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Court : Kolkata

Decided On : Jan-12-2017

Judge : Rakesh Tiwari

Appellant : Tapas Kumar Datta

Respondent : Indian Institute of Technology, Kharagpur and Ors.

Judgement :

ORDER
SHEET GA NO.1143 OF 2016 WITH APO NO.63 OF 2016 WP NO.403 OF 2014 IN THE HIGH COURT AT CALCUTTA CIVIL APPELLATE JURISDICTION ORIGINAL SIDE TAPAS KUMAR DATTA Versus INDIAN INSTITUTE OF TECHNOLOGY, KHARAGPUR AND ORS.BEFORE: The Hon'ble JUSTICE RAKESH TIWARI The Hon'ble JUSTICE MIR DARA SHEKO Date : 12th January, 2017.

MR.TAPAS KUMAR DATTA APPEARS IN PERSON MR.R.N.MAJUMDAR, MR.SOURAV CHAKRABORTY, MR.SUPRATIM BHATTACHARJEE, ADVOCATES APPEAR FOR RESPONDENTS The Court : Mr.Tapas Kumar Datta in person preferred an appeal assailing the order dated 20th January, 2016 passed by the learned Single Judge in W.P.No.403 of 2014 which, upon hearing both sides has been dismissed, penultimate portion of which is as follows:It appears that thesis submitted by the petitioner was sent for due evaluation by

examineRs.The same stood rejected by the foreign examiner, as also by the third examiner on reference by the institute.

This appears to be communicated by a letter dated June 10, 2002.

The writ petitioner has not explained his conduct for the period from June, 2002 to August, 2006 when he made request to then President of India.

Subsequent thereto for the period from August 12, 2006 to the date of filing of the writ petition dated May 5, 2014 the petitioner has not explained his conduct in the writ petition apart from the letter addressed by the advocate in 2014 as referred to above.

In the facts of the case I am satisfied the institute has taken appropriate measure to evaluate the thesis in accordance with the regulation prevailing.

The petitioner is also guilty of unexplained delay. On consent of both sides the appeal along with stay application are taken up for hearing.

Mr.Datta in the tune of the grounds taken in the writ petition argued that in June 1996 he submitted synopsis of thesis and in November 1997, he received a letter from the Head of the Department and Chairman of D.S.C.to submit clarifications in writing, which was complied with.

The grievance of Mr.Datta is that though his thesis was recommended for award by the two external examiners on the basis of clarifications duly submitted, but he was unnecessarily harassed since November 1997 by not awarding the degree on accepting the thesis submitted by him.

However, Mr.Datta, submitted that in 2006 he ventilated his grievance before the Visitor, IIT, Kharagpur but of no good.

He had sent a letter to the concerned institution on 7th February, 2012 and got a reply on 27th February, 2014 with an order of rejection, which according to him was without any reason and not following the rules, regulations and guidelines.

He submitted that the concerned authorities whimsically rejected the thesis without proper reason.

Injustice has been caused on him, which, according to him, is violation of fundamental rights.

Mr.Datta accordingly prayed as follows:- a) A writ in the nature of Mandamus commanding each and every Respondent to follow the rules and regulations and to take proper steps that your petitioner can appear for viva voce test and obtain his legitimate degree: b) A writ in the nature of Mandamus commanding each and every Respondent to cancel the rejection letter and follow the rules, regulations and guidelines so that your petitioner may appear for viva voce and obtain his legitimate degree; c) A writ in the nature of Certiorari directing each and every Respondent to submit all the necessary documents of your petitioner before this Hobble Court so that proper adjudication can be made.

Mr.Datta further argued that the letter dated 10th June, 2002 has been filed along with bunch of other documents by the respondent-Indian Institute of Technology is a false letter by which the Institute practised fraud, and he was discriminated in not following the rules and regulations in considering the thesis.

Thereby, according to him, Articles 14 and 21 have been violated.

Learned advocate for the respondent-Institute replied that the matter pertaining to the case of Mr.Datta was closed and it was communicated to him by letter dated 10th June, 2002, which is on record.

It was not challenged upto twelve yeaRs.There is also no pleading that the letter dated 10th June, 2002 was issued was false or issued by exercising fraud.

He further submits that the delay of about 14-15 years in filing the writ petition was unexplained.

According to the learned counsel for the respondent, the thesis was completed by the petitioner in 1997 and then a clarification was sought which was also provided by the appellant, Mr.Datta in 1997 itself, thereafter nothing was done by him.

For the fiRs.time Mr.Datta, the appellant ventilated his grievance before the Visitor in the year 2006 and suddenly writ petition was filed in 2014 without taking any step during the long intervening period.

It is argued that in the aforesaid circumstances repeated representations do not make provision to less the limitation much as in the case of the appellant, after he admitted in form, though his thesis was not accepted by the two examiners by the letter dated 10th June, 2002 he did not take any action or approach the Court.

Therefore, it does not lie and about to say that Article 14 i.e., equality before law has been violated as it was for him to approach the Court on the receipt of the letter immediately or within the reasonable period of time.

According to Mr.Datta, Article 21 has also been violated.

It is argued by the learned counsel for the respondent IIT, Kharagpur that Article 21 provides for protection of life and personal liberty.

It says that no person shall be deprived of his life or personal liberty except according to procedure established by law.

The Writ Court, on merits, decided the writ petition by observing as follows: It appears that thesis submitted by the petitioner was sent for due evaluation by examineRs.The same stood rejected by the foreign examiner, as also by the third examiner on reference by the institute.

This appears to be communicated by a letter dated June 10, 2002.

The writ petitioner has not explained his conduct for the period from June, 2002 to August, 2006 when he made request to then President of India.

