

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 1937/2011 & CMs 4128/2011, 12501/2011 & 2532/2012**

Reserved on : 29.02.2012

Decided on: 01.03.2012

IN THE MATTER OF

MD. MOBASHASHIR SARWAR

..... Petitioner

Through: Mr. R.K.Saini, Mr.Sitab Ali Chaudhary,
Mr.Alamgir, Advocates

versus

JAMIA MILLIA ISLAMIA AND ORS.

..... Respondents

Through: Ms. Jaya Goyal , Mr.Rohit Gandhi and
Mr.Ketan Madan, Advocates

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

1. The petitioner, a student of XI standard in the respondent No.4/School had filed the present petition through his local guardian, Mr.M.Munawwer Hussain on 18.3.2011, praying *inter alia* for issuance of a writ of certiorari to quash the expulsion order dated 20.12.2010 issued by respondent No.3/Director and respondent No.4/Principal, Jamia Senior Secondary School, expelling him from the school and banning his entry in the school campus. The second prayer made in the writ petition is for issuance of a writ of mandamus directing the respondents to allow the petitioner to stay in the hostel and to attend his classes in XI standard and permit him to sit for the examinations conducted by respondent No.4/School through the scheme of Compartment/Re-examination 2011.

2. It may be noted at the outset that the second relief sought by the petitioner hereinabove no longer survives for the reason that during the pendency of the present petition, by virtue of an interim order dated 4.4.2011, the petitioner had been permitted to take the supplementary examinations for standard XI, without prejudice to the rights and contentions of both the parties and without creating any equities in his favour. The result of the petitioner was directed not to be declared and it was made subject to further orders in the present petition. Later on, vide order dated 11.8.2011, his results were announced and he was declared as having passed the XI standard examinations. Prior thereto, vide order dated 19.5.2011, the petitioner had been permitted to attend the classes in XII standard. In September 2011, the petitioner had approached the Court for permission to deposit the fee for sitting in the examinations in XII standard which was allowed vide order dated 30.9.2011 and it was directed that his examination form for sitting in the examinations in XII standard would be forwarded by the respondent No.4/School to the Controller of Examinations, Jamia Millia Islamia.

3. During the pendency of the present petition, various applications have been filed by both sides. An attempt was also made to enable the parties to arrive at a rapprochement but the same was not successful as both sides were firm on their respective stands. On 9.2.2012, the present case was directed to be listed for arguments on

13.3.2012. In the meantime, the petitioner filed yet another application for directions to the respondents to issue him an admit card for sitting for his annual examinations for XII standard, which are to commence on 2.3.2012. The aforesaid application was listed on 27.2.2012. Due to the urgency expressed by learned counsel for the petitioner, learned counsel for the respondents was directed to file a reply to the application within one day and the matter was adjourned for 28.2.2012.

4. On 28.2.2012, a reply was prepared and handed over by the learned counsel for the respondents in Court and she insisted that no interim orders of the nature as sought by the petitioner could be granted in his favour as the said relief was beyond the scope of the relief sought in the main petition. She also submitted that the second relief sought in the petition did not survive due to the interim orders that had been passed during the pendency of the present petition and that the scope of the petition was now limited only to testing the legality and validity of the impugned expulsion order dated 20.12.2010 passed by respondent No.3/Director and respondent No.4/Principal of the school. As counsels on both sides agreed that the writ petition be taken up for hearing by advancing the date of hearing and having regard to the urgency in the matter, the date of hearing already fixed, i.e., 13.3.2012 was cancelled and the petition was directed to be listed for final arguments on 29.2.2012. Arguments were addressed by counsels on both sides on 29.2.2012 and judgment reserved on the same day.

5. The facts of the case need to be set out. The petitioner who is a permanent resident of Medhapura, Bihar, was admitted in class VI in respondent No.4/School in the year 2005 and since then he was continuing his studies in the said school as a boarder student. In the year 2010, the petitioner had successfully passed the X standard examination and was promoted to XI standard. As per the petitioner, he has been a diligent student, having an excellent academic record and has not given any occasion to the respondents to find any fault with his conduct. To press home his blemishless record, the petitioner relies upon a good conduct and moral character Certificate dated 5.7.2010 issued by respondent No.4/Principal of the school (Annexure P-2). However, the petitioner claimed that like a bolt from the blue, he was served with the impugned order dated 20.12.2010 signed by respondent No.3/Director and respondent No.4/Principal which reads as below:-

“Dated 20th December, 2010

Notice

In view of unending complaints of misbehavior and indiscipline, Mr.Mubashshir Sarwer s/o Mr.Sami Sarwer is expelled from the school with immediate effect and his entry in the school campus is banned. This has the approval of the Hon’ble Vice-Chancellor,JMI.

