



2024 : DHC : 2607



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

+ W.P.(C) 759/2012

BALBIR CHAND

..... Petitioner

Through: Mr. M.P.S. Kasana and Ms.
Kanchan, Advocates

versus

JAWAHAR LAL NEHRU UNIVERSITY Respondent

Through: Ms. Meenakshi, Advocate

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

01.04.2024

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1. The petitioner assails, by this writ petition, order dated 12 February 2011, purportedly issued by the Vice Chancellor of the Jawahar Lal Nehru University (JNU) in exercise of the powers conferred on him by Statute 32(5) of the Statute of the JNU, ordering the expulsion of the petitioner from the premises of the JNU with immediate effect and the removal of his name from the rolls of the JNU forthwith.

2. It is not necessary for this Court to enter into the factual thicket in this case, as the manner in which the JNU has proceeded against the petitioner cannot survive even the most liberal approach by any Court conversant with the rule of law.

3. The case revolves around four communications issued to the



petitioner by the JNU.

The first communication

4. The petitioner who, at that time, was a student undertaking his Master of Computer Application (MCA) Course with the JNU was, on 31 January 2011, served with the following terse communication issued by the Chief Proctor:

“JAWAHARLAL NRHRU UNIVERSITY
OFFICE OF THE CHIEF PROCTOR
New Delhi-110 067

Administrative Building
New Delhi-110 067
Tel : 26704045
Tel/Fax : 26741562

You are required to come to this office on 02.02.2011 at 3.00 P.M. and meet the undersigned, in Room No. 108, Administrative Building in connection with a complaint against you.

Chief Proctor”

5. The petitioner appeared before the Chief Proctor in compliance with the directive contained in the aforesaid communication dated 31 January 2011, on 2 February 2011. He was informed, then, that a video file containing objectionable material was found in his personal laptop, which indicating that he had ragged certain students of the JNU.

6. The Petitioner denied the allegation, and specifically asserted that no such objectionable video file was available on his laptop.

The second communication



7. Within a week thereof, on 9 February 2011, the JNU proceeded to issue Office Order No.14/CP/2011, which read thus :

“There is a *prima facie* evidence that Mr. Balbir Chand, r/o. 143, Tapti Hostel is responsible for producing an objectionable CD in JNU. As per Rules of discipline and proper conduct of students of JNU in accordance with the powers vested in the Vice-Chancellor as per Statute 32(5) of the Statutes of the University, the Vice-Chancellor has ordered that his status as a student of the University be suspended with immediate effect pending a Proctorial enquiry into the incident.”

The third communication

8. On 11 February 2011, the following “Show Cause Notice” was issued to the petitioner:

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

Administrative Building
New Delhi-110 067
Telephone: 26741562 26704045

February 11, 2011

Show Cause Notice

In the Proctorial Enquiry, Mr. Balbir Chand, a student of MCA 2nd year, School of Computer and System Sciences and a r/o 143, Tapti Hostel has been found guilty of (i) Aiding and abetting the malafide act of converting a video clip to a video file containing objectionable material (ii) possession of this video file in personal Laptop (iii) concealment of evidence to confuse the enquiry. He is hereby asked to explain why disciplinary action should not be initiated against him for his indulgence in the above acts.

His reply should reach this office latest by 12th February, 2011 (5 P.M) failing which it will be presumed that he has nothing to say in his defense and this office will be free to take appropriate action against him.

Sd/-



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Chief Proctor
11/2/2011

Mr. Balbir Chand
Room No. 143
C/o Senior Warden
Tapti Hostel
JNU”

9. The petitioner was, admittedly, never associated in the proctorial enquiry to which the aforesaid Show Cause Notice dated 11 February 2011 makes reference. Ms. Meenakshi, learned counsel for the JNU, submits that in the said enquiry, as many as statements of the 15 witnesses had been recorded. If that is so, the Rules applicable to proctorial enquiries in the JNU, as also the most elementary requirements of compliance with the principles of natural justice and fair play, would have required the petitioner to be presented with the said statements, afforded an opportunity to cross-examine the persons who gave the said statement, and lead evidence in his defence. This Court has, in *Swati Singh v. Jawaharlal Nehru University*¹, dealt at length with the requirements to be satisfied while holding proctorial enquiries in the JNU. Paras 30 to 32 of the said decision may be reproduced thus:

“30. Statute 32(5), therefore, requires that, as a general rule, the procedure that it envisages *is to be followed*. If, in a particular case, it is *impossible* to do so, then, *perhaps*, one or the other ingredients of the procedure may be dispensed with. Even in such a case, a conscious decision to do so, with cogent and convincing reasons, must be forthcoming, not only “on the file” but also communicated to the student concerned.

