

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

Judgment Reserved on: February 11, 2014

% *Judgment Delivered on: February 20, 2014*

+ **LPA 962/2013**

TAUHEED MOHAMMAD Appellant
Represented by: Mr.M.K.Bhardwaj, Advocate

versus

JAMIA MILLIA ISLAMIA UNIVERSITY
& ORS Respondents
Represented by: Mr.M.A.Siddiqui, Advocate
with Ms.Jaya Goyal,
Advocate with Mr.Masood Alam,
Proctor.

LPA 80/2014

MOHD ARSALAN Appellant
Represented by: Mr.Ashok Agarwal, Advocate with
Mr.M.K.Bhardwaj, Mr.Salar
M.Khan and Ms.Sridevi Panikkar,
Advocates.

versus

JAMIA MILLIA ISLAMIA UNIVERSITY Respondent
Represented by: Mr.M.A.Siddiqui, Advocate
with Ms.Jaya Goyal,
Advocate with Mr.Masood Alam,
Proctor.

LPA 81/2014

SALMAN HASAN Appellant
Represented by: Mr.Ashok Agarwal, Advocate
with Mr.M.K.Bhardwaj,
Mr.Salar M.Khan and
Ms.Sridevi Panikkar, Advs.

versus

JAMIA MILLIA ISLAMIA UNIVERSITY Respondent
Represented by: Mr.M.A.Siddiqui, Advocate
with Ms.Jaya Goyal, Advocate
with Mr.Masood Alam,
Proctor.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. The appellants are students of the respondent University. Tauheed Mohammad, the appellant in LPA No.962/2013 is a student of M.Tech. Mohd.Arsalan, the appellant in LPA No.80/2014 is a student of BDS. Salman Hasan, the appellant in LPA No.81/2014 is a student of B.Arch. All three were in the second year of study for the degree course they were pursuing. Whereas Tauheed Mohammad has been expelled from the University for a period of two years, Mohd.Arsalan and Salman Hasan have been expelled for a period of one year. All three have been permanently debarred from seeking admission in the hostel of the University.

2. The penalty imposed upon all three is by a common order dated November 28, 2013.

3. WP(C) No.7647/2013 filed by Tauheed Mohammad has been dismissed in limine by the learned Single Judge vide order dated December 05, 2013, WP(C) No.242/2014 and WP(C) No.251/2014 filed by Mohd. Arsalan and Salman Hasan respectively have been dismissed by a common order dated January 16, 2014.

4. On the intervening night of November 01 and November 02, 2013, pamphlets and posters were distributed in the hostel of the respondent

University. As per the respondent the pamphlets contained objectionable material bound to hurt the sentiments of Muslim community professing Shia faith. Prior thereto, on October 26, 2013 one Sheikh Mohammed Rahmani Madani had delivered a speech in the precincts of the campus of the University without prior permission from the university authorities and as per the respondent the speech had contained an objectionable reference to members of the Shia community.

5. On November 05, 2013 a show cause notice was issued and served upon the appellants alleging as under:-

“Complaints have been received that on 2nd November, 2013 certain posters were plastered around the Sindhi Hostel in the campus of the University. Information was also received that a number of hand-bills (to the said effect) were distributed by some of the students amongst their colleagues. The contents of the said posters/hand bills contain material which seek to create a wedge and rift amongst various religio-sections of the student community. These irresponsible acts of distribution and plastering of these posters/hand bills had a deleterious impact of disharmony amongst the various religious groups on the campus. The consequences of such actions can be disastrously fateful, and are bound to disturb the stability on the campus which has been carefully nurtured by the concerted efforts of the University administration.

The Provost along with his team made an inquiry into the said incident, and it has been identified that the following three students were involved in these activities:-

- 1. Tauheed Mohammad, M.Tech-II, S.R.K.Hostel*
- 2. Mohd.Arsalan, BDS-II, Allam Iqbal Hostel*
- 3. Salman Hasan, B.Arch-II year, F.R.Khan Hostel.*

The chief Proctor and the Vice-Chancellor of

Jamia Millia Islamia have been contacted by concerned teachers and students who have anxiously expressed displeasure and consternation at this uncalled for and unjustified activity.

The Vice-Chancellor under the provisions of Clause 4 of Ordinance 14 titled 'Students Discipline' has been constrained to suspend the erring students during the pendency of disciplinary proceedings against them.

