
(2016) 12 AHC CK 0106
In the Allahabad High Court
Case No : Writ C. No. 30472 of 2016

Rishabh Jha

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-12-2016

Acts Referred:

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 — Section 11, Section 9 (1)

Citation : (2017) 1 ADJ 407 : (2017) 2 AllWC 1495

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Vijay Kumar Singh and Hritudhwaj Pratap Sahi, Advocates, for the Petitioner; A.S.G.I. and Rohan Gupta, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Ashwani Kumar Mishra, J. - This petition questions validity of a decision taken by Senate of Indian Institute of Technology, Kanpur, in its meeting held on 5.4.2016 and consequential communication dated 7.4.2016, and its subsequent decision taken in appeal in its meeting dated 23rd/24th May, 2016, as communicated vide order dated 27.5.2016. By these orders, petitioner's academic programme of Bachelor of Science in Physics, stands terminated on disciplinary ground. A further prayer is made in the petition to declare petitioner's final result and issue degree, as petitioner has completed his academic programme and has also appeared in the examination pursuant to interim protection granted by this Court in earlier writ petition No. 17635 of 2016.

2. Facts, in brief, giving rise to filing of this petition are that petitioner was admitted to four year graduation course in Physics in the respondent no. 2 institution in July, 2012. He had completed his first three years without any blemish, and was pursuing his last year in November, 2015, when he received a letter from the Chairperson of the Women's Cell dated 27.11.2015, requiring his appearance on the next date i.e. 28.11.2015, in respect of a complaint filed by a

female student. Petitioner alleges that he appeared, as directed, before the Women's Cell and his statement was recorded. Petitioner demanded a copy of the complaint received against him. However, copy of the complaint was not provided to him. A communication of Women's Cell, sent on petitioner's mail, has been annexed along with the writ petition stating that Women's Cell will not provide any document and that after the report is submitted, petitioner may make a request to the Director for the purpose. It is, however, admitted on record that a complaint was made against petitioner by the 5th respondent, on 27.11.2015, which has not been provided to the petitioner nor has it been brought on record before this Court.

3. Petitioner was again called by Women's Cell on 6th January, 2016 and delivered a copy of complaint dated 5th January, 2016 (wrongly mentioned as 5th January 2015). This complaint is enclosed as Annexure- 2 to the writ petition. Complaint levels charges of verbal, emotional and sexual abuse of the 5th respondent by the petitioner. Various instances have been narrated right from February, 2014 onwards till September, 2015. The complaint alleges improper physical advances towards 5th respondent right from October, 2014, which continued with specific instances of misdemeanor in March, 2015, August, 2015 and again in September, 2015.

4. Petitioner denied all allegations vide his reply submitted before the Women's Cell on 14th January, 2016. Petitioner has also annexed transcripts of the mails exchanged between him and 5th respondent, which have been filed along with writ petition as Annexure-4. Petitioner further alleges that he was called to appear before the Women's Cell on 2nd February, 2016, where he was the alone person present before the Women's Cell, and neither the complainant nor any of the witnesses appeared before the Women's Cell. Petitioner also alleges that he was not shown any material which may have been submitted against him by the complainant or any of her witnesses. It is also alleged that petitioner was not called on any other date.

5. A report was apparently submitted by the Women's Cell before the Senate Students Affairs Committee on 18th February, 2016. This report was also not given to petitioner. Petitioner apparently was not called by the Senate nor was he afforded any opportunity of hearing, and the recommendations of the Women's Cell were approved by the Senate on 30th March, 2016. The report of the Senate Students Affairs Committee has been annexed along with the writ petition at page 158. It records that report submitted by Women's Cell, on the complaint of a girl student, regarding verbal, physical and sexual harassment has been discussed by the Senate and Chairperson was also called. The Senate took note of the report of Women's Cell, according to which high degree of harassment was caused to the girl student. The Senate concurred with the punishment recommended by Women's Cell that academic programme of petitioner be terminated, and he was asked to leave the campus with immediate effect, to secure safety of the girl student. The Senate further advised the petitioner to

refrain from contacting the girl student in any manner either directly or indirectly. The Senate also recommended counselling Service and awareness campaign to be undertaken in the campus on relationship issues. Although the report of the Women's Cell was not furnished but the findings of inquiry, as well as recommendations were made known, which shall be dealt with.

