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(2015) 12 OHC CK 0027

In the Orissa High Court

Case No : W.P.(C) No. 13687 of 2015

Debasish Dhal — APPELLANT

Vs

National Institute of Technology (NIT), Rourkela and Others — RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Citation : (2015) 12 OHC CK 0027

Hon'ble Judges : I. Mahanty and Krushna Ram Mohapatra, JJ.

Bench : Division Bench

Advocate : Samir Kumar Das, S.K. Mishra and P.K. Behera, for the Appellant; S.P. Mishra, Senior Advocate, S. Mishra and D. Priyanka, for the Respondent

Final Decision : Allowed

Judgement

Krushna Ram Mohapatra, J.—The petitioner, in this writ petition assails the order of punishment dated 21/22.09.2015 (Annexure-7) so far as it relates to the petitioner. Initially, petitioner filed this writ petition assailing the order of punishment dated 14.07.2015 (Annexure-4) terminating his studentship from National Institute of Technology, Rourkela (for short, ''NIT'') with effect from Autumn 2015-16. During pendency of this writ petition, this Court vide order dated 08.09.2015, taking into consideration the fact that the representations of the petitioner and similarly situated students are pending for consideration, directed that the Senate may consider the representations forthwith, preferably within a period of 10 days from the date of the order. This Court also directed the petitioner to make a representation to the NIT (opposite party No. 2) to permit him to attend classes pending decision of by the Senate. Pursuant to the direction of this Court impugned order under Annexure-7 is passed.

2. Facts in nut shell giving rise to filing of the present writ petition are as follows:

"The petitioner took admission in B.Tech (Bio Technology and Medical Engineering) in the NIT during the year 2012. When the petitioner was in the final year of the course, a student, namely, N. Preetham lodged complaint before

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the Chief Warden of the NIT on 12th April, 2014 alleging that his laptop was stolen and he suspected involvement of students, namely, Rashmi, Rakesh and Rinku for theft of his laptop and requested to take necessary action in the matter. On receipt of the complaint, the Chief Warden directed the Warden of S.D. Hall (where said N. Preetham was a boarder) to make an enquiry and submit report. On the basis of the said complaint, an enquiry was conducted and the petitioner was issued with notice dated 28/29.05.2015 in the matter of theft of laptop and camera, wherein, he was found guilty of stealing bicycle along with one Deepak Panigrahi and Anil Rathord being implicated by Deepak Panigrahi and Rinku Raj. He along with his parents were asked therein to submit their respective reply to the same. In response to the said notice, the father of the petitioner, namely Trilochan Dhal submitted his reply on 05.06.2015 (Annexure-3) stating that his son was never involved in any case of theft of bicycle. He further informed the authority that the laptop and mobile phone of his son, the petitioner herein, was stolen from C-201, V.S. Hall on 14.02.2014 for which a complaint was lodged before the authorities as well as the Police and the same was not recovered. However, the petitioner was imposed with punishment of termination of his studentship with effect from Autumn 2015-16 along with five other students, which was communicated to him vide order dated 14.07.2015 (Annexure-4). The petitioner made representation dated 20.07.2015 (Annexure-5) to the authorities to review the punishment reiterating the statements made by him during the enquiry and the reply of his father dated 05.06.2015 and requested to investigate into the matter and allow him for registration into 7th semester to save his career. Thus, the petitioner filed this writ petition assailing the order under Annexure-4 initially."

3. The NIT through its Director (opposite parties 1 and 2) filed counter stating therein that on receipt of complaint from one N. Preetham on 12.04.2014 (Annexure-A/1) to the effect that his laptop was stolen on 06.04.2014, the Chief Warden directed the Wardens of respective Halls of residence to enquire into the matter. Accordingly, the Warden of S.D. Hall in which said N. Preetham was a boarder, submitted his report along with statements of students with regard to the theft of the laptop (Annexure-B/1). When the matter was so pending before the Chief Warden, another complaint was lodged on 04.09.2014 by one Panchanan Mallick, another student, alleging theft of his laptop from his room. On receipt of the report from the Wardens of different Halls of residence, the Chief Warden submitted a report to the Director on 12.09.2014 (Annexure C/1) regarding theft of laptops from different Halls of residence of NIT. As desired by the Director, the Chief Warden again submitted a detailed report on 28.09.2014 on theft of laptops (Annexure-D/1). On receipt of the reports, the Director, NIT (O.P. No. 2) directed the Institute Student Disciplinary Committee (for short, ''ISDC'') to enquire into the complaints and recommend necessary deterrents. Accordingly, the Secretary of the ISDC intimated the students, accused of theft, to be present in the meeting, which was held on 14.11.2014. In the interregnum, on 20.11.2014, the Chief Warden intimated the Director under Annexure-G/1

