

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

Judgment reserved on: 05.11.2015
% Judgment delivered on: 17.11.2015

+ **WP(C) 9862/2015**

SIDDHARTH JAIN

..... Petitioner

Versus

SHAHEED SUKHDEV COLLEGE OF BUSINESS
STUDIES & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr R.K. Kapoor, Ms Astha Nigam & Mr Sai Jyotsna, Advocates

For the Respondent: Mr Amit Bansal, Ms Manisha Singh, Ms Seema Dolo & Mr Akhil
Kulshrestha, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

WP(C) 9862/2015 & CM No. 23813/2015

PREFATORY FACTS

1. This is a second round of litigation initiated by the petitioner. The petitioner, who is a young adult, approximately, 20 years of age, has approached the court, for the second time. In the first round, he had filed the petition, which was numbered as: WP(C) 7891/2015. The said writ petition was disposed of vide order dated 16.09.2015.

1.1 At that stage, a show cause notice was issued by the Disciplinary Committee, which remained to be adjudicated upon at that relevant point in time. Accordingly, the writ petition was disposed of, giving liberty to the petitioner to take recourse to an appropriate remedy, albeit in accordance

with law, in case, he remained aggrieved by the decision of the Disciplinary Committee.

1.2 Since then, the Disciplinary Committee appointed by respondent no.1 i.e. Shaheed Sukhdev College of Business Studies (hereafter referred to as the College), has adjudicated upon the show cause notice and given its recommendations. Based on these recommendations, respondent no.2 i.e. the Principal of the college, has taken a decision in the matter.

2. It is in this context, that the instant writ petition was filed, to begin with, to challenge the order passed by the Principal of the college. The impugned order by itself does not carry any date, though it is accompanied by a covering letter dated 29.09.2015, addressed by the college, under the hand of the Administrative Officer, to the petitioner herein.

3. Briefly, the Disciplinary Committee found the petitioner guilty of the charges levelled against him and, therefore, recommended that the petitioner be debarred for two years: from entering the college premises, attending classes, from participation or representing the college in any of its activities, and to appear in the university/ college examinations.

3.1 The Principal of the college, as indicated above, vide the impugned order has accepted, in substance, the recommendations of the Disciplinary Committee save and except qua the quantum of punishment. The Principal has reduced the period of debarment to one year, as against two years, recommended by the Disciplinary Committee.

4. It is in this backdrop, that the petitioner has approached this court to assail the Principal's order. However, it must be noted, at the very outset, that even prior to the passing of the impugned order, on 23.09.2015, the petitioner submitted a letter to the Principal whereby, he accepted his guilt and tendered an apology.

5. Notice in this petition was issued on 16.10.2015, which was made

returnable on 05.11.2015. Since then, two affidavits, dated 31.10.2015 and 05.11.2015, have been filed by the petitioner. Simply put, these are affidavits of apology filed by the petitioner.

5.1 At the hearing held on 05.11.2015, the petitioner was present. Mr. Kapoor, who appeared for the petitioner, made submissions, broadly, to the effect, that the petitioner, accepts his guilt and that, therefore, his submission was restricted only to the quantum of punishment. Mr Kapoor submitted that the petitioner, once again, tenders his unconditional apology in respect of misdemeanour qua which he has been found guilty.

5.2 To be noted, hereafter, for reasons of privacy, I would be referring to the victim i.e. the student qua whom the misdemeanour was committed as 'M'.

6. With this preface, let me etch out, the broad facts, which obtain in the matter as recorded in the Disciplinary Committee's report. The petitioner, who is a student of class BBS IInd E, was given the role of a "buddy" [i.e. a student escort], under a United Kingdom (U.K.) Study India Programme, 2015 (in short the, "study programme").

6.1 The study programme, evidently, is a British Council initiative, in which, the college, has been participating for nearly three years. As a part of the study programme, this year, students from U.K. visited India for a period of three days.

