

(2000) 02 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4779 of 2000

Sidh Vidya

APPELLANT

Vs

Banaras Hindu University, Varanasi

RESPONDENT

Date of Decision : 29-02-2000

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 50, 60(3)

Citation : (2000) 02 AHC CK 0117

Hon'ble Judges : V.M.Sahai, J

Final Decision : Disposed Of

Judgement

1. The petitioner a student of M.A. Final, Sociology in Banaras Hindu University, Varanasi, residing in Jyoti Kunj Hostel and a first class student thought has challenged the order dated 712000 passed by the ViceChancellor expelling her from the hostel and debarring her from appearing in the examination for the acts of indiscipline and misconduct. The relevant extract from the order dated 712000 is quoted below:

(4) WHEREAS on examination of her aforementioned reply and considering the entire case on merit, it is now established that the aforementioned Ms. Siddh Vidya has committed not only acts of indiscipline and misconduct as defined in the Ordinances Governing Maintenance of University Hostels and Delegacies, BHU Calendar part I, Vol.II, Pages 317 but also acts of indiscipline including misconduct, act punishable under the law of the land, act which interferes with personal liberty of other, subject another to indignity, involve physical violence, act which disturbs the smooth running of the University or environment conducive to the pursuit of knowledge and harmonious relationship between different people living in the campus as defined in the Ordinance Governing Maintenance of Discipline and Grievances Procedure, BHU Calendar Part I, Vol. II, Page 345347;

NOW THEREFORE I, Y. C. Simhadri, Vice Chancellor, Banaras Hindu University., after pursuing and examining in detail and on merit the entire case of Ms. Siddh

Vidya, in exercise of my powers under Statute 60 (3), hereby pass the following order;

(1) that the aforesaid Ms. Siddh Vidya, d/o Shri Pratap Singh, Permanent resident of C/o. Shri Pratap Singh, Additional District and Session Judge, Pakar (Bihar), a student of M.A. Final, Sociology, Deptt. Of Sociology, Faculty of Social Sciences, Banaras Hindu University is EXPELLED from all the privileges, including the privileges of the Hostels, of the Banaras Hindu University with immediate effect; and

(2) that she is debarred with immediate effect from appearing at any Entrance Test of the University and/or admission to any academic course at Banaras Hindu University in future.

Sd/

REGISTRAR

BANARAS HINDU UNIVERSITY

2. It is undisputed that some exchange of hot words followed by physical assault took place on 9121999 between two inmates of room No. 67 and 69 of Jyoti Hostel. A complaint was made by petitioner to the vicechancellor by inmate of room No. 69 on 9121999. Another complaint was made by petitioner on 10101999. On 12121999 both the students sent a joint letter to the vicechancellor that they were patching up their differences, that they were sorry for the inconvenience and may be forgiven. But the Registrar of the University on 16121999 issued a show cause notice to the petitioner to which the petitioner replied on 17121999 that due to emotional outburst a minor incident took place on 9121999 for which she was sorry and both have now compromised. On 18121999 the complainant sent a letter to the vicechancellor that the allegation in the show cause notice that the petitioner, "bolted the door from inside" was not correct as she had mentioned that she closed the door and stood against it. She further pointed out that the allegation in the show cause notice that the petitioner, "seriously assaulted" her in room was not correct, as she had mentioned that she was physically assaulted. She requested that the matter may be resolved. Many inmates of the hostel also represented that no proceedings be taken against the petitioner. In the counter affidavit reference has been made to a letter sent by some inmates of the hostel referring to the incident and requesting to ensure peace in the hostel to enable the students to carry on their studies. Two reports dated 11121999 by the Sanrakshika and by the Warden of the hostel have also been filed. It is mentioned that on coming to know of the incident they went to the hostel and were informed that the complainant was assaulted. In the report of the warden it is mentioned that she found the complainant terrified and she was trembling. Apart from this copy of the order dated 422000 passed by the ViceChancellor rejecting representation of the petitioner that she may be permitted to appear in the M.A. Final examination has also been filed. The relevant part of the order of vicechancellor dated 422000 is

extracted below:

4) WHEREAS the aforementioned Ms. Siddh Vidya had given in support of her good behaviour a copy of compromise letter dated 12121999 signed by herself and Ms. Mitu Sikdar. Also appended a copy of the letter from Ms. Anupama Tripathi, M.A. (Hindi) Final, giving her clarification about the phone call received by Ms. Mitu Sikdar. Also a copy of the letter dated 18121999 of Ms. Mitu Sikdar. Also a copy of each of the three representations jointly signed by 39, 83 and 136 inmates of the Joyti Kunj Hostel respectively;

5) WHEREAS the fact was that the aforementioned support in favour of Ms. Siddh Vidya was nothing but afterthought and the documents submitted by her of the inmates of the hostel are nothing but procured by Ms. Siddh Vidya under her otherwise influence;

