

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.12 OF 2024

... Petitioner

Versus

1. BIRLA INSTITUTE OF
TECHNOLOGY & SCIENCE,
PILANI K.K. BIRLA GOA
CAMPUS,
N.H. 17B, Bypass Road,
Zuarinagar, Sancoale, Goa-403726.

2. SHAILESH NAYARAYN
MOHANTY, JOINT
REGISTRAR,
Birla Institute of Technology &
Science, Pilani, K.K. Birla Goa
Campus, N.H. 17B, Bypass Road,
Zuarinagar, Sancoale,
Goa-403726.

... Respondents

AND
WRIT PETITION NO.13 OF 2024

... Petitioner

Versus

1. BIRLA INSTITUTE OF
TECHNOLOGY & SCIENCE,
PILANI K.K. BIRLA GOA
CAMPUS, N.H. 17B,
Bypass Road, Zuarinagar,
Sancoale, Goa-403726.

2. SHAILESH NAYARAYN
MOHANTY, JOINT REGISTRAR,
Birla Institute of Technology
& Science, Pilani,
K.K. Birla Goa Campus,
N.H. 17B, Bypass Road,
Zuarinagar, Sancoale,
Goa-403726.

... RESPONDENTS

Mr Parag Rao with Mr Ajay Menon, Advocates for the Petitioners.

Mr Pravin Faldessai with Ms P. Tari, Advocate for the Respondents.

CORAM: **DEVENDRA KUMAR UPADHYAYA, CJ. &
M. S. SONAK, J.**

Reserved on: **10th JANUARY 2024**

Pronounced on: **15th JANUARY 2024**

JUDGMENT

1. Heard Mr Parag Rao with Mr Ajay Menon for the petitioners in both these petitions. Mr P. Faldessai and Ms P. Tari appear for the respondents in both these petitions.

2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties. Even otherwise, this was a matter which would brook no delay and, therefore, the parties were requested to complete the pleadings so that these petitions could be finally disposed of. Substantially common issues of law and fact arise in these petitions; therefore, they are being disposed of by a common judgment and order.

3. The petitioners are the students of Birla Institute of Technology and Science, Pilani, K.K. Birla Goa Campus at Zuarinagar, Sancoale, Goa (Institute). They challenge orders dated 01.12.2023 cancelling their registration for Semester I (2023-24) and imposition of fines of ₹50,000/- each, amongst certain other punishments imposed upon them. These penalties were imposed on the petitioners for their alleged involvement in the theft of potato chips, chocolates, sanitisers, pens,

notepads, mobile phone stands, two desk lamps and three bluetooth speakers from the stalls on the college campus.

4. Initially, by orders dated 18.11.2023, the petitioners and three other students were debarred from registration during Semester I (2023-24) and two further semesters. Mr Faldessai pointed out that the petitioners were debarred for the present semester plus three other semesters. However, in respect of three students, the appellate Authority, by orders dated 01.12.2023, dropped the penalty of cancellation of semesters but maintained the fine of ₹50,000/-. In respect of the petitioners, however, the appellate Authority, i.e., the Director, maintained the cancellation of Semester I and the fine of ₹50,000/-. Since the examinations for the first semester were scheduled on 06.12.2023, the petitioners instituted these petitions on 02.12.2023 and applied for urgent circulation.

5. Both these petitions were taken up on 05.12.2023, and an interim order was made permitting the petitioners to answer the Semester I examination scheduled on 06.12.2023. The answer papers were directed to be kept in a sealed cover. Further, the petitioners were directed to deposit an amount of ₹1,00,000/- each with the respondents, without prejudice to their rights and contentions. The parties were also directed to complete their pleadings.

6. Mr Rao pointed out the difficulties that at least one of the petitioners would face in case these petitions were not disposed of before 16.01.2024. He pointed out that one of the petitioners would stand to

lose an entire year if he was not allowed to complete the pre-requisite course concerning Discrete Structure for Computer Sciences. Accordingly, these petitions were heard on the 9th and 10th of January 2024.

