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

Reserved on: 17.05.2018

Date of Decision: 02.07.2018

+ **LPA No.66/2017 & CM No.3186/2017**

PRABHAT KUMAR SINGH Petitioner

Through Mr.K.K. Rai, Senior Advocate
with Mr.Awanish Kumar,
Mr.Anshul Rai, Mr.S.K.
Pandey, & Mr.Chandra
Shekhar, Advocates

versus

**ARMY COLLEGE OF MEDICAL SCIENCE
& ORS.**

.... Respondent

Through Mr.Ankur Chhibber, Advocate
respondents No.1 & 2.
Mr.Harsh Kaushik & Ms.Sarita
Panda, Advocates for
respondent No.5.
Mr.T. Singhdev, Ms.Michelle
Biakthansangi Das, Ms.Puja
Sarkar, Mr.Tarun Verma &
Mr.Abhijit Chakravarty,
Advocates for respondent/MCI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. The present intra court appeal impugns the order dated 3rd January, 2017, passed by the learned Single Judge in WP (C) No. 5408/2012, whereby the Appellant's writ petition challenging the order dated 18th August, 2012, expelling him from Respondent No. 1/College, has been dismissed.

2. The facts necessary for the adjudication of the present appeal are that the Appellant, the son of an Ex. Havildar of the Indian Army, had joined the MBBS course of the Respondent No. 1/College in July, 2008, based on his outstanding performance in the entrance examination conducted by the Respondent No. 5/Guru Gobind Singh Indraprastha University (GGSIU), to which the Respondent No. 1/College is affiliated. The Appellant, having secured 94.4% marks in Class X and 93.8% marks in Class XII, already had an outstanding academic record when he joined the Respondent No. 1/College. He continued his excellent academic streak while undergoing his MBBS course, and was even awarded a scholarship by the Respondent No. 5/University for the academic session 2009-10, under its scheme for the economically weaker sections of society.

3. As per the Graduate Medical Regulations, 1997 laid down by Medical Council of India (MCI), a student of MBBS is required to undergo the following:-

“7. Training Period and Time Distribution

(1) Every student shall undergo a period of certified study extending over 4 ½ academic years divided into 9 semesters, (i.e. of 6 months each) from the date of commencement of his study for the subjects comprising the medical curriculum to the date of completion of the examination and followed by one year compulsory rotating internship. Each semester will consist of approximately 120 teaching days of 8 hours each college working time, including one hour of lunch.

(2) The period of 4 ½ years is divided into three phases as follows :-

*a) **Phase-I** (two semesters) - consisting of Pre-clinical subjects (Human Anatomy, Physiology including Bio-Physics, Bio-chemistry and introduction to Community Medicine including Humanities). Besides 60 hours for introduction to Community Medicine including Humanities, rest of the time shall be somewhat equally divided between Anatomy and Physiology plus Biochemistry combined (Physiology 2/3 & Biochemistry 1/3).*

*b) **Phase-II** (3 semesters) - consisting of para-clinical/ clinical subjects. During this phase teaching of para-clinical and clinical subjects shall be done concurrently. The para-clinical subjects shall consist of Pathology, Pharmacology, Microbiology, Forensic Medicine including Toxicology and part of Community Medicine. The clinical subjects shall consist of all those detailed below in Phase III. Out of the time for Para-clinical teaching approximately equal time be allotted to Pathology, Pharmacology, Microbiology and Forensic Medicine and Community Medicine combined (1/3 Forensic Medicine & 2/3 Community Medicine). See Appendix-C.*

*c) **Phase-III** (Continuation of study of clinical subjects for seven semesters after passing Phase-I) The clinical subjects to be taught during Phase II & III are Medicine and its allied specialties, Surgery and its allied specialties, Obstetrics and Gynaecology and Community Medicine. Besides clinical posting as per schedule mentioned herewith, rest of the teaching hours be divided for didactic lectures, demonstrations, seminars, group discussions etc. in various subjects. The time distribution shall be as per Appendix-C. The Medicine and its allied specialties training will include General Medicine, Paediatrics, Tuberculosis and Chest, Skin and Sexually Transmitted Diseases, Psychiatry, Radio-diagnosis, Infectious diseases etc. The Surgery and its allied specialties training will include General Surgery, Orthopaedic Surgery including Physio-therapy and Rehabilitation, Ophthalmology, Otorhinolaryngology, Anaesthesia, Dentistry, Radio-therapy etc. The Obstetrics & Gynaecology training will include family medicine, family welfare planning etc.”*

4. The Appellant, while still a student of Phase III of his MBBS course, attended a medical camp where he gave medical advice to a number of poor patients. Though he did not accept any money from the patients or prescribe any medicines to them, he was vide order dated 12.08.2011 rusticated from the Respondent No. 1/College for a period of six months, on the charge of holding a medical camp and impersonating as a doctor.

5. It further transpires that, at some point during the academic year 2010-11, the Appellant applied for a scholarship under the Economically Weaker Section Scheme for the

academic year 2011-12, which scholarship was granted to him on 21.02.2012. However, soon thereafter, pursuant to a fight between some students on campus, an Inquiry Committee was constituted by the Respondent No. 1/College on 02.04.2012, with the mandate to inquire into the aforesaid incident. It is the Appellant's case that a copy of the said Inquiry Committee's Report was not served on him and the said Committee, without even giving him any opportunity to present his case, went beyond its mandate and concluded that he had applied for and secured the aforesaid scholarship for the academic year 2011-12 during the period when he stood rusticated.

6. In view of the Inquiry Committee's Report, the Dean of Respondent No. 1/College vide his order dated 13.04.2012 constituted a Court of Inquiry, with a mandate to investigate the circumstances under which the Appellant had got the scholarship for the academic year 2011-12. It may be noted that the Dean has also been specifically impleaded as Respondent No. 4 in the writ petition. The aforesaid Court of Inquiry vide its report dated 17.04.2012, having found that the Appellant had forged the signatures, stamp and seal of the Training Officer on the EWS Scholarship and received a sum of Rs.55,000/- from the Respondent No. 5/University, had recommended strict legal action against the Appellant. It is the Appellant's case that the aforesaid Court of Inquiry was held in gross violation of the principles of natural justice, since neither any opportunity of

hearing was afforded to him, nor a copy of its recommendations were ever provided to him.

