

Jawaharlal Nehru University

Vs

B. S. Narwal

Civil Appeal No. 3115 of 1979, etc.

(V. R. Krishna Iyer, O. Chinnappa Reddy JJ)

04.09.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. The Jawaharlal Nehru University, considered to be one of the prestigious academic institutions of the country, is the appellant in this appeal by special leave of this Court under Article 136 of the Constitution. Named after great liberal, humanist and democrat of the century, the University was established by Act of Parliament to "embody a unique synthesis of Humanities, the Sciences and Technology" and to "endeavour to promote the study of principles for which Jawaharlal Nehru worked during his lifetime, namely, national integration, social justice, secularism, democratic way of life, international understanding and scientific approach to the problems of society".

2. 'The Court' is the supreme authority of the University and it has the power to review the acts of the Executive Council and the Academic Council. The Vice-Chancellor is the Principal Executive and Academic Officer of the University. The Executive Council is the executive body of the University, in charge of the general management and administration of the University while the Academic Council is the academic body of the University, responsible for the maintenance of standards of instruction, education and examination within the University. The Executive Council is empowered to make 'statutes' in the manner prescribed by the Jawaharlal Nehru University Act and to make 'ordinances' in the manner prescribed by the statutes.

3. Ordinances have been duly made the Ordinance 13 deals with the award of M.A., B.A. (Honours) and B.A. (Pass) degrees. The University offers Integrated Five-Year Programmes of studies leading to the award of M.A. degree in several disciplines and languages. Russian is one of the languages in which such a programme of studies is offered. The programme is spread over ten semesters, in five academic years. In the first two semesters, courses described as 'C' level courses are given, in the next four semesters 'B' level courses are given and in the last four semesters 'A' level courses are given. Each 'C' level course carries two credits, each 'B' level course carries three credits and each 'A' level course four credits. Paragraph 7.3 of Ordinance 13 prescribes a minimum of 144 credits in the case of Social Sciences and 176 credits in the case of languages for the Master of Arts degree, out of which there have to be a minimum of 20 credits from 'C' level courses, 60 from 'B' level courses and 64 from 'A' level courses in the case of Social Sciences and a minimum of 28 from 'C' level courses, 84 from 'B' level courses and 64 from 'A' level courses, in the case of languages. It is further prescribed that a minimum of 50 per cent of credits but not more than 75 per cent should be in the discipline in which the student is formally registered for the Master's degree. It may be mentioned here that the courses in the discipline in which the student is formally registered are known as the 'core courses' while the other courses for which also the student has to prescribe are

known as 'tool courses' and 'optional courses'. Paragraph 7.5 prescribes that the courses on the basis of which a student earns his 'C' level credits shall be at least from four disciplines. Paragraph 7.6 provides that a student shall be required to earn at least a minimum of ten credits from courses in Tools, Techniques and Methodology. Paragraph 8 of Ordinance 13 prescribes the method of evaluation. Sessional work is to carry the same weight as the semester examination. In each course a student is graded on a ten point scale and the final grade point is obtained by applying the formula :

$$\# Fg = \text{Alfa (n) Cigi} / \text{Alfa (n) Ci}\#\#$$

Where Fg is the final grade point of the student Ci is the credit of the ith course. Gi is the grade point secured by the student in the ith course and (n) is the total number of courses for which the student has prescribed. A student who fails in a course is required to repeat the course or clear another course in lieu of the course in which he has failed. Paragraph 9 of the Ordinance prescribes the minimum standard of grade point requirements. Every student is required to maintain a minimum cumulative grade point average of 2.0 during the first two semesters. At the end of the sixth semester the cumulative grade point average has to be 4.0 if he is to further continue in the programme of study. If he is to be awarded the Master of Arts degree he must have a minimum cumulative grade point average of 4.0 Paragraph 11 of the Ordinance is important for the purposes of this case and it may be extracted here. As it stood at the relevant time, it was as follows :

The Board of the School, on the recommendation of the Centre, may remove the name of a student from the course on the basis of unsatisfactory academic performance.