6. Petitioner, accordingly, approached this Court challenging the communication received by him, based upon the recommendations of the Senate, terminating his academic programme on 7th April 2016. It appears that an interim order was granted in the writ petition, permitting the petitioner to appear in the last examination of fourth year. Petitioner has although appeared in such examination, but his results are yet to be declared. In Writ Petition No. 17635 of 2016 filed earlier before this Court, the respondents brought on record an affidavit disclosing that an appeal lies before the Senate. It was explained that appeal is a misnomer and in effect, it is a review with wider limits and that the matter is placed before the Women's Cell, and based upon such materials as may have been placed before it, fresh views are tendered which is then placed before the Senate. In such view of the matter, Writ Petition No. 17635 of 2016 was disposed of on 16.5.2016 vide following orders:-

"7. In view of the said stand taken by the respondent Institute in the supplementary counter affidavit, Sri G.K. Singh, learned counsel for the petitioner very fairly submitted that the Senate may be directed to decide the appeal on the next date with liberty reserved in favour of the petitioner to challenge the final decision of the Senate in case it goes against the petitioner.

8. In view of the stand taken by the respondent Institute before this Court as well as the statement made by learned counsel for the parties, this Court, without interfering with the impugned order, disposes of the writ petition by providing that the Senate shall decide the appeal filed by the petitioner in its next meeting scheduled on 22nd of this month. The declaration of the result of the petitioner shall abide by the decision that would be taken by the Senate on the appeal of the petitioner. In case the decision of the Senate goes against the petitioner, it shall be open to the petitioner to challenge the same by availing such remedy as may be advised.

The writ petition stands disposed of accordingly."

It seems that the Women's Cell reiterated its recommendations and based thereupon, the Senate rejected petitioner's appeal. It is how these orders are assailed in the present writ petition.

7. The orders are assailed primarily on the ground that a fair procedure known to law, had not been followed in the matter. Following instances are cited for the purpose :-

(i) Copy of initial complaint dated 27.11.2015, was not furnished.

(ii) Statements of witnesses were not furnished.

(iii) Complainant and the witness were never examined in the presence of the petitioner.

(iv) Report of the Women's Cell was not furnished to the petitioner.

(v) Petitioner was not afforded an opportunity of hearing by the Senate.

(vi) Even while rejecting petitioner's appeal, no opportunity of personal hearing had been afforded to the petitioner.

(vii) The orders are also assailed on the ground that guilt of petitioner was not established, otherwise.

(viii).....

8. Submission is also advanced to the effect that complaint itself was barred by time in terms of the applicable provisions of law, relied upon by the respondents.

9. Learned counsel further contends that, in the facts and circumstances of the present case, the institute was not justified in terminating petitioner's academic programme, which would not merely waste his four years, but also ruin his entire life. It is also stated that during the pendency of the matter, he has already lost his one year, inasmuch as his result for final year has not been declared, and consequently he has not been able to secure admission in any further programme.

10. Learned counsel for the institute, on the other hand, states that the charges levelled against the petitioner were grave and serious, and the institution had to act both for protection of rights of the complainant and also to secure the academic environment of the institute, which is a premier educational centre. It is also stated that principles of natural justice, which in a set of flexible rules, have been observed, and in the facts and circumstances of the present case, due opportunity has been afforded to the petitioner.

11. Learned counsel for the institute has also placed before the Court confidential report of the Women's Cell dated 18th February, 2016, which has been pursued.

12. I have heard Sri G.K. Singh, learned Senior counsel assisted by Sri. H.P. Shahi for the petitioner and Sri Rohan Gupta for the respondent Indian Institute of Technology, Kanpur. Appearance on behalf of respondent no. 1 has been filed by Sri Avnish Prasad Mishra.

13. Despite service of notice in terms of direction issued by this Court on 30th August, 2016, none has appeared for 5th respondent i.e. complainant.