7. During the course of the final hearing, at least on two occasions, we deferred the matter to enable the Director to reconsider the punishment of cancellation of the semester or the substitution of such penalty with a direction to the petitioners to undertake community service, which was one of the modes prescribed by the respondents themselves for dealing with Student Indiscipline and Misconduct Cases. The order made by us on 09.01.2024 is transcribed below for the convenience of reference:

“P.C. :

1. *In these matters, the Court is faced with a peculiar situation where the petitioners, who are young students pursuing their respective courses at Birla Institute of Technology and Science are said to have indulged in serious acts of indiscipline on one hand and on the other, having regard to the young age of the petitioners this Court needs to take certain measures giving the petitioners a chance to evolve as a better and disciplined students. The kind of indiscipline the petitioners are said to have been involved in, appears to be serious and unpardonable. However, having regard to their age, they need to be given a chance to be reformed so that their studies and careers do not get hampered. We, thus, request the Director of the Institute to give a thought to the measures which can be taken to ensure that the discipline in the Institute is maintained and simultaneously the studies and the career*

of the petitioners do not get jeopardised. We also request Mr Faldessai, representing the respondent – Institute, to appraise the Director of the concerns of the Court and seek instructions in the matter accordingly.

2. *Stand over tomorrow, that is, on 10.01.2024.”*

8. The above order was made, *inter alia*, having regard to the guidelines issued by the University Grants Commission (UGC), which, in our opinion, could not have been ignored by the first respondent, which is a “deemed University” under Section 3 of the University Grants Commission Act, 1956 (UGC Act).

9. The UGC guidelines, *inter alia*, provide that higher education is a key pathway for social transformation and mobility along with the upliftment of individuals, households and communities. Considering its importance, NEP-2020 addresses this issue. It provides that to ensure the students’ physical, psychological and emotional well-being, support centres and career counsellors are to be made available for all students in higher educational institutions (HEIs). The key challenge lies in creating institutionalised provisions and practices and standard operating procedures that can ensure comprehensive protection to students from any threat and assault, physical, social, discriminatory, cultural and linguistic, causing psychological distress among students. The responsibility of HEIs is to provide complete protection to ensure the well-being of students to work and study in a friendly environment. The UGC constituted an expert committee and, based on the recommendations of such committee, suggested the guidelines which

were directed to be implemented by all HEIs under the purview of the UGC. All the HEIs were directed to make or amend their Ordinances, regulatory provisions and other rules accordingly to ensure that the directions given in these guidelines are implemented in the best interest of students.

10. In particular, the attention of the learned Counsel for the respondents was invited to clauses 5 and 6 of the UGC guidelines, which read as follows:

*“5. **Opportunity to Reform** - The students entering universities embark on a new phase in life. Many are often removed from their comfort zone and the secure environment of their homes to face the challenges of independent life. At times, these new challenges can be intimidating and create apprehension in the minds of young adults, which may lead to deviant behaviors. Generally, the HEIs, without objective analysis of such deviant behaviors, resort to punitive measures, including disciplinary action such as suspension of the student for a specific or indefinite period. Such punitive actions may create a sense of dejection and frustration in young minds. Deviant behaviors among students have several educational implications. The HEIs need to avoid such punitive measures to the extent possible and take affirmative action through programs, including taking the services of professional psychological counselors and promoting wellness through yoga and meditation.*

*6. **Structured reform/self-development programs** may be initiated by the universities, which can serve as catalysts for inducing behavioral change, teaching values, and nurturing human strengths. The UGC has already issued ‘Deeksharambh – A Guide to Student Induction*

Programme (SIP), Mulya Pravah – Inculcation of Human Values and Professional Ethics in Higher Educational Institutions, Jeevan Kaushal – Curriculum for Life Skills. A successful reform through self-development and rehabilitation can transform a possible danger into an asset for society. It is, therefore, important for university administration to ensure proper and regular monitoring of students' behavior and adopt necessary preventive and pre-emptive measures to control deviant tendencies among the students. To this end, amendments in the university statutes may be carried out if deemed necessary. HEIs shall develop structured reform programme(s) to address their specific requirements in consultation with stakeholders, including specialists and professionals working in this field.”

