

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.8544 of 2020
and W.M.P.Nos.10328, 10329 & 10330 of 2020

V.Rashwin Raj,
S/o.P.R.Varadharaj.

... Petitioner

Vs.

1.The Dean,
Sri Venkateshwaraa Medical College
Hospital & Research Centre,
Ariyur,
Puducherry 605 102.

2.N.Lenin

... Respondents

(2nd respondent impleaded as per order
of this Court dated 30.07.2020 made in
WMP.No.12666 of 2020)

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus, to call for the records of the order of the Respondent in his proceedings No.290/AAO/SVMCH&RC/2020 dated 17.03.2020 and to quash the same as being illegal and unsustainable in law and for a consequential direction to the respondent to reinstate the petitioner to attend the classes and examinations without any break whatsoever and pass orders.

For Petitioner : Mrs.N.Kavitha Raameshwar

For Respondents: Mr.Abhishek Jenasen for R1.

Mr.R.Saravanan for R2.

O R D E R

This writ petition has been filed challenging the order passed by the respondent through his proceedings dated 17.03.2020 and for a consequential direction to permit the petitioner to attend the classes and the examinations without any break.

2. The case of the petitioner is that he was admitted to the MBBS course in the respondent college during the academic year 2016-2017 and he is presently studying in the 4th year.

3. During February 2020, the second respondent, who was also studying in the same class made a complaint against the petitioner to the Dean of the college stating that the petitioner is harassing him continuously and indulged in ragging him and since he is not able to tolerate it any more.

4. On receipt of the complaint, the Dean of the respondent College called upon the petitioner and it is alleged that an apology letter was taken from the petitioner by threat on 03.02.2020. The matter took a different turn since the complainant was not willing to withdraw the complaint and therefore, the respondent Institution had to follow the regulations of the Medical Council of India (MCI) and an Internal Anti-Ragging Committee was constituted to conduct an enquiry on the complaint given by the second respondent. The Committee consisted of ten persons.

5. The Committee conducted an enquiry and took statements from the petitioner, second respondent and some other students and submitted a report. Pursuant to the same, the Dean of the respondent Institution issued an impugned letter dated 17.03.2020 suspending the petitioner for two semesters and imposed a penalty of a sum of Rs.1 Lakh. Aggrieved by the same, the present writ petition has been filed before this Court.

6. Mrs.Kavitha Raameshwar, learned counsel appearing on behalf of the petitioner submitted that even if the allegations are taken as it is, without admitting the same, it will not constitute a ragging as defined under the MCI Anti-Ragging regulations. The learned counsel further submitted that the petitioner was not given an opportunity to put forth his case and the letter was forcibly taken from the petitioner on 02.03.2020, as if the petitioner has accepted that he has ragged the second respondent. The learned counsel further brought to the notice of this Court, Clause 6.4.1 of the Regulations and submitted that the committee was not constituted in line with the said regulations. The learned counsel would submit that the head of institution is the Dean and he did not head the Committee and the Committee was actually headed by the Head of the Department. Therefore, the entire proceedings is vitiated and consequently the impugned letter issued by the respondent requires interference. The learned counsel submitted that where the regulations provide to do a particular act in a particular manner, the same ought to be done in the said manner or not at all. Therefore, even if it is taken that the petitioner

participated during the enquiry, that will not take away/remove the illegality in the constitution of the Committee. The learned counsel concluded her argument by submitting that the complaint itself is artificial, since it is alleged in the complaint that the second respondent is ragged from the first year onwards and there is absolutely no explanation as to why the complaint was given only in the 4th year. Therefore, taking this into consideration, the learned counsel submitted that the penalty imposed by the respondent is disproportionate to the allegations made against the petitioner.

7. Per contra, Mr. Abhishek Jenasenan, learned counsel appearing on behalf of the 1st respondent-Institution submitted that the delay in giving a complaint itself does not vitiate the complaint, since the second respondent has been tolerating it for a long time and it was going beyond control, which made him ultimately give a complaint against the petitioner. The learned counsel further submitted that the definition of ragging was expanded and, an amendment to the notification was published on 05.04.2018 and it is defined as follows:

" 3.3 "Ragging" includes the following:

