

(2006) 04 AHC CK 0027

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12920 of 2006

Asrar-ul-Haq

APPELLANT

Vs

Aligarh Muslim University

RESPONDENT

Date of Decision : 27-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 9 ADJ 597 : (2006) 6 AWC 6315

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Mahtab Alam, for the Appellant; Sunita Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. The petitioner claims that he was a regular student of class XI (Commerce) in Senior Secondary School (Boys) in Aligarh Muslim University, Aligarh. He had deposited fee for session 2004-05 for appearing in examination of class XI but due to illness and domestic problem he could not attend the class most of the days in the aforesaid session 2004-05. It is claimed that the petitioner has studied at home and has fully prepared the course but still the authority arbitrarily did not permit the petitioner to appear in the examination 2004-05 as such the father of the petitioner moved an application for permitting the petitioner to appear in the examination 2005-06 scheduled to be held w.e.f. 15.3.2006. Continuation certificate was not granted by the University. Representation was also made by the father of the petitioner for appearing his son in the examination 2005-06 but the University did not allow the petitioner to sit in the examination.

3. It is alleged that the University on the other hand, has discriminated the petitioner for some reason and on one hand has permitted the other students inspite of the shortage of attendance on the basis of extra curricular activities but

has denied the petitioner to appear in the examination and that the career of the petitioner is being deliberately spoiled by the respondent-University, as such the petitioner has no other alternative remedy except to approach this Court.

4. In the counter affidavit the University has taken a stand that the petitioner was not allowed continuation in the academic session 2005-06 as such he can not be said to be a regular student of the University and that since the petitioner has failed to attain the minimum percentage of attendance for appearing in the examination, as such he was not allowed to appear in the examination during the session 2004-05. It is vehemently denied that the University has fixed different minimum percentage of attendance for appearing in the examination for different classes.

5. Smt. Sunita Agarwal, counsel for the Aligarh Muslim University, Aligarh has urged that in all the courses of study a student must have put in at least 75% of the attendance whereas 80% of attendance is required in various courses of the faculty of medicine. She has relied upon the relevant rules as contained in Chapter XIX of the Ordinances (Academic) dealing with the examination in this regard which is as under:

2(a) The Senior Secondary School Certificate Examination Part I shall be open to candidates who have undergone a regular courses of study for a period of one academic year in class XI at a school maintained by the University. The expression "regular course of study" means that a student must have put in at least 75% of the attendance counted from the opening of the class.

Provided that shortage of attendance up to 10% may be condoned in genuine cases by the Board of Secondary Education on the recommendation of the Principal of the School concerned.

6. In so far as attendance during participation in extra-curricular activities is concerned, it is stated that only if the student represents the University or go on educational tour with the permission of the University authorities, then the attendance for that period is counted and awarded to the said student and not otherwise. Copy of the relevant extract of the Ordinances (Academic), Chapter XIX relating to Senior Secondary School Certificate Examination has been appended as Annexure-CA-1 to the counter affidavit.

7. It is further submitted that the continuation/admission of a student of the University is always subject to clearance from the office of the Proctor of the University, hence the application form of the petitioner was forwarded to the office of Proctor for his comments.

8. It is stated that there was a complaint against the petitioner and other students by the O.S.D. Senior Secondary School (Boys) dated 22.12.2004 which was submitted by him to the Proctor of the University. In the said complaint, the O.S.D. after preliminary enquiry has recommended that since the accused students have indulged in gross misconduct and indiscipline in and around the

School Campus, hence stringent disciplinary action leading to rustication is required in order to send clear signals that the School/University is not going to tolerate such incident of indiscipline. It is further stated that on the basis of the said report an enquiry was conducted by the Chief Security Officer, Proctor's office who submitted his report regarding the complaint of the Principal (O.S.D.) Senior Secondary School and recommended that further admission to the students involved in gross indiscipline may be banned by the competent authority. It is also stated that in view of the involvement of the petitioner in the acts of indiscipline and misconduct, the continuation form of the petitioner was not cleared by the office of the Proctor Aligarh Muslim University, Aligarh. The application submitted by the father of the petitioner before the Vice-Chancellor of the University on 19.11.2005 was duly examined by the Proctor and was found devoid of any merit, hence the prayer for continuation was not acceded to. It is stated that the petitioner was not allowed continuation as a student of the University in the larger interest of other students and in order to maintain the discipline in the University.

