

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5765/2011

% Judgment reserved on :24th April, 2012
Judgment delivered on:03rd July,2012

KISHOR GULERIA Petitioner
Through: Mr. Jagat Arora, Adv.

versus

THE DIRECTOR OF EDUCATION DIRECTORATE
OF EDUCATION & ORS Respondents
Through: Ms. Shobhana Takiar, Adv. for
respondent nos.1 & 2.
Ms. Fareha Ahmad Khan, Adv.
for respondent nos.3 to 5.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, petitioner seeks setting aside the order dated 27.04.2011 passed by Id. Presiding Officer of Delhi School Tribunal whereby the appeal filed by the petitioner has been dismissed.

2. In brief, the facts of the case are that petitioner was working as a Physical Education Teacher (PET) in the New Era Public School, Mayapuri, New Delhi (hereafter referred to as the respondent School) since 04.07.1983. He was placed in the PGT Grade w.e.f 01.08.2001.

3. Article of Charge of committing gross misconduct specified in
W.P.(C) 5765/2011

Rule 123 of DSER, 1973 and thus he acted in a manner of unbecoming of an employee of the School. The petitioner on 25.04.2008 punished the Students (Boys and Girls) of the School by way of slapping them on their body which tantamount to corporal (physical) punishment. The Provision of Corporation Punishment existing in Rule 37 (1)(a)(ii) and 4, DSER, 1973 was held void of law and hence struck down by this Court in its landmark judgment in ***Civil Writ Petition 196/1998 Parents Forum for Meaningful Education vs. Union of India.***

4. The conduct of the petitioner was criminal in nature attracting Indian Penal Code as well as (i) petitioner committed gross misconduct by giving corporal (physical) punishment to the Students physically touching part of the girls' body, which is prohibited and untimely tantamount to commit sexual abuse. He, thus, breached sub-clause (xvii) of Clause (n) of Sube Rule 1 of Rule 123 of DSER, 1973. (ii) He is also guilty of cruelty towards the students of the School thus acted contrary to the aspect of Sub-clause (xvii) of Clause (b) of Sub-clause of Rule 123 of DSER, 1973.

5. Thereafter, he was served Article of Charge (in detail) and the petitioner submitted an explanation dated 03.05.2008 which reads as under:-

“(a) This is to bring to your kind notice that last Friday i.e. 25.04.2008, I found a few students playing in TT Hall without the permission of any PET and violating the discipline of the School.

(b) In the heat of moment I gave them a slap each.

(c) I realize that I should have restrained myself.

(d) Madam, I tender an apology for the same and promise that such thing will not be repeated again.

(e) If it is repeated the disciplinary action should be taken against me.”

6. After considering the same, he was issued a memorandum dated 09.05.2008 to submit his representation so as to consider the same on merit which reads as under:-

“(a) The allegations as been raised in the memo under reply totally wrong and I deny these allegations specifically and in totality. I deny that I have slapped any girl student on her face that too mercilessly.

(b) On 25.04.2008, I was on round of the school for maintaining discipline and found some boys and girls standing and playing in the table tennis hall. When I enquired from them, I came to know that it was not their games period and it was also not the zero period.

(c) As such their presence in the table tennis hall is totally unauthorized and was a question of discipline in the school.

(d) I just with ANGRY MOOD announced there to them to leave the said hall immediately and directed them to move to their classes.

(e) Some of them followed it quickly and started running towards their classes, some of them were bit slow to act and I just gently slapped some these students who included both boys and girls on the

back of their head to make them more fast but none of them was slapped on his / her face mercilessly with any intention to give him / her any physical punishment.”

7. On being filed the present petition, notice was issued by this court vide order dated 10.08.2011 confined to the question of quantum of punishment.

8. Ld. Counsel for the petitioner submits that the petitioner was removed from the service despite the fact that he put 25 years of service and has unblemished record. During this period, he received number of appreciation letters. He is an outstanding Coach of physical education. The enquiry Officer exonerated him, but the Disciplinary Authority disagreed for the reasons state therein.

