

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

% **Date of Decision: 6.7.2012**

+ **W.P.(C) No.5725/2008**

Ms.Flora Gupta ... Petitioner

versus

Jawahar Lal Nehru University & Ors. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Vishwendra Verma & Ms.Subhavna

For Respondents : Mr. Vikram Nandrajog, Mr. Gagan Minocha
and Mr. Sushil Jaiswal

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

ANIL KUMAR, J.

1. The petitioner, who wanted to pursue her doctorate degree from the session of 2007-08, had appeared for the Ph.D entrance examination for the said period. She has sought quashing of alleged Inquiry Committee report dated 7th March, 2008 and has also sought quashing of office Order No. 08/CP/2008 based on said enquiry report whereby Vice Chancellor of Respondent no.1 in exercise of power vested in him under Statute 32 of the University has ordered that the entire JNU campus is declared out of bounds for petitioner for five years and debarring her from taking admission in any program of study of the Respondent no.1 for next five academic years and any other actions of

the respondents based on the said report The petitioner has also sought directions to the respondents to give her admission in the Ph.D programme after providing her the fresh character certificate for the term of 2003-05, during which the petitioner had completed her Master of Science in Biotechnology.

2. Brief facts to comprehend the controversies are that the petitioner was a student of M.Sc. Biotechnology in the academic session 2003-05. She had passed her course of M.Sc. in Biotechnology in the year 2005 from the School of Biotechnology (SBT) of Jawahar Lal Nehru University, New Delhi, respondent No.1.

3. After completing her M.Sc. in Biotechnology, the petitioner wanted to pursue her doctorate during the session of 2007-08. The petitioner, therefore, appeared for the Ph.D. entrance examination. The petitioner contended that it was disclosed to her that she had been successfully in the Ph.D. entrance examination.

4. The plea of the petitioner is that on 25th July, 2007 prior to formal declaration of the results, she was called by Ms.Aparna Dixit, Dean, School of Biotechnology, respondent no.2 to her office. On reaching the office of Ms.Aparna Dixit, she found that two other professors, namely, Mr.R.Bhatnagar and Mr.Uttam Pati were also

present there. The petitioner alleged that it was disclosed to her by the respondent no.2 that she had got the first rank among the candidates and had therefore, topped the merit list.

5. However, the petitioner contended that to her utter surprise, despite securing a very high position in the examination, she was pressurized, not to get herself registered. The petitioner further disclosed that she was threatened by Ms.Aparna Dixit, respondent no.2 to write a letter addressed to her, incorporating a confession that she had used unfair means during the Ph.D. entrance examination and therefore, she would not want to pursue the Ph.D programme. The petitioner also alleged that she had been threatened that her career would be destroyed and that an inquiry would be set up and that consequently she would be blacklisted from pursuing any career throughout India.

6. The contention of the petitioner is that at that time she did not succumb to the pressures of Ms.Aparna Dixit, respondent no.2. However, thereafter, respondent no.2 became more abusive and shouted at her and even pushed her on the chair, because of which the petitioner even hurt her arm and became scared. The petitioner was thereafter, confined to the room of respondent No.2 and she was further threatened that if she did not write the confession that the examination

paper was leaked out to her, her image would be maligned by falsely publicizing that the petitioner was having illicit sexual relations with Professor Uttam Pati. The petitioner further alleged that when she still refused to comply with respondent no.2's demands, she was locked into the room and was not even given water or even allowed to go for nature calls. The petitioner had also noticed that there were other persons present near the door of the room in order to help respondent no.2 due to which reason the petitioner got scared and thereafter, she wrote whatsoever was dictated to her by Ms.Aparna Dixit under coercion and pressure.

7. Thereafter, whatsoever was dictated by Ms.Aparna Dixit, was written by the petitioner. Even after that respondent no.2 was not satisfied with the same and therefore, asked the petitioner re-write it. Respondent No.2, Ms.Aparna Dixit, thereafter directed Professor R.Bhatnagar to dictate certain statements and coerced the petitioner to write the same. Still not being satisfied with whatsoever was dictated by respondent No.2, Ms.Aparna Dixit and Professor Bhatnagar, they again wanted the petitioner to modify her alleged confession. The petitioner however, declined to do so, due to which reason she was even slapped by respondent no.2. Under these circumstances, left with no other choice the petitioner again wrote whatsoever was dictated to her. On

account of this behavior and treatment meted to her as detailed, she started weeping and pleaded with Ms.Aparna Dixit to let her go.

8. The petitioner alleged that ignoring her pleas, Ms.Aparna Dixit and Professor Bhatnagar, dictated yet another, fourth letter as she wasn't still satisfied by the third letter. Respondent No.2, Ms.Aparna Dixit also stated at the time as under:

“YEH BAHUT DHEETH LADKI HAI SHAYAD ISKE PARIWAR VALE BHI AISE HAI. MUJHE TO LAGTA HAI KISI CHOTI JATI KI HAI TABHI TO PRESSURE MEI NAHI AA RAHI HAI. KAMINI YOU BITCH WRITE DOWN YOUR CONFESSION (Petitioner is very obstinate person like her other family member. I feel that she belongs to a lower castes and that's why she cannot be pressurized. Bitch, write down your confession)”

9. The alleged confessions/letters obtained from the petitioner in the above noted circumstances are as under:-

FIRST

“To,

The Dean
School of Biotechnology
Jawaharlal Nehru University
New Delhi-110067.

Dear Sir,

With regret I admit to having gained access to the entrance examination paper for the Ph.d entrance examination, 2007. And I request you not to take any action against me I assure you that I will not join if I will be selected.

Yours sincerely,
Flora Gupta

Date: 25.7.07
Time: 6.50 pm

SECOND

To,

The Dean
School of Biotechnology
Jawaharlal Nehru University
JNU
N.D-110067.

Dear Madam,

I got the Ph.D entrance examination on paper from the Sir room and I confess that I did that mistake.

Yours sincerely,

Flora Gupta
Sd/-
Date: 25.7.07

THIRD

To,

The Dean
School of Biotechnology
Jawaharlal Nehru University
JNU
N.D-110067.

Dear Madam,

I got the question papers from the Sir's room & practice for 1 hour & just wrote down the answers. And I confess that I did that mistake & feel sorry for that.

Yours sincerely,

Flora Gupta
Sd/-
Date: 25.7.07

FOURTH

To,

The Dean
School of Biotechnology
Jawaharlal Nehru University
JNU
N.D-110067.

Dear Sir,

I asked the sir that Ph.d entrance examination question paper, & he told me that it was in the table draw and I take it from there.

I confess that I did that mistake, and feel very sorry.

Please don't take any action against me.