Now therefore, Shri Tauheed Mohammad of M.Tech. Nanotechnology-II year is hereby called upon to explain as to why appropriate punishment should be not be imposed upon him for the above and misconduct for having acted in violation of Ordinance 14(2) (2.1), (3) (3.2) (3.6) (3.7) (3.10) (3.14) read with Statute 31 of Jamia Millia Islamia Act, 1988. Your explanation, in writing, must reach the undersigned by 11.11.2013, failing which it shall be validly presumed that you shall have nothing to say in your defence. Furthermore, you are hereby intimated that the disciplinary authority may require your presence before the Discipline Committee (the date, timing and place of which shall be notified to you."

6. It is apparent that it was alleged against the appellants that they were the ones who had plastered posters in the campus of the University and had distributed hand-bills containing material which seek to create a wedge and rift amongst various religio-sections of the student community.

7. The appellants sent a reply denying having plastered posters or having distributed hand-bills.

8. A supplementary show cause notice was issued to the appellants on November 07, 2013 pertaining to the speech delivered by Sheikh Mohammed Rahmani Madani on October 26, 2013. The same reads as under:-

"SUPPLEMENTAL SHOW CAUSE NOTICE

This supplemental Show Cause Notice is in continuation of the Notice issued earlier bearing F.No.59/CPO/JMI/2013 dated 5.11.2013.

It has also been brought to the notice of the Vice-Chancellor that, in addition to Messers Tauheed Mohammed (M.Tech-II yr.), Mohd.Arsalan (B.S.D-II yr.) and Mohd.Salman Hassan (B.Arch-II yr) one Mr.Mohd.Faheem Akhtar (Dipl.Elect.II yr) also committed the misconduct(s) as incorporated in the earlier Show Cause Notice (dated 5.11.2013), for which a separate Notice is being issued upon him. It has also been revealed that, all the above mentioned suspended students, invited a speaker Mr.Sheikh Mohammed Rahmani Madani, (an outsider) without any due authorizations/permissions, who delivered a religious discourse on 26.10.2013 at around 5.30 p.m. in the T.T. room of the Obaidullah Sindhi hostel. The said Sh.madani raised controversial and disturbing issues in his discourse, prejudicial to tranquility in the Campus and deeply hurt the religious sentiments of the inmates of the hostel as also of those who are a part of the Jamia. The fact that an outsider was invited in the hostel without any permissions, that he delivered a discourse/speech which was offensive to certain sections of the Jamia community, and the consequences of which could have been disastrous had the university administrators not acted with alacrity are serious misconducts committed by you.

The other contents/recitals of earlier show cause notice (dated 5.11.2013) are not being repeated herein for the sake of brevity, and the same should be read as per of this Supplemental Show Cause Notice as well. It is clarified that your explanation/defence (in writing) to the earlier Show Cause and the present Notice must reach the undersigned by 18.11.2013 (and not be 11.11.2013 as mentioned earlier) failing which it shall be validly presumed that you have nothing to offer in your

defence. The other facts/conditions, as incorporated in the earlier notice remain unchanged.”

9. The appellants denied the charge.
10. On November 13, 2013 the appellants were directed to appear before the Disciplinary Committee of the University at 3 P.M. on November 13, 2013 in connection with the aforementioned two notices.
11. The appellants were heard. Order dated November 28, 2013 was passed. It reads as under:-

“OFFICE ORDER

The matter pertaining to plastering and distributing posters/handbills containing material which had the impact of creating disharmony amongst various religious groups on the Campus and inviting an outsider to deliver a divisive religious discourse (without any permission whatsoever) in the hostel was considered by the Committee. It was noted that all the errant students had been issued Show cause Notices. Their replies were on record and were duly considered. For purposes of brevity, the substance of the complaints is not repeated in this Order (being part of the records). The Committee also perused the plastered posters/handbills (copies of which were made available to the Committee by the Chief Proctor).

All the Noticees have denied their involvement in the incidents.

The Provost who was present in the Committee has, however, identified that Messers Tauheed Mohammad, M.Tech.II yr. Mohd. Arsalan, B.D.S. II yr., Salman Hasan, B.Arch.-II yr. Md.Faheem Akhtar, Dip.Electrical-II year were involved in the distribution and plastering of the objectionable material, and inviting an outsider to deliver a sermon controversial as it was, it also hurt the religious feelings of others. He had made his inquiries and following careful deliberations with the

students as also staffers had been able to pin point the names of the errant students.

The committee members also pointed out that many teachers and students had contacted them expressing displeasure and deep anguish at the said condemnable incidents.

