
(2002) 09 AHC CK 0251
In the Allahabad High Court
Case No : C.M.W.P. No. 15358 of 2001

Vivek Kumar

APPELLANT

Vs

Vice Chancellor, B.H.U. and Others

RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Citation : (2002) 5 AWC 3596

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : H.M.B. Sinha, A.K. Mishra and Shashi Nandan, for the Appellant;
V.K. Upadhyay, for the Respondent

Final Decision : Allowed

Judgement

S.K. Singh, J.—Prayer in this petition is for issuance of a writ in the nature of certiorari quashing the impugned order of the opposite party No. 1 dated 20.4.2001 (Annexure-9) to the writ petition. By the aforesaid order, the Petitioner has been expelled from the Banaras Hindu University and has been debarred from pursuing any course of study or appearing at any entrance test of the University or taking any employment whatsoever in the university with immediate effect.

2. Summary of the facts dealing the issue can be summarized. When the impugned action against the Petitioner came into existence, he happened to be a student of last semester, i.e., VII Ith semester of B. Tech. Chemical Engineering. The Petitioner was selected for the aforesaid B. Tech. Chemical Engineering course in the Institute of Technology in the Banaras Hindu University on his performance in the admission test conducted on all India basis. Petitioner states that he has a good academic record as in the High School and Intermediate examinations conducted by the U.P. Board, he has secured 79% and 76% marks respectively. Petitioner claims that he has passed out all the semesters regularly with good performance. It is in respect to an incident which is said to have taken place in the night of 24/25th March, 2001, in which the Petitioner and one

Gaurav Anand committed a misconduct with a fellow student, namely, Siddharth Sinha, on a complaint having been made by the aforesaid Sri Sinha, the disciplinary proceedings started, which has resulted into expulsion of Gaurav Anand for one year from the university and expulsion of the Petitioner for all the time to come. It is this action of the Respondents which is under challenge before this Court.

3. At the very outset, Sri Shashi Nandan, learned advocate assisted by Sri H. M. B. Sinha, advocate submitted before the Court that so far the charges as levelled against the Petitioner, as has been found to be proved by the enquiry committee, Petitioner is not joining the issue and it is on the facts and circumstances and various kinds of situations which is being argued before this Court, he submits that the Petitioner is entitled to get a lenient view from the Court considering the Petitioner's future who admittedly happens to be a bright student having a very excellent career. In view of this, so far the merits of the charges and its proof is concerned, the Court is not required to go into the pleadings challenging the propriety of the enquiry proceedings or lack of opportunity and so on which has resulted into the impugned action.

4. Learned Counsel for the Petitioner submits that the Petitioner happened to be a meritorious student. He secured first division marks in the High School and Intermediate examinations. He has been selected for this technical course in an admission test on all India basis. Petitioner passed out all the seven semesters with good performance. It is pointed out that there does not exist a single complaint of any kind, at any point of time during his long tenure running into seven semesters either during college hours or in the stay at the hostel except this solitary incident. Learned Counsel further submits that the ground on which a severe penalty of expulsion for all the time to come has been taken, i.e., proof of the charge of severe ragging, is not established in the present case and, therefore, the Petitioner is entitled to get a lesser punishment. It has been further submitted that during the course of enquiry proceedings, which started from 10.4.2001, Petitioner has been permitted to appear in some papers of the VII Ith semester, i.e., on 16.4.2001, 17.4.2001 and 18.4.2001 and now as the Petitioner has already suffered for more than 1-1/2 year, by taking a lenient view in the matter Petitioner may be permitted to appear in the examination in the next semester so as to complete his course.

5. Sri V. K. Upadhyay, learned advocate who represents the Banaras Hindu University on the basis of the facts so stated in the counter-affidavit submits before the Court that Petitioner has been found to be guilty of serious misconduct and the acts of the Petitioner amount to a case of severe ragging and, therefore, to prevent pollution in atmosphere of the campus and discipline among the students, to curb the future cases of ragging a deterrent punishment was required to be given, which will go as a message for others, not to commit such an act of ragging in future. Sri Upadhyay during the course of his arguments emphasised that the incident and the indecent act on the part of the

Petitioner amounts to ragging which is strictly prohibited, which has also been taken very seriously by the Hon'ble Apex Court and all kinds of preventive measures have been directed to be adopted including deterrent punishment and, therefore, learned Counsel submits that expulsion of the Petitioner from the university for all the time to come cannot be said to be arbitrary and unjustified in any manner. Sri Upadhyay has taken the Court to the decision as has been given by the Apex Court in the case of Vishwa Jagriti Mission through President Vs. Central Government through Cabinet Secretary and Others, , in support of the submission that to curb the acts of ragging, it is the concern of all the educational institutions and the authorities and all kinds of preventive measures have to be taken and the punishment has to be given on its proof. Sri Upadhyay has also placed before this Court various Ordinances governing the maintenance of discipline in university hostels and delegacies as contained in Chapters 7 and 8 of the Ordinances and also para 60 of the Statute.

