

(1998) 09 AHC CK 0146

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 15460 of 1997

Anup Pratap Singh

APPELLANT

Vs

Principal, Udai Pratap Mahavidyalay (Autonomous) and
Others

RESPONDENT

Date of Decision : 09-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 3 UPLBEC 2169

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Ram Niwas and V.K. Chandel, for the Appellant; V.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Garg, J.—Discipline is the first casualty in the academic field. It is a universal phenomenon and a perennial complex problem plaguing the educational institutions. In the recent past, incidents of grave indiscipline among students have come to be multiplied.

2. The point for determination in the present writ petition is whether at the alter of the procedural law of natural justice and undue insistence on this concept, the orders of suspension and expulsion of the petitioner passed by the Principal of the College should be interfered with on the face of the emphatic assertion that continuance of the petitioner in the institution was not congenial to the orderly atmosphere in the college campus. This controversy has come to be raised in the backdrop of following facts.

The petitioner-Anup Pratap Singh was a regular student of B.A. Part III during the session 1996-97 in Udai Pratap Singh Maha Vidhayalaya (Autonomous), Varanasi. An unfortunate incident had taken place on 3.11.1996. Some of the students of the college extracted money in an illegal manner from the vehicle

owners who were passing through Shivpur Bye-pass, Varanasi. Local Police arrested two students and registered a case against them. At about 5 P.M. on the same day, i.e. 3.11.1996, the petitioner Anup Pratap Singh along with a body of students went to the house of the Principal Sri Bans Bahadur Singh and asked him to go to the Police Station to get the two students, who have been arrested, bailed out. The Principal of the college refused to oblige the petitioner and other students as according to him, the incident had taken place out-side the college campus and the students were involved In criminal activity. After sometime, a bus-load of the students along with the petitioner emerged, at the house of the Principal again and damaged the house hold effects, kept in the house of the principal, as also the motor car and other college property. A threat to the life of the Principal was also held out. The Principal had pointedly noticed the presence of Anup Pratap Singh petitioner, amongst the body of the students who had collected at his residence. An FIR, Annexure 3 to the writ petition, was lodged by the Principal of the College on 4.11.1996 with regard to the incident which had taken place on 3.11.1996 at 7.30 P.M. against the petitioners and others. A case u/s 452/427 and 508 I.P.C, (Crime Case No. 204 of 1996) was registered at Police Station Shivpur. Varanasi against the petitioner and others. On the same day, the petitioner was suspended from attending the classes and institution vide order which is Annexure 4 to the writ petition. A notice was also served on the petitioner, a copy of which is Annexure 5, on 4.11.1996 to show cause as to why he should not be expelled from the college on account of serious allegations of indiscipline against him. Another incident had taken place on 31.3.1997 in which one Navneet Kumar Singh, a student of B.Sc. IInd year was assaulted and beaten up by a body of students including the petitioner who where armed with sticks, hockeys and country made pistols. The presence of the petitioner was noticed and confirmed by Dr. Shyam Sudhar Singh and Maj. Ram Ashrey Singh, Senior Teachers of the College. In the background of the aforesaid two incidents, the petitioner was finally expelled on 5.4.1997 (Annexure 7 to the writ petition) by the Principal of the College.

3. By means of this writ petition, the petitioner has challenged the order of suspension dated 4.11.1996 (Annexure 4) and the order of expulsion dated 5.4.1997 (Annexure 7) primarily on the ground that the incidents in question are concocted ones and that unduly harsh punishment has been Inflicted upon him which has resulted in ruining his career in flagrant violation of the principles of natural justice. It was also stated that the petitioner had attended the classes, deposited examination fee and filled in the form to appear in the B.A. Part III examination and, therefore, the respondents are now estopped from denying the benefit to appear in B.A. Part III examination. It was prayed that the respondent be directed not to prevent the petitioner from appearing in the B.A. Final Examination.

