

Prabhat Kumar Singh vs.army College of Medical Sciences Through Its Dean and Ors

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Court : Delhi

Decided On : Jan-03-2017

Appellant : Prabhat Kumar Singh

Respondent : Army College of Medical Sciences Through Its Dean and Ors

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on: January 03, 2017 Judgment reserved on: November 17, 2016 + W.P.(C) 5408/2012 PRABHAT KUMAR SINGH

... Petitioner

Through: Mr. K.K. Rai, Sr. Adv. with Mr. S.K. Pandey, Mr. Awanish Kumar, Mr. Anshul Rai and Mr. Praneet Raman, Advs. versus

... RESPONDENTS

ARMY COLLEGE OF MEDICAL SCIENCES THROUGH ITS DEAN AND ORS
Through: Mr. Ankur Chibber, Adv. for R1 and R2. Mr. Vivek Goyal, CGSC for UOI. Mr. Harsh Kaushik and Mr. Abhay Chattopadhyay, Advs. for R5. CORAM: HON'BLE MR JUSTICE V. KAMESWAR RAO

JUDGMENT

V. KAMESWAR RAO, J1 The challenge in the writ petition is to the order dated August 18, 2012 passed by the Officiating Dean of the Army College of Medical Sciences expelling the petitioner from the College and Hostel with immediate effect. The impugned order was passed on charges W.P.(C) 5408/2012 Page 1 of 17 framed against the petitioner who was found guilty for forging signatures, appointment stamp and round stamp of College on EWS Scheme Scholarship Form 2011-12 and receiving amount of Rs.55,000/- from Guru Gobind Singh Indraprastha University by forgery and using forged Identity Card by forging signatures, appointment stamp and round stamp of College.

2. Some of the relevant facts are that the petitioner was granted admission in 1st respondent College on August 25, 2008 which is affiliated to the Guru Govind Singh Indraprastha University. He would have completed his MBBS Course by December, 2012. That during academic year 2010-2011, the petitioner submitted an application for claiming Scholarship under Economically Weaker Section Scheme for a amount of Rs.55,000/- from Guru Govind Singh Indraprastha University. The application was verified and forwarded with recommendations of Dean, i.e., 4th respondent on July 26, 2010. The first respondent / College ordered a Court of Enquiry to investigate the matter, on April 13, 2012. The Enquiry after examining the oral and documentary evidence concluded that the petitioner had forged the signatures, stamp and seal of the Training Officer on the EWS Scholarship and received a sum of Rs.55,000/- from Guru Govind Singh Indraprastha University. That in the meantime, the University vide its letter dated May 1, 2012 requested the 1st respondent College to initiate a strict action against the petitioner and also to recover Rs.55,000/- from the petitioner and to remit the amount to the University. The enquiry W.P.(C) 5408/2012 Page 2 of 17 report was duly considered by the Disciplinary Committee of the respondent No.1 College. The petitioner was called in front of the Committee, to whom, he submitted a written statement. On consideration, the Committee concluded that the petitioner should be expelled from the respondent No.1 College. It is noted that on May 10, 2012, the order of expulsion was served on the petitioner and his father. Simultaneously, a letter was issued asking him to deposit Rs.55,000/- with the University. The order of expulsion was a subject matter of Writ Petition (C) No.2990/2012, which was allowed vide order dated May 31, 2012 with the

