

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

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Date of Decision: 29.07.2013

+ W.P.(C) 4731/2013

ILHAM ZADI

..... Petitioner

Through: Mr Alamgir, Adv.

versus

JAMIA MILLIA ISLAMIA & ORS

..... Respondents

Through: Ms Jaya Goyal and Ms Manpreet Kaur, Advs.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

1. The petitioner before this Court is a student of respondent No. 1-Jamai Millia Islamia University and is pursuing his 4th year degree course in BDS. On 28.05.2013, he was found sitting in boys' common room and filling up some forms. A number of admission forms, loose photographs of students aspiring for admission in BDS course, ink pad and scotch tape were recovered.

2. A show cause notice dated 31.05.2013 was issued to him on the following allegations:

“ii. You were being helped in filling up the forms by Mr Shazeb, working for Royal Studio, although he was not allowed to go to the boy's common room. On enquiry, he admitted that you had called him to submit the forms of

the students in sequence so that they can also get the roll number in sequence to adopt unfair means in the coming Entrance Examination for BDS course. Mr Shazeb was also found having four forms, ink pad, cello-tape etc.

iii. You were found to be acting in conspiracy with Sh. Parwej Alam, first year student of MBBS of Jamia Hamdard, Rakesh Kumar, (4th year), Mukesh Kumar (4th year), Mukesh Kumar (4th year), Yashpal Nagar (4th year) and irregularities during the coming Entrance Examination for BDS course for illegal gratification.”

He was asked to explain why disciplinary action should not be initiated against him for the above misconducts and illegal conducts. He was asked to appear before the Disciplinary Committee of the University on 07.06.2013 at 3.00 PM and bring his reply in writing on the said date.

3. According to the petitioner, he submitted a reply dated 07.06.2013, responding to the show cause notice, but according to the learned counsel for the respondents, no such reply was received by the date and time stipulated in the show cause notice.

4. Pursuant to the said show cause notice an order dated 13.06.2013 was passed by the Chief Proctor of the University, expelling five students, including the petitioner from the University for a period of one year each. The said office order inter alia reads as under:

“WHEREAS it was noted with grave concern that five students of BDS Course namely Rakesh Kumar, 3rd year, Mukesh Kumar 4th year, Yashpal Nagar 4th year, Ilham Zaidi 03rd year and Israr Ali 2nd year were found indulging in using fraudulent means to get students admission in BDS course. They were acting in conspiracy with Sh. Parvez Alam, first year student of MBBS of Jamia Hamdard to use unfair means and irregularities during the coming Entrance Examination for BDS course for illegal gratification and also attempted to bribe the staff of Faculty of Dentistry. When they were caught, they confessed to the above act.

WHEREAS in the meeting of Disciplinary Committee held on 07.06.2013 all the students appeared and admitted their guilt. All the aforesaid acts committed by them are unbecoming of a student and are violative of guidelines 11 detailed in the Prospectus of the University, Students Handbook and of the Ordinance 14(1), 3(3.14) of Jamia Millia Islamia.

In view of the grave misconduct committed by these students, the Committee unanimously ordered that University cannot afford any attempt, which is made to threaten or disrupt the academic and disciplinary environment of the University. With a view to maintain highest standards of discipline, fairness in the examinations and quality of education, and on the recommendations of Discipline Committee, the Vice-Chancellor who is the Principal Academic and Executive Officer of the University enjoined by the Jamia Millia Islamia Act, 1988 to exercise general supervision and control over its affairs in terms of Statute 31, has expelled Rakesh Kumar, 3rd year, Mukesh Kumar, 4th year, Yashpal Nagar 4th year, Ilham Zaidi 3rd year and Israr Ali 2nd year for a period of one year with immediate effect.”

Being aggrieved from the order expelling him from the University for a period of one year, the petitioner is before this Court by way of this writ petition.

5. The plea taken in the writ petition is that on 27.05.2013, he had gone to the office of a teacher to get certain papers signed from him, but since the teacher had already left he came to the common room and while he was packing his papers in his bag, Yashpal Nagar, a 4th year student of BDS approached him and handed over two application forms of freshers known to Yashpal Nagar and papers for filing in the counter, stating that he was busy in OPD work. According to the petitioner, when he was putting his papers in the bag and was having two forms given to him by Yashpal Nagar, Dr. Tanveer and Mr Tofail accompanied by some known teaching members of the university entered the common room and asked him as to what he was doing . When the petitioner explained the matter to them, the forms given by Yashpal Nagar were snatched away from him and he was taken to the office of the Dean where Dr. Tanveer made him to write as per his dictation and handover the same to him. He has also alleged that he had gone to the meeting of the Committee on 07.06.2013 and submitted his reply but the same was not entertained and he was told that a decision in the matter had already been taken.