6.2 For the current year, an entity known as Indogenius (which was the delivery partner for British Council), sent thirty (30) students to the college under aforementioned Study Programme. The visiting U.K. students were in the college between 28th-30th July, 2015. As indicated above, each U.K. student was assigned a buddy, by the college. The U.K. students, as also their buddies, were present in the college all through out during the period indicated above and thus, were engaged in structured activities between

10.a.m. to 3.00 p.m. on each of the aforementioned dates. As a part of their curriculum, they were not only involved in workshops, but were also taken to the Dilli Haat at INA, New Delhi.

6.3 Evidently, on 30.07.2015, the Principal of the college received a complaint from Indogenius qua the petitioner, who was appointed as “buddy” to one of the visiting students.

6.4 Evidently, on 28.07.2015, the students from U.K. arrived at the college at about 10:15 a.m., whereupon a buddy was assigned by the college qua each of the visiting students, including M. As indicated above, M was assigned to the petitioner.

6.5 It appears within half an hour of petitioner’s interaction with M, he had asked her, inappropriate questions, which included, questions as to the number of boyfriends she had and, as to whether, she had had multiple sexual partners.

6.6 Apparently, the petitioner also offered to take M for a car ride, in the evening, contrary to the red-lines laid down by the college. Evidently, the petitioner, at some point in time, steered M to a secluded area, in the BMS Block of the college and, despite her resistance, kissed her on her lips.

6.7 On 29.07.2015, the petitioner, apparently, addressed somewhat similar, albeit, inappropriate questions to another visiting student while she was at the Dilli Haat.

6.8 There are, however, no details available in the record with regard to the second student and the kind of questions which were asked.

7. On 30.07.2015, the college received an oral complaint from Indogenius against a student volunteer of the college, who, on enquiry was identified as the petitioner.

7.1. Consequently, two teachers, Dr. Anuja Mathur and Ms Sonika Thakral, who were the designated, teachers incharge, qua the study

programme, were directed, to carry out a preliminary investigation in the matter.

7.2 As a part of this process, on 30.07.2015, the Principal forwarded the complaint to Dr. Anuja Mathur.

7.3 Evidently, on 30.07.2015, itself, Dr. Anuja Mathur spoke with the petitioner.

7.4 M, on her part, confirmed the facts adverted to, in the complaint. Dr Anuja Mathur was, in fact, informed by M that the petitioner, as indicated above, had addressed similar, albeit, inappropriate questions to another visiting student on 29.07.2015, while she was at Dilli Haat.

7.5 On that very date, M, along with the U.K. student co-ordinator met the Principal and recounted the entire incident to her in the presence of Dr. Anuja Mathur and Ms Sonika Thakral.

7.6 Independently of Dr. Anuja Mathur, on 30.07.2015, the petitioner, evidently, had admitted to Ms Sonika Thakral, as well, that he had kissed M, on her lips, on 28.07.2015.

7.7 Apparently, in the process of investigation, Dr. Anuja Mathur, on 30.07.2015, had telephonically asked the petitioner to provide the phone number of his father. The petitioner, it appears, provided the phone number of his friend, who pretended to be petitioner's father. The fact that the petitioner's friend had impersonated as his father got revealed on 30.07.2015 when, his father met with the Principal, Dr. Anuja Mathur and Ms Sonika Thakral. The father of the petitioner, it appears, at that meeting, stated that he was aware of the whole incident and was extremely ashamed of the conduct of the petitioner.

7.8 The petitioner, evidently, on 30.07.2015, enquired from Dr. Anuja Mathur as well as Ms Sonika Thakral as to what would be the consequences of his action. The Petitioner, it appears, also expressed his willingness to

tender his apology to M.

7.9 The petitioner, evidently, also spoke to the representative of Indogenius in the presence of Dr Anuja Mathur when, he was told, that his behaviour was unacceptable, and that, at the request of M, no written complaint had been made. The representative of the Indogenius told the petitioner that M had, however, verbally communicated the incident to the head of the institution.

