

NATIONAL HUMAN RIGHTS COMMISSION
(LAW DIVISION)
MANAV ABHIKAR BHAWAN, BLOCK-C, G.P.O. COMPLEX,
INA, NEW DELHI- 110023

Dated 18/05/2020

Case No. 508/30/0/2020

To

26 MAY 2020

Sir/Madam,

With reference to your complaint dated 01/01/1991, I am directed to say that the matter was considered by the Commission on 15/05/2020. The Commission has made the following directions.

The Commission received a complaint on 15.12.2019 from Ms. Mangla and Mathew Jacob regarding detention of 34 students of the Jamia Millia Islamia University at the Kalkaji PS/New Friends Colony PS, New Delhi. They are being denied legal and medical access and no information about them is being shared.

The NHRC Focal Point for IIRDs also received calls in the matter and he had a discussion with the DCP(South-East). The Focal Point was assured that the students who had been taken into police custody would be allowed to have access to the advocates/students.

Subsequently, on 16.12.2019, complaints have been received from Rustam Kuraishi, Belal Ahamad Khan, Ibrar Ahmad, Asad Khan and Mohd. Saqib. It has been alleged that one student died and many, including women, suffered injuries during the police action on the students who were peacefully protesting against the Citizenship Amendment Bill (Now Act), 2019. The police forcefully entered the University's Campus and brutally beat the students.

Two link files number 508/30/0/2020 (from Ms. Nabila, Advocate) and 535/30/8/2020 (from Vishwajit Ratoniya) have also been received and clubbed with the main file.

Besides the above complaints, other complaints on the same issue have also been received and taken on record.

Taking cognizance of the complaint, the Commission vide proceeding dated 16.12.2019 directed to issue notice to the Commissioner of Police, Delhi calling for a report in the matter. The Commission further, taking into view the entire facts and circumstances, vide proceeding dated 20.12.2019, directed that a team of officials from NHRC may undertake an immediate visit to Jamia Milia Islamia University for an assessment on the alleged human rights violation.

The NHRC team, led by Ms. Manzil Saini, SSP, visited the spot and recorded statements of all concerned and after going through the statements, available documents and spot visit, came to the following conclusion:-

i. The students of Jamia Millia Islamia University were protesting against the CAA Bill since 09.12.2019 on daily basis. No permission was sought from any authority. There is a clear cut notification of the University, issued in 2017 which states that for any "activity" prior permission is required and all such activities are permitted at designated places. The protest was also coordinated and led by local political leaders who from time to time addressed the protestors. On 13.12.2019, there were clashes between police and students/local residents in which many protestors became injured and detained. However, police succeeded to contain them at Gate No. 1 of the campus. No report/complaint in regard to this incident was made to any authority.

On 15.12.2019, Students and local residents again called for protest despite denial from the university and police authorities. Later on, these protestors became violent and damaged various private and Govt. properties and burnt down buses and other vehicles. They also attacked on the police with stones, petrol bomb etc. They blocked the traffic movement from the all sides at Mathura Road Ashram Chowk. The gathering was declared as "unlawful assembly" by the police. The police was law bound to contain the activities of these unlawful assembly to maintain the law & Order. The police used tear gas shells and lathi charge. While these protestors were pushed back, they damaged property alongside of the road. The member of unlawful assembly reached near Jamia Millia University and blocked the traffic movement and entered inside the campus. From there, they continued pelting stones on the police party. Seeing no other alternative, police also entered inside the campus to contain the violent/unruly mob and to remove them from the campus. However, these protestors entered inside the libraries and blocked their way as to prevent the police. As to remove them, police broke open the doors of libraries which. However, some of the police personnel especially RAF personnel hit students/protestors despite their pleadings. The beating inside the library was avoidable. At the same time, in another library, no student was beaten by the police. Further, some remains of tear gas shells were also found from the library which is an irresponsible action of the police and could have been avoided. There were many rumours on 15.12.2019 included death of two students of JMI in the incident. As repercussion, clashes were erupted between students and security forces in many places and there were Law & Order problem including Aligarh Muslim University.