11. Further, we had requested the learned Counsel for the respondents to appraise the Director of the above referred UGC guidelines and to reconsider whether the penalty of cancellation of the semester could be dropped, as was dropped by the Director in the case of three other students, who were alleged to be involved in the very same incident.

12. Despite our above order dated 09.01.2024 and interrupting the final hearing on two occasions, the Director took great pride in informing us that no mercy could be shown to the two 18-year-old petitioners, who admittedly had no history of any delinquency. The Director and Senior Professor issued certain instructions dated 10.01.2024, which instructions were placed on record by Mr Faldessai arguing that “*any reduction of punishment, at this stage, will encourage*

students to seek Court intervention against decisions given by the Institute, undermining the time-tested disciplinary system of the Institute”.

13. Thus, the prime reason for not being merciful or for almost ignoring the reformative aspect, so clearly emphasised by the UGC guidelines, was the apprehension that students would seek Court intervention against the Institute’s decision and such Court intervention would undermine the disciplinary systems of the Institute. To say the least, this should not have been the approach of the Director, particularly when dealing with two 18-year-old students from his Institute. Mr Rao pointed out that one of the students hails from a family which was below the poverty line and had to make considerable efforts to put their son through college education in such a prestigious Institute.

14. The Director, in his written communication dated 10.01.2024, pointed out that the Institute has four campuses and that over 250 students have been awarded various punishments for indiscipline during the year 2023 itself. These statistics furnished by the Director, at least prima facie, suggest that no heed is being paid to the reformative aspect underscored by the UGC guidelines that all HEIs were directed to implement. Even the guidelines framed by the respondents, apart from categorising acts of misconduct/indiscipline and providing graded penalties, make provisions for mandatory community services such as working in libraries, cooperative stores, gymnasiums, etc.

15. However, rather than resorting to such reformatory measures, the Director insisted that, at least in so far as the two petitioners before us were concerned, the penalty of cancellation of the semester and the potential loss of the entire year would not be reconsidered. We almost got the impression that the Director was irked by the fact that these two petitioners had dared to seek Court intervention against his decision. As noted earlier, one of the reasons stated by the Director for not revisiting his decision was the apprehension that the students might seek Court intervention against the decisions of the Institute. Again, though we are hurt by this approach of the Director of an Institute of Eminence, we refrain from saying anything more because we are mindful that the two petitioners before us have to complete their education with the respondents for the next few years and not be scarred for life due to the indiscretion or even indiscipline indulged by them on this one occasion.

16. In *Anant Narayan Mishra V/s. The Union of India and 4 Ors.* (WRIT – C No.13214 of 2019, decided by learned Single Judge of the Allahabad High Court on 02.12.2019), several directions were issued to the Universities in Uttar Pradesh on the aspect of emphasis upon reformation and self-development of students alleged to be involved in indiscipline. This was after noticing that the statutes of Universities like IIT, BHU and AMU focused mainly on penal action without sufficient emphasis on reformation and rehabilitation. The Court held that the statutory monopoly of a punitive approach to deviant behaviour and the exclusion of all other responses often creates a lack of balance in the actions of the concerned University. In such cases, the punishment

becomes disproportionate, not because the decision maker was incapable of measured action, but because the ordinances/statutes preclude a proportional response.

17. The Court, after discussing the concept of “life” and “human dignity”, both in the Indian and international context, held that if punishment is to be effective and serve its purpose, it cannot be purblind to human dignity if it is to retain its constitutionality. The degree of injuries to self-esteem, the extent of degradation of human worth, and the depth of humiliation caused by the punishment are relevant facts to be probed in an enquiry into the validity of the punishment to be imposed upon the students.

18. The Court observed that experience teaches the fact of human fallibility, but knowledge holds the hope of human redemption. If error is part of human nature, reform is an element of the human spirit. The capacity of human beings to introspect on erring ways and the power of human will to reform deviant conduct are building blocks of the concept of human dignity. The Court observed that while every saint has a past, every sinner has a future. Therefore, punishment for deviant conduct cannot be so severe as to degrade human life. Failure to consider susceptibility to reform while denying the right to access privileges and activities of the university negates the possibility of rehabilitation.

