

(2002) 12 AHC CK 0065
In the Allahabad High Court
Case No : Special Appeal No. 1282 of 2002

Ashok Kumar Rana

APPELLANT

Vs

Principal, M.M.M. Engineering College and Others

RESPONDENT

Date of Decision : 13-12-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 AWC 585

Hon'ble Judges : G.P. Mathur, Acting C.J.; Ashok Bhushan, J

Bench : Division Bench

Advocate : Y.S. Saxena, for the Appellant; Ramesh Upadhyaya, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri Y.S. Saxena, advocate for the appellant and Sri Ramesh Upadhyaya appearing for respondent Nos. 1 to 3.

2. By this special appeal, the appellant has challenged the judgment dated 23rd November, 2002 of learned single Judge in Writ Petition No. 49013 of 2002 dismissing the writ petition filed by the appellant.

3. Facts giving rise to this special appeal, briefly stated, are ; appellant is a student of Bachelor of Engineering final year in Madan Mohan Malviya Engineering College, Gorakhpur. A girl student of Bachelor of Engineering final year (Electronics), Km. Shaifali Gautam, submitted a written complaint against the appellant on 12.10.2002 to the Warden of Hostel. The complaint stated that she is being continuously harassed by appellant for last two months, the appellant had been sending letters, E-Mails and abusive phone calls in past. The girl stated that she is forced to lodge a complaint because of misbehaviour and eve-teasing he has done on that date in the city. The girl student stated that she along with two of her batch-mates was having dinner in Hotel San Plaza where appellant came and sat on their table. The girls went out avoiding the appellant

but appellant followed and misbehaved with the complainant. The complainant stated that appellant tried to abuse verbally as well as manually, he tried to slap her and even pulled her clothes. The aforesaid complaint was handed over to the disciplinary committee and the disciplinary committee on the same day at 10.00 p.m. Issued a notice to the appellant and another student, Balvir Singh to appear before disciplinary committee on 13.10.2002 at 11.00 a.m. The notice was duly received by appellant and he appeared on 13.10.2002 and submitted a written statement addressed to Dean of the Students, Madan Mohan Malviya Engineering College, Gorakhpur. Five professors participated in the proceeding on 13.10.2002 and directed the appellant to again appear before disciplinary committee on 22nd October, 2002. The disciplinary committee again took the above matter on 23rd October, 2002. Two girl students, who were along with the complainant on that day and one boy also gave written statement on 23rd October, 2002 before the disciplinary committee. The disciplinary committee recommended expulsion of the appellant from hostel and college on which the Principal passed an order expelling the appellant from the college and hostel for the year 2002-2003. The aforesaid order was communicated by the letter dated 26th October, 2002 of the Dean of the students. Writ petition was filed by the petitioner-appellant challenging the order dated 26.10.2002. Counter and supplementary counter-affidavits were filed by the college in the writ petition to which rejoinder-affidavit was also filed by the petitioner-appellant. Learned single Judge vide its judgment dated 23rd November, 2002 dismissed the writ petition. The appellant has challenged the aforesaid judgment dated 23rd November, 2002 by means of this special appeal.

4. We have heard counsel for the parties and perused the record. By our order dated 3rd December, 2002, we directed the counsel appearing for the respondents to produce the original records including the proceedings before the disciplinary committee. Learned counsel for the respondents produced the original proceeding book and the records pertaining to complaint and the statements submitted before the disciplinary committee when the matter was heard by us on 7.12.2002. We have also perused the original proceedings produced by counsel for the respondents.

5. Sri Y.S. Saxena, learned counsel appearing for the appellant, in support of this special appeal, made following submissions :

(i) The disciplinary committee did not give notice and opportunity to the appellant before recommending expulsion of the appellant, hence, the entire proceeding is vitiated due to non-observance of principle of natural justice.

(ii) The appellant was not given a notice that disciplinary committee will meet on 22nd October, 2002 or 23rd October, 2002, hence the proceedings of disciplinary committee are ex parte to the appellant.