4. Counter and rejoinder affidavits have been exchanged. When this writ petition was taken up on 27.5.1997, an order was passed by this Court that the petitioner shall make a representation before the Principal of the College who

shall decide the same by a speaking order after taking into consideration the apology tendered by the petitioner. The Principal of the college has considered the matter in the light of the above order of this Court and on 10.6.1997 has rejected the representation of the petitioner by a detailed order. It has been specifically mentioned that it is not a fit case in which apology of the petitioner should be accepted as it would have deleterious effect on the discipline of college.

5. Hearing of the writ petition has been expedited under the orders of Hon''ble the Chief Justice passed on the applications of the petitioner on 21.8.1998. Heard Sri Ram Niwas Singh, learned Counsel for the petitioner and Sri V.K. Singh, on behalf of the respondent Nos. 1 and 2 at considerable length.

6. Learned Counsel for the petitioner pointed out a number of discrepancies in the suspension order, F.I.R. and the final order passed on the representation of the petitioner on 10.6.1997 by the Principal of the college. It was urged that in the F.I.R it is mentioned that certain undesirable elements have indulged in Tod Fod'' and that there is no mention about the fact that the house hold effects of Principal, motor car and other properties of the college were damaged. It was also urged that in another incident, which is alleged to have taken place on 31.3.1997, as is unfolded in the complaint of Navneet Kumar Singh, a student of B.Sc. Part II, there is no mention of the petitioner against whom false charges have been foisted. All these submissions have been denied by the respondent No. 1 Sri Bans Bahadur Singh, who himself is the Principal of the College, has filed a short, but detailed counter affidavit, countervailing the allegations of the petitioner.

7. At the outset it may be mentioned that this Court is not dealing with a criminal trial and, therefore, standard of proof which is required in proving and establishing a criminal charge is not expected in the present case in which disciplinary action has been taken by the Principal of the college against his own student. The F.I.R, it is well established, is not intended to be an elaborate document containing all the detailed facts. It is intended to be a mere information to set in motion the police machinery to investigate the crime, the broad features of which have been depicted in the F.I.R Therefore, to say that there is no mention of the fact that the petitioner had indulged in damaging the house hold effects of the Principal and the motor car and other properties of the college in the F.I.R is of no consequence and is otiose. In respect of the first incident, the Principal of the college has made a categories assertion that he had seen the petitioner leading a body of students to commit aggression at his house. His house hold effects were ransacked and school property damaged. As regards the second incident. Dr. Ram Sudhar Singh and Maj. Ram Ashrey, senior teachers of the college have testified that the petitioner did take part in assaulting Navneet Kumar Singh, a student of B.Sc. Part II. There is absolutely nothing on record that Sri Bans Bahadur Singh, Principal of the College had any pique, grudge or animus against the petitioner. In the absence of this fact, it cannot be expected that the Principal of the college would spin or coin wholly

untrue stories against the petitioner, who was a student of the college.

8. Not only this, the petitioner acted in a most devil daring manner, inasmuch as, after his suspension on 4.11.1996 from the college, he had forcibly entered college and attended the classes. In spite of the fact that bona fide studentship of the petitioner stood suspended, he deposited the fee and filled in the form of B.A. Part III examination taking the advantage of the rush of work. The petitioner cannot take the plea that the respondents are estopped from not permitting the petitioner to appear in B.A. Part III examination in view of the fact that the examination fee was accepted from him and the form, which was duly filled in by him was accepted. The petitioner, who had been suspended, had no occasion to deposit the fee or fill in the form as a regular student of the college.

9. Learned Counsel for the petitioner pointed out that in view of the denial of the petitioner, a full dressed enquiry was required to be held after giving an opportunity of hearing to the petitioner and if this procedure was not adopted by the respondents, the order of punishment in the form of expulsion of the petitioner from the college is illegal and arbitrary and this Court would be justified in quashing the said order. To fortify his submissions, the learned Counsel for the petitioner placed reliance on *Dev Pal Singh Vs. Vice-Chancellor, G.B. Pant University of Agriculture and Technology, Nainital and others*, and *Ors.* AIR 1991 All. 167, *Dilip Kumar v. Special Judge, Barabanki and Ors.* 1982 UPLBEC 423 . *Km. Sadhana and Anr. v. DIOS , Deoria and Ors. and A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, ..