-sd-
(NASEERUDDIN)
Offg.Principal

-sd-
(PROF.M.MUTABA KHAN)
Hony.Director, Jamia Schools”

6. It is the aforesaid order which is in the eye of the storm. The *leitmotif* of the arguments of learned counsel for the petitioner is that the impugned order is liable to be quashed and set aside for the reason that it violates the principles of natural justice and runs contrary to the provisions of Ordinance 14 promulgated under the Jamia Millia Islamia Act, 1988 (hereinafter referred to as “**the Act**”) which relates to ‘Student Discipline’ and the provision of Rule 37 of the Delhi School Education Rules, 1973 for the reason that neither the petitioner nor his parents/local guardians were afforded an opportunity of hearing before the impugned order came to be passed. Learned counsel for the petitioner contended that the petitioner was never confronted with a notice to show cause, enlisting the complaints of misdemeanor/misbehavior/indiscipline on his part for him to offer any explanation or take a defence. He submitted that the complaints filed on record by the respondents would reveal that some dated back to the years 2006 to 2009 and some of them were false and fabricated as one did not bear the signatures of the complainant, another did not bear any date and a couple of them did not relate to the petitioner, but to his namesake, who was studying at the relevant time in a higher class. It was further submitted that in any event, if the school did not bother to take any action against the petitioner even though it had been receiving complaints against him ever since the year 2006, then it can only be treated as a conscious decision of the respondents to ignore the incidents

and any attempt on their part to use the said complaints that date back to the years 2006-09 today, would amount to an arbitrary and motivated action on their part.

7. Learned counsel for the petitioner asserted that the underlying reason for passing the impugned order is the fact that the petitioner had been filing a number of applications under the RTI Act seeking information from the respondents relating to the management and affairs of the hostel which had not gone down well with them. In this regard, learned counsel relied on an internal letter dated 20.12.2010 addressed by respondent No.4/Principal to respondent No.3/Director pointing out the behavior of the petitioner towards his teachers/wardens/students. One of the observations made in the said correspondence was that the petitioner and his friends were misusing the RTI Act to defame the respondents. He also referred to a letter dated 28.3.2011 addressed by the office of respondent No.3/Director to the PIO, Jamia Millia Islamia with reference to a couple of RTI queries raised by the petitioner, wherein, he had been described as a "habitual information seeker". Learned counsel wondered whether seeking information under the RTI Act could be treated as an offence and submitted that the direct consequent of seeking such information was that the petitioner has been penalized by the issuance of the impugned expulsion order by the respondents. Lastly, it was urged that the impugned order is bad in law as only the respondent No.1/Vice-Chancellor has the power to expel a

student and not the respondent No.4/Principal of the school, as has been done in the present case.

8. Learned counsel for the respondents refuted all the arguments urged by learned counsel for the petitioner and submitted that the respondents were constrained to issue the impugned order expelling the petitioner from the school and imposing a ban on his entry in the school campus in view of the continuous and unending complaints of misdemeanor, misbehavior and indiscipline of very serious nature on the part of the petitioner. She denied the contention made by the other side that the impugned order had been passed by respondent No.4/Principal of the school and instead submitted that the said expulsion order had been passed by the competent authority, i.e., respondent No.1/Vice-Chancellor, JMI by exercising the powers vested in him under Statute 31 of the Statutes of the University (hereinafter referred to as '**the Statutes**'), promulgated under Section 24 of the Act. She submitted that the casual attitude of the petitioner can be gauged by the fact that while the impugned order was passed on 20.12.2010, he had chosen to approach this Court on 18.03.2011, i.e., after the passage of almost three months. She submitted that respondent No.1/Vice-Chancellor, JMI was constrained to pass the expulsion order in view of the fact that the petitioner had been repeatedly committing acts of indiscipline for which on an earlier occasion in the year 2010, the matter had gone right upto the Vice Chancellor and despite the same, leniency had been shown to the

petitioner, when on 23.7.2010, the Vice-Chancellor had requested the respondent No.3/Director to grant him hostel accommodation. Learned counsel emphasized that the petitioner was repeatedly pardoned and warned for his acts of indiscipline and further, that both the petitioner and his guardians had submitted undertakings to the respondents assuring them that he would abide by the said undertakings and maintain good conduct, but the said undertakings were violated by the petitioner time and again.

