

(2008) 08 JH CK 0124
In the Jharkhand High Court
Case No : W.P (C) No. 6437 of 2007

Avinash Bhaskar

APPELLANT

Vs

Birla Institute of Technology and Another

RESPONDENT

Date of Decision : 20-08-2008

Acts Referred:

Citation : (2009) 57 BLJR 342 : (2009) 1 JCR 77

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Sohail Anwar, for the Appellant; Srijit Choudhry, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—The petitioner had been admitted in BHMCT course (Hotel Management) a 4-years degree course in Birla Institute of Technology (BIT Mesra), Ranchi in the year 2003 and came out successful in all the semester examination including 6th semester by securing first class marks. While the petitioner was in the 6th semester, he underwent six months" training in Seven Star Hotel at Goa from 5.12.2005 to 6.5.2006. After completing training when he returned home, he took admission in 7th semester on 18.7.2006. On 10.8.2006, the Superintendent of Hostel No. 7 and also Associate Deans when came to know that the students of 1st semester of BHMCT course have been subjected to ragging by the senior colleagues from 24.7.2006 to 10.8.2006, the matter was enquired into whereupon seven students of the 1st year of BHMCT course including Gaurav Bhardwaj, Amit Kumar Verma and Satyajeet Srivastava made a complaint in writing that ragging has been going on in the 5th lobby of Hostel No. 7 regularly. Thereupon the matter was reported to the Vice Chancellor on the next day, who asked the Associates Dean to issue notice to all the students of 5th lobby of Hostel No. 7 to vacate the Hostel. Accordingly, the students vacated the Hostel. Thereafter students of the 1st year BHMCT course met with the Vice-chancellor on 30.8.2006 and disclosed the name of three persons including the petitioner who had indulged themselves in the illegal act of ragging. Thereupon,

all those three persons including the petitioner were suspended along with one Gilbert Michael Linda and notice to that effect was issued by the Registrar of the Institute. After a week or so, the Registrar, Birla Institute of Technology, respondent No. 2 constituted a committee to look into the alleged act of ragging took place in Hostel No. 7. Thereafter the Chairman of the enquiry committee issued a letter dated 14.9.2006 calling upon the petitioner and other persons to be present before the committee on 16.9.2006 and the Chairman of the enquiry committee asked them to give their statements in writing. Accordingly, it was done wherein the petitioner stated that after coming home of undergoing hectic training for six months, he was quite busy in preparing project report which was to be submitted soon and therefore, he had virtually no time to indulge himself in this kind of act. The Chairman upon going through the statement asked the petitioner to furnish the name of the students who had involved themselves in the alleged act of ragging and accordingly, the petitioner furnished the name of six students including one Ravi Ranjan. Thereupon the committee called upon the students who had earlier made complaint and out of them, only four students, namely, Gaurav Bhardwaj, Satyajeet Srivastava, Amit Kumar Verma and Ravi Ranjan appeared before the committee and made written complaint. Thereafter the committee came to conclusion that this petitioner and other two persons had involved themselves in committing illegal act of ragging with the students of 1st semester of BHMCT course. Thereupon the office order dated 18.10.2006 (Annexure 5) was issued by the Registrar under the order of the Vice-Chancellor, Birla Institute of Technology informing therein that all the three students including the petitioner, who had earlier been suspended are expelled from the Institute and the mid-semester examination papers of the above students were cancelled.

Being aggrieved with the said order, this writ petition has been filed.

2. Counter affidavit has been filed on behalf of the respondents stating therein that initially students of 2006 batch could not disclose the name of senior who had indulged themselves in the act of ragging but one Ravi Ranjan, student of 2005 disclosed the name of three persons including the petitioner and thereafter enquiry was conducted and the members of the enquiry committee after taking into consideration the statement made by the victim students, found the petitioner and other two persons guilty and therefore, the impugned order was passed keeping in view the guidelines laid down by the Hon"ble Supreme Court in the case of University of Kerala v. Council of Principals of Colleges in Kerala SLP (Civil) No. 24295 of 2004.

