

(1981) 03 DEL CK 0045

In the Delhi High Court

Case No : Civil Writ Appeal No. 309 of 1981

Abhay Kumar Yadav

APPELLANT

Vs

K. Srinivasan and Others

RESPONDENT

Date of Decision : 24-03-1981

Acts Referred:

Citation : AIR 1981 Delhi 381 : (1981) ILR Delhi 661 : (1981) RLR 354

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Advocate : B.K. Pal and D.S. Narula, for the Appellant;

Judgement

S.B. Wad, J.

(1) Petitioner was suspended from the rolls of the three-year Diploma Course in Pusa Polytechnic Institute, by the order of the Principal on 16"-10-80. By the me order, he was prohibited from entering the premises of the Polytechnic. He was also directed to vacate the hostel room occupied by him. This was a temporary order. It was to be in force till the criminal case against him was decided. In this Writ Petition., the petitioner has challenged this order. The petitioner (along with two other students), was involved in a stabbing incident in the Polytechnic on 15-11-1979. One Shri Ved parkash Pippal, a student of first year was stabbed. A criminal case u/s 307 I-P.C. is pending against these students. The Disciplinary Committee of the Institute, after due enquiry, had recommended expulsion of these students but the Principal did not impose the extreme penalty.

(2) The Director of Technical Education, Delhi Administration, has framed rules regarding conduct, discipline and punishment of the students. Rule-3 lays down what are called the "Forbidden Practices". The relevant portion reads :

"NO student shall indulge in any of the following practices, namely.
(a) (e) Rowdyism and rudebehavior. (f) Use of violence in any form, (g) Offence of cognizable nature ...-.. (i) Any other conduct unbecoming of a student of institution."

Rule 4 prescribes the punishment that can be imposed on a student. There are two minor punishments, fine and suspension. The two major penalties are expulsion and rustication, which are awarded in cases of grave offences- Before imposing major penalties, the Principal shall refer the matter to the Director of Education for his approval. Expulsion debars a student from being re-admitted to the same Institution. Where a student is rusticated, he shall not be admitted to any institution till the expiry of the period of rustication. Rule I(d) lays down that powers to impose disciplinary actions are vested in the Principal of the Institution. Sub-rule (b) provides that observance of the rules of discipline and good behavior shall be a condition essential to a student's continuance in an institution. A student is required to give an undertaking under sub-rule (c) (at the time of his admission), signed by his guardian, that the student submits to the disciplinary jurisdiction of the Principal of the Institution. Under sub-rule (c), an appeal lies to the Director of Technical Education, against the disciplinary action taken by the Principal.

(3) The order of the Principal is challenged on the following grounds :

(I) No show-cause notice of the proceedings of the Disciplinary Committee was served on the petitioner. He could not. Therefore, participate in the proceedings. This was against the principles of natural justice :

(II) The action was in contravention of the petitioner's fundamental right under Article 19 of the Constitution of India. Right to take education is a fundamental right;

(III) The order was contrary to social justice"

(IV) The order was mala fide. The Principal has acted in collusion with Vcd Parkash Pippal, the victim of stabbing.

(4) Counsel for the respondents submits that the authorities tried to serve the show-cause notice at the room in the hostels where the petitioner was staying. As they failed to locate the petitioner there, Mr. M. L. Mehra, the demonstrator working in the Polytechnic was sent to the residence of the petitioner. namely, D-1A/93, Janak Puri, New Delhi, where the father of the petitioner stays. This is the permanent address of the petitioner on record. The petitioner's father has filed an affidavit in this Court where in the same address is given. Mr. Mehra found the house locked. After waiting there for one hour, Mr. Mehra pasted the notice on the door of the said house. Mr. Mehra has submitted a report which is filed as Annexure R-I. There is no mode of service laid down in the Rules. In the circumstances stated above, I have no hesitation in holding that the service of the show-cause notice was properly and legally effected on the petitioner. It may be noted that the impugned order was also served on the same address. After receiving the show-cause notice, the petitioner voluntarily preferred to stay away from the proceedings. The Report of the Disciplinary Committee has noted this fact. Two other students, namely, Deepak Sharma and Vijay Kaul were also served but only Vijay Kaul appeared before the Disciplinary Committee.