6) WHEREAS one of the inmates of the Joyti Kunj Hostel, Ms. Sangeeta Kumari, M.A. (Philosophy) 2nd year, Room No. 78, has not supported good behaviour of Ms. Siddh Vidya and stated in her letter, which was not asked by the authority, to the fact that as she was suffering from fever she had signed the joint complaints against Ms. Siddh Vidya. The change in mind is nothing but an afterthought and also written under the influence of the aforesaid Ms. Siddh Vidya ;

7) WHEREAS Ms. Mitu Sikdar had given her complaint dated 9121999 of the incident on December 9, 1999 to the following effect;

"With due respect, I would like to inform you that I am Mitu Sikdar, staying in Joyti Kunj Hostel room No. 69, was physically assaulted in my room by Sidhvidya Room No. 67 at around 15.30 hrs. on 9121999.

1) The genesis of the problem was 67 days back when asked Sidhavidhya not to wash her utensils in front of my room. It may please be noted that she regularly cooks in her room using a heater. Same may be confirmed from the mess register and hostel attendance register. 2) On my asking her not to wash utensils, she threatened me using the following choicest abuses, [Vernacular matter omitted ED] She threatened to have me murdered.

3) I reported this to Ms. Shalini Room No. 49 whom Admn. Warden madam had asked to control or look into the matter.

4) The same day a phone call for me from somebody who identified himself as Anil Pandey was received by Anupama Room No. 62. The message for me was, [Vernacular matter omitted ED].

5) Today Sidhvidya came to my room and accused me of stealing her shawl and sweater, which is utterly baseless. She wanted to check my cupboard, which I let her do it.

6) After that she closed the door and stood against it, not allowing me to outside.

7) I started banging the door to get out then she started abusing me physically

and hit me on my stomach with her legs and hands.

8) Somehow I escaped and went down and other girls consoled me. I request you to take strict action against her. Even if she has something against me she had no right to come to my room and beat.

Sir, I trust that you will look into the matter and restore a peaceful and safe atmosphere in the hostel.

Thanking you,

Yours sincerely,

Sd/

Mitu Sikdar "

And now she is writing on her own without being asked by the University a letter dated 1312000 to the following effect ;

"With due respect, I would like to inform that I am Mitu Sikdar, a resident of Jyoti Kunj Hostel.

Today, I came to know about the Rustication Order sent to Ms. Siddhvidya. We were never on bad terms and always good friends. The incident which took place in my room on the 9121999 at around 15.00 hrs. was probably a sudden outburst of anger on her part.

I would expect you, with utmost humility to kindly consider her case and let her sit for her M.A. (F) Examinations.

I would be highly obliged with the act of kindness shown by you towards both of us.

Thanking you,

Yours sincerely,

Sd/

Mitu Sikdar (M.A.) Final"

8) WHEREAS it is very clear from both the aforesaid letters that Ms. Mitu Sikdar had not written the letter with a free mind, on the contrary, in her complaint dated 9121999 she requested the University to take strict action against Ms. Siddh Vidya;

9) WHEREAS the aforementioned order of the ViceChancellor dated January 7, 2000 simply expelled the aforementioned Ms. Siddh Vidya from the privileges of this University only. Had she been rusticated from the University, the doors of her entry into other educational institutions would have been completely closed which the University did not do in her case. As such, a lenient approach was adopted in her case;

10) AND WHEREAS after carefully going through the appeal of Ms. Siddh Vidya dated January 14, 2000 and also the entire matter relating to her case in detail and on merit afresh, there is nothing to establish otherwise than the conclusions already drawn in the earlier orders of the vicechancellor dated January 7, 2000;

NOT THEREFORE, I Y.C. Simhadri, ViceChancellor, Banaras HinduUniversity, after careful examination of the appeal of Ms. Siddh Vidya dated January 14, 2000 and also the entire matter afresh and on merit, hereby pass order that the earlier orders of the ViceChancellor dated 712000 shall stand and be reiterated. As such, the appeal of Ms. Siddh Vidya dated 1412000, having no merit, is disposed of accordingly."

Sd/

REGISTRAR

BANARAS HINDU UNIVERSITY

3. Learned counsel for the petitioner Shri D. K. S. Rathore urged that the dispute having been patched up before any action was taken there was no occasion for the ViceChancellor to have issued a show cause notice proposing to take disciplinary action against the petitioner. The learned counsel submitted that it was a minor incident which could not be termed as indiscipline or misconduct. In any case it did not warrant expulsion of the petitioner from the hostel or from the university. Learned counsel further urged that the impugned order dated 712000 was passed without giving due weight to the compromise and letters sent by inmates of the hostel. The learned counsel urged that the vicechancellor did not exercise his discretion in accordance with well settled principle of law and contrary to the power vested in him under the statute which has caused grave injustice to the petitioner. He submitted that for an incident of no consequence her entire career would be ruined. In the end the learned counsel urged that according to Appendix2 of the University Ordinance inquiry committee had to be constituted and on report of the inquiry committee disciplinary action could have been taken against the petitioner. But the respondents did not appoint any disciplinary committee, therefore, the impugned order passed by the ViceChancellor was against law.