Yours sincerely,
Flora Gupta
Date: 25.7.07"

10. The petitioner alleged that Ms.Aparna Dixit had told her that she would burn the earlier three drafts and would keep only the last letter written by her and thereafter, she started to tear down the earlier drafts of the alleged confession letters and threw them into the trash. Thereafter, the petitioner was allowed to leave the room around 9.00 pm.

11. According to the petitioner, on 25th July, 2007 as it had been very late, she could not make any complaint with the Police, however, on 26th July, 2007 the very next day she went to the Police Station to file

the complaint. The result of the Ph.D entrance examination was also declared on 26th July, 2007.

12. On 26th July, 2007, the petitioner also went to the office of Ms. Aparna Dixit, respondent no.2 to give to her a letter retracting the alleged confessions which were obtained from her under duress and coercion, however, respondent No.2 tore her retraction letter and stated angrily as under:-

“TUM APNI JID SE BAAJ NAHI AAEE AUR PHIR AA GAI AB DEKHTI HU KI TUMHAE ENQUIRY COMMISSION SE KAUN BACHATA HAI. AB MEI TUMARA SARA CAREER AUR ZINDAGI TABAH KAR DUNGI”

13. The petitioner, thereafter, narrated the incident to her parents, pursuant to which her father wrote a letter dated 29th July, 2007 to Mr. Kumar Adhikari, Rector-II, JNU. Another letter was written on 30th July, 2007 in respect of the whole episode, however, the petitioner was not allowed to register herself for the Ph.D. programme although she had topped the entrance examination.

14. The petitioner had also applied for the character certificate for the period of 2003-05 by letter dated 11th October, 2007 to Ms. Aparna Dixit, during which period she had completed her M.Sc. in Biotechnology. As the character certificate was not given to the

petitioner, another request was made on 17th October, 2007. However, without disclosing any reason the character certificate for 2003-05 was not issued to the petitioner, because of which reason the petitioner, thereafter, again made another request on 11th January, 2008. As Ms.Aparna Dixit was persistently declining to give the character certificate to the petitioner, a request was even sent to the Vice Chancellor of respondent No.1 on 13th February, 2008 and thereafter, another request was made on 15th March, 2008. On failing to get a character certificate without any cause or reason, the petitioner ultimately sent a legal notice dated 7th April, 2008. The communication requesting the character certificate and also the legal notice demanding the character certificate was not replied to by the respondents. The petitioner contended that thereafter, she got a character certificate dated 9th April, 2008 incorporating that an Inquiry Committee has been set up against the petitioner and that the report of the Inquiry committee is awaited.

15. The petitioner further disclosed that she had been informed on 11th January, 2008 about the single member inquiry committee comprising of Professor Rameshwar Singh, respondent No.3 being constituted by the Vice Chancellor of respondent No.1 against the selection of the petitioner in the Ph.D Programme. The letter dated 11th January, 2008 intimating the petitioner about the appointment of a one

member inquiry committee and directing her to appear before the said committee so that the member of the committee could talk to her and record her statement is as under:-

“PROFESSOR RAMESHWAR SINGH ENQUIRY COMMITTEE

11TH January, 2008

The undersigned has been appointed by the Vice-Chancellor, JNU as One-member Enquiry Committee to look into the matter (issue) of selection of two candidates in Pre-Ph.D. programme of the School of Biotechnology in which the candidates allegedly appeared to have had prior access to the question papers of entrance examination. The enquiry is to ascertain the correct facts relating to the said matter in the contest of deliberations done by faculty and statements/representations made by candidates.

The undersigned would like to talk to the concerned persons and record their statements to ascertain the facts of the matter. Since your name appears in statements/proceedings on record concerning this matter, I need to have a talk with you and record your statement.

I request you to please come to Room No.026, Administrative Block, JNU at 3.30 p.m. on 17th January, 2008.

(RAMESHWAR SINGH)
Enquiry Officer”

16. The petitioner averred that she was not given any statements/documents or any material relied on by respondent No.2 on the basis of which, the single member inquiry committee was appointed. She contended that nothing was disclosed to her on the

basis of one member committee was constituted, however, she filed some relevant documents substantiating her innocence on 17th January, 2008.

17. On 7th February, 2008, the petitioner even sought information about the findings of the one man inquiry committee under the provisions of the Right to Information Act. Consequent to her request dated 7th February, 2008, the petitioner received a reply by communication dated 7th March, 2008 intimating her that any information which is not in existence or is not held by the public authority cannot be supplied for the reason that it is not available and therefore, the information sought by her cannot be supplied as respondent No.1 does not have any information about the inquiry report from the inquiry officer, Professor Rameshwar Singh, respondent No.3.

18. The petitioner had also sought a copy of the order constituting the single member inquiry committee by her letter dated 14th February, 2008. Subsequently she was intimated by letter dated 3rd April, 2008 indicating that the information sought by her has been received and duly enclosed with the said letter.

19. Aggrieved by the non-supply of the information regarding the enquiry report sought by the petitioner, she filed an appeal, which was

however, disposed of by order dated 6th May, 2008. The order categorically stated that the concerned department had intimated that the information sought by the petitioner is not available with them which fact had already been disclosed to the petitioner by letter dated 7th March, 2008. The order further stipulated that though later on, the information was received from the concerned department, however, as the final action on the inquiry committee report had not yet been taken, therefore, the information is not ripe for disclosure and so it is to be exempted under Section 8(1)(h) of the Right to Information Act, 2005. Relevant extract of the order dated 6th May, 2008 is as under:-

“It was explained to the Appellant that information sought by her regarding a copy of the Inquiry Report was ascertained from the concerned Deptts in the University. However, since the concerned Deptts. have intimated that no such information is available with them, about which the Appellant has been duly informed vide letter dated 7.3.2008. However, the appellant requested that perhaps the Inquiry Officer, Professor Rameshwar Singh, may be contacted by the dealing office to ascertain the status of the Inquiry Report. She further requests that the O/O the Vice-Chancellor/Rectors/Coordinator may also be contacted once again if they have received the Inquiry Committee Report. It was agreed that after this the Appellant may be informed about the outcome of the efforts, as aforesaid.

Subsequently, before this Order could be issued, the concerned Deptts. informed that although the Inquiry Report has been received, but final action on the inquiry Committee Report is not yet taken, i.e. Inquiry Report is still under the consideration of the University. Therefore, in my view, the information since not ripe for disclosure at this premature-stage, the same is exempt under Section 8(1)(h), which is reproduced below:

Section 8: Exemption from disclosure of information

- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give citizen:-
- (h) Information which would impede the process of investigation or apprehension or prosecution of offenders.”

