(2001) 03 DEL CK 0169

Delhi High Court

Case No: C.M. No. 5437 of 2000 and Civil Writ No. 3569 of 2000

Mansoor Azam		APPELLANT
	Vs	
Jamia Millia Islamia and Others		RESPONDENT

Date of Decision: March 3, 2001

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Citation: (2001) 90 DLT 735 : (2001) 59 DRJ 252

Hon'ble Judges: S.K. Mahajan, J

Bench: Single Bench

Advocate: S.C. Dhanda, for the Appellant; B.B. Sawhney, for the Respondent

Judgement

S.K. Mahajan, J.
With the consent of the parties, arguments have been heard in the matter and the petition is being disposed of finally.

2. By way of the present writ petition the petitioner is seeking to challenge the order dated October 13, 1998 whereby the respondent-University had decided not to allow the petitioner admission in any class/course in the Jamia Millia Islamia in future. The petitioner at the relevant time was a student of the class 12th and by the same order he was permitted to attend classes and could appear in the examination of Class 12. Pursuant to the permission granted for class 12 examination of the University, the petitioner was able to clear the said examination. After passing the examination, he applied for admission in B.Tech Course of the respondent University. Admission to this Course in the University is on the basis of merit in the written test and interview. Petitioner appeared in the entrance examination and his name was shown in the merit list. He, however, was not called for interview and on being approached the University informed him that on account of the order dated October 13, 1998 he cannot be admitted in any course in the respondent University. Being aggrieved by this order, the present writ petition as field.

3. It is the contention of the petitioner that in the year 1998 he was a student of Class 12 of the Senior Secondary School of the University. He was given admission after he had completed his Class 10 examination from the same University. On 7th September, 1998 the petitioner received a show-cause notice informing him that since he was involved in fighting with some outsiders residing in Azeem Dairy, he had violated the disciplinary norms of the Hostel on the mid-night of 6th September, 1998 and he was Therefore asked to explain within two days as to why disciplinary action be not taken against him. The petitioner in reply to the show cause notice wrote to the Principal of the School that on the fateful day, he had returned with his elder brother, who had taken him for treatment, around 10.30 PM at the Hostel and in the morning when he went to Azeem Dairy to collect his clothes from the washerman, he was recognised by certain persons as a hosteller and was apprehended by them alleging his involvement in the fight that had taken place the previous night. He stated that he was a laborious student having secured 80% marks in class X and was a topper in the Class 11th Examination held by the University. Being not satisfied with his reply, the petitioner was called upon to appear before the Disciplinary Committee on 18th September, 1998 at 4.30 P.M. In the meantime, it appears that certain persons residing near Azeem Dairy informed the University that the petitioner was not involved in the case at all and no action should be taken against him. The Disciplinary Committee of the respondent in its meeting held on September 18, 1998, however, took a serious view of the alleged misconduct of the petitioner and holding that he was involved in a physical fight with the residents of Azeem Dairy, the owners of STD booth and tea stall of the same locality at around 11.00 P.M. on 6.9.98, decided not to allow him to take admission to any class/course of the University in future.

4. It is the case of the petitioner that firstly he was not involved in any act of misconduct which could entitle the respondents to take action against him and secondly there was no material before the University to hold that the petitioner was involved in any such incident. it is also submitted that the petitioner had not been given any opportunity to defend himself and prove his innocence and in any case the alleged incident having taken place outside the University premises had nothing to do with the discipline of the University. Action, Therefore, taken against him was alleged to be arbitrary and capricious and vocative of the principles of natural justice. It is further submitted that to receive education was a fundamental right of the petitioner and the same was being denied to him without any justifiable cause and moreover punishment awarded by the respondent-University was not commensurate with the petitioner''s alleged misconduct.

5. The respondent has filed a detailed counter-affidavit in opposition to the writ petition. It is stated that the petition was hit by delay and laches inasmuch as the order of punishment imposed by order dated 13th October, 1998 has already been given effect to and the same having been challenged almost two years after the same was imposed was barred by delay and laches. it is also stated in the

counter-affidavit that the decision arrived at by the Disciplinary Committee of the University was just and proper and necessary for academic peace of the university and for creating a healthy, invigorating academic climate. it was stated that campus of the University is geographically located amongst number of residential localities and quite a few incidents had been reported to the University in which students of the University were involved in unfortunate incidents with the local residents. These incidents according to the respondents had been disturbing the life of the Campus and it was necessary to cure this menace by taking such disciplinary action against the students who were involved in the same. it is also stated that petition lacked bona fide in as much as the petitioner had been shifting stands from time-to-time. At one stage he head stated that he had gone to the washerman to collect his clothes and at the other place, he stated that he had gone tot he spot when some hostellers informed him that in Batla House, an accident had taken place. It is also alleged in the counter-affidavit that the petitioner along with two other students had secured the signatures of the other hostellers on blank papers on the pretext that they would be submitting an apology, but subsequently made false and frivolous allegations against the university officials. It is stated that the letters which have been received from certain residents of the area were in the hand-writing of the petitioner himself and the same were not worth of credence.

