Expulsion and Proportionality in Student Misconduct

Case Name: ‘X’ v. Maharashtra National Law University, Mumbai (Mnlu)

Citation: 2024:BHC-OS:15904-DB

Act: University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.21030 OF 2024

'X']**.... Petitioner**

VERSUS

1] Maharashtra National Law University Mumbai (MNLU), Through its Vice Chancellor, 2nd Floor, MNLU-CETTM Campus, MTNLBuilding, Technology Street, Powai, Mumbai – 400076]

2] Maharashtra National Law University Mumbai (MNLU), Through its Registrar, 2nd Floor, MNLU-CETTM Campus, MTNL Building, Technology Street, Powai, Mumbai – 400076]

3] Internal Complaints Committee (ICC), Maharashtra National Law University, Mumbai, (MNLU) 2nd Floor, MNLU-CETTM Campus, MTNL Building, Technology Street, Powai, Mumbai-400076]

4] 'Y'
Maharashtra National Law University, Mumbai (MNLU), 2nd Floor, MNLU-CETTM Campus, MTNL Building, Technology Street, Powai, Mumbai-400076]**.... Respondents**

Mr. Mihir Desai, Senior Advocate with Mr. Abhijit Desai, Mr. Karan Gajra, Ms. Mohini Rehpade, Mrs. Daksha Punghera, Mr. Vijay singh with Ms. Sachita Sontakke, Mr. Digvijay Kachare, Mr. Abhishek Ingale instructed by Desai Legal, Advocates for the petitioner.

Dr. Uday Warunjikar with Mr. Jenish Jain, Mr. Dattaram Bile, Mr. Aditya Kharkar, Advocates for respondent nos. 1 to 3 (MNLU).

Mr. Navroz Seervai, Senior Advocate with Ms. Gulnar Mistry, Ms. Pooja Thorat, Mr. Amar Bodake, Ms. Trisha Choudhary, instructed by M.V. Thorat for respondent no.4.

CORAM : A.S. CHANDURKAR & RAJESH S. PATIL, JJ.

Arguments were heard on : 28/08/2024

Judgment is pronounced on : 10/10/2024

JUDGMENT : (Per A. S. Chandurkar, J.)

1] The petitioner, a student pursuing B.A.LL.B. (Honours) Course with the Maharashtra National Law University, Mumbai has approached this Court under Article 226 of the Constitution of India raising a challenge to the order dated 21/06/2024 passed by the Vice Chancellor on the appeal preferred by the petitioner challenging the communication dated 17/06/2023 issued by the in-charge Registrar expelling him from the University with immediate effect.

2] Rule. Rule made returnable forthwith and heard learned counsel for the parties.

3] The facts giving rise to the present proceeding are that the petitioner – hereinafter referred to as 'X', a student of the 2019-2024 B.A.LL.B. (Honours) batch is alleged to have indulged in objectionable behaviour with the 4th respondent – hereinafter referred to as 'Y'. She was required to make a complaint on 01/03/2023 to the Internal Complaint Committee, MNLU – ICC of an incident stated to have taken place on 26-27/02/2023. The complaint was considered by the ICC and on the basis of material placed before it, report dated 20/05/2023 came to be submitted. The ICC recommended action against 'X' on the ground that he was found guilty of sexual harassment for the second time. Despite the earlier punishment of expulsion from the hostel, no reform in his conduct was noticed. It was thus recommended that 'X' should be expelled from the University Rolls. On the basis of the aforesaid recommendation, the in-charge Registrar issued an office order on 17/06/2023 expelling 'X' from the MNLU with immediate effect. His name was directed to be struck off from the Rolls of students.

4] Being aggrieved by the order of expulsion, 'X' preferred an appeal before the Vice Chancellor. After considering the said appeal, the Vice Chancellor on 30/08/2023 found that the appeal was devoid of merit. However, noting that 'X' was in the last year of his academic programme, a humanitarian approach was taken and he was given a chance to appear for the end Semester Examination at the completion of the academic session along with repeaters as a matter of grace. 'X' being aggrieved by the decision in the appeal preferred Writ Petition (L) No.31150 of 2023 challenging the order dated 30/08/2023 passed by the Vice Chancellor. One of the grounds of challenge raised was that the appeal was decided under Rule 40 of the Working Rules for Internal Complaints Committee which Rules were not applicable to the facts of the case and that the matter was governed by University Grants Commission (Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015 hereinafter referred to as "the Regulations of 2015". 'Y', the complainant, was also aggrieved by the decision taken in the

appeal principally on the ground that the said appeal was decided without hearing her. She therefore preferred Writ Petition (L) No.9713 of 2024 challenging the order passed by the Vice Chancellor.