19. The Court held that the termination of dialogue with the delinquent student, without offering an opportunity to reform, makes

him an outcaste, and the loss of human self-worth is total. The statutory monopoly of a punitive approach to deviant behaviour and the exclusion of all other responses often creates a lack of balance in the actions of the concerned University. In such cases, the punishment becomes disproportionate, not because the decision maker was incapable of measured action, but because the ordinances/statutes preclude a proportional response. The Court held that this system of punishment is destructive of fundamental elements of human dignity and violative of Article 21 of the Constitution of India.

20. The Court also held that education is the most credible and effective mode of restoring self-esteem and enhancing self-worth. By denying opportunities of education to a delinquent student without looking at the possibility of reform, the power to redeem one's errors and enhance self-worth is taken away from an individual. In these cases, the closure of avenues of education extinguishes the hope for a better tomorrow. Loss of hope and its sequitur perpetual condemnation are fatal blows to the human spirit and self-esteem.

21. The Court held that Universities are quasi-parental institutions. By the act of suspension or debarment of a delinquent student, the university abandons its ward. If the Universities think that they have solved their problem, but society has one at its hands. The downstream effects of the punishments should, therefore, be considered by the Universities. The role of the University should not end with punishing

the perpetrators of indiscipline. The role of Universities begins with the identification of the causes and taking steps to reduce such causes.

22. From the record, we find that the Institute was hosting a conference on Genome Engineering at its campus in Goa between 14.11.2023 and 16.11.2023. Reputed agencies were participating in this conference and had put up stalls on the campus. On 15.11.2023, Professor Rajesh Mehrotra, co-organiser of the local organising Committee, complained about the theft of some of their items from stalls. Such a complaint, admittedly, was never even shown to any of the five students, including the two petitioners. This complaint was enclosed along with the reply filed in the present petitions for the first time. Based on this complaint, CCTV footages were viewed and the five students *prima facie* involved were summoned.

23. The five students, including the petitioners, admitted having picked up some eatables like chips and chocolates and other items like mobile phone stands and speakers from the stalls but claimed that they were under the impression that these items were left abandoned at the stalls. All the students, not only returned the items immediately but expressed their apologies in writing. All this took place on 15.11.2023 and 16.11.2023 before the Standing Committee. The Standing Committee, vide communication dated 17.11.2023, imposed harsh penalties upon all five students. This involved cancellation of the present and a further two to three semesters apart from a fine of ₹50,000/- on each of the students.

24. The petitioners then appealed to the Director. Mr Rao submitted that the petitioners were informed that on confession of their involvement, a fine would be imposed but there would be no cancellation of semesters. The Director on appeal made orders dated 01.12.2023. In respect of three of the students, the penalty of cancellation of semesters was revoked, but the fine of ₹50,000/- was maintained subject to the undertaking from the students and their parents. However, when it came to the two petitioners before us, the penalty of cancellation of one of the semesters was maintained in addition to the fine of ₹50,000/- each.

25. Neither the orders made by the Standing Committee nor the Director make even a remote reference to the alleged difference in the roles of the three students, in respect of whom the penalty of cancellation of semesters was revoked and the present petitioners in respect of whom such penalty is retained. The affidavit filed by the respondents, however, purports to explain that the CCTV footages indicate that the petitioners were the masterminds of this planned theft activity. Again, it is apparent that natural justice was a casualty because neither was the complaint ever shown to the petitioners nor was any material sufficient to distinguish the petitioners' case from that of the remaining three students brought to their notice so that they could have some effective opportunity of rebuttal. This practice of furnishing ex-post facto explanations in affidavits is also not very desirable in such matters.