Jamia has always professed perfect secularism and universal tolerance. Religion and faith was never used as an instrument to isolate a particular religious section or entity. Practices, traditions, culture and ethos of every group of society needs to be respected. The greatness of this University was (and is) that it embraced wholeheartedly groups professing diverse beliefs and faith. Attempts made to create a wedge, on religious/sectarian lines, are unacceptable. Such nefarious attempts strike at the very roots of this premier institution of learning. The members were of the unanimous view that such misconducts cannot be endured Humanism and tolerance for others is the basic password of every individual, and educational institutions (like Jamia Millia Islamia) have to be role models.

Consequently, Mr.Tauheed Mohammad, (M.Tech.IInd yr.) who has also indulged in another misconduct pertaining to organizing a programme in the Hall of Boys Campus on 04.05.2013 by involving the outsiders without seeking permission from Provost/Warden and pasting several posters forcibly on hostel doors/walls for the above programme, is expelled for a period of two years, Messers Mohd.Arsalan (B.D.S. IInd yr.) Salaman Hasan (B.Arch, II yr.) and Md.Faheem Akhtar (Dip.Electrical-IInd yr) have been expelled for one year. However, all of them are debarred from seeking seats in the hostels managed and administered by the Jamia forever.”

12. The impugned decisions passed by the two learned Single Judges of this Court would evidence that the case of the appellants before the

learned Single Judge was that there was no material before the University to show that the appellants had invited Sheikh Mohammed Rahmani Madani or had pasted posters or distributed hand-bills and secondly even if it was presumed against the appellants that they had distributed hand-bills and pasted the posters, there was nothing offensive therein.

13. With respect to the second plea the learned Judges have noted that the contents are objectionable and would hurt the feelings of a particular sect of the Muslim community. The learned Judges have refrained from reproducing the contents thereof.

14. As regards the first argument, the learned Single Judges have noted that as recorded in the impugned order dated November 28, 2013, the Provost along with the Assistant Provost had made inquiries from students and that the record would establish that the Provost have submitted a report to said effect that students in the hostel room had informed the Provost that the appellants had distributed the hand-bills and had plastered the objectionable pamphlets.

15. We note at the outset that neither learned Single Judge who decided the three writ petitions had discussed any evidence available with the University pertaining to the charge against the appellants that they had invited Sheikh Mohammed Rahmani Madani in the University to deliver a lecture on October 26, 2013.

16. We have perused the offending pamphlets and posters and concur with the view taken by the Disciplinary Committee of the University as also the learned Single Judges that the contents lampoon the members of the Shia community and there is a derogatory reference to the faith professed by members of the Shia community. There are insinuations against members of the Shia community that they follow a path of life

and religious beliefs which are contrary to the tenets of Islam.

17. On the subject of evidence against the appellants that they had distributed the offending hand-bills and had plastered the posters, the same is in the form of a report of the Provost as per which the Provost and the Assistant Provost had made discreet inquiries and some students had informed them of having seen the appellants distribute the hand-bills.

18. No malice has been alleged against the Provost or the Assistant Provost and the question therefore would be : Why would the two submit false reports?

19. The question loomed large when learned counsel for the appellants made their submissions and learned counsel had no answer. Indeed, there can be no answer. Unless the Provost and Assistant Provost had an axe to grind they would not submit false reports against the appellants. We note that qua appellant Tauheed Mohammed there was a past instance when on May 04, 2013, without permission from the Provost or the Warden he had involved outsiders in plastering posters on the doors and walls of the Hall of Boys Campus.

20. It was urged that the University could have examined such students who had told the Provost, as claimed by him in his report, that the appellants were seen by them distributing hand-bills and plastering posters on the walls within the precincts of the hostel in the University.

21. In other words, the argument was that a full-fledged inquiry ought to have been conducted by leading primary evidence.

22. Now, situations may warrant not to hold regular inquiries and especially in cases where neither public interest nor public good requires full-fledged inquiries because situations may be such. We highlight that

when inquires concern communally sensitive issues, one has to be discreet and circumspect. Further, to have an element of deterrence it may be necessary to take prompt action. The shrill cries which we hear in newspapers pertaining to penalties levied for offences, is that delayed penalties levied do not have the salutary effect of setting examples to others. It is trite that purpose of a penalty is twofold. To punish a wrong doer. To act as a deterrence to others.