5] Both the writ petitions were heard together. In the common judgment of this Court dated 26/03/2024 it was noticed that the appeal preferred by 'X' raised various grounds that were required to be considered including the applicability of the Regulations of 2015 framed by the UGC. It was further found that 'Y' was not heard when the appeal was decided by the Vice Chancellor. On these counts, the Vice Chancellor was directed to re-consider the appeal preferred by 'X' after also hearing 'Y'. On remand, 'X' submitted an 'appeal statement' dated 21/05/2024. He stated that after careful consideration he had decided not to continue with any further arguments or contentions and that he did not wish to prolong the said process any further. He further stated that his primary goal at that stage was to move forward in his life and focus on his academic and personal growth. He requested that

since a period of one year had elapsed after occurrence of alleged incident and that his scheduled curriculum for the 2019-2024 batch had been completed, his appeal be considered with compassion and empathy. The "appeal statement" indicated that 'X' did not desire to raise any specific challenge to the findings recorded and the recommendations made by ICC.

6] The Vice Chancellor considered the appeal afresh. 'X' and 'Y' were heard on 21/05/2024. After considering the submissions made on behalf of 'X' and 'Y', it was held that the report as submitted by the ICC did not call for any interference. The Vice Chancellor then referred to an earlier report of the ICC dated 03/06/2022 wherein it was recommended that 'X' should be expelled and his name should be struck off from the Rolls of the University including denial of re-admission in MNLU, Mumbai. He observed that previously the punishment of expulsion from the hostel had been imposed on 'X' but there had been no reform in his conduct. On that count, the appeal preferred by 'X' came to be

rejected and the order of expulsion dated 17/06/2023 came to be confirmed. It was directed that the said order of expulsion be implemented forthwith. 'X' being aggrieved by the order dated 21/06/2024 has filed this writ petition raising a challenge to the order of expulsion.

7] Mr. Mihir Desai, the learned Senior Advocate for the petitioner referred to the relevant facts leading to the present proceedings and submitted that the petitioner's challenge was based on the aspects of procedural fairness and proportionality. Referring to the relevant provisions of the Regulations of 2015 it was submitted that in accordance with Clause-8 thereof the inquiry ought to have been conducted. The ICC was required to have inquired into the complaint in accordance with Working Rules for Internal Complaints Committee of MNLU, Mumbai by granting reasonable opportunity to 'X' and 'Y' for presenting and defending the case. Though 'X' was called before the ICC on two occasions, he was not granted any opportunity to cross-examine 'Y' or the witnesses examined by 'Y'. He took the Court through the

recommendations by the ICC dated 20/05/2023 and submitted that various procedural safeguards had not been followed. Referring to the Regulations of 2015 and especially Clause 4(1)(c) and Clause 8(6) thereof it was submitted that no show cause notice as contemplated on the action proposed to be taken against 'X' was issued. The order of punishment was required to be passed after granting an opportunity of hearing to 'X' which was not done. Absence of such notice definitely caused prejudice to 'X'. He submitted that though 'X' in his appeal statement had stated that he did not desire to advance any further arguments or contentions, it was incumbent upon the Vice Chancellor to have followed the procedure prescribed under the Regulations of 2015 in its true spirit. The punishment of expulsion was imposed without giving any show cause notice.

8] On the imposition of penalty of expulsion, the learned Senior Advocate submitted that the said punishment was grossly disproportionate and if implemented the same would completely take away the academic career of 'X'.

According to him, the incident in question was no doubt serious and that by the earlier order passed by the Vice Chancellor, 'X' had been expelled. On a humanitarian ground however he was permitted to complete his 9th and 10th Semester and the outcome of said examinations had been made subject to outcome of the appeal after remand. Referring to the aspect of reformation it was submitted that instead of the penalty of expulsion, a lesser punishment coupled with steps for reformation ought to have been imposed on 'X'. Referring to Rule 31 of the Working Rules it was submitted that penalties prescribed therein pertained to employees of MNLU and those could not be imposed in the present circumstances. Attention was invited to Clause 10(2) of the Regulations of 2015 to urge that reformative punishment and/or performance of community services in the form of penalty could have been considered. To substantiate his contention in this regard, reliance was placed on the decisions in *Vuribindi Mokshith Reddy vs. Birla Institute of Technology & Science and another* 2024 (3) Mah LJ 264, *T.T. Chakravarthy Yuvaraj and others vs. Principal, Dr. B.R. Ambedkar Medical*

College, AIR 1997 Kar 261 and the judgment in W.A.(MD) Nos. 1339 to 1343 of 2017 decided on 08/02/2018 in *Registrar, Gandhigram Rural Institute Deemed University, (Ministry of Human Resources Development, Govt. of India), Gandhigram, Dindigul District-624 302 vs. Hussain Mohammed BadhusaI* decided by the Madurai Bench of Madras High Court. It was thus submitted that taking an overall view of the matter, the Court ought to exercise discretion under Article 226 of the Constitution of India and grant reliefs as prayed for.

9] Dr. Uday Warunjikar, learned counsel appearing for MNLU opposed the writ petition. According to him, the penalty imposed by the Vice Chancellor was in accordance with law and proportionate to the conduct of 'X'. This was after considering all relevant aspects of the matter. The issue of reformation was relevant only if a solitary act of misconduct was committed by a student and not when such conduct was repetitive. A penalty had been imposed on 'X' pursuant to report dated 03/06/2022 submitted by the ICC which was accepted by 'X' and despite that he was involved in another

incident. 'X' was therefore not entitled to any concession whatsoever since MNLU was concerned with discipline at its campus. Relieving 'X' of any penalty would result in conveying a wrong message and hence 'X' was not entitled for any sympathy. It was submitted that the decisions relied upon by the learned Senior Advocate for the petitioner were not applicable to the facts of the present case. For all these reasons, no case had been made out to interfere in exercise of writ jurisdiction and the writ petition was liable to be dismissed.