4. The respondent B. S. Narwal was admitted, in 1974, to the five-year integrated programme of study leading to Master of Arts degree in Russian language at the Centre of Russian Studies in the Jawaharlal Nehru University. As he was seeking a degree in Russian language, the 'core courses' had necessarily to be those concerned with Russian language, literature and translation. In the first two semesters, he failed to take the sessional tests in any of the 'core courses' in Russian and consequently he was not allowed to sit for the end-semester examinations. He thus failed to clear any of the 'core course' in the two semesters. He, however, appeared for the examinations in the 'tool' and the 'optional courses' in the first two semesters and prescribed for five credits in two courses, in the first semester and eight credits in three courses, in the second semester. In the third semester the respondent requested permission of the University to repeat the courses of the first semester so as to enable him to pass them. As a special case, he was permitted to do so, but he failed in all the five courses in respect of which he sought and obtained permission to so repeat. The respondent, however, passed (securing B+) in an optional course for which he prescribed in the third semester. At the end of the third semester the nett result was that he had not cleared a single 'core course'.

5. The Centre of Russian Studies was dissatisfied with the performance of the respondent and some other students and at a meeting held on January 20, 1976, the Centre decided to recommend to the Board of Studies, School of Languages, that seven including the respondent should be struck off the rolls of the University for unsatisfactory performance. The recommendation of the Centre of Russian Studies was accepted by the authorities of the University and by an office order dated January 31, 1976, the respondent and others were removed from the rolls of the University for unsatisfactory performance as recommended by the Centre.

6. The respondent appeared to accept the decision of the University and kept quiet for a period of

two years and six months, but in August, 1978, he filed a writ petition in the Delhi High Court challenging the order removing him from the rolls of the University on the ground that the order had been made in violation of the principles of natural justice. The writ petition was opposed by the University but when the writ petition came for hearing on November 24, 1978, on a query by the court whether it was feasible to readmit the respondent, the University agreed to reconsider the question sympathetically. Thereupon, the writ petition was dismissed. Pursuant to the assurance given before the High Court the Centre of Russian Studies considered the question once again and found itself unable to admit the respondent in the middle of the academic year. The respondent was, however, informed that his case could be considered in the monsoon semester commencing from July, 1979, that is, at the beginning of the academic year. The respondent was advised to send a fresh application for admission.

7. The respondent being dissatisfied with the attitude of the University filed a fresh writ petition in the High Court, once again, challenging the order removing him from the rolls of the University. The High Court by their judgment dated August 6, 1979 allowed the writ petition firstly on the ground that the respondent was given no opportunity to show cause before action was taken against him and secondly on the ground that the University did not apply its mind to the question whether the petitioner's performance was unsatisfactory. The High Court quashed the order removing the respondent from the rolls of the University and gave the following directions to the University :

- (1) that the petitioner B. S. Narwal should be admitted in the 7th semester which is the monsoon semester of 1979;
- (2) that the petitioner should be permitted to complete the ten semester by the end of the academic year 1981 so as to qualify him to get his M.A. degree;
- (3) that the petitioner should be permitted to secure the required 180 credits by the end of the academic year 1981 and to make up the deficiency in the credits he has secured so far by taking up the contract hours, sessional tests and semester examinations of the appropriate semester before the completion of his 10th semester;
- (4) that the University shall permit the petitioner to join the appropriate groups for taking up the required courses and make proper arrangements of sessional tests and semester examinations at reasonable intervals so as not to crowd too many academic requirements at one time.

8. The first question for our consideration is whether the respondent was entitled to an opportunity of being heard before action was taken removing him from the rolls of the University. What should be mentioned right at the outset is that this is not a case of expulsion of a student pursuant to a claim, by the authorities of a University, to discipline the student at their discretion and the right of the student to freedom and justice. The case is merely one of assessment of the academic performance of a student which the prescribed authorities of the University are best qualified and the courts, perhaps, are least qualified to judge. Nor can there be any question of an opportunity to be heard being given. One does not hear of a claim to be heard when a candidate fails to qualify at an aptitude or intelligence test, written or oral. When duly qualified and competent academic authorities examine and assess the work of a student over a period and declare his work to be unsatisfactory we are unable to see how any question of a right to be heard can arise. The duty of an academic body in such a case is 'to form an unbiased assessment of the student's standard of work based on the entirety of his record and potential'(Herring v. Templeman, ((1973) 3 All ER 569,

584). That is their function. The very nature of the function of academic adjudication (if the use of the word adjudication is permissible in the context) appears to us to negative any right to an opportunity to be heard. If the assessment by the academic body permitted the consideration of 'non-academic' circumstances also, a right to be heard may be implied. But if the assessment is confined to academic performance, a right to be heard may not be so implied. Of course, if there are allegations of bias or mala fides different considerations might prevail, but in the absence of allegations of bias or mala fides we do not think that the declaration by an academic body that a student's academic performance is unsatisfactory, is liable to be questioned in a court on the ground that the student was not given an opportunity of being heard. Large and expanding, perhaps rightly, as the field of natural justice and fair dealing is, necessary and wholesome as 'hearing' an affected party even by academic bodies is, there are limits to attempt at unnatural extensions of the doctrine of 'audi alteram partem'. Without granting absolutism to academic authorities even in academic matters, we think this case hardly calls for judicial intervention.