Immediately after the stabbing incident, dated 15-11-79, a complaint to the Police was made. Two other students were arrested on 19-11-79 and 20-11-79. But the petitioner was absconding. After the arrest of the two of his colleagues, he secured an anticipatory bail from the Magistrate. It appears that after the stabbing incident, the petitioner was avoiding arrest and perhaps was not staying in his hostel room or his residence. The conduct of the petitioner clearly demonstrates that he voluntarily avoided to appear before the Disciplinary Committee. Such a petitioner cannot be allowed to complain: that principles of natural justice were violated. There is no merit in the petitioner's submission.

(5) Before going into the other submissions of the petitioner, I may dwell on the nature of the impugned order. Through the impugned order, the petitioner was directed to stay away from the Campus and to vacate the hostel room. He was suspended with immediate effect from the rolls of the Polytechnic. But this order was not the absolute and final order. The order was to be operative till the decision of the criminal case. The alleged motive of the stabbing incident was rivalry between the two groups of students. Victim Ved Parkash belonged to one group and the petitioner to another. The further allegation is that the petitioner and his associates wanted Ved Parkash, the victim to vacate the place from the examination hall where he was sitting so that the petitioner and his associates could occupy the same and carry on unfair practices in the examination. Quarrel between the student bodies are not unknown. But where they result into violence of the nature of stabbing, the authorities are naturally more concerned. They are to protect the general class of students who are more interested in the studies and also to maintain peaceful atmosphere on the Campus. The order of suspension passed against the petitioner, on proper reading, was really in the nature of a preventive action. The Principal, in fact thought, and justifiably so, that the students who were allegedly involved in a violent attack, should not be allowed to enter the premises of institution till the criminal case is decided. The suspension order in this sense is not a final order. It is like suspension of a government servant when the criminal proceedings are pending.

(6) The impugned order is rational and judicious. The Disciplinary Committee has, in fact, recommended expulsion of the petitioner considering the grave nature of the misconduct of the petitioner. Even the action of expulsion was justified. But the Principal took a lenient view and took only the immediate action necessary for preventing the repetition of such incidents on the Campus. Under the Rules, such grave misconduct would disentitle any student from being on the rolls because such a student is not interested in the Studies and is a nuisance to the other students who were interested in the studies. The main object of the impugned order is to establish peace on the Campus by temporarily preventing the petitioner from cantering the Campus. Suspension from the classes is only incidental to this object. If prohibition of entry on the Campus is justified, his suspension from the classes can also be appreciated because, if he cannot enter the premises, he cannot attend the classes as well, which are situated on the Campus. Considering the nature of the order, and the concern of the Principal to

maintain peaceful atmosphere on the. Campus. I do not think that for such a preventive action, the petitioner was entitled to any notice or opportunity

(7) Even if it is assumed that right to take education is a fundamental right, there is no denial of the right by the authorities. It is the petitioner who has denied the right to take education to himself. Before claiming it as a right, a student has a duty to study and take education. He must attend all the classes regularly and punctually, he should attend all the practical and training programmes regularly, he should take sessional tests and exams, and show his progress. He should not commit any misconduct and create obstruction and terror among the students who are interested in studies. The petitioner had been highly irregular in attending classes. As a part of his studies, he was supposed to attend the Delhi Transport Corporation for practical training for six months from: June, 1980 to December, 1980- In June, 1980, he attended the practical training only for 4 days, in July 11 days, in August 9 days, in September 16 days, in October 8 days. The Delhi Transport Corporation had earlier made a report to the Principal of the College which states that out of few students, who were most irregular, petitioner was one of them. The petitioner did not produce any medical certificate when he was unable to attend. He has now produced one by a doctor who is not even M.B.B.S. It may be noted that Government pays the student's stipend and the authorities were required to issue orders informing these irregular students that the stipend for each day of absenting would not be paid to them.

(8) The other fundamental right claimed by the petitioner is to form association including college union and to contest the election. He claims that he was previously a Secretary of Union of all the Polytechnics in Delhi. A student involved in criminal cases arising out such violence and unfair practice cannot claim any such right. Primary right (and also a duty) of a student is to study. Merely being on rolls for politicking and demagogic leadership does not make a student a bona fide student.

(9) The conduct of the petitioner after the date of the incident (15-11-79) till the passing of the impugned order is most unbecoming of a student. On 10-7-80, the Chowkidars of the Polytechnic made a report against the petitioner and three of his colleagues to the Principal. The Report states that the petitioner and the other students asked the Chowkidars to open the doors so as to enable them to play badminton. The door was opened. Sometime thereafter, they heard the noise of the breaking of the windowpanes. The Chowkidars then noticed that by breaking open the window-panes, the petitioner and his colleagues were getting down by a stair and on asking, they replied that they were going to see the results which were being prepared. On 19-8-80, the Lecturer conducting the examinations made the report to the Principal that the petitioner and some other students were creating trouble in the examination. From the students' union room, opposite to room No. 112, where the examination was being conducted, these students were shouting answers to each of the questions in the

examination. It was further requested that the students' union room may be closed at least during the examination. On 20-8-80, the Drawing Instructor Shri A. K. Dua made a report to the Principal that when he was taking the classes for the first year, the petitioner entered the classroom and addressed the students not to attend the class. The class was thereafter suspended.