10] Mr. Navroz Seervai, learned Senior Advocate for 'Y' vehemently opposed the submissions made on behalf of the petitioner. According to him, there were earlier complaints against 'X' and despite action being taken against him, his conduct and behaviour had not undergone any change which resulted in the present complaint. In the earlier round of the present proceedings, an opportunity was granted to 'X' to raise a challenge to the recommendations made by the ICC. 'X' however did not choose to avail of that opportunity as was

evident from his appeal statement wherein he stated that he did not desire to advance any further arguments or contentions. No grievance was raised by 'X' as regards failure to comply with the procedural requirements under the Regulations of 2015 in the appeal filed by him. Thus having chosen not to avail of the opportunity granted, it would not be permissible for 'X' to now raise a challenge to the recommendations of the ICC in the writ petition. The recommendations of the ICC had thus attained finality and it would therefore not be necessary to have a re-look at the same.

On the aspect of proportionality, it was submitted that this Court under Article 226 of the Constitution of India would not be justified in substituting the punishment imposed by the Vice Chancellor. It could not be said that the punishment imposed was shockingly disproportionate given the earlier conduct of 'X'. The impugned decision did not suffer from any unreasonableness as recognized by the Wednesbury principle. The overall conduct of 'X' was also required to be taken into

consideration including the fact that after tendering an apology, he had thereafter retracted from the same. Failure to avail of an opportunity to assail the recommendations of ICC was also a relevant aspect as 'Y' had submitted a detailed representation putting forth her stand. The punishment as imposed was thus proportionate to the conduct of 'X' especially in the backdrop of the fact that on an earlier occasion he had been expelled from the hostel. The entire matter was considered by the ICC which included Faculty Members. Reference was also made to the e-mail messages made by various students of the same batch of which 'X' was a member which indicated the feelings of his batchmates against him. To substantiate his contentions based on the aspect of proportionality, the learned Senior Advocate referred to the decisions in *Chief Constable of the North Wales Police vs. Evans*, 1982 Weekly Law Reports 1155, *Lieutenant General Manomoy Ganguly, VSM vs. Union of India and others*, (2018) 18 SCC 83 and the judgment of the Madhya Pradesh High Court in *Prince Raj vs. State of Madhya Pradesh and others,* Writ Petition No.3654 of 2024, dated 21/02/2024. Attention

was also invited to the decisions in *Anuradha Bhasin vs. Union of India, (2020) 3 SCC 637* as well as decision in *Priyanka Omprakash Panwar vs. State of Maharashtra and another, (2009) 4 Mh.L.J. 847*. It was thus submitted that there was no case made out to interfere in exercise of writ jurisdiction and the writ petition was liable to be dismissed.

11] We have heard the learned counsel for the parties at length and with their assistance we have also perused the documentary material on record. We have thereafter given our thoughtful consideration to the issues arising for determination. At the outset, it would be necessary to refer to certain factual aspects that would be relevant for adjudicating the prayers made in the writ petition. 'X' is a student of the 2019-2024 B.A.LL.B. (Honours) batch while 'Y' is a student of 2023-2028 batch pursuing the same course. A valedictory dinner in view of the Justice M.L. Pendse National Environment Law Moot Court Competition was organized at Rude Lounge, Powai. The ICC report dated 20/5/2023 refers to the said dinner as a University function. The said venue is

stated to be a Bar & Restaurant and a part thereof was booked and converted into an Organizing Committee Zone. The said dinner was held on 26/02/2023. In the light of the alleged incident that occurred during the course of the said dinner, 'Y' filed her complaint on 01/03/2023 with the ICC. In the proceedings before the ICC, the statement of 'X' and one of his witnesses was recorded. Similarly, the statement of 'Y' and her witnesses as well as the statements of Faculty Members and staff came to be recorded. In its report signed by 9 out of 11 members, it was recommended that while selecting a venue outside the University campus, due diligence ought to be undertaken that no alcohol was available for sale. Further, the venue ought to be such that there should be no interface with uninvited people and that the University staff should be vigilant, keeping a watch on students for any misbehaviour, indecent activity or bringing of any alcohol/prohibited substance. The ICC in its recommendations noted that it was for the second time that 'X' was found guilty of sexual harassment and that the earlier punishment of expulsion from the hostel had not brought any reform in his conduct. It

observed that he did not deserve any sympathy and should thus be expelled from the University Rolls.

This recommendation of the ICC was accepted and 'X', a student of fourth year was expelled from the University with immediate effect. This penalty of expulsion is relatable to Clause 10(2)(c) of the Regulations of 2015. The appeal preferred by 'X' was however considered under Rule 40 of the Working Rules and by adopting a humanitarian approach, 'X' was permitted to complete his academic session as a matter of grace. By the time the appellate order dated 30/08/2023 was set aside in the earlier round of the proceedings, 'X' had appeared for the 9th and 10th Semester Examinations of the B.A. LL.B. (Honours) Course that were held in May-June, 2024. His results however have been withheld being dependent on the outcome of the appeal preferred before the Vice Chancellor.

