

(2003) 03 DEL CK 0112

In the Delhi High Court

Case No : Civil Writ Petition No. 3104 of 2002

Ashwini Kumar and Others

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 31-03-2003

Acts Referred:

Citation : (2003) 4 AD 456 : AIR 2003 Delhi 304 : (2003) 104 DLT 748 : (2003) 68 DRJ 502

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Vikram Nandrajog, for the Appellant; S.K. Luthra, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—This writ petition is filed by four petitioners who are students of University of Delhi. They are research scholars doing research in different fields in the departments under Delhi University. Petitioner No. 1 is doing his Ph.D in Buddhist Studies, Petitioner No. 2 is doing his LL.M. Petitioner No. 3 is doing his Ph.D in African Studies and the petitioner No. 4 is a student of M.Phil with the Department of Botany. They were provided accommodation in Jubilee Hall and were occupying room Nos. 130, 192, 171 and 38 respectively in the said hostel.

2. Jubilee Hall is a hostel for post-graduate students and is run under the overall supervision of the respondent No. 1 through the Provost. The Resident Tutor and the Warden are the three principal officers appointed in this regard for the smooth conduct of the affairs of Jubilee Hall. The scheme for the management of the affairs of Jubilee Hall provides for the participation of the residents/students of Jubilee Hall. There is a students union for Jubilee Hall with a constitution for said Union. Amongst other provisions of the said Constitution, Article 4(c) provides for the running of the Hall mess on a cooperative, "no profit no loss" basis to be organized under the general supervision of the Warden of the Hall. Article 7 of the said Constitution lays down that the Executive Committee of the Union shall be elected consisting of a President, Vice-President, General

Secretary, Cultural Secretary and a Sports Secretary. Article 8 provides for a duly elected "Committee of Mess Coordinators" of the Hall consisting of 12 members and for appointment of a Mess Coordinator for one month on rotation basis. The Mess Coordinator in turn is empowered to choose persons from amongst other members of the Union and form a committee to run the affairs of the Mess during his term of one month. Rule 11.5.1 of the hand book of information and rules of the hall provide that the operation of the mess (menus, purchases and monthly accounts) will be normally performed through the mess coordinator. Rule 11.5.2 provides that the mess coordinator will look after the mess operations for one full month. Rule 11.5.3 provides that the weekly menu and the cost of items at the current rate shall be determined by the mess coordinator. Rule 11.5.4 provides that in no case the officers of the hostel or hostel office will manage the mess on day-to-day basis. Rule 15 provides that the hall administration will be available for consultation during fixed hour to be notified from time-to-time but further provides that in case of emergencies, residents are advised to get in touch with the hall administration.

3. Respondent No. 2 is a Professor in service under the respondent No. 1 and at present he is the Provost of Jubilee Hall which charge he assumed on 30.4.2002. Before that he was the warden of Jubilee Hall. Petitioner No. 2 was Mess Secretary of Jubilee Hall for the month of February, 2002 and his term came to an end "on 28.2.2002. Next Mess Secretary was to be appointed for the month of March, 2002. Applications for this purpose were received. The petitioner Nos. 1 and 4 made joint application. However, according to the petitioners, no appointment was made for the month of March, 2002. Residents of Jubilee Hall on this alleged inaction on the part of respondent No. 2 felt agitated and approached the then Provost by meeting him around 9 p.m. in the night of 5.3.2002 and submitted a written representation. The Provost noted on that representation that they should approach the Warden. These residents of Jubilee Hall thus went to the residence of the Warden on same day around 10.30 p.m. It appears that these residents including petitioners held demonstration at the residence of the Warden and shouted slogans. According to the respondent No. 2 these students had come to his residence at about 11.30 p.m. and remained there for about three hours. The respondent No. 2 accordingly made a complaint dated 7.3.2002 against the petitioners to the Managing Committee of the Jubilee Hall. After consideration of this complaint by the Managing Committee in its meeting held on 11.3.2002, members of the Committee comprising Prof. Rajiv Khanna (Convener) and Proctor or his nominee, was constituted to investigate into the incident of said breach of peace and advice on actions to be taken. The Proctor nominated Prof. Gurmeet Singh, Joint Proctor to be the second member of the Committee.