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about theft of another laptop and camera of one K. Sailesh Reddy, who was undergoing summer training in NIT. On 02.12.2014, ISDC convened a meeting before which the delinquent students appeared for further interrogation/ investigation and statements of delinquent students were recorded (Annexure-H/1). During investigation, one Madhusudan Sethi and Rinku Raj admitted their involvement in theft and also implicated Deepak Panigrahi, Rakesh Biswal as well as Anil Rathord in stealing laptops. However, after different sittings, the ISDC held the present petitioner guilty of stealing bicycles. The findings of ISDC was communicated to the petitioner and similarly placed students, who were found guilty by it as well as their parents to submit their respective reply on the same (Annexure-M/1/Annexure-2).

On receipt of the notice dated 28/29.05.2015, the petitioner submitted his representation for reconsideration of his case stating that he was never involved in any kind of theft including the incident as alleged. On receipt of representations of the students including that of the petitioner, the ISDC considered the same and necessary deterrents were recommended (Annexure-P/1). On the basis of the said findings/recommendations, the Senate vide its order dated 14.07.2015 (Annexure-4) terminated the studentship of the petitioner and other delinquent students with effect from Autumn 2015-16. On receipt of order dated 14.07.2015, the students, namely, Madhusudan Sethy, Rinku Raj, Rakesh Biswal, K. Anil Kumar Rathord approached the NIT and submitted their representations admitting their guilt and prayed to condone their mistakes. However, the present petitioner reiterated his stand to the effect that he was never involved in any kind of incident as alleged. On receipt of the representations, ISDC had decided to convene a meeting on 13.08.2015 for reviewing the punishment imposed on the students. However, no decision could be taken in the matter since the petitioner filed the Writ Petition assailing the punishment imposed. Pursuant to the direction of this Court dated 08.09.2015, the Senate reconsidered punishment imposed on the petitioner and after reconsideration, it was directed that the petitioner shall be expelled from the institute for one semester, i.e., for Autumn 2015-16. In addition to the expulsion, the following supplementary penalties were also imposed:--

"i. P-17 : Placement facility withdrawn totally (Cancellation of offers to final year student if already given);

ii. P-6 : Debarment from Medals & prizes linked to academic performance, and prizes (e.g. Sports Blues, Best Sports person of a year) based on cumulative performance;

iii. P-3 : Debarment from elected offices and captaincy of sports teams;

iv. A financial penalty of Rs. 50,000/- each be imposed on above six students, the collection being spent on student welfare;

v. There shall be no adverse entry in the conduct certificate of the student;

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vi. If in future their fresh involvement in such activity is established, the original penalty of total expulsion from Institute will be implemented;

vii. All the students and their parents need to give undertaking to the effect that he (his ward) will not be involved in any such activity in future. If any such involvement will be established against him (his ward), the original penalty of total expulsion from Institute will be implemented."

Hence, the opposite parties prayed for dismissal of the writ petition contending that the same is not maintainable being devoid of any merit. They also contended that for the welfare of the students in future and to maintain the reputation of the institution, the punishment imposed on the petitioner should not be interfered with.

