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

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Judgment reserved on : 21.7.2017

Judgment delivered on : 27.7.2017

+ W.P.(C) 8136/2016 & C.M. No.33696/2016

SARANYA TRIPATHY

..... Petitioner

Through: Mr S.S. Lingwal, Adv

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr Siddhartha Shankar Ray, Adv for
R-1.

Ms Avnish Ahlawat with Ms Palak
Rohmetra, Adv for DTU/R-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. Petitioner is aggrieved by the order dated 11.01.2016 as also the subsequent order dated 30.8.2016 passed by respondent no.2 whereby the hostel accommodation allotted to the petitioner stood cancelled and a fine of Rs.5000/- has been imposed upon her as penal charges which was pursuant to a disciplinary enquiry held against the petitioner.

2. Record shows that the petitioner, a student of B.Tech (3 years course) of respondent no.2 had applied for hostel accommodation as per the rules. She was eligible for the accommodation but the same was not allotted to her. She checked with the hostel authorities (led by Chief Warden Professor Narendra Kumar). She was given evasive answers. Thereafter on her repeated questions Professor Narendra Kumar agreed to allot a hostel accommodatin to the petitioner. An allotment letter was issued to her on 23.10.2015. Her semester end was also approaching so she informed the in-charge of the hostel office that she would occupy the room in the next semester as change of accommodation at that point of time would have an adverse impact upon her exams which were drawing near. She wanted a small room so she checked up with the girl's hostels and found a room triple seated which whould be suitable for her. The Warden, however, refused to accede to the request of the petitioner.

3. On 09.11.2015, the father of the petitioner made a request to the Chief Warden that transparency in hostel allotment should apply. The Chief Warden became furious. The petitioner was issued a show cause notice dated 09.11.2015.

4. Relevant would it be to reproduce this notice as this is the start of the dispute inter se the parties. It reads as under:

“Show cause notice

Whereas, as per Rule No.6 of General Rules and Regulations for Hostel residents, “Misbehaviour or indulging in a row with staff members/security staff will be treated as an offence and will be liable for expulsion from the hostel.”

Whereas, after getting allotment of her room, Ms.Saranya Tripathi, 2K14/HO/G/100 misguided her father regarding condition of the room. Due to this, her father misbehaved with the Office Staff over phone.

Therefore, this show cause notice has been issued to Ms.Saranya Tripathi, 2K14/HO/G/100 Resident of Hall-5, SNH hostel to explain that why not her hostel accommodation may be cancelled, within 7 days of the receipt of this notice, otherwise disciplinary action will be initiated against her.

*Ms.Saranya Tripathi
2K14/HO/G/100
Hall-5, SNH Hostel”*

5. The allegation as is evident from the notice was that the petitioner had misguided her father regarding the condition of the rooms and her father misbehaved with the office staff over the phone. The notice was issued by the Chief Warden Professor Narendra Kumar. Petitioner was granted seven days time to show cause as to why her hostel accommodation be not

cancelled; otherwise a disciplinary enquiry would be initiated against her. The petitioner vide her letter dated 27.11.2015 filed a reply. She appeared anguished. She stated that she had merely made a representation for her hostel facilities which was her right and this was not being acceded to by the Chief Warden; she had also deposited the fee for the hostel allotment. Her reputation has also been tarnished as this notice has been put up in the public domain. Moreover, it was the father of the petitioner who was to blame (even as per the show cause notice) and not the petitioner.

6. On 04.1.2016, the petitioner also sent a representation to the Vice Chancellor informing him about this incident and requesting him that action be taken against the authorities for initiating this traumatic ordeal which she was facing at the hands of respondent no.2.

7. On 05.01.2016 the Chief Warden convened a meeting. On 11.01.2016 the hostel accommodation of the petitioner stood cancelled on the ground of misbehavior. The petitioner was thereafter not allowed to occupy her hostel room in spite of payment of fee for her accommodation having been made.

8. On 15.01.2016, the father of the petitioner met the Pro-Vice Chancellor and informed him about the action of respondent no.2. The matter did not get resolved. A complaint dated 25.01.2016 was addressed by

the father of the petitioner to the Lt. Governor which was then forwarded to the Vice Chacellor.