4. This Committee, after enquiring into the matter, submitted its report dated 27.4.2002. As per this report, the Committee was of the view that the allegations made by the respondent No. 2 in his complaint dated 7.3.2002 amounted to an organized demonstration at mid-night at his residence which act could not be

justified, more so if it is at mid-night, whatever be its cause. The Committee specifically named the petitioners in taking active part in the demonstration along with 30-40 other residents and came to the conclusion that this act constituted a gross act of indiscipline on their part. The Committee further observed that it could not be ascertained as to who indulged in the acts of vandalism on the night of 5.3.2002 at the residence of respondent No. 2.

5. This report of the Inquiry Committee was placed before the Managing Committee of Jubilee Hall in its meeting held on 30.4.2002. The Managing Committee took the following decision after appraisal of the report:

"The report of Committee on incidents of breach of peace was presented, discussed and approved unanimously. The Chairperson was authorised to initiate the course of action, in consultation with Proctor, Delhi University, on the residents who were found guilty."

6. Consequent to the decision taken by the Managing Committee, the Chairman in consultation with the Proctor decided to serve the petitioners with a notice to show cause as to why action be not taken against them according to Ordinance XV-B of the University Calendar. The Provost was authorised to serve this notice to the petitioners. The petitioners were duly served with show-cause notice. The petitioners submitted the reply to the show-cause notice and it was decided by the Chairman and the Proctor that the petitioners be expelled from the Jubilee Hall Hostel as per Ordinance XV-B with immediate effect and they be called upon to vacate the rooms under their occupation within 24 hours and not later than 5 p.m. of 15.5.2002.

7. The petitioners were accordingly expelled from the hostel. This writ petition has been filed challenging the said action of expulsion vide order dated 14.5.2002.

8. Mr. Vikram Nandrajog, learned Counsel appearing for the petitioners questioned the validity of the expulsion order dated 14.5.2002 by contending as under:

1. The inquiry was against the principles of natural justice as the principle that "no man be judge in his own cause" is violated in this case. Contending that there was bias in the decision making process, learned Counsel sought to elaborate the submission by referring to proceedings dated May 2, 2002 annexed by the respondents as Annexure R-7 and submitted that the respondent No. 2 who was the complainant and at whose instance inquiry had been initiated against the petitioners was the party in decision making process when decision was taken to expel the petitioners.

2. His second submission was that the authorities sat with close and predetermined mind. Issuance of show-cause notice was a mere formality as reply thereto submitted by the petitioners was not considered which was clear from impugned order dated 14.5.2002 wherein it was stated that in the opinion

of the authorities Inquiry Committee Report once having been accepted by the Managing Committee could not be reopened and, Therefore, facts as alleged by the petitioners in the Explanation could not be accepted and the same were, Therefore, thus found to be unsatisfactory. He submitted that language of this communication clearly suggested that Explanation of the petitioners was rejected only on the ground that inquiry report had already been accepted and, Therefore, Explanation tendered by the petitioners in response to show-cause notice could not be considered and accepted.

3. Last submission of the learned Counsel was that in any case punishment was excessive and disproportionate to the alleged misconduct on the part of the petitioners. His submission in this behalf was that bona fides of the petitioners in raising genuine issue about non-appointment of Mess Coordinator for the month of March, 2002 could not be doubted as the respondents had themselves accepted the same. In fact when the petitioners and others met the then Provost around 9 p.m. in the night of 5.3.2002 and submitted written representation, the Provost wrote thereon that they could meet the Warden immediately on the same day. It was because of this reason that the petitioners and others had gone to the residence of the respondent No. 2, the then Warden at night for a genuine cause. Even if there was some misbehavior in pressing this cause, the petitioners, who were students, could not have been meted with severe punishment of expulsion from the hostel.