8. It is, in the background of the aforesaid, that a Disciplinary Committee was set up, comprising of six persons.

8.1 The Disciplinary Committee, notably did not include Dr. Anuja Mathur and Ms Sonika Thakral.

8.2 In the meeting of the Disciplinary Committee, held on 26.08.2015, the petitioner appears to have detailed out the sequence of events, which occurred according to him, on 28th and 29th July, 2015.

8.3 I must indicate herein that the petitioner had sent two emails to the college, which are dated 5th and 6th August, 2015. In these emails, the petitioner gave his version of the events. The events, as put down by the petitioner, made no reference to the incident with respect to which the complaint had been made.

8.4 Before the Disciplinary Committee though, the petitioner accepted the fact that he had provided Dr. Anuja Mathur, his friend's phone number, who pretended to be his father. In respect of this, the petitioner offered his apology to the Disciplinary Committee. The petitioner, apparently, justified this action by stating that he got the impression that his father was being called to the college on account of his absence on 30.07.2015, and that, he thought, it was a trivial issue for which he ought not to trouble his father. The petitioner, though, denied all allegations made against him. He also indicated that he was unaware that there was a complaint made against him,

at the point in time when, he was called to the college, on 30.07.2015.

8.5 As a matter of fact, the petitioner stated that he had met M, at Dilli Haat, while she was busy buying a saree. There was, evidently, a contradiction in the stand of the petitioner as he also admitted to having spoken to M on 30.07.2015, who, he said, had assured him that she would not institute a written complaint against him. The petitioner, also, took the stand that he was being victimized by the college administration and the faculty, and that, the entire case against him was fabricated.

9. The Disciplinary Committee, after taking note of the written statements filed by Dr. Anuja Mathur and Ms. Sonika Thakral, came to the conclusion that the petitioner had made inappropriate inquiries from M and had also kissed her on her lips, despite, resistance. The Disciplinary Committee's conclusion was based on M's narration of events to Dr. Anuja Mathur as well as to Ms Sonika Thakral, at the meeting held in the Principal's office where, the Principal, Dr. Anuja Mathur and the student Co-ordinator were present.

9.1 The conclusions reached by the Disciplinary Committee in its report are as follows:

“..... **Conclusions:**

The first hand information by the complainant to Dr. Anuja Mathur which subsequently was reported in writing by Dr. Anuja Mathur to the committee is perceived as the written complaint by the complainant herself.

The fact that the complainant has narrated the entire incident in detail in the presence of the Principal Dr. Poonam Verma, Dr. Anuja Mathur and Ms Sonika Thakral leaves no doubt in the minds of the Committee members that Siddharth Jain is guilty of the complaint.

Siddharth Jain stating that he is being framed by the complainant, the British Council, the delivery partners Indogenius, college authority and two faculty coordinators

has absolutely no basis. The committee finds no reason to believe as to why the above mentioned would try to frame him.

Siddharth Jain's behaviour suggests that his intentions from the beginning itself were questionable since the incident took place within half an hour of the arrival of the UK Delegates on 28th July 2015.

The Committee feels that any practice- whether verbal or otherwise- derogatory of woman is unacceptable, more so since this is an educational institution.

UK Study India Programme was initiated for the benefit of the college students. Such an indecent behaviour being reported by Indogenius and the British Council may jeopardize such initiative and lead to discontinuation of such partnership in future.

Siddharth Jain's indecent behaviour has not only embarrassed the institution, the University but also harmed the reputation of the country in the eyes of foreign delegates.

In light of the documents produced before the Committee and deliberations, the Committee feels that Siddharth Jain is guilty of the complaint.....”

9.2 Based on the aforesaid conclusions, the Disciplinary Committee made the following recommendations:

“....Recommendation:

Despite being guilty, Siddharth Jain's complete denial of the charges without having any remorse or repentance of his act and alleging the complainant, the British Council, the delivery partners Indogenius, college authority and the two faculty coordinators of framing charges against him, the committee is left with no option but to recommend to the Principal that:

Siddharth Jain may be debarred from college for a period of two years with immediate effect. During this period Siddharth Jain may not be allowed:

To enter the college premises

To attend classes

To participate or represent in any of the activities of the college

To appear for the University/ college Examinations.....”

