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

% Date of decision: 23.05.2016

+ LPA 845/2015 & CM 28044/2015 (*stay*)

SHAHEED SUKHDEV COLLEGE
OF BUSINESS STUDIES

..... Appellant

Through Mr.Amit Bansal and Ms.Seema Dolo,
Advs.

Versus

SIDDHARTH JAIN

..... Respondent

Through Mr.R.K.Kapoor, Ms.Rekha Giri and
Mr.Rajat Kapoor, Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

ORAL

1. The present appeal is filed seeking to impugn the order dated 17th November, 2015 of the learned Single Judge. The writ was filed by the respondent seeking a writ of mandamus for quashing the order dated 29th September 2015 by which order the respondent was debarred from entering the College premises of the appellant for one year and from taking University/College examination for the academic year 2015-16.

2. The brief facts which led to filing of the writ petition were that the respondent is a student of the appellant College studying BBS II. He was admitted in July 2014 to the course of Bachelor of Business Studies. An incident is said to have taken place around 28-30th July, 2015. The appellant College had been participating in a UK Study India Program, a British Council initiative. As a part of the Program, students from the UK visited

participating colleges in India for three days. 30 students were sent to the appellant College from 28th to 30th, July 2015. As per the Program, each UK student was assigned an Indian student called “Buddy”.

3. A complaint was received on 30th July, 2015 by the Principal from the delivery partners who had organized the Program against the respondent who had been assigned a lady delegate from UK as “Buddy”, that he had asked the lady inappropriate personal questions. Subsequently, he is said to have kissed her despite her resistance. It was also alleged that the respondent had asked similar inappropriate questions to another UK student subsequently. This was an oral complaint. The lady only sought to bring the incident to the notice of the College authorities but did not wish to file a written complaint.

4. Based on this oral complaint, on 5th August, 2015 a notice was issued to the respondent to give his response. He was also debarred from entering the College premises till the pendency of the matter with the Disciplinary Committee.

5. The respondent filed a writ petition No. 7891/2015 on 14th August 2015 to set aside the said letter dated 5th August, 2015. The writ petition was disposed on 16.09.2015 with the direction that the decision of the Disciplinary Committee be passed early.

6. The Disciplinary Committee thereafter gave its order whereby it noted that it is established beyond reasonable doubt that the respondent is guilty of having been indulged in indecent and inappropriate behavior towards the female guest students. Accordingly, the Committee recommended that the respondent be debarred for two years with immediate effect from the college.

7. The Principal in his order dated 29th September 2015, however, on account of letter of regret dated 23rd September, 2015 filed by the respondent took a lenient view for the sake of the career of the respondent and reduced the punishment to one year. The relevant portion of the punishment reads as follows:-

“.. it is hereby ordered that Mr.Siddharth Jain is debarred from entering the college premises for a period of one year and he shall not take the University and college examination for the academic year 2015-16.”

8. The above order was challenged by the respondent in the present writ petition. The learned Single Judge noted that the respondent is only 20 years of age. He further noted that no fault or error could be found in the manner the Disciplinary Committee dealt with the matter or the approach adopted by the Principal. However, the issue framed in the order was as to whether or not the punishment imposed by the impugned order is excessive having regard to the age of the petitioner. The order further notes that the respondent falls in the category of young adults who has crossed the age of juvenility but less than 21 years. The order notes that it is widely recognized that younger the age of the offender, the lesser is his culpability. The order further notes that the respondent has tendered his apology vide letter dated 23rd September 2015 and has also filed two affidavits in court dated 31st October, 2015 and 5th November, 2015 wherein he has expressed his regret. The order hence concluded as follows:-

“19. A perusal of the above would show that the petitioner is contrite and perhaps now realizes the consequences of his misdemeanor. The apology may have come with the realization that his conduct could ruin his career; which is one of the

reasons which was cited by the Disciplinary Committee in recommending the punishment, which it did, vide its report.”

9. The order also noted as follows:-

“15.1 The rationale behind a different regime being followed world over vis-à-vis young offenders, is to prevent recidivism. It is felt that recidivism can be prevented if, young offenders are dealt with appropriately with due sensitivity, at an early age. There are range *of sentences* available *qua young offenders*, depending on the gravity of offence and the age of the offender. The range of sentence would vary from absolute discharge to conditional discharge, fine or compensation for which parent could not be made responsible, supervision orders which could include psychiatric treatment, educational treatment, educational requirements, detention in special homes for grave offences, such as, murder, rape etc. as also issuance of a probation order, as indicated above.

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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*).

10. The impugned order suspended the punishment for the remaining tenure for the respondent in the College and passed the following directions:-

“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 behavior with the following conditions:-

(i) In case any other act of misdemeanor [which comes within the ambit of offences prescribed in clause 3 of the Ordinance XV (B)] is committed by the petitioner, he will, serve the entirety of the remaining sentence, as imposed vide the impugned order. I was informed by Mr. Bansal that the petitioner stood effectively debarred from the college from 05.08.2015.

(ii) The Petitioner, will report to the Principal every month, on a date and time assigned to him. The Principal will call for a report from the concerned faculty member with regard to the petitioner’s general behavior, conduct and disposition.

(iii) The parents of the petitioner shall remain present at such monthly meetings.

(iv) The Principal, at such meeting(s) will have the concerned faculty members (who would have dealt with the petitioner in the relevant period), participate in such a meeting.

21.1 The undertaking of good behavior will be filed within two days from today in the form of an affidavit with this court; with a copy of the College. In case the petitioner commits fresh offences, as indicated above, condition (i) will get triggered automatically. The Principal, will be the sole judge of this aspect of the matter.”

11. We have heard the learned counsel for the parties and gone through the record.

12. Learned counsel for the appellant has strongly urged that the impugned order is erroneous inasmuch as a person guilty of an offence like the respondent should not be left scot free.

13. We are unable to agree with the submission of the learned counsel for the appellant. In our opinion, the reasons which have persuaded the learned Single Judge to pass the impugned order appears to be in order. The respondent is a young person still in college aged 20 years old. He has three times tendered an unqualified apology realizing that his actions would lead to serious consequences on his study, career and future. We agree with the conclusion of the learned Single Judge that the respondent is feeling remorse.

14. The order also notes that the complainant herself has chosen not to take the offence done by the respondent to its logical conclusion and has merely verbally informed the authorities without filing a written complaint. The humiliation and stress suffered by the respondent in the course of the disciplinary proceedings would be sufficient deterrent and warning for the respondent. Further, in our opinion, there is no exoneration of the respondent. On the contrary, as per the directions in the impugned order, a strict vigil is to be maintained on the conduct of the respondent. In case of a repeat offence by the respondent, the original punishment shall be restored.

15. In view of the above, we concur with the view of the learned Single Judge and dismiss the appeal.

CHIEF JUSTICE

JAYANT NATH, J

MAY 23, 2016

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