14. Before proceeding to analyse submissions advanced on behalf of the respective parties, it would be appropriate to notice the relevant provisions which have been relied upon by the respondents for inflicting punishment upon the petitioner. The conduct of discipline in the institution is regulated by Clause 9.9 to 9.11 of Ordinance No. 9, which have been pressed into service, and reads as under:-

"9.9 The Case of a defaulting student recommended for dismissal from the Institute shall ordinarily be referred to the Senate for its final decision.

9.10 A defaulting student who feels aggrieved with the punishment awarded may prefer an appeal to the Chairman, Senate stating clearly the reasons why the punishment should not be awarded. The Senate shall prescribe the procedure to process such an appeal.

9.11 A student who is found guilty of some major offence may not be recommended by the Senate to the Board of Governors for the award of a degree/diploma/certificate even if all the academic requirements have been satisfactorily completed by the concerned student."

15. Respondent Institute has constituted a Women's Cell for protection of girl students studying in the institute, essentially relying upon the principles laid down by the Apex Court in the case of *Vishaka v. State of Rajasthan*, (1997) 7 SCC 323. The respondents further assert that provisions of the Sexual Harassment of Women at Work Place (Prevention and Prohibition and Redressal) Act, 2013 have been followed while examining the complaint and inflicting the punishment upon the petitioners. Respondents contend that provisions of the Act of 2013, have been meticulously followed and an inquiry in accordance with law, keeping in view with the principles of natural justice, has been held.

16. It is also stated that in the matter of sexual harassment, it is important to protect identity of person, and therefore it is not mandatory to examine witnesses in the presence of accused person, nor is it necessary to afford an opportunity of cross examination.

17. The records reveal that a complaint was made by the 5th respondent to the Chairperson of the Women's Cell for the first time on 27th November, 2015, upon which cognizance was taken by the Women's Cell. This is clearly reflected from the confidential report of Women's Cell, which has been produced before this Court. However, this complaint dated 27.11.2015 has not been brought on record before this Court. It is further admitted that a copy of such report has not been furnished to the petitioner and its content are not known. It is however, apparent that such complaint was the first complaint made against the petitioner, on the basis whereof proceedings were initiated against the petitioner. A subsequent complaint thereafter has been made on 5th January, 2016. This complaint contains allegations of verbal, emotional and sexual abuse by the petitioner. The allegations dates back to February, 2014 onwards and specific instances of such abuse in October, 2014; March, 2015; August, 2015 and in September, 2015, are made.

18. The Women's Cell has conducted an inquiry in which statement of various witnesses are stated to have been called, and their statements were recorded. Ultimately findings have been returned by this Committee which are to the following effect:-

"The inquiry committee having duly investigated the petition of the complainant arrives at the findings given out in the following paragraph:-

(a) That there was an abusive physical relationship between Ms. Shukla and Mr. Jha involving various sexual aberrations on his part.

(b) That Ms. Shukla was a victim of an abusive relationship and was scared enough of Mr. Jha to not discuss the relationship with anybody prior to September 2015.

(c) That the extent of the relationship, can be construed as Sexual Harassment as defined vide Section 2(n) of the Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(d) That there was a superior-subordinate relationship between Ms. Shukla and Mr. Jha, with apparently amicable relations till a particular point in time"

(e) That Mr. Jha completely controlled virtually all aspects of Ms. Shukla's life by demoralizing, undermining her confidence and blackmailing her making her incapable of breaking off the relationship.

(f) That the Sexual Harassment charge against Mr. Rishabh Jha has been established.

19. Based upon the aforesaid findings, following recommendations have been made by Senate :-

"The inquiry committee after due inquiry to investigate the circumstances leading to the petition filed by Ms. Shreya Shukla vide her letter dated January 5, 2016 and arriving at its findings has the following to recommend:

(a) That, looking into the gravity of the offence, the academic programme of Mr. Rishabh Jha be terminated with immediate effect.

(b) That Mr. Rishabh Jha be asked to leave the campus with immediate effect considering the safety of Ms. Shreya Shukla. He should be advised to refrain from contacting Ms. Shukla in any manner either directly or indirectly.