9. On 29.4.2016 another show cause notice was issued to the petitioner informing the petitioner that an inquiry by a Board of Discipline (BoD) has been scheduled for 04.5.2016 and the petitioner was directed to bring all her original papers, evidence and defence which she proposes on that date. On 27.5.2016 another notice followed which was on the same lines as was the earlier notice dated 29.4.2016.

10. In the meanwhile the father of the petitioner addressed e-mails to the Assistant Registrar of respondent no.1 seeking details as to why the enquiry had been initiated against the petitioner when her hostel accommodation stood cancelled by an earlier order dated 11.01.2016. This was, however, to no avail.

11. On 21.6.2016 an office order was passed by respondent no.2 which inter alia reads as under:

<i>S.No.</i>	<i>Name and Registration/Roll No. of students</i>	<i>Decision/Punishment</i>
<i>01</i>	<i>Ms.Sarayna Tripathi, Roll</i>	<i>Looking into her continuous absence and not defending herself before BoD,</i>

	No.2K14/EC/149	<i>which are the serious act of indiscipline; Board is compelled to take ex parte decision to impose a fine of Rs.10,000/- on her along with a warning and an undertaking be submitted within 15 days, failing which she will not be allowed to register to the next semester and her result for current semester will be held up.</i> <i>A warning is issued not to repeat such indiscipline in future. Accused student be put under a probation for a period of his entire stay in DTU. Ms.Saranya Tripathi and her parents have to submit an undertaking within 15 days of issuance of order, not to repeat the act of indiscipline in future and that ex parte stern action may be initiated against the studentt in case of repetition of any indiscipline.</i> <i>In case of non-compliance of the orders i.e. non-submitting undertaking and depositing fine, within 15 days, will be viewed very seriously as an act of indiscipline, which will invite the action against above mentioned student accordingly.</i>
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12. This was an ex parte order. A warning was issued to the petitioner not to repeat such an act of indiscipline. Rs.10,000/- was imposed as a fine; if this fine was not deposited within 15 days the petitioner would not be allowed to register for the next semester and her result for the current semester would also be withheld. The petitioner filed an appeal against this order which was disposed of on 30.8.2016. The penalty amount of Rs.10,000/- was reduced to Rs.5000/-. The gist of the order otherwise remained the same.

13. A review petition was filed against that order which was pending till the filing of the present petition.

14. The present writ petition is premised on the grounds set out therein for setting aside of the order dated 11.01.2016 as also the order dated 30.8.2016 passed by respondent no.2 as also for permitting the petitioner to appear in the forthcoming examination as the petitioner was apprehensive that in view of the order dated 30.8.2016 she may be barred from sitting in the examination.

15. On 16.9.2016 a Bench of this Court had stayed the operation of both these aforementioned orders. This Court has been informed that the petitioner has since sat for her semester examination.

16. The grievance of the petitioner which is culled out from the averments in the petition as also from the arguments advanced before this Court is that the whole procedure which has been followed by respondent no.2 is not one only against the principles of natural justice but appears to be patently illegal. The petitioner was entitled to a hostel accommodation. She had been allotted a room. She wanted to use the room in the next semester for which she had made a request to the Chief Warden; she had also requested the Warden to put transparency in the rules of hostel allotment as she could not get an accommodation in time; she had been allotted an accommodation in October when her application was pending since July, 2015. Her father also brought this to the knowledge of the Chief Warden which had escalated the matter and led to the complaint being filed by the Chief Warden against the petitioner.

17. Counter affidavit of the respondent is on record. The averments contained therein have been perused.

18. This Court is in agreement with the first submission made by the petitioner which is to the effect that the complaint was qua the alleged misbehavior by the father of the petitioner. The petitioner could not be penalized for any act even presuming that it was an act of misbehavior by

her father. In fact the show cause notice of 09.11.2015 is premised on this fact. This show cause notice clearly states that the father of the petitioner misbehaved with the office staff over phone. At the cost of repetition, this act of the father of the petitioner cannot prejudice to the rights of the petitioner. That apart this Court notes that it was on the complaint of the Chief Warden that this show cause notice dated 09.11.2015 had been issued. Thereafter pursuant to a reply filed by the petitioner an action was taken against the petitioner and the hostel accommodation of the petitioner stood cancelled on 11.01.2016. The matter did not end there. The respondent no.2 appeared to be aggrieved that his office staff had been addressed rudely; accordingly the respondent no.2 thought it fit to initiate a disciplinary proceeding against the petitioner. At the cost of repetition, the disciplinary enquiry was initiated qua the act committed by the father of the petitioner. Respondent no.2 however illegally thought it fit that the act of the father can be imposed upon the daughter and for which a show cause notice dated 27.5.2016 was issued to the petitioner holding her ransom to a disciplinary enquiry proposed to be carried out by respondent no.2. This enquiry ended with an ex parte order dated 30.8.2016.

