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

Date of decision: 8th September, 2010.

\+ **W.P.(C) No.1897/2010 & CM No.9422/2010**

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AKSHAY CHAUDHARY & ANR. **.....** Petitioners
Through: Mr. Satyendra Kumar & Ms. Sunita Bhardwaj, Advocates

Versus

UNIVERSITY OF DELHI & ANR. ..... Respondents
Through: Mr. Mohinder J.S. Rupal, Advocate for R-1.

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes

2. To be referred to the reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

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.

2. The petitioners apologized to the respondent no.2 Kirori Mal College and assured the College of good behavior in future. The College vide its order dated 19th/20th November, 2009 allowed the petitioners to attend classes and to sit in the College Midterm Examination as well as University Examination, subject to the approval of the Vice-Chancellor of the University.

3. The Vice-Chancellor however rejected the application of the College for approval and as such vide order dated 25th November, 2009, the College revoked the earlier order dated 19th/20th November, 2009.

4. The petitioners being the perpetrators of the crime of ragging reached a settlement with their victim on whose complaint the FIR had been lodged. A compromise deed dated 22nd December, 2009 was signed between the petitioners on the one hand and their victim on the other hand. Armed with

the said compromise deed a writ petition under Section 482 of the Code of Criminal Procedure, 1973 being Criminal Misc. Case No.7/2010 was filed in this Court for quashing of the FIR. This Court in the order dated 22nd January, 2010 though noticed that one of the offences with which petitioners had been charged was not compoundable, finding that the antecedents of the petitioners otherwise were clean and on the assurance of the petitioners that in future there will be no complaint whatsoever against them and being of the view that the pendency of the FIR would mar the career of the petitioners, quashed the FIR and the proceedings emanating therefrom.

5. After the quashing of the FIR, the petitioners again represented to the respondent no.2 College and the College vide order dated 19th / 23rd February, 2010 again withdrew the expulsion order against the petitioners subject to the approval of the Vice-Chancellor of the University.

6. The Vice-Chancellor again rejected the application of the College and vide order dated 15th March, 2010, the College maintained the order of expulsion of the petitioners from the College and the Hostel.

7. It was then that the present writ petition was filed along with an application for interim relief to permit the petitioners to appear in the final year examination commencing from 30th March, 2010. This Court vide a detailed order dated 22nd March, 2010 dismissed the application of the

petitioners for interim relief. The said order has attained finality. The result thereof is that the petitioners who in the normal course would have taken their final year examination in March/April, 2010 have not taken the said examination and have in any case lost one year. But the question herein is of not losing one year. The petitioners stand expelled from the College/University and as long as the said order remains, are unlikely to gain admission in any other College/University also.

8. The matter came up before this Court on 13th July, 2010 when attention of the counsel for the University was drawn to Clause 9 of the Regulations aforesaid and which is as under:-

> "**9. Administrative action in the event of ragging:-**
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> 9.1 The institution shall punish a student found guilty of ragging after following the procedure and in the manner prescribed herein under:
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> a) The Anti-Ragging Committee of the institution shall take an appropriate decision, in regard to punishment or otherwise, depending on the facts of each incident of ragging and nature and gravity of the incident of ragging established in the recommendations of the Anti-Ragging Squad.
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> b) The Anti-Ragging Committee may, depending on the nature and gravity of the guilt established by the Anti-Ragging Squad, award, to those found guilty, one or more of the following punishments, namely;
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> i. Suspension from attending classes and academic privileges.
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> ii. Withholding/ withdrawing scholarship/ fellowship and other benefits.
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> iii. Debarring from appearing in any test/ examination or other evaluation process.

iv. Withholding results.

v. Debarring from representing the institution in any regional, national or international meet, tournament, youth festival, etc.

vi. Suspension/ expulsion from the hostel.

vii. Cancellation of admission.

viii. Rustication from the institution for period ranging from one to four semesters.

ix. Expulsion from the institution and consequent debarring from admission to any other institution for a specified period.

