IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2017

CORAM:

THE HON 'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Writ Petition No.43767 of 2016 and
WMP.Nos.37570 and 37571 of 2016

S.Harish Kumar ... Petitioner

Versus

1. Hindustan Institute of Technology & Science
(Deemed to be University established under
Section 3 of UGC Act, 1956)
rep. by its Registrar,
1, Rajiv Gandhi Salai (OMR),
Padur, Kelambakkam,
Kancheepuram District,
Chennai-603 103.

2. University Grants Commission (UGC)
rep. by its Chairman,
Bahadur Shah Zafar Marg,
New Delhi-110 002. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the 1st respondent culminating in the impugned order vide Ref:HITS/C.Memo/R.VIII/2016 dated 08.12.2016, quash the same.

For Petitioner : Mr.T.Mohan
for M/s.P.Muthusamy
For Respondents : Mr.Doraisami, Senior Counsel
for Mr.Kandhan Duraisami for R1
Mr.P.R.Gopinathan for R2

O R D E R

The Writ Petition is filed by a student, who has been rusticated from the 1st respondent University by an impugned order dated 08.12.2016. This is a case which illustrates how a student is expected to pursue his studies after getting an admission in a professional college, indulging in misconduct and violence, resulting in dismissal from college.

2. The facts that lead to the above Writ Petition are as follows:

(i) The petitioner, who is aged about 20 years, had joined B.E. Mechanical Course in the 1st respondent University, perhaps, with a dream of becoming a successful Engineer. According to him, his dreams including the dreams of his parents were shattered, when the college had issued him the Expulsion Order dated 08.12.2016.

(ii) Originally, there was an order dated 06.05.2016 by the 1st respondent informing that the petitioner was expelled from the University based on the Enquiry Report filed by Five Members Committee on 29.04.2016. It was challenged by the petitioner in W.P.No.19096/2016. The said Writ Petition was ordered on 13.07.2016 remitting the matter back to the 1st respondent,

directing them to issue a charge memo with specific details of the allegations and elicit the written response from the petitioner and thereafter, conduct an enquiry by adhering to the principles of natural justice and pass orders in accordance with the norms and regulations as expeditiously as possible.

(iii) Accordingly, the 1st respondent has issued a Show Cause notice dated 05.08.2016 alleging six acts of misconduct on the part of the petitioner and asking him to show cause in writing. The petitioner also gave a reply on 23.08.2016 denying the allegations levelled against him. The 1st respondent College after receipt of the reply, appointed an Enquiry Officer and he was subsequently replaced by another Officer. The Enquiry was conducted on various dates and the petitioner was also examined. In addition a CCTV Footage was also relied on by the prosecution to prove that the petitioner had indulged in vandalism. After thorough enquiry, the Enquiry Officer, based on the facts and evidence available, submitted a report dated 29.11.2016 concluding that the first charge was partly proved and other charges Except Charge No.4 were proved. Based on the Enquiry Report, the 1st respondent expelled the petitioner from the college for violation of Clauses 1, 4, 7, 9 and 12 of the General Code of Conduct for Students of the University. The Transfer Certificate was also issued to the

petitioner. The said order of expulsion is under challenge on the following grounds:

Firstly, it is stated that after the Enquiry Report was submitted, the petitioner was not provided with an opportunity of being heard by the 1st respondent;

Secondly, it is stated that there was no evidence on the part of the prosecution to show that the petitioner had indulged in any acts of violation. However, the Enquiry Officer had held that the petitioner was guilty of charges levelled against him; and

Thirdly, it is stated that the 1st respondent before arriving at the quantum of punishment ought to have sought for an explanation from the petitioner.

3. In response to the same, the Registrar of the 1st respondent has filed a Counter Affidavit wherein it is stated that the 1st respondent College is a Deemed University, established under Section 3 of the University Grants Commission Act, 1956. The University has been imparting quality education to the students with full security and no untoward incident has happened so far excepting the incident that happened on 07.03.2016 in which the students damaged the University Properties such as furniture, glasses, computers and cars etc. Though the University had employed security personnel in the premises, a mob of students

were led by the petitioner barged into each and every Block in the premises and broke the furniture, glasses, computers, cars etc.

4. The petitioner, who was a student of III year B.Tech. Mechanical Engineering Course, was not academically focused and his academic performance was also not good. He has got arrear papers in all Semesters. The University has facilitated the students who would like to attend special coaching classes to improve the internal assessment marks, on payment of the prescribed fee and register their names for improvement and the said facility was only optional. Those, who were not willing to attend the Special Coaching Classes were allowed to register for improvement without payment of fees. From the above, it would be clear that on attending the Special Coaching Classes and payment of Sem Carry Fees are purely optional left to the discretion of the student.