9.3 As indicated, at the outset, the report of the Disciplinary Committee was placed before the Principal. The Principal vide the impugned order, while accepting the recommendations and the conclusions reached therein, has reduced the quantum of punishment to one year.

SUBMISSIONS OF COUNSELS

10. It is in the aforesaid background, that arguments on behalf of the petitioner were addressed by Mr. Kapoor, while on behalf of the college, submissions were advanced by Mr Bansal.

11. Mr. Kapoor, on his part, argued that the petitioner should be dealt with leniently having regard to his young age. Learned counsel submitted that any other approach would completely obliterate his career and his dignity, which may inculcate resentment and derision towards the society as a whole.

12. Mr Bansal, on the other hand, relied upon the impugned order passed by the principal. It was learned counsel’s submission that the impugned order balanced, in a sense, the interest of the institution, and that, of the petitioner. It was contended by the learned counsel that the punishment of debarment for a period of one year had to be imposed as it was necessary to deter other students from indulging in misdemeanour(s) such as the one the petitioner had indulged in. The learned counsel emphasised that, apart from anything else, the reputation of the institution and the country was also at stake which had been marred by the petitioner’s conduct. In support of his submission, Mr Bansal relied upon the judgement of the Supreme Court in the case of *Deputy Inspector General of Police and Anr. Vs. S. Samuthiram*, (2013) 1 SCC 598.

REASONS

13. Having heard the learned counsels for the parties, and examined the record, it is quite clear that the petitioner was clearly involved in the act of misdemeanour, qua which an inquiry was held against him. The inquiry was both fair and impartial. The petitioner was given due opportunity to defend himself. The record also shows that the petitioner did, initially, attempt to deny the charge levelled against him.

13.1 Therefore, quite clearly, no fault or error can be found either in the manner in which the Disciplinary Committee dealt with the matter or with the approach adopted by the Principal. As a matter of fact, the Principal vide the impugned order has reduced the quantum of punishment. In doing so, the Principal has taken into account the letter of apology dated 23.09.2015, tendered by the petitioner. The impugned order, however, not only debars the petitioner from entering the college for a period of one year but also debars him from taking university and college exams for the academic year 2015-2016.

14. The issue, therefore, which arises for consideration is : whether or not the punishment imposed by the impugned order is excessive having regard to the age of the petitioner. The petitioner clearly falls in the category of young adults, who had crossed the age of juvenility, but was less than 21 years at the time when, the misdemeanour, was committed. It is widely recognized that younger the age of the offender, the lesser is its culpability.

14.1 In *Thompson Vs Oklahoma, 487 U.S. 815 (1988)*, the U.S. Supreme Court considered the culpability of a young offender in the context of death penalty. The court was called upon to consider whether the State had violated the 8th Amendment which placed prohibition on “cruel and unusual

punishments” by seeking to execute an offender for heinous murder, he had committed when he was 15 years old. By a majority decision, the court while overturning the capital sentence concluded that “a young person is not capable of acting with degree of culpability [as an adult] that can justify ultimate penalty.”

14.2 The age of responsibility has been fixed at different levels in different statutes, even in our country. While under Section 82 of the Indian Penal Code, 1860 (in short the IPC), nothing is construed as an offence, which is, done by a child under 7 years of age; under Section 83 of the IPC, nothing is an offence which is done by a child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion.

14.3 However, under Section 2(k) of the Juvenile Justice (Care & Protection of Children) Act, 2000 (in short the JJC Act), the age of a juvenility is 18 years or below. Section 2(l) of this very Act provides that juvenile in conflict with law means a juvenile who is alleged to have committed an offence and has not completed the 18th year of age as on the date of commission of such offence.