4. Mr. Sameer Das, learned counsel for the petitioner submitted that the complaint on the basis of which the enquiry was initiated relates to theft of laptops and there was no complaint with regard to theft of bicycle of any student. No enquiry was ever made with regard to alleged theft of bicycle. Thus, the finding that the petitioner was involved in theft of bicycle is baseless and the punishment imposed is not correct and proper. He further submitted that the father of the petitioner in his reply dated 05.06.2015 (Annexure-3) categorically denied the allegations made against his son and brought to the notice of NIT that the petitioner was a victim of theft of his laptop and he had lodged a complaint with the authorities of NIT for theft of his laptop from his room No. C-201, v. Hall on 14.02.2014 and had also lodged an FIR. Surprisingly, no enquiry on the complaint of the petitioner has been conducted and the laptop of the petitioner is yet to be recovered. Thus, he could not have been held guilty. Rather, he is a victim. However, without considering the plight and innocence of the petitioner, the order of punishment was imposed upon him.

The NIT has its own Rules and Regulations with regard to student discipline, i.e., "Manual of Student Discipline" (Annexure-2 to the additional affidavit filed by the opposite parties). Sections-VI of the said Manual, deals with typical offences and recommended deterrents. OA-13 of Category-A (General Offences) of Section-VI deals with "Stealing of private or public property". Section-V of the Manual provides list of possible deterrents/punishments for different offences. The probable deterrents/punishments for OA-13 are provided as follows:

"P-7 Placement facility withdrawn till mid semester exam of pre-final Semester or for remaining period of pre-final and final semesters for final year students with one job offer;

P-8 Delay in publication of final results by 1 to 3 months; degree to be awarded in the same year, if convocation dates permit;

P-9 Delay in publication of final results by 3 to 6 months; degree to be awarded in the same year, if convocation dates permit;

P-10 Placement facility withdrawn for pre-final semester including winter

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vacation;"

Referring to aforesaid provisions of the Manual of the Students Discipline, Mr. Das submitted that the maximum punishment which could have been imposed on the petitioner is enumerated at P-7 to P-10 and not beyond that. However, the punishment imposed upon the petitioner, as reveals from Annexure-7, is much beyond that. He is awarded with punishment enumerated at P-3, P-6, P-17 and P-24 and similar other punishments which were not provided under Section-V. In addition to the above, he submitted that Section-II of the Manual deals with Rules regarding conduct and discipline of the students. Clasue-4 of Section-II provides different kinds of punishment commensurating with gravity of offence. In addition to the above, for economic offence (either misappropriation of money or damage to Institute property), the cost to the institute will be recovered along with penalty, which may be up to ten times of the cost recovered. In the instant case, the allegations against the petitioner do not constitute any ''economic offence'', as contemplated under Clause-4 to Section-II, as the petitioner has neither caused any damage to the property of the institute nor has he misappropriated any money. Therefore, the penalty of Rs. 50,000/- as imposed upon him is do hors the Rules and is not in conformity with the offence alleged. Thus, it is apparent that the authorities have never applied their mind to the matter and the punishments imposed are shockingly disproportionate and de hors the Rules.

5. Mr. S.P. Mishra, learned Senior Advocate appearing on behalf of the opposite parties submitted that the petitioner was awarded with punishment basing upon the statements of students, namely, Rinku Raj and Deepak Kumar Panigrahi. They have categorically stated about the involvement of Debasish Dhal in theft of cycles from the institute. Further, the Manual of Student Discipline under Section-II provides for Rules regarding conduct and discipline of students. Clause-3 of the said Section lays down different acts of omission and/or commission and comparable offences which constitute gross violation of code of conduct and are liable to invoke disciplinary measures. The offences enumerated therein include ''willful damage or stealthily removing any property belonging to the institute, hall or fellow students''. Further Clasue-4 of the said Section provides for punishment to be awarded, which commensurate with the gravity of the offences. The ISDC keeping in view the nature of offences committed, the statements of the students recorded during the interrogation as well as the need for discipline in the institute to prevent repetition of the offence, recommends the punishment(s) to be imposed on the delinquent student(s). Section-V of the Manual provides a list of possible deterrents/punishments that may be recommended by the ISDC. It is clarified therein that the list of possible deterrents given therein are only basic guidelines for the sake of uniformity across separate incident and the same is not intended to limit the power and responsibility of the ISDC to recommend any other punishment. The ISDC may use the list and the guidelines of possible deterrents given in Section-V and can also create innovative combination of the recommended deterrents. The ISDC

