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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 4258/2012

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Judgment dated 05.10.2012

HAMIDUR RAHMAN

..... Petitioner

Through: Mr.Sitab Ali Chaudhary, Advocate

versus

JAMIA MILIA ISLAMIA AND ORS

..... Respondent

Through: Mr.M.A. Siddiqui and Mr.Rohit Gandhi,
Advocates along with Ms.Tasneem Menai
(DSW) Jamia Millia Islamia

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Rule. With the consent of counsel for the parties, the present petition is set down for final hearing and disposal.
2. The petitioner claims himself to be an OBC student and an RTI and social activist, poet, debater, who advocates democracy and protects the democratic rights as a public spirited and a responsible citizen of India. He is aggrieved by the action of the respondents of not granting admission to the petitioner in M.A. (Persian), which according to him is illegal, arbitrary, malafide, discriminatory, tyrant, unjust, unwarranted, bias and without any jurisdiction.
3. It is contended that petitioner has been denied admission ignoring his merit being a topper and also in spite of the fact that 10 seats are lying vacant and only with a view to punish and humiliate the petitioner, as he has filed a PIL being WP(C)No.917/2012 titled as *Hamidur Rahman Vs. Jamia Millia Islamia & Ors.* against the respondent/ university, for

seeking restoration of democracy by way of holding students union election which are suspended since the year 2006. Petitioner also claims that this action has been initiated against him after the respondents were unable to pressurize him for withdrawal of the said public interest litigation. Counsel for the petitioner submits that as per the prospectus for the year 2012-13 there are 30 seats available in M.A. (Persian) and only 35 application forms were submitted. Being an eligible candidate, the petitioner applied on 07.05.2012 and an admit card for appearing in the written test was issued to the petitioner. The written examination was conducted on 19.06.2012, only 25 students including petitioner appeared in the examination, the results were declared, the petitioner secured position no.21 and he was directed to appear for viva voce on 03.07.2012. On the declaration of the final results only 20 students were called for admission. It is submitted that by denying the petitioner admission the respondents have violated the terms of the prospectus and petitioner's right to education. Mr.Chaudhary, counsel for the petitioner submits that the action of the university is only on account of the public interest litigation which has been filed by the petitioner. Counsel also submits that the action of the respondents is highly vindictive in nature. In support of his submission counsel for the petitioner has drawn the attention of the court to an order passed in the public interest litigation dated 18.04.2012, wherein the Division Bench had noted the submission of counsel for the petitioner that an inappropriate character certificate was issued to the petitioner and also observed that the University cannot issue such a certificate nor the petitioner can be penalized for approaching the court. They expressed their hope that the university would not take a vindictive attitude against the petitioner and issue a proper character certificate. The order had also noted that the counsel for the university has agreed that he

would have the matter looked into and only thereafter usual character certificate was issued in favour of the petitioner. Counsel for the petitioner next contends that the action of the respondent is vindictive in nature and it is manifestly erroneous and has resulted in miscarriage of justice. It is contended that the action of the Vice-Chancellor is a result of colourable exercise of power and non-application of mind. Counsel for the petitioner submits that merely filing a public interest litigation and to fight for the rights of the students by formation of union itself cannot be a ground for the respondents to deny admission in M.A. (Persian) to a meritorious and topper, and just to satisfy the ego of the respondents. It is submitted that the decision has been made for extraneous considerations and is thus liable to be quashed.

4. Counsel for the petitioner has relied on a decision rendered by this court in the case of **S.M. Hamoodur Rehman Faridi Vs. Jamia Millia Islamia University & Anr.** [WP(C)No.6279/2008 decided on 17.10.2008] in support of his plea that the discretionary power vested in any authority cannot be unguided and arbitrary. Para 4 of the judgment reads as under:

“4. Discretionary power vested in any authority has to be guided. An unguided discretionary power may be attacked as vesting an arbitrary power in the authority and the exercise of such discretionary power may result in arbitrary and whimsical exercise of that power. The guideline for the exercise of discretionary power by the Vice Chancellor in this case is found in the relevant Ordinance itself.