(c) That, considering the fact that Mr. Jha is in his final semester and has only two months left in his academic program, the action following the recommendation must be expedited in the interest of justice.

(d) That, in addition to the above, considering the grievous nature of the complaint, the Institute may in consultation with Ms. Shukla lodge a formal police complaint.

(e) That, the Institute ensures a safe environment for Ms. Shukla for the remainder of her stay on campus and provides her with necessary support."

20. The first limb of petitioner's challenge is on the alleged procedural flaws in the conduct of inquiry, and imposition of consequential punishment. The Court

finds that the inquiry has commenced on the basis of complaint made by respondent no. 5 dated 27th November, 2015. This complaint however is not on record. It is not known as to what exact was the nature of allegations made in this complaint. It being the first complaint made against the petitioner, on the basis whereof, the entire action commenced was relevant, and at least its contents ought to have been disclosed to the petitioner. This complaint has not even been placed before this Court, for the reasons unknown. This complaint also assumes significance, inasmuch as Section 9 of the Act of 2013, permits taking of cognizance within a period of three months from the date of last incident, where series of instances are alleged. Section 9 (1) of the Act of 2013 is reproduced:-

"9. Complaint of sexual harassment:-

(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period."

21. Subsequent complaint which has been brought on record is of 5th January, 2016, according to which the last incident took place in September, 2015. This complaint undisputedly is after a period of three months of the last alleged incident, which is said to have taken place on 15th September, 2015. In terms of the statutory scheme, for a valid complaint of which cognizance could be taken, would have to be made within a period of three months, which apparently is not the case here. If the complaint of 5th January, 2016 is relied upon, there is nothing on record to disclose that the Committee for the reasons to be recorded in writing, has extended the period of limitation. This is one of the circumstances which has to be borne in mind.

22. The records further reveal that petitioner was given a copy of the complaint dated 5th January, 2015, and he has submitted reply to it. In this reply petitioner has also mentioned names of his witnesses. Petitioner has also appeared before the Women's Cell on 2nd February, 2016. The averments made in the writ petition that on such date none of the witnesses were examined nor even complainant appeared on that day, is not disputed. It is further admitted that report of the Women's Cell has not been furnished to the petitioner, and even

the statement of witnesses have also not been made known to the petitioner. The Senate before proceeding to take a decision in the matter, has also not afforded any opportunity of hearing to the petitioner.

23. Much arguments had been advanced by counsel for the parties on the aspect of impugned action, being inconsistent with the principles of natural justice. Respondents have relied upon a division Bench judgement of this Court in *Dr. Virendra Singh v. Banaras Hindu University, Varanasi and Others*, (2015) 2 UPLBEC 1012 to contend procedure followed in the facts of the present case, would meet the requirement. The judgement of *Dr. Virendra Singh* (Supra), relied upon by the respondent, would not be of much help in the facts of the present case, inasmuch as the facts of that case were entirely distinct. In *Dr. Virendra Singh* (Supra), the female student had made a complaint of sexual harassment by the professor, which was objected to immediately by her, unlike the facts occurring in the present case. In this case, accused was a retired professor who was on an extended service and therefore the facts of that case is not comparable with a situation where a student has almost completed his academic course. Even the provisions of the Act of 2013, does not appear to have been placed before Court. The Judgement therefore, is clearly distinguishable.

24. The Act of 2013, which is stated to have been relied upon by the respondents, clearly contemplates that in the matter of holding of inquiry, in respect of a charge of sexual harassment, reasonable opportunity of being heard, and a copy of findings shall be made available to both the parties, enabling them to make representations against the findings before the Committee. Section 11 of the Act 2013 in that regard is relevant and is reproduced:-

"11. Inquiry Into complaint

1. Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall,

during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

2. Notwithstanding anything contained in section 509 of the Indian Penal Code, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

3. For the purpose of making an inquiry under subsection (I), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:-

a. summoning and enforcing the attendance of any person and examining him on oath;

b. requiring the discovery and production of documents; and

c. any other matter which may be prescribed.