26. Mr Rao, in the above context, did invoke the principle in *Mohinder Singh Gill & Anr. V/s. Chief Election Commissioner, New Delhi & Ors.*¹. Apart from this principle, we think that there is also a violation of natural justice involved if reasons for distinction are not even briefly indicated in the original or appeal orders but are sought to be introduced only in affidavits filed to challenge the original or appeal orders. Apart from ex-post facto concluding that the petitioners were masterminds, there is no real distinction drawn out between the role of the three students on whom only fines were imposed and the present petitioners who are now condemned to suffer cancellation of a semester and possibly a year, in addition to the fine of ₹50,000/- each.

27. The Institute, as noted earlier, has framed guidelines for dealing with Students' Indiscipline and Misconduct Cases. Without going into the larger issue of whether these guidelines are consistent with the UGC guidelines, which the respondents were directed to implement, if necessary, by making amendments to their Ordinances, regular provisions and other rules, it is apparent that the respondents have acted in breach of their own guidelines.

28. The guidelines for dealing with student indiscipline and misconduct cases are transcribed below for the convenience of reference:

¹ (1978) 1 SCC 405

***“GUIDELINES FOR DEALING WITH STUDENT
INDISCIPLINE AND MISCONDUCT CASES***

Level	Category	Illustrative Cases	Actions First Time
Category 1	Violation of Hostel/Campus rules, misconduct	Smoking inside hostel/inside the campus. Tampering with leave permit, Misbehavior in public place. Possession and use of Appliances or any other item not permitted in the hostel.	Warning + Counseling. Warning + Fine up to Rs 5000/ Warning + Confiscate Appliances + Cost towards Replacement of damages
Category 2	Serious violation of Hostel/Campus rules/ Serious misconduct	Thefts from hostel/institute. Damage to Peers and/or Institute Property Consuming/Carrying alcohol and found in drunken state inside the Campus/Hostel Room/Hostel Premises. Impersonation/ Identity Theft	Warning + Fine Rs 5000/ + Amount equivalent to Replacement of Theft Item Warning + Fine Rs 5000/ + Amount equivalent to Replacement cost for damaged property Warning + Fine Rs 10000/ + Social Service and counseling by attaching with a Mentor. Warning + Fine Rs 25000/ + Replacement to the extent of misuse + Social Service and counseling by attaching with a Mentor.

<p>Category 3</p>	<p>Grave violation of Hostel/ Campus rules/Grave misconduct , fraud</p>	<p>Entry to Girl's/Boy's hostel against rule</p> <p>Illegal entry into faculty chamber</p> <p>Consuming/Possessing substance abuse in Hostel/Hostel Premises and Campus</p> <p>Misuse of cyber space for malicious activities such as hacking others account, harassing other people or posting of objectionable content and tampering with institutes server.</p> <p>Intent of selling and sharing of substance abuse in Hostel/Hostel Premises and Campus.</p>	<p>Fine up to Rs. 50000/- or Cancellation of registration for ongoing semester and Stipulating monitoring mechanism through various modes.</p> <p>Fine up to Rs 50000/ + Cancellation of Registration for ongoing semester + Stipulating monitoring mechanism through various modes.</p> <p>Fine up to Rs 50000/ + Cancelation of registration for ongoing semester + Debar from registration during next semester + certificate from a professional doctor of related specialization/rehabilitation center to the satisfaction of the institute + Stipulating monitoring mechanism through various modes.</p> <p>Fine up to Rs.50000/- + Cancellation of registration for ongoing semester + Debar from registration in the next semester + Stipulating monitoring mechanism through various modes.</p> <p>Expulsion from the institute.</p>
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Note: 1. A suitable undertaking from parents will be taken in all cases against whom Disciplinary action is taken.

2. Any student against whom action is taken under Disciplinary Committee will not be eligible to apply for any institute scholarship.

In addition to above mentioned actions; for cases under Category 2 and 3, it is suggested to stipulate monitoring mechanism through one or more of the following modes:

i) Mandatory Community Service such as working in library, cooperative store, gymnasium, NSS, NIRMAN, Divisions such as SWD, Instruction, ARCD etc. Nature of service and time to be devoted on such service would be decided by the Disciplinary Committee depending upon the category and Nature of indiscipline.

ii) Students will be advised to meet Counselor and report would be obtained from him.

iii) Compulsory attendance to the extent of at least 80% would be stipulated for one semester or more depending upon the nature of case.