The protest dated 15.12.2019 of students was not peaceful as they claimed. Many appeals made by the police including senior officers were ignored by the protestors. If the protest was peaceful, then there is no answer as to how large number of private and Govt. property were destroyed and many vehicles were burnt down. As many as 350 PCR calls were received within a span of about 2 hours from local residents/shopkeepers and daily commuters as the rioters created havoc which indicates gravity of the situation. While students/protestors were pushed back and many of them were entering inside the campus, no I-Card checking was conducted at the gates of the University. There is every apprehension that the outsiders also entered in the University.

It is beyond doubt that students of Jamia Millia Islamia University, local residents, doubtful character, political leaders were actively involved in various violent protests in Jamia area. Police personnel and protestors including students received injuries. Medical care was given to injured on time who were detained by the police

ii. There is failure of Administration of Jamia Millia Islamia University as they did not try to share any development of discontentment of students with local police and also did not seek any assistance from them. There is also failure of Proctorial team who were present at Gate No 7 till police arrived in the campus. However, they left for their office on the plea that they were going to watch overall situation through CCTV which was a grave lapse on their part. Instead of going to their office, had should have remained at Gate No. 7, probably police and students could have been pacified by them and they could have been pivotal in moderating the situation.

The JMI campus is divided into two side of public road namely Mohd. Ali Jauhar Marg and administration is facing difficulties in maintaining and regulating the movement of students. The students are prone to mingle with locals population. University administration wants some permanent solution of this problem.

iii. There was apparent failure of local police who failed to get timely information about the ongoing resentment of the students and local residents and their planning dated 15.12.2019. On 13.12.2019, the barricading was near Gate No. 1 of the campus and somehow the crowd/protest was contained then and there. However, the NHRC team is not convinced as to how the barricading were erected at Julena (near Suryaa Hotel) about 1.5 KM away from the Campus which has many arterial roads and easy for anyone to skip and was difficult to control large crowd.

In the incident dated 15.12.2019, two cases have been registered; one at police station New Friends Colony vide FIR No. 242/19, u/s 143/147/148/149/ 186/353/ 332/308 /427 /435/ 323/341/120B/34 IPC & 3/4 Prevention of Damage to Public Property Act other at police station Jamia Nagar vide FIR No. 298/19, u/s 143/147/148/149/186 /353/332 /308/427/ 435/323/341/120B/34 IPC & 3/4 Prevention of Damage to Public Property Act. Both cases have been transferred to SIT (Crime Branch of Delhi police) and charge sheets have been filed in the court. Some arrests have also been made in both cases. However, cases are still part pending in investigation.

There is need to uncover real actors and motive behind overall protest at Jamia Millia Islamia which seems to be smartly and purportedly organized under disguise of students.

iv. One enquiry on the alleged atrocities by Police inside the library building of JMI on 15/12/2019 has been ordered by the Delhi Police. The enquiry is being conducted by Addl. CP/Cyber and Technology assisted by DCP/Crime and DCP/Spl. Branch and the same is under progress. A fact finding committee has also been constituted by the Jamia Millia Islamia. However, reports in both cases are still awaited.

v. There are petitions pending in this matter especially in regard to registration of FIR u/s 156(3) Cr.P.C filed by the Registrar, JMI University and for compensation filed by an injured in lower court and Delhi High Courts. All matters are under consideration in the court and subjudice.

vi. Further, Article 19 of the Constitution of India is relevant and required to be discussed in this case. This Article provides freedom of speech. Some relevant part of Article reads as follows which has some relevancy in this case:—

"19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right:-

- (a) to freedom of speech and expression;*
- (b) to assemble peacefully and without arms;*
- (c) to form associations or unions;*
- (d) to move freely throughout the territory of India;*
- (e) to reside and settle in any part of the territory of India; and*
- (f) omitted*
- (g) to practise any profession, or to carry on any occupation, trade or business*

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause".