Procedural Fairness

12] The petitioner's challenge based on procedural

fairness is required to be taken up first for consideration. After remand of the proceedings, it is evident that 'X' chose not to assail the findings recorded by the ICC in its report dated 20/5/2023 and stated in his appeal statement that he did not desire to urge any further contentions. It would thus have to be accepted that the recommendations made by the ICC are on the basis of the material that was placed before it. We therefore do not find any reason to re-consider the observations made by the ICC on the basis of which it proceeded to recommend the expulsion of 'X' from the University. The recommendations as made on 20/05/2023 are thus accepted and the same have to be taken as the basis for inflicting punishment on 'X'. The procedure followed by the ICC which culminated into its report dated 20/5/2023 having not been specifically challenged despite grant of an opportunity to 'X' while remanding the proceedings leads us to conclude that 'X' was satisfied by the conduct of the proceedings and he accepted its report. The conduct of proceedings before ICC and the sufficiency of material placed before it is therefore not required to be gone into in the present

proceedings.

Thus, in so far as the aspect of procedural fairness is concerned, the same is not required to be examined till the stage the report of the ICC dated 20/05/2023 was submitted. We would thus proceed on the basis that the recommendation made by the ICC on 20/05/2023 is valid and forms the basis of action against 'X'.

13] We may now turn to the decision making process adopted by the Vice Chancellor based on the recommendation of the ICC. In this context, it would be necessary to refer to Clause 8 of the Regulations of 2015. The said Clause indicates the manner in which the ICC is required to conduct an inquiry. After the ICC submits its report and the Executive Authority of the Higher Educational Institution – HEI decides to act on the said recommendation, the provisions of Clause 8(6) of the Regulations of 2015 come into play. The said provision reads as under:-

> **"8. Process of conducting Inquiry-**
>
> (6) If the Executive Authority of the HEI decides

> not to act as per the recommendations of the ICC, then it shall record written reasons for the same to be conveyed to ICC and both the parties to the proceedings. If on the other hand it is decided to act as per the recommendations of the ICC, then a show cause notice, answerable within ten days, shall be served on the party against whom action is decided to be taken. The Executive Authority of the HEI shall proceed only after considering the reply or hearing the aggrieved person." *(emphasis supplied)*

14] From the aforesaid provision it is clear that when the Executive Authority of the HEI decides to act as per the recommendations of the ICC, a show cause notice is required to be served on the party against whom action is proposed to be taken. The show cause notice is required to be answered within a period of ten days and thereafter on considering the reply or hearing the aggrieved person, the Executive Authority of the HEI has to take a decision.

The material on record does not indicate that a show cause notice as contemplated by Clause 8(6) indicating that the Vice Chancellor was proposing to take action on the basis of recommendation of the ICC dated 20/05/2023 was issued

to 'X'. As a result, 'X' could not respond to the action proposed to be taken against him on the basis of the recommendation of the ICC. The requirement of issuance of a show cause notice prior to acting on the recommendations of the ICC is with a view to grant an opportunity to the party against whom action is proposed to be taken to urge otherwise. This requirement ordinarily cannot be dispensed with as the Executive Authority is required to proceed only after considering the reply of such party against whom action is proposed. In our view, Clause 8(6) is couched in a mandatory language and in compliance of the principles of natural justice as the noticee is to be visited with some penal action. The effect of the failure to issue such show cause notice in the present case would be required to be borne in mind.

15] To conclude the issue of procedural fairness, it is held that 'X' not having questioned the correctness of the recommendations of the ICC as recorded in its report dated 20/05/2023 despite availability of an opportunity to do so before the Vice-Chancellor, the report of the ICC has to be

accepted as unchallenged and it forms the basis of action against 'X'.

However, the procedure prescribed by Clause 8(6) of the Regulations of 2015 prior to taking action against 'X' on the basis of the report of the ICC not having been followed, it is clear that the penalty of expulsion has been imposed without grant of an opportunity to 'X' to show cause as required therein. There has been a procedural infraction in that regard.

PROPORTIONALITY

16] Clause 10(2) of the Regulations of 2015 prescribes punishment that can be imposed on a student depending upon the severity of the offence. Clause 10(2) reads as under:-

> "**10. Punishment and compensation-**
>
> (2) Where the respondent is a student, depending upon the severity of the offence, the HEI may :-
>
> (a) withhold privileges of the student such as access to the library, auditoria, halls of residence, transportation, scholarships,

allowances, and identity card;

(b) suspend or restrict entry into the campus for a specific period.

(c) expel and strike off name from the rolls of the institution, including denials of readmission, if the offence so warrants;

(d) award reformative punishments like mandatory counselling and, or, performance of community services."

