

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : ADMISSION MATTER

Reserved on : October 31, 2007

Pronounced on : November 28, 2007

W.P.(C) 4980/2007

AMRITASHVA KAMAL Petitioner
Through Mr. Akhil Sibal, Mr. Pradeep Chandra,
Mr. Salim Inamdar, Advocates.

versus

JAWAHARLAL NEHRU UNIVERSITY & ANR. Respondents
Through Mr.S.C. Dhanda, Advocate for JNU.

Mr. Justice S. Ravindra Bhat

1. The writ petitioner seeks quashing of an order dated 7-5-2007 declaring him to be out of bounds, with immediate effect, from the Jawaharlal Nehru University (hereafter "JNU") campus, and debarring him from admission to any of its programmes and courses.
2. The facts, undisputed by the parties, and emerging from the pleadings are that during the period July, 2006 Saurabh Kamal (the petitioner's brother) was constantly humiliated and harassed on castes lines by a group of students of JNU led by one Mahindra Kumar Chauhan, an ex-student of JNU apparently living

unauthorizedly in Chandrabhaga Hostel. Saurabh was constantly referred to as a 'Dalit' and subjected to caste based harassment and social discrimination by them.

3. In the evening of 31st July, 2006 the situation, became serious as Manindra Kumar Chauhan and his friends abused Saurabh very badly on caste lines and even threatened to beat him up. Being alarmed by the incident, Saurabh Kamal telephoned the petitioner, his brother, about the threat and his continued harassment by Manindra Kumar Chauhan and other students. The next day the petitioner went to JNU Campus to meet his brother to verify the situation. He apparently decided to meet and persuade Manindra Kumar Chauhan not to harass and humiliate his younger brother. Both, i.e. the petitioner and Saurabh, therefore, went to meet Manindra Kumar Chauhan on 01.08.2007. Manindra apparently started hurling filthy abuses and shouted as how the Dalits dared to come to his room. He also allegedly started badly beating the petitioner and his younger brother. Manindra Kumar Chauhan called his other friends and all of them started abusing, beating and kicking the petitioner and his younger brother. They took the petitioner and Saurabh by beating, kicking and dragging up to the Lohit Hostel. They could only be saved by some other students of JNU and the Security staff which had reached on the spot by that time.

4. The severity of violence was such that it drew considerable attention of Print as well as Electronic Media next morning. On 03.08.2006 Saurabh made a

complaint in writing to the Vice Chancellor and also to the Equal Opportunity Office. Taking into account the gravity and seriousness of the incident, the Vice Chancellor of JNU immediately constituted an Enquiry Committee headed by Prof. Tulsiram, Chief Advisor, Equal Opportunity Office (EOO), to look into this violent incident and provide a report to the University 04.08.2006.

5. The Enquiry Committee examined a number of witnesses and 16 lengthy meetings were held during August -October 2006. After going through the entire proceedings and examining the statements of the complainants, accused and different witnesses, the Enquiry Committee submitted its Report and arrived at the following conclusions :

“1. Mr. Saurabh Kamal's allegation of harassment on caste line and social discrimination by the aforesaid accused is found to be true. Mr. Maninder Kumar Chauhan (ex-student) emerged as the chief exponent of casteist remarks and social discrimination against Mr. Saurabh. Maninder Kumar Chauhan appeared to be the leader of the entire group who was involved in the violent incident.

2. Some of the revealed that Maninder Kumar Chauhan had bitter contempt for the people coming from deprived sections of the society and he was habitual of passing caste based remarks and he and his friends were very frequent in passing remarks with hidden meanings amounting to gender based discrimination against some girl students.”

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7. Through Saurabh Kamal had mentioned the names of 8 persons involved in the violent incident of August 1, 2006, only 4 persons namely, Maninder Kumar Chauhan (ex-student), Yashwant, Aditya and Rahul Kumar are found to be guilty of badly beating up Saurabh

Kamal and his brother Amritashva in the night of August 1, 2006. All these people are also found guilty of harassing Saurabh Kamal on caste line and social discrimination.