5. While so, under the leadership of the petitioner, a group of students covered their faces with kerchiefs, face masks, monkey caps and helmets and loitered inside the University premises with the iron rods and threatening the staffs and students. They also pelted stones on the building and using iron rods damaged furniture, glasses, computers, cars etc. As the petitioner indulged in misbehaviour and misconduct, six specific charges were framed

against him.

6. The first charge is that the petitioner had involved in forming a group with other students on 07.03.2016 inside the University Campus and raised slogans against the University, instigating the other students to join him and damage the properties of the University, which is in violation of Clause 1 of the General Code of Conduct for the students of the University. The second charge was that on 07.03.2016, the petitioner with a group of other students have damaged the glass doors, windows and several other properties of the University by pelting stones and with the help of iron rods, which is in violation of Clause 4 of the General Code of Conduct for the students of the University. The third charge is with respect to conduct of unauthorised meeting in the University in violation of Clause 7 of the General Code of Conduct. The Charge No.4 is that he had instigated the students to absent from classes for the purpose of going on strike within the campus in violation of Clause 8 of the General Code of Conduct for students of the University. The Charge No.5 is that on the same day, the petitioner had indulged in strike, creating an unpleasant atmosphere in the University by shouting slogans and damaging the properties and behaving unruly with the staff in violation of Clause 9 of the General Code of Conduct for students of the University. The 6th charge is that the petitioner had conducted

himself in an unpleasant and unruly manner, unbecoming of a student by resorting to strike damaging the properties, shouting slogans which have resulted in tarnishing the image of the University in violation of Clause 12 of the General Code of Conduct for students of the University.

7. Though the petitioner submitted his explanation on 23.08.2016, not satisfied with the same, an enquiry was ordered and an independent person was appointed to conduct an enquiry in a common place. The petitioner was also allowed to get an assistance of a Legal Counsel. Though the petitioner was issued the Hall Ticket for writing the examination, he failed to write the 4th Semester examinations.

8. Now the question that arises for consideration is as to whether the order of expulsion based on the Enquiry Report has to be set aside.

9. Though in every case, there cannot be a procedure for framing of charges, holding an enquiry etc. In this case, after this Court had directed to hold a fresh enquiry with a neutral person as an Enquiry Officer, admittedly, there was an enquiry satisfying the requirement of principles of natural justice. The decision was taken

by the 1st respondent only based on the Enquiry Report. Unlike the Industrial Establishments, the question of victimization of the student does not arise in an educational institution where the educational authorities have control over the students and take action that is warranted in a given situation. Therefore, the question of victimization of the petitioner does not arise in this case.

10. The only contention is that there was no clear and unambiguous evidence that the petitioner indulged in unruly activities. In this regard, the examination of the petitioner before the Enquiry Officer as R.W.1 may be adverted to. He has stated that he used to travel in Verna Car and he travelled in the same on the date of the incident i.e. on 07.03.2016. It is admitted by him that he carried a monkey cap which was kept in his car in the College. It is also admitted that he wore monkey cap with the assistance of another friend. Ex.R.1 is a CCTV Footage which was marked through the college. The petitioner had also specifically admitted that he was present throughout the incident though denied the fact that he was leading the mob of students. It is also admitted that in Ex.P.5 he was using his Cell Phone. It is also specifically admitted that the Science Block, P.G.Block, Jubilee Block and also the Founder's Block were damaged as found in page

6 of Ex.P.5.

11. When the petitioner was confronted with the question whether there was any justification in resorting to violence on 07.03.2016, he had replied positively. It was stated by him that the University failed to return the Sem Carry Fee as promised vide Ex.R.1. According to the petitioner, he had not paid the Sem Carry Fees, he had resorted to violence on 07.03.2016 for the benefit of others. The petitioner also had admitted that he was in possession of a stick and the reason given by him is that it was lying on the pathway and that he removed the same and the holding of the same was not with any malafide intention. But the Enquiry Officer has held that the petitioner had carried with him a stick, wearing a monkey cap. The Enquiry Officer had found that there was overwhelming evidence corroborated by the admission of the petitioner himself that the charge No.1 is proved. Similarly, the finding of the Enquiry Officer is that the Charge No.2 is also proved which are in violation of Clause 1 and 4 of the General Code of Conduct for students of the College. The charge No.5 was that the petitioner was wearing a monkey cap in front of the Jubilee Block carrying a rod in his hand. It is the admitted case that the buildings were damaged and the glasses were broken and the cars

belonging to the University authorities were damaged. Therefore, the Charge No.5 is also said to be proved that on 07.03.2016, the petitioner conducted a strike along with other students and created unpleasant atmosphere inside the University premises. The other charges are that on a working day, the petitioner had indulged in vandalism and not attending classes. There is no acceptable answer was forthcoming from the petitioner for wearing the Monkey Cap and holding a rod on hand. Therefore, the Enquiry Officer has found that the petitioner was guilty of violation of various clauses of the General Code of Conduct.