(10) It may be noted that the Principal passed the present order after watching the performance of the petitioner. Considering the seriousness of the main incident and the subsequent conduct of the petitioner, charges of vindictiveness and mala fide against the Principal, are baseless and highly irresponsible. No particulars of mala fide or collusion with the victim are furnished in the petition. The submission is, Therefore, rejected.

(11) The petitioner also submits that the treatment meted out to him is contrary to social justice. This is described as "Juvenile justice" by Krishna Iyer, J. in Satto and Others Vs. State of U.P., . Relying on the said judgment the petitioner submits that the action against him is too harsh. I do not think that the said decision has any application because the question involved there was whether the sentence imposed by a criminal court was justified or not. We are here concerned with only a disciplinary proceeding taken by the Principal of a College for preventing further violence on the Campus. The approach of the Principal in the present case was not to somehow expel the student. Although the Disciplinary Committee recommended the said punishment, the Principal, to my mind, considered "the juvenile justice" of the matter and merely suspended the petitioner. This was also after watching the conduct of the petitioner for almost nine months after the Disciplinary Committee submitted its report. Far from availing of this opportunity to show that he has made improvements in his conduct the petitioner has indulged in aggravating the earlier misconduct. I do not think that the said decision of the Supreme Court helps the petitioner even in a remote way.

(12) I have given my anxious consideration to another question. That Question is whether consistent with the order of the Principal, is it possible to protect the academic interest of the petitioner ? Through his additional affidavit the petitioner has made some submissions in this regard. His first submission is that the two subjects, namely, I.C. Engine" & "Mechanics of Vehicle", in which he had got compartment in the second year examination, should be permitted to be cleared in the ensuing examination in May, 1981. The Principal who was present in the Court has stated that it is for the Board to decide whether he can be permitted to take up the examination in the said papers and that he would be ready to send his recommendations to the Board. The approach is quite fair. The petitioner further submits that he should be permitted to appear in the second semester examination of the IIIrd Year to be held in November/December, 1981 and may also be permitted to appear in the papers of 1st semester of IIIrd year examination simultaneously as compartmental candidate. He then submits that he should be permitted to undergo Industrial Training with D.T.C. or any other

reputed Automobile Workshop afresh. The Principal submits that the Rules would not permit the petitioner to take up any examination for the 3rd year as he has not been promoted to the IIIrd year so far. The petitioner has not shown any Rule under which such a permission can be given. The prayer is, Therefore, to be rejected. As far the last prayer regarding Industrial Training, I think, it is better to leave it to the Principal and the workshop concerned to decide whether the petitioner should be permitted to re-start his Industrial Training in the next academic year on such conditions as they think proper. Violence unfair examination practice" frequent strikes have plagued our universities and technical institutions. Problem of controlling these elements has become major problem for the authorities. Honest tax payers money is assigned by the State for establishing and running these institution particularly technical institutions. The entire students community is held at ransom by these elements. The student community includes girl students, scheduled class students and students whose first generation wants, to avail of higher education. Unfair practices on large-scale (accompanied by violence) completely demoralise serious hardworking students. Admissions to higher studies are limited and employment opportunities very scarce. It is like an adulterator of food-stuff driving the honest trader out of competition. Recently, a retired I. G. has been appointed as Vice- Chancellor of one university. G. D. Khosla Commission, appointed by Delhi University (after the incident of manhandling of the Vice-Chancellor) has upheld the right of the Police to enter Campus for pulling down violence, even if the authorities have not asked for it. These are very sordid developments from the point of view of the academic atmosphere and autonomy of the educational institutions. It is necessary, Therefore, that the students community and educational authorities are properly protected and encouraged to resolve these problems by appropriate measures on the Campus itself. In Vijay Kumar Goal Vs. University of Delhi (C.W.P. No, 1737179. decided on April 16, 1980(2). I have fully upheld the authority of the Vice-Chancellor to deal effectively with indiscipline and violence on the Campus within the framework of law.

(13) The result is that the petition fails with cost. The rule is discharged.