8. *The rest of the 4 persons, Rahul Tulsyan, Gopal Krishanan, Abhishek Bhardwaj and Avinash, have been given benefits of doubt as evidences against them could not reveal their clear role in the violence.*

However, circumstantial evidences and other facts show that these people were essential component of very intimate group led by Maninder Kumar Chauhan and therefore all these persons seem to be the part of the activities related to caste based harassment and social discrimination.

Recommendations

The Enquiry committee submits its findings to be top authority of Jawaharlal Nehru University for appropriate action against the guilty persons who were involved in caste based harassment and violent incident so that such occurrences in future could be avoided.”

6. No action at all was recommended against the petitioner as he was found to be a victim of caste abuse and physical violence led by Manindra Kumar Chauhan. Immediately after the incident, Manindra Kumar Chauhan was not permitted to enter JNU Campus and it was declared out of bounds for him; therefore, he was debarred from taking admission in future at JNU. Yashwant Singh, Rahul Kumar and Aditya were rusticated for four semesters and fines were imposed on four others.

7. The Chief Proctor, Respondent No.2, passed an Office Order No. 29/CP/2007 dated 07.05.2007 with approval of Vice-Chancellor JNU, purportedly in exercise of power under Statute 32 of the Jawaharlal Nehru University Act,

1966 in declaring therein the entire JNU Campus to be out of bounds for the petitioner with immediate effect and further debarring him from taking admission in any programme of study in JNU in future.

8. On 13.06.2007 a representation was given by the petitioner to the Vice-Chancellor requesting him to withdraw the above said Office Order however no response was received. The petitioner had earlier applied for admission to M.Phil Programme of study in JNU in the month of March, 2007, in the various courses of study (in JNU) received calls for viva-voce examination for admission on 16th July, 2007 for the subject SAH and the subject EUP and on 18th July, 2007 for R.C.A. through communications dated 26, 27 and 28 July, 2007.

9. In view of the impugned order dated 7.5.2007 the petitioner could not have entered the JNU Campus for viva voce examination or for any other purpose and therefore again gave a detailed representation dated 03.07.2007 to the Vice-Chancellor with a copy to the Chief Proctor and Head Equal Opportunity Office requesting for withdrawal of the above said office order and in the meantime to allow him provisionally to appear for the viva-voce examination on 16th and 18th July, 2007.

10. On 04.07.2007 the counsel for petitioner, who is also the local guardian of the petitioner, met the Respondent No.2 personally and requested for withdrawal

of the impugned Office Order. It was also urged that in the entire Enquiry Report there is no even an iota of allegation found to be true against the petitioner and his brother, while Manindra Kumar Chauhan and his friends were very categorically and specifically found to be indulging in abusing and caste based discrimination and violently beating the petitioner and his younger brother. The Chief Proctor however did not assign any reason for the aforesaid impugned Office Order and expressed his inability to withdraw such an order.

11. The Chief Proctor was requested to allow the petitioner to enter and appear for viva voce examinations only on 16th and 18th July, 2007, but he asked the petitioner to submit an application not before 12th July and said he would consider the same on 13th July, 2007 and in no circumstances before that. The petitioner in representation dated 03.07.2007 had requested for provisional permission only for 16th and 18th July, 2007 and apprehending adverse action, or at best deliberate inaction, approached this court. It is alleged that the impugned Office Order amounts to denial of the fundamental rights of the petitioner to education and also to life and livelihood and is therefore liable to be quashed. The said order is in violation of principles of natural justice as no opportunity was granted to the petitioner, before initiating the impugned action. The said order is also assailed as being in complete violation of the Enquiry Committee Report as there is not even

an iota of evidence against the petitioner and rather he is found specifically to be a victim of physical violence and harassment on caste lines.

12. The JNU has filed its counter affidavit and justified the impugned office order, by saying that the “Enquiry” was not against the petitioner. It was against Maninder Kumar Chauhan and his associates. The petitioner was not a student of the University and therefore, the University had no jurisdiction or authority to charge him or to hold an enquiry against him and award any punishment to him. The petitioner was not even summoned as a witness, as he was an outsider. The petitioner was not covered under the Rules of Discipline and Proper Conduct of students of the University and was not subject to the powers vested in the Vice Chancellor. For this reason no advantage can be derived by him from the findings of the said “Enquiry”.