9. Learned counsel for the respondents also stated that the last straw on the camel's back was an incident which took place on 15.12.2010. The entire incident that occurred on 15.12.2010 was narrated by respondent No.3/Director to the Proctor, Jamia Millia Islmaia, in his letter despatched on the same day. Respondent No.3/Director stated that he had received a call from a mobile number at about 7.30 in the evening intimating him that the caller was a student of the respondent No.4/school and that a hosteller was going to commit suicide and thereafter the caller had disconnected the call abruptly. It was submitted that some days prior thereto, i.e., on 10.12.2010 the petitioner had thrown a plateful of steaming rice on the face of the caretaker of the hostel in the presence of a number of hostellers and when the incident was reported, his local guardians were summoned in the evening and his mother, who resided in Bihar, was contacted over telephone.

10. On repeated pleas from his guardians and his mother to afford

the petitioner one opportunity to improve his conduct, he was called upon to apologize to the caretaker at dinner time on the same day, but he failed to do so and instead, he created an ugly scene. The entire incident is stated to have taken place in the presence of the local guardian of the petitioner who was called upon to take him to his residence till his father arrived from Bihar. The father of the petitioner arrived from Bihar on 13.12.2010 and the whole situation was explained to him and he was asked to take the petitioner from the hostel. On 15.12.2010, the father and the local guardian of the petitioner again approached the respondents in the afternoon, with a request to permit the petitioner to stay on in the hostel. However, respondent No.3/Director declined the aforesaid request and told them that the petitioner would not be taken back till the end of the examinations of XI standard that were to be held in March 2011 and if in that duration, his behavior was found to be normal, he would be admitted in the hostel. On the same evening, i.e., on 15.12.2010, the aforesaid telephonic call was received on the mobile number of respondent no.3/Director. The caller was later identified as Mr.Akhlaqur Rehman, a First Year Diploma student and a friend of the petitioner.

11. After receiving the aforesaid call, the University Proctor apprised the local police of the incident. Apprehending an untoward incident, respondent No.3/Director approached respondent No.1/Vice Chancellor, JMI with a recommendation to expel the petitioner from the school and impose a campus ban on him. However, keeping in mind his

age and career, it was suggested that the petitioner be permitted to appear in his examinations as a private candidate. The aforesaid recommendations made by respondent No.3/Director on 20.12.2010 were duly considered by respondent No.1/Vice Chancellor, JMI who noted in the file that the complaints against the petitioner were of an extremely serious nature and the school could not take responsibility for his abnormal behavior despite best efforts to counsel him. As a result, it was decided that the petitioner be handed over to his father and be expelled from the school as also banned from entering into the school campus. However, while penning the aforesaid note, respondent No.1/Vice Chancellor, JMI added a post script to the effect that as an exception, the petitioner could be allowed to appear as a private candidate.

12. Learned counsel for the respondents submitted that the petitioner's misdemeanor did not cease even during the pendency of the present petition, and she pointed out that the particulars of one incident that took place on 31.7.2011 and five incidents that took place on 18.8.2011 had been mentioned in the brief list of dates and events, filed by the respondents on 28.1.2012. The said incidents include the complaint that the petitioner had abused and threatened the warden of the hostel, misbehaved and abused the respondent No.3/Director, had been instigating the students against the administration and teachers, and had misbehaved with the female trainee teachers and threatened them. She submitted that in view of all the aforesaid acts of indiscipline,

a notice to show cause dated 15.11.2011 had been served on the petitioner, but no precipitative action was taken in view of the pendency of the present petition. To fortify her submission that the respondents were justified in passing the impugned order as the petitioner had become a threat to the school and that he had no right to continue as its student or be associated with the respondent/School, learned counsel relied on a judgment of a Single Judge of this Court in the case of Narender Singh Vs. Delhi University reported as **1997(70) DLT 509**.