5. Learned counsel for the petitioner has also relied upon **Ramesh Chandra Sahu v. N. Padhy, Principal, Khallikote College, Berhampur**, reported at AIR 1959 Orissa 196, in support of his plea that a personal hearing should have been given to the petitioner before his application for admission was rejected. Counsel for the petitioner has further relied upon **Brig. E.T. Sen**

(Retd.) v. Edatata Narayanan and Others, reported at AIR 1969 DELHI 201, in support of his plea that by rejecting the application for grant of admission the Fundamental Right of Freedom of Speech and Expression of the petitioner cannot be curtailed. Reliance is also placed by counsel for the petitioner in the case of *Pratap Singh and Anr. v. Gurbaksh Singh*, reported at AIR 1962 SC 1172, which relates to Contempt of Courts Act.

6. Counsel for the respondents has vehemently opposed this petition and has drawn attention of the court to the counter affidavit, in support of his plea that respondent no.1 / university is one of the premier educational institutions, which was founded in the year 1920 and is a central university. It is submitted that the institution caters to educational requirements of around 15000 students mainly which come from under-privileged section of society and being first time learners. Being a Muslim minority institution, special care and attention is given to maintain peace and academic stability in the campus. It is submitted that although the university had a glorious history, however, there have been frequent disturbances in the campus, which began to endanger the health of the institution its academic standards and goals. It is submitted that there was extreme unrest and indiscipline was openly manifested in various unhealthy tone and politicians, interlopers, and anti-social elements have also lent their hands in spreading the disturbances in the institution. Thus appropriate remedial steps have been taken to ensure that the vast majority of those genuine interested students are not put to ransom by some undesirable elements. It is thereafter that extra care has been taken to ensure that the delicate and fragile peace is maintained on the campus through care and attention and the concerted efforts of the academic administrators do not go waste.

7. Counsel for the respondents has placed reliance on Statutes 31 (1) and 31(3) of Jamia Millia Islamia Act, 1988, in support of his submission that all the powers pertaining to discipline and disciplinary action in relation to students vest in the Vice-Chancellor. Mr. Siddiqui contends that the Vice Chancellor has the power, by order, to direct that any student be expelled/rusticated or be not admitted to a course of study. Statutes 31 (1) and 31(3) of Jamia Millia Islamia Act, 1988, read as under:

“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).
 - (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.”
8. It is contended that the petitioner has been denied admission on the roles of the respondent/ university by the Vice Chancellor as a preventive measures on account of the petitioner having committed troublesome and painful acts of indiscipline in the past and with a view to maintain peace,

tranquility and discipline at the respondent/ institution and more particularly having learnt from past mistakes, the character and antecedents of prospective students who are desirous to seek admission to the courses are carefully vetted, and in cases where it is found that there is an element of fomenting trouble, admissions are denied. It is also the case of the respondent that the petitioner was denied admission as the petitioner had mis-conducted himself during the interview and on the basis of the complaint received against him from Directors of Various Centres (all being eminent academicians). The complaints were considered by the Vice-Chancellor and on the basis of the complaint it was evident that the petitioner was trying to secure admission on the rolls of the respondent/ university to create disarray, annoyance and to disturb peace which has been established in the campus after great effort. Attention of the court has been drawn by counsel for the respondent to various complaints which were received from the Directors/ Functionaries of various centres. It is submitted that interference by Court in matters of academic discipline may lead to intractable difficulties for the university administration in establishing academic calm in the campus.

