

BIHAR HUMAN RIGHTS COMMISSION

9, Bailey Road, Patna

File Nos. BHRC/Comp. 3562/14

Case of Abhishek Gupta: (Case of Rustication from Patna University)

5.5.2015

Petitioner present. Controller of Examination, Patna University, Mr. Ram Kumar present with his counsel Mr. Vivekanand Prasad Singh.

This is a matter concerning rustication of a student of Patna University. The facts as mentioned by petitioner are that when he was writing the examination on 20th May, 2014, he was being harassed by the invigilating staff. The petitioner says he was asked not to leave the exam hall. Then many people came who lifted him to another room where he was made to sign many papers and then he was handed over to the police. Police took him to the police station and then produced him before a judge and thereafter he was sent to jail from where he was bailed by the court on 31st May, 2015. He remained in custody for 11 days.

The learned counsel for the respondents submits that petitioner was found cheating in the examination hall and when confronted by the invigilating staff, petitioner bet the invigilator. Thereafter, the Superintendent, the police and the magistrate were called and whatever followed had followed on the directions of the magistrate.

Some facts are disputed between the parties. The Commission is not at present concerned with those facts. The petitioner on his release found a notice dated 27th May 2014 at his residence by which he had been asked to show-cause within seven days. This notice was received by him on 31st May,

2014 when he was released from jail. Obviously, the time to file reply had come to an end. Therefore, he contacted the University authorities submitted that he could not file a reply. He was advised orally on phone to file reply on the next day which he did. The proctor had asked him to show cause within one week but at the same time he was suspended for one month.

Thereafter, another notice came to be issued to him on 22nd September, 2014. This notice makes an interesting reading:-

“As per decision taken by the Unfairmeans Committee at its meeting held on 26.05.2014, 10.0-7.2014, 28.07.2014, 30.07.2014 & 01.08.2014 the under mentioned examinees who were found guilty of using Unfairmeans at B.A/B.Sc./B.Com./U.G. Vocational/Self Financing & M.A./M.Sc./M.Com./ Semester I to IV Session (2012-14) and Semester I & II Session (2013-15) at Patna College/B.N. College/Patna Women’s College/Magadh Mahila College/ Science College Centre, Patna held in the month of February, March, April , May, June, & July 2014 have resolved why not they should be punished in the category as Mention against their names.”

On bare perusal of the notice, it becomes clear that University had already decided to punish the petitioner. His guilt had been presumed by the University and the notice was given with respect to the quantum of punishment. At no stage, the petitioner was given a chance to prove that he was not guilty. He questioned the notice by filing a detailed reply. The Unfairmeans Committee met on 13.2.2015. The minutes of the meeting have been produced by the University with respect to petitioner. The Committee reads:-

“The matter of Mr. Abhishek Gupta was considered by the Committee. Mr. Gupta has denied the charges and his explanation is entirely different from the report sent by the Centre Superintendent. The Committee, therefore, resolves that the

explanation submitted by Mr. Abhishek Gupta is not tenable. The matter is referred to the Examination Board for final decision.”

A bare perusal of the said minutes of the meeting would show total non-application of mind by members of committee. The facts with regard to the incident were disputed between the petitioner and the University Authorities but at no point of time the Unfairmeans committee had applied its mind to know truth. The truth could have been known by various methods. It could have been known by examining the examining authorities who were present in the examination hall. But all this has not been done. Now there is more glaring aspect of the case, the notice is given for awarding punishment of “His/her present examination cancelled” but the punishment given is rustication.

The learned counsel for University submits that in the notice, the petitioner was informed that he could be punished under category IV of Rules of Patna University, this Rule lays down:-

Offence	Punishment
Impersonation, assault or use of force against invigilator, superintendent, observer or persons connected with examination, snatching or tearing of answer book of other examinees, damage or arson or looting near examination hall disruption of examination by raising slogans, gherao or threats, use of force whether inside or outside the examination hall and gross indiscipline and illegal activities by examinees or non-examinees under Bihar conduct of Examination Act 1981.	Cancellation of current examination and to be debarred from any examination for next three academic sessions and/or rustication and other suitable legal action depending upon the nature of the offence and debarring him promotion to higher class.

The punishments prescribed under this rule are many. The petitioner had been asked as to why he should not be punished with “Present examination cancelled” in punishment column of the notice, no where he was asked to show cause against punishment of rustication.

To sum up:

1. No notice was ever given to petitioner to show cause as to why he should not be held guilty. Notice was given only with regard to quantum of punishment.
2. The Unfairmeans Committee did not apply its mind to the facts of the case and did not even suggest a punishment
3. That the Examination Board decided to rusticate the Petitioner for which no proceedings were ever initiated. Proceeding at best had been initiated for cancellation of petitioner’s “present examination”
4. That at no point of time, petitioner was given a chance of being heard.

This is all about administrative action. Now the legal action, the Bihar Conduct of Examination Act, 1981 lays down:-

S.10 Penalty :- Whoever contravenes any of the provisions or the provisions of section 3 to 9 shall be punished with imprisonment which may extend to six months but shall not be less than one month or with fine which may extend up to rupees two thousand or with both.

S.11. Nature of offence and trial :- Offences committed under the act shall be cognizable and non-bailable, and shall be disposed of through the procedure of summary trial by Executive Magistrates.

Although the trial has to be summary but it did not take place till date. Petitioner was kept in custody for 11 days without granting bail and without

concluding trial which had to be conducted summarily. Prima facie, it is an abuse of process of law.

The Commission is of the view that on these grounds the order of rustication of petitioner is a gross violation of human rights.

The Act makes certain omissions and commissions offences which are non-bailable and cognizable minimum sentence is one month's imprisonment. The Commission feels this an appropriate matter to be referred to Hon'ble High Court under S. 18(b) read with S.29 of the Protection of Human Rights Act, 1993 for issuance of appropriate writ or direction and also for examination of the constitutional validity of S.11 of the Act, as it prima facie negates the doctrine of Separation of Powers by giving punitive judicial powers to Executive. The doctrine of Separation of Powers is held to be part of basic structure of constitution.

Copy of this order along with copy of the material on the file of this Commission shall be transmitted to the Registrar General of the High Court with request that he shall place the papers before the Hon'ble Chief Justice.

Copy of this order be also given to Registrar, Patna University and the petitioner for information.

Copy be also sent to the Chancellor of the Patna University for information and circulation amongst the officials of the University.

(Justice Bilal Nazki)
Chairperson