20. The grievance of the petitioner is that though the single member commission had already given its report dated 7th March, 2008, however, the same was not given to her despite repeated pleas. Consequently, the petitioner was left with no option but to file a criminal complaint against Ms.Aparna Dixit, which the petitioner contends is pending before the court of Sh. Sameer Vajpayee, Metropolitan Magistrate. In the complaint filed before the metropolitan magistrate, a copy of the report dated 7th March, 2008 was also filed on 3rd July, 2008.

21. Impugning the inquiry report dated 7th March, 2008, the petitioner has contended that the inquiry officer had relied on certain documents detailed in the report, the copy of which were not supplied to her. The documents referred to and relied on by the one member inquiry committee are as under:-

“ENQUIRY REPORT

With the Office Order appointing me as Enquiry Officer, I was provided the following “documents (photostat copies)”.

1. A letter, dated July 30, 2007, from the Dean Prof. Aparna Dixit, addressed to the JNU Vice Chancellor, which contained detailed information about as to how the concerned matter was dealt with by the Faculty Committee etc. The letter also made a request to set up an inquiry to look into the matter.
2. Minutes of the Faculty Meeting held on July 25, 2007. In their deliberations, the faculty discussed the matter of very high marks scored by the two candidates in JNU Entrance Examination of 2007, and had decided: not to withhold the declaration of entrance examination results and that the matter should be investigated.
3. Four different statements of Ms.Gargi Roy, which she wrote on 25th July, 2007 during 6.40 pm to 7.45 p.m. In these, she revealed how she gained access to the entrance examination question paper. The statements were addressed to the Dean, School of Biotechnology.
4. Four different statements of Ms.Flora Gupta, which she wrote on 25th July, 2007 at 6.50 p.m. onwards. In these statements, she revealed how she got access to the examination paper etc. The statements were addressed to the Dean, School of Biotechnology.
5. Letter dated 25.07.2007 addressed by Ms.Flora Gupta to Prof. Uttam K.Pati. In this letter, she talks of pressure etc. put on her to write confessional statements, and further stated that none of the statements were true.
6. Minutes of the Faculty Meeting held on July 27, 2007. In their deliberations, the faculty seem to have discussed the concerned matter in great details, and have talked to the two candidates.
7. A letter from Ms.Gargi Roy (dated 27.07.07) addressed to the Dean, School of Biotechnology in which she stated that “the statements” were dictated, and she was retracting them etc.”

22. The petitioner also referred to the categorical observation made in the enquiry commission report indicating that Professor Uttam Pati had stated that the petitioner had not written the statement on her own and that the text written in the confessional statement was entirely the product of the Professor Bhatnagar and Ms.Aparna Dixit, respondent No.2. The relevant observations made in the inquiry report dated 7th March, 2008 are as under:-

“To look into the matter, I felt it necessary to talk to the Faculty members of the School of Biotechnology, as they at one stage or the other had dealt with the matter. It was in the presence of three faculty members, i.e., Prof. Aparna Dixit, Prof. Uttam Pati and Prof.Rakesh Bhatnagar, that the two (Flora Gupta and Gargi) wrote their ‘confessional’ statements. Thereafter, a full fledged Faculty Meeting took place and deliberated over the matter.

I, therefore, talked to the Faculty of the School of Biotechnology and recorded their statements. I also talked to the two candidates: Ms.Flora Gupta and Ms.Gargi Roy and took their statements on record.

In their testimony (deposition) before me, the two: Flora Gupta and Gargi Roy admitted that they wrote their statements when Professors Dixit, Uttam Pati and Rakesh Bhatnagar were present, and these statements are on record. Four statements were written by each one of them in a span of about an hour. A close perusal of these statements would show that the first statements of the two were ‘Identical’ to each other (only there is a minor difference in the last few words of Flora Gupta’s statement). They admitted that they had gained “access” to the entrance examination paper, requested not to take any action against them, and assured that they would not join if selected. Gargi Roy wrote at 6.40 p.m. and Flora Gupta at 6.50 p.m. It, therefore, appears that the latter “copied” from

the text of the former's statement.

It seems that when they (i.e. the two girls) were grilled/probed further as to how they obtained access to the question paper, they wrote their second statements which were "not identical": Gargi wrote "regret and confess and Flora wrote that "I got the Ph.D. entrance examination paper from the Sir room- I confess that I did that mistake.

On further probing, they responded by giving other two statements which were not identical to each other's. However, both of them revealed one common thing, that is, "they got the question papers from their guides" 'Sir's room, and Flora, in addition, wrote that "she wrote answers and practiced for one hour". On still further probing, they again wrote statements (one each) which were not identical to each other's. But these statements have a common point that they (the two) asked "guide" "Sir" about examination-examination paper and they were helped by him in getting the access" etc.

In all, each one of the two wrote four written statements and handed them to the Dean Prof. Aparna Dixit in the presence of Prof. Rakesh Bhatnagar and Prof. Uttam Pati.

Prof. Uttam Pati, in his testimony before me, claimed that he did not open his mouth during this meeting in which the two girls were questioned, and all the questioning was done by Prof. Dixit and Prof. Bhatnagar only. Prof. Uttam Pati further claimed that the text of the statements the girls wrote was dictated by Prof. Bhatnagar and Prof. Dixit implying that the two girls on their own did not write the statements, and the text written in the said statements "is entirely the product of Prof. Bhatnagar's and Prof. Dixit's mind."

The two candidates after having given their statements on 25th July, 2007 came up with letters which they claim to be their 'retraction' letters in which they have "retracted" from their earlier statements. Flora Gupta addressed her retraction letter (dated 25.07.07) to Prof. Pati and a copy of was endorsed to the President Student's Union. In this letter she says none of the statements given by her were "true", and the statements were taken under threat etc. Flora Gupta then addressed a 'retraction' letter

to Rector-II on July 30, 2007 in which she alleged that her confession letters were dictations given by the Dean. Flora Gupta's father has also sent a letter to JNU VC claiming essentially that his daughter was harassed and inappropriately treated etc."

23. The inquiry committee report dated 7th March, 2008 also discussed about the recorded statements of Professor S.K.Kar, Dr.Rajiv Bhat, Dr.S.Maitra, Dr.D.Choudhury and Dr.K.J.Mukherjee as well as the retraction letter produced by Professor Uttam Pati given by the petitioner dated 25th July, 2007 which was produced in the meeting on 27th July, 2007.