6. It is further stated in the counter-affidavit that on receipt of the complaint from the local residents of Jamia Nagar area that at 11.00 P.M. on 6th September, 1998 around 20 student of the University had attacked and assaulted one Mohd. Deen, as tea vendor, causing fracture to his hands and legs and caused destruction to another shop from where an STD booth was being run, a preliminary investigation was conducted by the Proctorial Team of the respondent-University and it was revealed that the petitioner was involved in the incident. A show-cause notice was accordingly issued, reply to which was received from the petitioner. It is also stated that the wardens had reported to the Provost that the petitioner was involved in the group clash on the night of 6th September, 1998 and that he had violated the hostel norms by leaving the hostel without permission of the warden. The petitioner along with two other suspended inmates of the hostel namely Mohd. Haris and Mohd Asif was allegedly involved in the incident. The Disciplinary Committee in its meeting held on 18th September, 1998 took into consideration the show-cause notice, reply of the petitioner as well as the complaint made by different persons and came to the conclusion that the letters received from the STD Booth owner and Abbasi Kalayan Samiti exonerating the petitioner had ben procured by the petitioner and that the conduct of the petitioner was such that he did not deserve to be given any further admission in the University. The Disciplinary Committee of the respondent considered of the Vice-Chancellor, the Proctor, the Principal of the Senior Secondary School, the Head Master of the Middle School, Shri T. Barney, Smt. K. Jehan, Shri Shahid Khan, Shri Faiz Mod, and Smt. Razia Ynus, all the last five persons were teachers of the school. It is stated that while two other persons namely Mohd. Anis

and Mohd. Arif who were already under suspension because of an earlier incident of indiscipline as also the gravity of the misconduct were debarred from admission in any class/course in Jamia in future and their hostel accommodation was withdrawn, campus ban was imposed upon them and they were not even permitted to attend classes but were permitted to appear in class 10 Annual Examination, some latitude was given to the petitioner by permitting him to attend classes of 12th Standard till the final examinations, but he was also debarred from admission in any class/course in Jamia in future. The petitioner thereafter moved a mercy appeal expressing regrets fro whatsoever had happened, but the same was rejected by the Vice-Chancellor. it is stated that a civil writ petition was also filed by the other charge-sheeted student namely Mod Harris but the Court was pleased to dismiss the same. It is stated that the petitioner had clearly admitted that he was at the site of the incident and he was even assaulted by the local residents of the area at that time. The contention of the Petitioner, Therefore, according to the respondents that he was present at the site only by co-incidence could not be believed. It is stated that the Disciplinary Committee had arrived at a conclusion keeping in view the facts and circumstances of the case including the need to maintain general discipline and academic calm at the Campus. The statements of the Proctorial team and the charge sheeted students was duly considered by the Disciplinary Committee and an oral hearing was also given to them. it is submitted that University cannot permit indisciplinary in the Campus and it was not obliged to examine the owners of the tea stall or STD Booth who had evidently been prevailed upon. It is stated that on the facts of the case Members of the Committee were convinced of the indiscipline of the charged students. The petitioner while challenging the punishment dated 13th October, 1998 had regretted his conduct which is an admission by implication of the charges leveled against him. It is, Therefore, stated that no case was made out for the grant of any relief to the petitioner.

7. Learned Counsel for the petitioner has mainly relied upon two factors namely (i) that the principles of natural justice were violated in as much as he was not given any opportunity to cross-examine any of the witnesses who had made complaint against him and (ii) assuming that the fight had taken place, the punishment imposed upon him was not commensurate with the misconduct alleged to have been committed by him. For this he has placed reliance upon the judgment reported as Ranjit Thakur Vs. Union of India (UOI) and Others, .