14.4 Section 6 of the Probation of Offenders Act, 1958 (in short the 1958 Act), provides that when a person under 21 years of age is found guilty of having committed any offence punishable with imprisonment (but not with imprisonment for life), the court, by which the person is found guilty, is required not to sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of offence and the character of the offender, it would not be desirable to deal with him under Section 3 or Section 4 of the very same Act, and if, the court passes any sentence of imprisonment qua the offender, it shall record its reasons for doing so.

14.5 Under Section 3 of the 1958 Act, the court is empowered to release an offender with an admonition for the offences referred to under the said Section. However, under Section 4 of the 1958 Act, when a person is found guilty of an offence, which is not punishable with death or imprisonment for life, the court, which finds such a person guilty, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, can release him on probation of good conduct.

14.6 In other words, the court, instead of sentencing the offender, at once, can direct his release on execution of a bond with or without sureties to appear and receive sentence when called upon during such period, but not exceeding three years, as the court may direct, and in the meantime, the offender is obliged to keep peace and be of good behaviour. The court is also empowered to pass a supervision order directing that the offender shall remain under the supervision of a probation officer for such period, which is, not less than one year, as may be specified in the order, and may impose such conditions as it may deem necessary for due supervision of the offender.

15. I must clarify that Section 3 and 4 of the 1958 Act does not apply only to young adults. The legislative policy qua young adults is reflected, as indicated above, in Section 6 of the 1958 Act. In this context one may usefully extract the observations of the Supreme court in paragraph 4 and 7 of the judgment in the case of *Ishar Das Vs. State of Punjab*, (1973) 2 SCC 65 :-

“..4. ...The Probation of Offenders Act, as observed by Subba Rao, J. (as he then was) speaking for the majority in the case of *Rattan Lal v. State of Punjab*, [1964] 7 S.C.R. 676, is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the

individual offender than to punish him. Broadly stated, the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years absolute discretion is given to the court to release, them after admonition or on probation of good conduct, subject to the conditions laid down in the appropriate provisions of the Act, in the case of offenders below the age of 21 years, an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under sections 3 and 4 of the Act...

7. The question which arises for determination is whether despite the fact that a minimum sentence of imprisonment for a term of six months and a fine of rupees one thousand has been prescribed by the legislature for a person found guilty of the offence under the Prevention of Food Adulteration Act, the court can resort to the provisions of the Probation of Offenders Act. In this respect we find that sub-section (1) of section 4 of the Probation of Offenders Act contains the words "notwithstanding anything contained in any other law for the time being in force". The above non-obstante clause points to the conclusion that the provisions of section 4 of the Probation of Offenders Act would have overriding effect and shall prevail if the other conditions prescribed are fulfilled. Those conditions are (1) the accused is found guilty of having committed an offence not punishable with death or imprisonment for life, (2) the court finding him guilty is of the opinion that having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, and (3) the accused in such an event enters into a bond with or without sureties to appear and receive sentence when called upon during such period not exceeding three years as the court may direct and, in the meantime, to keep the peace and be of good behavior. Sub-section (1) of section 6 of the above mentioned Act, as stated earlier, imposes a duty upon the court when it finds a person under 21 years of age, guilty of an offence punishable with imprisonment other than imprisonment for life, not to sentence him to imprisonment unless the court is satisfied

that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to deal with him under sections 3 or 4 of the Act but to award a sentence of imprisonment to him. The under-lying object of the above provisions obviously is that an accused person should be given a chance of reformation which he would lose in case he is incarcerated in prison and associates with hardened criminals. So far as persons who are less than 21 years of age are concerned, special provisions have been enacted to prevent their confinement in jail at young age with a view to obviate the possibility of their being subjected to the pernicious influence of hardened criminals. It has accordingly been enacted that in the case of a person who is less than 21 years of age and is convicted for an offence not punishable with imprisonment for life, he shall not be sentenced to imprisonment unless there exist reasons which justify such a course. Such reasons have to be recorded in writing..”