4. The inquiry under sub-section (I) shall be completed within a period of ninety days."

25. Rules have been framed under the Act of 2013, which again provides the manner of inquiry into complaint. Rule 7(4) of the Rules is also reproduced:-

7. Manner of inquiry into complaint:-

(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.

26. In the facts of the present case, it is not disputed that neither the statements were recorded in presence of the petitioner nor the findings returned by the inquiry Committee, has been made available to the petitioner. Second proviso to Section 11 (1) of the Act is specific, inasmuch as it is mandatory that during the course of inquiry, opportunity of being heard has to be afforded, and a copy of the findings would have to be made available to both the parties, so that they could made their representation against the findings before Committee.

27. In the present case the Women's Cell appears to have proceeded on the basis of a complaint dated 27th January, 2015, without serving its copy upon the petitioner. Statements of witnesses have been recorded behind the back of the petitioner, and such statements have not been made known to petitioner. Even if respondents' contention that this was done to protect the identity of witnesses, is accepted, then also, the petitioner was entitled to know the reasons which prevailed upon the Committee to hold him guilty. In the absence of service of report, petitioner would be justified in stating that he was prevented from making representations against the findings before the Committee.

28. In order to form a definite opinion, on the allegation of denial of opportunity,

in light of the discussions aforesaid, the matter needs to be viewed from another angle also, particularly as allegation of sexual harassment to a female student, needs deeper examination in a wider perspective. The petitioner, as well as complainant were studying in the same institute, and were in touch with each other for a long period. Petitioner is an year senior to the respondent no. 5, and therefore is her senior in the faculty. The complaint clearly acknowledges that they were closely known to each other since February, 2014. The allegations of physical advances are acknowledged in the complaint right from October, 2014 onwards. There is however nothing on record to show that such advances were objected by the 5th respondent, and their association continued for well over a year. The Inquiry Committee in its findings in para 32 (d) has also observed that there were superior subordinate relationship between the petitioner and fifth respondent with amicable relations till a particular point of time.

29. This finding apparently is consistent with the evidence brought on record, which clearly suggest parties were in touch with each other and they continued to interact without any complaint made by the respondent no. 5, despite physical advances and indiscretion on part of the petitioner.

30. The Court would not like to comment on the merits of the allegations made, but it would be apt to observe that immediately after the alleged incident occurred in October, 2014, a protest ought to have been raised, lest it might lead to an inference of consent on part of the complainant. The parties were in a delicate phase of their life, and possibly may not have understood the consequences of their acts. Actions on part of the petitioner, were otherwise serious and ought to have been objected at the threshold. The complainant has been too kind to the petitioner, which may have misled the petitioner into believing that his actions were natural and normal, and were not taken as affront by the complaint, which led to subsequent unfortunate alleged events.

31. Concern on part of the Women's Cell to protect dignity of respondent no. 5 has to be appreciated. The institute has acted in proper manner in proceedings to ensure the dignity and safety of the fifth respondent, and all directions issued to protect her from the act of mis-demeanor on part of petitioner in the campus, or outside it, are found to be valid. The question that arises in the facts of the present case, is as to whether punishment of termination of academic programme at such stage was warranted on its part or not?

32. Petitioner, by the time complaint was made against him, had completed three years of his course, and was in the fourth year of programme. By the time recommendations of report of Women's Cell were received, and approved by the Senate, the academic programme of the petitioner was concluded, and he was merely required to appear in the examination. Even otherwise, it is apparent on record that under the interim orders granted by this Court, petitioner has completed his academic course, and only his result is withheld. Even on the date when appeal was presented before the Senate, petitioner had already completed his course. There were two distinct aspects, which require consideration on part

of the institute. It has to protect dignity and safety of fifth respondent, as well as security of girls students in its campus, and it could not tolerate any act, which may adversely affect the security of the female students on the campus, and secondly, to deal with the object of imposing appropriate punishment for act of sexual harassment, complained off.