For second offense in any category, Disciplinary Committee may decide a fine/cancellation of registration for one or more semesters/discontinuation from the programme, on a case by case basis depending upon the gravity of the offense and the general conduct of the concerned student.

Standing Committee for Students' Discipline is authorised to take appropriate action or impose any suitable penalty in other than illustrative cases given above.

Appeal matters would be handled by Standing Committee for Students' Discipline.”

29. The allegation against the petitioners and the three students was of theft of the above items from the Institute's campus on the night of 14.11.2023. Therefore, this was a Category 2 offence that the

petitioners and the other three students were charged with. The guidelines provide that for the first-time Category 2 offender, the penalty prescribed is “*Warning + Fine Rs5000/- + Amount equivalent to Replacement of Theft Item*”. Instead, the petitioners are penalised with the cancellation of a semester and a fine of ₹50,000/- each. Since the petitioners promptly returned all the items after expressing regrets and apologies, the petitioners have not been required to pay the amount equivalent to the replacement of the theft items.

30. The only justification provided by the respondents for imposing penalties in breach of their own guidelines is the observation in clause 2 of the guidelines, which states that the Standing Committee for Students’ Discipline is authorised to take “*appropriate action or impose any suitable penalty in other than illustrative cases given above*”. Respondents contend that this was not just a case of theft, but this was a case where the students defamed the Institute and, therefore, the Standing Committee or the Director was not bound by the specific guidelines but had an almost unfettered discretion not only to treat the students’ acts as misconduct post facto but to impose any penalty that it may deem fit and proper in the circumstances.

31. Normally, such a claim of unfettered or unguided discretionary powers is not looked upon with favour in administrative law. Such unfettered and unguided discretion often leads to arbitrariness and discrimination. Therefore, the requirement is to specify to the extent possible what acts could be broadly regarded as misconduct or

indiscipline and provide some guidelines for penalties. The guidelines were provided, but now the standing committee and the director insist on deviation without any sufficient cause, relying upon a clause which they claim gives them almost an untrammelled and unfettered discretion.

32. In this case, apart from the discrimination between the petitioners and the three students referred to above, it does appear that the respondents had ignored their own guidelines when the allegation against the petitioners and the other three students was that of theft from the Institute's campus. As noted earlier, no formal charge was served upon the petitioners or the other three students. Even the copy of the complaint was never furnished to the petitioners or the other three students. Therefore, the imposition of a penalty of cancellation of one semester and a fine of ₹50,000/-, appears vulnerable.

33. Mr Faldessai did try to contend that the respondents were not State under Article 12 of the Constitution and, therefore, this Writ Petition was not maintainable. He relied on *K.K. Saxena V/s. International Commission on Irrigation and Drainage*². There was no public law element involved in initiating disciplinary proceedings against the Institute students, and, therefore, extraordinary jurisdiction under Article 226 may not be exercised. He submitted that the petitioners

² 2015 2 SCC (L&S) 119

could have always approached the Ombudsman for redressal of their grievances.

34. Mr Rao, apart from several other submissions, contended that the Institute was admittedly a deemed University under Section 3 of the UGC Act. He submitted that imparting education was a public function. He strongly relied on *Janet Jeyapaul V/s. SRM University and Ors.*³ to contend that this petition was very much maintainable.

35. *K.K. Saksena* (supra), relied upon by Mr Faldessai, was not concerned with a deemed University under Section 3 of the UGC Act. Instead, *Janet Jeyapaul* (supra) was a matter concerned with SRM University, which was admittedly a deemed University under Section 3 of the UGC Act. *Janet Jeyapaul* (supra) was a case of the termination of service of the university's employee. Learned Single Judge of the Madras High Court entertained the petition and set aside the termination order. The Division Bench, however, reversed the learned Single Judge by holding that SRM University was not "State" within the meaning of Article 12 of the Constitution and, therefore, could not be subjected to writ jurisdiction of the High Court under Article 226 of the Constitution. Hence, the appeal to the Hon'ble Supreme Court.