15.1 The rationale behind a different regime being followed world over vis-a-vis young offenders, is to prevent recidivism. It is felt that recidivism can be prevented if, young offenders are dealt with, appropriately, with due sensitivity, at an early age. There are a range of sentences available qua young offenders, depending on the *gravity of offence* and the *age of the offender*. The range of sentence could vary from : absolute discharge to conditional discharge, fine or compensation for which parent could be made responsible, supervision orders which could include psychiatric treatment, educational treatment, educational requirements, detention in special homes for grave offences, such as, murder, rape etc. as also, issuance of a probation order, as indicated above.

16. In so far as colleges, which are affiliated with University of Delhi, are concerned, Ordinance XV (B) provides for several options qua disciplinary action in respect of offences prescribed under clause 3 of the said ordinance; which range from physical assault to ragging etc. and includes any practice, whether verbal or otherwise, which is derogatory of women. The range of

punishments, which could be imposed qua offences prescribed in clause 3 of Ordinance XV(B), include expulsion, rustication, not being admitted for a stated period for a course or courses of study in a college, department or institution of the university, fine, debarment from taking a university or college or departmental examination or examinations for one or more years (the punishment imposed in the instant case), and also, the result of a student or students concerned, in the examination or examinations, in which, he or she would have appeared, being cancelled.

16.1 The purpose, obviously, is to not only to protect the reputation of the institution but also to send out a message of deterrence, so as to assuage the hurt and injury inflicted on the victim.

16.2 There is no gainsaying that concerns of both the institution and the victim have to be considered while dealing with a delinquent/ offender even in an educational institution.

17. There is, however, an another aspect, if I may say so, which requires consideration as well, without undermining the relevance or the importance of the aspects which are noticed hereinabove, by me. This aspect requires that while dealing with a young offender an attempt should be made to ascertain whether the sentencing disposition could be tailored, as long as it is consistent with other sentencing principles, so as to promote reformation and lead to rehabilitation of the offender.

17.1 This, if I may say so, is a facet of the doctrine of proportionality which, our courts, have often used in dealing with disciplinary matters falling in the realm of service jurisprudence (See *Ranjeet Thakur vs Union of India*, (1987) 4 SCC 611).

17.2 In applying the aforestated principle, what is not to be forgotten, is that, while sentencing, the educational institutions have to consider that any punishment imposed by them which leads to an outright denial of the right

of a delinquent young offender to education, is required to be based on a compelling State / public interest. [See *Cathe A., Guardian of C.E.A. Vs. Doddridge County Board of Education, Supreme court of Appeals of West Virginia, September 1996 Term, No.23350*].

17.3 The compelling State/public interest element would necessarily include as well the immediate interest of other students who are admitted to the institutions, in which, the offence may have been committed. Therefore, as I said at the beginning of my discussion, the gravity of the offence and the age of the offender will have to be borne in mind. The exclusion of a young offender from the normal educational stream for a period of time brings about “unpleasant consequences” and “harm”, which, in any case, amongst others, is the purpose of any punishment¹.

18. The sentencing authority therefore should ask of itself, in the context of offence committed : the degree of harm or unpleasantness that a punishment should visit upon an offender.

18.1 Undoubtedly, in the instant case, the petitioner has admitted his misdemeanour. The victim, who herself is a young adult, did not submit a written complaint against the petitioner, not because she was not injured or hurt both psychologically and physically, but perhaps for the reason (and I can only hazard a guess in that behalf) that she did not wish to bring upon the petitioner unpleasant consequences and/or harm more than that was necessary. In this context, I may only quote from the report of the Disciplinary Committee wherein extracts from the written statement of Ms Sonika Thakral are set out:

“... From Written Statement of Ms. Sonika Thakral (enclosed as Annexure-6)....

..... She also said that Siddharth Jain had later apologized to her;

¹ Encyclopaedia of Crime & Justice, 2nd Edition, Vol. 3, Page 1282

that she did not want to make a written complaint because she did not want to *ruin* his career, but wanted to bring this incident to the knowledge of college authorities.....”