direction to the College to re-constitute the Disciplinary Committee and recommence the proceedings from the point where the same has been left by affording an opportunity to the petitioner to depose and also cross-examine the witnesses, who were produced by the College before the Court of Enquiry after a copy of the deposition made by the witnesses is furnished to him. Pursuant thereto the Disciplinary Committee reassembled on July 17, 2012 and concluded its proceedings. The Committee reported a finding that the petitioner had forged the signature of Dr. Sapna Pradhan, one of the teaching staff of the College and also faked the stamps of the College and recommended him to be expelled from the College, which resulted in the impugned order dated August 18, 2012. The challenge to the impugned order is made primarily on one ground that the same is disproportionate to the charge. It is the contention of Mr. K.K. Rai, learned Sr.Counsel appearing for the petitioner that the punishment is unconscionable totally annihilating the academic life of the petitioner as a Doctor and bringing to an end the dream of a marginal W.P.(C) 5408/2012 Page 3 of 17 family to see its child in the robes of a Doctor. He would state that proportionality of punishment has always been looked into and reduced when warranted. While examining the proportionality, the courts have considered the following factors: a) b) c) d) e) f) g) Young age of the delinquent which is impressionable. Aristotle and Oscar Wilde have been quoted to see guilt in the context of their youth. The relationship of the Head of the Institution and the student is that of a parent and child and approach is that of a parent towards and erring or misguided child. A student in the hands of Principal / Head is a child in the hands of a parent and a parent would never want the career of a child to be completely destroyed by expulsion which necessarily renders him unfit for any other career either, for no college would be willing to grant them admission to enable them to complete their studies thereby leading to such frustration and disappointment or despondency which may lead even either to suicide or turn them into anti-social elements. It has to be borne in mind that when the maximum penalty is imposed total ruination stares once in the eye rendering such student a vagabond as being unwanted both by parents and the educational institution. Frustration that would result would seriously jeopardize young life. Every harsh order results in bitterness and arouses a feeling of antagonism and many a time turns a student into an anti-social element and in that

way it results in more harm than good to the society. Permanently putting an end to the career of the petitioners would not be an appropriate punishment. The Karnataka High Court quotes Shakespeare in Merchant of Venice: Justice should be tempered with mercy and Jesus Christ: They know not what they do. Forgive them. W.P.(C) 5408/2012 Page 4 of 17 h) In the words of George Bernard Shaw If you are to reform him, you must improve him and men, are not improved by injuries. i) Modern penologists hold the view that punishment should not necessarily be retributory and deterrent but should be rehabilitative. Hegel, a German Philosopher in his theory on Punishment asserts that object of punishment is to make the criminal repent his crime, and by doing so to realize his moral character, which has been temporarily obscured by his wrong action, but which is his deepest and truest nature. j) k) Justice Krishna Iyer in Mohammad Giasuddin Vs. State of Andhra Pradesh (1977) 3 SC287 emphasized that The sub-culture that leads to anti-social behavior has to be countered not by undue cruelty but by reculturation. The Court has felt a duty thrust upon it to nurture the career of a student and not to damage the same.

3. He would rely upon the following judgments in support of his submissions:

- 1.
- 2.
- 3.
4. 5.

6. of Delhi Akshay Chaudhari and Anr. vs. W.P.(C) 1897/2010 decided on 8th September, 2010 by this Court. University Akhlaque Ahmad Khan vs. Jamia Milia Islamia W.P.(C) 1687/2008 decided on 14th September, 2010 by this Court. T.T. Chakravarthy Yuvraj and Anr. vs. Principal Dr. B.R. Ambedkar College decided on 5th November, 1996 by High Court of Karnataka, AIR1997 Kant 261 Sarthak Sen Gupta vs. State of West Bengal & Ors. decided on 23rd May, 2013 by Kolkata High Court in W.P.(C) 15604 (W) of 2013 Vivek Kumar vs. Vice Chancellor, B.H.U and Ors. decided on 13th September, 2002 C.M. W.P. No.15358 of 2001. Union of

India and Ors. v. Bishamber Das Dogra decided on 26th May, 2009, (2009) 13 Supreme Court Cases 102. W.P.(C) 5408/2012 Page 5 of 17 4. Mr. Ankur Chibber, learned counsel appearing for respondents 1 and 2 would apart from reiterating the facts as noted above, submit that during the year 2011-12, the petitioner was rusticated from the respondent No.1 College w.e.f August 10, 2011 to February 9, 2012 for impersonation, as a doctor and practicing medicine at the medical camp organized by him where he stated himself to be Dr. P.K. Singh although he was a second year student. That before ordering rustication of the petitioner the matter of impersonation as a doctor was enquired into by an Enquiry Committee held at the respondent No.1 College on August 8, 2011. That while the rustication was in force on November 11, 2011, the offence/misconduct, which resulted in the punishment, which is the subject-matter of this petition, was committed by him.

