
(1991) 10 AHC CK 0028
In the Allahabad High Court
Case No : Writ Petition No. 1932 (M/S) of 1591

Vikas Jain

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 31-10-1991

Acts Referred:

Citation : (1991) 10 AHC CK 0028

Hon'ble Judges : S.C.Mathur, J

Final Decision : Partly Allowed

Judgement

S.C. Mathur, J.—The petitioner who was doing internship in King George Medical College, Lucknow, has approached this Court seeking a writ of certiorari to quash the order dated 1261991, Annexure1, and the notice dated 1291991 Atinexure4. The order dated 261991 and the notice dated 1291991 both have been issued by the Principal of the College.

2. The petitioner was doing internship in the aforesaid College and was staying in Room No. 57 of S. P. Hall. On 2321991 an incident admittedly took place at about 10p.m. in his room. In this incident there appears to have been a fight between Dr. Anil Kumar Rathi, another student of the College and an outsider. The petitioner's case is that he had slight acquaintance with that outsider and on his request he had allowed him to keep his luggage for the day and in the evening he was to take away the luggage. Prior to the occurrence there was a party which was attended by the petitioner, Dr. Rathi and the outsider. The petitioner asserts that at the party itself there was some altercation between the outsider and Dr. Rathi and when the outsider came to collect his luggage from his room Dr. Rathi along with certain other initiates" of the hostel came to settle scores with the said outsider. Report of this incident reached the Provost of the Hostel Dr. N.C. Misra. He visited the Hostel and thereafter submitted report to the Principal on 2441991. In this report Dr. Misra has stated "After having gone into all the facts of the incident on the night of Saturday 23rd Feb. in SP Hall and the preceding events and having talked with all the persons involved. The

following is the sequence of events which could be made out?. Thereafter he records the sequence of events. In the sixth event of sequence he has stated ? Dr. Vikas Jain was also in drunken state as reported by hostel chowkidar and some residents. He ran away from the hall when Dr. N.C. Misra reached around 11.30 p. m. on 23 Feb., 1991?. Thereafter Dr. Misra makes his recommend aliens to the Principal regarding the action to be taken against the petitioner and Dr. Rathi. The first recommendation is that the petitioner has been instructed to leave the hall. In paragraph3 of the recommendations it is stated that ?Drunken disorderly behaviour is very strongly condemned and a warning issued that any such behaviour will be severely dealt?. In paragraph4 it is stated. ?Violating the Principal's order that no guests are allowed to stay over night in the hall is reiterated and any body so found will be summarily expelled from the hall.....?. The Principal approved the step taken by Dr. Misra and the recommendation made by him and passed an order on 1261991. The order so far as it relates to the petitioner reads as follows:

?Expelled from the S. P. Hall with immediate effect.

They are also warned not to repeat such undesirable activities in future otherwise they will be dealt severely.

An entry to this effect have been made in their Character Rolls.....?.

3. Against the above punishment the petitioner preferred representation on 2661991 which was forwarded by Dr. Misra to the Principal with the following observation:

?Dr. Vikash Jain was not present, when I have reached the SP Hall, Dr. Anil Rathi has damaged his motor cycle and Cooler. I was told that Dr. Jain ran away after seeing the temper of Dr. Rathi. I have fined Dr. Rathi and I have turned out Dr. Jain although he did not involve in the mischief inside the hall. He needs consideration for the character roll entry?.

Thus Dr. Misra did not recommend readmission of the petitioner to the Hall although he recommended that the character roll entry may be expunged. The Principal did not agree with the recommendation of Dr. Misra and issued order dated 1291991, Annexure4 in which he deprecated the tendency of Provosts and Heads of Department to alter their previous recommendations.

4. The net result of the proceedings is that the petitioner remains out of this hostel and the entry in his character toll also remains. The petitioner perhaps in order to seek admission for higher classes sought character certificate from the Principal. The Principal issued the certificate containing the following entry:

?..... His character, and conduct during the stay in this Institution were found to be unsatisfactory as per records.?