12. It is the endeavour of the Counsel for the petitioner to state that in the CCTV footage, there is nothing recorded that the petitioner was indulging in actual pelting of stones and damaging the properties. Therefore, it has to be taken that the petitioner is innocent and he was not indulging in such activities and the punishment of expulsion is grave.

13. From the reading of the evidence of the petitioner and the report of the Enquiry Officer, the reasons are clear and explicit indicating that the College Authorities have given due consideration to the controversy involved. The University or any educational institution is not a Tribunal or Court to strictly follow the

procedures and conduct an enquiry to arrive at a finding. Fortunately, in this case, by virtue of the order of this Court, a detailed enquiry was conducted without prejudice to the rights of the parties by an Enquiry Officer, who is a stranger and a report was filed. The Enquiry Officer has recorded all the necessary, relevant and acceptable material facts.

14. The learned Counsel for the petitioner argued that the enquiry report was based on conjectures and speculations. As stated earlier, the strict rules of Evidence Act or the Standard of Proof envisaged therein do not apply to such disciplinary proceedings. Only inference from the evidence and circumstance must be carefully distinguished.

15. This Court while deciding the present case is not only a court of law, but also a court of equity, implying thereby that the court had all powers to mete out corrective justice to the petitioner. It may be stated that by ousting the student/petitioner, the college has stigmatized the petitioner for life. Socitial pressure from the family and relatives keeps building on the person in such a situation, whether the punishment awarded by the University is out of proportion and not commensurate with the wrong committed.

16. In this case, the petitioner had not shown any remorse or sought forgiveness. The Hon'ble Supreme Court held that there should be strict discipline in academic matters and malpracice and misconduct should be severely punished.

17. While inflicting appropriate punishment, several aspects have to be borne in mind. Any punishment imposed should not result in any retribution. The purpose of any punishment is to correct the fault of the student concerned by making him alert in future and hold out a warning to other students to be careful. The authorities should have an approach like a parent towards an erring or misguided child. Unless the disciplinary authority reaches the conclusion that having regard to the nature of misconduct it would be totally unsafe to retain the petitioner in college, the maximum penalty of expulsion should not be imposed.

18. So far as awarding the punishment for indiscipline is concerned, the approach of the court should be to think whether the question of punishment will result in any reformation.

19. In this case, there is evidence direct and circumstantial to deduce necessary inferences to prove the facts in dispute. The petitioner himself has admitted that he was wearing a Monkey Cap

and holding a stick on his hand on a working day, which has witnessed vandalism inside the premises resulting in thorough damage to the glasses of the building and damage to the cars belonging to the authorities. In the absence of any other motive, it can be easily inferred that the petitioner had indulged in such violent activities.

20. As stated supra, there is an enquiry satisfying the requirement of principles of natural justice and there is a finding on the same by the Enquiry Officer, followed by the order of expulsion. While so, there cannot be any justification to interfere with the said finding and the consequential order passed. Further, the power of the judicial review in case of student indiscipline is very limited and in such cases, this Court cannot sit in appeal over the decision of the school authorities.

21. It is the petitioner, who on his shameful act of indulging in vandalism, has brought disrespect to the institution, his parents and teachers. Merely because, the CCTV footages had not captured the actual act of violence, the indisciplined act of the petitioner which is evident from other circumstantial evidences, this Court is of the view that the impugned order of expulsion cannot be set aside and the same has to be upheld.

PUSHPA SATHYANARAYANA, J.

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22. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

17.04.2017

Note : Issue order copy on 17.4.2017
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To
1. The Registrar,
Hindustan Institute of Technology & Science
(Deemed to be University established under
Section 3 of UGC Act, 1956)
1, Rajiv Gandhi Salai (OMR),
Padur, Kelambakkam,
Kancheepuram District,
Chennai-603 103.

2. The Chairman,
University Grants Commission (UGC)
Bahadur Shah Zafar Marg,
New Delhi-110 002.

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