8. In Ranjit Thakur v. Union of India (supra) the facts were that Ranjit Thakur was tried by a summary Court Martial. he is stated to have pleaded guilty and a sentence of rigorous imprisonment for one year was imposed upon him. The sentence was for a charge of disobeying a lawful command given by his superior officer in that he at 15.30 hrs. on 29th May, 1985 when ordered by J.C. 1.6251-P Subedar Ram Singh, the Orderly Officer of the same Regiment, to eat his food, did not do so. Besides sentencing the appellant in that case to rigorous imprisonment of one year, he was also dismissed from service with the added disqualification of being declared unfit

for any future civil employment. While dealing with the question as to whether or not the punishment imposed upon the appellant was commensurate with the offence committed by him, the Court held that the judicial review generally speaking was not directed against the decision but was directed against the decision making process. The question of the choice and quantum of punishment was within the jurisdiction and discretion of the Court Martial. but the sentence has to suit the offence of the offender. It should not be vindictive or harsh nor it should be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would into be immune from correction. Relying upon another judgment in Bhagat Ram Vs. State of Himachal Pradesh and Others, it was held that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be vocative of Article 14 of the Constitution. The Supreme Court, Therefore, held that the punishment imposed was so strikingly disproportionate as to call for an interference and the same cannot be remained uncorrected in judicial review.

9. It is, Therefore, the submission of Mr. Dhanda, learned Counsel for the petitioner that even assuming that the petitioner was involved in a fight outside the Campus of the University with some outsiders who had later on withdrawn their complaint, the petitioner should not have been imposed such a heavy punishment so as to be deprived of his right to education. it is stated that right to education is a right guaranteed under the Constitution and within the directive principles of the States. This right cannot, Therefore, be taken away more so when the petitioner did not have any past history of having indulged in any act of indiscipline.

10. On merits of the case, the contention of learned Counsel for the petitioner is that the petitioner was not identified by any person being allegedly involved in the fight; the STD Booth owner and the witnesses who had allegedly made a complaint about the incident had resoled from their earlier statement; no enquiry worth the name was held and no opportunity was given to the petitioner to cross-examine any witness to prove his innocence; no one had identified the petitioner and the respondent Therefore, had clearly erred in concluding that the petitioner was involved in the fight. According to him, it is a clear of the violation of principles of natural justice and the impugned order was liable to be set aside.

11. Mr. Sawhney, learned Counsel for the respondent besides contending that the petition is bad because of delay and laches has also submitted that in academic disciplinary matters, an enquiry cannot be of the kind envisaged against either an industrial employee or a Government servant. It is his submission that more often than not it may not be possible to examine the fellow students and even the

University officials do not want to expose students who may be witnesses to the incident and their identity is not normally disclosed. It is, Therefore, his submission that the decision taken on the basis of the report of the Proctor and the complaint of the residents was proper and the action taken against eh petitioner cannot be challenged or set aside.

12. Mr. Sawhney has also contended that in case this Court comes to a finding that principles of natural justice had been violated it should not set aside the order, but should direct the University to hold fresh enquiry. He also submitted that this is not a case where a student had been expelled or rusticated and he was at liberty to seek admission on the basis of his Class 12th examination in any other University. Mr. Sawhney in support of his arguments has relied upon the judgments reported as M.A.A. Abu Ghunima Nazer Zohir El Yazgi Vs. Union of India and Another, Controller of Examinations and Others Vs. G.S. Sunder and Another, , Arun Kumar Pateria and Another Vs. Vikram University, Ujjain and Others, , Ram Chander Roy v. University of Allahabad and Ors., air 1956 All 46, State Bank of Patiala and others Vs. S.K. Sharma, Mohd. Zareeq Khan and Others Vs. Jamia Millia Isalamia, Narender Singh Vs. University of Delhi and Others,

13. In M.A.A. Abu Ghunima v. Union of India (supra) a Division Bench of this Court had held that on a question of discipline in the educational institution rules of natural justice cannot be put in a strait-jacket and they vary from situation to situation and from case to case. It was held that rules of natural justice depend upon facts of each case and where no mala fides or other motives were alleged against the officers of the University in the passing of the impugned orders, the Court will not interfere in the punishment imposed upon the petitioner.