7. It is the Appellant's further case that, based on the recommendations of the aforesaid Court of Inquiry, the Respondent No. 4/Dean vide his order dated 25.04.2012 constituted a Disciplinary Committee, in order to enquire into the matter of the EWS Scholarship received by the Appellant for the academic year 2011-12. The said Disciplinary Committee comprised of the following members:

- a) Col Virender Dhatwalia, SC, Registrar, ACMS.
- b) Col AG Mathur, Prof. & HOD, Dept. of Pharmacology and Training Officer.
- c) Lt. Col RKS Tomar, Prof & HOD, Dept of Physiology
- d) Dr.Anupma Chowdhary, Assoc Prof. Dept. of Physiology.
- e) University Enrolment No. 0587259008 Miss Kanika Jain, Student of MBBS 2008 Batch.
- f) University Enrolment No. 0057259008 Mr.Anubhav Upadhyay, Student of MBBS 2008 batch.

8. It is the Appellant's case that the said Disciplinary Committee was constituted de hors Clause 7(1)(h) of Ordinance 3 of GGSIP University. It has been contended that, while Ordinance 3 of GGSIP University mandates that either the Director or Principal of the concerned Institution should be appointed as the chairman of a Disciplinary Committee, the Respondents No. 1 to 4, instead of following the provisions of the aforesaid ordinance, had proceeded with the enquiry on the

pattern of an enquiry in the Army, as per which pattern it was the Registrar and not the Dean (who was the Head of the Respondent No. 1/College) who was appointed as the Presiding Officer of the Disciplinary Committee.

9. It emerges that the aforesaid Disciplinary Committee appointed vide the Respondent No. 4/Dean's order dated 25.04.2012, instead of examining evidence independently, simply chose to rely on the evidence recorded by the Court of Inquiry, and vide its report dated 04.05.2012 recommended the Appellant's expulsion. Being aggrieved by the aforesaid recommendations of the Disciplinary Committee, the Appellant preferred a writ petition before this Court, wherein vide order dated 31.05.2012 this Court, while quashing the recommendations, remanded the matter back to the Disciplinary Committee with a direction to continue the proceedings from the point where they had been left, by giving an opportunity to the Appellant to depose and cross-examine the witnesses before the Committee.

10. In compliance of this Court's order dated 31.05.2012, the Disciplinary Committee conducted its proceedings by affording the Appellant an opportunity to depose and cross-examine the witnesses. However, the said Committee did not allow the Appellant to avail the services of a next friend for his defense in the said proceedings. It has also been contended that, though the Appellant was provided with copies of some documents during the proceedings of the Disciplinary Committee, he was not

provided with a copy of the 'student dossier' despite his request. It has thus been contended that even this enquiry was held in violation of the principles of natural justice.

11. It emerges that after the matter of the Appellant's expulsion was remanded back to it, the Disciplinary Committee once again recommended the Appellant's expulsion, which recommendations were accepted by the Respondent No. 1/College. The Respondent No. 1, in turn, vide its order dated 18.08.2012, expelled the Appellant from both the college and the hostel with immediate effect.

12. Thereafter, the Appellant preferred a writ petition impugning the Respondent No. 1/College's expulsion order dated 18.08.2012, which petition has been dismissed by the learned Single Judge, thus leading to the filing of the present appeal. At this stage, it may be noted that the only ground urged on behalf of the Appellant before the learned Single Judge was that the punishment of permanent expulsion of the Appellant was extremely disproportionate. This ground, however, did not favour with the learned Single Judge, who upon considering the Appellant's act of forgery as also four other previous acts of misconduct on his part, declined to interfere with his expulsion.

13. Before us also, Mr. K.K. Rai, learned Senior Counsel for the Appellant, has raised the same pleas as raised before the learned Single Judge, and has submitted that the penalty of expulsion imposed on the Appellant, being extremely harsh,

deserves to be modified to any lesser penalty as prescribed under the GGSIP University's ordinance. The penalty of expulsion, virtually, erases the possibility of the Appellant reforming himself and becoming a medical doctor for all times to come, despite him being a meritorious student throughout.

14. The present appeal came up before us on 30.08.2017, at which stage, in light of the time period which had elapsed since the Appellant stood expelled from the Respondent No. 1/College, we were of the view that before proceeding further it was first necessary to call for a report from the District Magistrate of the Appellant's hometown (i.e. Siwan, Bihar) regarding his antecedents and conduct post his expulsion. The report received from the District Magistrate, evidently reveals that the Appellant has not indulged in any criminal activity in the recent past. The relevant extract of the report reads as under:-

“With reference to the above and in compliance of direction given vide order dated 30.08.2017 by Hon'ble Court, the undersigned vide letter no.-2666 dated 09.09.2017 called for report from Superintendent of Police, Siwan (A photocopy of the said letter is enclosed herewith).

Pursuant to the above letter, the Superintendent of Police, Siwan vide letter no.-121 dated 16.09.2017 has forwarded the inquiry report of Police Sub-Inspector of Daraunda Police Station (A photocopy of the said letter with inquiry report is enclosed herewith).

As per the said inquiry report, the appellant Prabhat Kumar Singh had been staying with his father Sri Baban Singh in Delhi from the childhood for studies. At present the appellant is engaged in preparation of

medical competitive examination and that the appellant has no criminal antecedent.

Accordingly this report is submitted for further process.”

15. The appeal has been vehemently opposed by Mr. Ankur Chhibber, learned counsel for Respondents No. 1 to 4, including on the ground that the Appellant cannot now at this belated stage, after a gap of six years, be re-inducted in the Respondent No. 1/College to complete his MBBS course with students years younger than him.