13. It is alleged in the counter affidavit that:

“The petitioner, who was not a student of the University, came to the Campus and admittedly was involved in the fight with other students, who he claims were pestering his younger brother. Thus, instead of taking preventive measures he took the law and order in his own hands. The petitioner went to Chandrabhaga Hostel along with his younger brother Mr. Saurabh Kamal to settle the matter on his own instead of informing the University authorities. Even prior to this, the University was not informed that his brother was being pestered. The University would not like to admit a student who picks up a fight and creates a law and order situation in the University which could turn out to be very ugly. The petitioner is an M.A. What is the use of his education if he cannot handle a situation like this

peacefully by informing the University. The purpose of education is not to obtain a degree. It is to grow up as a responsible person. No useful purpose will be served if admission is given to the petitioner and he obtains another degree. It is reiterated that being an outsider he had no business to go to the hostel to the room of Mr. Maninder Kumar Chauhan and indulge in confrontation with Mr. Maninder Kumar Chauhan.

The students who were found guilty by the Inquiry Committee have been duly punished. Keeping in view what happened, the petitioner does not merit admission in this University. His presence is bound to create law and order situation again and it will disrupt the peace and harmony in the University.”

14. It is contended, for the Petitioner that the impugned order cannot be sustained under any circumstances as it is opposed to all canons of fair play. The enquiry proceedings originated on a complaint by the Petitioner's brother about unacceptable caste based mis-behaviour, by some students and outsiders. This was on account of an incident which occurred on 1.8.2006. The entirety of circumstances was enquired into by a Committee constituted by the JNU. Neither the Petitioner nor his conduct, were subject-matter of the enquiry; indeed no notice or opportunity was ever given to him. In any case the enquiry fully established that the complainant i.e the Petitioner's brother had been unfairly harassed. In some places the report adverted to the Petitioner's supportive role in helping his brother i.e the complainant. Instead of punishing the real culprits the JNU has also inflicted punishment on the Petitioner who was attempting to resolve the issue and help his brother.

15. Learned counsel contended that even though, at the relevant time the Petitioner was not a student of the University, nevertheless the fact was that he was a candidate for admission and had participated in the admission process. Despite knowledge about these facts, the University mindlessly and without any basis issued the impugned order inflicting a penalty as it were against him thus debarring his candidature. Besides denial of principles of natural justice and the adoption of an unfair procedure, learned counsel contended that the University was also guilty in drawing conclusions against the Petitioner without any material. He relied upon the contents of the enquiry report which did not, anywhere point to objectionable conduct on his part. On the other hand, counsel relied upon the said report to say that the persons – some of whom were students – ultimately found guilty, had indulged in utterly objectionable behaviour in targeting members of the Dalit Community including the Petitioner's brother and harassing them. It was contended that obviously unfair attitude of the respondents in debarring the Petitioner from the JNU Campus and also prohibiting his admission or participation, disclosed a completely biased attitude.

16. Counsel lastly contended that out of the students ultimately indicted for misconduct, three were rusticated for four semesters and one was not permitted

admission; he was also kept out of bonds. He relied upon the documents reflective of the subsequent conduct of the University in keeping the order of one Aditya, a guilty student in abeyance. That order was issued on 13.8.2007.

17. Mr. S.C. Dhanda, learned counsel for the Respondent relied upon the judgments of this Court reported as *Mohd. Zareeq Khan & Others Vs. Jamia Millia Isalamia* 1999(III) AD (DEL) 498; *Shahid Ali Khan Vs. Union of India & Ors.* 2004(75) DRJ 51 and contended that any conduct unbecoming of a student can be legitimately construed as a breach of discipline and that concerned academic authority such as a University would be acting within the bounds of jurisdiction and taking disciplinary action including rustivating the student.

18. Mr. Dhanda submitted that the incident and the events which unfolded were at the instigation of the Petitioner and in fact fanned by him. If he had not visited the Campus, the guilty persons would not have been stirred into acting as they did. Since the Petitioner was no longer a student of the University, the JNU had no jurisdiction over him and could not have asked him to show cause for his conduct. Instead, it enquired into the totality of circumstances and the Vice-Chancellor after considering all the materials invoked Statute 32 to issue the impugned order.