10. There can be no quarrel about the proposition of law laid down in the aforesaid decisions. I would, however, not miss the opportunity of pondering over the matter in some detail to clarify the situation, in which the law in this sphere has come to be developed.

11. Before the dawn of judicial intervention, educational authorities had plenary power over those in their charge. In the beginning the law Courts appeared to be generous in favour of the educational authorities and allowed them to deal strictly with the students' indiscipline and did not interfere much. The Courts acknowledge that there exists a sacred relationship between a pupil and a teacher. When a person joins a university or any other educational institution, he becomes "discipline" and subject to the discipline of such authorities. It is wrong to import the conception of "liberty" in dealings of the authorities with their students. It was considered that the students do not have a legal right to come to a Court of law to require the head of the institution to justify his action where he has meted out some punishment or taken any disciplinary action. If the students were allowed to do so, it would have amounted to condemning their own teachers and other authorities, thereby subverting the discipline in the educational Institutions. Despite frequent actions, the Courts refused to review the merits of litigation dealing with the internal operation of educational system. This policy often referred to as the "hands off doctrine" effectively insulated educational authorities from accountability through judicial review.

12. A Central justification underlying judiciary's reluctance to intervene was its fear that doing so would undermine institutional order and control. In its caution, the judiciary recognised that to allow the students, staff and teachers the right to challenge the disciplinary system would grant them the right to question the very legitimacy of the central method of governance of educational institutions.

13. The Courts were mainly guided by the considerations that the maintenance of discipline, the upkeep of the necessary tone and standards of behaviour in a body of students in a college is of course a task committed to faculty and officers, not to the Courts. The Courts have, therefore, been reluctant to entertain and proceed with the student petitions relating to the cases of indiscipline (see *Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman*, , *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, ; *Prem Parkash Kaluniya Vs. The Punjab University and Others*, and *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, .

14. The cases of violence, physical assault, cheating in examinations, and mass copying are stark realities of present day life. The indiscipline has come to stay unabated and is a black spot in our educational system. Things have reached the stage when indiscipline is taken as a matter of right of students and measures to prevent them are considered as anti students. In the wake of this unsavoury feature, which has come to stay in the society, the unqualified acceptance of the "hands off doctrine has now begun to show signs of erosion and the disciplinary actions are being tested at the alter of the principles of natural justice. Those who are responsible for maintaining academic standards and discipline are conceded vast powers but it is incumbent upon time to act fairly. Whatever be the gravity of the charges levelled against a student no action visiting him with evil consequences can in any circumstances be justified without affording him an opportunity of hearing. The present slant which is discernible from the various decisions of the Supreme Court on the point is that the principles of natural justice cannot be dispensed with In a case where a punishment is inflicted in, the disciplinary matter. In this connection, a reference may be made to the decision of the Apex Court in *Nilma Misra v. Harindra Kaur Paintal* : (1990) 2 SCC 746. There is, however, some reluctance to adhere to the strict compliance of the principles of natural justice as the matter is left to the wisdom of discretionary power of the educational authorities concerned, the only requirement being that- (a) an opportunity to explain charge must be given to the student concerned at any stage of the enquiry; (b) enquiry must be held "honestly" and with no mala fide intention; (c) the action taken must be on reasonable grounds. These requirements have been culled out on the basis of the decision of the Apex Court in *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, . Though the premises on which the above requirements came into being were entirely different, but the fact remains that for the maintenance of discipline in the educational institutions, the above requirements are of universal application. In the absence of any statutory

provision, the Principal of the college has the power to suspend a student for indiscipline and this power is implicit in the power to maintain discipline in the campus of the institution. Though there is insistence on the technical observance of the principles of natural justice, this requirement would, in substance, stand satisfied if, in essence, the rules of natural justice, keeping the practical realities, of situation in view have been followed. The Courts have shown no sympathy to students Involved In criminal acts for one simple reason that a student involved to criminal cases, arising out of violence and unfair practice, cannot claim any right of being a bona fide student. 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.