13. In rebuttal, learned counsel for the petitioner submitted that the invocation of Statute 31 by the respondents was unjustified in the present case as the said provision is an emergent provision which ought to be exercised only in case of an emergency and the notings of the respondent No.1/Vice Chancellor, JMI, as placed by the respondents on record, did not reflect that any such emergent situation had arisen for him to have exercised the extraordinary powers vested in him under Statute 31. It was contended that when an authority is vested with general powers that are meant to be exercised for the same purpose, they cannot be bypassed by exercising the emergent provisions and thus the action of the respondents of straightway invoking Statute 31 is unjustified and arbitrary. He argued that assuming without admitting that the petitioner had indulged in misbehaviour as a student of the hostel, he could have been expelled from the hostel but he could not have been expelled from the school, as has been done by the respondents herein. The earlier

expulsion of the petitioner from the hostel in the year 2009-10 was described by learned counsel as a "breach of discipline" and not a "breach of studies". The delay in approaching the Court by filing the present petition against the impugned order dated 20.12.2010, in the month of March 2011, was explained by him by submitting that during the period of three months, the petitioner had been running from pillar to post by submitting representations to various authorities right upto the Ministry of Education, but to no avail. It was asserted that the suicide threat mentioned by respondent No.3/Director in his letter to the Proctor could not be termed as a threat extended by the petitioner to the school or the Principal for the reason that even the said letter only mentioned that a telephonic call had been received from a student of the school, and there is no direct linkage of the suicide threat to the petitioner. It was reiterated that due to the frequent RTI applications filed by the petitioner seeking information from the respondents with regard to the hostel and its affairs, he had become an uncomfortable person for the respondents who found themselves on the back foot and that the impugned order was passed only with the idea of getting rid of him.

14. This Court has carefully considered the rival submissions of the counsels for the parties and examined the documents placed on record. Before proceeding to deal with the respective submissions of the parties, it is considered appropriate to examine the relevant provisions, which in this case, are the Jamia Millia Islamia Act, 1988 and the relevant

Statute and Ordinances. Section 24 of the Act empowers the Executive Council of the JMI to promulgate Statutes and Section 25 of the Act provides for making Ordinances for various matters, including the admission of students to the University and their enrolment, the conditions of their residence etc. Statute 31 of the Statutes of the University (hereinafter referred to as '**the Statutes**') prescribes the powers of maintenance of discipline among students of the University and lays down as below:-

"31. MAINTENANCE OF DISCIPLINE AMONG STUDENTS OF THE UNIVERSITY

(1) All powers relating to discipline and disciplinary action in relation to students shall vest in the Shaikh-ul-Jamia (Vice-Chancellor).

(2) The Shaikh-ul-Jamia (Vice-Chancellor) may delegate all or any of his powers as he deems proper to any officer as he may specify in this behalf.

(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 Shaikh-ul-Jamia (Vice-Chancellor) may, in the exercise of his powers, by order, direct that any student or students be expelled or rusticated, for a specified period, or be not admitted to a course or courses of study in a Department or an Institution of the University for a stated period, or be punished with fine for an amount to be specified in the order, or be debarred from taking an examination or examinations conducted by the University or a Department or an Institution for one or more years, or that the results of the student or students concerned in the examination or examinations in which he or they have appeared be cancelled."

15. Ordinance 14, which deals with students discipline, stipulates as below:-

"Ordinance 14 "Students Discipline" :

4. Students found guilty of breach of discipline shall be liable to such punishment, as prescribed below:

- (1) Fine;
- (2) Campus Ban;
- (3) Expulsion; and
- (4) Rustication.

However, no such punishment shall be imposed on an erring student unless he is given a fair chance to defend himself. This shall not preclude the Shaikhula-Jamia(Vice-Chancellor) from suspending an erring student during the pendency of disciplinary proceedings against him

5. All powers relating to discipline & disciplinary action in relation to the student shall vest in the Shaikhula-Jamia(Vice-Chancellor). However Shaikhula-Jamia(Vice-Chancellor) may delegate all or any of his powers as he deems proper to the proctor or to the discipline committee as the case may be or any functionary of the University.