36. The Hon'ble Supreme Court, after consideration of several decisions on the subject and the status of a deemed University, reversed the Division Bench judgment and held that the petition was very much

³ (2015) 16 SCC 530

maintainable. The Hon'ble Supreme Court held that the University was engaged in imparting education in higher studies to students at large. Secondly, it is discharging "public function" by way of imparting education. Thirdly, it is notified as a "Deemed University" by the Central Government under Section 3 of the UGC Act. Fourthly, being a "Deemed University", all the provisions of the UGC Act are made applicable to respondent No. 1, which inter alia provides for the effective discharge of the public function - namely education for the benefit of the public. Fifthly, once respondent No. 1 is declared as a "Deemed University" whose all functions and activities are governed by the UGC Act, like other universities, then it is an "authority" within the meaning of Article 12 of the Constitution. The Court concluded that once it is held to be an "authority" as provided in Article 12, then as a necessary consequence, it becomes amenable to writ jurisdiction of the High Court under Article 226 of the Constitution. These findings/conclusions were recorded in paragraph 30 of the decision.

37. Applying the law in *Janet Jeyapaul* (supra) to the facts of the present case, where there is no dispute whatsoever that the respondent Institute is a deemed University under Section 3 of the UGC Act and is engaged in discharging public functions of imparting education, Mr Faldessai's objection will have to be overruled. The further contention that cancellation of a semester bears no public law element also cannot be upheld. If, admittedly, a deemed University is amenable to writ jurisdiction in matters of admission of students, rustication or imposition of penalties that affect such admission or rather continuance

of such students in the Institute cannot be held to be immune from challenge under judicial review on the ground that they are purely private functions having no public law element whatsoever. Incidentally, *Janet Jeyapaul* (supra) was a case of termination of the services of a lecturer, and here we are concerned with penalties imposed upon students who are the *raison d'être* for establishing such Universities and imparting education to them.

38. The argument based on an alternate remedy before the ombudsman also does not appeal to us in the facts of the present case. There was no clarity on the scope of the availability and powers of such an ombudsman. Two names were furnished to us of some outstation persons, and we were informed that the person who was available at the given point of time would deal with the complaints. That apart, the Director made impugned orders on 01.12.2023, which was a Friday, and the Petitioners were barred from answering the semester examination scheduled on 06.12.2023. In Goa, 2nd, 3rd, and 4th of December were holidays. To, therefore, expect that the Petitioners should have approached the uncertain ombudsman does appear unrealistic. The alternate remedy has to be efficacious and not merely alternate.

39. Mr Faldessai also urged that the Institute was declared to be an Institute of Eminence and, consequently, the UGC regulations did not apply. He relied on a Notification dated 29.08.2017 issued by the UGC called the UGC (Institutions of Eminence Deemed to be Universities)

Regulations, 2017. He submitted that upon the Institute being declared as an Institution of Eminence, regulations 11.1 to 11.6 of the 2017 regulations would not apply to the Institute.

40. Though Mr Rao contested the above contention of Mr Faldessai, without prejudice, he submitted that at the highest, only regulations 11.1 to 11.6 of the 2017 regulations were excluded. He, therefore, submitted that all other regulations, including regulations concerning disciplinary actions against students, would apply. He relied on *Manipal-Tata Medical College, through its Dean, Dr. Poornima Baliga B. and Anr. V/s. Union of India, Ministry of Education, Secretary Higher Education and Ors.*⁴ in support of this proposition.

41. We find merit in Mr Rao's contention about the exclusion being restricted to regulations 11.1 to 11.6 of the 2017 Notification. Therefore, Mr Faldessai's contention about all the UGC regulations not being applicable cannot be accepted. Such contention is not borne out from the Notification declaring the Institute as an Institution of Eminence. Such a contention was not accepted in *Manipal-Tata Medical College, through its Dean, Dr. Poornima Baliga B. and Anr.* (supra).

