

(1992) 11 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No. 14901 of 1992

Leo Francis Xaviour

APPELLANT

Vs

The Principal, Karunya Institute of Technology, Coimbatore
and another

RESPONDENT

Date of Decision : 09-11-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Penal Code, 1860 (IPC) — Section 377, 504
Secondary School Code — Rule 56.5

Citation : AIR 1993 Mad 233 : (1992) 2 LW 642

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : Mr. K. Shridhar and Mr. B. Rabu Manohar, for the Appellant; Mr. N.G.R. Prasad, for M/s. Row and Reddy, Mr. T. Chinnaswamy and Mr. K. Sethuraman, for the Respondent

Judgement

1. The petitioner is a III year student in B.E., Civil Engineering Course, in Karunya Institute of Techonology, Coimba-tore, the Principal of which is the first respondent. The second respondent is the Registrar, Bharathiyar University, Coimba-tore. The petitioner is challenging the order made by the the first respondent on 8-9-1992 expelling him from the College and the hostel for indulging in ragging the I Year students, beating the students in uncultured way, using abusive words against them, showing obscene pictures and threatening them for the consequences, thereby giving mental and physical torture to the 1 Year students.
2. At the outset it should be mentioned that the second respondent is wholly unnecessary to this petition. The second respon-dent has nothing to do whatever with the impugned order passed by the first respondent. No relief

has been prayed for by the petitioner against the second respondent. The affidavit filed in support of the writ petition does not disclose the reason for impleading the second respondent as a party to the petition. The second respondent has been unnecessarily dragged to this Court by being impleaded as a party. Hence, the writ petition deserves to be dismissed as against the second respondent.

3. The petitioner's case in short is that he has been victimised by some members of the staff of the College who have a personal grudge against him and that there was no notice to him or any kind of enquiry whatever before the impugned order was passed. In the first respondent's counter affidavit, the allegations made by the petitioner are denied and it is categorically stated that an enquiry was held by a Committee on a complaint received from a Ist Year Student and the petitioner was found guilty of the charges made against him. The petitioner has filed a reply affidavit reiterating his stand and for the first time, he. alleged therein that the first respondent demanded a sum of Rs. 5000/- and a statement admitting the charges from the petitioner and he refused to comply with the same, he has been victimised.

4. The two grounds of attack against the order of expulsion are, (1) the principles of natural justice have been violated, as there was no enquiry whatever before the said order was passed; and (2) the order is mala fide and brought about because of personal motives of some members of the staff against the petitioner. In so far as the second ground is concerned, it is to be rejected in limine, as no particulars whatever of the alleged mala fides are set out in the affidavit. The petitioner has not given any details as to why some members of the staff should have any personal grudge against him and how they brought about the order of expulsion against the petitioner. In the absence of any specific allegations which could indicate mala fide on the part of the first respondent, there is no justification to entertain any argument in that regard.

5. The only question that remains to be considered is whether there was an enquiry and whether the petitioner was given an opportunity to meet the allegations made against him. The first respondent has produced the relevant files not only pertaining to the present enquiry which led to the expulsion order, but also to the enquiry held in 1991 in which the petitioner was

found guilty of certain misconduct.

6. In the previous year, viz., 1991, one Jayakumar, Ist Year Student, made a complaint against senior students by name Selvam and Shaji Samuel.

It was the case that the said Selvam wanted him to purchase a mini-drafter for a sum of Rs. 70/- and when he expressed his inability to do so as he

had no money, the said Selvam attacked the Ist Year student and poked him on his chest and stomach with the sharp edge of the mini-drafter,

causing severe pain. The other senior student Shaji Samuel was said to have slapped the Ist Year student with his chappals. There was a complaint

by one Kuntran against Mr. Selvam and the petitioner herein. It was stated that when Mr. Kuntran enquired as to whether Mr. Salvam had beaten

the Ist Year student, the latter along with the petitioner beat him on his face and tore his banian. He also complained of head injury. There were

certain counter allegations against the said Kuntran by the petitioner. There was a detailed enquiry by an Enquiry Committee and Mr. Selvam and

Mr. Shaji Samuel admitted their guilt. They were found guilty by the Committee. The petitioner also accepted his fault and he was found guilty. A

lenient view was taken in the matter of punishment and the suspension order already passed was cancelled and the petitioner was permitted to

continue his studies. A perusal of the file relating to the said enquiry shows that the petitioner, in the previous year, was found guilty of the alleged

misconduct and the said finding was arrived at after a due enquiry by a Committee.