9. The counsel for the respondents has placed Rule 1 of the Rules of the University, which provides that no admission can be claimed as a matter right even if he is otherwise eligible. Rule 1 of the Rules of the University is as under:

1. There shall, under no circumstances, be any relaxation in the eligibility criteria. A candidate shall not be entitled to claim admission as a matter of right even if he/she is otherwise eligible. The University reserves the right to refuse admission to any individual without assigning any reason, as also the right not to disclose the marks secured by a candidate in any admission test/interview/apptitude assessment etc.

10. It is lastly contended that since the petitioner was not allowed to continue as a regular student of the University for the session 2005-06, as such he has no right to appear in the examination for the aforesaid session. It is stated that the endeavour of the University is to pay attention to the quality of teaching and to impress the students that regular attendance in the classes is for their benefit. According to the rules of the University the petitioner is not eligible to appear in the examination without admission/continuation and attendance in class XI. It is further stated that the petitioner is himself responsible for the loss as he has never been serious towards his studies and has been involved in the acts of indiscipline and misconduct. It is also stated that the petitioner should blame himself rather than levelling bald allegations against the University authorities.

11. In support of his contention that the petitioner was indiscipline, the counsel for the respondents has placed reliance upon letter dated 22.12.2004 by the Principal/O.S.D. of the Senior Secondary School, Aligarh Muslim University, Allahabad. Since the emphasis has been placed on the averments made in the aforesaid letter it is being quoted below:

Principal SENIOR SECONDARY SCHOOL ALIGARH MUSLIM UNIVERSITY

ALIGARH-202 002. 22.12.2004 The Proctor Aligarh Multisim University, Aligarh. The preliminary inquiry regarding the enclosed complaint dated 22.12.2004 has revealed the following facts:

Asrarul Haque S/o Mr. Gulzarul Haque, class XI-A, Enrolment No. FF-1518. Ashish Chauhan, S/O Mr. P.S. Chauhan Class XI-A, Enrolment No. GB-1001, Prashant Sharma, S/o Mr. Shashi Kant Sharma, Class XI-A, Enrolment No. GB-0908, Abdul Kaish Siddiqui, S/o Mr. Abdul Mannan Class XI-A, Enrolment No. GB-0976, led by Mohd. Rabey, S/o Mr. Abdul Mannan, Class XI-A, Enrolment No. FF-1617 have been repeatedly threatening Shoeb Ahmad of the same class since he was elected as the class representative two months earlier. Some of the teachers has tried to diffuse the situation in order to maintain harmony among the students of the class.

The accused also threatened some other students who intervened to establish reconciliation.

However, the accused did not relent and they continued to hatch conspiracy. It has come to notice that Mohd. Rabey was at the fore-front in inciting and provoking some other students to teach a lesson to Shoeb Ahmad and his friends.

Today, it was reported that a group of students armed with hockey sticks chains and some other dangerous equipments gathered outside of the School gate. They started abusing and physically assaulting the complainants as well as he came out of the premises of the school after their sessional test at about 10.00 A.M.

The undersigned along with some school Proctors and teachers rushed to the spot. The accused fled away. Two hockey sticks left by the accused were recovered from the spot.

About half of an hour another student Mohd. Hasan S/o Mr. Mohd. Nisam Class XI C Enrolment No 1919 came to school to fetch the Motorbike No. UP 81 M. 6955 parked in the school which belonged to Prashant Sharma one of the accused.

The Motorbike No. UP 81 M. 6955 and Bajaj Scooter No. UP-81-Q-1833 belonging to the accused were recovered from the parking side of the school are being deposited to your office. The other vehicle belonged to Ashish Chauhan.

The accused have indulged in gross misconduct and indiscipline in and around the School Campus. Hence stringent disciplinary action, leading to rustication is required in order to send clear signals that School/University is NOT going to tolerate such crime and indiscipline.

It is important to point out that student at para 6 was not involved in executing the crime, he only tried to bail them out by roaming the bike from the sight of the episode.

Ends: Students report. Sd. Eligible Officer-on-Special Duty

12. The complaint which is said to have been enclosed with the aforesaid letter dated 22.12.2004 has not been appended with the writ petition, though a recommendation dated 27th January, 2005 has also been made to the Proctor office strongly recommending that admission of the petitioner as well as Mohd. Rabey may not be granted as they have shown gross indiscipline which amounts to misconduct and they may be banned by the competent authority for serious charges on their part.