4. On the other hand, Shri Yogesh Agrawal assisted by Shri V.K. Upadhyaya learned counsel appearing for respondent has vehemently argued that in order to maintain discipline in the hostel it was necessary to take action against the petitioner and the order of ViceChancellor did not suffer from any illegality or arbitrariness. The learned counsel submitted that in view of statute 60(3) of the Banaras Hindu University Act it was open to the ViceChancellor to appoint a disciplinary committee but he being the sole authority in whom the power to take action for the indiscipline vested the order could not be interfered, more so, when he himself got decision show cause notice issued and took a final expelling the petitioner from the university and hostel. The learned counsel vehemently argued that in any case the Courts cannot interfere with the decisions of the

authorities in such matter. He placed reliance on a decision of the apex Court in *Chairman J and K State Board of Education v. Feyaz Ahmed Malik* (2000)1 JT (SC) 398: (AIR 2000 SC 1039)

5. The questions that arise for consideration, therefore, are whether a quarrel between two inmates of the hostel could be held to be acts of indiscipline and misconduct as held by the impugned order, whether the order can be upheld on facts, whether it was reasonable and fair for the ViceChancellor to issue show cause notice when even before the issuance of notice both the girls had patched up the difference, whether the ViceChancellor was justified in holding petitioner guilty of indiscipline resulting in not only expelling her from the hostel but even debarring her not only for the year but even for the future without any inquiry only on the complaint and the explanation, whether the order is so grossly unfair and unjust that this Court has to exercise its extraordinary power to remedy injustice to petitioner.

6. The order has been passed by the ViceChancellor in exercise of powers under Statute 60 (3) of the statutes extracted below:

60. (3) Without prejudice to the generality of his powers relating to the maintenance of discipline and taking such action in the interest of maintaining discipline as may seem to him appropriate, the ViceChancellor may, in the exercise of his powers aforesaid, order or direct that any student or students be expelled, or be, for a stated period, rusticated, or be not, for a stated period admitted to a course or courses of study in a College, Department or Institution of the University, or be fined in a sum of rupees that may be specified, or be debarred from taking a University or College or Departmental Examination or Examinations for one or more years, or that the results of student or students concerned in the Examination or Examinations in which he or they have appeared be cancelled.

7. The power under the statute for maintenance of discipline is very wide. It extends to expelling a student, debarring him or even rusticating him for the period mentioned in the order. The learned counsel for the university did not produce the ordinance giving out the procedure to be followed by the ViceChancellor in matters relating to discipline. But it cannot be denied that since the order of expulsion and debarring affects the career and entails serious consequences for future, therefore, the exercise of power has to be reasonable, just and fair. From the facts mentioned it is clear that the ViceChancellor on the complaint proposed to hold an inquiry. Therefore, a show cause notice was issued to the petitioner. But he did not hold any inquiry. Mere asking for explanation was not sufficient as the petitioner and complainant even before the show cause notice had made a joint request for being forgiven. The proceedings initiated for taking action for indiscipline are not empty formality. It was necessary in this case for the ViceChancellor to be cautious as the letter of complainant made it clear that show cause notice was not based on correct facts. The complainant very fairly pointed out that she never mentioned in the

complaint that the petitioner bolted the door or she seriously assaulted her. But the ViceChancellor did not pay any heed to it and passed the impugned order without disclosing any reason for the drastic action ignoring that in absence of bolting of door and serious assault the incident was of simple quarrel between two inmates. The defect in the order was attempted to be unsuccessfully rectified in the later order dated 422000 rejecting representation of the petitioner for permitting her to appear in the M.A. Final examination. In fact the reasons mentioned in the order disclose that the ViceChancellor did not act reasonably as is required by the statute. When the power is conferred on a high or the highest functionary it is expected to be discharged with greater responsibility and more carefully. In the show cause notice two basic allegations were made one regarding bolting the door and assaulting the complainant seriously and the other that one Shri Anil Pandey telephoned Miss Anupama of room No. 62 to inform the complainant not to show heat (garma) otherwise it would be difficult for her to come out of the hostel. The allegation regarding bolting the door and assaulting seriously was denied by the complainant herself. Miss Anupama also sent a letter to the ViceChancellor on 21121999 clarifying that Shri Pandey never mentioned about complainant. Moreover, three representations jointly signed by 39, 83 and 136 inmates of the hostel requested the ViceChancellor to drop the proceeding. Another letter was written by Miss Sangeeta Kumar supporting good behaviour of the petitioner. But the ViceChancellor mentioned that these letters were afterthought and procured by the petitioner by otherwise influence. The letter written by Miss Sangeeta who too had signed on the complaint was brushed aside as after thought written under influence of petitioner. And the letter of complainant was not believed, as it was not written by a free mind. Whether the letters were written under influence of complainant or under pressure or without free mind were all questions of fact which were required to be verified and investigated. They could not be imagined. The reason given in the order dated 422000 in absence of any material or inquiry discredit the entire proceedings and the procedure followed by the ViceChancellor.