9. Mr. Sudhir Luthra, learned Counsel appearing for the University on the other hand justified the order of expulsion by submitting that it was a very grave act on the part of the petitioners. He referred to the counter-affidavit wherein the allegations of the petitioners in respect of alleged inaction on the part of Warden in not appointing Mess Coordinator for the month of March, 2002 were refuted and it is explained that initially two applications were received. One was made by the petitioners 1 to 4 and another application by Mr. Siddharth P. Kale. Mr. Kale withdrew application on 4.3.2002 leaving no choice for the Warden to invite fresh applications which he did immediately. On 4.3.2002 itself again two applications were received, one of joint application of petitioners 1 to 4 again and another application by Mr. Pradeep Kumar Singh. The Warden immediately appointed Mr. Pradeep Kumar Singh as Mess Coordinator for the month of March, 2002 and did not accept joint application of petitioners 1 to 4. He further submitted that the incident of 5.3.2002 was very serious as the petitioners along with 30-40 other residents of the hostel went to the residence of respondent No. 2 at about 11.30 p.m. and were there for about 3 hours. Organising of a demonstration of this kind that too at mid-night at the residence of the then Warden could not be justified whatever be its cause. He submitted that this was precisely the findings of the Fact Finding Committee as well. He further submitted that principles of natural justice were fully complied with inasmuch as the Committee was appointed to go into the incident after the complaint of respondent No. 2 was received. The Committee investigated into the matter and submitted its report which report was considered by the Managing Committee on 30.4.2002 and was

unanimously approved. The petitioners were given even show-cause notice and their replies considered where after decision was taken to expel them from the Hostel.

10. Replying to the specific arguments of learned Counsel for the petitioners he submitted that it could not be said that respondent No. 2 acted as Judge in his own cause inasmuch as report of the Fact Finding Committee had already been accepted by the Managing Committee on 30.4.2002 which would be clear from the following portion;

"The report of Committee on Incidents of Breach of Peace was presented, discussed and approved unanimously. The Chairperson was authorised to initiate the course of action, in consultation with Proctor, Delhi University, on the residents who were found guilty (Report enclosed)."

11. His submission was that after approving the report, it was the Chairperson who was authorised to initiate the course of action in consultation with Proctor, Delhi University. Therefore, the respondent No. 2 was not involved in the decision making process and the petitioners could not rely upon subsequent proceedings dated May 2, 2002 as decision had been taken on 30.4.2002 itself. In respect to the allegation that show-cause notice was not considered, he submitted that the petitioners are interpreting the letter dated 14.5.2002 wrongly inasmuch as the show cause notice was for the proposed punishment only as the facts relating to incident had already been admitted. In view thereof, no prejudice was even caused to the petitioners, the learned Counsel contended. On quantum of punishment, his submission was that by expelling the petitioners from the Hostel, a very lenient view was taken and in fact for such serious misconduct, the petitioners could even be rusticated from the University.

12. I shall first deal with the contention relating to the alleged bias of respondent No. 2:

As per the admitted facts culled out above, the respondent No. 2 was the complainant. It was on his complaint that the action was initiated against the petitioners which resulted in the impugned order. The Managing Committee in its meeting held on 11.3.2002 constituted a two members Committee. The report submitted by this Committee was considered by the Managing Committee in its meeting held on 30.4.2002 wherein it was decided to accept the report unanimously. The minutes of this meeting are annexed by the respondent No. 1 as Annexure R-1/1. As per these minutes 10 members were present including the respondent No. 2. When action was to be taken on the complaint of the respondent No. 2 and the Committee was discussing this report and the Managing Committee had to take a decision as to whether this report was to be accepted or not, the respondent No. 2 could not have been present in such a meeting. In the aforesaid decision making process, he became a party. Thus the petitioners are correct in their submission that he became Judge in his own cause. This principle of bias is based on the rationale that a person cannot take

an objective decision in a case in which he has his own interest. As a human psychology tells us, very rarely can people take decisions against their own interests. That is why this principle of rule against bias, namely, "Nemo judex in causa sua" is treated as one of the fundamental principles of natural justice and now principles of natural justice are firmly grounded in Article 14 of the Constitution [Refer; Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another,].