6. In view of the aforesaid submission as has come from both sides, the issue before this Court is confined only to this aspect that whether on the facts of the present case awarding of the punishment of expulsion of the Petitioner from the university for all the time to come is to be justified or Petitioner is to be let off by awarding a lesser punishment so provided in the Ordinance of the university itself.

7. It appears that the Respondents awarded impugned punishment to the Petitioner, on the premise that the action of the Petitioner amounts to a case of severe ragging. The report of the enquiry committee is mentioned in the impugned order. Para 7 (v) of the report is hereby quoted:

All evidence suggests that this is a case of severe ragging.

8. There cannot be two opinion, and so far as this Court also feels that the acts of ragging have to be severely dealt with. It is a matter of common knowledge, as has been and is being published also from time to time that on account of the severe ragging and even on its threats to the freshers by the seniors, large number of innocent students including the boys and the girls having their bright future/career, having got a seat in specialised courses by sheer dent of their merit, have to leave their course/study and even in some of the cases may be in very less number but innocent boy/girl has to commit even suicide. This causes great frustration among the freshers as well as to their parents. The senior students of any college, hostels are supposed to behave like an elder, like a guardian of the freshers treating them to be a junior member of the family and they are expected to teach them, guide them in respect to various kinds of disciplinary things which may be befitting to the dignity in the society. Senior students in the name of ragging, i.e., an introduction of the freshers normally involve themselves in various kinds of serious misconducts including manhandling, physical assault and even encroachment on personal liberty of the innocent boy/student. It is for this reason the Apex Court has come very heavily on all the persons concerned who are connected in the system either with a

responsibility to prevent it or they are involved in it. The observations as has been made by the Apex Court in the decision as has been given in the case of Vishwa Jagriti Mission (supra) in para Nos. 5, 6 and 7 is hereby quoted below:

5. Broadly speaking, ragging is:

Any disorderly conduct whether by words spoken or written or by an act which has the effect of teasing, treating or handling with rudeness any other student, indulging in rowdy or undisciplined activities which causes or is likely to cause annoyance, hardship or psychological harm or to raise fear or apprehension thereof in a fresher or a junior student or asking the student will not do in the ordinary course and which has the effect of causing or generating a sense of shame or embarrassment so as to adversely affect the physique or psyche of a fresher or a junior student.

6. The cause of indulging in ragging is deriving a sadistic pleasure or showing off power, authority or superiority by the seniors over their juniors or freshers.

7. Ragging can be stopped by creating awareness amongst the students, teachers and parents that ragging is a reprehensible act which does no good to anyone and by simultaneously generating an atmosphere of discipline by sending a clear message that no act of ragging shall be tolerated and any act of ragging shall not go unnoticed and unpunished.

9. In view of the aforesaid, so far act of ragging is concerned if any student is found to be indulged in it, he has to be dealt severely. Here in the case in hand, there is no dispute about the fact that the victim, namely, Siddharth Sinha is concerned, he was not a fresher or junior than the Petitioner. Admittedly, both happened to be fellow students, running in VII Ith semester. Both of them had taken admission in B. Tech. Chemical Engineering course at a time, continued together for more than 3-1/2 years, by completing seven semesters and both happened to be inmates of the same hostel, i.e., Dhanrajgiri Hostel. The ragging in the strict sense has to be taken as an indecent act of a senior with a fresher or even with a junior fellow. But so far the indecent act, behaviour or any kind of misconduct with the fellow student on completion of about four years, i.e., in the VII Ith semester, it cannot be brought within the purview of the ragging although it can be called a serious misconduct on the part of that student. In view of this, so far the act of ragging is concerned as the command of the Apex Court is, as observed above and so far other kind of misconducts are concerned, a distinction will have to be drawn and in respect to any kind of misconduct in the name of severe ragging, the extreme penalty of expulsion for all the time to come need not to be awarded.