9. To strengthen his arguments, ld. Counsel for the petitioner has relied upon a Judgment in the case of ***Kathuria Public School Vs. Director of Education & Anr. 123 (2005) Delhi Law Times 89 (DB)*** passed by the Double Bench of this Court.

10. Ld. Counsel for the respondent on the other hand, submits that Disciplinary Authority considered all the aspect of his conduct towards the students (boys and girls), thereafter inflicted appropriate punishment and same has been ratified by the Ld. Tribunal. Therefore, Petitioner does not deserve any leniency to the punishment awarded by the Disciplinary Authority which is appropriate to the mis-demnor committed by the petitioner.

11. Ld. Counsel for the respondent has relied upon case of ***B.C. Chaturvedi vs. Union of India & Ors. (1995) 6 Supreme Court Cases 749*** wherein it is held as under:

“The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in State of Orissa Ors. v. Bidyabhushan Mohapatra [AIR 1963 SC 779] held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty. This view was reiterated in Union of India v. Sardar Bahadur [(1972) 2 SCR 218]. It is true that in Bhagat Ram v. State of Himachal Pradesh & Ors. [AIR 1983 SC 454], a Bench of two Judges of this Court, while holding

that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. In that case, the finding was that the appellant was to supervise felling of the trees which were not hammer marked. The Government had recovered from the contractor the loss caused to it by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In Rangaswami v. State of Tamil Nadu [AIR 1989 SC 1137], a Bench of three Judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitution, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in State Bank of India's case (supra), where the court elaborately reviewed the case law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to the

relevant facts, it was remitted to the appellate authority to impose appropriate punishment.

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.

20. Consequently, the appeal of the Union of India is allowed. The order of the Tribunal modifying the punishment is set aside and that of the disciplinary authority is maintained. In the circumstances, parties to bear their own costs."

12. Ld. Counsel further relied upon case of ***Union of India & Anr. v. K.G. Soni (2006) 6 Supreme Court Cases 794*** wherein it is held as under:

In Union of India and Anr. v. G. Ganayutham (1997 [7] SCC 463), this Court summed up the position relating to proportionality in paragraphs 31 and 32, which read as follows:

"The current position of proportionality in administrative law in England and India can be summarized as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury (1948 1 KB 223) test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU (1985 AC 374) principles.

(3)(a) As per Bugdaycay (1987 AC 514), Brind (1991 (1) AC 696) and Smith (1996 (1) All ER 257) as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts

will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

To put differently, unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."

13. Ld. Counsel for the respondent has also relied upon a case of ***Parents Forum for Meaningful Education & Anr. vs. Union of India & Anr:89 (2001) Delhi Law Times 705 (DB)*** wherein it is held as under:-

"4. According to the petitioners, infliction of corporal punishment upon children is inhuman. The petitioners challenge Rule 37(1)(a) and 37(4) of the Rules on the ground of the same being illegal, arbitrary and violative of Articles 14, 19, 21 and 39(e) and (f) of the Constitution.

7. The Preamble to the Convention on the Rights of the child reflects that the state parties thereto, recognising the importance of the Child considered the necessity of bringing up the child in the spirit of the ideals proclaimed in the Charter of the United Nations, particularly in the spirit of peace, dignity, tolerance, freedom, equality and solidarity. The Preamble recalls that in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance.

9. Article 19 of the Convention mandates the States Parties to take appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. Article 29 inter alia records the agreement of the States Parties for administering a system of education which develops the child's personality, talents and mental and physical abilities to the fullest potential, and the preparation of the child for responsible life in the free society in the system of peace, understanding and friendship among all people. The Convention under Article 37(a) declares that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Articles 39 and 40 recognise the right of the child to be protected from any form of neglect, exploitation, or abuse, or any other form of cruel, inhuman or degrading treatment or punishment and to be treated in a manner consistent with his sense of dignity.

