

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 21085 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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**KUNDANKUMAR NAVALKISHOR MAHATO**

Versus

**THE MAHARAJA SAYAJIRAO UNIVERISTY OF BARODA**

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Appearance:

MR HITESH L GUPTA(3937) for the Petitioner(s) No. 1

MR MITUL K SHELAT(2419) for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 2,3

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**CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA****Date : 09/02/2023****ORAL JUDGMENT**

1. Heard learned advocate Mr. Hitesh L. Gupta for the petitioner and learned advocate Mr. Mitul

Shelat for the respondents.

2. Having regard to the controversy in the narrow compass and with the consent of the learned advocates of both the sides, the matter is taken up for hearing.

3. Issue **Rule**, returnable forthwith. Learned advocate Mr.Mitul K. Shelat waives service of notice of rule for the respondents.

4. By this petition under Article 226 of the Constitution of India, the petitioner has prayed to quash and set aside the communication dated 13<sup>th</sup> May, 2022 whereby, the petitioner was ordered to be debarred permanently from the respondent-University under Ordinance 290 for Display/Exhibition of Objectionable art work in Department of Sculpture Faculty of Fine Arts.

5. The petitioner has also prayed to set aside

the order of rejection of Appeal preferred by the petitioner before the respondent-University against the order of debar.

6.1. The brief facts of the case are that the petitioner, after graduation from Banaras Hindu University got admission at the Department of Sculpture Faculty of Fine Arts of the respondent-University and was pursuing first year studies of his Post Graduation Degree.

6.2. On 2<sup>nd</sup> May, 2022, the petitioner appeared for his viva-voce before the Examination Committee and presented his experimental art work for their review. Accordingly to petitioner, this was supposed to be a very confidential process in which only the concerned students and examiners are supposed to remain present and the art work submitted by the petitioner was never meant for public display.

6.3. It is also the case of the petitioner the art work of the petitioner was a piece of stencil which was a collage of newspaper cuttings that are selectively collected and placed over a cardboard.

6.4. It appears that the petitioner created an art work of collage of newspaper cuttings over cutouts of Hindu Goddesses made of Mount Sheet.

6.5. The petitioner was asked about the concept of this art work on 2<sup>nd</sup> May, 2022 during the course of viva-voce examination and the petitioner was thereafter told by the examiners that the art work of the petitioner was addressing sensitive subjects and could be misunderstood by layman during public display and therefore, the petitioner was asked to remove his art work and accordingly, petitioner removed the same.

6.6. It appears that the art work of the

petitioner was photographed by some unknown person and was circulated over social media which created a ruckus at the respondent-University.

6.7. According to the petitioner, the petitioner left for his village at Bihar on 05.05.2022. The petitioner thereafter informed Dr. C. N. Murthy explaining his situation that he was at his native village and thereafter communicated on whatsapp with Dr. Murthy and he was asked to tender apology in his own handwriting. An FIR is also filed against the petitioner under Sections 295A and 298 of the Indian Penal Code on 09.05.2022 for alleged display of all objectionable art work.

6.8. The respondent-University issued show-cause notice dated 12.05.2022 calling upon the petitioner to show cause why he should not be debarred permanently as a student from pursuing

the study in any of the Faculty/Institution of the respondent-University as per provision of major penalty under Ordinance 290 of the University within 24 hours on or before 3:00 p.m. on 13<sup>th</sup> May, 2022. The petitioner on receipt of such show-cause notice, left his village and reached to the respondent-University at 2:40 p.m. which fact is available from the correspondences of Emails placed on record by the petitioner with the respondent-University. However, according to the petitioner, he was not heard and the impugned order dated 13.05.2022 was passed on the basis of the alleged confession of the petitioner.

6.9. The petitioner thereafter was informed on 13<sup>th</sup> May, 2022 that he is debarred permanently from the respondent-University. The petitioner being aggrieved preferred Appeal before the Chancellor, Vice-Chancellor and Syndicate Members seeking review of the decision dated 13.05.2022 taken by the competent authority debarring the

petitioner from respondent-University.

6.10. The Syndicate of the respondent-University however, without giving any opportunity of hearing to the petitioner confirmed the decision dated 13.05.2022 of the respondent-University by debaring the petitioner permanently.