6. Powers relating to discipline/misconduct shall be regulated by Statute 31 read with Section 30 JMI Act, 1988.

7.(i)Without prejudice to Section 30 of JMI Act 1988 as also Statute 31, there shall be a Discipline Committee comprising of the following members;

- (1)The Shaikhula-Jamia(Vice-Chancellor)-(Chairman);
- (2) The Naib Shaikhula-Jamia(Pro-Vice-Chancellor);
- (3) The Dean Students, Welfare;
- (4) The Provosts;
- (5) The Dean of the Faculties;
- (6) The Warden, who shall be invited, when the matter concerning his/her Hotel/Kitchen is required

to be placed before the Committee for consideration;
and

(7) the Proctor(Member/Secretary)".

16. It may be pertinent to note that Ordinance 14 is quite akin to Rule 37 of the Delhi School Education Rules, 1973, that prescribes forms of disciplinary measures, which include fine, expulsion and rustication and mandates in sub-rule(7) that no student shall be expelled or rusticated from a school except after giving the parent or guardian of the student a reasonable opportunity of showing cause against the proposed action. Footnote (i) at the bottom of Rule 37 clarifies that expulsion or rustication shall be resorted to only in cases of grave offences where the retention of the student in the school is likely to endanger its moral tone of discipline.

17. The relevant facts of the case have already been noted above. On the one hand is the claim of the petitioner that the impugned expulsion/campus ban order passed by the respondents has come like a bolt from the blue for the petitioner, who was never issued a notice to show cause prior to passing of the said order, much less afforded an opportunity of hearing. On the other hand, it is the stand of the respondents that having regard to the provisions of Statute 31, respondent No.1/Vice-Chancellor, JMI is well empowered to take such action as he may deem appropriate in the interest of maintaining discipline amongst the students and in the present case, the impugned

order expelling the petitioner from the school and banning his entry in the school campus had to be passed in the interest of maintaining discipline in the school.

18. The Court is cognizant of the fact that when it comes to maintenance of academic standards, Courts should ordinarily refrain from interfering with matters relating to the internal working of educational institutions for the reason that the decisions taken by such academic bodies are largely in the nature of policy decisions and the rules and regulations made by the institutions are based on their day to day experience. As long as such a decision/rule/regulation is on the face of it unreasonable, arbitrary or in violation of the principles of natural justice, the Courts ought not to interfere therein as every institution has a right to set its own benchmark for achieving academic excellence. The Court is also not blind to the fact that there should be strict discipline in academic matters and to maintain such discipline, an academic institution is well empowered to take disciplinary action against a delinquent student, that may include imposition of fine, campus ban, passing expulsion orders and/or rustication of a student. The bottom line is that if the tussle is between the interest of an institutional body and a student, the former ought to prevail over the latter, and further that the head of the institution is the best judge of a prevailing situation and wherever, a student is found to be acting in an indisciplined manner or is found to be indulging in violent/criminal acts and/or in moral turpitude, he is

empowered to take a decision taking into consideration the past conduct of a student and the prevalent situation in the institution.

19. The constant strain of the learned counsel for the respondents was that they had been receiving a litany of complaints against the petitioner for the past number of years, which included unending acts of misconduct, immoral behaviour and indiscipline, prejudicing the discipline and academic stability of respondent No.4/school and despite the undertakings given by the petitioner, and his local guardian, he continued to breach the same with great impunity not only prior to the passing of the impugned order but even during the pendency of the present petition. Thus, it was contended that the impugned order does not deserve to be interfered with inasmuch as no lesser punishment could have been imposed on the petitioner having regard to his past conduct and consequently, the writ petition ought to be dismissed.

20. However, as observed by the Supreme Court in the case of Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh and Others vs. Vaibhav Singh Chauhan reported as **(2009) 1 SCC 59**, there is a difference in jural interference in academic standards and judicial review of the punishment. When an order of punishment is examined, the Court must satisfy itself that the order is a reasoned one. In the case in hand, the impugned order states that in "view of unending complaints of misbehaviour and

indiscipline, the petitioner has been expelled from the school with immediate effect and his entry into the school campus is banned". The Court is required to examine whether it ought to interfere in the aforesaid decision of the respondents and consider whether there is any arbitrariness in the action taken or whether the rules of natural justice have been violated or ignored, or the decision taken is so unreasonable and/or discriminatory that it requires interference.