13. From perusal of the counter affidavit and the annexures contained therein it is evident that neither any preliminary enquiry in respect of the incident nor complaint dated 27.12.2005 from any student who is said to have been involved has been appended with the writ petition. All that appears from letter dated 22.12.2004 that a preliminary enquiry is said to have been made by the authorities and certain students including the petitioner are stated to have threatened Mohd. Shoeb Ahamad about two months back. If that was a case, the college ought to have taken action at that time. It further appears that rest of the contents of the letter are based on surmises and conjectures such as the accused did not relent and they continued to hatch conspiracy and it has come to notice that Mohd. Rabey was at the forefront in inciting and provoking some other students to teach a lesson to Shoeb Ahmad and his friends. It was reported in letter dated 22.12.2004 that a group of students (which students?) armed with hockey sticks chains and some other dangerous equipments gathered outside the school gate and started abusing and physically assaulting the complainants (who was the complainant is also not given). No complaint of the students has been appended with the counter affidavit. All that is said that a group of students gathered outside the school gate and assaulted the complainant. Two hockey sticks are said to have been found left by the accused on the spot. Neither any eyewitness was examined nor the petitioner was given any opportunity to defend himself. The letter-dated 22.12.2004 appears to have been prepared by the Officer-On-Special Duty and the petitioner has been visited with severe punishment harming his career and a stigma to carry throughout his life without any enquiry or opportunity to him. Rule for continuation/readmission does not provide that in case there is a complaint of the student he may not be granted admission. It only deals with the question of shortage of attendance and to secure the minimum prescribed marks for passing in sessional wherever applicable as per rules.

14. The Hon"ble Supreme Court in Lalita Jalan and Another Vs. Bombay Gas Co. Ltd. and Others, State of Karnataka Vs. Puttaraja, , State of Madhya Pradesh Vs. Ghanshyam Singh, State of Rajasthan Vs. Kheraj Ram, , Nazir Khan and Others Vs. State of Delhi, , Sushil Murmu Vs. State of Jharkhand, and State of U.P. Vs. Virendra Prasad, on penology has held that sentence of punishment awarded should be proportionate to the gravity of the charge proved. The nature of sentence depends upon facts and circumstances of each case, having regard to various factors including nature of the offence and manner in which it is executed or committed. Aggravating and mitigating factors should be properly balanced as

the object of sentence being to protect the society and to deter the criminal, social impact of the crime and effect of the sentence on the social order are relevant consideration. Sentence should therefore, reflect conscience of the society.

15. The Educational Institutions are supposed to guide and mould the students to make them good citizens of the country and are not supposed to turn young students specially who are under graduation level to criminals. The punishment awarded to such students of tender age should be tempered with mercy and their acts should not be compared with hardened criminals for purpose of punishment. The relief has to be tempered and moulded with reasonableness. If the students have indulged in some violent activities they should be given a punishment, which does not spoil their life.

16. In the instant case it appears that the punishment given is not equitable and proportionate. If the Court does not interfere in such matter, the life of the student may be spoiled. Human approach is called for in this case as only two hockey sticks were found outside the school premises and two hockey and the motor bike of the student recovered from the parking in absence of evidence in enquiry would be by itself not lead any conclusion of the guilt of the petitioner as he had not been given any opportunity to defend himself. The respondents may therefore, not be correct in coming to the conclusion that the petitioner was prima facie involved in the incident, though hatching of conspiracy is not proved.

17. It appears that the petitioner was punished on circumstantial evidence. Such evidence must be complete and incapable of explanation on any other hypothesis except that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should he inconsistent with his innocence.

18. Examination of class XI is a home examination, which leads to final examination of Board in class XII. The manner in which the authorities have proceeded in this case has raised serious doubts in the mind of the Court that if direction is given to the authorities to take home examination of the petitioner of class XI first before admitting him to class XII, he may be failed to teach him a lesson.

19. In the circumstances, this Court to prevent miscarriage of justice and ensure that justice is done exercise its extraordinary power under Article 226 in this case and directs the respondents to admit and permit the petitioner to appear in class XII final examination forthcoming as he has already lost 1 year due to unreasonable attitude of the respondents. However, it is made clear that the relief granted in this case may not be precedent in any other case.

20. With the aforesaid directions, the writ petition is allowed. The impugned order is quashed.