5. He would submit that in the given facts, the punishment of expulsion is in accordance with the Rules in as much as the penalty for breach of discipline would entail expulsion from University, College or Institution as the case may be in which case, he shall not be re- admitted to the University / College or Institution from where he is expelled but it shall not preclude his admission to any other affiliated College or Institution with the previous approval of the Vice-Chancellor. According to him, the charge against the petitioner is of a very serious nature, the punishment of expulsion is justified. He state, a person who could not mend his conduct having been rusticated earlier, is not entitled to any sympathy from the Court. He would rely upon the following judgments in support of his contentions:

1. Basi Lal Gera v. University of Delhi 1968 (4) DLT353 W.P.(C) 5408/2012 Page 6 of 17 decided on 23rd February, 1968 by this Court.

2.

3.

4. Director Management, Nutrition Chandigarh and Ors. (2009) 1 SCC59 (Studies), Dr. Ambedkar Institute of Hotel Technology, and Catering Vice-Chancellor, Guru Ghasida University v. Craig Macleod (2012) 11 SCC275 Ilham

Zadi v. Jamia Milia Islamia 2013 (6) AD Delhi 685 decided on 29th July, 2013 by this Court.

6. He states that when this matter was listed before this Court on January 30, 2013, this Court noted the submission made by the learned Sr. Counsel for the petitioner that without prejudice to the rights and contentions of the petitioner, the petitioner is willing to render a unconditional apology to the respondents and in addition thereto, the petitioner shall return the scholarship amount to respondent no.5 and respondent may take a sympathetic view in the matter and the order of expulsion may be kept in abeyance to ensure good conduct of the petitioner and the petitioner be given one last opportunity to pursue his studies from the next academic session, i.e., w.e.f June, 2014. He would submit that the said aspect was considered at the highest level and was not accepted by the authorities which aspect has been noted by this Court in its order dated May 29, 2014. He states that the present petition is liable to be dismissed.

7. Before I consider the only submission made by learned Sr. Counsel appearing for the petitioner, I may note that the petitioner had earlier filed an application being CM. No.11024/2012 seeking stay of the operation of the impugned order dated August 18, 2012. W.P.(C) 5408/2012 Page 7 of 17 The said application was decided by this Court vide its order dated November 9, 2012, wherein this Court has given a finding on the following terms: So in my view there is nothing on record to show that respondents No.1 and 4 were biased towards the petitioner or as to why they entrap the petitioner by affixing a fabricated rubber stamp or there would be any reason for a senior officer to deny her signatures on the application form. Having regard to the submissions made and the documents placed on record, it cannot be said that the petitioner has been able to establish a strong prima facie case or that the balance of convenience is in favour of the petitioner. In my view this is not a fit case to stay the impugned order or to permit the petitioner to appear in the examination. Accordingly, the application stands dismissed. 8. In any case, the only plea now urged by Mr. K.K. Rai, learned Sr. Counsel appearing for the petitioner being that punishment is disproportionate to the charge/finding and the factors as enumerated above along with the judgments so relied upon by him need to be considered is concerned, before I deal with the said submission I