3. Mr. Sohail Anwar, learned Counsel appearing for the petitioner submits that under the impugned order extreme penalty has been imposed upon the petitioner which would virtually ruin the career of the petitioner who had good academic record throughout whereas such extreme punishment is neither justified nor proportionate to the accusation made against the petitioner as the petitioner has only been alleged to have abused the students of the 1st year

BHMCT course whereas the same punishment has been inflicted even upon the students who have been alleged to have subjected some of the students to physical assault.

4. In this regard learned Counsel submits that out of three students, namely, Gaurav Bhardwaj, Satyajeet Srivastava and Amit Kumar Verma, two of them, namely, Satyajeet Srivastava and Amit Kumar Verma have not uttered a single word against the petitioner whereas Gaurav Bhardwaj has simply stated that the petitioner had used abusing language and this statement never seems to have come at the first instance, rather it seems to have come subsequently which gives impression that it is an outcome of after thought brought at the instance of someone carrying grudge against the petitioner. Similarly, Ravi Ranjan against whom a complaint was made by this petitioner of indulging himself in the act of ragging has also stated that this petitioner had only abused the students and, therefore, under these circumstances, punishment inflicted upon the petitioner seems to be too severe which needs to be quashed particularly, when opportunity was never given to the petitioner for defending himself in course of enquiry and even the enquiry report was not given before the punishment was awarded.

5. As against this, learned Counsel appearing for the respondents submits that students of the 1st year could not name the students who had indulged himself in the act of ragging as they were not knowing the names of the person involved and that if the statements made by the students in course of enquiry are taken in totality, it would appear that the petitioner had indulged himself in the various acts of ragging and taking into consideration this aspect of the matter and keeping in view the guidelines laid down by the Hon"ble Supreme Court in the aforesaid case, punishment has been awarded which does not warrant to be interfered by this Court.

6. Admittedly, Institute does not have any rules and regulations for dealing with such kind of menace like that of ragging which has pervaded the educational institution deeply which itself speaks about the degradation of the moral values. This menace was so widespread all over the country that day in and day out there used to be complain of ragging in one institute or the other institute and when such matter came to the notice of the Hon"ble Supreme Court in a case of University of Kerala v. Council of Principals of Colleges (supra) a committee was constituted for suggesting the measures for stemming this menace. Accordingly, the committee suggested some measures which need to be focused for tackling the problem and the Court, vide its order dated 16.5.2007 accepted some of the recommendations to be implemented immediately and one of the suggestions which was accepted by the Court is that "punishment to be meted out has to be exemplary and justifiably harsh to act as a deterrent against recurrence of such incidents".

7. Regard being had to this aspect of the matter, it is to be considered as to whether punished awarded to the petitioner which is extreme in its kind can in

the facts and circumstances be said to be justifiable?

8. One does easily understand that act of ragging includes various acts indecent to moral values such as abuses, physical torture, mental torture putting the students to indulge in obscene act etc. Each such act has got degree of its severity and among all these acts "abuse" seems to have lesser severity but still the petitioner who came out successful in his all the 6th semester has been expelled from the Institute which, in the facts and circumstances of the case, never seems to be justifiable rather imposition of lesser punishment would have been appropriate as it would have telling effects upon the career of student and if one such act ruins a career of student, it would certainly be too harsh when the petitioner had to take only two examination to finish the course. Thus, punishment imposed never seems to be justified nor proportionate to act committed by the petitioner. On other counts also the impugned order of punishment as contained in Annexure 5 suffers from illegality as the order seems to have been passed in violation of the principles of natural justice as the petitioner was not given any opportunity of being heard at the time of enquiry nor copy of the enquiry report was submitted before infliction of the punishment, though no such rule is there for providing copy of the enquiry report or allowing the culprit to participate in the enquiry but equity demand that petitioner should have been given opportunity of being heard before infliction of the punishment.

9. Accordingly, the office order dated 18.10.2006 as contained in Annexure 5 is hereby quashed so for the petition is concerned and the matter is remitted back so that fresh order be passed by the authority within a month from the date of receipt/production of a copy of this order after giving due opportunity to the petitioner of being heard in the matter of infliction of punishment keeping in view that the petitioner has already lost almost two years of his academic career and also the fact that the petitioner in terms of the order dated 17.4.2008 has tendered his unqualified apology before the Vice-Chancellor.

10. In the result, this application is allowed.