21. Learned counsel for the respondents had sought to draw strength from Statute 31 to claim that the respondent No.1/Vice Chancellor, JMI was empowered to pass the impugned order in exercise of the powers vested in him under the said provisions. Upon carefully perusing sub-section (3) of Statute 31, it emerges that while respondent No.1/Vice Chancellor is undoubtedly entitled to take action in the interest of maintaining discipline amongst students as it may be deemed appropriate by him, and in furtherance of the said object, he could order expulsion or rustication of a student, the said order of expulsion or rustication is required to be for passed a specified period and cannot be an open ended one. In the present case, the impugned order of expulsion of the petitioner and of banning his entry into the school campus is without fixing a timeline. The said order, therefore, does not qualify as an "order for a specified period", as stipulated in sub-section(3) of Statute 31.

22. Furthermore, when the Act itself envisages that Ordinances shall be promulgated for various matters and the respondents have enacted Ordinance 14 specially for maintaining discipline amongst the students when Ordinance 14 prescribes that no punishment shall be imposed on an erring student unless he is given a fair chance to defend himself, it was incumbent upon the respondents to have followed the procedure prescribed in the aforesaid Ordinance before passing the impugned order. Furthermore, Ordinance 14 has categorized the punishments to be imposed on students found guilty of breach of discipline under four heads, which include imposing of fine, campus ban, expulsion and rustication. The aforesaid Ordinance also provides that imposition of such a punishment does not preclude the respondent No.1/Vice-Chancellor from suspending an erring student during the pendency of the disciplinary proceedings against him. Again, for the purposes of initiating disciplinary proceedings, the Act, Statutes and the Ordinances envisage constitution of a Disciplinary Committee in the manner as prescribed in Ordinance 14.

23. The punishment of expulsion and campus ban have serious implications and ought to be inflicted on a student only in cases of grave offences. Footnote (i) at the bottom of Rule 37 of the Delhi School Education Rules, 1973 is also a pointer in that direction as it describes grave offences to be of the nature where the retention of the student in the school is likely to endanger its moral tone of discipline. Again, it may

be underscored that it is the discretion of the respondents to determine as to whether the actions of the petitioner herein called for the punishment inflicted on him. The records reveal that before inflicting the punishment of expulsion and campus ban on the petitioner, the respondents did not issue any notice to show cause to him or to his parents/local guardian, much less afford him/them an opportunity of hearing. In the case of Amir-Jamia and Ors. vs. Desharath Raj reported as **ILR 1969 Delhi 2002**, while considering the question as to whether Jamia Millia is a public authority amenable to issuance of directions in the nature of certiorari, a Division Bench of this Court had observed that the right to education is not a merely a contractual right and that it finds a place in the Constitution and the State is directed to provide for the securing of such a right of a student. The Division Bench had remarked that when a student is expelled by an educational authority on the allegations that he is guilty of indiscipline, such an action is in the nature of an adjudication and therefore, a student against whom such a serious action is proposed to be taken, must be afforded a reasonable opportunity of being heard against the proposed action and that rules of natural justice ought to be observed before exercising the drastic powers of expulsion and if they failed to do so, the Court would be constrained to intervene, though reluctantly.

24. In the present case, the facts as narrated by the respondent No.3/Director to the Proctor, Jamia Millia Islamia on 15.12.2010 reveal

that just a few days before passing of the impugned order, on 10.12.2010, the petitioner had misbehaved in the dining hall and had allegedly manhandled the caretaker of the school hostel. When the said incident was reported to the respondent No.3/Director, he stated that he had summoned the local guardian of the petitioner on the same day at about 4 PM and also telephonically spoken to the mother of the petitioner in Bihar. On the request of the petitioner's guardian to excuse him, he was asked to apologize to the caretaker in the dining hall at dinner time on 13.12.2010. However, the petitioner did not apologize and instead he created an ugly scene. In view of the above, the petitioner was entrusted to his local guardian, who was requested to take him to his residence, until the father of the petitioner arrived from Bihar. On 13.12.2010, when the father of the petitioner arrived, he was explained the circumstances and asked to take the petitioner away from the hostel. On 15.12.2010 at about 2 PM, the father and the local guardian of the petitioner again approached respondent No.3/Director with a request to take the petitioner back in the hostel, but respondent No.3/Director declined to do so till the completion of the examination, i.e., in March, 2011. However, as per respondent No.3/Director, on the very same evening, he received a telephonic call from a person, who described himself as a friend of the petitioner, intimating him about the petitioner's intention to commit suicide. The aforesaid telephonic call galvanized the respondent No.3/Director into action and he requested the Proctor of the Jamia Millia