Any conduct whether by words spoken or written or by an act which has the effect of harassing, teasing, treating or handling with rudeness any other student, indulging in rowdy or undisciplined activities which causes or is likely to cause annoyance, hardship or psychological harm or to raise fear or apprehension thereof in a fresher or a junior student or asking the students to do any act or perform something which such student will not in the ordinary course and which has the effect of causing or generating a sense of shame or embarrassment so as to adversely affect the physique or psyche of a fresher or a junior student. The

conduct includes but is not restricted to any act by a senior student that prevents, disrupts or disturbs the regular academic activity of any other student or a fresher; exploiting the services of a fresher, or any other students for completing the academic tasks assigned to an individual or a group of students; any act of financial extortion or forceful expenditure burden put on a fresher or any other student by students; any act of physical abuse including all variants of it: sexual abuse, homosexual assaults, stripping, forcing obscene and lewd acts, gestures, causing bodily harm or any other danger to health or person; any act or abuse by spoken words, emails, post, public insults which would also include deriving perverted pleasure, "vicarious or sadistic thrill from activity or passively participating in

the discomfiture to fresher or any other students; any act that affects the mental health and self-confidence of a fresher or any other student with or without an intent to derive a sadistic pleasure or showing off power, authority or superiority by a student over any fresher or any other student.

The following have been added after sub-clause 3.3 in terms of notification published on 05.04.2018 in the Gazette of India .

"Any act of physical or mental abuse (including bullying and exclusion) targeted at another student (fresher or otherwise) on the ground of colour, race, religion, caste, ethnicity, gender (including transgender), sexual orientation, appearance, nationality, regional origins, linguistic identity, place of birth, place of residence or economic background."

8. The learned counsel by relying upon the amended notification submitted that it is not necessary that to constitute ragging, a senior must rag a junior. It will amount to ragging, the moment it is targeted at another student, who may be a junior or in the same year or a senior. Therefore, the allegations made by the second respondent clearly comes within the definition of ragging under the regulations.

9. The learned counsel further submitted that the petitioner was well aware about the constitution of the Committee and he had also given his explanation to the Committee and the petitioner could not have given an explanation without understanding the allegations made against him by the second respondent. Therefore, sufficient opportunity was given to the petitioner to defend himself. The learned counsel further submitted that apart from the statement taken from the second respondent, the enquiry Committee also took into consideration the statement made by the class representative, who had stated that the second respondent complained to him that he was repeatedly threatened by the petitioner. The learned counsel submitted that act of ragging cannot be handled with kid glove and stringent action must be taken to send a strong message to all the other students and ensure that similar incidents do not take place in future.

10. The learned counsel further submitted that the Dean had earlier attempted to compromise between the petitioner and the second respondent. That is the reason why the Dean did not head the Committee, which conducted the enquiry since it is possible that an allegation of bias will be put against the

Dean. Therefore, the Committee that was constituted was in substantial compliance of the regulations and the petitioner having participated in the enquiry cannot be allowed to turn around to challenge the constitution of Committee at this Stage.

11. The learned counsel concluded his arguments by submitting that the Committee had given sufficient opportunity to the petitioner and the regulations have been complied with and when it comes to matters of discipline and enforcement of discipline in Educational Institution, this Court will be slow in interfering with the same.

12. The learned counsel appearing on behalf of the second respondent apart from adopting the arguments advanced by the learned counsel appearing on behalf of the Institution, submitted that the petitioner has been continuously harassing the second respondent from first year onwards and it came to a stage where the second respondent was no longer able to tolerate it and only at that stage, the complaint was given. The learned counsel submitted that if this Court interferes with the penalty imposed by the institution, the petitioner will once again indulge in similar activities and it will send a wrong signal to the entire student community.

13. Heard the submissions made on either side and perused the materials available on record.

14. This Court has to remind itself the settled principles of law that when it comes to discipline and enforcement of discipline in the educational of institution, this Court will be very slow to interfere with the same. This principle has been enunciated by the Hon'ble Supreme Court in the case of Controller of Examinations and others Vs. G.S.Sunder and another reported in 1993 Supp(3) SCC 82. This was subsequently reiterated in the case of Union Public Service Commission Vs. Jagannath Mishra reported in 2003 (9) SCC 237. These judgements were followed by the Division Bench of this Court in the case of The Controller of Examination, Bharathidasan University etc., Vs. B.Vignesh, etc., reported in 2006 2 Law Weekly 690. Keeping this in mind, this Court will now venture into the facts of the present case.

15. The complaint given by the second respondent against the petitioner is to the effect that, right from the first year onwards the petitioner was teasing him by showing gestures and physically assaulting him. It is further alleged in the complaint that the second respondent even decided to leave the college not able to tolerate the harassment made by the petitioner. It ultimately ended up with the complaint given by the second respondent against the petitioner on 29.02.2020.

16. It is seen from the counter affidavit that the Dean of the respondent Institution attempted to talk with the petitioner and the second respondent and amicably settle the issue. The same did not work and the second respondent was insistent in taking action against the petitioner. Therefore, the Committee was constituted under the regulations to conduct an enquiry.

