

Court No. - 19

Case :- WRIT - C No. - 10105 of 2024

Petitioner :- Utkarsh Tripathi

Respondent :- United Babasaheb Bhimrao Ambedkar University,
Lucknow Thru. Vice Chancellor And Others

Counsel for Petitioner :- Atul Kumar Dixit

Counsel for Respondent :- Dr. V.K. Singh,A.S.G.I.

Hon'ble Manish Mathur,J.

1. Heard Sri Nitesh Tomar and Mr. Akshaya Bajpai, learned counsel for petitioner and Dr. V.K. Singh, learned counsel for opposite parties no. 1 to 7 and Mr. Umesh Singh, learned counsel for opposite parties no.8 and 9.

2. In view of order being passed, notice to opposite party no.9 which even otherwise is a proforma party stands dispensed with.

3. This petition has been taken up being listed in the applications for orders on an urgency application filed by the petitioner.

4. Learned counsel for petitioner submits that petition challenges suspension of petitioner for a period of one Semester but since examinations of 5th Semester BBA LLB (Hons.) are to commence from tomorrow i.e. 5th December, 2024, this petition is required to be heard urgently. It is in these circumstances that the petition has been heard out of turn on being listed as an urgent matter.

5. Petition has been filed with fifteen prayers but at present, learned counsel for petitioner restricts his prayer for adjudication with regard to the order dated 20th September, 2024, whereby petitioner has been suspended with immediate effect for one Semester.

6. A preliminary objection filed today on behalf of opposite parties no.1 to 7 is taken on record.

7. Learned counsel for opposite parties no.1 to 7 University has raised a preliminary objection regarding maintainability of this petition on twin grounds of availability of appeal under Section 32 of The Babasaheb Bhimrao Ambedkar University Act, 1994 as well as on the ground of multiplicity of relief sought in the petition.

8. The grounds of preliminary objections have been raised in the affidavit filed today. In response thereto, learned counsel for petitioner submits that in Paragraph-5 of writ petition, it has been specifically stated that prior to passing of the impugned suspension order, no notice or specific grounds for action was ever received by the petitioner. It is submitted that the aforesaid action on the part of opposite parties is a clear violation of Article 14 of the Constitution of India. He has placed reliance on judgement rendered by Supreme Court in the case of **Whirlpool Corporation vs Registrar Of Trade Marks, Mumbai & Ors** reported in **1998 (8) SCC 1**.

9. With regard to the second preliminary objection raised, learned counsel for petitioner submits that since in the present writ petition, he is confining his grievance to the impugned order of suspension, the aspect of multiplicity of cause of action fails.

10. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that the primary grounds for raising challenge of suspension order is of not adhering to the principle of natural justice and of not issuing any notice to the petitioner prior to passing of the impugned order specifically indicating the charges leveled against him.

11. Hon'ble Supreme Court in the case of **Whirlpool Corporation (supra)** has already dealt with the aforesaid aspect particularly holding that in case of violation of principle of nature justice or an allegation made to that effect, writ petition would be directly entertainable before this Court under Article 226 of the Constitution of India. The aforesaid judgement, in the considered opinion of this Court, is squarely applicable in the facts and circumstances as well as the plea raised in Paragraph-5 of the writ petition. Accordingly, preliminary objections are rejected and petition is held to be maintainable.

12. The writ petition has been filed challenging the order dated

20th September, 2024, whereby petitioner has been suspended with immediate effect for one Semester during which period the University Campus would be out of bounds for him.

13. Learned counsel for petitioner has drawn attention to the Code of Conduct for students of the University notified by Notification dated 12th May, 2023 duly approved by the 77th meeting of Academic Council of University held on 30th August, 2024 as subsequently approved by the Board of Management in its 79th Meeting held on 24th December, 2022, a copy of which has been brought on record as Annexure No.3 to the writ petition.

14. Learned counsel has specifically drawn attention to Clause 8 of the aforesaid Code of Conduct pertaining to disciplinary action / punishment whereunder the competent authority can impose any of the punishments indicated under Categories 1 and 2. It is submitted that Clause 7.14 has also been indicated in the Code of Conduct which clearly stipulates that no punishment shall be imposed on a student unless he is found guilty of the offence for which he has been charged by the Proctor or any other authority after following due procedure and providing due opportunity to the student charged for the offence to defend himself or herself in front of the Proctoral Board / Disciplinary Committee.

15. It is therefore, submitted that since no prior notice

indicating any particular charge was ever served upon the petitioner, the impugned order has been passed in clear violation of Clause 7.14 of the Code of Conduct. Adverting to the impugned order, it has been submitted that the order also does not indicate any notice having been served upon petitioner indicating any specific charge or even consideration of any submission of petitioner. It is submitted that order has been passed without application of mind.

16. Learned counsel appearing on behalf opposite parties has refuted submissions advanced by learned counsel for petitioner with the submission that in the meeting of disciplinary committee, keeping in view various allegations leveled against the petitioner, it was resolved that the petitioner be visited with stern warning that he shall desist from leveling unfounded allegations against the University and its authorities. It is submitted that subsequently a notice dated 13th August, 2024 was also received by the petitioner on the same date and therefore, the provisions of Clause 7.14 have clearly been met with particularly since the petitioner appeared before the Committee on the date fixed and an opportunity of hearing was provided to him whereafter the impugned order has been passed. It is, therefore, submitted that there is no violation of the Code of Conduct with regard to the impugned order.