16. Mr. Harsh Kaushik, learned counsel for Respondent No. 5/University, however, fairly admits that as per the University's Ordinance No. 3, which is applicable to the MBBS Course, there is no time span during which the MBBS course has to be completed, clearly implying that but for the penalty of permanent expulsion, the Appellant is as on date fully eligible to be re-inducted in the MBBS course of Respondent No. 1/College. The stand of Respondent No. 5/University, thus, is that it is only because of his permanent expulsion from the Respondent no.1/College that the Appellant is prevented from completing his MBBS course and not because of any time gap.

17. Mr. Kaushik has also placed before us the Rules of the University dealing with 'Maintenance of Discipline among Students'. Paragraph 7(b) of Ordinance 3, which provides for the constitution of the Boards of Discipline at the level of Affiliated Colleges or Institutions, reads as under:-

- “(i) The Director of the institution or the Principal of the college concerned, Chairman.*
(ii) Two senior teachers of the institution or the college to be nominated by the trust or the society running the college or the institution, member.
(iii) One senior lady teacher of the college or the institution to be nominated by the trust or the society running the college or the institution, member.
(iv) A senior teacher of the institution or the college of the programme to which the act of indiscipline or misconduct by a student or students pertains to.”

18. In view of the stand taken by the Respondents No. 1 to 4, that the Appellant was not suitable for the medical profession and should, therefore, not be permitted to rejoin the Respondent No. 1/College and complete the remainder of his MBBS course, we had deemed it appropriate to ascertain the views of Medical Council of India (MCI) on the feasibility of permitting the Appellant to rejoin the last semester of his MBBS course at this stage, for which purpose notice was issued to the MCI. In response to the Court's notice, a Sub-Committee was constituted by the MCI for examining as to whether the Appellant could at this stage be re-inducted into the MBBS course after a gap of more than 5 years. A copy of the Sub-Committee's report, as approved by the Executive Council of MCI was placed before us, the relevant extract whereof reads as under:-

“In view of the aforesaid position and noting the fact that the appellant when rusticated by the admitted college had cleared his 'Part I' of the III phase of the Final MBBS examination conducted by the Examining

university in the year 2012, the committee is to recommend as under:-

1. By virtue of the fact that the regulation does not prescribe any limitation of age and time for procurement of the MBBS degree, the lapse of time does not come in the way of continuation of the course further from the point where it was left for whatever reason, hence there is no statutory bar which restricts the appellant to pursue the MBBS course at the concerned Medical College from the point where he had left upon his rustication on disciplinary grounds by the concerned college.

2. the appellant will be duty bound to ensure that all the prescribed academic requirements including acquiring required prescribed percentage of attendance and duration of the two 'Academic terms' of six months each are fulfilled by him for being eligible to take the final MBBS (Clinical Part II) examination of the examining university.

3. Upon clearing the final MBBS examination of the concerned examining university, the appellant shall be duty bound to satisfactorily complete one year rotating internship and procure certification thereto which would then entitle him for conferment of MBBS by the examining university."

19. What thus emerges is that, while the Respondent No. 1/College has vehemently opposed the re-induction of the Appellant into the MBBS course, the MCI has no objection thereto, though it has been emphasized that the Appellant will have to fulfill the prescribed academic requirements including one year of rotating internship. It may be noted that even the Respondent No. 5/University, while contending that a student is not entitled to award of a degree if any disciplinary action is pending against him, has categorically stated that there is limitation on the time taken for completion of a program leading

to the award of a MBBS degree, meaning thereby that there is no outer limit of the time period during which a candidate must complete the MBBS course. The Respondent No.5/University has also conceded that some students admitted in its MBBS programme in the years 2004/2007/2008, were permitted to appear in the final year supplementary exams as late as in February 2017 and February 2018, clearly showing that students have been allowed to complete their MBBS course in periods upto 13/14 years.

20. In light of these facts, Mr. K.K. Rai, learned Senior Counsel for the Appellant, has while referring to various infractions in the procedure followed by the Disciplinary Committee, mainly urged that the punishment of permanent expulsion awarded to the Appellant was unduly harsh and shockingly disproportionate, and has prayed that the same be modified to any of the lesser penalties prescribed in paragraph 4.2 of Ordinance 3 of the University, dealing with maintenance of discipline among students.

21. Before examining Mr. K.K. Rai's aforementioned plea, it may be appropriate to refer to paragraph 4.2 of Ordinance 3 of the University, which reads as under:-

“4.2 The Vice-Chancellor, Directors/Principals of affiliated colleges or institutions as the case may be, may in the exercise of his powers aforesaid, order or direct that any student –

- (i) be expelled from the University, college or institution, as the case may be, in which case he shall not be re-admitted to the*

- University, college or institution from where he is expelled but it shall not preclude his admission to any other affiliated college or institution with the prior approval of the Vice-Chancellor; or*
- (ii) be, for a stated period, rusticated in which case he shall not be admitted to the University or an affiliated college or institution, till the expiry of the period of rustication; or*
 - (iii) be not, for a stated period, admitted to a course or courses of study of the University; or*
 - (iv) be imposed with the fine of a specified amount of money;*
 - (v) be debarred form taking a University examination or examinations for one or more years.”*

22. In the light of the penalties provided for in the University's Ordinance, let us now consider the rival contentions of the parties. As noted above, the only ground pressed on behalf of the Appellant, both before us and the learned Single Judge, was that the penalty of permanent expulsion awarded to the Appellant was unduly harsh and shockingly disproportionate. Therefore, keeping in view the time period which has elapsed from the date of the Appellant's expulsion, it has been urged that this Court may, instead of remitting the matter back to the Respondents, appropriately modify the penalty to any of the other penalties prescribed in the GGSIP University's Ordinance. At this stage, we may also note that Ordinance 4 prescribes for five scales of penalties and, except for the penalty of expulsion, which is the severest

penalty provided therein, the award of any other penalty would allow the Appellant to complete his MBBS course from the Respondent No. 1/ College.