The punishment as stipulated by Clause 10(2)(c) of the Regulations of 2015 has been imposed on 'X' by the impugned order dated 21/06/2024. Since it is urged on behalf of 'X' that the punishment of expulsion from the University Rolls is disproportionate in the facts of the case, the said aspect requires consideration. Whether this punishment is proportionate or not is the issue.

17] On the aspect of proportionality vis-a-vis the punishment imposed, certain aspects will have to be borne in mind. It is well settled that the writ court is principally

concerned with the decision making process rather than the decision itself which legal position does not require any elaboration. If the decision making process is found to be fair and the decision taken is otherwise in accordance with law, there would be no reason to interfere with such decision under Article 226 of the Constitution of India. It is also well settled that the question as regards the choice and quantum of punishment is within the jurisdiction and discretion of the authority empowered to inflict such punishment. It is only if punishment is found to be disproportionate to the act in question so as to shock one's judicial conscience that the doctrine of proportionality can be invoked undertaking judicial review as held by the Supreme Court in *Ranjit Thakur vs. Union of India*, 1987 INC 285.

18] The punishment of expulsion by striking off the name of a student from the rolls of the Institution has the effect of such student thereafter not being able to pursue further studies and complete the course for which admission was taken in the Institution. This punishment may require

such student to either join some other Institution to complete the remainder course, if the same is permissible under the relevant Regulations of the HEI or seek re-admission if permissible. It is to be noted that under Clause 10(2)(c), the punishment of expulsion includes denial of re-admission if the offence so warrants. The Regulations of 2015 framed by the UGC thus contemplate that in a given case, if the punishment of expulsion with denial of re-admission is imposed by Institution 'A', it would require such student to seek admission in Institution 'B' under the same University so as to complete his education. Where however such arrangement is not possible, the expelled student would be unable to complete the remainder course after his expulsion.

In the present case, 'X' has been expelled and his name has been struck off from the Rolls of the Institution. The HEI in the present case is the MNLU, Mumbai and under its Regulations, completion of the remainder course as a result of expulsion would not be permissible in any other HEI. In other words, even in the absence of denial of re-admission after

expulsion, the effect of such punishment would be that the course undertaken by 'X' prior to imposition of the punishment of expulsion would not be possible to be completed in any other Institution. In any event, such other Institution would always be reluctant to admit an expelled student. Thus, in effect the punishment of expulsion is a severe punishment that can have a permanent effect if such expelled student is unable to complete his/her remainder course post expulsion.

19] It is to be borne in mind that initially on 17/06/2023, the penalty of expulsion from the University was imposed on 'X'. In appeal however the Vice-Chancellor permitted 'X' to appear at the end-semester examination after completion of the academic session as a matter of grace. 'X' has accordingly appeared for the 9th and 10th semester examinations. His results however have not been declared in view of the penalty now imposed. Thus, the situation in hand is that after the penalty of expulsion was imposed, 'X' completed the academic course in B.A. LLB. (Honours) at the MNLU, albeit his result not being declared for the last two

semesters. This factual aspect will have to be weighed while considering the challenge to the order of expulsion based on proportionality.

20] We may first advert to the decisions relied upon by the learned Senior Advocates for 'X' and 'Y' in that regard. In *Vuribindi Mokshith Reddy (supra),* the petitioners were students pursuing their education at the Birla Institute of Technology and Science. On the allegation that they were involved in the theft of potato chips, chocolates, sanitisers, pens, notepads, mobile phone stands, two desk lamps and three bluetooth speakers from the stalls on the college campus, they were debarred from registration during Semester-I and two further semesters. The Appellate Authority maintained the cancellation of registration of Semester-I along with fine of Rs. 50,000/-. A challenge was raised to the order of punishment. A Co-ordinate bench of this Court deferred the consideration of the writ petitions to enable the Director to re-consider the punishment of cancellation of the Semester or substitution of that penalty with a direction to undertake

community service. The Director however indicated that no mercy could be shown to the said petitioners. In that backdrop, the co-ordinate bench considered the aspect of imposition of reformative penalty. It referred to the judgment of the Allahabad High Court in *Anant Narayan Mishra Vs. Union of India and Others, 2019 AHC 201145* wherein it was observed that termination of dialogue with the delinquent student without offering any opportunity to reform makes him an outcaste and loss of human self-worth is total. An act of suspension or debarment of a delinquent student would result in the University abandoning its ward. It was found that while imposing penalty, the University had ignored its own guidelines that were prevailing. It was also found that the directives issued by the UGC on the aspect of reformation had been ignored. Taking an overall view of the matter, the co-ordinate bench proceeded to set aside the penalty of debarment while maintaining the imposition of fine of Rs. 50,000/- with a further direction to undertake community service for two hours every day for a period of two months.

21] The Karnataka High Court in *T. T. Chakravarthy Yuvaraj and others (supra)* considered the challenge raised to an order of expulsion taken by the Principal of the college where the said petitioners were taking education. It was found that the enquiry held against the petitioners had been fair and that the said petitioners had opportunity to participate in the same. The Court however was of the view that the doctrine of proportionality as regards the punishment imposed required consideration. It observed that if the decision of an authority as regards the punishment imposed defied logic then the sentence would not be immune from correction. A balance between the interest of the educational institution and the delinquent student was required to be maintained. It observed that though the acts of the students were not condonable or excusable, the Court could not be oblivious to the reality of the matter so as to impose the highest punishment of expulsion. Such order of expulsion would render the students unfit for any other career as no other college would be willing to grant them admission to enable them to complete their studies which could lead to frustration and disappointment. To

permanently put an end to their career would not be an appropriate punishment. In that view of the matter, the High Court held that the punishment of expulsion from the college for a period of three years from the date of the order made by the Principal would be an appropriate punishment.