7. In spite of the warning administered to him in the previous year, the petitioneer has not chosen to mend his ways and he indulged in ragging the

Ist Year students. An oral complaint was made by one T. Darwin Andrew, a Ist Year student regarding the indecent, violent and offensive

misbehaviour of the petitioner. An enquiry was held by a Committee of seven persons, with the Principal as the Chairman. Mr. Darwin Andrew

gave a statement in writing at the enquiry. The complaint was that he was called to Room No. 210 by the petitioner on 5th Sept. 1992 and after

locking the room inside, the petitioner started indulging in homo-sexual acts. The Ist Year student was forced to remove his clothes and the

petitioner showed obscene pictures to him and forced him to masturbate in a very cruel way. The petitioner indulged in an unnatural offence.

During the said process whenever the Ist Year student refused to obey the directions of the petitioner, he was severely beaten. He was also threatened with dire consequences if he disclosed the incident to any authorities of the College or hostel. He was let out after an hour. He was afraid of giving information to anybody about the incident for two days and he informed a Lecturer by name Mr. Selvakumar only on 7th September. It was thereafter a Committee was appointed and an enquiry was held immediately. As per the report of the Committee, the petitioner accepted his mistake, but refused to give a statement in writing. After discussing the matter in detail, the Committee took into account the past conduct of the petitioner and also the discipline which should be maintained in the educational institution. It was decided unanimously by the Committee that the continuance of the petitioner in the College and in the hostel will be detrimental to the smooth functioning of the same and recommended the dismissal of the petitioner from the College and the hostel. Consequently, the first respondent passed the impugned order.

8. A perusal of the file produced by the first respondent shows that an enquiry has been held and the petitioner was given sufficient opportunity to have his say. The principles of natural justice have been complied with and no complaint can be made by the petitioner that the action was taken behind his back.

9. Learned counsel for the petitioner contended that while the file relating to the enquiry in the previous year would show that there was a regular enquiry meticulously conducted, the file for the present year would prove that there was no enquiry at all and that the papers have been fabricated.

I do not accept this contention. The file shows that an enquiry was held by a Committee of seven persons with the Principal as its Chairman. The written statement given by Darwin Andrew narrating the events as they took place on 5-9-1992, is found in the file. There is no reason to suspect that the members of the staff of the College fabricated the records as if there was an enquiry. Nothing has been alleged against any of the members of the Enquiry Committee as to why they should act to the prejudice of the petitioner. The most clinching factor is that the petitioner has not whispered anywhere as to why Darwin Andrew, the Ist Year student, should make such a serious allegation against the petitioner. Even in the reply

affidavit, the petitioner has not stated a word about the motive on the part of Darwin Andrew to give a false statement or to make a reckless

allegation against the petitioner. It can be easily appreciated that no student of the Ist Year of any College will be able to make such false

allegations against a senior student unless all the other students of the College collude with him and support him. There is no explanation on the part

of the petitioner as to why Darwin Andrew should make a complaint against him. Secondly, the way in which the petitioner has introduced new

allegations in the reply affidavit and attempted to improve upon and develop his case shows that he is not speaking the truth and his version cannot

be accepted as genuine. As pointed out earlier, the allegations against the members of the staff of the College are vague and bereft of any details.

There is nothing whatever on record to indicate that the teachers of the College or the Principal had any grudge against the petitioner. Hence, the

contention of the petitioner that the records of the enquiry are fabricated and that there was no enquiry at all cannot be accepted.