19. The record of the Department has been summoned which has been perused. A meeting was held on 01.6.2016 of the Board of Discipline which was followed by another meeting dated 20.6.2016 wherein it was noted that the petitioner in spite of notice did not appear before the Board of Discipline. She was proceeded ex parte. The order dated 21.6.2016 was issued against the petitioner holding her guilty of indiscipline and a fine of Rs.10,000/- was imposed (which in the course of appeal vide order dated 30.8.2016 was reduced to Rs.5000/-).

20. The so-called enquiry which is evident from the two meetings held of the Board of Discipline (dated 01.6.2016 and 20.6.2016) was proceeding on the complaint of the Chief Warden. The minutes of those meetings, stand of the concerned students and witnesses called at the time of hearing, copies of evidence, statements and photographs if any of the cases were placed in respective case files. The proceedings were recorded on video camera. The complainant and the witnesses who had appeared before the Board were Ms.Neelima Mittal and Mr.Rakesh Mishra. The first witness was the SOA, Hostel Office and the second witness was the Caretaker Hostel Office. The statement of the complainant was neither a part of the record and nor was ever disclosed to the petitioner; how Neelima Mittal or Rakesh Mishra were

concerned with these proceedings is not known as what has otherwise been gauged from the record is that the father of the petitioner had telephonically misbehaved with the office staff over the phone. Who was the office staff has never been detailed till these proceedings were initiated and the minutes of these two meetings dated 01.6.2016 and 20.6.2016 were requisitioned by the Court.

21. This Court is of the view that this whole exercise carried out by respondent no.2 appears to be a misguided procedure which has probably been done at the behest of the grievance of some staff of respondent no.2. It is wholly understandable that if any person is rude to the staff of respondent no.2 they have a reason to make a complaint but at the same time it must be kept in mind that what was the nature of the complaint and the penalty which respondent no.2 sought to impose qua this complaint. The complaint was qua an act of the father of the petitioner; petitioner was prejudiced by the show cause notice which was issued to her in her own individual capacity. She had been penalized. Her hostel accommodation has been cancelled. She has been imposed a fine. She was warned not to repeat the act of indiscipline which act of indiscipline as per the show cause notice of respondent no.2 was the act of the father of the petitioner and not of the

petitioner. That apart once the hostel accommodation stood cancelled this should have been an enough penalty for the petitioner but respondent no.2 did not appear to be satisfied; he wanted to vent out a grievance against the petitioner (who had made a complaint qua the transparency in the allotment rules of hostel accommodation) which was not the right attitude of respondent no.2 who then initiated an enquiry and within two hearings without detailing as to who would be the witnesses, the enquiry was concluded and an ex parte order was handed over to the petitioner wherein besides the warning she was made apprehensive that she might not be able to sit in her next semester examination. Such huge emotional and psychological naturally impacted the petitioner who had to answer to this enquiry due to which not only not being able to concentrate on her studies; she even otherwise was put to a disrepute as all her colleagues in the institute became aware of these disciplinary proceedings against her.

22. The enquiry proceedings appear to be sham; instigated/motivated at the behest of the complainant who should have been satisfied after the hostel allotment of the petitioner stood cancelled. The enquiry proceedings initiated were uncalled for. Even otherwise they were against all the principles of natural justice. The details of the complainant, the witnesses

who would depose against the petitioner, the evidence gathered; nothing was disclosed and this was in spite of all emails generated by the petitioner to the respondent (a part of the record).

23. Petition is accordingly allowed. The aforementioned orders dated 11.01.2016 and 30.8.2016 are set aside.

JULY 27, 2017
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INDERMEET KAUR, J