24. The single member committee however rejected the retraction letter given by the petitioner on the ground that it was dropped into the mail box of Professor Uttam Pati and that said the retraction letter was clearly an afterthoughts and thus it does not deserve any credence. The relevant portion of the reasoning given in the inquiry committee report is as under:-

"It is also instructive to note that the 'retraction' statement written by Flora Gupta was addressed to Prof. Pati and was dropped into his mail box, and Prof. Pati brings it to the notice of the Faculty Committee only when the matter had already been discussed and deliberated for quite sometime. This also cannot be ignored that Professor Pati did not bring to the attention of the Faculty Committee that "the statements which are being attributed to the two girls" are dictions by the two Professors because the Faculty Committee was deciding to ask for an enquiry or as such

was dealing with the matter largely and substantially on the basis of their confessional statements. Furthermore, it is also of great interest that in those statements Prof. Pati had been referred to as “Sir (and he admits “Sir” refers to him)- even then before the Faculty Committee he does not disclose “that the statements are the result of dictations”. In response to the interrogation by Prof. Dixit and Prof. Bhatnagar aimed at finding out whether the two candidates (Ms. Flora Gupta and Ms. Gargi Roy) adopted some unfair means in the examination or have had access to the question papers prior to the examination, Flora Gupta and Gargi Roy wrote their separate statements in which they said they had access to the question paper (prior to the entrance exam), and briefly also outlined how they got the access. Their statements reveal they sought help from their teacher (Prof. Pati) for preparing for the entrance examination of JNU. The teacher responded by making it convenient for them to go through the copy of the concerned question paper. This could be possible because Prof. Pati had set (compiled) the question paper. So the “access” came to them (the two candidates), they did not indulge in some unfair activity to obtain it.

In view of this my conclusion is that these theories of “retraction” “dictations” are simply after thoughts and command no credence/credibility, and the statements which the two candidates Flora Gupta and Gargi wrote were not the product of dictations but of whatever they could truthfully write at that point of time, and certainly reveal a substantial part of the truth of the matter i.e. they did not have an access to the paper and that “access” was provided to them in Prof. Pati’s room. Prof. Pati’s assertion, as I have discussed above would command no credence. He in his written deposition before me talks of that nobody else knew the question paper. But he wholly ignores, that the point here is not that nobody else knew the question paper after he has compiled it, the crux of the matter was whether he made it known to the two candidates. His implied silence on this despite the reference to “Sir’s Room” etc in the 25.07.07 statements (of the two candidates) is indeed intriguing, and his taking shelter behind the wholly untenable “theory of dictations” demolishes his innocence in the matter, thus it is not possible to exonerate him because of his plea that “statements” were dictated.

Therefore, I conclude that it is beyond any reasonable doubt that the two candidates did have access to the question paper prior to the entrance examination and the bits of how they came to have that access are also clear in the discussion above in this report.”

25. The petitioner was, thereafter given a show cause notice dated 15th July, 2008 stipulating as to why disciplinary action should not be taken against her. The petitioner replied to the show cause notice by reply dated 18th July, 2008 contending, *inter-alia*, that she cannot comprehend as to on what grounds the single member inquiry committee had arrived at the conclusion that she had access to the examination paper and that she is also unable to answer the allegation against her as inquiry committee report dated 7th March, 2008 was not given to her. The petitioner, therefore, sought to be provided with the complete inquiry report including all the relevant documents.

26. The respondents refuted the pleas and contentions raised by the petitioner and filed the counter affidavit dated 1st November, 2008 contending, *inter-alia* that no cause of action had arisen in favor of the petitioner to file the present writ petition. According to the respondents the petitioner is guilty of gross misconduct as she had obtained illegal access to the Ph.D. entrance examination paper of the School of Biotechnology, JNU and had thereafter appeared for the same. Since the petitioner had answered the said examination (Theory/written part)

after having prior access to the question paper, had obtained exceptionally high marks i.e. 58 ½ out of 70 in the written examination. As a result of the manipulation done by the petitioner it was contended that her examination result was vitiated.

27. According to the respondents, the faculty of the School of Biotechnology, JNU considered the matter and forwarded it to the Vice Chancellor of JNU who appointed a one man inquiry committee comprising of Prof. Rameshwar Singh, Respondent no.3 who enquired into the matter and submitted his report on 7th March, 2007 giving the finding that the petitioner had prior access to the question paper. The said report had been accepted by the Vice Chancellor of JNU pursuant to which the order dated 5th August, 2008 was passed whereby the Vice Chancellor exercised the power vested in him under Statue 32 of the Statutes of the University under The Jawahar Lal Nehru University Act, 1966 whereby he ordered that the entire JNU Campus would be out of bounds for the petitioner for five years with immediate effect and that she would also be debarred from taking admission in any program of study of the JNU for the next five academic years. It was also ordered that anyone who would give shelter to the petitioner in any of the premises of the University would invite strict disciplinary action against him/her.

28. The respondents denied that the petitioner was a brilliant student who topped the Ph.D. entrance examination of School of Biotechnology, JNU. It was also categorically denied that she was forced to write the confession by respondent No.2 and was prevented for enrolling for the Ph.D. program so as to make the seat available for another student.

29. The respondents averred that the allegations made in the writ petition are baseless and have been made with the malafide intention of somehow deflecting the attention from the manipulation/illegality done by the petitioner. Regarding the petitioner, the respondents further asserted that after doing her M.Sc. in the year 2005 from the School of Biotechnology, JNU, she did not join any course. In her M.Sc. course, the petitioner was placed at the ranking of 12 in the batch of 14 students and that she had secured a cumulative grade point average (CGPA) of 5.18 out of 9 and thus, barely qualified for writing the Ph.D. entrance test. The respondents also disclosed that the petitioner had failed to clear the Ph.D. entrance exam of JNU in the year 2005 and 2006.

30. According to the respondents, after qualifying the M.Sc. in Biotechnology in the year 2005, the petitioner had been working as a Junior Research Fellow (JRF) with Prof. Uttam Pati, who was the Dean of the School of Biotechnology before Ms.Aparan Dixit, who took over as

Dean on 25th April, 2007. The respondents further disclosed that the theory question paper of the Ph.D. entrance exam for the year 2007 was compiled by and typed out under the supervision of Prof. Uttam Pati. According to the respondents, the petitioner and another candidate, Ms Gargi Roy, who was also working as a Junior Research Fellow, had managed to secure access to the question papers of the Ph.D. entrance exam and both of them had obtained very high marks which aroused the suspicion of the faculty members of the School of Biotechnology. According to the respondents, the petitioner had confessed on her own that she adopted illegal and unlawful means and wrote the same in her confession dated 25th July, 2007. The respondents also averred that the petitioner had never complained to the police at the said point of time that she had allegedly been forced to write the confession, nor had she made any complaint to the higher police authority against the non-recording of her complaint at the concerned police station as alleged by her.

31. Regarding the character certificate, the respondents have contended that the character certificate was sought with the intention of diverting the attention from her own wrong doings and that it was pertinent to note that the petitioner did not seek the character certificate from her project supervisor Prof. Uttam Pati and instead insisted the same from Ms.Aparna Dixit, Dean of the School of

Biotechnology, who regardless had issued the character certificate dated 9th April, 2008 after obtaining the approval from the Rector-II, JNU. Since the inquiry report dated 7th March, 2008 had been submitted by respondent No.3 affirming the fact that the petitioner had prior access to the question paper, therefore, it was endorsed on the character certificate as well.

