

(2013) 09 P&H CK 0424

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 2648 of 2010 (O and M)

Pavneet Singh

APPELLANT

Vs

The Baba Farid University of
Health Sciences and Others

RESPONDENT

Date of Decision: Sept. 5, 2013

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 148, 149, 307, 506

Hon'ble Judges: Sanjay Kishan Kaul, C.J; Augustine George Masih, J

Bench: Division Bench

Advocate: Karanvir Singh Khehar, for the Appellant; Anupam Gupta with Mr. Sharad Chaudhary, Advocate for respondent No. 1, Mr. Puneet Bali with Ms. Priyanka Ahuja, Advocate for respondents No. 4 to 7, for the Respondent

Final Decision: Dismissed

Judgement

Sanjay Kishan Kaul, C.J.

The passage of time, the conviction of private respondents No. 4 to 7 under Sections 307, 148, 120-B read with Section 149 IPC and even their rustication from the respondent-University for a period of three years has not acted as a balm on the hurt feeling of the petitioner and, thus, the present PIL. It is an unfortunate incident of 26.9.2006 where a fight broke out between the students of Sri Guru Ram Dass Institute of Medical Sciences and Research, Amritsar (respondent No. 2), i.e., petitioner and respondents No. 4 to 7. It is the case of a single injury on the head of the petitioner which was opined by the doctor, who attended to the petitioner, as dangerous to life in the criminal trial (examined as PW-9). An FIR was registered on the same day under Sections 307, 506, 148, 149, 120-B IPC at Police Station "B" Division, Amritsar, on the statement of the father of the petitioner against respondents No. 4 to 7. On 28.9.2006, respondents No. 4 to 6 were rusticated from the college while the same punishment was meted out to respondent No. 7 on 7.10.2006.

2. The decision to rusticate these private respondents was assailed by them in CWP Nos. 18322 and 18328 of 2006. These writ petitions were disposed of on 21.11.2006 directing the respondent No. 2-Institute to take a decision on the representation filed by the private respondents. The Chairman of respondent No. 2-Institute expressed his inability to take any decision on the representation as he was not competent to do so and, thus, the private respondents made a representation to the Vice Chancellor of respondent No. 1-University on 16.3.2007. In view of there being absence of response, three writ petitions, i.e., CWP Nos. 6351, 6761 and 6399 of 2007 were filed, once again impugning the order of rustication as well as the order passed by the Chairman of respondent No. 2-Institute on 2.12.2006. In these writ proceedings, the counsel for the respondent No. 1-University made a statement on 12.7.2007 that the matter would be placed before the Senate of the respondent-University. The Senate opined on 19.7.2007 that the rustication was justified. The duration of the rustication was fixed for a period of 3 to 5 years on the premise that the private respondents should not be allowed to enter the campus of respondent No. 2-Institute till the completion of internship of their batch. The writ petitions were dismissed on 6.9.2007.

3. The private respondents, aggrieved by this decision, approached the Hon'ble Supreme Court by filing an SLP and the matter was taken up on 29.10.2007. The SLP was, however, dismissed, but, simultaneously, leave was granted to the private respondents to approach the Vice Chancellor to seek modification of the punishment imposed on them and the Vice Chancellor was given liberty to pass an appropriate order despite the observations made by the High Court in the impugned judgment.

4. The Vice Chancellor, in pursuance to the aforesaid leave granted to him, passed an order on 2.6.2008 whereby the private respondents were rusticated for a maximum period of 3 years subject to fulfilling certain conditions, as under:--

a) That all the students from the victim's class should have cleared MBBS Course and passed out (including internship) so that they are not unnecessarily exposed to the adverse presence of alleged assailants in the institution.

b) That the alleged assailants shall only be allowed continuity of academic pursuit at the end of the period and no benefit should accrue to the alleged assailants for the period of rustication till their rejoining.

c) The alleged assailants shall be required to comply with all academic requirements for pursuing their academic career.

d) That the college authorities shall be fully entitled to keep the conduct of all of the alleged assailants in tight scrutiny and on any kind of default in conduct, have freedom to take appropriate action accordingly.

e) That all the alleged assailants at the time of restoration of continuity of study shall give in affidavit form declaration showing regret and apology for misconduct, guarantee of good behaviour and earnest pursuit of studies to the full satisfaction of the college authorities alongwith any other guarantee/assurances that the college authorities may seek to ensure peaceful undistruptive presence of these alleged students both inside and outside the college premises.

5. The private respondents assailed this decision in CWP No. 19042 of 2008, which was disposed of on 6.11.2008 by noticing that if affidavit in terms aforesaid is filed by the private respondents to seek apology, that would not amount to admission of their guilt as the criminal trial was pending.

6. The effect of all the aforesaid was that finally on 29.9.2009, the Registrar of respondent No. 1-University conveyed to the Principal of respondent No. 2-Institute that rustication of respondents No. 4 to 6 had been withdrawn with effect from 28.9.2009 and with respect to respondent No. 7 with effect from 7.10.2009. However, the Principal of respondent No. 2-Institute still did not allow the private respondents to rejoin their MBBS Courses despite the order dated 29.9.2009 of respondent No. 1-University and, thus, began another round of litigation by filing CWP No. 16114 of 2009. In the said writ petition, it was pleaded by respondent No. 2 that another 5 students of the same batch had not passed their internship and that was the reason that respondent No. 2-Institute had taken a decision not to allow the private respondents to rejoin their classes, as the private respondents should not be welcomed in the College in their presence. It was apprehended that there may be serious breakdown of discipline and creation of law and order problem by arrival of private respondents. Apart from this plea, the respondent No. 2-Institute also took the stand that there was shortage of lectures attended by the private respondents, an aspect emphasised by learned counsel for the petitioner today before us to contend that Clause (c) of the conditions mentioned in the letter dated 2.6.2008 of respondent No. 1-University has not been complied with.