10. The Ordinances governing the maintenance of the discipline in the university hostels and the delegacies as has been placed by the learned advocate, on its perusal gives an impression that the authorities of the university have been fully cautious and they themselves although have provided the same punishment for any kind of misconduct and also for the ragging in any form inside or outside the

hostel but various kinds of immediate action in the case of ragging and various kinds of preventive measures as has been provided to curb the ragging as given in detail, gives a clue for taking two views in the matter of punishment. Appendix-2 of Chapter VII of the aforesaid Ordinance deals with maintenance of hostel discipline. This appendix refers to various kinds of acts as (A) indiscipline (B) misconduct and accordingly the punishments have been provided. Undisputedly the conduct of the Petitioner comes within the definition of the misconduct and it is under this head of misconduct, the ragging is also included. For the purpose of this case, the relevant extract as given in Appendix-2 of Chapter VII of the Ordinance is hereby quoted:

S. No. Acts Punishment

11. Non-vacation of hostel after the prescribed period of stay. Warning followed by rustication from the university for a specific period.

12. Non-payment of Mess/Hostel dues beyond due date. (i) Suspension from the hostel after two months. (ii) Expulsion from the hostel after three months.

13. Manhandling/Physical assault on anyone in the hostel premises. (i) Institution of an enquiry,

14. Misbehaviour with staff of Admin. Warden/Chief Proctor/ Security personnel/ other persons charged with the duty to check Identity Card and entry etc. (ii) Suspension from the hostel pending enquiry in cases of prime facie guilt.

15. Removing furniture/or hostel property. (iii) Disciplinary action after completion of enquiry.

16. Moral turpitude.

17. Abuse of drugs/indulgence in intoxicants.

18. Keeping fire-arms, knives, contraband material etc. Expulsion from the hostel.

19. Ragging in any form inside or outside the hostel. Students found indulging in ragging shall be summarily expelled from the university.

20. In the case of reports of indiscipline/ misconduct, other than those specified above the matter shall be considered by a committee consisting of:

(i) Concerned Director of the Institute and/or Dean of the Faculty or Principal of the College concerned or his nominee.

(ii) Head of the concerned Department (in the case of Postgraduate students/ Research Scholars) ;

(iii) Administrative Warden of the Hostel concerned ;

(iv) Concerned Block Warden of the Hostel ;

(v) Dean of Students or an officer appointed by the university.

If in the opinion of the aforesaid Committee the allegation against student is found to be correct the committee shall report the matter along with its specific recommendations to the Vice Chancellor/ Rector.

Note: Measures to be taken for prevention of ragging in the hostel:

(i) The Director/Dean/Principal/ Head of the Institute/Faculty/ College/ Department shall write before the start of the new session to the parents/ guardians (Natural/ Legal/ Local) of students in senior classes informing them of the possible consequences of ragging and requesting them to instruct their wards against getting involved in ragging.

(ii) Telephone numbers of senior Faculty/Administrative Officer will be given by the office of the Director/Dean/Principal/ Head of the Institute/ Faculty/College/ Department concerned to every new entrant with the advice that he should report all incidents of ragging through these numbers even anonymously, if circumstances so warrant.

(iii) Squads consisting of Wardens/ Admin. Wardens, other senior faculty members, senior students and security staff will do regular patrolling throughout the night in the halls of residences where new entrants live, at least for the first month of the opening of the term.

(iv) All new entrants shall be attached in small groups, a senior faculty member who shall help in the process of adjustment of students to the new environment and serve as an academic and personal tutor.

(v) A high-level standing committee consisting of some teachers, senior students and administrative officers will be set up with the Head of the Institute/Faculty/ College as Chairman to keep a periodical watch on the situation .

11. In view of the aforesaid, it is clear that so far ragging is concerned the student can be summarily expelled from the university. Note, which is mentioned at the bottom of the aforesaid, refers to various kinds of measures for prevention of the ragging in the hostel. In this view of the matter, it is clear that it is the ragging in any form inside or outside the hostel which has been taken in a very serious manner by the authorities themselves and so far other kinds of misconduct are concerned, it is to be placed at a slightly lower gravity as all kinds of misconduct cannot be treated at par for the purpose of awarding punishment. Chapter VIII of the aforesaid Ordinance explains about the condemnation of acts of in-discipline and the disciplinary action which may comprise one or more actions. Categories 2 and 3 in the disciplinary action refer to minor punishment to which, on the facts, we are not concerned. Category (1), providing punishment on the disciplinary action will be useful to be quoted:

(2) "Disciplinary action" may comprise of one or more of the following:

(a) Category I:

(i) an order rusticating a student for a stated period, under intimation to other

universities in India ;

(ii) an order expelling a student from the university, whether for all time to come or for a stated period, under intimation to other universities in India ;

(iii) an order directing banishment of a student from a Faculty or a Hostel, whether for all time to come or for a stated period ;

(iv) an order suspending a student for a period exceeding 15 days, whether from all activities of the university, Faculty or Hostel, or only from specified activities ;

(v) an order directing a student to pay fine.