14. In Controller of Examinations and Ors. v. G.S. Sunder and Anr., (supra) it was held that in matters of enforcement of discipline the Courts must be very slow in interference. After all, the authorities in charge of education whose duty it is to conduct examinations fairly and properly, know best how to deal with situations of this character. One cannot import fine principles of law and weigh the same in golden scales. In the present system of education, the system of examinations is the best suited to assess the progress of the student so long as they are fairly conducted. Interference by Court in every case may lead to unhappy results. In that case the University had recommended the student to be debarred from appearing for any University examination for three years from the date of issue of the order and was permitted to appear only in the April 1994 Examination. It was a case where the student had alleged to have committed certain malpractice while appearing in the semester examinations. The student had allegedly inter-changed his roll number with that of a good student in the answer book in some of the subjects in four semester examinations which resulted in the student passing all the examinations concerned with good marks in those subjects whenever the roll number was inter-changed, while the other student whose roll number was

inter-changed by the guilty student, failed in those subjects concerned. The other student took supplementary examination and secured goods makes in all those subjects in which he was declared fail in the main examination. On these facts an enquiry was conducted into the conduct of the student. The student denied his having inter-changed the roll numbers. However, subsequently, he admitted the commission of malpractice. During the course of arguments in the Supreme Court, the student expressed his willingness to take the examination concerned in the ensuing semester afresh and prayed for the period of debarment to be reduced. After holding that in the matter of discipline, the Courts should not interfere with the decision of the authorities, it reduced the punishment directing the University to permit the student to appear in April, 1993 examination.

15. In Arun Kumar Pateria and Anr. v. Vikram University, Ujjain (supra) it was held that in the interest of maintaining proper discipline in educational institutions, it was necessary to strengthen the hands of the Head of the Institutions and to arm them with sufficient powers so that those who were keen to study and improve their careers should not be the victims of a handful of persons who may spoil the academic atmosphere by indulging in anti-social activities.

16. In Ram Chander v. Allahabad University (supra) it was held that in a case where a head of an educational institution takes disciplinary proceedings, it is not necessary that he must give an opportunity to the student to cross-examine the witnesses who may be examined by him in order to satisfy himself that an occasion had arisen for taking disciplinary action against him. In matters of discipline, the head of an educational institution does not act as a judicial or quasi-judicial Tribunal. The disciplinary authority vested in any officer or the head of an institution is a power which is absolutely necessary for an ancillary to the exercise of administrative functions in that capacity. Consequently, when disciplinary proceedings were being taken against student the could not claim any right that the proceedings should be taken only after the procedure necessary for the exercise of judicial or quasi-judicial powers had been gone through unless there was any such provision in law granting a right to the petitioner to claim that procedure should be taken only after the procedure necessary for the exercise of judicial or quasi-judicial powers had been gone through unless there was any such provision in law granting a right to the petitioner to claim that procedure should be adopted. Nor is there any principle of natural justice under which a person sought to be dealt with in disciplinary proceedings can claim that he must be dealt with by the procedure applicable to judicial or quasi-judicial proceedings.

17. In State Bank of patiala v. S.K. Sharma (supra) it was held that where the enquiry was not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice -- or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action -- the Court or the Tribunal should make a distinction between a total

violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule. In other word,s a distinction must be made between "no opportunity" and "no adequate opportunity" i.e. between" no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e. in accordance with the said rule (audi alteram partem).(b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the stand point of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query.

18. In State Bank of Punjab v. Dr. Harbhajan Singh Greasy (supra) it was held that when the enquiry was found to be faulty, it would not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the sate at which the fault was pointed out and to take action according to law.

19. In Mohd. Zareeq Khan and Ors. v. Jamia Millia Islamia (supra) it was held that in matters concerning denial of admission to students on the ground of maintenance of discipline in the campus, when the authority vested with power in that behalf takes a decision by reference to all relevant factors, it will not be permissible to a writ Court to interfere in exercise of its powers under Article 226 of the Constitution of India. The authority having taken a decision on due consideration of the past conduct of the student and the prevailing situation in the campus, the Court should not interfere with the same.

20. In Narender Singh v. University of Delhi and Ors. (supra) it was held that the Principal of a college can inform a student that he cannot be admitted to the College during the next session, if the Principal comes to the conclusion that such an action was necessary in the interest of discipline among students. A student has no right for admission in such a situation. Even assuming that the terminology used in the order of the Principal did not clearly and fully express his intention to keep the petitioner out of the college permanently, the Court would not in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India give an interpretation to the order to give it a meaning which is contrary to the real intention of the Disciplinary Committee and the Principal of the College. Nor will the Court impose on the college a person who is perceived by the college authorities as a threat to the discipline and peaceful functioning of the college.

21. In B.C. Chaturvedi Vs. Union of India and others, it was held that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities had exclusive owner to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the

magnitude or gravity of the misconduct. The High Court/Tribunal, while excising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. The Tribunal in that case had held that the appellant had put in 30 years of service. He had a brilliant academic record. He was successful in the competitive examination and was selected as a Class I Officer. He earned promotion after the disciplinary proceeding was initiated. It would be difficult to get a new job or to take a new profession after 50 years and he was "no longer fit to continue in Government service". Accordingly, the Tribunal substituted the punishment of dismissal from service to one of compulsory retirement imposed by the disciplinary authority. The Supreme Court found the reasoning wholly unsupportable. The reasons according to the Court were not relevant nor germane to modify the punishment. In view of the gravity of the misconduct, namely, the appellant having been found to be in possession of assets disproportionate to the known sources of his income, the interference with the imposition of punishment according to Supreme Court was wholly unwarranted.