22] On the scope of judicial review, the learned Senior Advocate for 'Y' relied upon the decision in *Lieutenant General Manomoy Ganguly, VSM (supra).* The Supreme Court held therein that in exercise of judicial review, the Court is not concerned with correctness of the findings of fact on the basis of which an order is made as long as such findings are reasonable and supported by evidence. The Court would not substitute its judgment for that of the legislature or executive or its agents. The decision making process was required to be examined.

23] In the case of *Prince Raj (supra),* the Madhya Pradesh High Court considered the challenge to an order of penalty suspending the said petitioner for one academic year.

It was found that on the basis of recommendation made by the Student Advisory Senate, the disciplinary measure had been taken against the petitioners. On the ground that the paramount consideration for an institute is to maintain discipline, the High Court refused to interfere in exercise of writ jurisdiction.

The House of Lords in *Chief Constable of the North Wales Police (supra)*, has cautioned against the substitution of its opinion by the judiciary or by individual judges for that of the authority constituted by law to decide matters which it has jurisdiction to do so. Judicial review was concerned with the decision making process rather than the decision itself. This proposition of law admits of no doubt and has to be borne in mind while assessing the case in hand.

24] It would be apposite at this stage to refer to a few decisions indicating the approach of various Courts in the context of disciplinary action concerning students. Reference can be made first to the decision of the Delhi High Court in

Siddharth Jain vs. Shaheed Sukhdev College of Business in WP (C) No.9862 of 2015 dated 17 November 2014. The petitioner, a student, was debarred by the Principal of the College for a period of one year on account of his indecent behaviour. While maintaining the finding recorded by the Disciplinary Committee as regards the guilt of the petitioner, the learned Single Judge considered the aspect of proportionality vis-a-vis the punishment of debarment for a period of one year. While applying the doctrine of proportionality, the Court highlighted the difference between a young offender and an adult offender. In that regard, we may refer to the observations in paragraphs 16.2 to 18 and paragraphs 19.2 to 21 which read as under :-

> "16.2 There is no gainsaying that concerns of both the institution and the victim have to be considered while dealing with a delinquent / offender even in an educational institution.
>
> 17. There is, however, an another aspect, if I may say so, which requires consideration as well, without undermining the relevance or the importance of the aspects which are noticed hereinabove, by me. This aspect requires that while dealing with a young offender an attempt

should be made to ascertain whether the sentencing disposition could be tailored, as long as it is consistent with other sentencing principles, so as to promote reformation and lead to rehabilitation of the offender.

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

17.2 In applying the aforestated principle, what is not to be forgotten, is that, while sentencing, the educational institutions have to consider that any punishment imposed by them which leads to an outright denial of the right of a delinquent young offender to education, is required to be based on a compelling State / public interest. *[See Cathe A., Guardian of C.E.A. Vs. Doddridge County Board of Education, Supreme Court of Appeals of West Virginia, September 1996 Term No.23350]*.

17.3 The compelling State / public interest element would necessarily include as well the immediate interest of other students who are admitted to the institutions, in which the offence may have been committed. Therefore, as I said at the

beginning of my discussion, the gravity of the offence and the age of the offender will have to be borne in mind. The exclusion of a young offender from the normal educational stream for a period of time brings about "unpleasant consequences" and "harm", which, in any case, amongst others, is the purpose of any punishment.

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

19.2 To my mind, even if one were to accept the argument that the apology was an act of self-preservation, I would in the case of a young adult offender, still allow him a chance to reform himself as the difference between an adult offender and a young adult offender, is that, the latter does not fully comprehend the consequences of his misdemeanour when he/she embarks upon it. There is scientific and medical literature which distinguishes between physical, mental, social and emotional maturity of a young offender *[See : Salil Bali Vs. Union of India and Anr., (2013) 7 SCC 705, para 58 at page 722-723; and Subramanian Swamy and Ors. Vs. Raju, (2014) 8 SCC 390, para 37 at page 408]*. Having said so, one would also have to

balance the concerns of the institution which includes its need to protect other students and its reputation as a place where education is imparted to students of every gender, without feat of physical, mental or psychological injury.

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

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

The Division Bench of the Delhi High Court refused to interfere with the said judgment in appeal.

In our view, this decision highlights the need to balance the concerns of the educational institution on one hand and those of a young offender so that he is not totally excluded from the normal stream of education.