would like to deal with the judgments referred to by Mr. Rai in support of his submission. In *Akshay Choudhary and Anr. (Supra)* the facts were that the petitioners impugned the order of the University of Delhi expelling them from the Kirori Mal College of which they were final year Students in the academic session 2009-2010. The charge was with regard to ragging a fresher admitted during the said academic session. The petitioners were expelled from the College as well as from the College Hostel. The Court considered the issue of expulsion from the perspective of proportionality. The Court referred to various judgments of this Court, Karnataka High W.P.(C) 5408/2012 Page 8 of 17 Court and Supreme Court. This Court observed that the duty thrust upon is to nurture the career of the petitioners and not to damage the same. The Court upholding the expulsion from the Hostel has modified the punishment to that of rustication from the College for the academic Session 2009-2010. The Court also directed that their conduct would be watched. In *Akhlaque Ahmed Khan (supra)* the petitioner challenged the order dated June 8, 2001 of the Vice-Chancellor rusticating the petitioner from the University with consequential prayer to allow the petitioner to appear in the examination of two papers / subjects, in which he had received a compartment and in the viva-voce exam which he had not taken of the final year. The charge against the petitioner was that an FIR was registered against him for the offences under Sections 3

IPC. The court noting the contents of the FIR and the FIR filed by the petitioner against the complainant and that the order contemplates the rustication of the petitioner forever, the court modified it to rustication till now. In so far as the judgment of the Karnataka High Court in the case of *T.T. Chakravarthy Yuvraj (supra)* is concerned, the challenge was to an order made by the Principal of the respondent / College expelling the petitioner from the College on the ground that the bust of Dr. B.R. Ambedkar installed in front of the academic floor was desecrated / defiled and several acts of misconduct were allegedly committed by some students of the College. The High Court considering the aspect of penalty was of the view that the case is an extraordinary case in which it should exercise its powers, which could have been exercised by the original Tribunal or Authority and reduced the punishment of expulsion from the College to that for W.P.(C) 5408/2012 Page 9 of 17 a period of three years from the date of the order. In

paras 17 and 18, the Court held as under:-

"17. In inflicting appropriate punishment, certain aspects have to be borne in mind. When the relationship of the Head of the Institution and the student is that of a parent and child, the punishment imposed should not result in any retribution or give vent to a feeling of wrath. The main purpose of punishment is to correct the fault of the student concerned by making him more alert in future and to hold out a warning to other students to be careful, so that they may not expose themselves to similar punishment and the approach is that of a parent towards an erring or misguided child. In order to not to attract the criticism that the action is a result of arbitrariness, it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Certainly one cannot rationally or justly impose the same penalty for giving a slap to the one imposed for homicide. Unless the disciplinary authority reaches the conclusion that having regard to the nature of the misconduct it would be totally unsafe to retain them in the college, the maximum penalty of expulsion from the college should not be imposed. If a lesser penalty can be imposed without jeopardizing the interest of the college, the disciplinary authority cannot impose a maximum penalty of expulsion from the college. The concerned Head of the Institution must necessarily have an introspection and a rational faculty as to why lesser penalty cannot be imposed. In doing so, it should also be borne in mind that when the maximum penalty is imposed total ruination stares one in the eye rendering such student a vagabond as being unwanted both by the parents and the educational institution. Frustration that would result would seriously W.P.(C) 5408/2012 Page 10 of 17 jeopardize young life. Every harsh order results in bitterness and arouses a feeling of antagonism and many a time turn a student into an anti-social element and in that way it results in more harm than good to the Society.

18. Young and inexperienced these students are, came to the college campus on the night of 13.11.1995 perhaps with a view to have a drink, eat and make merry. We can visualize a situation when these students being in a group did exactly, what they would not have done individually for they were egged upon to do so and for the fear that they should not be branded as cowards perhaps to project themselves as heroes however misguided they may be. Being influenced by