32. The respondents, however, admitted that the petitioner had filed a criminal complaint dated 26th May, 2008 against Ms.Aparna Dixit before the ACMM, Patiala House Court in which the police was directed to investigate the allegations and submit a status report. The police had thereafter, filed a status report stipulating that the allegations made by the petitioner were not true.

33. According to the respondents, subsequently a show cause notice dated 15th July, 2008 was issued against the petitioner stipulating as to why disciplinary action should not be taken against her. The respondents also contended that the petitioner has not come with clean hand on the issue as she has not denied that she did not have prior access to the question paper. According to the respondents, she has set up a baseless and false story with a view to escape the consequences of her own deeds. The respondents also disclosed that the criminal complaint dated 26th May, 2008 was filed by the petitioner under

Sections 348/323/506/469/327/330/342 of Indian Penal Code against Ms.Aparna Dixit, whereas the incident complained of had taken place on 25th July, 2007. Thus for almost 10 months she had not made any complaints to the police in relation to the alleged incident of Ms.Aparna Dixit having obtained the confession from the petitioner under duress and coercion. The respondents asserted that the plea of the petitioner that the police did not register her complaint is negated by the fact that she did not make any complaint to the higher police authorities regarding the non-recording her complaint in the said police station. The respondents also placed reliance on the status report dated 2nd July, 2008 filed by the police before the Metropolitan Magistrate stating that upon inquiry none of the allegations made by the petitioner could be substantiated.

34. Regarding the appointment of the petitioner as a Junior Research Fellow (JRF), it was averred that she was appointed for the period 31st July, 2005 till 31st October, 2005 on the specific request of Prof. Uttam Pati. Her appointment as JRF was thereafter extended in the project titled as "Co-relation of P53....Cells" from 31st October, 2005 till 30th October, 2006. The appointment was further extended till 31st March, 2007 and thereafter again extended from April to June, 2007.

35. The petitioner was also given appointment in the project titled as, 'Suppression of Oral-Cancer specific p53 mutants by SIRANA' from 1st July, 2007 to 30th September, 2007 and extended to 30th September, 2008. It was also disclosed that till the date of filing the counter affidavit on 1st November, 2008 the petitioner has continued to work with Prof. Uttam Pati in the said project.

36. Regarding the question paper in which the petitioner is alleged to have scored very high marks on account of allegedly having prior access to said the question paper, it was disclosed that the written examination has both basic and applied questions from different disciplines of sciences i.e. physics, mathematics, biology, chemistry and modern biological sciences and that the answer sheets of the written examination are evaluated by computer. However, the candidates never score such high marks as were obtained by the petitioner and Ms. Gargi Roy in the written examination. It was further alleged that the candidates majoring in physical sciences (mathematics, physics & chemistry) are able to answer the applied questions related to these fields whereas the candidates majoring in Biological sciences (biochemistry, Biotechnology & Biology) are able to answer applied questions from these subjects/areas. The respondents also relied on the comparison of the petitioner's marks in the examination for the year 2005-2006, 2006- 2007 & 2007- 2008 in her attempts at the Ph. D.

Entrance exams. The comparison of the marks as given by the respondents is as under:-

Ph.D entrance examination for admission in the Ph.D programme of	Examination for admission in the Acad.Year 2005- 2006 (held in May 2006)	Examination for admission in the Acad.Year 2006- 2007 (held in May 2006)	Examination for admission in the Acad.Year 2007- 2008 (held in May 2007)
	Flora Gupta	Flora Gupta	Flora Gupta
School of Life Sciences	11.00	11.00	18.50
School of Biotechnology	03.00	20.50	58.50
Special Centre of Molecular Medicine	25.50	14.50	15.50

37. The respondents also asserted that in the viva voce, the petitioner had failed to answer the questions from the basic sciences on the pretext that she had studied the same three years ago. Thereafter, the petitioner was posed the questions relating to her project where she has been working since 2005 with Prof. Uttam Pati and the answers given by the petitioner were endorsed to be correct by Prof. Uttam Pati. According to the respondents, in the meeting of the faculty which was attended by 7 faculty members, it was decided to probe into the matter

and to withhold the result of the Ph.D. entrance examination. The petitioner was then called on 25th July, 2007 and was questioned by Ms.Aparna Dixit, Prof. Uttam Pati and Prof. R.Bhatnagar after which the petitioner confessed to have adopted illegal means. According to the respondents, the confessions were given by the petitioner in the presence of three members, Ms.Aparna Dixit, Prof. Uttam Pati and Prof. R.Bhatnagar in a fair and transparent manner without any threat or coercion to the petitioner. The allegation of the petitioner being abused and physically injured by Ms.Aparna Dixit was specifically denied. It was also denied that the alleged confessions were written by the petitioner at the instance and on account of the coercion by respondent No.2 so that she could secure one seat of the Ph.D. program for another student. The allegation that the petitioner had written the retraction letter to the respondent No.2 was not admitted and according to the respondents, she did not report her alleged version to any other authority in JNU as well.

38. The respondents further disclosed that the matter was considered in the subsequent meeting held on 27th July, 2007 which was attended by 8 faculty members and it was unanimously decided to refer the matter to the administration to carry out the investigation. The minutes of the meeting dated 27th July, 2007 were forwarded to the Vice Chancellor of JNU by letter dated 30th July, 2007 and on the orders of

the Vice Chancellor, respondent No.3, Prof. Rameshwar Singh was appointed as the one man inquiry committee to enquire into the matter.

39. The respondents also disclosed that a show cause notice dated 24th July, 2008 was issued to Prof. Uttam Pati and the Executive Council of JNU in its meeting held on 3rd September, 2008 has decided to authorized the Vice Chancellor, JNU to constitute a full Inquiry Committee to investigate the matter as regards Prof. Uttam Pati and his involvement in the present matter.

40. Regarding the inquiry conducted by Prof. Rameshwar Singh and the plea taken by the petitioner that she was not allowed to cross-examination the witness nor the witnesses were recorded in her presence, **it was asserted that no witnesses as such were examined in the inquiry.** According to the respondents, this was neither a Govt. departmental inquiry, nor was it subjected to any rigid rules as to cross-examine etc. and that the inquiry in any case meets the requirements of the principles of natural justice and thus, is valid and proper. The grounds as taken in para O-Q of the counter affidavit dated 1st November, 2008 are as under:-

“That the contents of grounds O to Q are wrong and are denied. It is denied that the petitioner did not have sufficient time to file her defense. **There was no occasion for cross examination as no witnesses as such were examined in the inquiry.** The inquiry in question is not a

government departmental inquiry nor is subject to rigid rules as to cross examination etc. The inquiry meets the requirements of the principles of natural justice and is valid and proper. It is denied that the inquiry report is based on frivolous ground.”