9. Mr.Siddiqui, counsel for the respondent has relied in the case of **Mohd. Zareeq Khan & Ors. Vs. Jamia Millia Islamia** 1999 III AD (Delhi) 498 and more particularly paragraph 3, 4, 5 which are reproduced below:

3. Having considered the submission made at the bar and at the material, which was placed before the learned Single Judge, which has also been made a part of this appeal, we are of the view that no interference is called in the impugned judgment. Statute 31 quoted in the judgment vests all powers relating to discipline and disciplinary action in relation to students on the ViceChancellor, which also includes power not to admit a student to a course of courses of study in a Department or an Institution of University as candidate has no vested right for admission to a course in an Educational Institution and it cannot be disputed that under the

powers vested in him the ViceChancellor on consideration of relevant factors can refuse admission to a candidate on valid grounds. Learned Single Judge concluded from the material placed before him and from the affidavit of ViceChancellor that the ViceChancellor had taken into consideration the relevant factors including the situation prevailing in the respondent University and that despite earnest efforts, it has not been possible to restore normalcy. It was with a view to prevent reoccurrence of violent and criminal acts and of the fact that the appellant had a tainted record of indiscipline, that their presence in the University was considered to be prejudicial and serious threat to the maintenance of discipline and peace in the campus.

4. In such like matters concerning denial of admission to students on the ground of maintenance of discipline in the campus, when the authority vested with power in that behalf takes a direction by reference to all relevant factors, it will not be permissible to a writ court to interfere in exercise of its powers under Article 226 of the Constitution of India. We agree with the view taken by a decision of Allahabad High Court in Ramesh Chandra Chaube Vs. Principal Bipin Behari Intermediate College, Jhansi, AIR 1953 Allahabad 90. A student had been denied readmission by the Head of the Institution in the interest of discipline. Such an action on the part of the Head of the Institution was found to be within his powers having been taken on due consideration of relevant factors and thus not amenable to writ jurisdiction.

5. We may also refer to a few other decisions on the point where the authority competent to take decision, on due consideration of the past conduct of the student and the prevailing situation in the educational campus takes a decision declining admission to such a student, the Courts decline to interfere in writ jurisdiction. Such other decisions are Vikaruddin Vs. Osmotic University & Others AIR 1954 Hyd 25; Miss Zee Nat Taj and Others Vs. The Principal of the Prince of Wales Medical College, Patna & Others AIR 1971 Patna 43; Deva Singh Vs. Kurukshetra University, Civil Misc. Writ No. 2955 of 1960, decided by Punjab and Haryana High Court on 15.10.1970 and reported as 1990 AIEC 299 and S. Goverdhan Vs. Rani Laxmi devamma College Arts, Commerce and Science, Wanaparthy, writ petition No. 5517 of 1982 decided on 29.10.1982 and reported as 1991 (2) AIEC 433.

10. Counsel for the respondent has also placed reliance in the case of *Narender Singh Versus University Of Delhi And Others* reported in **1998 II AD (DELHI) 321** and more particularly paragraphs 9 and 12, which are reproduced as under:

9. As per Clause (1) of Ordinance XV-B all powers relating to discipline and disciplinary action are vested in the Vice Chancellor. 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, certain actions that may be taken by the Vice Chancellor in exercise of his aforesaid powers are mentioned in Clause (1). From the wording of the said clause it is clear that the power of the Vice Chancellor is not restricted to taking only those particular actions mentioned in Clause (1). On the other hand, Clause (1) clearly recognises the generality of the Vice Chancellor's powers relating to the maintenance of discipline and taking such action in the interest of maintaining discipline as may seem to him appropriate. Clause (1) also empowers the Vice Chancellor to delegate all or such of his powers as he may deem proper to the proctor and to such other persons as he may specify in that behalf. As per Clause (2) of Ordinance XV-B, the Principals of the colleges shall have the authority to exercise all such disciplinary powers over the students in their respective colleges as may be necessary for the proper conduct of the institutions. The source of the disciplinary powers of the Principals of the colleges is Clause (2) of Ordinance XV-B. Clause (1) and Clause (2) are independent and each of them independently and separately confers disciplinary powers on the Vice Chancellor of the University and the Principals of the colleges respectively. Whereas under Clause (1) the Vice Chancellor is given all powers relating to discipline and disciplinary action, under Clause (2) the Principals of the colleges are given the authority to exercise all such disciplinary powers over the students in their respective colleges as may be necessary for the proper conduct of the colleges. In other words, through two parallel provisions the Vice Chancellor of the University and the Principals of the colleges