(iii) That there is contradiction in the averments made in the affidavit filed by the college on 7.12.2002 and in the original records since in the affidavit filed on

7.12.2002, it has been stated that statement of Km. Richa Srivastava was recorded on 13.10.2002, whereas from the original records, it appears that the said statement was given on 23rd October, 2002.

6. Sri Ramesh Upadhyaya, appearing for the respondents refuted the submissions of counsel for the appellant and submitted that appellant was given full opportunity by the disciplinary committee and the appellant also appeared before the disciplinary committee on 13.10.2002. Sri Upadhyaya submitted that appellant was given notice on 12.10.2002 which was duly received by the appellant. The appellant has also given his written statement on 13.10.2002 before the disciplinary committee, hence, the submission that appellant was not given opportunity is incorrect and without any basis. Sri Upadhyaya further submitted that in the writ petition appellant came with the case that he was not given any opportunity by disciplinary committee and did not even disclose that he was given notice on 12.10.2002 and he appeared on 13.10.2002. Sri Upadhyaya submitted that on 13.10.2002 the appellant was directed by disciplinary committee to again appear on 22.10.2002 but the appellant did not appear on 22nd October, 2002. Sri Upadhyaya further submitted that there is no contradiction in the affidavit filed in the appeal and the original records produced by the college. He submitted that along with the writ petition itself, the appellant had filed copy of all the statements submitted before the disciplinary committee. He submitted that on 13.10.2002, only appellant and another student Balvir Singh gave their written statement and written statement by Km. Richa Srivastava, Km. Manisha Budiya and Sri Prasant Kumar Singh were given on 23rd October, 2002 copy of which statements have been filed along with the counter-affidavit as Annexures-C.A. 2, C.A. 3 and C.A. 4, hence there is no question of any contradiction.

7. We have considered the submissions raised by counsel for the parties. The principal submission, which has been advanced on behalf of the appellant, is of not giving of notice and opportunity by the disciplinary committee. The contention is that action against the appellant is in violation of principle of natural justice, hence unsustainable.

8. For the appreciating the aforesaid submission, we have carefully perused the pleadings of the parties and the original proceedings produced before us. In the counter-affidavit filed in the writ petition, copy of the complaint filed by the girl student, Km. Shaifali Gautam, has been filed as Annexure-C.A. 1 and copy of the notice dated 12.10.2002 issued by Dean of the Students has been filed as Annexure-C.A. 6. The aforesaid notice, which has been filed as Annexure-C.A. 6, contains the signature of the appellant also. Further Annexure-C.A. 7 is copy of written statement submitted by appellant addressed to Dean of Students reference of which has been made in paragraph 13 of the counter-affidavit. Although the appellant has denied that he appeared before the committee but he has admitted that he was called on 13.10.2002 and was asked to give in writing as to what happened on 12.10.2002 which he gave. In paragraph 14 of the

rejoinder-affidavit, appellant clearly stated in following words :

"14. That the contents of paragraph 13 are denied. The petitioner never appeared before the committee. He was only called on 13.10.2002 and was asked to give in writing as to what happened on 12.10.2002, which he gave