41. Respondents also contended that the case of the petitioner is not that of no notice/no hearing but may be a case of inadequate hearing and relied on (1996) 3 SCC 364, State Bank of Patiala & Ors. v. S.K.Sharma and 19 (2001) DLT 735, Mansoor Azam v. Jamia Milia Islamia & Ors. It is contended that the case of the petitioner is not of no notice or no hearing as the petitioner was given notice of the inquiry proceedings and she has been given an opportunity to state her case before the inquiry officer and before passing the order of debarment for five years, she was given a show cause notice and the documents as demanded by her were given to her. The petitioner too had submitted her reply, therefore, no prejudice has been caused to the petitioner by the procedure followed and the inquiry held was fair and the order of debarment and punishment is therefore, not vitiated. The respondents also contended that circumstantial evidence against the petitioner and her subsequent conduct point to her guilt and that she herself was unable to give any cogent explanation when she was called on 25th July, 2007, which is why she had written the confession willfully and without any coercion or pressure. Regarding the alleged retraction, it was stated that it was an act of afterthought. The respondents also emphasized that the petitioner never stake any claim to secure admission to the

Ph.D. course which fact in itself inculcates the petitioner. The respondents refuted the plea of the petitioner regarding the inquiry not being conducted under the ordinance of JNU on the ground that she was not a student of JNU. As it is contended that 'student' under the ordinance contemplates a student on the active roll of the University. It was further contended that in the circumstances, inquiry could not be held under the ordinance of JNU, since the petitioner had merely appeared in the entrance examination to secure admission in the course. Thus, no formal rules of inquiry were applicable and what was required was a fair hearing to the petitioner which has been complied with. The respondents justified the action against the petitioner under Statue 32 of the JNU and contended that it was a valid, legal and justified action as it was taken by the Vice Chancellor of JNU and not by any junior official. The respondents also relied on (1993) Supp. 3 SCC, 82, Controller of Examination & Ors. v. G.S.Sunder & Ors. and (2009) 1 SCC, Director (Studies), Dr.Ambedkar Institute of Hotel Management, Nutrition and Catering Technology, Chandigarh & Ors. v. Vaibhav Singh Chauhan to contend that since the matter of the petitioner relates to the enforcement of discipline, the Court should be slow in interfering. Reliance was also placed on 70 (1997) DLT 509, Narendra Singh v. University of Delhi & Ors., wherein according to the respondents, the action against the student of Delhi University was upheld even though it was without a formal inquiry. The respondents

contended that the provisions of the Delhi University are *pari-materia* to Statue 32 of the Statue of JNU. The respondents asserted that the petitioner has not challenged the Statue 32 of JNU and that the action taken against the petitioner is therefore, entitled to be upheld.

42. Relying on (1996) 9 SCC, 322, State of Punjab & Ors. v. Dr.Harbhajan Singh Grisya, the respondents further contended that if there is any flaw in the procedure adopted by the respondents then the matter should be remanded back for rehearing/proceeding from the point when the flaw had occurred.

43. The petitioner refuted the allegations made by the respondents against her in their counter affidavit and filed a rejoinder affidavit dated 4th December, 2008. The petitioner challenged the appointment of respondent No.3 as the one man committee relying on the letter dated 9th March, 2002 of the University Grants Commission stipulating that no retired teacher after the age of 62 years could be appointed on any Statutory or even non-statutory position in the University/Colleges. Letter dated 9th March, 2012 of the University Grant Commission is as under:-

“March, 2002

Dear Sir/Madam,

It has been brought to the notice of UGC that some of the Universities are appointing retired teachers to the

statutory and non-statutory bodies of the University. The matter has been examined by the UGC and it is decided that no retired teachers after the age of 62 years be appointed on any statutory or even non-statutory position in Universities/Colleges.

This is for your information and necessary action.”

44. The petitioner refuted the claim of the respondents that she had failed to answer the questions regarding the basic science by contending that she had been awarded 25 marks out of 30 in the viva voce which marks were confirmed to her pursuant to the petitioner seeking the information in the application dated 8th November, 2011 under the Right to Information Act, 2005. She further disclosed that the said Viva Voce had been taken by 5 professors of the JNU, in a face to face discussion and thus there was no possibility of cheating at the time.

45. The petitioner has relied on Harpal Singh Sangwal v. University of Delhi & Ors., 2008 VIII AD (Delhi) 494; Sibaram Panda & Ors. v. Collector, Cuttack & Ors., AIR 1982 Orissa 117; Sunil Kant v. The Kurukshetra University & Ors., AIR 1977, Punjab & Harayana 37; Neha Jain v. University of Delhi & Anr., AIR 2002 Delhi 403; K.Santha Kumari & Anr. v. Sri Krishnadave Raya University & Anr., AIR 1997, Andhra Pradesh 72; D.T.C. v. Shyam Lal, AIR 2004 SC 4271; Amit

Kumar Bashista v. Jamia Millia Islamia University & Ors., 2003 VII AD (Delhi) 377; Nagarjuna Construction Co. Ltd. v. Govt. of Andhra Pradesh & Ors., 2009 II AD (S.C.) 139, Roop Singh Negi v. Punjab National Bank & Ors., 2009 II AD(S.C.) 177 and Gopal Sah v. State of Bihar, 2008 Suppl. I AD (S.C.) 1.

46. This court has heard the learned counsel for the parties and have also perused various documents filed along with the writ petition and with the counter affidavit. Though specific allegations have been made against respondent no. 2, however, no affidavit of respondent no. 2 has been filed by the respondents. The parties have referred to various precedents and in the facts and circumstances it will be appropriate to first consider the precedents relied on by the parties.