alcohol and false sense of security of being in a group, they must have been led to the unfortunate events. As a result of heady youthfulness and under the evil influence of Bacchus the students might have lost their mental poise so as not to treat the bust of Dr. Ambedkar with reverence it deserved. Though the acts of the appellants are not condonable or excusable. We should not be oblivious to the realities of matter so as to impose the highest punishment by expulsion of appellants from the college. A student in the hands of Principal is a child in the hands of a parent and a parent would never want the career of a child to be completely destroyed by expulsion which necessarily renders him unfit for any other career either, for no college would be willing to grant them admission to enable them to complete their studies thereby leading to such frustration and disappointment or despondency which may lead even either to suicide or turn them into anti- social elements. Therefore, we are of the view that to permanently put an end to their career would not be an appropriate punishment considering the fact that they had not indulged in any violence or acted in any premeditated manner violating the college discipline as such but their spontaneous acts had W.P.(C) 5408/2012 Page 11 of 17 resulted in showing disrespect to Baba Ambedkar. However, we think even Baba Ambedkar would not have ignored the famous statement made by Portia in Merchant of Venice by Shakespeare that Justice should be tempered with mercy, particularly when the students are in the position of those about whom - Jesus Christ said --, They know not what they do. Forgive them. On this understanding of the matter, we are of the view that expulsion from the college would be a disproportionate punishment not commensurate with the charges against them. On the other hand, if they are debarred from the college for few years and allowed to rejoin the college thereafter, with passage of time heal all the hurt sentiments. With the passage of time the atmosphere in the college would also change and the other students too may accept them with their hurt sentiments assuaged. In the instant case the punishment imposed is thus strikingly disproportionate as to call for and justify interference in our hands. We cannot allow such punishment to remain, uncorrected in exercise of our powers under Art. 226 of the Constitution of India. 9. Similarly, in the Judgment of the Kolkata High Court in Sarthak Sengupta (Supra), the petitioner had impugned the order of the Vice-Chancellor expelling him from

Hostel permanently and debarring him from appearing in two consecutive Semesters. The charge against the petitioner in the writ petition was of committing assault on the students on whom the allegation of ragging was also made. The High Court modified the order to the extent that the petitioner shall be debarred from appearing in the examination for the ensuing Semesters and shall remain permanently expelled from the Hostel so long as he W.P.(C) 5408/2012 Page 12 of 17 does not emerge as successful candidate in last Semester Examination. Similarly, in the judgment of the Allahabad High Court in Vivek Kumar (supra), the petitioner had challenged the order of the University expelling him from the University and debarring him from pursuing any course of study or appearing in any entrance test of the University or taking an employment whatsoever in the University with immediate effect. The charge was that the petitioner and one fellow Student has committed a misconduct with the fellow students Siddharth Sinha. The High Court was of the view that so far as awarding the punishment for any indiscipline or any crime is concerned, the approach of the Court should be to think that whether the quantum of punishment will result in any reformation and will be of a kind of warning to improve the habits and misdeeds of the person involved or it will cause and create a more serious situation and will aggravate the feelings of that man to cause and commit more serious acts of indiscipline and crime. The Court, held in the case in hand, the petitioner is neither a criminal nor he happened to be an indisciplined boy which is clear from his past record and even upto VII semester, there were no complaints of any kind from any quarter and the complaint now being a solitary complaint, the Court set aside the impugned order to the extent of the petitioners expulsion from the University for all the times to come. He was permitted to sit in the next examination so that he can complete his 8th Semester. In so far as the judgment of the Supreme Court in the case of Bisambhar Das Dogra (supra) is concerned, the said judgment as relied upon by Mr. Rai was to the extent that the charged employee must be informed, that his past conduct would W.P.(C) 5408/2012 Page 13 of 17 be taken into consideration while imposing the punishment would not be applicable to the only issue urged by Mr. Rai during his submissions, i.e., proportionality of the punishment. In so far as the judgments relied upon by Mr. Chibber are concerned in Basi Lal Geras case (supra), this Court has held when an allegation is made against the student and

the fact finding committee complied with the principle of natural justice is entitled to devise its own procedure, in such cases, interference with the order of the University is not called for.