At this stage it will be convenient to set out Articles 19, 29, 37, 39 and 40 of the Convention.

"Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation,

treatment, and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

xx xx xx

"Article 29

1. States Parties agree that the education of the child shall be directed to :

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the

observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

xx xx xx

"Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment, Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other

appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."

xx xx xx

"Article 39:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social re-integration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and re-integration shall take place in an environment which fosters the health, self-respect and dignity of the child.

"Article 40

1. States Parties recognise the right of every child alleged as, accused of , or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and desirability of promoting the child's re-integration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognised as having infringed the penal law by

reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and if appropriate through his or her parents or legal guardian, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians.

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and measures imposed in consequence thereof reviewed by a higher competent, independent and

impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and in particular:

(a) The establishment of a minimum age below which children shall be presumed not have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

10. Thus, in a nut shell the thoughts which pervade the various Articles of the Convention are basically protection of the child from all forms of physical or mental violence, injury, neglect, exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment and

adoption of means for the welfare of the child in every conceivable way and preservation of the dignity of the child.

11. The Government of India acceded to the Convention on December 11, 1992. National Policy on Education was modified in 1992 before acceding to it. It is significant to note that the National Policy is in tune with the Convention inasmuch as it is against imposition of corporal punishment. At this stage it will be convenient to set out para 5.6 of the Policy which envisions this approach. This para reads as follows:-

"Child-Centered Approach:

5.6 A warm, welcoming and encouraging approach, in which all concerned share solicitude for the needs of the child, is the best motivation for the child to attend school and learn. A child-centered and activity-based process of learning should be adopted at the primary stage. First generation learners should be allowed to set their own pace and be given supplementary remedial instruction. As the child grows, the component of cognitive learning will be increased and skills organized through practice. The policy of non-detention at the primary stage will be retained, making evaluation as disaggregated as feasible. Corporal punishment will be firmly excluded from the educational system and school timings as well as vacations adjusted to the convenience of children."

12. Thus, the policy makes it amply clear that corporal punishment is to be eradicated from the schools. It may be noted that provision for corporal punishment contained in Rule 37 is not in keeping with the goals set out in the National Policy on Education and the international convention. In case corporal punishment was conducive to education, the Convention on the Rights of the Child adopted by the General Assembly of the United Nations and the National Policy on Education would have been laudatory of the same and would have permitted it. Since physical punishment has a baneful

effect on the child and on his education, the Convention and the National Policy have not endorsed the same.

13. It seems to us that imposition of corporal punishment on the child is not in consonance with his right to life guaranteed by Article 21 of the Constitution. Right to life has been construed by the courts widely. On a larger canvass right to life includes all that which gives meaning to life and makes it wholesome and worth-living. It means something more than survival or animal existence. Right to life enshrined in Article 21 also embraces any aspect of life which makes it dignified. This view finds support from the various decisions in Munnabhai v. Union of India, 94 US 113; Smt. Maneka Gandhi v. Union of India and others, , State of Maharashtra v. Chander Bhan,; Kharak Singh v. State of U.P. ; C.Masilamani Mudaliar and others v. Idol of Sri Swaminathaswami Swaminathaswami Thirukoil and others, ; and Gian Kaur v. State of Punjab,

14. Article 21 in its expanded horizon confers medley of rights on the person including the following rights:-

- 1. A life of dignity.*
- 2. A life which ensures freedom from arbitrary and despotic control, torture and terror.*
- 3. Life protected against cruelty, physical or mental violence, injury or abuse, exploitation including sexual abuse.*

All these rights are available to the child and he cannot be deprived of the same just because he is small. Being small does not make him a less human being than a grown up. We are not mentioning other rights flowing from Article 21 as they are not relevant for the purposes of present petition. Article 21 makes no distinction between a grown up person and a child. Whatever rights are available to the former are also available to the latter.