10. Learned counsel submits that the order of expulsion served on him does not contain any reference to the proceedings of the Enquiry

Committee. He points out that in the previous year when the final order was issued to him on 18-11-1991 severely warning him to be more careful

in future, it contained a reference to the Proceedings dated 17-9-1991 in KIT/RAGGING/426/91. According to learned counsel, if there was an

enquiry as alleged by the first respondent, there would have been a number given to that proceeding and it would have been referred to in the

Memo issued to the petitioner expelling him from the College. There is no substance in this contention. In the Memo dated 18-11-1991, the

reference is to the order of suspension made earlier on 17-9-1991 by which the petitioner and two others were placed under suspension pending

further enquiry. As the suspension was to be cancelled, there was a reference in the final Memo issued to the petitioner on 18-11-1991 to the

suspension order. In the present instance, there was no prior order of suspension. When a complaint was made by Mr. Darwin Andrew, an

enquiry was held straightway and at the conclusion of the enquiry, the petitioner was found guilty and it was followed by an order of dismissal. Just

because the order does not contain a reference to the number of the Proceedings held by the Enquiry Committee, it will not prove that there was

no enquiry at all. When the relevant records have been produced to show that an enquiry was held, there is no substance in the contention that the

absence of a reference to any number of the proceedings would prove that there was no enquiry.

11. The next contention is that the order of expulsion does not refer to the unnatural offence said to have been committed by the petitioner. The

order clearly refers to the petitioner's indulgence in ragging the Ist year students, beating them in uncultured way, using abusive words against them,

showing obscene pictures to them and threatening them with dire consequences. The order is passed only after the enquiry was held. In the

Minutes of the Enquiry Committee, there is a reference to the charges made against the petitioner. In the statement given by Darwin Andrew

before the Enquiry Committee, there is again reference to the unnatural offence committed by the petitioner. Hence, the contention of learned

Counsel is untenable.

12. It is next argued that the minutes of the Enquiry Committee refers to an oral complaint, but a written complaint has been included in the typed

set of papers. The relevant facts have already been referred to by me. The enquiry was initiated on the oral complaint made by the affected student

and he gave a written statement at the enquiry. Hence, there is no discrepancy in this regard.

13. It is next contended that in the previous year, no offence was committed by the petitioner and what all he did was only to support Mr. Selvam

and mediate between him and Mr. Kuntran. It is not necessary to deal with the contention in detail. Suffice it to point out that admittedly there was

a detailed enquiry in the previous year and it was found at the conclusion of the enquiry that the petitioner was guilty of misconduct of having

beaten another student.

14. It is argued that the petitioner's father sent a registered letter in the previous year on 1-10-1992 to the first respondent calling upon him to

cancel the order of suspension and permit the petitioner to attend classes. According to learned Counsel, on account of the said letter the first

respondent got enraged and prejudiced against the petitioner which has led to the expulsion of the petitioner from the college. There is no merit

whatever in this connection. The facts already stated are sufficient to show that

the first respondent has no motive against the petitioner.

15. It is argued that as many as six students were indulging in ragging and three of them had been taken back in the College on payment of fine of

Rs. 2500/-. It is stated that one student has been debarred for one year and the petitioner and another student have been expelled from the college

for ever. It is argued that it amounts to discrimination on the part of the first respondent. Learned Counsel for the first respondent has submitted

that in the case of three students, the offence was not as serious as in the case of the petitioner and they were allowed to continue studies on

payment of fine and similarly, the fourth student was debarred for one year only. As regards the petitioner and another student, the offences were

very serious and both of them were treated equally and expelled. It should be pointed out that there is no allegation whatever in the affidavit or in

the reply affidavit with regard to the alleged discrimination as against the petitioner in the matter of punishment. Without having the full particulars

about the charges framed against the other students, it is not possible to accept the contention of the petitioner that there has been hostile

discrimination against him by the first respondent.