23. In support of his contention that the penalty was unduly harsh and shockingly disproportionate, Mr. Rai has fervently urged that, while imposing the penalty of permanent expulsion, the college authorities, who are Senior Officers of the Army, have ignored the various facets of the case, which ought to have been considered while deciding the quantum of penalty. By placing reliance on the decisions of different High Courts, including this Court, Mr. Rai contends that the Appellant, who is the son of an Ex-Havildar of the Indian Army coming from a rural background, had an outstanding academic record all through, having obtained 94.5% marks in Class X and 93.8% in Class XII. Mr. Rai further contends that, based on his performance in the highly competitive entrance examination of Respondent No. 5/GGSIP University, the Appellant secured admission in the prestigious Respondent No. 1/College, which was a moment of great pride for him and his family, who belong to the lower wrung of society. He submits that the Appellant had also proved his merit while undergoing the MBBS course in the Respondent No. 1/College, having been appointed as the students' representative in the college, and in the first three years of his college life, he was not even once charged with any misconduct. On the contrary, he submits, the Appellant received

a scholarship from the University for the academic year 2009-10.

24. Taking his aforementioned plea further, Mr. Rai submits that the first misconduct with which the Appellant was charged, related to an incident on 30.05.2011, where the Appellant perceived that he had been wrongly held guilty due to his being the son of a Havildar as opposed to the children of Officers in the College. This incident, Mr. Rai submits, left a deep imprint on the Appellant's young mind and led to a series of minor incidents in the short span of the next 11 months. He, thus, contends that it is not as if the Appellant was— from the very beginning, an undisciplined student and, therefore, urges that this black period of eleven months from 30th May, 2011 to April, 2012 in his student life, ought not to be a ground to banish him from education and society forever. He, thus, contends that, while imposing the extremely harsh penalty of expulsion, the authorities ought to have kept in mind the Appellant's young age, his academic excellence, his humble background and the circumstances in which the misconducts were committed.

25. Mr. Rai further contends that, even otherwise, the Appellant has already suffered for the last six years, during which period he has remained not only in grave mental stress but has also been branded as an expelled student, and that too after having completed four years of his course of study with only six months of study remaining for him to acquire his

MBBS degree. He, therefore, urges that this Court may itself modify the penalty of permanent expulsion to that of rustication for the period of six years, during which the Appellant has already remained out of the system. In support of his contention that this was not a case warranting the extremely harsh penalty of permanent expulsion, Mr. Rai has placed reliance on the following decisions:-

- (i) ***Akshay Chaudhary and Anr. Vs. University of Delhi & Anr. passed 2010 SCC OnLine Del 3061: (2010) 174 DLT 645***
- (ii) ***Akhlaque Ahmad Khan Vs. Jamia Millia Islamia 2010 SCC OnLine Del 3173***
- (iii) ***T.T. Chakravarthy Yuvaraj & Ors. Vs. Principal, Dr. Jahar Majumdar B.R. Ambedkar Medical College AIR 1997 Kar 261;***
- (iv) ***Sarthak Sen Gupta Vs. State of West Bengal 2013 SCC OnLine Cal 9469;***
- (v) ***Vivek Kumar Vs. Vice Chancellor, B.H.U. & Ors. (2002) 5 AWC 3596;***
- (vi) ***Union of India & Ors. Vs. Bishamber Das Dogra (2009) 13 SCC 102***

26. On the other hand, Mr. Chibber submits that the Appellant having indulged in various acts of indiscipline between 30th May, 2011 and May, 2012, was not a suitable candidate for a career in medicine. By relying on four successive minor incidents in which the Appellant was involved, the details of which incidents are not necessary for

deciding the present appeal, Mr. Chhibber contends that the said incidents only show that the Appellant's behavior had progressively deteriorated and his craving for monetary gains has increased despite warnings and punishments. He submits that the re-induction of the Appellant in the Respondent No. 1/College will severely undermine the discipline therein. By placing reliance on the decisions of the Supreme Court in the case of *Director (Studies), Dr.Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh & Ors. v. Vaibhav Singh Chauhan [(2009) 1 SCC 59]* and *Vice-Chancellor, Guru Chasidar University v. Craig Macleod [(2012) 11 SCC 275]*, he contends that in matters of discipline or administration of the internal affairs of a University, the Courts should be most reluctant to interfere.

27. Having heard the learned counsels for the parties at great length, we have given our anxious consideration to the only issue arising before this Court, the same being as to whether the penalty of permanent expulsion awarded to the Appellant is, in the facts of the case, so unduly harsh and shockingly disproportionate, as to warrant our interference and if yes, whether the ends of justice demand that the same should be modified by us to a lesser penalty in accordance with paragraph 4.2(b) of the University's own ordinance.

28. In deciding this question, we cannot also lose sight of the fact that even though the Appellant had given up his challenge on merits, and his counsel had confined his arguments only to

the proportionality of the penalty imposed, glaring infirmities in the constitution of the Disciplinary Committee are writ large. Even the procedure followed by the said Committee, prima facie, indicates that the Committee has dealt with the Appellant as if he was an Army Officer, by completely forgetting that he was just a young lad of about 20 years of age at the relevant point of time.

29. Another interesting factor which emerges from the record is that, even though paragraph 8.3 of the University's Ordinance No. 7 provides for an appeal to the Vice-Chancellor against the decision of the Board of Discipline, neither the Appellant was ever advised to do so, nor the plea of existence of an alternate efficacious remedy was ever taken by the Respondent No. 1, either before the learned Single Judge, or before us. In our opinion, this fact only re-inforces our view that the Respondent No. 1/College has dealt with the Appellant's case by treating its Discipline Committee as a final authority without even informing the Appellant that, as per the University's ordinance, he was entitled to file an appeal to the Vice-Chancellor of the University.

30. We may now refer to the various decisions relied upon by learned counsels for the parties. The common thread running through all the decisions cited at the Bar is that, there can never be any straight jacket formula for deciding the penalty to be imposed in each case, and the same would necessarily depend on the varied factors of each individual case. It also emerges

that, while it is a settled legal principle that in matters of discipline of academic institutions, the Courts must be slow to interfere, it is equally true that there is no absolute bar that the Court should not interfere with punishments imposed by academic institutions, even when it finds that the penalty is so unduly harsh, and so disproportionate, that if left uncorrected it will lead to grave injustice.