19. The impugned office order reads as follows:

*“JAWAHARLAL NEHRU UNIVERSITY
OFFICE OF THE CHIEF PROCTOR
New Delhi-110067*

*Administrative Building
New Delhi-110067
Tel: 26704045
May 07, 2007*

OFFICE ORDER NO.29/CP/2007

In view of the undesirable activities of Mr. Amritashva (S/o Shri Raja Ram Prasad), an ex-student of School of International Studies and elder brother of Mr. Saurabh Kamal (140, Periyar Hostel) of this University, the Vice-Chancellor in exercise of his powers vested in him under Statute 32 of the Statutes of the University, has ordered that the entire JNU Campus is declared out of bounds for him with immediate effect. Any one giving shelter to Mr. Amritashva in any premises of the University will invite strict disciplinary action against him.

He is also debarred from taking admission in any programme of study of this University in future.

This has the approval of the Vice-Chancellor.

*Sd/- 7.5.07
CHIEF*

PROCTOR”

20. The above narration of facts discloses that a serious incident involving students in the Jawahar Lal Nehru University Campus occurred in the end of July and 1st August, 2006. Undisputedly the Petitioner is a member of a Dalit community, his brother, Saurabh Kamal was at the relevant time a residential student of the University. He apparently faced considerable harassment and intimidation on account of his caste. The Petitioner's version is that he went to defuse the situation and therefore his brother became a victim of acts of

misconduct by a number of students. Originally complaints were leveled against eight students. An Enquiry Committee was set up by the University. The Committee recorded statements of the concerned parties including the complainant, students, others supporting his version; the accused; statements of others supporting the accused's version. After duly considering these materials the Committee determined positively that such complaints were well-founded and the incident of caste based harassment, which was unacceptable, occurred as alleged. That formed its report – the relevant parts of which have been reported above – formed the basis of the opinion by the University, that disciplinary action could be taken against four persons indicted by the Committee. Till date, that report has not been set aside or adversely commented upon.

21. The question which arises immediately as to whether, in the absence of any indictment or adverse comment in the report or in any properly constituted proceeding, the University could have of its own accord as it were, determined that the Petitioner was at fault and imposed a drastic order debarring him.

22. The Respondents never disputed that the order, as far as the Petitioner was concerned was ever preceded by any notice or opportunity. The defence that they have no jurisdiction over him as he ceased to be a student, in my opinion is a barely veiled attempt to mask the truth. The JNU never appeared to have had any intention to involve the Petitioner, or grant him any sort of hearing. The Registrar

who has sworn the counter affidavit has nowhere discussed as to what materials exist to justify the impugned order. All the facts point to there being only one enquiry i.e by the Committee set up by the University. That Committee unequivocally recommended that the complaint by the Petitioner's brother was correct; its report led to disciplinary action against four persons including three students of the University. In these circumstances the position of JNU that opportunity could not be given to the Petitioner since he was no longer was a student is exposed as palpably untrue. If the University found, after considering the materials that a third party – someone who was not within its disciplinary jurisdiction (i.e Mahendra Chauhan) no less a third party could be the subject matter of enquiry and dealt with, there was no reason why the Committee could not have involved the petitioner and given him a hearing. On the other hand, the Committee's recommendations nowhere mention the Petitioner's role in an adverse light. On the contrary, it supports the version alleged by him.

23. It is well settled that every administrative or executive order, which affects or adversely impacts on the rights of an individual, should be preceded by a fair procedure, thereby implying notice, a right to represent against the proposed action and some opportunity of hearing. The content of such right would vary from situation to situation; every case may not warrant a personal hearing. (Ref *Charan Lal Sahu vs. Union of India etc.* AIR 1990 SC 1480; *Gadde Venkateswara Rao vs.*

Govt. of A.P. & Ors AIR 1966 SC 828; *Canara Bank and others vs. Debasis Das & Ors* 2003 (4) SCC 557). In *S. L. Kapoor v. Jagmohan* (1980) 4 SCC 379 the Supreme Court held as follows :

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs."

24. In *Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Others*

[1991 Supp (1) SCC 600], it was *inter alia*, held that:

"... It is now well settled that the 'audi alteram partem' rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally. ..."