16. Learned Counsel for the petitioner has relied on the judgment of the Punjab High Court in Rakesh Kumar Vs. The State of Punjab and

Others, . In that case it was found that the order of suspension passed against the student was made without afford-ing opportunity to the student

and as it was for an indefinite period, there was violation of the condition imposed in Clause 192 of the Punjab Education Code, under which the

period of rustication or expulsion shall not exceed one year. That judgment has no relevance to the present case, as on the facts of this case it is

proved that there was an enquiry and the petitioner was given sufficient opportunity to meet the allegations made against him.

17. Reliance is also placed on a judgment of the Punjab and Haryana High Court in Rohtas Singh Vs. Haryana State Board of Technical

Education, Chandigarh and Another, . In that case also, the petitioners were expelled from the educational institution without even a show cause

notice and no enquiry was held against them. The Court held that the order of expulsion was not sustainable as it was vio-lative of the principles of

natural justice. The findings of facts arrived at by the Court in that case led to

that conclusion and the decision has no bearing in the present case.

18. Learned Counsel invited my attention to a judgment of the Bombay High Court in *Kobad Jehangir Bharda Vs. Farokh Sidhwa and others*, .

There against was found that the principles of natural justice were not adhered to before an order of expulsion was passed. It was held that the

compliance with Rule 56.5 of the Secondary Schools Code, which prescribed the procedure for expulsion of a student was mandatory and if that

procedure was not followed, the order would be vitiated. The ruling has no relevance to the present case as the facts are entirely different.

19. In *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, , the Supreme Court had occasion to

consider the applicability of principles of natural justice with regard to domestic enquiries, with particular reference to educational institutions. The

complaint in that case was that the appellants who were II Year students of the College and who lived in a hostel attached to the College, entered

the compound of the ladies' hostel and walked inside without clothes on them. They tried to misbehave with one of the girl students and they also

climbed up along the drain pipes to the terrace of the girls' hostel, where some of the girls were doing their studies. The miscreants were identified

by the college and an enquiry was held by an Enquiry Committee. The Committee had enquired the girls and recorded their statements. But, those

statements were not recorded in the presence of the delinquent boys and the latter were enquired by the Committee later. As a result of the

findings of the Enquiry Committee, the miscreants were expelled from the College for two academic sessions and they were directed to vacate the

hostel immediately. The main contention urged before the apex Court was that rules of natural justice had not been followed before the order of

expulsion was made as the statements of the girl students were recorded behind their back and there was no opportunity given to the delinquents

to cross-examine the witnesses with a view to test their veracity. It was also contended that the report of the Enquiry Committee was not made

available to them. Repelling those contentions, the Court observed that under the circumstances of the case, the requirements of natural justice

were fulfilled. It will be useful and advantageous to refer to the following passage in the judgment :--

10. We think that under the circumstances of the case the requirements of natural justice were fulfilled. The learned Counsel for the respondents made available to us the report of the Committee just to show how meticulous the members of the Committee were to see that no injustice was done. We are informed that this report had also been made, available to the learned Judges of the High Court who heard the case and it further appears that the counsel for the appellants before the High Court was also invited to have a look into the report, but he refused to do so. There was no question about the incident. The only question was of identity. The names had been specifically mentioned in the complaint and, not to leave anything to chance, the Committee obtained photographs of the four delinquents and mixed them up with 20 other photographs of students. The girls by and large identified these four students from the photographs. On the other hand, if as the appellants say, they were in their own Hostel at the time it would not have been difficult for them to produce necessary evidence apart from saying that they were innocent and they had not gone to the girls Hostel at all late at night. There was no evidence in that behalf. The Committee on a Careful consideration of the material before them came to the conclusion that the three appellants and Upendra had taken part in the night raid on the girls Hostel. The report was confidentially sent to the Principal, The very reasons for which the girls were not examined in the presence of the appellants, prevailed on the authorities not to give a copy of the report to them. It would have been unwise to do so. Taking all the circumstances into account it is not possible to say that rules of natural justice had not been followed. In Board of Education v. Rice, 1911 AC 179, Lord Loreburn laid down that in disposing of a question, which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on everyone who decided anything. He did not think that the Board was bound to treat such a question as though it were a trial. The Board need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view. More recently in Russell v. Duke of Norfolk, (1949) 1 All ER 109, Tucker, L.J. observed : ""There are in my view, no words which are of universal application to

every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the

nature of the inquiry, the rules under which the Tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not

derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one

essential is that the person concerned should have a reasonable opportunity of presenting his case." More recently in *Byrne v. Kinematograph*