6.11. Being aggrieved by the above orders, the petitioner has preferred this petition.

7.1. Learned advocate Mr. Hitesh Gupta for the petitioner submitted that it is never the intention of the petitioner to cause any disrespect to Hindu Goddesses. It was submitted that the petitioner has created the art work for the purpose of internal examination only and the Faculty Members who are examiners were supposed to examine and on being asked, the petitioner immediately removed such art work on 2<sup>nd</sup> May,

2022.

7.2. It was submitted that the respondent-Authority without conducting the inquiry in a proper manner and in hasty manner has taken the decision to debar the petitioner on the basis of the alleged confession. Learned advocate Mr. Gupta invited the attention of the Court to various correspondence as well as the extracts from the Whatsapp messages which were exchanged between the petitioner and Dr. Murthy which is relied upon by the respondent-University to hold that the petitioner has made confession about his mistake.

7.3. It was further submitted that as per Ordinance 290 (O. 290) of the respondent-University, major penalty can be imposed for indiscipline on the part of the students which are enumerated in clause (a) to (t). It was submitted that for imposing major penalties as

per O. 290, complaint is required to be filed by Dean/Principal/Head of the Institution with the help of the Faculty level disciplinary committee and the Faculty and Disciplinary Committee is required to conduct a preliminary inquiry and on the basis of the report of the preliminary inquiry, the University is required to take necessary action. It was submitted that none of the clauses of O.290 are applicable to the facts of the case and the respondent university has not followed the procedure prescribed therein.

7.4. Learned advocate Mr. Gupta submitted that observation of the Fact Finding Committee which is produced at page No.142 of the petition, clearly points out that the art work for which the objections are raised was not part of the Public Display/Exhibition and it was a work prepared and submitted by the petitioner as part of his examination. It was also stated in the report that the petitioner prepared the

objectionable work in department studio and a month long art work went unnoticed from all the Teachers of the Department till it was displayed for assessment.

7.5. Learned advocate Mr. Gupta invited the attention of the Court to Additional Affidavit filed by the petitioner affirmed on 7<sup>th</sup> February, 2023 and submitted that the petitioner is ready to follow the procedure laid down in O. 290 and respondents may conduct the inquiry and petitioner shall extend all co-operation and participation for such inquiry.

8.1. On the other hand, learned advocate Mr. Mitul Shelat for the respondent-University submitted that the respondent-University has passed the impugned order dated 13<sup>th</sup> May, 2022 on the basis of confession statement dated 9<sup>th</sup> May, 2022 of the petitioner. It was submitted that the petitioner has given such statement in his own writing which

is now stated to be sent to Dr. Murthy on Whatsapp.

8.2. It was submitted that the impugned communication of debaring the petitioner is issued by the respondent-University after following the procedure laid down in O. 290 for Conduct, Discipline and Appeal Rules for the students of the University and in compliance of the principles of natural justice.

8.3. It was submitted that the challenge to the impugned communication is barred in view of doctrine of acquiescence because of confession of the petitioner committing act of exhibition/display of objectionable art work which resulted into hurting the religious sentiments, disruption of University work and defaming the name of the University.

8.4. It was therefore submitted that the

petitioner is now estopped from seeking to challenge the punishment imposed upon him having admitted the misconduct committed by him.

8.5. It was submitted that the petitioner has approached this Court after the lapse of academic session as the communication debarring the petitioner is issued on 13.05.2022 and the Appeal is rejected by the Syndicate of the University on 05.07.2022. Merely because the time was consumed by the petitioner to get the relevant documents through Right to Information Act cannot be considered as an excuse to prefer the petition late after about eight months. It was therefore submitted that the petitioner is not diligent in pursuing his cause and therefore he is not entitled to the get any relief.

8.6. Learned advocate Mr. Shelat thereafter referred to and relied upon the following averments in the Affidavit-in-Reply with regard

to the relevant facts of the case as per the respondents:

"A. It is stated that an objectionable art work was prepared by the Petitioner depicting deities in a manner which would hurt the religious sentiments of the people and put on display for assessment and evaluation as a part of the second semester of first year MVA degree course in the faculty of Fine Arts. The said Art works were circulated in social media leading to the ruckus and breach of peace in the University campus on 05.05.2022.