7. The learned single Judge in the aforesaid writ proceedings passed an order on 17.11.2009. In terms of this order, the private respondents were directed to migrate to some other Government college for which the respondent No. 2-Institute would recommend the applications and the said private respondents were also permitted to appear in the examinations which were commencing on 19.11.2009. Counsel for the respondent No. 2-Institute also got recorded the statement that if this was done there would be no objection by respondent No. 2-Institute. This order was not assailed either by the petitioner or by his father.

8. It may be added that the father of the petitioner, in order to put forth the stand on behalf of the petitioner, had already filed C.M. No. 18388 of 2009 as an interim application in those proceedings. The aforesaid directions were complied with and, thus, the writ petition was withdrawn on 20.1.2010. On the interim application filed by the father of the petitioner, it was observed in the presence of the counsel for

father of petitioner that nothing survives in the application and that application was also accordingly disposed of.

9. The present writ petition, styled as a Public Interest Litigation, has been filed by the petitioner seeking quashing of the permission granted to the private respondents to appear in the Second Professional Examination of the MBBS; a direction to Medical Council of India to look into the irregularities and hold an inquiry and for withdrawal of the MBBS degrees awarded to the private respondents, who have, undisputedly, qualified as doctors, in the meantime. In a nutshell, the petitioner, who is deeply involved in the lis in the present case, claims that a larger issue is involved as to how the private respondents have obtained the degrees of MBBS.

10. We have heard learned counsel for the parties and even sought to find out if an amicable resolution to this long dispute can be arrived at de hors the criminal proceedings. This is so, as in the criminal proceedings the private respondents were convicted under Sections 307, 148, 120-B read with Section 149 IPC and were sentenced for a period of 4 years by the Additional Sessions Judge (Ad-hoc), Fast Track Court, Amritsar. Further, a fine of Rs. 5000/- was imposed on each of the private respondents apart from a sum of Rs. 1 lakh each, to be paid by respondents No. 4 and 5 and Rs. 50,000/- each by respondents No. 6 and 7 as compensation to the petitioner. The appeals of the private respondents have been admitted and sentence suspended. The fine is stated to have been stayed and compensation deposited. The State has filed an appeal and the petitioner preferred a criminal revision for enhancement of sentence. The criminal revision preferred by the petitioner (CRR-2535-2012) was ordered to be dismissed as withdrawn on 31.1.2013 in view of appeal of the State i.e. CrI. Appeal No. D-667-DB of 2012 having been admitted.

11. Our endeavour was only to see if there can be an agreement to end the present lis with payment of certain amount of additional compensation by the private respondents which would be without prejudice to the rights and contentions of the parties in the criminal proceedings. However, this is not acceptable to the petitioner, as stated by learned counsel for the petitioner. Thus, the petitioner wants his pound of flesh for the alleged injury caused to him.

12. In the present proceedings, we are not required to go into the aspects of the criminal trial and the result thereof as those aspects are pending consideration in appeal. Suffice it to say that we are concerned herein with the academic future of the private respondents, who have suffered 3 years" of rustication. As to what should be their academic fate has been left even by the Court to the discretion of the academic bodies including the Senate and the Vice Chancellor. It is the Vice Chancellor who ultimately took the call to ensure that rustication was for a certain period so that the batch concerned had passed out from the college. Despite that decision the respondent No. 2-Institute was reluctant to admit the private

respondents as five students were still pursuing their courses, apparently, because they may not have cleared their respective examinations at the earliest. The Vice Chancellor, thus, bestowed his consideration on the issue and that too after hearing the petitioner and his father.

13. The learned single Judge found the via media in the subsequent proceedings whereby there was an agreement between the University and the Institute that the interests of discipline would be best served by the migration of the private respondents to a different Government college. That did happen and the private respondents have now cleared their examination and obtained the MBBS degrees. As to how many classes they should have attended and what should have been the course of action towards that, has to be again examined by the University, which has no objection to the course of action adopted by the learned single Judge.

14. We may also take note of another crucial aspect, i.e., presence of the father of the petitioner in those proceedings as he had sought impleadment. Even when interim orders or the final order were passed, there was representation through counsel. No doubt, the father of the petitioner was, at no stage, impleaded as a party. But then, if the father of the petitioner or the petitioner was aggrieved by any order, it could have been assailed in appeal through an LPA by seeking leave to file LPA. This has not happened and, thus, those orders were accepted. Having accepted those orders, in our view, that chapter cannot be permitted to be opened obliquely through the present PIL.

15. In the present case, there is no larger public interest involved. In fact, it is purely a case of the private grievance of the petitioner, who wants to ensure that apart from whatever sentence is imposed on the private respondents by the criminal court and despite their rustication for 3 years, the private respondents should never be permitted to obtain their medical degrees despite the complete exercise having been devised and done under the aegis of the Vice Chancellor of the University who is the head of the academic body. We do not feel that the present proceedings should be permitted to be used for such a purpose, howsoever genuine the grievance of the petitioner against the conduct of the private respondents may be (we may make it clear that we are not commenting qua the conduct of respondents No. 4 to 7 for the purposes of the criminal appeal pending in this Court). We, thus, dismiss the writ petition, leaving the parties to bear their own costs.