

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petitioner No. 8598 of 2018.

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

-And-

IN THE MATTER OF :

Md. Mohiuddin Rana.

.....*Petitioner.*

-Versus-

University of Dhaka, represented by its Registrar, Shahbag, Dhaka and others.

.....*Respondents*

Mr. Md. Hamidur Rahman with

Mr. Mohammad Imam Hossain, Advocates

...For the Petitioner.

Mr. Ahmed Ishtiaque, Advocate

..... For the Respondents.

Present:

Mr. Justice K. M. Kamrul Kader

And

Mr. Justice Sardar Md. Rashed Jahangir

Heard on : 08.11.2021 & 02.02.2022.

And

Judgment on: 09.02.2022.

K.M. Kamrul Kader , J :

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued on 08.07.2018, in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the decision dated 30.01.2018 taken by the Syndicate of the University of Dhaka (respondent No.2), so far as it relates to the permanent expulsion of the petitioner from the University of Dhaka, as evidenced by Annexure-G to the writ petition pursuant to the

decision No.4 dated 04.01.2018 taken by the Discipline Board of the University of Dhaka, so far as it relates to the petitioner (Annexure-F to the writ petition) should not be declared to have been done without lawful authority and of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The facts relevant for disposal of the Rule, in short are that the petitioner is a student of Dhaka University. He passed his SSC and HSC examination in the year 2008 and 2010 respectively and secured GPA 5.00 on a scale of 5.00 in both the examinations. Accordingly, the respective education board issued certificates in his favour. After passing the HSC examination, the petitioner got himself admitted in B.S. (honours) under Department of Physics of the University of Dhaka in Session 2011-2012 and the authority concerned issued a certificate for admission in his favour containing his Registration No.2011-112-976. The petitioner passed successfully 2nd year of his examination and he was promoted to the 3rd year. In the meantime, the petitioner has falsely implicated along with others in Shahbag Police Station Case No.26, dated 20.10.2017, corresponding to G.R. No.399 of 2017 under section 06 of the Information and Communication Technology Act, 2006, read with section 9(Kha) of the Public Examinations (Crime) Act, 1980. The police seized a cell phone as well as a deposit slip in which Tk.1,50,000/- (Taka One lac and fifty thousand) was deposited in the name of one Aulip Kumar Biswas by another person namely Tarikul Hasan and the police arrested the petitioner on 21.10.2017 from his room of Dr. Shahidullah Hall of the University of Dhaka and produced him before the Chief Metropolitan Magistrate, Dhaka with a forwarding from the police. The petitioner obtained bail in connection with the aforesaid case vide

order dated 31.01.2018 passed by the Metropolitan Sessions Judge, Dhaka in Criminal Miscellaneous Case No.103 of 2018. The case is still pending before the Court. During pendency of the aforesaid case without giving any chance of hearing to the petitioner, the Disciplinary Board of the University of Dhaka on 04.01.2018 in its meeting took a decision to expel the petitioner from the University on the allegation of leaking out and forgery of the questionnaire of admission test. The said decision of the Disciplinary Board was placed before the Syndicate of the University of Dhaka and the Syndicate of the University of Dhaka in its meeting held on 30.01.2018 took a decision to expel the petitioner from the University permanently and the said decision was communicated to the Controller of examination of the University of Dhaka, the respondent No.5 vide Memo No.772-76, dated 09.04.2018. It is also stated that the Authority failed to deliver any copy of the aforesaid decision of Syndicate as well as of the Disciplinary Board to the petitioner. Next, the petitioner on 28.05.2018 submitted an application to the Vice-Chancellor of the University of Dhaka, the Ex-officio Chairman of the Syndicate of the University, through the Dean of Science Faculty, Provost of Dr. Shahidullah Hall and the Chairman, Department of Physics of the University of Dhaka for getting the decision dated 04.01.2018 taken by the Disciplinary Board and the decision dated 30.01.2018 was taken by the Syndicate, but till date the respondent failed to deliver the same to the petitioner. It is also stated that the case brought against the petitioner along with others is still pending. The petitioner is not in any way involved in the commission of offence as alleged and he has been victim of circumstances and that the materials on record manifestly shows his innocence in connection with offence as alleged against him.

Being aggrieved by and dissatisfied with the decision of the Disciplinary Board as well as by the Syndicate of the Dhaka University, the petitioner filed this instant writ petition before this Court and obtained the present Rule.