31. In the case of ***T.T. Chakravarthy Yuvaraj (supra)***, on which reliance has been placed by Mr. Rai, it was observed by the Karnataka High Court as under:-

“16. The only aspect that has really given us very anxious concern is the punishment that should be imposed upon the students. The learned single Judge has taken the view that when once the charges against students which are serious enough are proved, the punishment that could be imposed also is within the discretion of the disciplinary authority and the Courts should not interfere with the same. The Courts also have taken note of the fact that when the punishment imposed is not commensurate with the charge, such action ought to be held arbitrary calling for interference with the same. In support of this proposition, we may advert to the decision of the Supreme Court in AIR 1987 SC 2386: (1988 Cri LJ 158) (Ranjit Thakur v. Union of India). In this decision, it is held that judicial review is not directed against a decision but is directed against the "Decision making process"; that the question of appropriate punishment, both in its choice and quantum, being within discretion of the disciplinary authority and the same has to suit the offence and the offender; that it should not be vindictive or unduly harsh or so disproportionate to the offence as to shock the conscience and the magnitude of punishment in itself conclusive evidence of bias; that the doctrine of

proportionality as part of concept of judicial review, would ensure that even on an aspect which is otherwise within the exclusive domain of the disciplinary authority, if the decision of the authority even as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction; that perversity and irrationality are recognised grounds of judicial review. After enunciating this dicta, corrected the sentence awarded in that case.

17. In inflicting appropriate punishment, certain aspects have to be borne in mind. When the relationship of the Head of the Institution and the student is that of a parent and child, the punishment imposed should not result in any retribution or give vent to a feeling of wrath. The main purpose of punishment is to correct the fault of the student concerned by making him more alert in future and to hold out a warning to other students to be careful, so that they may not expose themselves to similar punishment and the approach is that of a parent towards an erring or misguided child. In order to not to attract the criticism that the action is a result of arbitrariness, it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Certainly one cannot rationally or justly impose the same penalty for giving a slap to the one imposed for homicide. Unless the disciplinary authority reaches the conclusion that having regard to the nature of the misconduct it would be totally unsafe to retain them in the college, the maximum penalty of expulsion from the college should not be imposed. If a lesser penalty can be imposed without jeopardising the interest of the college, the disciplinary authority cannot impose a maximum penalty of expulsion from the college. The concerned Head of the Institution must necessarily have an introspection and a rational faculty as to why lesser penalty cannot be imposed. In doing so, it should also be borne in mind that when the maximum penalty is imposed total ruination stares one in the eye rendering such student a vagabond as being unwanted

both by the parents and the educational institution. Frustration that would result would seriously jeopardise young life. Every harsh order results in bitterness and arouses a feeling of antagonism and many a time turn a student into an anti-social element and in that way it results in more harm than good to the Society.

18. Young and inexperienced these students are, came to the college campus on the night of 13-11-1995 perhaps with a view to have a drink, eat and make merry. We can visualise a situation when these students being in a group did exactly what they would not have done individually for they were egged upon to do so and for the fear that they should not be branded as cowards perhaps to project themselves as heroes however misguided they may be. Being influenced by alcohol and false sense of security of being in a group, they must have been led to the unfortunate events. As a result of heady youthfulness and under the evil influence of Bacchus the students might have lost their mental poise so as not to treat the bust of Dr. Ambedkar with reverence it deserved. Though the acts of the appellants are not condonable or excusable. We should not be oblivious to the realities of matter so as to impose the highest punishment by expulsion of appellants from the college. A student in the hands of Principal is a child in the hands of a parent and a parent would never want the career of a child to be completely destroyed by expulsion which necessarily renders him unfit for any other career either, for no college would be willing to grant them admission to enable them to complete their studies thereby leading to such frustration and disappointment or despondency which may lead even either to suicide or turn them into anti-social elements. Therefore, we are of the view that to permanently put an end to their career would not be an appropriate punishment considering the fact that they had not indulged in any violence or acted in any premeditated manner violating the college discipline as such but their spontaneous acts had resulted in showing

disrespect to Baba Ambedkar. However, we think even Baba Ambedkar would not have ignored the famous statement made by portia in "Merchant of Venice" by Shakespeare that 'Justice should be tempered with mercy,' particularly when the students are in the position of those about whom -- Jesus Christ said -- "They know not what they do. Forgive them." On this understanding of the matter, we are of the view that expulsion from the college would be a disproportionate punishment not commensurate with the charges against them. On the other hand, if they are debarred from the college for few years and allowed to rejoin the college thereafter, with passage of time heal all the hurt sentiments. With the passage of time the atmosphere in the college would also change and the other students too may accept them with their hurt sentiments assuaged. In the instant case the punishment imposed is thus strikingly disproportionate as to call for and justify interference in our hands. We cannot allow such punishment to remain, uncorrected in exercise of our powers under Art. 226 of the Constitution of India." (emphasis supplied)

32. Reference may also be made to the decision in the case of *Akshay Chaudhary (supra)*, wherein a learned Single Judge of this Court held as under:-

"1. The two petitioners by this writ petition impugn the order of the respondent No. 1 University of Delhi expelling the petitioners from the respondent No. 2-Kirori Mal College of which they were final year students in the academic session 2009-2010. The complaint against the two petitioners, who had then been recently promoted to the final year, was of ragging a fresher admitted in the first year in academic session 2009-2010. The petitioners were proceeded against in terms of the then freshly promulgated (on 4th July, 2009) University Grants Commission Regulations on

Curbing the Menace of Ragging in Higher Educational Institutions, 2009. On the complaint of the victim, of ragging by the petitioners, a First Information Report (FIR) was also lodged by the Police Authorities on 3rd August, 2009 against the petitioners. The respondent No. 2-Kirori Mal College vide order dated 3rd August, 2009 expelled the petitioners from the College as well as the College Hostel with immediate effect.