(emphasis is mine)

18.2 The petitioner, on the other hand, has not only tendered his apology vide letter dated 23.09.2015, but has also filed two affidavits in this court dated 31.10.2015 and 05.11.2015, wherein he has expressed his regret. The relevant part of his affidavit dated 05.11.2015, which was tendered in court reads as follows:

“..1. That I am the petitioner, in the above said Civil Writ Petition as such am fully conversant with the facts and circumstances of the case.

2. That though the petitioner has challenged the order dated 29.09.2015 passed against him, which is pending consideration in the above said Writ Petition. The petitioner is not pressing the case on merits, the deponent admitted the happenings dated 28th-30th July 2015 and feels sorry for what happened on that date. After admitting all that he is tendering his unqualified apology for what happened on 28th-30th of July 2015 or thereafter...”

19. A perusal of the above would show that the petitioner is contrite and perhaps now realizes the consequences of his misdemeanour. The apology may have come with the realization that his conduct could ruin his career; which is one of the reasons which was cited by the Disciplinary Committee in recommending the punishment, which it did, vide its report.

19.1 The question, therefore, is: should the sentencing authority in the case of a young adult offender (i.e. the petitioner), treat such an apology as a contrived? And if so, to what effect?

19.2 To my mind, even if one were to accept the argument that the apology was an act of self-preservation, I would in the case of a young adult offender, still allow him a chance to reform himself as the difference between an adult offender and a young adult offender, is that, the latter does

not fully comprehend the consequences of his misdemeanour when he / she embarks upon it. There is scientific and medical literature which distinguishes between physical, mental, social and emotional maturity of a young offender. [See : *Salil Bali Vs. Union of India nad Anr., (2013) 7 SCC 705, para 58 at page 722-723; and Subramanian Swamy and Ors. Vs. Raju, (2014) 8 SCC 390, para 37 at page 408*]. Having said so, one would also have to balance the concerns of the institution which includes its need to protect other students and its reputation as a place where education is imparted to students of every gender, without fear of physical, mental or psychological injury.

20. Before I conclude and get to the operative directions, I must indicate that the judgement of the Supreme Court in the case of *Deputy Inspector General of Police and Anr. Vs. S. Samuthiram*, in my view, would not apply to the facts of the instant case as it dealt with an offence committed by an adult person, albeit qua a married lady. In the present case, as indicated above, the petitioner is a young adult and would, therefore, have to be dealt with differently. The said judgement, to my mind, is distinguishable.

21. Therefore, having regard to the totality of circumstances, I am of the view that the punishment imposed by the Principal vide the impugned order should be suspended for the remaining tenure of the petitioner in the college upon the petitioner executing an undertaking of good behaviour with the following conditions:

(i) In case any other act of misdemeanour [which comes within the ambit of offences prescribed in clause 3 of the Ordinance XV(B)] is committed by the petitioner, he will, serve the entirety of the remaining sentence, as imposed vide the impugned order. I was informed by Mr. Bansal that the petitioner stood effectively debarred from the college from 05.08.2015.

(ii) The Petitioner, will report to the Principal every month, on a date and

time assigned to him. The Principal will call for a report from the concerned faculty member with regard to the petitioner's general behaviour, conduct and disposition.

(iii) The parents of the petitioner shall remain present at such monthly meetings.

(iv). The Principal, at such meeting(s) will have the concerned faculty members (who would have dealt with the petitioner in the relevant period), participate in such a meeting.

21.1 The undertaking of good behaviour will be filed within two days from today in the form of an affidavit with this court; with a copy to the College. In case the petitioner commits fresh offences, as indicated above, condition (i) will get triggered automatically. The Principal, will be the sole judge of this aspect of the matter.

22. The result of the above, in effect, would be that the respondents would permit the petitioner to take the college/ university examinations subject to the aforesaid.

23. The petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

NOVEMBER 17, 2015

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