Subsequent thereto for the period from August 12, 2006 to the date of filing of the writ petition dated May 5, 2014 the petitioner has not explained his conduct in the writ petition apart from the letter addressed by the advocate in 2014 as referred to above.

In the facts of the case I am satisfied the institute has taken appropriate measure to evaluate the thesis in accordance with the regulation prevailing.

The petitioner is also guilty of unexplained delay. While holding that the appellant did not explain the delay or his conduct in the writ petition apart from the letter dated May 5, 2014, addressed to his Advocate, the Writ Court also noted its satisfaction in the impugned judgment holding that the Institute had applied the proper methods for evaluation of the thesis of the appellant who was guilty of unexplained delay.

We have heard the appellant in person and the learned counsel for the respondents as also perused the records and the judgment impugned in the present appeal.

As regards delay and merits of the appeal, we are in total agreement with the reasons given by the Writ Court in the impugned judgment.

In so far as the question of violation of Articles 14 and 21 of the Constitution as well as discrimination alleged by the appellant are concerned, suffice it to say that no one had prevented the appellant from exercising his rights under Article 14 as is apparent from the records.

The appellant could have come to the Court immediately on receipt of the letter dated June 10, 2002 by which he was communicated the adveRs.decision on his thesis by the authority concerned.

But it took the appellant 12 long years to reach the Court and even then he argues that there is violation of Article 14 which, to our mind, is not attracted in the facts and circumstances of the case.

So far as violation of Article 21 is concerned, the essential components thereof are- (i) person; (ii) deprivation of life; (iii) deprivation of personal liberty; and (iv) procedure established by law.

Of these, deprivation of life and procedure established by law are of prime importance.

So far as the question of deprivation of life is concerned, there is no material before us or any argument advanced by the appellant as to how the appellant has been deprived of his life.

The fourth component, i.e.procedure established by law to be followed, is concerned, the writ court has, on the basis of the arguments made and the documents relied upon before it, came to a conclusion that the procedure as established by law was followed in case of this appellant for consideration of his thesis.

We also, after perusal of the records, are of the same view to adopt the reasons of the writ court in this regard.

According to the appellant, his thesis had not been rejected by Prof.

Wagoner and, therefore, he was deprived of his life because his thesis was not granted on false pretext.

The explanation of the appellant is that he was not aware about the order dated June 10, 2002 because it was brought on record by the respondents only in the writ petition.

If that was so, it was more for the appellant to have preferred writ petition challenging the order dated June 10, 2002 within a reasonable period of time at that stage.

He cannot now come in appeal raking ashes to flare up a dispute which was not even agitated after June 10, 2002 till the date of filing of the writ petition.

If the appellant challenged the order dated June 10, 2002 within the reasonable period of time, probably all the records could have come before the court at that time.

Merely to say that the appellant came to know of the same after the affidavits were exchanged in the writ petition and thereby fraud committed on him by robbing him of his fundamental right to life does not hold good as the appellant had not only corresponded with the Institute in this regard but had also represented there as

visitor in 2006, and copy of that letter also found place in the paper book prepared by him.

In so far as the question of discrimination raised by him, the appellant has not been able to show from the records or the pleadings that any other person similarly situated had been granted Ph.D.on accepting thesis in the same facts and circumstances as that of the appellant.

There can be no discrimination if the appellant has been visited with adveRs.consequences vide the letter dated June 10, 2002 when the appellant could not show that any other person with the same facts and circumstances as that of the appellant was differently treated.

Mere assertion or argument that the appellant had come to know about the said letter dated June 10, 2002 only after filing of the writ petition in 2014 does not earn any credence far to speak of meeting the requirements of law to hold that any discrimination has been suffered by the appellant and this, therefore, does not appeal to reason.

That apart, while the members of the Academic Excellence Committee had considered the impugned thesis of the appellant with its expertise and arrived at the decision, as quoted above, the writ court rightly refrained its hand from interfering into such decision making process when there was no procedural lapses.

The appellant has relied upon a decision of the Apex Court rendered in AIR 1994 SC853(S.P.Chengalvaraya Naidu (dead) by L.Rs., Appellants v.

Jagannath (dead) by L.Rs.and otheRs.Respondents).where the Honble Court was considering the Civil Procedure Code along with section 2(2) of the Evidence Act read with section 44 thereof.

The judgment was in the context of a proceeding in Court wherein the Court had considered fraud by litigants, i.e.to say in that case vital documents relevant to litigation were withheld and in that circumstance it was remarked by the Honble Court by reversing the judgment of the High Court that fraud was committed on

Court and the guilty party is liable to be thrown out at any stage.

The litigant in that case had obtained preliminary decree for partition of a property by withholding facts.

A perusal of the said judgment clearly reveals that it was in the aforesaid context that the decree was sought to be obtained by fraud.

This case is not applicable in the facts and circumstances of this case.

The appellant further relied upon paragraph 14 of the judgment rendered in (2005) 6 SCC149(State of A.P.& Anr.

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Suryachandra Rao).which reads as follows: 14.

Suppression of a material document would also amount to a fraud on the court. This case also is clearly distinguishable as the moot question before the court is as to whether the appellant had approached the court within the period of limitation and whether any fraud has been committed by the respondents in the facts and circumstances of the case and the answers come out in the negative.

As regards the other cases cited by the appellant, they are not in pari materia with the instant appeal.

The writ petition was filed by the appellant with unexplained delay and laches, as also noted by us, the effect of which was rightly held to be fatal by the writ court as neither the writ court nor do we find any fraud committed on the appellant, rather whatever place it was held in usual couRs.and to the knowledge of the appellant, whose allegations at this stage are also barred by the theory of eclipse.

For all those reasons stated above, we find no merit in the appeal and the same is dismissed along with the connected application.

(RAKESH TIWARI, J.) (MIR DARA SHEKO, J.) sb./tk

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