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15. *This Court has however reconsidered the matter only on the thought that, **all in all punishment hardens and renders people more insensible; it concentrates; it increases the feeling of estrangement; it strengthens the power of resistance (Courtesy Friedrich Nietzsche, German Philosopher) and that any punishment that does not correct, that can merely rouse rebellion in whoever has to endure it, is a piece of gratuitous infamy which makes those who impose it more guilty in the eyes of humanity, good sense and reason, nay a hundred times more guilty than the victim on whom the punishment is inflicted (Courtesy Marquis De Sade, French Novelist). The French Philosopher Voltaire famously said that the punishment of criminals should be of use, when a man is hanged he is good for nothing. Justice Krishna Iyer also in Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P., (1978) 1 SCC 240 : AIR 1978 SC 429 observed that punitive harshness should be minimized.***

16. *The petitioners were young lads barely 20 years old when indulged in ragging. Undoubtedly they are guilty, however the said guilt will be in the context of their youth. Aristotle said “Young people are in a condition like permanent intoxication, because youth is sweet and they are growing”. Oscar Wilde by saying “To get back one's youth one has merely to repeat one's follies” put the matter succinctly.*

17. *The question therefore which perturbed me was that when the Regulation aforesaid provides for administrative punishment, of minimum of suspension from attending classes and academic privileges and maximum of expulsion from the Institution and consequential debarring from admission to any other Institution for a specified period, whether the maximum punishment is today justified. The signal intended to be sent by expelling the petitioners has already reached where it was intended. The petitioners have shown sufficient remorse. They have not indulged in any reckless litigation. I find that students punished for ragging or violation of disciplinary norms of the College/University have approached this Court in the past with all kinds of pleas, of the principles of nature justice having not been complied with, hearing having not been given, right of cross examination having been not given [see Ashish Bhateja v. Indian Institute of Technology, AIR 1993 Delhi 354 and Mansoor Azam v. Jamia Millia Islamia, 90 (2001) DLT 735]. The petitioners have not indulged in disputes of any such nature.” (emphasis supplied)*

33. We may also refer to the decision of the Supreme Court in **Sarthak Sen Gupta (supra)**, on which reliance has been placed by Mr. Rai, where the Court held as under:-

“The petitioner is a student of the University Institute of Technology, Burdwan University and pursuing the Bachelor of Engineering Course in Computer Science and has challenged the decision of the Vice-Chancellor by which he is expelled from hostel permanently and debarred from appearing in two consecutive semesters (Even Semester 2012-2013; Odd Semester 2013-2014).

The petitioner has assailed the said order on the ground that no opportunity of hearing was afforded to him. According to the petitioner, the entire order is vitiated by the principle of natural justice.

From the impugned order, it appears that the petitioner was found guilty of ragging to the freshers previously and was exonerated on submission of an undertaking. The petitioner was again found guilty of committing assault on the student on whom the allegation of ragging was also made and the said student lodged complaint before the local police station and also with the authorities.

The authorities in strict compliance of the procedures and norms took a resolution that he should be permanently expelled from the hostel and should be debarred from appearing in two semesters examination.

The learned advocate appearing for the respondents nos. 4 to 7, submits that there is a provision for an appeal under the All India Council of Technical Education Regulation before the Vice-Chancellor.

There is no dispute to the fact that on an earlier occasion the university has shown some latitude and sympathy to the petitioner and have exonerated him from being prosecuted under the said rules on an undertaking given by the petitioner as well as the father of the petitioner.

The ragging is an act of indisciplined activities undertaken by the senior students to bring the freshers down to earth because they think that the freshers do not respect the seniors. Such barbaric, inhuman activities not only affects the freshers physically but has mental impact as well which may result in the disastrous steps taken by the freshers. In order to countermand such inhuman activities, the All India Council of Technical Education Regulation is framed which provides the full mechanism to combat the war against the ragging in the different educational institutions through out the country. The educational institutions are required to maintain a congenial as well as disciplined atmosphere within the institution and should not be allowed to tolerate any such act done by the students. The authorities have shown some latitude to the petitioner in not expelling him and/or debarring him from the institution itself but have expelled from appearing in two semesters examinations. The All India Council of Technical Education Regulation

provides different punishment to be inflicted on the students found to have been indulge in the ragging to the freshers which includes cancellation of admission, suspension of attending classes, withholding and withdrawing scholarships/fellowship and other benefits, debarring from any tests or examination, withholding results, debarring from representing the institutions, suspension and expulsion from hostel, rustication from the institution for period ranging from 1 to 4 semesters.

The ragging has been defined by the Apex Court in case of University of Kerala v. Council of Principles of Colleges in Kerala reported in (2009) 15 SCC 301 as an abuse of human rights which is not restricted to the physical abuse but the mental harassment as well. Ragging are usually done on the freshers who have just come into the new environment and cannot be tolerated in a civilised society.

Admittedly the complainant is not a fresher and it appears that there was some conflict with him and the petitioner, at the time the said complainant joined the institution. The authorities have found the petitioner to be guilty of indiscipline and misconduct and have inflicted the punishment of expelling him permanently from the hostel and also from appearing in the examination for two semesters.

The writ court should not interfere with the decision of the fact finding authorities but can certainly interfere when the punishment inflicted and being the outcome of the said disciplinary decision making process, is shockingly disproportionate. This Court further finds from the record produced before this Court by the university that another student who was accompanying the petitioner have been imposed the monetary punishment though according to them it was the solitary act which has been done by him. There is no dispute that the petitioner was actively involved in the incident and the same is found to be true on enquiry by the authorities. This Court found that debarring the petitioner to appear in the examination for two semesters is disproportionate

to the commission of an offence as well as the misconduct.

This Court, therefore, modifies the order to the extent that the petitioner shall be debarred from appearing in the examination of the ensuing semester and shall remain permanently expelled from the hostel so long he does not emerged as the successful candidate in the last semester examination.”

34. We may now refer to the decisions relied upon by Mr. Chhibber, learned counsel for the Respondents No. 1 to 4. In ***Dr. Ambedkar Institute of Hotel Management (supra)***, the Supreme Court was dealing with a case where a candidate was found guilty of using unfair means in the examination and was, therefore, disqualified for one academic year. It is in these circumstances that the Supreme Court, after observing that the student had been given the minimum punishment under the Rules, declined to interfere with the same by observing as under:-

“19. Moreover, the respondent examinee has been given the minimum punishment under the Rules and no lesser punishment could have been imposed, except in exceptional circumstances. It is true that when a person confesses his guilt it is often treated as a mitigating circumstance and calls for lesser punishment if that is permissible. However, this is not an absolute rule and will not apply in all kinds of cases. In particular, as stated above, in academic matters there should be no leniency at all if our country is to progress. Apart from that, the respondent had been given the minimum punishment under Rule 9.2 and we fail to understand how a lesser punishment could have been given to him, except by exercising discretion in a particular case. This is not that kind of exceptional case, and no sympathy was called for.”