23. In Universities, students assembled to study and not to indulge in such activities which vitiate the congenial atmosphere in the University. When communal issues are raised in Universities, sometimes not taking prompt action may result in the trouble spreading and the situation worsening and at times becoming uncontrollable. Not taking prompt action may also be construed by the trouble-makers as a sign of weakness on the part of the authorities and thus encourage them to step up the tempo of their activities. Prompt action taken has an element of deterrence and thus is the unavoidable and necessary concomitant of an action resulting from a situation which is not of the creation of the authorities.

24. Thus, in matters of discipline a distinction has to be drawn where a wrong is of a kind which does not fester unrest and a kind of a wrong which festers unrest. The sweep of the span of principles of natural justice i.e. hearing has to be measured by the nature of the allegations and there can be no straightjacket formula.

25. In the instant case principle of natural justice and minimum fairness recognized by a civil society have been followed. The appellants have been put to notice of what is alleged against them. Written response was received. The appellants were given a hearing by the Disciplinary

Committee. There is evidence in the form of the report of the Provost.

26. We are satisfied that there is enough material against the appellants pertaining to the offending activity of distributing hand-bills and plastering posters. There is no material, even in the form of a report, that the appellants had invited Sheikh Mohammed Rahmani Madani to deliver a lecture without the permission of the University and further we do not have the contents of the lecture allegedly delivered. This aspect of the matter has been overlooked by the two learned Single Judges.

27. To conclude, we find against the appellants allegation being proved concerning the show cause notice dated November 05, 2013 but not the supplementary show cause notice dated November 07, 2013.

28. It is apparent that the two indictments have influenced the decision taken by the Disciplinary Committee and thus corrective action needs to be taken.

29. We have two options. The first is to call upon the Disciplinary Committee to pass fresh orders levying penalty. The second to do the needful ourselves.

30. The penalty levied upon the two appellants is expulsion from the University for one year. The penalty commences from the date of the order which is November 28, 2013. This would mean that appellants Mohd.Arsalan and Salman Hasan would be prohibited from attending the course which they had joined till November 28, 2014. In effect, the penalty would have effect for two years for the reason the course semesters starts in the month of July each year. The two were to take the annual examination pertaining to the second year of their study in April-May, 2014. The next examination which they can take would be in April-May, 2015. If the penalty is upheld the two appellants would have

a problem with attendance and they would in all probability become ineligible to take the examination which would be held in April-May, 2015. They would not be able to rejoin the course in the second year in July, 2014. This aspect appears to have been overlooked by the Disciplinary Committee.

31. Thus, vis-a-vis appellant Mohd.Araslan and Salman Hasan we dispose of LPA No.80/2015 and LPA No.81/2014 substituting the penalty of expulsion by limiting it to the current academic year and make it expressly clear that the two would be entitled to rejoin the University when the academic session recommences in the month of July, 2014.

32. As regards appellant Tauheed Mohammed, we find that he had indulged in a similar objectionable activity in the past. But we find that he is a student of M.Tech. and was in the second year of the study. The course being for two years, it would be unjust to expel him for two years, for effectively this would mean that he loses not only the current academic year but even the next two and for which we need not repeat the reasons noted in paragraph 30 hereinbefore. Thus, as regards him we dispose LPA No.962/2013 substituting the penalty of expulsion limited to the current academic year and make it expressly clear that he would be entitled to rejoin the University when the academic session recommences in the month of July, 2014.

33. As regards permanent expulsion from the hostel, we are of the opinion that without disturbing the penalty we should only request the Vice-Chancellor of the University to re-consider granting them hostel accommodation when the next academic session commences if the appellants agreed to furnish good conduct bond.

34. In this regard we must note that learned counsel for the appellants

had cited a decision dated September 14, 2010 allowing WP(C) 1687/2008 Akhlaque Ahmed Khan vs. Jamia Millia Islamia passed by a learned Single Judge which held that a punishment of rustication forever from the University is beyond the powers of the University authorities because Statute 31 of the respondent University vide sub-statute (3) thereof expressly limits the power for the period of rustication evidenced by the phrase '*be expelled or rusticated for a specified period*'. The decision would have no application to denial of seat in a hostel for the reason the decision concerned Statute No.31. Besides, permanent rustication would mean the end of the career. Permanent debarring from a hostel seat does not mean end of the career. The student can study in the University but not reside in the campus. There may be situations where it may be inadvisable or to put it differently it may be in the interest of the University not to have a student residing in the precincts of the hostel campus.

35. The appeals are partially allowed. The impugned order dated November 28, 2013 is modified as per paragraphs 31, 32 and 33 above.

36. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

FEBRUARY 20, 2014
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