Provided that where the persons committing or abetting the act of ragging are not identified, the institution shall resort to collective punishment.

c) An appeal against the order of punishment by the Anti-Ragging Committee shall lie,

i. in case of an order of an institution, affiliated to or constituent part, of a University, to the Vice-Chancellor of the University;

ii. in case of an order of a University, to its Chancellor.

iii. in case of an institution of national importance created by an Act of Parliament, to the Chairman or Chancellor of the institution, as the case may be."

9. The aforesaid Clause would show that expulsion from the institution and consequent debarring from admission to any other Institution for a specified period is the harshest of the 9 administrative punishments provided for ragging. In the present case, the expulsion and consequent debarring from admission to any other Institution is not for any specified period but is indefinite. It was felt that the matter had not been considered by the Vice-Chancellor from the aspect of the proportionality of punishment. The

counsel for the University was as such asked to take instructions from the Vice-Chancellor on the said aspect.

10. The counsel on 2nd August, 2010 informed that the Vice-Chancellor had considered the matter afresh but in larger public interest to curb the menace of ragging had not acceded to the representations of the petitioners for confining their expulsion to one academic year only and to allow them to undergo final year again.

11. The matter has thus been heard on merits.

12. The petitioners have not challenged the factual aspect of having indulged in ragging. The petitioners have also not contended that there was any defect in the procedure adopted by the College/University in inflicting the administrative punishment on them. The counsel for the petitioners has only contended that the petitioners be permitted to undergo final year of their graduation in the academic session 2010-11 to enable them to appear in the examination scheduled in 2011. The petitioners are not even seeking admission to the Hostel. The counsel for the petitioners further states that if the punishment is confined to rustication for one year which they have already undergone, they will not take the matter further.

13. I have therefore considered the matter only from the aspect of proportionality of punishment.

14. However before proceeding to discuss the same it would be appropriate to record that the menace of ragging in educational institutions was reaching alarming proportions and demanded the situation to be dealt with a stern hand. I must also add that owing to measures including as taken against the petitioners, the menace appears to have toned down considerably in the current academic year. No fault can thus be found with the decision of the Vice-Chancellor. The Vice-Chancellor has the onerous task of maintaining discipline in the University/Educational Institutions affiliated to the University and in a situation as of ragging ought to send a strong deterrent signal. Thus, the matter has to be considered not only from the aspect of punishment to the culprits but also from the aspect of sending a strong deterrent signal so as to prevent others from indulging in such vice. It is the Vice-Chancellor's duty to prevent recurrence of such incidents in the large campus under his jurisdiction. I, therefore, intend to clarify that this Court in considering the aspect of proportionality does not intend to cast any doubt as to the reasons under which the Vice-Chancellor of the respondent University has acted. As far as the Vice-Chancellor is concerned, the larger interests of academic life in the campus and the interests of other students outweigh the individual interests of the petitioners.

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.*** 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.

18. To allow the punishment as meted out to stand would also amount to nullifying what this Court had attempted to do by quashing the FIR against the petitioners. Not only the petitioners would remain without Degree of graduation but their future prospects would also be seriously hampered.

19. The Supreme Court in ***Ranjit Thakur Vs. Union of India*** AIR 1987 SC 2386 held that the question of choice and quantum of punishment, though within the jurisdiction and discretion of the punishing authority, but the sentence has to suit the offence and the offender; it should not be vindictive or unduly harsh nor it should be so disproportionate to the offence so as to shock the conscience and amount in itself to conclusive evidence of bias; the punishment if in outrageous defiance of logic, then would not be

immune from correction. Reliance was placed on the earlier judgment in ***Bhagat Ram Vs. State of Himanchal Pradesh*** AIR 1983 SC 454 laying that penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of misconduct would be violative of Article 14 of the Constitution.

20. The Supreme Court in ***B.C. Chaturvedi Vs. UOI*** AIR 1996 SC 484 held that the Court in exercising the power of judicial review, depending upon the facts, is empowered to appropriately mould the relief, either by itself imposing another penalty with a view to shorten the litigation or by refering matter back to the disciplinary authority. The disciplinary authority in the present case being the Vice-Chancellor as in-charge of the educational Institution, with a view to ensure that discipline is maintained and required to be armed with sufficient power so that those who are to study and improve their careers should not be the victims of a handful of persons in the Institution who spoil the academic atmosphere by indulging in anti-social activities in the matter of discipline has chosen not to consider the representation of the petitioners.