35. In the present case, the Appellant has been inflicted with the severest possible penalty prescribed under the Rules. Consequently, this decision relied upon by learned counsel for the Respondents is not apposite.

36. We have also considered the decision in the case of ***Vice-Chancellor, Guru Ghasidas University (supra)***, on which heavy reliance has been placed by Mr. Chhibber, and find that in the said case, the Supreme Court was dealing with a situation where the High Court had by way of an interim order, restrained the University from passing a final order in the disciplinary proceedings against a student, and finally the penalty of rustication for a period of five years had been imposed on the said student. The Court, while remanding the matter back to the High Court, had observed as under:-

“18. Therefore, without going into the larger issues raised before us, we grant liberty to Craig MacLeod to revive WP (C) No.890 of 2012 filed (and subsequently withdrawn) by him in the High Court challenging the office order dated 7-1-2011 passed by the Vice-Chancellor of the University. We expect the High Court to permit revival of the writ petition and decide it expeditiously since it is stated that Craig MacLeod has already lost two years of his education as a result of this litigation.”

37. When we consider the facts of the present case in light of the aforesaid decisions, the one noticeable aspect which emerges is that neither of the cases cited by Mr. Chibber deal with the permanent expulsion of a student. In the cases cited

before us by Mr. Chibber, the penalty imposed on the student-whether of rustication or of disqualification, was only for a limited period, unlike the present case where the penalty is of permanent expulsion. In *T.T. Chakravarthy Yuvaraj* (supra); *Akshay Chaudhary* (supra); *Akhlaque Ahmad Khan* (supra), and *Vivek Kumar* (supra), the student had been permanently expelled, and Courts found the same to be unduly harsh and shockingly disproportionate.

38. The Appellant joined the MBBS course in July 2008. When he joined, he would have been barely 17 or 18 years of age. The Appellant, it appears, out of his exuberance and foolhardiness conducted a medical camp when he was a second year student, projecting himself to be a doctor, to treat patients. Pertinently, he does not appear to have done the same with the objective of either making money or causing any harm to any patient. It appears that the said conduct of the appellant stemmed from his overconfidence, and immaturity. He could not hold his horses. The realisation did not dawn on him that his holding a camp by projecting himself as a medical doctor, could harm the patients who attended the same, and could even result in ugly unforeseen consequences.

39. When one views this conduct in the background that the appellant comes from a rural poor family, one can only describe this conduct as amateurish. For this, he deserved a rap on his knuckles and deservedly he was rusticated for a period

of six months, since he was found to have impersonated as an MBBS doctor who prescribed medicines when not licensed/qualified to do so, whereby the lives of the patients could be endangered. This punishment was given effect to on 12.08.2011.

40. The appellant, at the time of grant of admission by the Respondent No.1/College in August, 2008, submitted his application for claiming scholarship under the EWS Scheme for the amount of Rs.55,000/- from the Respondent No.5/University for the year 2010-11. This application was verified and forwarded with the recommendations of the Respondent no.4/Dean on 26.07.2010.

41. It appears that while the rustification of the Appellant for impersonation - for a period of six months, was still in force, on 11.11.2011 the Appellant purportedly submitted another application to claim scholarship for the academic year 2011-12 under the EWS Scheme for the amount of Rs.55,000/- from the Respondent no.4/University.

42. The Appellant, apparently, forged certain documents and signatures while submitting the said application. Such conduct of any student would, no doubt, raise concerns in the minds of the administrations at the institution where the student studies, and would impel the institution to take stern action against the erring student. We also agree with Mr. Chhibber that since this action was taken by the Appellant during his rustification for

six months, the same required to be viewed even more seriously. However, the question is whether the medical institution and/ or the university could justifiably resort to the strictest action against the erring student in such a situation? While this conduct of the appellant cannot be countenanced under any circumstance, we have tried to gather and understand the background in which he may have acted in such an unacceptable and disastrous manner.

43. As noticed herein above, the appellant comes from a rural background- being the son of an ex- havildar of the army. Apparently, he secured a scholarship for the academic year 2010-11 of a substantial amount of Rs.55,000/-. That scholarship would have been extremely valuable for him and his family, since it would have lessened the burden on the family to fund his education and his lodging and boarding at the hostel. In the next year, he was expelled due to his first misadventure and mistake taken note of herein above. That, however, did not stop the clock or put an end to his needs and wants. He would still have to maintain himself. Apparently, he did not have the courage to tell his family that on account of his rustification for six months, he would not get the scholarship for the next academic year, since the college would not, obviously, recommend or accept an application for such a scholarship in respect of a rusticated student. The Appellant was caught in a tight spot. Intelligent the Appellant was, and

his intelligence -bereft of wisdom, which comes only with age, guided him to resort to forgery and fabrication of documents to be able to again secure the scholarship for Rs.55,000/- for the academic session 2011-12. As would be the end of any such escapade, this too ended disastrously for the Appellant. This act of his, too, was exposed. What followed thereafter was a strict disciplinary action against him after, inter alia, holding an inquiry.

44. For anyone to be subjected to the experience of undergoing interrogation and questioning by a disciplinary committee, while the person is in the dock, is in itself a traumatic experience. The same would have washed away any sense of bravado and delusion about his being extra smart, that the Appellant may have entertained, on the basis of which he indulged in such objectionable conduct. Coupled with that, being subjected to permanent expulsion from the MBBS course would have taught him a lesson, and deeply engrained in him the fundamental principle of maintaining honesty and integrity in life.