8. The petitioner has been expelled from hostel and debarred from appearing in the examinations as it was established that she committed, "not only acts of indiscipline and misconduct as defined in the Ordinances Governing Maintenance of Discipline In University Hostels and Delegacies, Banaras Hindu University Calendar but also acts of indiscipline including misconduct, act punishable under the law of the hostel which interferes with personal liberty of others, subject another to indignity, involve physical violence, acts which disturbs the smooth running of the university or environment conducive to the pursuit of knowledge and harmonious relationship between different people living in campus as defined in the Ordinance". I have extracted this to demonstrate that the ViceChancellor without applying his mind to the facts picked up the language used in the Ordinance and held petitioner guilty of all without any basis. Indiscipline, misconduct, interfering with personal liberty, subjecting to indignity, disturbing smooth running of university etc. are well known expressions. Each of

these had to be found to have been established on material on record. i do not want to comment but the quarrel between two inmates of the hostel on washing utensils in front of the room leading to assault could not be termed as interference with personal liberty, subjecting to indignity and disturbing smooth running of the university. To my mind the ViceChancellor in passing the order on these grounds acted arbitrarily in complete disregard of the provisions of the statute.

9. The impugned order is based on breach of discipline of hostel rules and misconduct. The learned counsel for the university could not point out their definitions either from the ordinance or statute. Therefore, in my opinion these words have to be understood in their ordinary sense. Yet its meaning may differ from the context and purpose for which it is used. For instance coming late in the night in hostel may be misconduct. Similarly, disobeying the warden or committing breach of hostel rules and normal may be indiscipline. Even quarrelling and assaulting by one inmate with other may be indiscipline. It may result in reprimand, penalty or even expulsion depending upon gravity of the indiscipline. But on the facts it could not result either in expulsion from hostel and university or debarring from examinations. 10. The finding of misconduct is based on still weaker footing. The only basis for it could be the threat extended by Shri Anil Pandey. Once Miss Anupama Tripathi clarified about the phone call, there was no material, which could lead to an inference that Shri Pandey extended any threat. There is no material to support it. Further there is nothing to show that the phone was made at the instance of petitioner. In fact the ViceChancellor did not hold any inquiry personally or appointed any committee or authority for this purpose. On the spot report mentioned by the warden established only that when after hearing about the incident they reached, they found that the complainant was terrified, she was trembling. On these facts no reasonable person could come to the conclusion that the petitioner was guilty of misconduct.

11. In Feyaz Ahmed Malik (AIR 2000 SC 1039) (supra) it has been held that the High Court should not interfere with orders passed by educational authorities especially in matters of discipline. The apex Court, however, while laying down this principle has held that the order should not result in injustice. The facts of the instant case leave no room for doubt that if the order is permitted to remain it shall result in grave miscarriage of justice. The petitioner is a brilliant student with excellent academic record. There was no complaint against her by the warden of the hostel. It was an isolated incident in which the inmates living in the adjoining rooms quarrelled on a very trifling incident. The assault by one inmate on the other may invite some reprimand or penalty but expelling a student not only from hostel but even debarring her from M.A. Final Examination being unreasonable cannot be upheld.

12. For the reasons stated above this petition succeeds and is allowed, the orders dated 712000 and 422000 passed by the ViceChancellor are quashed. The

petitioner shall be entitled to her costs from the university which is assessed at Rs. 5000=00 (Rupees five thousand only).

13. The final examination is due to begin shortly. Therefore, it is necessary to direct the respondents to permit the petitioner to appear in M.A. Final Examination. She shall be issued admit card at least two days before the examination. Her absence due to impugned orders or pendency of writ petition shall not prevent her from appearing in the examination for want of attendance. She shall be permitted to reside in the hostel forthwith.

14. Even though the petition was listed for admission it was disposed of with consent of learned coounsel for the parties. Notice was not issued to respondent No. 5 complainant as she had patched up the difference and was not in any manner effected by quashing of impugned orders.

15. Office is directed to issue certified copy of this order to the learned counsel for the parties on payment of usual charges by 332000.