25] In *Anant Narayan Mishra (supra)*, a First Information Report was registered against the petitioner under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as a result of which he was suspended by the University from all its privileges and activities. While considering the aspect of proportionality and punishment to be imposed on a student, a learned Single Judge of the Allahabad High Court observed as under :-

> "**M. Proportionality & Punishment**
>
> 217. The controversy has to be seen from another critical legal perspective. The doctrine of proportionality is an established ground of judicial review in the Indian Constitutional jurisprudence.
>
> 218. Aharon Barak, former President of Supreme Court of Israel in his book "Proportionality" thus defines the rules of the doctrine of

proportionality, “According to the four components of proportionality a limitation of constitutional right will be permissible if, (1) It is designated for a proper purpose, (2) The measures undertaken to effectuate such a limitation are rationally connected to the fulfillment of that purpose, (3) The measures undertaken are necessary and in that there are alternative measures that my similarly achieve that same purpose with a lesser degree of limitation and finally; (4) Their needs to be a proper relation “proportionality strict senso and balance” between the importance of achieving the proper purpose and social importance of preventing the limitation on the constitutional right.”

219. The concept of proportionality essentially visualizes, a graduated response to the nature of the misconduct by a delinquent student. The purpose of the institution, its role in the society and its obligations to the nation, provide the setting for adjudication of the issue of proportionality.

220. Proportionality first came to be applied in the context of punishments imposed for misconduct in service jurisprudence. The necessity of proportional punishment, in cases of misconduct by students is more

strongly needed. Hence, action of the respondent-University is liable to be tested on the anvil of disproportionality.

221. The "doctrine of proportionality" was introduced and embedded in the administrative law of our country by the Hon'ble Supreme Court in the case of *Ranjit Thakur Vs. Union of India, (1987) 4 SCC 611*. The Hon'ble Supreme Court in *Ranjit Thakur (supra)* held thus :

> "Judicial review generally speaking is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality as part of the concept of judicial review would ensure that even on an aspect which is otherwise within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an

outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

222. The essence of proportionality is that the competent authority while imposing a punishment upon a delinquent student has to co-relate and balance the imperatives of institutional discipline with the demands of individual rights. Too light a punishment will not be conducive to institutional discipline. Too harsh a punishment will not be consistent with norms of justice.

223. The enquiry into the four components of proportionality, as elucidated by Justice Aharon Barak in his book "Proportionality" has been made in the preceding part of the judgment. The purpose and obligations of Universities have also received consideration in the earlier part of the narrative.

224. The suspension of the petitioner from the University for an undefined or indefinite period is an action of extreme severity. It is a de-factor expulsion from the University. These actions carry drastic penal consequences for the students. Denial of education to a soul in quest of knowledge is the severest form of restriction. Moreover,

the instigatory role of the Professor Y in causing the incident has not been factored into the decision.

225. The measures undertaken against the petitioner are not rationally connected to the fulfillment of the purpose sought to be achieved. The proper and designated purpose of a punishment in a University has to include reform of the student not more imposition of penalty. Clearly there are alternative reformative measures that can achieve the same purpose with a lesser degree of curtailment of the students rights.

226. The impugned action fails the test of proportionality. The action taken against the petitioner does not achieve the purpose and social importance of the reform and rehabilitation of the delinquent student. The impugned order is liable to be set aside on this ground as well."

26] Yet again in *Prabhat Kumar Singh vs. Army College of Medical Science and Others (LPA No. 66 of 2017 decided on 02/07/2018)* the Delhi High Court had an occasion to consider the aspect of proportionality in the context of punishment of expulsion of a student. In that regard it

observed in paragraphs 50 to 52 as under :-

> "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 :-
> *(Rest of the paragraph is not material for our purpose).*"

27] The aforesaid decisions seek to strike a balance by applying the doctrine of proportionality in the context of punishment imposed on students. While ensuring that the discipline at the concerned institution is maintained, care has been taken to see that the student is not entirely deprived of academic opportunities by taking a holistic view of the matter.

28] In the case in hand, we find from the material on record that (a) 'X' had suffered a penalty of expulsion from the hostel on 03/06/2022. (b) As a result of the report of the ICC dated 20/05/2023, 'X' has now been expelled from the Institution. (c) The punishment of expulsion however has been imposed on 'X' without complying with the mandate of Clause 8(6) of the Regulations of 2015. (d) In the meanwhile, 'X'

appeared for the ninth and tenth semester examinations of the BA.LLB (Honours) Course and his results are dependent on the present proceedings. (e) 'Y' is presently pursuing her studies at the MNLU.

In this factual backdrop, the options available are either to ensure procedural compliance by setting aside the penalty of expulsion and thereafter remanding the proceedings before the Vice-Chancellor to enable him to comply with the requirement of Clause 8(6) of the Regulations of 2015 or to consider the aspect of proportionality while maintaining the imposition of penalty of expulsion in the peculiar facts of the case.

29] As regards the option of remand, the same would require the Vice Chancellor to re-consider the matter that could thereafter result in a third round of litigation which in our view would not be in the academic interest of either 'X' or 'Y'. It would only result in extending the agony, especially of 'Y', by requiring her to again undergo the ordeal of appearing before the Vice-Chancellor as an "aggrieved person". This

would also undesiringly result in a distraction from her academic activities. It is also likely that the matter would again reach the Court at the behest of an aggrieved party. It would rather be in the interest of 'Y' that her focus on academic pursuits continues unhindered rather than re-kindling bad memories.