17. Upon consideration of submissions advanced, learned

counsel for parties and perusal of material on record, particularly the impugned order dated 20th September, 2024, it appears that there is no narration of the fact that the petitioner was ever served with a notice as stipulated in Clause 7.14 of the Code of Conduct. Even assuming the notice dated 13th August, 2024 having been issued in terms of Clause 7.14 of the Code of Conduct, a perusal of same, having been placed by learned counsel for opposite parties- University, does not indicate any charge or allegation leveled against the petitioner. The notice dated 13th August, 2024 merely states that in terms of E-mail submitted by petitioner, he is being called upon to appear on 13th August, 2024 at 12:30 P.M. before the Committee to put forth his case. There is absolutely no indication of any charge or allegation being leveled against the petitioner.

18. Although learned counsel for opposite parties submits that petitioner was heard on subsequent dates as well on 27th August, 3rd September, 23rd September, 26th September as on various other dates but the fact still remains that prior to imposing of any punishment upon the petitioner, the opposite parties were bound to act in accordance with Clause 7.14 of the Code of Conduct.

19. Neither any material on record of the petition nor even in the record submitted by learned counsel for University today indicates any charge having been served upon the petitioner

prior to passing of the impugned order. Only vague notices directing petitioner to put forth his case, in the considered opinion of this Court would not come within purview of Clause 7.14 of the Code of Conduct.

20. The provisions of Clause 7.14 of the Code of Conduct as well as disciplinary action punishment are as follows:'

" 7.14 No punishment shall ordinarily be imposed on a student unless he/she is found guilty of the offence for which he/she has been charged by Proctor or any other inquiry after following the nor procedure and providing due opportunity to the student charged for the offence to defend himself or herself in front of the Proctorial board Disciplinary committee.

Disciplinary Action/Punishment

The competent authority may impose one or more of the following punishments on any student found guilty of any of the acts of indiscipline or misconduct as defined in Category-I or Category- II on the recommendation the Proctorial board Disciplinary committee.

(a) Category-I

- 1) Warning / Reprimand and information to the parents/guardian.*
- 2) Fine up to Rs. 10,000/- depending upon the nature and magnitude of violation.*
- 3) Suspension for one week.*
- 4) Declaring hostels, premises, building or the entire BBAU campus out of bounds to any student up to two weeks.*
- 5) Recovery of any kind such as any dues, cost of damages etc.*
- 6) With holding the certificate of conduct up to two months.*

(b) Category-II

- 1) Suspension for more than one week.*
- 2) Fine more than Rs. 10,000/-depending upon the nature and magnitude of violation.*
- 3) Declaring any part or the entire BBAU campus out of bounds.*
- 4) Cancellation of admission or withdrawal of degree or denial of registration for a specified period.*
- 5) Denial of any or all academic processes.*
- 6) Withdrawal of any or all facilities extended to a student as per BBAU Rules (such as Scholarship Fellowship, hostel etc.)*
- 7) Non-issuance of certificate of conduct.*
- 8) Expulsion*
- 9) Rustication for the specified period."*

21. Upon perusal of the aforesaid Clauses, it is evident that suspension for more one week would come within Category II of the Code of Conduct for which prior action under Clause

7.14 of the Code of Conduct is required to be taken which stipulates that the person should be charged by the Proctor whereafter an inquiry by providing due opportunity to the student is mandatory.

22. In the present, since no specific charge or allegation has even been served upon the petitioner, there obviously cannot be any reply submitted by petitioner in the absence of any specific charge or allegation. Students cannot be expected to imagine a charge and then subsequently, reply to same.

23. Clause 7.14 of the Code of Conduct also stipulates that an inquiry procedure to that effect is required to be followed providing due opportunity to the student charged for the offence to defend himself or herself in front of the disciplinary committee.

24. The aforesaid provisions clearly indicates adherence to principle of natural justice and application of mind to the defence raised by the student for which purpose, the disciplinary committee necessarily is required to advert to the reply submitted by the student and due consideration thereof.

25. A perusal of the impugned order dated 20th September, 2024, however, indicates none of the aforesaid factors available in the order. There is absolutely no mention of the ground raised by the petitioner in response to the charge, if any, may be

presumed. The order also does not indicate any consideration or application of mind as to how allegation leveled against the petitioner are made out. In fact, the order merely quotes various provisions of the Code of Conduct and does not even indicate as to how those specific provisions would be applicable in the case of petitioner. The order ex facie is non-speaking and has been passed without any application of mind.

26. In view of discussion made hereinabove, it is evident that the impugned order is patently against the provisions of the Code of Conduct, the said order dated 20th September, 2024 is hereby quashed by issuance of a writ in the nature of certiorari, leaving it open to the opposite parties to act in accordance with provisions of Clause 7 of the Code of Conduct in case required.

27. Since it has been stated and admitted that the examinations of 5th Semester BBA LLB (Hons.) are slated to commence from tomorrow, the opposite parties are directed to permit petitioner to appear in the aforesaid examinations subject to fulfillment of other mandatory conditions. Learned counsel for opposite party - University shall communicate this order and directions to the concerned authority of the University, who shall act in accordance thereof without waiting for a certified copy of this order to be served upon them.

28. Attendance of the petitioner, rather absence of petitioner from the classes and University for the period 18th November,

2024 till today, shall not be taken into consideration by the authorities for the purposes of calculating minimum attendance.

29. Resultantly, the petition succeeds and is **allowed**.

Order Date :- 4.12.2024

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