is infraction of law in taking decision affecting the right of a citizen. The court shall always keep in mind while exercising its power of judicial review that it has not transgressed the jurisdiction in any authority transacting its business.”

43. Once again, we are of the view that this observation does not come to the aid of Mr. Ahmed; rather it goes to substantiate the petitioner’s case.

44. We are conscious of the fact that the image of the University and the sanctity of the University premises cannot be allowed to be vandalized and perpetrators of such action must be dealt with sternly, without showing any lenience, even if such perpetrators are the students of the University. However, in doing so, the Authorities must follow the principles of natural justice and conduct the proceeding in accordance with law and only in accordance with law.

45. The University, more particularly the Syndicate, being in a position of “*loco parentis*”, is obliged not only to observe the well-established principle of natural justice, but it must also act in accordance with law. Regrettably, in the instant case, not only did the University Authority fail to observe the due process of law, as guaranteed by our Constitution, but the impugned orders of expulsion were passed in gross violation of the principles of natural justice, which is manifested in the show cause notice itself as well as the final expulsion order. Consequently, the same is not tenable in the eye of law.

46. In view of the discussion made above, we are inclined to hold that the instant Rule merits positive consideration.

47. In the result, the Rule is made absolute.

48. The impugned order of expulsion of the petitioners, as contained in Memo No. একা ৯৮/১২০(৭)/৫/১১৯৩ dated 16.03.2014, issued by respondent no. 3 is declared to have been made without lawful authority and to be of no legal effect.

49. The University Authorities are directed to publish the result and also issue the certificate to the successful candidates.

50. There will be no order as to cost.

51. The office is directed to communicate the order.