33. On the first aspect, the Women's Cell has recommended the institute to ensure safe environment for the 5th respondent for the remainder of her stay in the campus, and provide her necessary support. It was also recommended that petitioner be asked to leave the campus with immediate effect to ensure safety and security of the 5th respondent, and that petitioner be advised to refrain from contacting 5th respondent in any manner, either directly or indirectly. This part is absolutely valid and justified, in the facts of the present case, and to that extent, no fault can be found with the report.

34. Further recommendation made by the Women's Cell that considering grievous nature of complaint, the institute may, in consultation with the 5th respondent, lodge a formal police complaint, is also valid. In fact, as soon as, the Women's Cell found prima facie substance in the complaint, it ought to have proceeded with the lodging of a formal police complaint in the matter. This is particularly so as allegations, if were found to be proved, would amount to commission of an offence, which is required to have been dealt with, in accordance with law of land.

35. However, despite such recommendation, it does not appear that institute has proceeded to lodge any complaint. The recommendation states that such Police report be lodged in consultation with the respondent no. 5, and it cannot be ruled out that respondent no. 5 may not have consented for such course. This inference, I am inclined to draw as even before this court, she has chosen not to appear, despite service of notice.

36. The recommendation regarding termination of academic programme of petitioner is the bone of contention, in-as-much as if it is upheld, petitioner loses his four years, which he has spent in pursuing the graduation programme. Petitioner must have been around 18 years of age when he joined the programme, and possibly was around 21 years at the time when incident in question is stated to have happened. Losing four years time and living with a stigma that his academic programme has been terminated on a charge of indiscipline, would be a serious blow to life of young person. Petitioner is otherwise a good student, and on his academic performance has secured admission in premier institution. The consequences which may fall for the petitioner would be immense. The institution therefore, while protecting the dignity of respondent no. 5, was also required to keep in view the concerns of the present petitioner. It was otherwise apparent that petitioner has almost completed his course.

37. A division Bench of Karnataka High Court while dealing with punishment

imposed upon the student had cautioned the institution of the consequences which may arise not only for the student but society at large. Paragraphs 16 to 18 of the judgement of Karnataka High Court in the case of T.T. Chakravarthy Yuvaraj and others v. Principal, Dr. B.R. Ambedkar Medical College, AIR 1997 Kar 261 would be apt for this case, and therefore are reproduced:-

"16. The only aspect that has really given us very anxious concern is the punishment that should be imposed upon the students. The learned single Judge has taken the view that when once the charges against students which are serious enough are proved, the punishment that could be imposed also is within the discretion of the disciplinary authority and the Courts should not interfere with the same. The Courts also have taken note of the fact that when the punishment imposed is not commensurate with the charge, such action ought to be held arbitrary calling for interference with the same. In support of this proposition, we may advert to the decision of the Supreme Court in (Ranjit Thakur v. Union of India). In this decision, it is held that judicial review is not directed against a decision but is directed against the "Decision making process" that the question of appropriate punishment, both in its choice and quantum, being within discretion of the disciplinary authority and the same has to suit the offence and the offender; that it should not be vindictive or unduly harsh or so disproportionate to the offence as to shock the conscience and the magnitude of punishment in itself conclusive evidence of bias; that the doctrine of proportionality as part of concept of judicial review, would ensure that even on an aspect which is otherwise within the exclusive domain of the disciplinary authority, if the decision of the authority even as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction; that perversity and irrationality are recognised grounds of judicial review. After enunciating this dicta, corrected the sentence awarded in that case.

17. In inflicting appropriate punishment, certain aspects have to be borne in mind. When the relationship of the Head of the Institution and the student is that of a parent and child, the punishment imposed should not result in any retribution or give vent to a feeling of wrath. The main purpose of punishment is to correct the fault of the student concerned by making him more alert in future and to hold out a warning to other students to be careful, so that they may not expose themselves to similar punishment and the approach is that of a parent towards an erring or misguided child. In order to not to attract the criticism that the action is a result of arbitrariness, it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Certainly one cannot rationally or justly impose the same penalty for giving a slap to the one imposed for homicide. Unless the disciplinary authority reaches the conclusion that having regard to the nature of the misconduct it would be totally unsafe to retain them in the college, the maximum penalty of expulsion from the college should not be imposed. If a lesser penalty can be imposed without jeopardising the interest of the college, the disciplinary authority cannot impose a maximum penalty of expulsion from the college. The concerned Head of the Institution must

necessarily have an introspection and a rational faculty as to why lesser penalty cannot be imposed. In doing so, it should also be borne in mind that when the maximum penalty is imposed total ruination stares one in the eye rendering such student a vagabond as being unwanted both by the parents and the educational institution. Frustration that would result would seriously jeopardise young life. Every harsh order results in bitterness and arouses a feeling of antagonism and many a time turn a student into an anti-social element and in that way it results in more harm than good to the Society."