17. This Court is in complete agreement with the submissions made by Mr. Abhishek Jenasanen, to the extent that the act complained against the petitioner clearly falls within the definition of ragging, more particularly, after a notification added and expanded the term and which was published on 05.04.2018. According to this notification any act of physical or mental abuse targeted at any other student will fall within the definition of ragging. It is therefore not necessary that the ragging should be understood in a traditional way, where the senior used to rag a junior. The expanded definition encompasses a senior ragging a junior, a student ragging another student in the same year or even a junior ragging a senior. Therefore, the allegations made by the second respondent against the petitioner prima facie satisfies the definition of ragging under the regulations.

18. It is seen that the regulation provides for the Head of the Institution to head the Committee. However, the Head of the Institution viz., the Dean, had attempted to compromise between the parties and therefore thought it fit not to head the Committee. Therefore, the Committee was constituted for conducting the enquiry was in substantial compliance of the regulations and this Court is not able to see any illegality in the constitution of the Committee.

19. The Committee after conducting the enquiry came up with the following findings:

"1. Rashwin Raj has indulged in teasing of Lenin repeatedly, probably because of his soft nature.

2. There have been incidents of physical conflict between Lenin and Rashwin Raj.

3. Lenin has confided his fears to fellow classmates.

4. We recommend some form of punitive action for Rashwin Raj so as to act as a deterrent for similar incidents in our institution in the future.

5. We also feel that because of the above findings, it would be better to have a good parents care and attention, Lenin can be a day scholar in future."

20. The Committee in order to arrive at the above findings, not only relied upon the statement of the second

respondent, but also the statement of the class representative, which had corroborated the statement made by the second respondent. It is also seen that the petitioner had given a statement and has also given an apology letter on 02.03.2020 repenting for his act. The petitioner has not made any allegations of mala fides against the institution or against the Committee. Therefore, this Court must only to be satisfied as to whether the findings of the Committee is reasonable and in line with the material that was placed before it.

21. On a cumulative reading of the report of the Committee, this Court finds that the decision of the Committee does not suffer from any illegality or infirmity. It is important to note that the Committee itself felt that there is substantial delay in giving the complaint, since according to the second respondent, the harassment was going on from the first year onwards.

22. Keeping in mind the settled principle of law with regard to interference into the disciplinary action taken by the educational institution, this Court does not find the report of the Committee to be unreasonable or illegal. After the Committee submitted its report, the respondent Institution passed the impugned order dated 17.03.2020 imposing the penalty of suspending the petitioner for two semester and directing him to pay Rs.1 Lakh.

23. In the considered view of this Court, the petitioner and the second respondent belong to the same class right from the first year onwards. The second respondent comes from an educated background and it is seen that his father is also a Professor. Therefore, it does not stand to logic as to why the second respondent kept quiet for so many years before giving a complaint against the petitioner. This aspect will have a bearing insofar as the punishment imposed against the petitioner is concerned. The petitioner and the second respondent are in the final stages of completing their MBBS course. Suspending the petitioner for two semesters and allowing him to attend the classes only from 01.01.2021, will have an adverse impact on the future of the petitioner. To that extent, this Court finds that the punishment is disproportionate. The petitioner had been kept under suspension from 17.03.2020 onwards till date.

24. In the considered opinion of this Court, even though this Court is not interfering with the report submitted by the Committee and the penalty imposed by the respondent Institution, this Court is interfering with the quantum of penalty and the same is modified as follows:

(i) The period of suspension of the petitioner will be confined to the period from 17.03.2020 to 17.08.2020.

Thereafter, the petitioner can attend the class.

(ii) Insofar as the penalty of Rs.1 Lakh imposed against the petitioner, the same is sustained and the same shall be paid by the petitioner on or before 17.08.2020 to the respondent Institution.

25. This Court modified the punishment by taking into consideration the nature of allegation, delay in lodging the complaint, age of the petitioner and the adverse impact it will have on the future of the petitioner. By sustaining the findings of the Committee and retaining the penalty imposed against the petitioner subject to the above modification, this Court had only attempted to strike a balance between the interest of the petitioner, Institution and the second respondent. This will also send the right signal to other students that such acts of ragging will not be taken lightly by the institution.

26. This Court also expects the petitioner to keep in mind the grace shown by this Court by modifying the penalty and the petitioner has to concentrate on his studies and successfully complete the course without wasting his time by involving in unwanted activities.

27. This writ petition is disposed of accordingly. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Dean,
Sri Venkateshwaraa Medical College
Hospital & Research Centre,
Ariyur,
Puducherry 605 102.

+1cc to Mr.Abishek jenaseenan, Advocate sr no.25676/20
+1cc to M/s.N.Kavitha rameshwar, sr no.25732/20

W.P.No.8544 of 2020
and W.M.P.Nos.10328, 10329 & 10330 of 2020

RLD(CO)

RMP(31/08/2020)