15. In the instant case, a notice to show cause was served admittedly on the petitioner on 4.11.1996 itself. The petitioner, it is alleged, submitted a reply denying all the allegations against him. This explanation did not satisfy the authority concerned, i.e., the Principal, who had himself noticed the conspicuous role in the vandalism and hooliganism, which was taken recourse to at his residence. As said above, there is no earthly reason why the Principal of the college should have adopted hostile attitude only against the petitioner. In the second incident there is testimony of two other senior teachers of the college who have in enerring terms firmly stood to vouchsafe about the involvement and criminality of the petitioner. It was, therefore, a case in which the petitioner had no defence to make as he was caught by the Principal and other teachers of the college while indulging in criminal activity. The petitioner simply required an opportunity to explain the charge against him. This was done in this case. The enquiry was not on account of any mala fide intention, but it was the product of the established and self speaking criminal acts of the petitioner. In these circumstances, it cannot be said that the action taken against the petitioner was not on reasonable grounds. The respondent-Principal has acted in good faith in the matter of the petitioner against whom, as said above, the former had no animosity or ill-will. Sri Bans Bahadur Singh. Principal of the college is himself feeling sorry for having taken a drastic and harsh step against his own student, but according to him, sometimes swallowing of bitter pill is necessary to maintain order and discipline in the institution for the sake of students in general. The College atmosphere should not be allowed to be spoiled at the hands of some students who have adopted crime as their profession. In my view, requirement of principles of natural justice has been fully complied with in the present case. The order of expulsion of the petitioner cannot be held to be tainted on account of the alleged non-observance of the principles of natural Justice.

16. A short and swift reference may also be made to the controversy about the quantum of punishment. An expulsion order is a severe form of punishment. It carries with it an indelible stigma of "far reaching consequences" on his entire futures career. Normally, the question of quantum of punishment is not made the subject of Judicial review as the trend is that such matters should be left to the authority which is responsible to maintain discipline of the educational institution

and the Courts should not go into the question of adequacy of punishment. Sometimes, the Courts have not missed an opportunity to be generous in subsisting the punishment by granting certain concessions looking to the repercussions on the future career of the students. A glaring example of sympathy shown by the Apex Court is to be found in case of Sarvesh Narain Mishra and Others Vs. Vice-Chancellor, Aligarh Muslim University, Aligarh, . The ultimate test is responses of Judicial conscience and the Courts will interfere in the rarest of rare cases where not to interfere will perpetuate injustice and cause irreparable injury to a young student.

17. The petitioner has ceased to be a bona fide student of the college on account of his criminal activities. Had it been a solitary incident of indiscipline or of sudden involvement in Criminal activity, one would have thought to extend sympathy to the petitioner. But, contumacious as he was, he repeatedly indulged in criminal activities. On one occasion he entered the house of the Principal with a body of students and falling short of assault on him, the petitioner and other students plundered his house hold effects and damaged college properties. They also held an open threat to the life of the Principal. These acts amounted to great disrespect to a reason who deserved highest respect. The petitioner ignored the suspension order altogether and forced his entry in the college and the classes. He did not show any sign of repentance. Within about 5 months of the first incident, the petitioner indulged in another criminal activity, inasmuch as, he along with other students and undesirable elements came to assault Nav Neet Kumar Singh, A B.Sc. Part II student. This repetitive behaviour of the petitioner smacks of his obstinacy and obduracy. It was not a heart-felt apology tendered by the petitioner. It was merely an excuse to get over of the order of punishment passed against him. In the absence of sincere and earnest apology and resentence for his past deeds, the Principal was justified in not revoking the order of expulsion passed against the petitioner.

18. In the background of the above facts, I am also of the view that the petitioner deserves no sympathy. The action taken by the Principal was quite honest and based on reasonable grounds. Any tinkering by this Court with the impugned order of expulsion passed against the petitioner bound to send wrong signals in the educational institutions and if in the cases like the present case, judicial activism in resorted to, it would be difficult to control the already worsened condition of discipline in the educational institutions. I, therefore, feel chary in interfering with the impugned order in exercise of writ jurisdiction.

19. The relief that the petitioner be permitted to appear in the B.A. Part III examination has become infructuous as the examinations have been held and results declared.

20. The writ petition is wholly devoid of any merits and substance, and is accordingly dismissed without any order as to costs.