15. *It also appears to us that corporal punishment is not keeping with child's dignity. Besides, it is cruel to subject the child to physical violence in school in the name of discipline or education.*

17. *According to the UNICEF's report titled "The State of World's Children 99, 40 million children hopped out of schools before reaching class V due to substandard learning situations.*

18. *Studies have also shown that spanking of children result in undesirable effects. They become withdrawn and exhibit anti-social behavior. Children who are ruled by the rod in school may acquire disdain and hatred for their teachers. Beating affects their concentration in studies and leads to development of fear psychosis towards learning. Fear of corporal punishment discourages regular attendance at schools and increases dropout rate. This obviously hampers and obstructs education and affects their right to education, which is a fundamental right flowing from Article 21. This dimension of Article 21 was recognised in Unni Krishnan J.P. and others etc. etc. v. State of Andhra Pradesh and others etc.etc, , wherein it was held that every citizen up to the age of fourteen years has a fundamental right to free education. Again in Miss Mohini Jain v. State of Karnataka and others, , it was held that right to education is concomitant to fundamental rights enshrined under Part III of the Constitution. While holding so the Supreme Court read directive principles which are fundamental in governance of the country into Article 21 on the ground that both the fundamental rights and directive principles are supplementary to each other and the State is under constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Besides, the Supreme Court emphasised the importance attached to education by noticing that right to education occurs in three Articles in Part IV. viz., Articles 41, 45 and 46, and two Articles in Part III viz., Articles 29 and 30.*

19. *The fall out of use of physical force on the children in schools by teachers defeats the very purpose for which it is applied. Infliction of bodily pain as penalty for indiscipline of the children at school may have different effects on different children. Some children may become submissive while others may learn that punishment is an accepted mode of ensuring compliance of one's wishes by others and that physical violence is an accepted means of exercising control over them. With the latter class of subjects, violence becomes means to acquire what they wish. Thus violence becomes an integral part of their lives. It is difficult to imagine the future of a nation whose children believe in violence for subjugating others or being submissive to force. Brutal treatment of children can never inculcate discipline in them. Obedience exacted by striking fear of punishment can make the child adopt the same tactics when he grows up for getting what he wants.*

21. *Child being a precious national resource is to be nurtured and attended with tenderness and care and not with cruelty. Subjecting the child to corporal punishment for reforming him cannot be part of education. As noted above, it causes incalculable harm to him, in his body and mind. In F.C.Mullin v. Administrator, Union Territory of Delhi and others, , the Supreme Court held that every limb or faculty through which life is enjoyed is protected by Article 21. This would include the faculties of thinking and feeling. Freedom of life and liberty guaranteed by Article 21 is not only violated when physical punishment scars the body, but that freedom is also violated when it scars the mind of the child and robs him of his dignity. Any act of violence which traumatises, terrorises a child, or adversely affects his faculties falls foul of Article 21 of the Constitution. In saying so we are also keeping in view the Convention on the Rights of the Child which in clear terms cast an obligation on the state party to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, maltreatment, torture, inhuman or*

degrading treatment, exploitation including sexual abuse while in the care of the parent, legal guardian or any other person who are in the care of the child. The signatory state is also obliged to protect the dignity of the child. We have relied upon the Convention in consonance with the decision of the Supreme Court in Bandhua Mukti Morcha v. Union of India and others, , wherein the Supreme Court relying upon the Convention on the Rights of the Child made use of the same and read it along with Articles 21, 23, 24, 39(e) and (f) and 46 to hold that it was incumbent on the State to provide facilities to the child under Article 39(e) and (f) of the Constitution. It was also observed that child cannot develop to be a responsible and productive member of the society unless an environment is created which is conducive to his social and physical health.

23. We are not impressed by the submission that the provisions of Rule 37(1)(a)(ii) and (4) is not violative of Article 21 as they allow infliction of light physical punishment on the students. To allow even minimum violence to children can degenerate into aggravated form. A teacher using the rod cannot every time be mindful of the force with which he may be hitting the child.