It is worth mentioning here that freedom of speech/expression and assemble peaceably has "constitutional limitation attached to it". The fundamental rights as envisaged under Article 19 of the Constitution cannot be given absolute.

There are many judgments of Hon'ble Supreme Court and High Courts in interpreting the fundamental rights of freedom of speech and expression while clarifying the reasonable restrictions imposed on the same. There is no such absolute right or freedom but it is subject to reasonable restrictions provided by the Constitution itself. Hon'ble Courts have in several cases clarified these rights while striking a balance between individual freedom and social control. It is well settled in law that law enforcing authorities are the best judge for meeting a situation prevailing in a particular locality based on which appropriate decision is to be taken either to grant permission to conduct meeting or protest or march in a particular place and a particular time. It is a matter of fact that Law & Order is a state matter and it is the duty of concerned authority to take a final call. Hence, assembly must be peaceful to get the benefit of this Article.

Upon consideration of the above findings, and material on record the recommendations made by NHRC Investigation team, are accepted, and the Commission:-

i. recommends the Chief Secretary, GNCT Delhi to provide suitable compensation to the injured students who received grievous injuries, commensurate with their injuries, on humanitarian grounds;

ii. recommends to Government of India to, direct the Commissioner of Police, Delhi and Director General, CRPF for RAF, to identify members of force (both Delhi Police and RAF), as seen in CCTV footages involved in damaging CCTV Cameras, unnecessarily caning inside the reading rooms of libraries of Jamia Millia Islamia and also using tear gas

shells inside the close compound of library, which has no bearing on the task of controlling law and order. A suitable action may also be taken against them as per rules and provisions that exist in the respective organizations;

iii. recommends to the Government of India, to direct to the Commissioner of Police, Delhi and Director General, CRPF for RAF to ensure that the police force should be sensitized and special training modules be carried out to inculcate professionalism in handling such Law & Order situations;

iv. recommends to the Government of India to direct to the Commissioner of Police, Delhi, to ensure that the SIT of Crime Branch, Delhi Police investigates all the related cases on merits and in a time bound manner by identifying and arresting the real perpetrators behind this violent protest;

v. recommends to the Government of India to direct to the Commissioner of Police, Delhi to expedite administrative enquiry into alleged atrocities by Police inside the library building of Jamia Millia Islamia University on 15/12/2019 being conducted by Addl. CP/Cyber and Technology. The action on its findings and recommendations may be taken promptly;

vi. recommends to the Government of India to advise to the Commissioner of Police, Delhi and other senior officers also to improve and set up a robust intelligence gathering system to ensure better preparedness to prevent such incidents in future. Special steps may be taken to counter rumour mongering and circulation of distorted and false news especially on the social media;

vii. recommends to the Vice Chancellor, Registrar and other authorities of JMI University to establish a mechanism of better communication with the students' fraternity so that they are not influenced by outsiders and local goons or petty politicians. Also, the university management should ensure timely sharing of information and regular Liaisoning with local police so that such incidents can be prevented in future. A SOP may be prepared to deal with such incident in future;

viii. recommends to the Secretary, Ministry of Human Resources Development, Govt of India to look into the difficulty of Jamia Millia Islamia in regard to division of campus across public road namely Mohd. Ali Jauhar Marg and to sort out the issue amicably to avoid Law & Order problems in future.

ix. recommends to, the Secretary, Ministry of Human Resource Development, Govt of India to submit action taken reports on the letter dated 20.12.2019 of the Registrar, Jamia Millia Islamia University, Delhi.

With the above recommendations u/s 18 PHIR Act 1993, the case along with linked cases, stands disposed of.

This is for your information.

Yours faithfully,



ASSISTANT REGISTRAR(LAW)

CC :-