B. The University vide letter dated 05.05.2022 constituted a Fact Finding Committee pertaining to exhibition/display in Faculty of Fine Arts. The following were the members of the Committee:

1. Prof. C.N. Murthy, Dean Faculty of Tech. Engg.
2. Prof. Ketan Upadhyay, Dean Faculty of Commerce
3. Prof. Bhavna Mehta, Dean Faculty of Social Work
4. Prof. HaribhaiKataria, Dean (offg.) Faculty of Science
5. Dr. V. H. Kher, Syndicate Member (MSUB)
6. Dr. Chetan Somani, Syndicate Member (MSUB)

7. *Shri Jignesh Shah, Senate Member (MSUB)*

8. *Prof. Ambika Patel, Faculty of Fine Arts*

9. *Dr. Mayank Vyas, Jt Registrar (MSUB)*

*A Copy of the Letter dated 05.05.2022 is annexed herewith and marked as Annexure R-1.*

*A Copy of the Newspaper Reports published on 06.05.2022 is annexed herewith and marked as Annexure R-2.*

*C. It is stated that the Committee inquired into the said Incident. The meetings of the Committee were held on 06.05.2022, 08.05.2022 and 09.05.2022. The statements of teachers and students were taken. The Petitioner was informed vide letter dated 07.05.2022 (Page 67) to remain present before the Committee however he chose not to remain present before the Committee. The Petitioner made a confessional statement on 09.05.2022 admitting that the objectionable art work was prepared by the Petitioner. The Factn Finding Committee submitted its report on 09.05.2022.*

*A Copy of the Report of the Fact-Finding Committee is annexed herewith and marked as Annexure R-3.*

*D. It is stated that pursuant thereto, the Petitioner and certain faculty members*

were issued show cause notices by the University. The notice issued to the Petitioner was vide letter dated 12.05.2022 (Page 73).

E. It is stated that as petitioner in response to the said notice addressed a communication dated 13/05/2022, admitting his guilt and apologizing for the same. The Competent Authority of the University debarred the petitioner permanently as a student from pursuing study in any of the faculty/institution of the Answering Respondent and issued the impugned communication.

F. I state that the Answering Respondent has followed the procedure as laid down in Ordinance 290 and has followed the principles of natural justice. The Petitioner was given the opportunity to submit his explanation. The Petitioner did not dispute allegations made against him and only tendered his apology.

G. I state that the Petitioner preferred an Appeal/Representation against the impugned communication. The Appeal was considered by the Syndicate of the Answering Respondent. The Syndicate of the Answering Respondent after considering the Appeal, affirmed the earlier decision regarding debarment of the Petitioner. (Page 109)

H. I state that the Petitioner has confessed to preparing the objectionable art work vide communication dated 09.05.2022 which adversely damaged the religious sentiments, created disharmony in the society and damaged the prestige

*and peace of the University. The Fact-finding committee has concluded that the objectionable art work was prepared by the Petitioner. I state that the Answering Respondent has followed the procedure prescribed under Ordinance 290 (Page 86) before imposing penalty and issuing the impugned communication.*

*I. The decision of the Answering Respondent is bonafide and in accordance with law."*

8.7. Referring to the above facts, it was submitted that once the petitioner has found committing an indiscipline by exhibiting and displaying the art work resulting into hurting the religious sentiments and the reputation of the University, the petitioner is not entitled to continue studies with the respondent-University and therefore, as per the O. 290, the petitioner is rightly debarred permanently from the respondent-University and such decision is confirmed by the Syndicate of the University.

8.8. It was submitted by learned advocate Mr.

Shelat that the petitioner was given sufficient opportunity to appear before the Fact Finding Committee and submit his explanation, however, he did not appear and instead he submitted the confessional statement on 09.05.2022 and he had given the confessional statement as per instructions of Dr.Murthy is not true and correct. It was submitted that the petitioner has again sent the apology letter confessing the preparation of the objectionable art work vide Email dated 13.05.2022 and thereafter, the impugned communication/order was issued after following the procedure laid down in ordinance.