27. Before parting with the case we would like to observe that fundamental rights of the child will have no meaning if they are not protected by the State. In Bhajan Kaur v. Delhi Administration, 1996 III AD (DELHI) 333, it was recognised by this Court that State cannot be a mute spectator to the violation of the rights guaranteed to a person under Article 21 of the Constitution. The State must intervene to secure the rights to an individual. In Usuf Khan alias Dilip Kumar and others vs Manohar Joshi and others, 1999 S.C.C. (Cr.) 577, it was held that the State is obliged to protect law and the Constitution. In discharge of that obligation the State was directed to take action with a view to ensure adequate security cover and protection to the petitioners. Therefore, the State cannot derive any consolation from the fact that the violators

are schools and not the State. The State must ensure that corporal punishment to students is excluded from schools. The State and the schools are bound to recognise the right of the children not to be exposed to violence of any kind connected with education. The National Policy in tune with the Convention has adopted child centered approach, where corporal punishment has no place in the system of education. Even otherwise, India being a signatory to the Convention is obliged to protect the child from physical or mental violence or injury while the child is in the care of any person, may be educational institution, parents or legal guardian.

14. I have heard learned counsel for parties.

15. The petitioner admitted in his explanation dated 03.05.2008 that he should have restrained himself and sought to tender the apology for the same and promised that such thing would be repeated again.

16. The High Court/Tribunal while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty, unless it shocks the conscience of the High Court/Tribunal, in exceptional and rare cases where the disciplinary authority have imposed punishment without cogent reasons in support thereof.

17. The current position proportionality in administrative law in England and India as discussed in case of ***K.G.Soni (supra)***. The validity of any administrative order or statutory discretion is to be applied to find out if the decision of the disciplinary authority was illegal or suffered from any procedural improprieties or was one which no sensible decision-maker could, on the material before him and

within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him.

18. The position in our Country in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority.

19. To put differently, unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference.

20. Infliction of corporal punishment upon children is inhuman. The Preamble to the Convention on the Rights of the Child reflects that the State parties thereto, recognising the importance of the Child considered the necessity of bringing up the child in the spirit of the ideals proclaimed in the Charter of the United Nations, particularly in the spirit of peace, dignity, tolerance, freedom, equality and solidarity. The Preamble recalls that in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance.

21. Article 19 of the Convention mandates the States Parties to take appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.

22. The Convention under Article 37(a) declares that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Articles 39 and 40 recognise the right of the child to be protected from any form of neglect, exploitation, or abuse, or any other form of cruel, inhuman or degrading treatment or punishment and to be treated in a manner consistent with his sense of dignity.

23. The Government of India acceded to the Convention on December 11, 1992. The National Policy on Education was modified in 1992 before acceding to it. It is significant to note that the National Policy is in tune with the Convention inasmuch as it is against imposition of corporal punishment. Para 5.6 of the policy describes all concerned share solicitude for the needs of the child, is the best motivation for the child to attend the school and learn.

24. The UNICEF's report and studies have also shown that spanking of the children result in undesirable effects. They become withdrawn and exhibit anti-social behavior. Fear of corporal punishment discourages regular attendance at schools and increases dropout rates. This obviously hampers and obstructs education and affects their right to education, which is a fundamental right flowing from Article 21 of

the Indian Constitution.

25. The corporal punishment to a school child is barred by law. Any act of awarding corporal punishment to children, not to be taken lightly by the disciplinary authority. The punishment awarded to the petitioner in the present case is hence not disproportionate *vis-a-vis* charge levelled against him.

26. In view of above discussion and legal position, I find no discrepancy in the impugned order passed by the Tribunal and also find no disproportionate punishment given by the disciplinary authority against the petitioner.

27. Therefore, instant petition is dismissed with no order as to costs.

SURESH KAIT, J

JULY 03, 2012

Jg/MK