Islamia to hand over the case to the local police in the presence of the father and local guardian of the petitioner and seek an explanation from the petitioner's friend, who had, by then been identified as the person who had made a telephonic call to the respondent No.3/Director.

25. On the basis of the aforesaid information, the matter was placed before the Vice-Chancellor, whose remarks in the noting file were as below:-

"The complaints against Sarwar are of an extremely serious nature. He was given an opportunity by me to rejoin the boys hostel despite and against all advice.

There is a full file of complaints against him. The last threat to commit suicide – puts an extremely serious tenor to this child's character. The School cannot take responsibility for his abnormal behaviour despite all our efforts to counsel him.

The child be handed over to the father. He should be expelled & all teachers/proctor etc. notified restricting his entry into the campus. The School/Law will – after today – no longer be responsible for him. This be made clear to his father. All students of class 9 upwards be informed of this.

Sd.
20.12.2010

PS: As an exception he can be allowed to appear as a private candidate"

26. One fact, that stands out starkly on a careful scrutiny of the sequence of events that unfolded on the eve of the passing of the impugned order, is that the trigger point was the telephonic call received by respondent No.3/Director on 15.12.2010. Admittedly, at that time, the

petitioner was not residing in the hostel as he had been entrusted to his local guardian two days prior thereto, on 13.12.2010 and had remained with him thereafter since the respondents had refused to take him back in the hostel. Thus, there was no such imminent danger or threat perceived to the institution or any such critical/crucial circumstance, which called for dispensing with the prescribed procedure of issuance of a notice to show cause to the delinquent student and/or his parents/local guardian and giving them a complete and meaningful opportunity of being heard before passing the impugned expulsion order. As observed in the case of Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh (supra), before any punishment is inflicted on a person, even in circumstances where he admits to his guilt, the authority should carefully exercise its mind and determine as to whether the circumstances call for a particular punishment and it is essential for an authority to give a complete and meaningful opportunity to the delinquent to be heard. In the present case, there is no such confession that was made by the petitioner. Rather, in his rejoinder, the petitioner has disputed the entire sequence of events as narrated in the letter dated 15.12.2010 addressed by respondent No.3/Director to the Proctor, Jamia Millia Islamia. In such circumstances, the action of the respondents in dispensing with the procedure of issuance of a notice to show cause and proceeding to pass the impugned order, inflicting the punishment of expulsion from school with immediate effect and banning

the entry of the petitioner in the school campus, does not inspire the confidence of the Court.

27. Reliance placed by the learned counsel for the respondents on the judgment in the case of Narender Singh(supra) cannot be of any assistance inasmuch as the same is based on the fact situation of the said case, which is entirely different from the one in hand. It is also relevant to note that a perusal of the facts of the aforesaid decision reveals that before inflicting a punishment on the petitioner therein, the respondents had issued two notices to show cause to him setting out the allegations against him and asking him as to why disciplinary proceedings be not initiated against him. Only after replies were submitted by the petitioner to both the show cause notices did the disciplinary committee of the respondent/college hold a meeting and recommended that the petitioner therein ought not to be admitted to the third year BA pass course. The said recommendations of the disciplinary committee were submitted to the Principal of the college, who then accepted them and directed that the petitioner be not permitted to deposit the fee for admission to the next course.

