

THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W. P. (C) No. 11 of 2021

Praveen Basnet,
Son of Shri Mohan Singh Basnet,
Resident of Middle Gyalshing,
P.O & P.S Gyalshing,
West Sikkim.

..... **Petitioner**

Versus

1. State of Sikkim,
Through the Chief Secretary,
Government of Sikkim,
Gangtok – 737101.
2. Education Department,
Through the Additional Chief Secretary-
cum-Principal Secretary,
Government of Sikkim,
Gangtok – 737101.
3. The Principal,
Sikkim Government College, Gyalshing,
Gyalshing – 737111.

..... **Respondents**

and

W. P. (C) No. 12 of 2021

Pravin Sharma,
Son of Shri Khara Nanda Sharma,
Resident of Aarigoan,
P.O. - Langang & P.S. Gyalshing,
West Sikkim.

..... **Petitioner**

Versus

1. State of Sikkim,
Through the Chief Secretary,
Government of Sikkim,
Gangtok – 737 101.

2. Education Department,
Through the Additional Chief
Secretary-cum-Principal Secretary,
Government of Sikkim,
Gangtok – 737101.
3. The Principal,
Sikkim Government College, Gyalshing,
Gyalshing – 737 111.

..... **Respondents**

and

W. P. (C) No. 13 of 2021

Lok Nath Chettri,
Son of Shri Abi Keshor Chettri,
Resident of Upper Hathidunga, Rinchenpong,
P.O. Rinchenpong and P.S.- Kuluk,
West Sikkim.

..... **Petitioner**

Versus

1. State of Sikkim,
Through the Chief Secretary,
Government of Sikkim,
Gangtok – 737101.
2. Education Department,
Through the Additional Chief Secretary
-cum-Principal Secretary,
Government of Sikkim,
Gangtok – 737101.
3. The Principal,
Sikkim Government College, Gyalshing,
Gyalshing – 737111.

..... **Respondents**

and

W. P. (C) No. 14 of 2021

Nakul Sharma,
Son of Shri Ghana Shyam Sharma,
R/o Aarigaon,
P.O.- Langang and P.S. Gyalshing,
West Sikkim.

..... **Petitioner**

Versus

1. State of Sikkim,
Through the Chief Secretary,
Government of Sikkim,
Gangtok – 737101.
2. Education Department,
Through the Additional Chief Secretary-
cum-Principal Secretary,
Government of Sikkim,
Gangtok – 737101.
3. The Principal,
Sikkim Government College, Gyalshing,
Gyalshing – 737111.

..... **Respondents**

Petitions under Article 226 of the Constitution of India.

Appearance:

Mr. Debasish Banerjee, Mr. Madhukar Dhakal, Mr. Sunder Basnett and Mr. Krishna Bhandari, Advocates for the Petitioners.

Mr. Sudesh Joshi, Additional Advocate General with Mr. Yadev Sharma, Government Advocate, Mr. Sujan Sunwar, Assistant Government Advocate and Mr. Zigmee Bhutia, Standing Counsel, Education Department, for the Respondents.

J U D G M E N T (O R A L)

(14.12.2021)

Bhaskar Raj Pradhan, J.

1. W.P.(C) No. 11 of 2021, W.P.(C) No. 12 of 2021, W.P.(C) No. 13 of 2021 and W.P.(C) No. 14 of 2021 are being disposed of by this common judgment.

2. The writ petitions have been filed by four students of the Sikkim Government College, Gyalshing (College), who challenges their expulsion orders all dated 19.02.2021 bearing identical reference no. 276/SGC/GYAL/EDN/W/2021 (the impugned expulsion orders).

3. The petitioners were pursuing their Bachelor of Arts Degree from the College. Praveen Basnet was a student of B.A. (Political Science Honours). Pravin Sharma was a student of B.A. (Sociology Honours). Lok Nath Chettri was a student of B.A. (English Honours). Nakul Sharma was a student of B.A. (Physical Education Honours).

4. The petitioners allege that although the College started functioning, its infrastructure was inadequate to meet the requirements; it did not offer streams like science and commerce; and it did not have an academic environment.

5. The petitioners took their grievances before various authorities who gave them certain assurances. However, since no progress was made, a video clip was prepared highlighting the infrastructural deficiencies of the College and uploaded in social media platforms. Show cause notices were issued alleging that a press conference was held by them on 19.11.2020 within the College premises. The petitioners replied to the show cause notices clarifying that they had prepared a video clip and not held a press conference. According to the petitioners, there were no further communications thereafter.