As regards 'X', he having not chosen to question the report of the ICC dated 20/05/2023 which forms the basis for the infliction of penalty, its report does not deserve to be interfered with. In his appeal statement, 'X' had indicated that he did not desire to pursue the matter any further.

Taking an overall view of the matter in the light of the fact that both 'X' and 'Y' being students are not subjected to any further distractions from their academic activities and this being the second round of litigation, we do not deem it appropriate to again engage 'Y' and 'X', in that order, to another round of litigation. It would be in the larger interest of both that the entire matter is given a quietus so that they can focus on positive aspects of their careers. In that view of the

matter, we have undertaken to consider the appropriate course that could be followed, which in our view would meet the ends of justice, viewed from the perspective of 'Y' and 'X'.

30] We thus proceed on the premise that the punishment of expulsion of 'X' as imposed by the Vice-Chancellor was justified in the light of the material available and especially the report of the ICC dated 20/05/2023. The punishment of expulsion therefore does not call for any interference. Having said that, in our view, an order of expulsion for an indefinite and unspecified period would be harsh resulting in 'academic death' of 'X'. It would result in taking away the education and training undergone since his admission to the course in 2019-20. In effect, he would never be able to complete the BA.LLB (Honours) course at the MNLU in future. The consequence of such expulsion would operate perpetually having a drastic effect on a student's academic life. All this would also result in deprivation and denial of education. In our view, the consequences flowing from an order of expulsion for an indefinite and unspecified period are

drastic and harsh.

We may take a cue from the decision in *M/s. Kulja Industries Limited vs. Chief Gen. Manager W.T. Proj. BSNL & Others*, 2013 INSC 673 that blacklisting of an entity for an indefinite period would be harsh and could result in economic death. Similarly, in *O.P. Gupta vs. Union of India and others*, 1987 INSC 238 suspension of an employee for a long period of over eleven years was found to be harsh. Thus a penalty resulting in deprivation of certain privileges for an indefinite period has normally been found to be harsh and therefore disproportionate. Courts have interfered in cases raising challenge to orders imposing penalty for an indefinite period. On a penalty being found to be harsh, the aspect of proportionality would arise for consideration.

31] Thus, while maintaining the punishment of expulsion, the duration for which it ought to operate in the present case requires consideration. Having found that the expulsion of 'X' for an undefined period would be harsh, in ordinary course the matter ought to be remitted to the

disciplinary authority to specify the period of expulsion. But as stated above, we do not intend to remand the proceedings and prolong the present litigation. By virtue of the earlier order dated 30/08/2023, the Vice-Chancellor permitted 'X' to appear for the ninth and tenth semester examinations. His results however have not been declared being dependent upon the outcome of the present proceedings. In normal course, 'X' would have completed his BA.LLB (Honours) course at the end of academic session 2023-24. That has not happened as his results for the last two semesters have not been declared.

In our view, restricting the punishment of expulsion for one academic year coupled with a further direction to undertake community services as prescribed by Clause 10(2)(d) of the Regulations of 2015 would meet the ends of justice. 'X' can be directed to undertake community services as deemed fit by the Vice Chancellor till the end of academic year 2024-25 after which his results for the ninth and tenth semester can be declared. This would result in 'X' suffering the punishment of expulsion for one academic year and also

undertaking community services till the end of the current academic year. Loss of an academic year in these facts would, in our view, be proportionate to the misconduct of 'X'. It would put him behind his entire batch of 2019-24 by one year and during that period he would be unable to take up any other academic activity. This approach may not be construed as an outcome of an exercise in equity but an exercise of applying the doctrine of proportionality considering the indefinite period of expulsion. Hence, the ratio of the decision in *Priyanka Omprakash Panwar* (supra) is not attracted to the facts of the present case. With this order, we hope that the entire unsavory episode is put to rest.

32] We accordingly pass the following order :-

(a) The action of expulsion as directed by the Vice Chancellor based on the recommendation of the ICC dated 20/05/2023 is upheld.

(b) On the principle of proportionality, it is directed that the order of expulsion shall operate till the end of academic year

2024-25. In addition, 'X' shall render community service under the guidance of the Vice-Chancellor till the end of academic year 2024-25. After the completion of such community service, the results of 'X' for the ninth and tenth semester shall be declared along with the results of regular students at the end of academic year 2024-25.

(c) 'X' shall not interact in any manner with 'Y' while rendering community service.

(d) The Vice Chancellor is requested to consider the recommendations made by the ICC in its report dated 20/05/2023 in the matter of selection of a venue for such activities of the MNLU as well as undertaking due diligence that no alcohol is served at dinners held on such occasions and take remedial steps in the larger interest of the MNLU, its staff as well as its students.

33] Rule is disposed of in aforesaid terms with no order as to costs.

[RAJESH S. PATIL, J.] **[A.S. CHANDURKAR, J.]**

Case Brief & MCQs on "'X' v. Maharashtra National Law University, Mumbai (Mnlu)" (2024:BHC-OS:15904-DB) is available in the eBook:

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