Earlier, in an illuminating judgment, the Court had held that an authority bound to hear a party likely to be affected by its decisions, but not doing so, would be issuing a void order, in the decision reported as *Nawabkhan Abbaskhan –vs- State of Gujarat* AIR 1974 SC 1471, thus:

“Maybe that in ordinary legislation or at common law a Tribunal, having jurisdiction and failing to hear the parties, may commit an illegality which may render the proceedings voidable when a direct attack is made thereon by way of appeal, revision or review, but nullity is the consequence of unconstitutionality and so without going into the larger issue and its plural divisions, we may roundly conclude that the order of an administrative authority charged with the duty of complying with natural justice in the exercise of power before restricting the fundamental right of a citizen is void and an initio of no legal efficacy. The duty to hear manacles his jurisdictional exercise and any act is, in its inception, void except when performed in accordance with the conditions laid down in regard to hearing. Maybe, this is a radical approach, but the alternative is a travesty of constitutional guarantees, which leads to the conclusion of post-legitimated disobedience of initially unconstitutional orders. On the other hand law and order will be in jeopardy if the doctrine of discretion to disobey invalid orders were to prevail.”

In view of the above discussion, it is clear that the impugned order is unsupportable in law; it is arbitrary. It was also issued without any materials in support of the JNUs opinion.

25. The above reasons could have been dispositive of these proceedings as the Petitioner is plainly entitled to relief, in view of the findings. Yet I cannot help in commenting on the utterly indefensible conduct of the University which shows it in poor light. Conceived as a premier institution of higher learning with an international reputation, the defence put forth, by it, about futility of an enquiry against someone likely to be irreversibly prejudiced by its action, or even deny information to him of its actions, is disquieting at this point in time. Such a stand perhaps would have been considered proper in medieval times where the writ of a

monarch could run unquestioned and his authority, accountable to none. That Vice-Chancellor of the University has chosen to support such a stand and apparently “applied his mind” is alarming to say the least.

26. Almost half a century ago, in another context, the Supreme Court articulated the goal of the Constitution of social equity and a caste less society, in the following terms, in *V.V. Giri –vs- Dippala Suri Dora* AIR 1959 SC 1318, thus:

“The history of social reform for the last century and more has shown how difficult it is to break or even to relax the rigour of the inflexible and exclusive character of the caste system. It is to be hoped that this position will change, and in course of time the cherished ideal of casteless society truly based on social equality will be attained under the powerful impact of the doctrine of social justice and equality proclaimed by the Constitution and sought to be implemented by the relevant statutes and as a result of the spread of secular education and the growth of a rational outlook and of proper sense of social values..”

Sadly, the stark reality of caste prejudice has been highlighted in this case. The JNU, consistent with its mandate of promoting modern education and secular values, unfortunately displayed rank insensitivity. There no more justice where the victim and the oppressor are treated alike, as where the lion and the lamb are afforded the same treatment. That JNU has done so, betrays its callousness, to say the least.

27. During the hearing, learned counsel for the respondent had, on a query from the Court, made a without prejudice submission that if the Petitioner were to succeed, his performance in the admission process was such that he was number

one in the merit list for M.Phil Programme in European Studies as well first in the merit list in Russian and Central Asian Studies and that if the interim orders were to be confirmed on merits, the Petitioner could be accommodated in the forthcoming Semester/Session beginning in January, 2008.

28. In view of the above findings the writ petition deserves to succeed. Accordingly the impugned order dated 7.5.2007 is hereby quashed; the Respondent – Jawahar Lal Nehru University is directed to offer the Petitioner a seat in the European Studies (EUP) or in the Russian Central Asian Studies (RCA) according to his choice in the reserved/scheduled caste category of vacancies and admit him to the course of his choice in the forthcoming session of January, 2008, to the M.Phil Course. The University shall comply with these directions within two weeks from today.

29. The writ petition and pending applications are allowed in the above terms; in the circumstances the University shall bear the costs of these proceedings quantified at Rs.25,000/-, which shall be paid to the petitioner within two weeks.

Sd/-
(S. RAVINDRA BHAT)
JUDGE