Renters Society Ltd., (1958) 2 All ER 579, Harman, J. observed : "what, then, are the requirements of natural justice in a case of this kind? First, I

think that the person accused should know the nature of the accusation made; secondly that he should be given an opportunity to state his case;

and thirdly, of course, that the Tribunal should act in good faith. I do not think that there really is anything more.

11. Rules of natural justice cannot remain the same applying to all conditions.

20. A similar ruling was given by Mohan, J. in *R. Satheesh (minor) rep. by father and natural guardian, C. Rajendran v. Director of Higher*

Secondary Education, (1989) 2 LW 206. The learned Judge held that in every case it cannot be insisted that there must be a memorandum of

charge, an enquiry and a finding arrived at like a Court or a judicial proceeding. The learned Judge observed as follows :--

It is well settled by now that a student, so long as he behaves himself properly, in a disciplined way in other words, as a student ought to behave,

has every right to prosecute his studies. Such a right cannot be interfered with. As against this, should there be any act of indiscipline which is not

conducive to the interests of the Institution, and which will pollute the educational atmosphere of the Institution or the calm of the Institution,

certainly, the school authorities have every right to see that such a student who would not behave himself in a disciplined way is expelled from the

school. Apart from the fact that such an indisciplined student is not only an undesirable element who spoils his own future, his conduct and

character will have deleterious effect on others as well.

Upon the education of the people of the country, the fate of the country depends" (White paper on the Education Act of 1944 quoted by Lord

Denning in *Smith v. Inner London Educational Authority*, (1978) 1 All ER 411.

In this connection, it requires to be remembered that the students are of impressionable age; sometimes they take all adventurism; sometimes they

become victims of unguided enthusiasm; sometimes they become the victim of vicious circumstances. In all these cases, could it be said by the

Court -- No you shall not take action against this person, because his right to prosecute the study will be hindered? I should answer this question in

the negative. To put it briefly, it is the educational authorities who alone should have every control over the students and take such action as is

warranted in the circumstances. Court would no doubt come to the rescue of the student where they are victimised, or to use the phraseology of

Labour Law, they are singled out for some hostile treatment. Normally speaking, I do not expect such victimisation or hostile treatment, in an

educational institution, because, it is controlled and run by enlightened persons. The students come there to receive light and education. That being

so, these are totally alien to such an atmosphere.

With respect I agree with whatever the learned Judge had observed in the above passage.

21. In my view, ragging is a barbarous practice and it should be totally banned. If anybody is found guilty of ragging, he shall be immediately

expelled from the Institution and he shall be debarred from entering any other educational institution thereafter. The origin of ragging is not clearly

known. It had its birth only in foreign shores. According to Shorter Oxford English Dictionary, the word is a University slang. "An act of ragging"

means especially an extensive display of noisy disorderly conduct, carried on in defiance of authority or discipline. The word ""rag"" as a verb is also

defined as follows :--

a. To scold, rate, talk severely to.

b. To annoy, tease, torment; spec. in Univ. slang, to assail in a rough or noisy fashion; to create wild disorder in (a room).

In Webster's New 20th Century Dictionary it is stated that from 19th century it is a British University slang. A guess is made in the Dictionary that

it had its origin probably from the phrase like a red rag to a bull; its derivative being bully rag etc.

21.1 Ragging was totally unknown in this country. It is not known how, when and who imported it into this country. It has been in vogue if at all for

the past few decades. Before that it was not heard of. But, it has become a wide-spread virulent disease prevalent in all educational institutions and more in Professional colleges and hostels. It causes deep sorrow and anguish that in a country which had very lofty University ideals expounded in the Vedas, this shameful and disgusting evil of ragging degenerating into bestiality should come to stay in educational institutions, which are intended for imparting knowledge to the future rulers of this country. Taittiriyaopaniṣad describes the rules to be observed by a good student. He prays to the Supreme Being to give him able and active body, sweet tongue and make him listen abundantly through his ears and learn.