The aforesaid statement made by appellant in the rejoinder-affidavit coupled with the copy of the notice dated 12.10.2002 and the written statement submitted by the appellant on 13.10.2002 addressed to Dean of the Students clearly prove that after receiving the complaint by girl student, the appellant was given notice and in reply to the notice, he gave his written statement. The University has produced the original proceeding book of the disciplinary committee which contains the proceeding dated 13.10.2002. In the said disciplinary committee, five professors of the University participated. The said disciplinary committee noted that enquiries were made from Km. Richa Srivastava, Manisha Budiya, Ashok Kumar Rana and Balvir Singh. The disciplinary committee directed the appellant to go home due to Dussehra holidays and come on 22nd October, 2002, along with his father. Further, the proceeding of disciplinary committee took place on 23rd October, 2002, in which ten professors and Dean of the Students participated. The disciplinary committee considered the entire matter and also took the written statements of Km. Richa Srivastava, Km. Manisha Budiya and Prasant Kumar Singh. The committee noted that appellant was directed to appear on 22nd October, 2002, but till 4.30 p.m. on 23rd October, 2002 he had not appeared. The committee found the appellant guilty of misbehaviour with the girl student, Km. Shaifali Gautam. The disciplinary committee recommended expulsion of appellant for the year 2002-03 from college and hostel. The Principal approved the aforesaid recommendation and directed for expulsion of the appellant. The aforesaid facts clearly establish that appellant was given due notice on 12.10.2002 after receiving a written complaint by the girl student and appellant also gave his written statement of the incident. In the written statement submitted by appellant, copy of which has been filed as Annexure-C.A. 7 to the counter-affidavit, the presence of the appellant in the restaurant and outside the restaurant is not denied. The appellant has also admitted that he caught hold of the hand of the girl student. In view of the aforesaid, we do not find any substance in submission of the appellant that disciplinary committee did not give any notice or opportunity to the appellant. The original proceedings dated 13.10.2002 and 23.10.2002, have been produced before us which are duly signed by five professors and ten professors respectively. There is no reason to disbelieve the aforesaid proceedings.

9. The extent and nature of opportunity, which is to be given in the matter of indiscipline by student in educational institutions, varies from case to case. The object of giving education to the students in an educational institution is to acquaint the students with various disciplines in life. Indiscipline in educational

institutions has a very serious effect in the mind of students which diverts them from main object for which they have joined the educational institutions. A duty is cast on the authorities of the university to maintain discipline. In cases of indiscipline, action is necessarily to be quick and immediate. The Apex Court considered the nature and extent of opportunity which is to be given to a charged student in a matter of indecent behaviour with girl student in *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*. In the aforesaid case, the appellants before the Apex Court, who were second year students and lived in hostel attached to the college sneaked in the girls hostel and were found walking without clothes. They went near the windows of the rooms of some of the girls and tried to pull the hand of one of the girls. Some boys also climbed up along the drain pipes to the terrace of the girls hostel where a few girls were studying. A complaint was received by the Principal from 36 girl students residing in the girl hostel alleging the above facts. The Principal entrusted the enquiry to three members committee. The four students were directed to be present in the Principal's room in connection with the enquiry. The students were informed about allegations and they gave their reply. The students denied having trespassed in the girl hostel. Before the students had been called, the enquiry committee had called ten girls of the hostel and their statement in writing were recorded. The committee held the students guilty of gross misconduct and recommended their expulsion for a minimum period of two years. The principal passed an order expelling the students. Against that order writ petition was filed in the High Court which was dismissed against which the matter went before the Apex Court. Before the Apex Court, it was contended on behalf of the appellants that rules of natural justice had not been followed before order was passed expelling them from the college. It was contended that the enquiry, if any, had been held behind their back, the witnesses, who gave evidence were not examined in their presence and there was no opportunity to cross-examine the witnesses. The High Court had held in the facts of the above case that requirement of natural justice has been satisfied. The Apex Court in paragraphs 7 and 11 of the said judgment held as under :

"7. The High Court was plainly right in holding that principles of natural justice are not inflexible and may differ in different circumstances. This Court has pointed out in *Union of India (UOI) and Another Vs. P.K. Roy and Others*, , that the doctrine of natural justice cannot be imprisoned within the straitjacket of a rigid formula and its application depends upon several factors. In the present case the complaint made to the Principal related to an extremely serious matter as it involved not merely internal discipline but the safety of the girl students living in the Hostel under the guardianship of the college authorities. These authorities were in loco parentis to all the students--male and female, who were living in the Hostels and the responsibility towards the young girl students was greater because their guardians had entrusted them to their care by putting them in the Hostels attached to the college. The authorities could not possibly dismiss the matter as of small consequence because if they did, they would have

encouraged the male student rowdies to increase their questionable activities which would, not only have brought a bad name to the college but would have compelled parents of the girl students to withdraw them from the Hostel and, perhaps, even stop their further education. The Principal was, therefore, under an obligation to make a suitable enquiry and punish the miscreants.