6. The petitioners allege that on 02.02.2021, they along with other students of the College met the Respondent no. 2 regarding their grievances. Although they sought for an appointment with the Minister in charge, the meeting could not take place. On 05.02.2021, they were arrested. The petitioners alleged that the allegations in the FIR were false. They were released on 06.02.2021. On 06.02.2021, some students submitted a written complaint at the Sadar Police Station against the respondent no.2 for alleged misbehaviour. After the petitioners were released on bail, they held a press conference giving details of the assurances given by the State Government on 19.03.2020 and till the time of their arrest and release. On 07.02.2021, some other students filed yet another complaint against the respondent no.2. Thereafter, on 17.02.2021/18.02.2021, the respondent no.3 asked the father/guardian of the petitioners to be present in his office at 2 p.m. along with the petitioners for having violated the rules and regulations of the College. The petitioners along with their relatives went to the office of the respondent no.3 where they requested the authorities to take them back.

7. On 19.02.2021, the petitioners were expelled. On 02.03.2021, the counsel of the petitioners served a legal notice to the respondents. Under such circumstances, the petitioners have sought for quashing of the impugned expulsion orders as well as the decision taken by the General Body Meeting held on 10.02.2021.

8. The respondents no.1, 2 and 3 have filed their counter-affidavits. It is contended by the respondents that the impugned expulsion orders are the culmination of several failed attempts aimed at ensuring that the petitioners and other students of the College maintain discipline as expected of them. They assert that despite several instances of misconduct on the part of the petitioners, the respondents have condoned them with the hope that the petitioners would mend their ways. However, emboldened by the lack of stringent action against them, the petitioners on 02.02.2021 not only entered the State Secretariat at Gangtok without permission of the authorities but also threatened, attempted to assault and browbeat the respondent no.2. Pursuant to which he was compelled to lodge the FIR. It is contended that the petitioners were made aware of the rules and regulations published in the prospectus of the College which are critical for the maintenance of discipline. The petitioners were aware of the rules and regulations and the consequences of flouting them. Attention was drawn to rules 1, 2, 3, 7, 8, 9, 12 and 16. It is alleged that the petitioners in the month of February 2020 had uploaded a false and derogatory post in Facebook questioning the legality and authenticity of the College's accreditation by the National Assessment and Accreditation Council (NAAC). An explanation was sought for by the Principal on 12.02.2020 where they misbehaved with the College authorities. A meeting of the Disciplinary Committee was held on 19.02.2020 and certain decisions taken. According to the averments in the counter-affidavit, the students realized their mistake and corrected their post and they assured the college authorities that they shall not

repeat their mistakes in future. With regard to their misbehaviour with the College authorities, the students expressed their desire to meet them for further discussion and clarification and the matter was forwarded to the College for information and action. On 19.11.2020, without any discourse with the College authorities and their consent, the petitioners held a press conference and circulated disparaging and defamatory contents amongst the media personnel including the social media outlets regarding the progress of construction activities of the College while giving an ultimatum that construction should be completed within three months. It is the respondents' case that the petitioners have violated the rules and thus, they were served with a show cause notice on 24.11.2020. Further, on 26.11.2020, a new Disciplinary Committee for the period 2020-2022 was constituted comprising of all Heads of Departments (HODs) and faculties of the College as members of the Committee. Praveen Basnet, Pravin Sharma and Lok Nath Chettri submitted their reply to the show cause notice on 26.11.2020. Nakul Sharma did not submit his reply on 26.11.2020. On 30.11.2020, the Disciplinary Committee resolved to ask Praveen Basnet, Praveen Sharma and Lok Nath Chettri to submit an apology letter for their misconduct but they did not do so. Nakul Sharma was suspended for a month. The Disciplinary Committee decided to suspend Praveen Basnet, Praveen Sharma and Lok Nath Chettri for a month as well. Thereafter, the Dean of the College vide a letter dated 11.12.2020, requested the Disciplinary Committee to grant the petitioners a final chance and revoke the suspension. On 11.12.2020, the Disciplinary Committee resolved to grant the petitioners one final chance thereby