45. It has been over six years now since the Appellant was expelled. He has been languishing in the courts ever since, pleading that he be forgiven for his misconduct, and that he be given yet another chance to reform himself. In these six years, the Appellant would have matured much faster and much more due to his suffering, than even his peers. Even we have

counselled him in court and he has promised to maintain honesty in his dealings. It is precisely for this reason that we called for a report from the District Magistrate, Siwan, Bihar regarding the conduct of the Appellant, particularly post his expulsion from the Respondent No.1/College. He is not found to have indulged in any criminal conduct.

46. Having examined the decisions cited by the Appellant, particularly in the case of *T.T. Chakravarthy Yuvaraj* (supra) and *Akshay Chaudhary* (supra), we respectfully agree with the views expressed in the said decisions with regard to the approach that should be adopted by educational institutions and courts in such like cases. One should not forget that, to err is human. Adolescence and youth are those stages in any persons life, when they do make mistakes without fully appreciating what is right from wrong, and without appreciating the seriousness of the consequences which their acts, deeds and omissions may lead to. Though the Appellant may have crossed the age of majority at the relevant point of time when he indulged in unacceptable conduct, he was still very young. Experience of life shows that while some children mature early, others may take time. It appears to us that the Appellant - who was transplanted from a closed environment of a lower middle class family (being the son of an ex-havildar of army), into the environment of the Respondent No.1/College – wherein he interacted with children/ students and faculty

coming from economically higher strata of the society, could not handle the change and made mistakes for which he has sufficiently suffered.

47. At this stage, the Appellant has admittedly completed four years out of the prescribed four and a half years of study for the award of a MBBS degree. In view of the same, when we examine all the surrounding factors, including the Appellant's humble background; brilliant academic career; his young age; his right to education; his right to fulfil his aspirations and reach somewhere in life; and, the fact that for the last six years he has only suffered humiliation from every quarter, we have no hesitation in holding that the penalty of permanent expulsion imposed on him was unduly harsh and shockingly disproportionate.

48. We also find that the view we are taking is very similar to the course of action adopted by various Courts, including this Court. It has been consistently held that while imposing punishments on students, it must be kept in mind that they are not to be treated as criminals and the punishment imposed on them should not be such as to invoke in them any feeling of being wronged. The approach has to be to correct them, while balancing the requirement of maintaining discipline in the concerned institute. While convicts of even most heinous crimes are permitted to pursue their academic dreams, the Appellant, a young and meritorious lad coming from a rural and a very

humble background, is being denied the opportunity even after he has already suffered for the last six years.

49. We may also note that, though Mr. Chhibber has vehemently argued that the expulsion from the Respondent No. 1/College or Respondent No. 5/University, does not prevent the Appellant from taking admission in any University to pursue his academic career, we find no merit in the said contention, as it needs no gainsaying that with this expulsion, the Appellant is not likely to be granted admission by any other educational institution. It would also mean that he would have to start from scratch and his four years of study, and six years of suffering thereafter would get washed away.

50. Having found that the penalty imposed on the Appellant is unduly harsh and shockingly disproportionate, the question would now be whether we should remit the matter back to the Respondents for modification of penalty or this Court should itself modify the penalty. In our considered view, at this stage when the Appellant has already lost six academic years, interest of justice demands that, instead of remanding the matter back to either the Respondent No.1/College or the Vice-Chancellor of the Respondent No. 5/University, we should modify the penalty of permanent expulsion to that of rustication for the period already undergone. A similar course of action was taken by this Court in the case of ***Air Force Bal Bharti School and Anr. v. Delhi School Tribunal and Ors.*** [LPA No. 48/2005], wherein it was held as under:-

"7. This Court is now called upon to exercise second review, as it were, of the disciplinary order made by the school....The counsel's emphasis that without a finding that the penalty in a given case is "shockingly" disproportionate, the Court cannot substitute it, exercising the jurisdiction of the decision-maker, does not persuade this Court. It is the disproportionality of the punishment, by whatever name called, i.e., "shocking", "serious" or "gross" having regard to the totality of the proven facts, which is to be seen in every case. A case might reveal facts where the penalty is shockingly disproportionate, and the Court may substitute it without saying that the penalty is shockingly disproportionate. Conversely, in another instance, the penalty might not be disproportionate at all, despite which the Court might say it is. Ultimately, it is a matter of substance, and not semantic form, that the Court has to look into..."

51. However, even though we are inclined to modify the penalty and permit the Appellant to pursue his MBBS degree, the same in our considered opinion, has to be made subject to some conditions, which we have arrived at by considering the views not only of the Respondent No. 5/University, but also of the MCI.

52. Resultantly, the impugned order passed by the learned Single Judge is set aside. The order of penalty of permanent expulsion imposed on the Appellant is also set aside and is modified to his rustication from the Respondent No. 1/College till 31.5.2018, whereafter he would be re-inducted in the final semester of his MBBS course in Respondent No. 1/College itself. However, the same would be subject to the following conditions:-

(1) The Appellant will not be permitted to join the hostel and would only be admitted as a day scholar.

(2) While the Appellant is permitted to join the final semester and appear in the exams thereof, he will also have to once again clear all the theory examinations of the second and third phase of the MBBS course by way of supplementary/regular exams, as and when they are held.

(3) We also direct the constitution of a three member Committee, having one nominee each from Respondent No. 1/College, Respondent No. 5/University and the MCI, which committee would be free to decide any other conditions (like compulsory rural service etc.) to be imposed on the Appellant, as may be deemed appropriate in the facts of the case. Needless to say, the said conditions must necessarily be consistent with this order. We may observe, that on instruction from the Appellant, Mr. Rai has stated that the Appellant would abide by any such directions and conditions, as are considered necessary to monitor the conduct of the Appellant during the period of his study till he completes the MBBS course and even thereafter. We consider that the conduct of the Appellant may be watched by the said committee till he completes three years after obtaining the MBBS degree.

53. We hope that our decision to modify the Appellant's penalty and to give him an opportunity to complete his MBBS course, motivates him to blossom into a good and dedicated doctor. We hope that our trust in the human capacity of self correction; of self reform, and the human ability to rise above adversities would be reaffirmed by the Appellant.

54. The appeal is allowed in the above terms with no order as to costs.

(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

JULY 02, 2018
aa.