(emphasis supplied)

38. A Single Judge of Delhi High Court in Writ Petition(Civil) No. 9862 of 2015, Siddharth Jain v. Shaheed Sukhdev College of Business Studies and Anr, has also dealt with issue in the context of Students who have come of age and are suddenly confronted with the complexities of life. While recognizing the object of protecting the reputation of institution and also sending a distinct message, so as to assuage injury of the victim, the concerns of such young adult have been noticed in following words :-

17.2 There is no gainsaying that concerns of both the institution and the victim have to be considered while dealing with a delinquent/ offender even in an educational institution.

18. There is, however, an another aspect, if I may say so, which requires consideration as well, without undermining the relevance or the importance of the aspects which are noticed herein above, by me. This aspect requires that while dealing with a young offender an attempt should be made to ascertain whether the sentencing disposition could be tailored, as long as it is consistent with other sentencing principles, so as to promote reformation and lead to rehabilitation of the offender.

18.1 This, if I may say so, is a facet of the doctrine of proportionality which, our courts, have often used in dealing with disciplinary matters falling in the realm of service jurisprudence (See Ranjeet Thakur v. Union of India), (1987) 4 SCC 611).

18.2 In applying the afore stated principle, what is not to be forgotten, is that, while sentencing, the educational institutions have to consider that any punishment imposed by them which leads to an outright denial of the right of a delinquent young offender to education, is required to be based on a compelling State/public interest. [See Cathe A., Guardian of C.E.A. v. Doddridge County Board of Education, Supreme court of Appeals of West Virginia, September 1996 Term, No.23350].

18.3 The compelling State/public interest element would necessarily include as well the immediate interest of other students who are admitted to the institutions, in which, the offence may have been committed. Therefore, as I said at the beginning of my discussion, the gravity of the offence and the age of the offender will have to be borne in mind. The exclusion of a young offender from

the normal educational stream for a period of time brings about "unpleasant consequences" and "harm", which, in any case, amongst others, is the purpose of any punishment 1.

19. The sentencing authority therefore should ask of itself, in the context of offence committed : the degree of harm or unpleasantness that a punishment should visit upon an offender.

39. The institution in its anxiety to protect the dignity of 5th respondent, as well as to cause deterrence of such instances, recurring in future, appears to have gone a little too far in extending retributive justice. The parties otherwise appear to have remained in touch and voluminous exchange of mails between them, is a testimony to it. Many of such mails have been exchanged after acts, complaint of, were performed by the petitioner.

40. In view of the discussions made, this Court finds that the procedure for arriving at impugned decision, is not immune from challenge laid on account of violation of principles of natural justice. The decision taken, though bona fide, is otherwise too harsh, and disproportionate and therefore this Court has to intervene. In the facts and circumstances, it would not be appropriate to remit the matter for taking a fresh decision and therefore, following decision is taken to protect the interest of the parties. The action under challenge would therefore be substituted as under:-

(i) The recommendation made by the inquiry Committee contained in para 33 (b) to (f) of its report stands affirmed.

(ii) It shall be open for the institute not to admit petitioner in any further course, which he may intend to pursue in the institution. Learned counsel for the petitioner however states that petitioner shall not make any application in that regard.

(iii) Petitioner will also submit a written unconditional apology before the institution, within two weeks from today.

(iv) Upon furnishing of unconditional apology, the second respondent shall declare petitioner's result, and shall deliver his degree for the course, if he has passed the examination.

41. With the aforesaid observations, writ petition stands disposed off. No order as to costs.