withholding any disciplinary action against the petitioners with the hope that the petitioners would resume their academic activities. The Disciplinary Committee further resolved that if the students were found to be violating the rules and regulations of the College, stringent disciplinary action would be taken. Thereafter, the petitioners emboldened by the leniency shown by the College authorities travelled to Gangtok without the consent of the College authorities entered the State Secretariat and staged dharna without permission of the authorities; attempted to threaten, assault and browbeat the respondent no.2 culminating in the lodging of the First Information Report. Thereafter, the petitioners conducted another unauthorized press conference and filed a complaint against the respondent no.2 making false and baseless allegations. On 10.02.2021, another Disciplinary Committee meeting was held which resolved to take action against the students and also to expel the petitioners. It is the respondents' case that they had granted numerous opportunities and hearing to the petitioners to comply with the rules and regulations of the College, to which, the petitioners have repeatedly engaged in a conduct subverting the very foundation and discipline which is needed for a conducive academic environment.

9. The petitioners have filed a rejoinder contesting the factual averments made in the counter-affidavits by the respondents no.1, 2 and 3.

10. Heard the learned counsel for the petitioners as well as the learned Additional Advocate General.

11. The format of the impugned expulsion orders reads thus;

"Ref. No. 276/SGC/Gyal/EDN/W/2021 Date:- 19.02.2021

OFFICE ORDER

Whereas student ofwhile initially joining this college was made aware of the Rules and Regulations of the college vide the prospectus.

And whereas had signed the undertaking dated: stating that he would abide by the rules and Regulations of the college and would submit himself to the disciplinary jurisdiction of the Disciplinary Committee and other authorities of the college who may be vested with the authority to exercise discipline under Rules and Regulations that have been framed by the college.

And whereas despite having signed the undertaking dated: violated Sl. No. 1, 2, 3, 7, 8, 9, 12 & 16 of the Rules and Regulations of the College.

Now, therefore after taking into account of the aforesaid instances of repeated breach of institutional Rules and Regulations, based on common consensus (vide General Body Meeting dated 10.02.2021), the Disciplinary Authority is satisfied that all the allegations levelled against you are correct and expel you from the college with immediate effect."

12. A perusal of the impugned expulsion orders reflects that not a single instance of any breach of the rules has been mentioned in it. On a pointed question to the learned Additional Advocate General as to whether the impugned expulsion order was preceded by a show cause notice, he very fairly stated that there was no show cause notice issued highlighting the various instances of the breach of the rules. The learned Additional Advocate General pointed out the minutes of the meeting dated 10.02.2021 in reply to the query as to what were the breaches that were alleged in the impugned expulsion orders. A

perusal of the minutes of the meeting reflects that the meeting was of the Head of Departments alleging that the students had violated the rules by staging dharna. Neither the petitioners nor other students were part of the meeting convened on 10.02.2021, in which it was recorded that 21 students named therein were identified for violating the institutional rules and regulations by staging dharna without seeking prior permission from the institution; inappropriate and indecent use of language; instigating other students to take part in such acts and disrupting the teaching – learning environment. The Disciplinary Committee seems to have thereafter decided to issue a show notice to those students who breached the institutional norms for the first time as deterrent and expelled those who had violated the rules on multiple occasions. It was in this meeting that a resolution was taken to expel the petitioners for engaging themselves in such activities bringing disrepute to the institution, conducting press conferences in the College campus without seeking permission from College administration on multiple occasions, staging dharna at the Education Department Headquarters at Gangtok without the consent of the administration and disrupting the teaching and learning environment of the College. Besides these minutes, there is nothing on record placed as proof of evidence to establish the allegations made against the petitioners.

13. In the present case, the petitioners are seeking for setting aside the impugned expulsion orders and the decision at the General Body Meeting dated 10.02.2021, passed against them by the College.

14. In *Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh vs. Vaibhav Singh Chauhan*¹, the Supreme Court held that there should be strict discipline in academic matters and malpractices should be severely punished. High educational standards have to be maintained if the country is to progress. The High Court should not ordinarily interfere with the functioning and order of the educational authorities unless there is clear violation of some statutory rule or legal principle.