9. The learned counsel for the respondent relied on *Regina v. Aston University, Senate* ((1969) 2 WLR 1418 : (1969) 2 All ER 964) to contend that the examining body of the University was bound to give an opportunity to a student before requiring him to withdraw from the University consequent on his failure in the examination. Admittedly, in that case, the examiners took into consideration a "wide range of extraneous factors, some of which by their very nature, for example personal and family problems might only have been known to the student themselves". Therefore, Donaldson, J., observed that in common fairness the students should have been given an opportunity. Even so, Lord Parker, C.J., did not appear to be convinced about the correctness of Donaldson, J.'s view and in *Herring v. Templeman* (*Herring v. Templeman*, ((1973) 3 All ER 569, 584), the Court of Appeal expressed the view that Donaldson J. 's opinion required reconsideration on some suitable future occasion.

10. From the earlier narration of facts it would be seen that the respondent had not cleared any of the core courses in the first three semesters. If a candidate for the M.A. degree in a certain discipline fails to clear any single core course in that discipline in the first three semesters, surely, no one can complain that the academic body which has declared the academic performance of the candidate as unsatisfactory has acted arbitrarily in so declaring. The complaint of the respondent, however, was that he was unable to clear the 'core courses' in the first two semesters because the University authorities failed to provide teachers to take classes and this was a factor which the authorities of the University had failed to consider and the authorities must, therefore, be held not to have applied their minds. It appears that in the very first semester the respondent joined the University late and missed several classes. The result was that while the rest of the students had made sufficient progress in Russian language the respondent who had yet to learn the alphabet could not straight away join the rest of the students attending the core courses. He, therefore, had to attend other classes in Russian language where Russian language was taught not as a 'core subject' but as a 'tool or optional subject'. According to the respondent there was none to teach Russian language to his group between October 6, 1974 and December 6, 1974. Again, in the second semester, though there were Russian classes from February 10 to March 30, 1975, there were no arrangements to teach Russian language to his group after March 30. The High Court appeared to attach great importance to the failure of the University to expressly deny the respondent's allegation that there were no teaching facilities between October 6 and December 6, 1974 and again between February 10 and March 30, 1975. True the University did not in express terms deny the allegations. But the University did mention the following facts in their counter-affidavit. In paragraph 5 it was said :

He joined that first semester on August 22, 1974 although it started from August 9,

1974. So much so he was to be grouped together with students who had offered Russian as a non-core subject and for whom the Russian classes happened to be starting from September 1. Again, from October 8, 1975 to December 20, 1975, he was not regular in attendance. How could the respondent-University afford a special curriculum for the sake of a particular student who does not avail of the regular course of teaching provided by the University to a class of students ? It was not fault of the University if the petitioner could not attend the classes when they were conducted, and the petitioner should be blamed for his irregular attendance.

Again in paragraph 9 it was said :

In reply to paragraph 5, I say that the petitioner did not join the course on August 9, 1974 when the classes for Russian as a core subject commenced. When the petitioner came on August 22, 1974 to join the course, the students who had offered Russian as a core subject and started their classes on August 9, had made substantial progress. The petitioner, being a beginner in Russian language, could not be accommodated in any of those groups. He had, therefore, to be grouped together with students who had offered Russian classes happened to be starting from September 1.

11. These statements show that the University did run the necessary classes for the 'core course' but the respondent was unable to take advantage of them on account of his insufficient knowledge of Russian, for which reason he had to attend classes for 'optional' courses instead of classes for core courses. The University naturally, could not run a special programme for an individual student. These statements went unnoticed by the High Court. We are, therefore, of the view that the finding of the High Court that the authorities of the University were oblivious of the circumstances that the University itself had failed to provide teaching facilities in Russian and therefore, must be considered not to have applied their minds is without factual foundation.

12. We have, therefore, no option but to allow the appeal and dismiss the writ petition filed by the respondent. We may add that we would not, in any case, have confirmed the directions given by the High Court, as they appear to involve a virtual rewriting of the ordinances of the University. While allowing the appeal, we leave it to the University, to consider if the career of the respondent cannot be salvaged by admitting him into some appropriate semester in accordance with the ordinances, if he chooses to submit an application for admission. There will be no order regarding costs.

13. Civil Miscellaneous Petition 1926 of 1980 is dismissed.

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