are given disciplinary powers over the students of a college affiliated to the University. The said powers of the Vice Chancellor and the Principals of the colleges are independent and co-exist. Since Clause (2) is independent of Clause (1) and since it exclusively deals with the disciplinary powers of the Principals of the colleges, the powers of the Principal under Clause (2) are not circumscribed or controlled by Clause (1). Consequently, the Principals of the colleges are competent to take even actions other than the particular actions mentioned in Clause (1). As already observed earlier, even the disciplinary powers of the Vice Chancellor under Clause (1) are not confined to the particular actions mentioned in Clause (1). Hence I am inclined to accept the contention of the learned Counsel for respondent No. 2 that the disciplinary action against the petitioner was taken by respondent No. 2 in exercise of his powers under Clause (2) of Ordinance XV-B and that his powers are not limited or controlled by the provisions in Clause (1) of Ordinance XV-B. Learned Counsel for respondent No. 2 is right in his submission that the principal of the college has the authority to exercise all such disciplinary powers over the students as may be necessary for the proper conduct of the college and that in exercise of such powers he is competent to impose on a student even a punishment which is not mentioned in Clause (1) of Ordinance XV-B.

12. I will not in exercise of my discretionary jurisdiction under Article 226 of the Constitution of India give an interpretation to the order to give it a meaning which is contrary to the real intention of the Disciplinary Committee and the Principal of the college. Nor will I impose on the college a person who is perceived by the college authorities as a threat to the discipline and peaceful functioning of the college. The details given in the counter-affidavit of respondent No. 2 and referred to in paragraph (3) of this judgment have satisfied me that the abovementioned perception of the Disciplinary Committee and the Principal about the petitioner is justified and well founded.

11. I have heard counsel for the parties and considered their rival contentions. The sum and substance of arguments of learned counsel for the petitioner is that the petitioner is an OBC student, an RTI and social activist. The petitioner has been taking steps to protect Democracy. It is the contention of counsel for the petitioner that the action of the respondent in declining admission to the petitioner, despite the fact that seats are available, is arbitrary, malafide, discriminatory and a meritorious student has been denied admission only with a view to punish, humiliate and dissuade him in pressing a Public Interest Litigation filed by him seeking a prayer that the students' union election be held, which stand suspended since the year 2006.
12. The case of *S.M. Hamoodur Rehman Faridi* (supra) pertains to the case of age relaxation. The Jamia Milia Islamia University had taken a decision that the Vice-Chancellor would not exercise his discretion with respect to age relaxation in any matter. The Court had come to the conclusion that the Vice-Chancellor should have exercised his discretion in the matter. There is no quarrel to the principles laid down in the said decision but the same is not applicable to the facts of the present case where the Vice-Chancellor has exercised his jurisdiction and the short question which arises before this Court is whether the said discretion was exercised judiciously; in the interest of the educational institution; and with a view to maintain discipline, peace and tranquility, having regard to the past incidents pertaining to the institution or whether the discretion exercised by him was arbitrary without any application of mind or vindictive in nature.
13. In the present case the petitioner was denied admission on the rolls of the respondent University by the Vice-Chancellor as a preventive measure and by way of abandon caution. The explanation rendered on affidavit by

the respondent to deny admission to the petitioner was on the ground that the petitioner had misconducted himself during the interview and complaints were received against him from the Directors of the various centres qua persons, who are eminent academicians. These complaints were duly considered by the Vice-Chancellor. Based on the complaints the Vice-Chancellor was of the view that the petitioner was only trying to secure admissions on the rolls of the respondent University to create disarray, annoyance and to disturb the peace, which has now been established in the campus. Along with the counter affidavit notings of the Vice-Chancellor and the complaints received against the petitioner from the Directors/Functionaries of various Centres have been annexed. Since the respondents have placed the material on record on the basis of which a decision has been taken by the Vice-Chancellor it cannot be said that the Vice-Chancellor has exercised his discretion in an arbitrary, illegal or vindictive manner.