15. In *M.D. Mobashashir Sarwar vs. Jamia Millia Islamia*², the Delhi High Court examined an expulsion of a student. It held that when it comes to maintenance of academic standards, court should ordinarily refrain from interfering with matters relating to the internal working of educational institutions for the reason that the decisions taken by such academic bodies are largely in the nature of policy decisions and the rules and regulations made by the institutions are based on their day to day experience. As long as such a decision/rule/regulation is on the face of it unreasonable, arbitrary or in violation of the principles of natural justice, the courts ought not to interfere therein as every institution has a right to set its own benchmark for achieving academic excellence. There should be strict discipline in academic matters and to maintain such discipline, an academic institution is well empowered to take disciplinary action against a delinquent and/or rustivating a student. The bottom line is that if the tussle is between the interest of an

¹ (2009) 1 SCC 59

² 2012 SCC Online Del 1289

educational body and a student, the former ought to prevail over the latter, and further that the head of the institution is the best judge of a prevailing situation and wherever, a student is found to be acting in an indisciplined manner or is found to be indulging in violent, criminal acts and/or in moral turpitude, he is empowered to take a decision taking into consideration the past conduct of the student and the prevalent situation. There is a difference in jural interference in academic standards and judicial review of the punishment. When an order of punishment is examined, the court must satisfy itself that the order is a reasoned one. The court is required to examine whether it ought to interfere in the decision and consider whether there is any arbitrariness in the action taken or whether the rules of natural justice have been violated or not, or the decision taken is so unreasonable and/or discriminatory that it requires interference. The punishment of expulsion and campus ban has serious implications and ought to be inflicted on a student only in cases of grave offences. An earlier decision of the Delhi High Court in **Amir-Jamia vs Desharath Raj**³, was also referred to where it was held that when a student is expelled by an educational authority on the allegations that he is guilty of indiscipline, such an action is in the nature of an adjudication and therefore, a student against whom such a serious action is proposed to be taken, must be afforded a reasonable opportunity of being heard against the proposed action and that rules of natural justice ought to be observed before exercising the drastic powers of expulsion and if they failed to do so then the court

³ ILR 1969 Delhi 2002

would be constrained to intervene, though reluctantly. The Delhi High Court held in paragraph 29 as follows:-

“29. The impugned order passed by the respondents have far reaching consequences. Expulsion from the school and the ban imposed on the petitioner from entering the school campus is a grave punishment to be inflicted. While it is true that no leniency ought to be shown in academic matters and the educational institutions ought to be very strict in maintaining high academic standards and academic discipline, but at the same time the rules of *audi alteram partem* cannot be thrown to the winds. Following the principles of natural justice is the first filter of a judicial act. Turning a blind eye to the said rule is close to being sacrilegious to the rule of law. The circumstances notes hereinabove do not justify dispensing completely with the procedure prescribed under Ordinance 14 by invoking Statute 31.”

16. The averments in the writ petitions as well as the counter-affidavits filed by the respondents no.1, 2 and 3, make it evident that the allegations levelled against the petitioners were not without any reason. The allegations, if true, may amount to indiscipline which ought to be disciplined. The College authorities are fully within their power and jurisdiction to discipline students resorting to indiscipline and misconduct. Students are enrolled in colleges to pursue education which is fundamental to their growth. Students must always ensure that they take this opportunity of being enrolled in an institute to educate themselves and make them better citizens. It is the educated enlightened students which makes the back bone of our nation.

17. Having said that, on examination of the records of the present cases, it is noticed that there has been a complete violation of the principles of natural justice. The impugned expulsion orders have been passed without giving an opportunity to the petitioners to show cause as to why such an action, as was resorted to, ought not to be

taken. There is no material, even at this stage, on perusal of the counter affidavits, which reflect that the authorities applied their mind to the evidence to establish the allegations and thereafter to pass the impugned expulsion orders after affording an opportunity to them. The impugned expulsion orders as well as the decision for their expulsions taken at the General Body Meeting dated 10.02.2021, in such circumstances, cannot be sustained. They are accordingly set aside.

18. In the facts of the case, this court is also of the view that the College authorities shall be fully within their rights to issue show cause notice upon the petitioners on ascertained facts giving them an opportunity to explain themselves and after following the principles of natural justice to take such measured disciplinary action as befitting the indiscipline and as per rules and regulations of the College.

19. The writ petitions are allowed to the extent above and disposed of accordingly.

20. The Interlocutory Applications also stand disposed of.

21. No order as to costs.

(Bhaskar Raj Pradhan)
Judge