Mr. Mohammad Imam Hossain, the learned Advocate appeared on behalf of the petitioner and submits that it is apparent that the petitioner has yet not been found guilty by any competent Court of law in the commission of offence as alleged and thus, the decision of the respondent No.2 in expelling the petitioner from the University permanently for the involvement relating to the offence of leaking out and forgery of the questionnaire of admission test has no legal basis. He also submits that the respondents without serving any show cause notice to the petitioner and without affording any opportunity of being heard, the respondent No.2 have decided to expel the petitioner from the University, which is clear violation of principle of natural justice. He also submits that in taking the impugned decision, the respondent No.2 did not consider the prevailing provision to impose punishment upon a student, which denotes the colorable exercise of power on the part of the respondents. As per prevailing provision it is the Proctorial Body of the University, who can impose punishment for breach of discipline or for misconduct, but in the present case the proposal of punishment was taken by the Disciplinary Board and the action of the respondents is illegal, *malafide*, arbitrary and colourable exercise of their administrative power and as such the impugned decision is liable to be declared to have been made without lawful authority and is of no legal effect. He lastly submits that the impugned decision is violative of the petitioner's fundamental rights as guaranteed under Articles 27 and 31 of the Constitution and as such he prays for making the Rule absolute.

Mr. Ahmed Ishtiaque, the learned Advocate appeared on behalf of the respondents by filing affidavit-in-opposition and denying all the material averments in the instant writ petition and submits that the very outset before averting the statements of facts as stated in the writ petition, the deponent begs to state that the writ petition itself is not maintainable as the writ petitioner filed the instant writ petition without exhausting all the remedies available to him. The petitioner had an effective alternative remedy under Article 52 of the Dhaka University Order, 1973 contained in the Part-I of the Calendar of the University of Dhaka to redress his grievance. As per provision of the said Article the Petitioner was given an opportunity to redress his grievance by the Chancellor and this was also affirmed by the Hon'ble Appellate Division of the Supreme Court of Bangladesh and to substantiate his submission the learned Advocate cited a decision in the Judgment of *Dhaka University –Vs.- Md. Mohiuddin* reported in 44 DLR (AD) (1952)305. As the writ petitioner did not avail the remedy under Article 52, the very writ petition challenging the decision of the Syndicate is not maintainable at all. The learned Advocate also submits that the statements made in paragraph No. 7 that the petitioner has falsely been implicated along with others in Shahbag Police Station Case No. 26, dated 20.10.2017 corresponding to G.R. Case No. 399 of 2017 under Section 6 of the Information and Communication Technology Act, 2006 read with Section 9(Kha) of the Public Examinations Act, 1980 are not correct and hence denied. He also submits that the petitioner is habituated with committing such kind of offence and the petitioner in his statement under section 164 of the Code of Criminal Procedure admitted that he was involved with such type of offence. The learned Advocate Mr. Ishtiaque, lastly submits that the petitioner

was permanently expelled by the Syndicate following the Dhaka University Ordinances and Regulations and as such the Rule issued in the instant writ petition is liable to be discharged.

We have heard the learned Advocates for both the parties, perused the writ petition, affidavit-in-opposition and all other material on records. Learned Advocate for the respondents argued that the petitioner without availing remedies ensured under Article 52 of the Dhaka University Order, 1973 filed this writ petition and as such, the writ petition is not maintainable in the eye of law. In the case of *Dhaka University –Vs.- Md. Mohiuddin* reported in 44 DLR (AD) (1952)305 wherein it was held that,

“Now the question is whether the appeal under Art. 52 is an effective alternative remedy for the respondents-examinees who have felt aggrieved by the impugned order of the appellants. For correct appreciation of the question Article 52 is quoted below in its entirety:

"52(1). An appeal against the order of any officer or authority of the University affecting any person or class of persons in the University may be made by petition to the Chancellor who shall send a copy on receipt of the petition thereof to the officer or authority concerned and shall give such officer or authority an opportunity to show cause why the appeal should not be entertained.

(2) The Chancellor may reject any such appeal or may, if he thinks fit, appoint an Enquiry Commission consisting of such persons as are not officers of the University or members of any authority thereof, to enquire into the matter and to submit to him a report thereon.

(3) The Chancellor shall, on receipt of the Enquiry Commission's report, send a copy thereof to the Syndicate and the Syndicate shall take the report into consideration and shall, within

three months of the receipt thereof, pass a resolution thereon which shall be communicated to the Chancellor, who shall then take such action on the report of the Enquiry Commission and resolution of the Syndicate as he may think fit.

(4) An Enquiry Commission appointed under clause (2) may require any officer or authority of the University to furnish it with such papers or information as are, in the opinion of the Enquiry, and such officer or authority shall be bound to comply with such requisition.”

We also noticed that there is a criminal proceeding wherein he made a statement under section 164 of the Code of Criminal Procedure where he admitted his guilt, though it is a *sub-judice* matter.

Considering the facts and circumstance of the case, we are of the view that the petitioner failed to avail the alternative remedy under Article 52 of the Dhaka University Order, 1973 and as such, challenging the impugned order under the writ jurisdiction is not maintainable at all. Thus, we find substance in the submission of the learned Advocate for the respondents.

In the result, the Rule is discharged without any order as to costs.

Communicate at once.

Sardar Md. Rashed Jahangir, J:

I agree.