14. Ordinance, 31, which has been quoted above, makes it abundantly clear that all powers relating to discipline and disciplinary action in relation to the students shall vest in the Vice-Chancellor. It is the duty of the Vice-Chancellor to exercise his power to maintain discipline and to take such action in the interest of maintaining discipline as he may consider appropriate. In my view in case the complaints were brought to the notice of the Vice-Chancellor and the Vice-Chancellor did not take any action it would amount to not exercising discretion, which is vested in him, as it would lead to indiscipline in the campus. The peace, tranquility and carrier of a large number of students cannot be jeopardized and their life cannot be paralised by the act of one individual as serious students would be adversely affected in case atmosphere of the institution is polluted by even a single student.

15. The case of **Mohd. Zareeq Khan & Ors.** (supra), a judgment relied upon by counsel for the respondents, pertains to almost identical facts. In the aforesaid matter a Single Judge of this Court, while relying on Statute 31, held that all powers related to discipline and disciplinary action in relation to the students vests in the Vice-Chancellor. It was also held that such a power includes power not to admit students to a course or courses of study as a candidate has no vested right for admission. The view of the learned Single Judge was upheld by the Division Bench. The Division Bench held that it was not permissible to a writ Court to interfere in the exercise of its powers under Article 226 of the Constitution of India in matters relating to maintenance of discipline at the campus.
16. The facts in the case of **Narender Singh** (supra) also pertains to a case of indiscipline. In the said case it was held that the Principal of a college would have the authority to exercise all disciplinary powers over the students as may be necessary for proper conduct of the institutions.
17. An educational institution or University is a place of learning. It is the head of the institution, and in this case the Vice-Chancellor, who must ensure that the atmosphere in the University is peaceful and the students who are admitted in the temple of learning are able to carry on their studies in a congenial atmosphere freely and without any interruption and interference.
18. In the case of ***Director (Studies), Dr.Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh and Others v. Vaibhav Singh Chauhan***, reported at (2009) 1 SCC 59, wherein it was held as under:

“27.Before parting with this case, we would like to refer to the decisions of this Court which has repeatedly held that the High Court should not ordinarily interfere with the orders passed in educational matters by domestic tribunals set up by educational

institutions vide Board of High School and Intermediate Education v. Bagleshwar Prasad, AIR 1966 SC 875 (vide AIR para 12), J.P. Kulshrestha (Dr.) v. Allahabad University (1980) 3 SCC 418 (vide SCC para 17 : AIR para 17), Rajendra Prasad Mathur v. Karnataka University 1986 Supp SCC 740 (VIDE scc PARA 7 : AIR para 7). We wish to reiterate the view taken in the above decisions, and further state that the High Courts should not ordinarily interfere with the functioning and orders of the educational authorities unless there is clear violating of some statutory rule or legal principle. Also, there must be strict purity in the examinations of educational institutions and no sympathy or leniency should be shown to candidates who resort to unfair means in the examinations.”

19. Keeping in mind the facts of the present case the complaints made by Directors/Functionaries of various Centres to the Vice-Chancellor, it cannot be said that there is any infirmity in the decision taken by the Vice-Chancellor. In exercise of jurisdiction under Article 226 of the Constitution of India the court cannot force the college to admit a student who is likely to cause indiscipline or is a threat to the peaceful atmosphere of the University. There is no merit in the present writ petition and the same is accordingly dismissed.

CM 8829/2012

20. In view of the order passed in the writ petition, application stands dismissed.

G.S.SISTANI, J

OCTOBER 05, 2012

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