The teacher advises the student as follows :--

Swerve not from truth.

Swerve not from duty.

Swerve not from what is proper and good.

Swerve not from auspicious rites and well-being.

Swerve not from study and teaching.

If the instructions are followed by a student diligently, he becomes healthy in mind and body and the world will be full of wealth and achievement for him.

Saint Tiruvalluvar has spoken about purity of conduct and discipline :

(Matter in vernacular omitted)

The man whose conduct is pure is honoured by all; purity of conduct is therefore to be prized even above life.

(Matter in vernacular omitted)

Purity of conduct sows the seed of prosperity; but an evil course is the mother of endless ill.

How can anyone conceive of more ennobling thoughts and better ideals than that prevailed in our ancient Universities? But alas! what a fall from

that high peak of virtuous principles to the murky depths of a dirty mire named "ragging". Any person with a little sense of decency would abhor

even to think of indulging in it.

22. Having come to the educational institution to learn and pave the way for a bright future, it is unfortunate that students should commit unnatural

offences and satiate their sadist instincts in the name of ragging. There seems to be a misapprehension among some sections of the students and even teachers that ragging is a way of training the new entrants to the institution to face the difficulties in life later. There cannot be a more absurd view than that. In several cases, the students get mental shock and depression by ragging and there are instances of the victims of ragging committing suicide. Even assuming without admitting that some of the victims of ragging will be bold enough to face difficulties in life later, end cannot justify the means. The sooner the ragging is abolished by an appropriate legislation, the better.

23. An occasion arose in the State of Himachal Pradesh when the High Court gave certain directions to the Chief Secretary to the State

Government. A complaint was received by the Chief Justice of the High Court of Himachal Pradesh from the guardian of a student of the Medical

College in Shimla about the ragging of freshers by senior students. Along with the complaint, a letter received from his son was also enclosed. The

two letters were treated as writ petitions by the Chief Justice and a Division Bench of the High Court presided over by the Chief Justice considered

the matter. Notices were issued to the State Government, the Principal of the Medical College, the Himachal Pradesh University and the Director

of Health Services and they were arrayed as respondents. On the materials placed before it, the Division Bench came to the conclusion that the

practice of ragging was prevailing in the Medical College, Shimla on a noticeable scale and that ragging took the form of subjecting freshers

including female students to inhuman and humiliating treatment degenerating even into physical violence and that the college authorities were not

able to effectively control the same. The Division Bench gave various directions including a direction to the State Government to constitute a

Committee consisting of the Vice-Chancellor of the University and the Secretary to the Government, Health Department, inter alia, to make

recommendations in regard to the curative, preventive and punitive measures to be adopted by the college authorities to control and curb the evil of

ragging and the machinery to be set up to enforce those measures. A Committee was appointed and it submitted its report to the High Court

containing various recommendations. The Division Bench gave directions for implementing the various recommendations made in the report and

with regard to one of the recommendations, the Division Bench directed the Chief Secretary to the State Government to file an affidavit within a

period of three months from the date of receipt of the writ setting out the action proposed to be taken on that recommendation. The

recommendation was that the Himachal Pradesh Government should initiate a legislation making ragging a cognizable offence and prescribing

punishment commensurate with the crime. It was that direction which was challenged in the Supreme Court by the State Government in *State of*

Himachal Pradesh Vs. A Parent of a Student of Medical College, Simla and Others, . The Supreme Court held that the Court had no power to

compel the State Government to initiate legislation or to pass an enactment, While upholding all the other directions given by the Division Bench,

the Supreme Court vacated the direction to the State Government to initiate a legislation making ragging a cognizable offence.