It has been submitted by the learned counsel for the petitioner that the recording of entry in the character roll has serious consequences and such a step could

have been taken only after giving opportunity of hearing to the petitioner. In support of the submission he has cited several authorities.

5. The submissions of the learned counsel for the petitioner have been countered by the learned standing counsel who has submitted that in order to maintain discipline in educational institutions it is necessary that the authorities of the educational institutions may be reserved powers to impose punishment which may be warranted by the circumstances of the case. He has cited AIR 1966 Supreme Court 875, Board of High School and Intermediate Education, U.P. Allahabad and another v. Bagleshwar Prasad and another.

6. AIR 1966 Allahabad 477 Gajadhar Prasad Misra v. Vice Chancellor of the University of Allahabad and others was a case of imposition of punishment for breach of University discipline. It appears that the punishment was awarded without holding enquiry and thus violating principles of natural justice. The question whether principles of natural justice were required to be complied with was referred to a Full Bench of this Court. The Full Bench by majority judgment upheld the plea of the student that principles of natural justice were required to be complied with. In paragraph (sic) of the report it has been observed. 'It is thus clear that the ViceChancellor can carry out his duty of deciding whether or not the student is guilty of misconduct only by judging the material in his possession and it is equally clear that he would not be able to discharge this duty properly and fairly or decide the matter justly without hearing the student?'. Again in paragraph 6 it has been observed. '.....An investigation being implied and there being an express provision for consultation, it is implicit that the student should be heard before action is taken against him for otherwise the investigation will be a farce and the consultation a mockery of the provision?'.

7. Ajai Kumar Mital v. ViceChancellor, Roarkee University, Roorkee and others, (1991) 1 UPLBEC 132 was also a case of punishment awarded to a student without compliance of principles of natural justice. The punishment awarded was quashed by a learned Single Judge of this Court.

8. From the above authorities it is apparent that no order which has adverse effect on the career of a student can be passed without giving him opportunity of hearing. In the present case the record was produced by the learned standing counsel. That record does not indicate that any investigation worth the name was made by the Provost before recommending the punishment to the Principal. He has indeed observed that he has gone into all the facts of the incident and has talked to all the persons involved? but he has not disclosed the name of a single person to whom he may have talked. He does not mention that he had any talk with the petitioner. The petitioner asserts that no enquiry was ever made from him. It is, therefore, clear that principles of natural justice have been violated in the present case while directing recording of adverse entry against the petitioner and while expelling him from the Hall. The petitioner has completed his internship and he does not require room in the Hall at this stage. The learned counsel for the petitioner has, however, submitted that he may require

accommodation in the Bail if he is admitted to a higher class. It is obvious that if the adverse entry remains in his Character Roll the petitioner may face prejudice not only at the time of admission to the Hall but also in the higher class. The adverse entry, therefore, has serious consequences and since it has been awarded in violation of principles of natural justice it has to be quashed. Even the representation made by the petitioner was not properly considered. It was rejected merely on the ground that Dr. Misra had made contradictory recommendations.

9. In view of the above the order dated 12/6/1991, Annexure 1, is liable to be quashed. So far as the order dated 12/9/1991, Annexure 4, is concerned it is a general order and is not in respect of petitioner particularly. In this the Principal has merely expressed displeasure in the Provost and Heads of the Department making one recommendation at one stage and another at a later stage. Indeed all responsible persons are required to make recommendations after taking into consideration all the pros and cons. The sum and substance of the Principal's order is that before making a recommendation all aspects of the matter may be considered so that there is no necessity in future of the resiling from the earlier recommendation. There is, therefore, no necessity of quashing the order dated 12/9/1991, Annexure 4.

10. In view of the above the writ petition is partly allowed and the order dated 12/6/1991, Annexure 1, is quashed to the extent it relates to the petitioner. The adverse entry which thus stands quashed will not be referred to in any certificate which may be issued to the petitioner. There shall be no order as to costs.

11. Learned counsel for the petitioner prays that certified copy of this judgment may be supplied by tomorrow. A true copy of this judgment shall be supplied to the petitioner on payment of requisite charges by 22/11/1991.