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has been empowered to suggest and recommend combination of punishment so as to serve the deterrents for the erring students. Thus, Mr. Mishra, learned Senior Advocate strenuously refuting contentions of Mr. Das, contended that the ISDC is empowered to recommend punishments beyond the guidelines provided and recommends punishment creating innovative combination of the recommended deterrents commensurating with the gravity of offences. Mr. Mishra further contended that while interrogating students for theft of laptops, ISDC came across the incidents of theft of bicycles from the premises of the institute by the students and the ISDC couldn''t have closed its eyes to such incidents. Thus, while recommending punishment for the erring students, the ISDC has not only taken into consideration the theft of laptops but also cycles, which were stolen from the premises of the institute. After careful scrutiny of the statements of the students and other materials, the ISDC recommended punishment commensurating with the gravity of the offence. Initially, the ISDC recommended termination of students accused of, but considering the representations of the delinquent students, their punishments were reviewed by the Senate and the impugned punishments were awarded which are just, proper and commensurate with the offence committed. The same needs no interference by this Court. Hence, he prayed for dismissal of the writ petition with costs.

6. Taking into consideration the rival contentions, a close scrutiny of the imputation made against the petitioner, materials available as against such imputations, procedures followed in conducting enquiry as well as the punishment imposed on the delinquent(s) is warranted.

7. Undisputedly, the complaint lodged by one N. Preetham on 12.04.2014 before the Chief Warden alleging theft of his laptop on 06.04.2014 was the basis of initiation of the enquiry. It is also not disputed that on receipt of the complaint, the Chief Warden directed Wardens of respective Halls of residence to enquire into the matter and submit report. During enquiry, one Deepak Kumar Panigrahi and Rinku Raj allegedly implicated the petitioner and on the basis of their statements only the petitioner found guilty. Hence, in order to test the veracity of the allegations made against the petitioner, this Court examined the statements of said Rinku Raj and Deepak Kumar Panigrahi.

As it appears, from Annexure-F/1 series, Rinku Raj has given statement admitting theft of one laptop of one Jajati Keshari Kumbhar along with Rakesh Kumar Biswal. He also stated that he had transferred two cycles to Sector-2 bus stand with the help of Deepak Kumar Panigrahi. In the said statement, neither he named the petitioner nor has he signed the said statement. It doesn''t also bear the date on which such statement was recorded. However, Deepak Kumar Panigrahi while admitting his guilt had implicated the petitioner for stealing some cycles. During the course of hearing, the opposite parties filed additional affidavit enclosing voluminous documents to supplement their stand and justify the involvement of the petitioner in the alleged offence. Along with the additional affidavit, the opposite parties filed statement of Rinku Raj recorded on

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05.10.2014. Rinku Raj in his statement dated 05.10.2014, made before the Chief Warden, has stated as follows:--

"I admit that I did the mistake and want to inform you some details in order to reduce laptop thefting in NIT Rourkela. In first semester under the lead of Deepak Ku. Panigrahi, Debasish Dhal, Anil Rathod we passed No. of cycles to Sec-2 Bus stand & I know the above mentioned seniors did No. of laptop thefts (they passed 8 laptop''s to Berhampur in summer vacation, also an outsider Abinash Tarai enter''s the campus of the institute. He usually enters into NIT (By taking the advantage of loose security) & supplied laptop''s outside. As per I know he is involved in number of theft case at NIT Rourkela...."

At the bottom of the said statement, the Chief Warden put his signature and seal with date. The date reflected therein is 05.09.2014.