12. In the light of the punishment so provided in Category I referred to above, it is clear that apart from the punishment of expulsion from the university for all the time to come and also intimation to all the Universities in India, banishment of the student from the University or a Hostel for a stated period or even more severe punishment, i.e., expulsion from university for a stated period can also be given.

13. On the facts and circumstances, there cannot be any dispute that the Petitioner happens to be a brilliant student as he has got his seat in the B. Tech. Chemical Engineering course on the basis of the all India admission test ; he completed his seven semesters with good performance. It is also clear that there happened to be no complaint of any kind from any corner during his long tenure of about 3-1/2 years in the university and hostel and it is solitary incident which took place not with any fresher or with a junior student but with his own colleague studying in VII Ith semester and inmate of the same hostel and, therefore, although the incident in question is misconduct on the part of the Petitioner, but it cannot be termed to be as a case of severe ragging. It is clear from the averments as made in para 21 of the writ petition that the Petitioner during the course of the enquiry proceedings was permitted to appear in some of the papers in the VII Ith semester. It is also clear from the facts as mentioned in the supplementary-affidavit filed by the Petitioner that the Respondent No. 4 who is the victim has also written a letter on 2.4.2001 to the university authorities to let off the Petitioner and to withdraw the expulsion order. The Petitioner has also stated that after a campus interview, he was selected as a Software Engineer in Infosys Technologies Limited and was required to join on 4.6.2001 after his final semester examination but on account of this incident, he could not get his employment. Averments in this respect is contained in paras 4 and 6 of the supplementary-affidavit. It appears that the Petitioner on account of earlier incident of January, 2001, when he returned the scooter of Sri Sinha in a damaged condition, on the complaint having been made to the Warden of the hostel, Petitioner had to agree to pay the damage, upon which Petitioner in aggressive mood, having lost his temper, apparently in a drunken state as has been found in the enquiry report has committed a gross act of indiscipline, which cannot be justified in any manner but in view of the facts and situation, it is clear that Petitioner was aggrieved on account of making complaint by aforesaid Sri

Sinha and he being in drunken state, has committed that incident. Looking into the past academic record of the Petitioner, his brilliance, completing seven semesters in the same university and peaceful tenure of the hostel for all the aforesaid times, it appears that loss of more than 1-1/2 years, is enough punishment for the Petitioner as during this period of 1-1/2 years, he must have suffered great mental strain besides humiliation from various corners having become junior in various respects from large number of candidates. There also appears to be another reason for taking this view, i.e., so far as awarding the punishment for any indiscipline or any crime is concerned, the approach of the Courts should be to think that whether the quantum of punishment will result in a reformation and will be a kind of warning to improve the habits and misdeeds of the person involved or it will cause and create a more serious situation and will aggravate the feelings of that man to cause and commit more serious acts of indiscipline and the crime. Here so far as the case in hand is concerned, admittedly, the Petitioner is neither a criminal nor he happened to be an indisciplined boy, which is clear from his past record as well as an admitted situation that even up to VI Ith semester, there happened to be no complaint of any kind from any quarter and, therefore, this solitary incident in the given set of facts, i.e., annoyance with the victim Siddharth Sinha on account of earlier complaint and at the time of incident, the Petitioner being in drunken state, has certainly crossed the limit but the punishment which he has already received, i.e., loss of his 1-1/2 year career, besides mental strain and for all this time a hanging pendulum and a fear pinching him that whether he will get any relief in relation to the impugned action of his expulsion from the Court or not, this Court feels, is enough for the present case. The submission of Sri Upadhyay, learned Counsel that in the event a lesser punishment is allowed to the Petitioner, it will lead to the indiscipline in the college campus and in the hostel, apparently being based on the premises of the facts of severe ragging, with an intention to clear out the fear among the freshers to have their peaceful study in the college campus, being not available in the present case, this Court feels that the Petitioner is entitled to get himself permitted for his VII Ith semester examination, in the next examination as and when it takes place.

14. In view of the foregoing discussion, this writ petition succeeds in part. The impugned order of the Respondent No. 1 dated 20.4.2001, as contained in Annexure-9 is hereby quashed to the extent that instead of Petitioner's expulsion from the university for all the times to come, it is directed that in the next coming examination, Petitioner will be permit-ted to appear and complete his VII Ith semester, in accordance with law.