13. After accepting this report when the Managing Committee authorised Chairperson to initiate course of action in consultation with Proctor, Delhi University against the petitioners who were found guilty and show-cause notice was issued to the petitioners, further decision was to be taken as to what punishment should be meted out to them. For this purpose the Chairperson after consultation with the Proctor, Delhi University had a meeting with the concerned students i.e. the petitioners and he asked the petitioners to voluntarily vacate the hostel. The petitioners declined to do so. Thereafter an emergent meeting of the Managing Committee was held to decide further course of action. This meeting was held on May 2, 2002. In this meeting also respondent No. 2 participated. He has even signed the minutes of May 2, 2002 (Annexure R-7). Not only this, the decision to issue show-cause notice is taken after consultation with the respondent No. 2, amongst other, as would be clear from the following portion of the minutes dated May 2, 2002:

"After consultations among Chairman (Jubilee Hall) Proctor (University of Delhi) and Provost (Jubilee Hall), it is decided to initiate the process of disciplinary action as per rules on the four students, Mr. Neeraj Kumar Singh, Mr. Ashwani Kumar, Mr. Jitendra Kumar Mishra and Mr. Rajnish Kumar Singh, named in the report submitted by the Committee on Breach of Peace. They may be given five days notice to show cause by the Provost as to why action be not taken against them according to Ordinance XV-B."

14. The respondent No. 2 as is/was Provost at that time. Further interestingly, even for giving this show-cause notice Provost was authorised. Thus it is clear that right from the stage of acceptance of report of the Fact Finding Committee till the decision to expel the petitioners from the Hostel, the respondent No. 2 played active role in the decision making process at every crucial stage. Such an action cannot at all be justified. Such an action is clearly against the principles of natural justice as it suffers from bias on the part of the respondent No. 2 who participated in the proceedings.

15. In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, similar action where acting Chief Conservator of Forests, who was a candidate for selection to the All India Cadre of Forest Service was also a member of the Selection Board, was set aside by the Supreme Court though in that case he did not even take part of the deliberations of the Board when his name was considered and approved. It was held that there was a real likelihood of bias for the mere presence of the candidate on the selection board may adversely influence the judgment of the other member. Similarly in Gullapalli Nageswara

Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, the Supreme Court quashed the decision of Andhra Pradesh Government, nationalizing road transport on the ground that the Secretary of the Transport Department who gave hearing was interested in the subject matter.

16. Insofar as contention of the petitioners to the extent that their Explanation was not considered may not be correct. As already pointed out above, report of the Committee had already been accepted by the Managing Committee in its meeting held on 30.4.2002. The result of which was that the petitioners were found guilty. It is only for further course of action i.e. what kind of punishment is required to be given, that the Chairperson was authorised. Pursuant thereto show-cause notice dated May 9, 2002 which was issued related to the quantum of punishment, as is clear from the language of the show-cause notice itself. It was in this context that Explanation of the petitioners to the incident was not considered and turned down as this was not the subject matter of show-cause notice. However, as the proceedings dated 30.4.2002 accepting the report of the Committee wherein respondent No. 2 participated and consequent decision was taken to expel the petitioners from Hostel cannot be sustained because of violation of principles of natural justice as held above, this aspect of the matter even otherwise becomes inconsequential.

17. For the same reason, it is not necessary to go into the question of quantum of punishment. Although it may be added that normally it is not for this Court to consider the question of quantum as it is the concerned Executive Authority which is the best Judge in these matters and Courts are not to interfere unless punishment is shockingly disproportionate to the gravity of charge leveled against concerned persons. It does not seem to be a case of that nature as the allegations against the petitioners are serious. However, as mentioned above, it is not necessary to give any decision on this aspect.

18. The result of the aforesaid discussion is that impugned order dated 14.5.2002 is illegal and cannot be sustained. This writ petition is accordingly allowed. The said order dated 14.5.2002 is hereby quashed. The respondents, however, shall be at liberty to proceed with the matter from the stage when the Fact Finding Committee had submitted its report and the Managing Committee would be required to take the decision without any involvement of the respondent No. 2. Needless to mention that the concerned authorities shall comply with the principles of natural justice by giving proper opportunity to the petitioners in this behalf as required under the law.

No costs.