10. Suffice to state, the charge against the student was that he was involved in unfair means.

11. In so far as the judgment of the Supreme Court in Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition and Catering Technology, Chandigarh and Ors. (supra) is concerned, the Supreme Court in the said case was concerned with a charge against the student, that he was found with a slip in his possession while writing his answer script. The slip was in the students handwriting and contain material relevant to the examination. The student admitted his guilt and expressed his regrets and also offered a promise that he would not repeat it in future. In terms of rules, the student was to be declared fail in all the examinations and was disqualified for the next academic session. The learned Single Judge allowed the petition on the ground that the punishment imposed on the student was disproportionate particularly, when the student has shown remorse and sought forgiveness. The Division Bench of the High Court upheld the order of the learned W.P.(C) 5408/2012 Page 14 of 17 Single Judge. The Supreme Court held that there should be strict discipline in academic matters and mal-practices should be severely punished. High educational standards have to be maintained if the country is to progress. This is possible only if the mal-practices in examinations in educational institutions are curbed with an iron hand. There must be purity in the examinations and no sympathy or leniency be shown to candidates who resorted to unfair means. In the case of Vice Chancellor, Guru Ghasida University (supra), the Supreme Court was concerned with the case where the stay order was granted by the High Court qua provisional rustication (expulsion) order by the University for serious allegation of assaulting (beating and threatening) of a teacher by student concerned. The Supreme Court held that maintenance of discipline is equally important for conducive academic environment and larger interests of the academic community are more important than individual interest of a student. In matter of discipline or administration of internal affairs of University, the Court should be most reluctant to interfere. In

Ilham Zadis case (supra), this Court held, it is for the University and not for the Court to decide whether the Act committed by a student was an act unbecoming of a student. The Court cannot interfere with the decision of University unless it is wholly arbitrary, irrational. The Court also found no perversity in the decision of the University and had not interfered with the decision. W.P.(C) 5408/2012 Page 15 of 17 12. In case in hand, the offence/misconduct, is that the petitioner was involved in the Act of forging the signatures, appointment stamp and round stamp of the Officer for the EWS scholarship and receiving a sum of Rs.55,000/- and using the I-card procured in the same manner. The petitioner has during the course of pendency of the proceedings refunded the amount of Rs.55,000/-. The misdemeanors are of very serious nature while he was pursuing his MBBS course, during the time he was under rustication for a serious misconduct of impersonation. The various factors pointed out by Mr.Rai for this Court to consider may not be relevant and/or would not be applicable to the facts of this case. The offence, for which he was expelled, is not the first one. The earlier one of impersonation was equally serious one. Regrettably, despite rustication, he has not mend his conduct. He indulged in a further more serious offence of forging the signature/stamps of an officer to seek monetary gain. This offence/misconduct committed by the petitioner has to be looked not only from his perspective but from a larger perspective of the society which he would serve if he is allowed to go scot free. I only note here, the following observation made by the DGMS (Army) while rejecting the request for reconsideration. 2. A medical officer has to be an epitome of trust, humility and sacrifice always placing self before others. He has to demonstrate abilities to win over the confidence of those whom he serves.

3. As Mr. Prabhat Kumar Singh has repeatedly indulged in malpractices even before completing the initial phase of trg in MBBS, it will not be prudent W.P.(C) 5408/2012 Page 16 of 17 to take him back after expulsion purely on moral grounds. Given his background, it is fairly certain that he will not be able to be groomed into an ethical medical officer. Any leniency at this stage may be dangerous to the society at large in the future.

4. I, therefore concur with the opinion expressed in the preceding notes. 13. The plea that the petitioner cannot pursue any other career does not appeal to this

Court. Had the charge been a different one and not as serious to the one committed by the petitioner possibly the Court could have taken a lenient and pragmatic view so as not to damage the career of a person.

14. The judgments as relied upon by Mr.K.K.Rai would not be applicable to the facts of this case primarily for the reason that the offence/misconduct committed in the cases referred to by Mr.Rai were with regard to ragging, cheating during examination which are totally different from the one committed by the petitioner in the case in hand.

15. I do not find any merit in the only contention of Mr. Rai. The writ petition is dismissed. No costs. JANUARY03 2017 jg/rn V. KAMESWAR RAO, J W.P.(C) 5408/2012 Page 17 of 17

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