42. Mr Faldessai also relied on *Varanasaya Sanskrit Vishwavidyalaya and Anr. V/s. Dr Rajkishore Tripathi and Anr.*⁵ to submit that in matters touching either the discipline or the

⁴ 2021 SCC OnLine Jhar 371

⁵ 1977 0 SCC (L&S) 121

administration of internal affairs of the University, Courts should be most reluctant to interfere. This decision holds that Courts should refuse to grant an injunction unless a fairly good prima facie case is made out for interference with the internal affairs of the educational institutions.

43. Though the observation in *Varanasaya Sanskrit Vishwavidyalaya and Anr.* (supra) should not be read out of context, still, Mr Faldessai is justified in contending that normally, Courts do not interfere with the internal affairs of the University, touching either discipline or administration. Accordingly, we are quite conscious of the principle that ordinarily, Courts must be slow to interfere with the internal affairs of a University, particularly on issues concerning disciplinary proceedings against students.

44. However, where the Institute acts contrary to its own guidelines, ignores UGC directives (particularly on the aspect of reformation), discriminates between two sets of students even though there was no appreciable difference between circumstances of the two sets and the Institute breaches the principles of natural justice and fair play, the Institute cannot claim any immunity based on the principle that Courts should be slow in interfering with its internal affairs concerning disciplinary proceedings against students.

45. The circumstance that students would approach the Courts against the Director's decision cannot be a legitimate consideration for not tempering justice with mercy. Every student has the right to seek

redressal from the Court of law, and the fact that students might take recourse to Courts of law cannot be a valid consideration not to revisit the penalty imposed by adhering to the UGC guidelines, which emphasise the reformative element.

46. In such matters, we are also conscious that Courts normally do not interfere with the quantum of punishment imposed and leave it to the disciplinary Authorities to decide upon the same. However, when it is found that there is discrimination in a matter of imposition of penalties or, where the penalties imposed are in breach of the guidelines enacted by the Institute itself or where the penalty imposed excludes considerations of reformation, the Institute cannot claim any immunity from judicial review. The institute has to explain the deviation from its own guidelines and cannot simply rely upon some unfettered discretion claimed by its director in such matters.

47. The petitioners have admitted to their lapse. Mr Rao argued that the petitioners were basing their case, *inter alia*, on equal treatment vis-a-vis the three students who were also alleged to be involved in the theft. Still, the penalty of debarment from answering the semester examination was not imposed upon them. Accordingly, it would be appropriate if the impugned order dated 01.12.2023 is modified by setting aside the penalty of debarment from answering the semester examination.

48. Although there is not much material as such to distinguish between the role played by the petitioners and the remaining three

students, still, accepting the Institute's case that there was some difference, this is a fit case where the petitioners, in addition to payment of a fine of ₹50,000/-, must undertake community service for a period of two months and for two hours each day.

49. We were informed by the Advocate General that there is an old age home at Majorda, Goa, not too far from the University campus. Mr Faldessai also confirmed this position. Accordingly, the petitioners are directed to undertake community service at this old age home as suggested by the learned Advocate General for a period of two months commencing from 01.02.2024. Such a direction is also consistent with the Institute's guidelines for dealing with Student Indiscipline and Misconduct Cases (Exhibit E to the petition).

50. By an interim order, we had permitted the petitioners to answer the Semester I examination. Now that the penalty of cancellation of the semester is set aside, the respondents will have to evaluate the petitioners' answer papers and declare their results/marks forthwith. The petitioners will be entitled to all consequential benefits consequent to the striking down of the penalty of cancellation of the semester examination. We order accordingly. We also direct the petitioners to undertake community service in the above terms for a period of two months commencing from 01.02.2024.

51. The respondents can now retain an amount of ₹50,000/- from out of ₹1,00,000/- deposited by each of the petitioners. The balance

amount of ₹50,000/- will have to be refunded to each of the petitioners after they complete the two months community service as directed.

52. The rule in both these petitions is made absolute in the above terms. There shall be no order for costs.

M. S. SONAK, J.

THE CHIEF JUSTICE