22. In State of Karnataka and Others Vs. H. Nagaraj, it was held that the Court cannot interfere with the findings of the enquiry officer or the competent authority where they were not arbitrary or utterly perverse and what punishment would meet the ends of justice was a matter exclusively within the jurisdiction of the competent authority.

23. It is, Therefore, the submission of Mr. Sawhney that since the question as to what should be the punishment imposed upon the delinquent student was within the competence of the Disciplinary Authority, the Court should not interfere with the same.

24. From the aforesaid principles of law laid down by various Courts including the Supreme Court of India, it is clear that on a question of discipline in the educational institutions rules of natural justice cannot be put in a strait-jacket and they vary from situation to situation and from case to case. Where no mala fides or other motives have been alleged against the officers of the University in the passing of the impugned order the Courts should not normally interfere in the punishment imposed upon the delinquent. it is the duty of the authorities, in charge of the educational institutions, to ensure that the discipline is maintained in the institution and the head of the institution in such cases is required to be armed with sufficient powers so that those who are keen to study and improve their carrier should not be the victims of a handful of persons who may spoil the academic atmosphere by indulging in anti-social activities in the matter of discipline the disciplinary authority

does not act as a judicial or quasi-judicial Tribunal and the delinquent student cannot claim, as a matter of right, that the proceedings should be taken only after the procedure necessary for the exercise of judicial or quasi-judicial powers had been gone through. A decision having been take by the authorities on due consideration of the past conduct of the student and the prevailing situation in the campus should not normally be interfered with by the Courts.

25. In the present case it is not the case of the petitioner that action has been taken against him mala fide or because of other motives alleged against the officers of the University. In the first instance the case of the petitioner was that he was not present at the site at the time of the happening of the alleged incident, however, later on he expressed regrets fro what had happened on the fateful day and pleaded with the Vice-Chancellor to show mercy with a view to save his carrier. This clearly shows that the petitioner was present at the spot at the time of the incident. in my view, Therefore, with a view to maintain general discipline and academic clam in the campus and with a view to avoid the repetition of such incidents which had been disturbing the life of the campus, it was necessary for the authorities to take disciplinary action against the petitioner and other students for their having participated in the fight with the residents of the nearby residential locality. I am unable to believe the petitioner that he was not involved in the incident and had been made a scapegoat. I am also of the view that the letters written by the STD Booth owner and Abbasi Kalyan Samiti exonerating the petitioner were procured by the petitioner with a view to save himself.

26. While it is true that the disciplinary authority in the matter of discipline in the campus has the discretion to impose punishment keeping in view the magnitude or gravity of the misconduct and the Court while exercising the power of judicial review should not normally substituted its own conclusion on penalty and impose some other penalty, however, if the punishment imposed by the disciplinary authority shocks the conscience of the Court it would be justified in appropriately moulding the relief either itself imposing another penalty with a view to shorten the litigation or to refer the matter back to the disciplinary authority to reconsider the penalty imposed. In the present case though it was entirely within the discretion of the disciplinary authority to take an action against the student, however, keeping in view the fact that the petitioner was a brilliant student and had a brilliant academic record and there was no past history of his having been involved in any other incident and no person had identified him of his having actively participated in the fight, in my view, the punishment imposed upon the petitioner appears to be rather harsh and disproportionate to the misconduct alleged against him. With a stigma attached to the petitioner of his having been debarred from one educational institution because of a small incident, it may be difficult for him to take admission in any other institution. I, Therefore, feel that the authorities ought to have taken a lenient view in the case of the petitioner and he should not have been bracketed with the other two students, namely, Mohd. Anis and Mohd. Ariff who were already

under suspension because of their earlier action of indiscipline.

27. I, accordingly, refer the casebook to the university authorities with the hope that the respondents will reconsider the case of the petitioner and may propose to award a lesser punishment than what has been awarded to the other tow students. I would not like to say any more on this subject and leave it entirely to the respondents to take into consideration all the facts and circumstances of the case and take appropriate decision in case of the petitioner. With these observations the petition stands disposed of leaving the parties to bear their own costs.

28. Petition disposed of.