11. Under the circumstances the course followed by the Principal was a wise one. The committee whose integrity could not be impeached collected and sifted the evidence given by the girls. Thereafter, the students definitely named by the girls were informed about the complaint against them and the charge. They were given an opportunity to state their case. We do not think that the facts and circumstances of this case require anything more to be done."

10. The law laid down by the Apex Court in the aforesaid case is fully attracted in the facts of the present case. Principles of natural Justice were fully satisfied in the present case since the appellant was given notice and was informed about the allegations against him.

11. It is also necessary to note that discipline in educational institution has to be maintained by the educational authorities themselves. This Court and Apex Court has always been reluctant to interfere with action of educational authorities for maintaining discipline with the educational Institution in proceeding under Article 226 of the Constitution. Apex Court in *Kishan Chand Chopra and Others Vs. State (Delhi Administration) and Others*, held in paragraph 20 of the judgment as under :

"20. In matters concerning campus discipline of educational institutions and conduct of examinations the duty is primarily vested in the authorities in charge of the institutions. In such matters the Court should not try to substitute its own views in place of the authorities concerned nor thrust its views on them. That is not to say that the Court cannot at all interfere with the decisions of the authorities in such matters. The Court has undoubtedly the power to intervene to correct any error in complying with the provisions of the rules, regulations or notifications and to remedy any manifest injustice being perpetrated on the candidates.

12. The Apex Court in *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, while considering the challenge to decision of examination committee with regard to an examination conducted by Maharashtra Secondary and Higher Secondary Education Board held in paragraph 29 of the judgment as under :

"29. While it is open to the High Court to interfere with the order of the quasi-judicial authority, if it is not supported by any evidence or if the order is passed in contravention of the statutory provisions of the law or in violation of the principles of natural justice, the Court has no jurisdiction to quash the order merely on the ground that the evidence available on the record is insufficient or inadequate or on the ground that different view could possibly be taken on the

evidence available on the record. The Examination Committee has jurisdiction to take decision in the matter of use of unfair means not only on direct evidence but also on probabilities and circumstantial evidence. There is no scope for importing the principles of criminal trial while considering the probative value of probabilities and circumstantial evidence. The Examination Committee is not bound by technical rules of evidence and procedure as are applicable to Courts. We respectfully agree with the ratio."

13. The third submission of counsel for the appellant is that there is contradiction in the averments made in the affidavits filed on 7.12.2002 and the original records. We have perused the original records including the written statements of Km. Richa Srivastava, Manisha Budiya and Prashant Kumar Singh. Copies of written statements of above three persons dated 23.10.2002, have already been filed along with the counter-affidavit in the writ petition. The written statement given on 13.10.2002 by the appellant as well as another student Balvir Singh is also on record. The respondents having already filed the copies of all the written statements given before the disciplinary authority along with the counter-affidavit, there is no occasion to find out any contradiction in the pleading of the respondents. The proceedings dated 13.10.2002 of disciplinary committee also notes that only enquiries were made from Km. Richa Srivastava and Manisha Budiya. Proceedings do not show that any written statement was given by them on 13.10.2002. While considering pleading of a party, the entire pleading has to be looked into and one sentence here or there cannot be picked up to find out contradiction in the pleadings. We are satisfied that pleadings of the respondents in the writ petition are in conformity with the original records produced today. Counsel for the respondents has also not raised any submission contrary to original records produced before us. In view of above, there is no substance in third submission of counsel for the appellant.

14. In view of what has been said above, it is clearly established that the appellant was given notice and opportunity before taking decision against him. The decisions of the Apex Court as referred above, fully support the submissions raised by the counsel for the respondents. No violation of any statutory provision have been alleged nor any other good ground has been made out to interfere with the action of the college authorities. We do not find any ground to interfere with the judgment of the learned single Judge.

15. The special appeal lacks merit and is dismissed.