21. The Division Bench of the Karnataka High Court in ***T.T. Chakravarthy Yuvraj Vs. Principal, Dr. B.R. Ambedkar Medical College*** AIR 1997 Karnataka 261 held that in inflicting appropriate punishment, certain aspects have to be borne in mind. 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. It was held that the concerned Head of the Institution must necessarily have an introspective 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 turns a student into an anti-social element and in that way it results in more harm than good to the society. A student in the hands of Principal/Head 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.

22. Therefore permanently putting an end to the career of the petitioners would not be an appropriate punishment. The Karnataka High Court quotes Shakespeare in "Merchant of Venice": "Justice should be tempered with mercy" and Jesus Christ: "They know not what they do. Forgive them."

23. In the words of George Bernard Shaw "If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and men, are not improved by injuries." Modern penologists hold the view that punishment should not necessarily be 'retributory' and 'deterrent' but should be 'rehabilitative'. Hegel, a German Philosopher in his theory on Punishment asserts that "object of punishment is to make the criminal repent his crime, and by doing so to realize his moral character, which has been temporarily obscured by his wrong action, but which is his deepest and truest nature." Justice Krishna Iyer in ***Mohammad Giasuddin Vs. State of Andhra Pradesh*** (1977) 3 SCC 287 emphasized "The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by reculturisation."

24. The Supreme Court in ***Divisional Controller N.E.K.R.T.C. Vs. H. Amaresh*** AIR 2006 SC 2730 and ***UPSRTC Vs. Vinod Kumar*** (2008) 1 SCC 115 has held that the punishment should always be proportionate to the gravity of the misconduct and the High Court under Article 226 gets

jurisdiction to interfere with the punishment only when it finds that the punishment imposed is shockingly disproportionate to the charges proved.

25. The Supreme Court in ***Shailesh Jasvantbhai Vs. State of Gujarat*** (2006) 2 SCC 359 faced with the task of balancing of the sentences with the offences quoted ***Dennis Councle McGautha Vs. State of Callifornia*** 402 US 18,3 that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

26. This Court is of the view that the duty thrust upon it is to nurture the career of the petitioners and not to damage the same.

27. I have perused the contents of the FIR against the petitioners. The acts of ragging indulged in by the petitioners though traumatic to a fresher, are not found to be such so as to nip the career of the petitioners in the bud.

28. For the reasons aforesaid, I deemed it appropriate to mould the administrative punishment to be meted out to the petitioners as under:-

(i) The punishment of expulsion from the Hostel of the respondent no.2 College, would remain.

(ii) However, the punishment of expulsion from the respondent no.2 College and consequent debarring from admission to any other Institution is modified to that of rustication from the respondent no.2 College for the academic session 2009-10. The petitioners would thus be entitled to be readmitted to the respondent no.2 Kirori Mal College on complying with necessary formalities, in the final year of their under-graduation course but subject to the conditions appearing hereinafter. The respondent no.2 College to accordingly readmit the petitioners.

(iii) The petitioners shall not visit the Hostel of the respondent no.2 College at any time.

(iv) The petitioners shall abide strictly by the rules of the respondent no.2 College regarding attendance.

(v) The petitioners would be watched over by the respondents no.1 & 2 University and College authorities and are expected to and exhibit exemplary behaviour. If it is found that the petitioners have indulged in any misconduct towards the Faculty/members/Staff or any other

student of the University/College, the sentence meted out to the petitioners can be varied again.

(vi) The respondents no.1 & 2 University and College to widely publish the said conditions imposed on the petitioners by exhibiting them on the notice board so that the student community in general is aware that the punishment to the petitioners for having indulged in ragging continues and it is not as if the petitioners have been let off for the same.

(vii) The respondents no.1 & 2 University and College are given liberty to approach this Court if of the view of the petitioners have breached any of the conditions imposed upon them.

29. The writ petition is disposed of. The petitioners to pay costs of this writ petition of Rs.25,000/- each to the respondents no.1 & 2; the costs be paid before readmission as aforesaid to the final year.

RAJIV SAHAI ENDLAW
(JUDGE)

8th September, 2010
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