28. In the present case, admittedly no such steps of issuance of a notice to show cause to the petitioner had been taken by the respondents before inflicting such a grave punishment on him. Furthermore, a perusal of the impugned expulsion notice shows that the respondents have not given any plausible reasons for exercising such drastic powers, except for

making a bald reference to the continuous and unending complaints of misbehavior, immoral behavior and indiscipline of very serious nature without buttressing the allegations levelled against the petitioner with actual instances, more so, when as per the respondents, they had received a plethora of complaints against the petitioner from different quarters. Dispensing with the notice to show cause on the ground that the petitioner and his local guardian were all along aware of the petitioner's misdemeanours, is not justifiable for the reason that in the past, the trespasses of the petitioner may have been frowned upon by the respondents but even as per them, the petitioner was shown leniency each time and let off the hook. In such circumstances, the respondents had only to confront the petitioner by itemizing his past misconducts in seriatim and then calling upon him to offer an explanation, before passing appropriate orders.

29. The impugned order passed by the respondents has far reaching consequences. Expulsion from the school and the ban imposed on the petitioner from entering the school campus is a grave punishment to be inflicted. While it is true that no leniency ought to be shown in academic matters and the educational institutions ought to be very strict in maintaining high academic standards and academic discipline, but at the same time the rules of *audi alteram partem* cannot be thrown to the winds. Following the principles of natural justice is the first filter of a judicial act. Turning a blind eye to the said rule is close to being

sacrilegious to the rule of law. The circumstances noted hereinabove do not justify dispensing completely with the procedure prescribed under Ordinance 14 by invoking Statute 31.

30. Even if it is assumed that the situation was of such a grave magnitude and the past conduct of the petitioner was perceived as a grave threat to the peaceful functioning of the institution and consequently the respondent No.1/Vice-Chancellor, JMI was of the opinion that a serious punishment was required to be inflicted on the petitioner, he ought to have been given a fair chance to defend himself. While doing so, respondent No.1/Vice-Chancellor was not powerless to contemporaneously suspend the petitioner during the pendency of the disciplinary proceedings against him. The suspension order would have balanced equities both ways. On the one hand, it would have ensured that the petitioner did not endanger the moral tone of discipline required to be maintained by the respondents in the school campus and at the same time, the petitioner would have had an occasion to explain his stand and place forward his point of view. Then, for the disciplinary committee to have recommended/taken disciplinary action against him, which could have included imposition of a fine, or a campus ban, or/and expulsion/rustication could have been justified and in those circumstances, the Court would have been loathe to interfere. However, failure to follow the well trodden path of issuing of notice to show cause to the petitioner/his parents/local guardians, followed by affording an

opportunity of hearing to him/them, strikes a jarring note. The punishment of expulsion and campus ban are drastic powers and while exercising such drastic powers, the respondents ought to have acted cautiously and taken reasonable steps to afford an opportunity of hearing to the petitioner and/or his parents/local guardian and thereafter, carefully examined all the relevant facts and circumstances before proceeding to inflict a particular punishment on him.

31. On the principles stated above, this Court is the opinion that the impugned order cannot be sustained as it does not withstand judicial scrutiny, the same having been passed without following the principles of natural justice. Given the facts and circumstances of the case and having regard to the grave allegations levelled against the petitioner, it was all the more incumbent upon the respondents to have acted judiciously by affording a reasonable opportunity of hearing to him against the action proposed to be taken and after receiving a reply/explanation from the petitioner/his local guardian/parents, the authorities ought to have applied their mind to the question as to whether the petitioner had committed such a grave act of indiscipline as alleged against him to inflict the punishment proposed to be inflicted.

32. In view of the above, the present petition is allowed and the impugned order dated 20.12.2010 is quashed and set aside. However, it is made clear that the Court has refrained from making any observation

on the merits of the allegations levelled against the petitioner and vice-versa. It may further be noted that this decision shall not preclude the respondents from following the due process of law by issuing a notice to show cause to the petitioner and setting out all the allegations/complaints received against him and then affording him/his parents/local guardian an opportunity of hearing and thereafter, if the competent authority arrives at a conclusion that the petitioner is guilty of misconduct/indiscipline, the authority shall be entitled to inflict upon the petitioner such punishment as may be deemed appropriate. It is also clarified that additionally, the respondents shall be at liberty to take further steps in pursuance to the notice to show cause dated 15.11.2011 issued to the petitioner and take the said proceedings to its logical conclusion, in accordance with law.

33. In the facts and circumstances of the case, parties are left to bear their own costs.

MARCH 01, 2012
mk/rkb

(HIMA KOHLI)
JUDGE