9. Having heard the learned advocates for the respective parties and after considering the material documents produced on record, it appears that the impugned communication dated 13.05.2022 as well as the order of the Syndicate is based on the alleged confessional statement of the petitioner. It also appears that the petitioner

was not granted an opportunity of hearing by the Fact Finding Committee on 13<sup>th</sup> May, 2022 and the Syndicate has also not granted any opportunity of hearing to the petitioner. The O. 290 prescribes the procedure as under:

**"Procedure**

*Whenever any of the act comes to the notice of the competent authority the same authority will issue a notice to the student concerned to show cause as to why a particular disciplinary action should not be taken against him. For the minor penalty other than warning the reply received from the student concerned will be placed before the faculty level disciplinary committee and on the recommendations of the said committee the Dean/Principal/Heads of Institution will take further appropriate action regarding imposing penalty. For imposing major penalties, on the basis of the complaint the Dean/Principal/Head of the Institution with the help of the Faculty level disciplinary committee will conduct a preliminary enquiry and on the basis of the report of the preliminary enquiry he will forward the matter along with the report to the University for further necessary action. The matter will be placed before the University level disciplinary committee and the same committee will after following the law of natural justice will submit its report to the Vice-Chancellor and the Vice-*

Chancellor will take further appropriate decision in the matter. In short minor penalty will be imposed by the Dean/Principal/Head of Institution concerned and for major penalty the Vice-Chancellor will impose penalty after following above procedure

**Notes : -**

1. While conducting an enquiry/investigation, the disciplinary Committee should go into the causes/circumstances leading to the acts of indiscipline/violence and if the root cause is found to lie with academic or administration lapse, such as late submission of results, delay in declaration of admissions, availability of marks lists, irregularity in taking classes etc. such findings should be noted and the committee should report the findings along with erring parties for necessary action. In such a case, the act of violence/indiscipline on the part of students should be looked at with due moderation.

2. Whenever elements other than students belonging to the Faculty or the Institution where indiscipline or violence takes place are involved, "the incident must be fully investigated by the disciplinary Committee of the Faculty or the Institution where the act of indiscipline/violence takes place.

3. Whenever an act of indiscipline/violence takes place, before filing the F.I.R., all the aspects at the

*appropriate level be considered."*

10. O. 290 also prescribes for Appeal against the order of the punishment imposed upon the students which reads as under:

*"The Faculty level committee will be appointed by the Dean/Principal/Head of Institution. University level committee will be appointed by the Vice-Chancellor. On the decision of the Dean, the student concerned will have a right to file an appeal before the Vice-Chancellor to review the penalty imposed by the Dean and in case of the penalty imposed by the Vice Chancellor, the student concerned will be entitled to file an appeal to the Syndicate to review the penalty. This appeal is to be filed within a period of 45 days from the date of the order of penalty. The appeal filed after the expiry of 45 days from the date of communication of the order, will not be entertained."*

11. The petitioner has filed an Additional-Affidavit retracting/withdrawing his alleged confessional statement and has also stated on oath that the petitioner shall extend all co-operation and participation for any type of Faculty level inquiry and University level inquiry.

12. In view of the above facts and considering the nature of the incident which has taken place, it would be in the interest of justice to conduct further inquiry by the respondent-University in case of the petitioner for the alleged Display/Exhibition of objectionable art work in Faculty of Fine Arts of the respondent-University as the communication dated 13.05.2022 is based upon the confessional statement dated 9<sup>th</sup> May, 2022 of the petitioner in addition to the report of the Fact Finding Authority. Therefore, without examining the merits of the matter any further, the impugned order/communication dated 13.05.2022 as well as the Resolution dated 05.07.2022 passed by the Syndicate confirming such order are hereby ordered to be quashed and matter is remanded back to the respondent-University to pass appropriate order upon the inquiry report submitted by the Fact Finding Committee and further inquiry which may be conducted after giving an opportunity of hearing to the petitioner.

13. It is clarified that this Court has not gone into the merits of the matter and the impugned orders are quashed and set aside only on the ground of breach of principles of natural justice keeping all the contentions of the petitioner as well as the respondent-University open so as to enable the respondents to arrive at a decision as per O. 290 after providing an opportunity of hearing to the petitioner.

14. Rule is made absolute to the aforesaid extent. No orders as to cost.

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THE HIGH COURT  
OF GUJARAT

(BHARGAV D. KARIA, J)

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