The statement of Rinku Raj reportedly recorded on 05.10.2014 does not inspire confidence. Firstly for the reason that the statement recorded on 05.10.2014 could not have been signed on a previous date, i.e., 05.09.2014 and there is no explanation to such disparity. Secondly, the said statement of Rinku Raj was not produced before this Court along with the counter affidavit (it was only filed along with additional affidavit of opposite parties 1 and 2) and more importantly, in the earlier statement, said Rinku Raj has not implicated the petitioner. Likewise, though Deepak Kumar Panigrahi implicated the petitioner for theft of some cycle in his statement in his statement recorded on 14.10.2014. However, in the statement recorded on 20.07.2015, while admitting his guilt of stealing four cycles he has not whispered a single word against the petitioner. Be that as it may, it would be profitable to indicate that there was no complaint with regard to theft of bicycles from the premises of the institute. The allegation was with regard to theft of laptops of different students. There is also no evidence available on record to implicate the petitioner for theft of laptops. Hence, holding the petitioner guilty for theft of bicycles, which was not in issue, makes the entire enquiry perfunctory. To add to it, no charge was framed against the petitioner nor was he given any opportunity to cross-examine said Rinku Raj and Deepak Kumar Panigrahi, who had allegedly implicated him. Moreover, there is no material on record to suggest that the statements of said Rinku Raj and Deepak Kumar Panigrahi were recorded in presence of the petitioner. In addition to the above, the petitioner and his father have repeatedly pledged before the authority with regard to theft of laptop and mobile of the petitioner which was stolen from his room on 14.02.2015. No enquiry to that effect has apparently been conducted till date. In that view of the matter, we have no hesitation to conclude that the enquiry is perfunctory one and the findings arrived at are perverse and are based on surmises.

8. The "Manual for Student Discipline" provides that the ISDC of the Senate is responsible for investigation of the ''reported'' complaint against the students and to advise the administration/Senate on the proposed punishment to be imposed upon the students. Section-VI of the Manual reveals the types of

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offences to be considered by the ISDC. There are as many as seven types of offences. General offences are categorized in ''A'' to ''G'' of Section-VI. Under category-''A'', OA-13 deals with ''stealing private or public property''. Since the allegation was with regard to theft of laptop (even cycles), the same will come under the category OA-13. Section-V of the Manual provides proposed deterrents/ punishments for different offences. The possible deterrents/punishment for offence under OA-13 are as provided under P-7 to P-10 (quoted hereinabove).

Mr. Mishra, learned Senior Advocate for the opposite parties drawing attention to Section-V submitted that said Section-V deals with probable deterrents that may be dealt with by the ISDC. The list is given only as a basic guideline for the sake of uniformity across separate incidents, NOT intended to limit the powers and responsibilities of the Standing Disciplinary Committee. The Committee is expected to use the list and the guidelines given in Section-V and also to create innovative combination of recommended deterrents. Thus, the ISDC is empowered to suggest and recommend combination of punishment so as to serve as a deterrent to the erring students. Thus, the power of the ISDC cannot be limited to the list of proposed/possible punishments as provided under Section-V, especially when under Section-II of the Manual, a list of punishments have been prescribed at Clause-4 to be imposed commensurating with the gravity of omission/commission of acts of misconduct and indiscipline. He further submitted that in the present case along with the expulsion for one semester, the petitioner was also awarded with punishment as enumerated under P-17, P-6 and P-3 with financial penalty. Hence, the same warrants no interference by this Court. On a close scrutiny, it appears that no reason is assigned by the opposite parties as to why the ISDC as well as the Senate traveled beyond the proposed punishment and imposed a higher penalty upon the petitioner, more particularly when the same is provided under P-7 to P-10. True it is that the authorities have the power to create innovative combination of punishment to be imposed on the erring students whenever it is warranted. But the greater is the power, the more should be the responsibility and restraints of the authorities while exercising such power in imposing punishment. Otherwise, it would lead to arbitrariness and colourable exercise of power. Thus, while imposing punishment, authorities are expected to act reasonably and impose punishment on the erring student(s) commensurating with the gravity of offence, which is also the requirement as provided in Clause-4 of Section-II of the Manual of Student Discipline. In the case at hand, the authorities appear to have acted mechanically with a mind set to do away with the academic career of the petitioner. No reason has apparently been assigned for imposing the punishment impugned herein. In that view of the matter, the impugned punishment/deterrents imposed also suffer from arbitrariness and non-application of mind, which is not sustainable in the eye of law.

9. In the result, the writ petition is allowed; Annexure-7 is quashed and the opposite parties are directed to pass consequential orders with regard to academic career of the petitioner in the institute forthwith.

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I. Mahanty, J.

I agree.

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