24. It appears that in a number of States there are Acts making ragging a cognizable offence and prescribing the types of punishment to be

awarded. It is high time that such a legislation was passed by the legislature of Tamil Nadu also. No doubt, as held by the Supreme Court, this

Court cannot give any direction to the Government to initiate a legislation. But, this Court can express a fervent hope that the Government would

take note of the situation now prevailing in the State and take steps to bring about a legislation preventing ragging and making it a cognizable

offence. It is seen from the counter-affidavit filed by the first respondent that the State Government has been giving instructions to the College

authorities to prevent ragging and only in pursuance of such instructions, circulars were issued to the students that nobody shall indulge in ragging.

The College had also issued circulars to prevent the senior students from entering the Ist Year Class students room or the blocks in which the Ist

Year students are staying. In order to get round the circular, in the present case the petitioner called Darwin Andrew to Room No. 210 instead of

his going to the place where Darwin Andrew was staying.

25. A somewhat - disturbing passage is found in the judgment of Allahabad High Court in *Anil Kumar Sheel Vs. The Principal, Madan Mohan*

Malviya Engg. College, and others, . In that case F.I.R. was launched by one Sushil Kumar Verma, a student of the Engineering college against the

petitioner and two other students for an offence under Sections 377/504, Indian Penal Code. When that case was under investigation, the Dean of the students of the College, taking it to be a misconduct and indiscipline, awarded the punishment of expulsion of the petitioner from the college as well as the hostel with immediate effect whereas the other two students were suspended from classes till a particular date. It was found that no opportunity whatever was given to the petitioner before the order of expulsion was made. In fact, it was found that even the victim did not name or recognise the petitioner and the allegation against him was only based on suspicion on account of some earlier enmity. The Court while quashing the order of expulsion on the ground of violation of principles of natural justice made the following observations :--

15. Matter can be viewed from another angle. Even though matter pertaining to an unnatural offence is primarily one of morality, in this respect it is pertinent to indicate a statement, Wolfenden Committee advocated lifting the ban of the criminal law from homosexuality between consenting adults. But the report was criticised by a distinguished Judge Lord Devlin in a lecture to the British Academy. He, however, maintained that the law should continue to support a minimum morality. The report and the lecture aroused widespread controversy. (Sec Jurisprudence by R.W.N. Dias, 4th Edition, page 145). As the State is very much concerned with the behaviour of the citizens it must also continue to concern with moral ideas. However, in my opinion, the problem would always be as to how far laws should uphold morality and it depends upon the facts and circumstances of the case. A Judge is to keep the finger on the pulse of society.

16. Moral ideas are part of the fabric of a given society and that society is entitled to preserve them. Lord Devlin, however, compared contravention of this morality to treason. The law cannot undertake not to interfere. See *Reynolds v. U.S.*, (1878) 98 US 145 and *Musser v. Utah*, (1948) 333 US 95 .

With respect to the learned Judge, I am unable to appreciate the relevance or necessity for the above observations in that judgment. Having held on the fact that principles of natural justice were violated and the order of expulsion was vitiated, there was no occasion for the learned Judge to dilate on the moral ideas of the society. The alleged misconduct, if proved, would

undoubtedly have been an offence under Sections 377/504 of

the Indian Penal Code. So long as the Sections are on the statute book, how can a Judge go beyond the provisions and keep the finger on the

pulse of the society? I am unable to agree with the above observations of the learned Judge.

26. As it is found on the facts that there was an enquiry satisfying the requirements of the principles, of natural justice, this Court cannot interfere

With the finding of the Enquiry Committee and the consequential order of expulsion passed against the petitioner. The plea taken by the first

respondent that it is a private college and the jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked by the

petitioner against the said College is well-founded. Inasmuch as the principles of natural justice have been complied with, this Court has no

jurisdiction to interfere with the order of expulsion passed against the petitioner.

27. In the result, the writ petition has to suffer a dismissal and it is hereby dismissed. The petitioner shall pay the costs of the second respondent,

who is unnecessarily impleaded in this case. Counsel's fee Rs. 500/-.

28. Petition dismissed.