6. The case of the petitioner is that he has submitted the reply to the show-cause notice, but the same was not considered by the respondents. The case of the respondents, as stated by their counsel, is that no reply to the show-cause notice was submitted by the petitioner. The impugned order dated 13.06.2013 contains no reference to the reply alleged to have been submitted by the petitioner. The copy

of the reply filed with the writ petition does not bear any acknowledgement from the University. Had any such reply been actually submitted by the petitioner, he would certainly have obtained acknowledgment from the University. In case, the University refused to accept his reply, he would have written a letter to the University stating so in the letter and enclosing the reply to that letter. The petitioner had five clear days available to him between the date of show-cause notice and the office order dated 13.06.2013 passed by the University to send a copy of the reply to the University by post. No such course of action, however, was adopted by him. In these circumstances, the plea taken by the petitioner in this regard cannot be adjudicated in a writ petition.

7. On merits, the case of the University is that the petitioner along with some other students, was the member of a conspiracy to use unfair means in admission to the BDS course of the University. It is stated in the impugned order that all the students who had appeared before the Disciplinary Committee on 07.06.2013 had admitted their guilt. During the course of arguments, the learned counsel for the respondents produced the alleged admission of the petitioner, which finds reference in the impugned order dated 13.06.2013. The petitioner did not dispute that the said document is in his hand and bears his signature. A copy of this writing has been placed on record. The said document reads as under:-

“with due respect, I, Ilham Zaidi want to state that two days ago, one of my acquaintance met me at the Central canteen, whose name is Talha and have done schooling with me in Jamia Senior Secondary School While our conversation, he asked me if there is any how, one of his cousin could get admission in BDS course of IMI. As I had knew, that few of my classmates (Yashpal Singh, and Mukesh Kumar) are into these businesses since long. I gave him the phone number of Yashpal. They both met, and had a deal yesterday. I don't know anything about that, neither I was present at the site, but after the deal Talha called me to confirm and thank me for the favour. Today, I received a call from Yashpal saying there is some problem in submitting the forms, as he had to do patients due to his lack of patient quota. I was studying in library at that time, and as I am very image conscious, I called my cousin, Shazib, who works at Royal Studio, to submit the form, as I myself would have felt humiliated in doing some. He came back saying that due to certain errors this form cannot be submitted, I gave it to Israr Ali (2ne year BDS), from whom I had collected them, on behalf of Yashpal. I, was explaining Israr that the forms could not be submitted due to these reasons, and in the time, I was seen by Dr. Tanveer & Mr Tufail Ahmad, sitting on round table in common room with Israr and Shzib.”

8. Though the petitioner has claimed that the aforesaid writing given by him was not voluntary and it was a professor of the University, namely, Dr. Tanveer, who dictated the contents of the said writing to him, he has not chosen to implead Dr. Tanveer as a party to the writ petition. During the course of hearing, I asked the petitioner as to whether Dr. Tanveer had any kind of animosity with him. No such animosity, however, was imputed by him to Dr. Tanveer. Moreover, there is

no communication from the petitioner to the University alleging therein that Dr. Tanveer had induced/pressurized him to give the said writing and had dictated its contents. Therefore, the plea taken by the petitioner in this regard appears to be just an afterthought and cannot be accepted.

It is an admitted case of the petitioner that two forms of the candidates seeking admission to BDS course were found in his possession, having given to him by one Yashpal Nagar. A perusal of the written statement given by the petitioner to the University would show that he had referred one Talha, who was previously known to him and was seeking to get admission in BDS course to his classmates Yashpal Singh and Mukesh Kumar, who, to his knowledge, were in the business of facilitating admission in the said course and also provide phone number of Yashpal to him. He also stated that the forms referred by him were collected by him from Israr Ali, a second year student of BDS and he had called his cousin to submit the said forms since he would have felt humiliated in doing so himself. This written statement given by the petitioner would show that he had facilitated attempt to obtain admission in BDS course of University through use of unlawful means. He knew that Yashpal Singh and Mukesh Kumar were engaged in the business of facilitating such admissions and knowing that he referred his acquaintance Talha to them and also provided telephone number of Yashpal to him. He then also collected the forms from another student Israr Ali. Obviously, the

petitioner was also engaged in the business of facilitating admission through unauthorized channels in connivance with Yashpal and Mukesh Kumar. Primarily, it is for the University and not for the Court to decide whether the act committed by a student of the University was an act unbecoming of a student and amounted to use of unfair means and irregularities for the purpose of facilitating admission to the University. The Court cannot interfere with the decision taken by the university in this regard, unless it is shown that the decision is wholly arbitrary, irrational and capricious, bordering on perversity. That, however, is not the case here. It can hardly be disputed that such acts are bound to tarnish the image of the University besides facilitating use of unlawful means for getting admission to the University. Therefore, the decision taken by the University cannot be said to be so arbitrary, irrational or illogical as to call for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution.

The writ petition is devoid of any merit and is hereby dismissed.

V.K. JAIN, J

JULY 29, 2013

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