31. In the present case, however, no such decision is forthcoming. Absent strict compliance with the protocol envisaged

¹ 2024 SCC OnLine Del 848



by Statute 32(5), therefore, the impugned decision would necessarily stand vitiated.

32. It is clear, from the facts, that the JNU has acted in breach of the procedure prescribed in Statute 32(5). Statute 32(5) envisages a very clearly delineated procedure, which requires, as one step following the other,

- (i) recording of the deposition of the complainant,
- (ii) recording of the statement of the accused person,
- (iii) recording of the statements of the witnesses mentioned by the complainant and the accused,
- (iv) recording of the evidence of the JNU staff or other persons present at the occasion who witnessed the incident,
- (v) cross-examination of the accused and the complainant,
- (vi) examination of any material evidence like audio/video tapes or paper documents after establishing their veracity from the persons who submitted them,
- (vii) preparation of a final comprehensive report setting out the specific charge against the accused,
- (viii) issuance of a show cause notice to the accused,
- (ix) study and examination of the defence of the accused,
- (x) preparation of a report recommending appropriate disciplinary action,
- (xi) preparation of a final report and submission of the recommendations to the VC for approval, and
- (xii) award of punishment to the students and conveying of the decision to him/her.”

10. It is apparent that there has been no compliance with this requirement, especially as the Show Cause Notice dated 11 February 2011 came to be issued within a week of the audience granted by the JNU to the petitioner on 2 February 2011.

11. That apart, the Show Cause Notice dated 11 February 2011 does not, on its face, even disclose lip service with the requirement of compliance with the principles of natural justice and fair play. The petitioner was given just 24 hours to file a reply to the show cause



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notice, which was directed to be filed by 5 pm on the next date i.e. on 12 February 2011.

The fourth communication

12. Be that as it may, the petitioner did submit the reply to the said show cause notice on 12 February 2011 itself. That very day, the impugned order came to be passed by the JNU expelling the petitioner from its environs. The order reads thus:

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

February 12, 2011

OFFICE ORDER NO. 16/CP/2011

In the Proctorial Enquiry, Mr. Balbir Chand, a student of MCA 2nd year, School of Computer and System Sciences and a r/o 143, Tapti Hostel has been found guilty of (i) Aiding and abetting the malafide act of converting a video clip to a video file containing objectionable material; (ii) possession of this video file in personal Laptop, and (iii) concealment of evidence to confuse the enquiry.

The above charges on the part of Mr. Balbir Chand are very serious in nature, unbecoming of a student of JNU and calls for a stringent punishment

The Vice-Chancellor, in exercise of the powers vested in him under Statute 32(5) of the Statutes of the University has ordered that Mr. Balbir Chand be expelled from the University with immediate effect. His name shall stand removed from the rolls of the University forthwith.

The entire JNU Campus shall remain out of bounds for Mr. Balbir Chand during the period of his expulsion. Anyone found giving shelter to Mr. Balbir Chand in any Hostel/residence in the campus shall invite disciplinary action against him/her



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He is also debarred from taking admission in any programme of study of JNU during this period.

Sd/-
Chief Proctor
12/2/2011

Mr. Balbir Chand
Room No. 143
C/o Senior Warden
Tapti Hostel
JNU”

13. The manner in which the JNU has proceeded in the case of the petitioner is a mere mockery of the principles of natural justice and fair play. It is also in the teeth of the principles governing holding of proctorial enquiries in the JNU, as has already been observed by this Court in *Swati Singh*.

14. The fact that the JNU was all along acting with a pre-determined intent of removing the petitioner from his premises is apparent even from the issuance of the show cause notice on 11 February 2011 and the impugned order within 24 hours thereof on 12 February 2011. The “opportunity” to the petitioner to file a reply to the show cause notice was therefore a mere eye wash, and nothing more.

15. It is a matter of concern that the JNU, which is a premier University, has acted in this fashion. As the incident is today of 12 years vintage, I say no more.



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16. Needless to say, in these circumstances, the decision to expel the petitioner as contained in the impugned Office Order No. 16/CP/2011 dated 12 February 2011 is quashed and set aside.

17. It would be for the petitioner, if he so chooses, to approach the JNU for completion of his MCA. In case he does so, the JNU shall permit the petitioner to complete his course.

18. Ms. Meenakshi, learned counsel for the JNU, points out that in 2011, the MCA course was of three years duration whereas it is now of two years duration.

19. Needless to say, the petitioner cannot be prejudiced as a result of the pendency of this writ petition, especially as the decision to expel him has been found to be illegal. It would be for the JNU to take appropriate steps in order to ensure that the petitioner is able to complete his MCA course, in the best manner possible.

20. The writ petition is allowed in the aforesaid terms.

C.HARI SHANKAR, J

APRIL 1, 2024/yg

Click here to check corrigendum, if any