47. In Harpal Singh Sangwal (supra), the candidate had appeared in the entrance examination for the post of graduate course in Hindi Journalism. When the result was declared and the names of the successful candidates were revealed, it was realized by the petitioner that his name had been initially displayed, but subsequently the said list was substituted with another list which did not include his name. Thereafter, the candidate received a notification that on account of his misbehavior and acts of indiscipline as a student of M.A. in Russian Studies, University of Delhi and in exercise of the power vested under

the Ordinance XV-B and in order to maintain the discipline, it was decided not to admit him in any course in the University of Delhi for a period of next five years. The candidate had challenged the action of the University in not admitting him to any course by filing a writ petition before the Delhi High Court. During the pendency of the petition, the University had issued a notification that the competent authority had decided to grant post decisional hearing to the candidate and had accordingly constituted a committee to look into the complaint against the candidate. The complaints against the petitioner were given by the committee and the candidate also filed his replies. A report prepared by the committee was also given to the candidate, which was also replied to by the candidate and thereafter, the Vice Chancellor after considering the report of the Inquiry Committee, concluded that the response of the candidate was unsatisfactory and unacceptable and that thus there was no ground to review the decision not to admit the petitioner in any course in the University of Delhi for the next five years. The candidate had also challenged the subsequent order passed by the Vice Chancellor on the ground that in a matter like his, a post decisional hearing could not be an adequate substitute and that the decision taken to debar him from admissions to any course in the University was in complete violation of the principles of natural justice. On behalf of the University, the plea was taken that during the admission to the course of Hindi Journalism, the petitioner had

appeared in the entrance examination and that at the time he had already completed his M.A. Russian Language and hence he was not a student of the University. However the single bench of this Court had repelled the plea that since the petitioner was not a student, a proper inquiry was not to be constituted on the ground that whether the candidate was a student or not, the principle of natural justice had to be adhered to and thus in the facts and circumstances, it was held that the principles of natural justice had been violated. Referring to Ordinance XV-B of the Delhi University, the Court held that though it does not provide the procedure to conduct the inquiry, however, the inquiry had to be conducted in compliance with the basic principles of natural justice and consequently, the post decisional hearing after the impugned notification and all the proceedings subsequent thereto were quashed. The University was also directed to consider the entrance test result of the candidate for the entrance examination for the current academic year and to proceed to hold his interview for the admission to the Hindi Journalism Post Graduate Course for the ensuing year. Considering the facts and circumstances whereby the candidate was subjected to absolutely arbitrary and illegal acts on the part of the respondents leading to the deprivation of the candidate's right to study in the University for one year, the Court had also awarded a cost of Rs. 30,000/-.

48. In *Sibaram Panda (supra)*, the transfer certificates were issued against the students of the Orissa School of Engineering, Cuttack compulsorily transferring them on account of their alleged misconduct and indiscipline. Since some criminal cases were filed, the principal of the college had treated the mere allegations as sufficient proof and justification for the punitive action of issuing the compulsory transfer certificates, which was done for the best interest of the institutions and to control the law and order situation for the purpose of maintenance of the discipline of the institution. Reliance was also placed on the allegation made by the members of the staff and other students regarding the highhanded action and misconduct of those candidates who had been issued the compulsory transfer certificates. It was also alleged that as the atmosphere of the institution was surcharged with rowdiness, it was considered that issue of show cause would frustrate the very purpose for which the action was proposed. The students who had been issued compulsory transfer certificate had challenged the action of the institution and the question for consideration before the Court was whether the delinquents/students had been deprived of a reasonable opportunity to show cause and if the rules of natural justice have been violated. The Division Bench of the Orissa High Court had held that the action of the institution in issuing the compulsory transfer certificate was hit by the violation of principles of natural justice and that such an action was not sustainable in law and thus was set aside.

49. The Division Bench of the Punjab High Court in *Sunil Kant* (supra), relied on by the petitioner, had set aside the notification by the University disqualifying a candidate from passing the examination on the ground that the candidate was not supplied the material which was intended to be used against him. The candidate in this case had appeared in the pre-medical examination held in April/May, 1975. When the candidate was doing his paper, the Superintendent of the Examination had called him and told him that some printing papers had been recovered by the members of the Flying Squad. The statement of the candidate was recorded by the Superintendent, who had stated that the papers were lying near his seat on the floor and that he was busy doing his paper and had not taken any help from them. Those papers lying on the floor were recovered by the Superintendent of Examination, but nothing was recovered from the petitioner's possession and he did not know as to who had thrown the papers as well. In the facts and circumstances it was held by the Court that the proceedings initiated by the Unfair Means Committee were vitiated against the candidate, as he was not supplied with the material on which the Unfair Means Committee had relied, nor was he given a copy of the report of the Superintendent, or the statement of the members of the Flying Squad or the printing material allegedly recovered from the candidate. The Court had therefore, held that the notification disqualifying the said candidate from passing the examination was in

violation of the principles of natural justice and thus had set aside the same.

50. In *Neha Jain (supra)*, relied on by the petitioner, a student had made notes on the date sheet instead of the answer sheet and it was found that the said notes were found to be relevant to only one question in the question paper. The University of Delhi had imposed the punishment of cancellation of the entire examination and had debarred the candidate from appearing for any examination for 12 months. The Court had held that the punishment imposed was disproportionate to the alleged offence and that though the decision of the University that the note on the date sheet was not permissible could not be substituted, however, in the facts and circumstances, it was held that punishment of cancellation of only the paper in question was adequate and sufficient and consequently, the decision of the University to debar the student for 12 months and cancelling her entire examination was set aside.

51. In *K.Santha Kumari & Anr. (supra)*, on the basis of probability and circumstantial evidence, it was alleged by the Educational Authority that the student had indulged in mass coping and consequently the punishment of cancellation of examination and debarring the candidate for taking next two examination was imposed.

The Court had held that a decision given in disregard to the principles of natural justice is void and that a body with the power to decide, cannot lawfully proceed to make a decision until it has afforded the person affected an appropriate opportunity to state his case. The Court had also held that though it is not within the purview of the Court to substitute a decision taken by an administrative or quasi-judicial authority simply because the decision sought to be substituted is a better one. However, unless it is shown that the conclusion arrived at by the authority suffers from want of evidence, breach of principles of natural justice, unreasonableness, illegality, irrationality or perversity, bad faith, they are not susceptible for interference under Article 226 of the Constitution of India. In the circumstances, it was held that though the charges of malpractice against the candidate about mass copying was established, however, the punishment was modified to the cancellation of the paper in which mass copying was alleged and the candidates were allowed to appear in the ensuing examination, which was to be conducted by the University.

52. In *Amit Kumar Bashista* (supra), in which the candidate was denied admission on account of his alleged involvement in the serious misconduct of manufacturing a fraudulent degree, the Court had noticed that the candidate was only named in the FIR however, there was nothing in the FIR to connect the candidate to the said offence and

thus in such circumstances refusing the admission to the candidate was held to be clearly arbitrary a mala fide exercise of discretion which was not sustainable in law. In the circumstances, the University was directed to admit the candidate in the current year.

53. Relying on Nagarjuna Construction Co.Ltd. (supra), it has been contended by the learned counsel for the petitioner that rules of natural justice are not codified canons. The first and foremost principle is what is commonly known as audi alteram partem rule which contemplates that no one should be condemned unheard. Thus, notice is the first limb of this principle which should be precise and unambiguous. Time given to respond to the notice should be adequate so as to enable the person concerned to make his effective representation. In the absence of any notice of the kind and in case such reasonable opportunity is denied, the order passed thereafter becomes wholly vitiated. The Supreme Court in Para 33 to 41 of the judgment had held as under:-

“33. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

34. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defense.

35. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. **It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated.** Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of *Cooper v. Wandsworth Board of Works* 1963 (143) ER 414, the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defense. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat."

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

36. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

37. What is meant by the term 'principles of natural justice' is not easy to determine. Lord Sumner (then Hamilton, L.J.) in *Ray v. Local Government Board* (1914) 1 KB 160 at p.199 : 83 LJB 86) described the phrase as sadly lacking in precision. In *General Council of Medical Education & Registration of U.K. v. Sanckman* 1943 AC 627 : (1948) 2 All ER 337, Lord Wright observed that it was not desirable to attempt 'to force it into any procustean bed' and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give 'a full and fair opportunity' to every party of being heard.

38. Lord Wright referred to the leading cases on the subject. The most important of them is the *Board of Education v. Rice* 1911 AC 179 : 80 LJB 796, where Lord Loreburn, L.C. observed as follows:

Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds. It will, I suppose usually be of an administrative kind, but sometimes, it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must

act in good faith and fairly listen to both sides for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial....The Board is in the nature of the arbitral tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari.

Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that the Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view". To the same effect are the observations of Earl of Selbourne, LO in Spackman v. Plumstead District Board of Works 1985 (10) AC 229 : 54 LJMC 81, where the learned and noble Lord Chancellor observed as follows:

No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice.

Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as

in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oft-quoted phrase 'justice should not only be done, but should be seen to be done'.

39. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

40. Natural justice has been variously defined by different Judges. A few instances will suffice. In *Drew v. Drew and Leburn* 1855(2) Macg. 1.8, Lord Cranworth defined it as 'universal justice'. In *James Dunbar Smith v. Her Majesty the Queen* 1877-78(3) App. Case 614, 623 JC Sir Robert P. Collier, speaking for the judicial committee of Privy council, used the phrase 'the requirements of substantial justice', while in *Arthur John Specman v. Plumstead District Board of Works* 1884-85(10) App. Case 229, 240, Earl of Selbourne, S.C. preferred the phrase 'the substantial requirement of justice'. In *Vionet v. Barrett* 1885(55) LJRD 39, 41, Lord Esher, MR defined natural justice as 'the natural sense of what is right and wrong'. While, however, deciding *Hookings v. Smethwick Local Board of Health* 1890 (24) QBD 712, Lord Fasher, M.R. instead of using the definition given earlier by him in *Vionet's case* (supra) chose to define natural justice as 'fundamental justice'. In *Ridge v. Baldwin* 1963(1) WB 569, 578, Harman LJ, in the Court

of Appeal countered natural justice with 'fair-play in action' a phrase favoured by Bhagwati, J. in *Maneka Gandhi v. Union of India* 1978 (2) SCR 621. In *re R.N. (An Infant)* 1967(2) B617, 530, Lord Parker, CJ, preferred to describe natural justice as 'a duty to act fairly'. In *Fairmount Investments Ltd. v. Secretary to State for Environment* 1976 WLR 1255 Lord Russell of Willowan somewhat picturesquely described natural justice as 'a fair crack of the whip' while Geoffrey Lane, LJ. In *Regina v. Secretary of State for Home Affairs Ex Parte Hosenball* 1977 (1) WLR 766 preferred the homely phrase 'common fairness'.

41. How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is 'nemo judex in causa sua' or 'nemo debet esse judex in propria causa sua' as stated in (1605) 12 Co.Rep.114 that is, 'no man shall be a judge in his own cause'. Coke used the form 'aliquis non debet esse judex in propria causa quia non potest esse judex at pars' (Co. Litt. 1418), that is, 'no man ought to be a judge in his own case, because he cannot act as Judge and at the same time be a party'. The form 'nemo potest esse simul actor et judex', that is, 'no one can be at once suitor and judge' is also at times used. The second rule is 'audi alteram partem', that is, 'hear the other side'. At times and particularly in continental countries, the form 'audietur at altera pars' is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely 'qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit' that is, 'he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right' (See *Bosewell's case* (1605) 6 Co.Rep. 48-b, 52-a) or in other words, as it is now expressed, 'justice should not only be done but should manifestly be seen to be done'. Whenever an order is struck down as invalid being in violation of

principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.”

54. In *Roop Singh Negi (supra)*, the Supreme Court had held that suspicion, as is well known, however, high it may be, can under no circumstances be held to be a substitute for legal proof. It was further held that though the provisions of Evidence Act may not be applicable on departmental proceeding but the principles of natural justice are. In this matter, the inquiry officer had relied upon the alleged confession made by the delinquent. The Court had observed that that there was no reason as to why the order of discharge passed by the Criminal court on the basis of the same evidence should not have been taken into consideration and it was held that the material brought on record pointing out the guilt of the delinquent are required to be proved. In the circumstances, it was held that the decision must be arrived at on some evidence which is legally admissible and since the report of the inquiry officer was found based on ipse dixit and also surmises and conjectures, therefore, such action was not to be sustained.

55. About the alleged confession of the petitioner, the counsel for the petitioner relied on *Gopal Sah (supra)*, to contend that extra judicial confession is, in the face of it, a weak piece of evidence and the courts

are reluctant in the absence of a chain of cogent circumstances to rely on this evidence for the purpose of recording conviction.

56. Per contra the learned counsel for the respondents relied on State Bank of Patiala & Ors v. S.K.Sharma, (1996) 3 SCC 364; Mansoor Azam v. Jamia Milia Islamia & Ors, 90(2001) DLT 735; Controller of Examinations and Ors v. G.S.Sunder & Anr, 1993 Supp (3) SCC 82 and Director (Studies), Dr.Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh and Ors v. Vaibhav Singh Chauhan, (2009) 1 SCC 59; Narender Singh v. University of Delhi & Ors, 70 (1997) DLT 509 and State of Punjab & Ors v. Dr.Harbhajan Singh Greasy, (1996) 9 SCC 322. According to the learned counsel for the respondents it was held in State Bank of Patiala (Supra) that the interests of justice equally demands that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. It is contended that the principles of natural justice cannot be perverted to achieve the very opposite end. The Supreme Court had summarized the principles in this context as follows:-

“(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the **provision violated is of a substantive nature** of (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: Procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed.-**Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories,** the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted there from, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defense in his evidence and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a

provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment) keeping in mind the approach adopted by the Constitution Bench in *B. Karunakaran*. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem pattern) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice/no hearing" and "no fair hearing", (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not

apply in the case of rule against bias, the test in which behalf are laid down elsewhere.

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., **to ensure a fair hearing and to ensure that there is no failure of justice.** It is this objective which should guide them in applying the rule to varying situations that arises before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

57. In the above noted case relied on by the respondents though the copies of the statements of two witnesses were not given to him, however, the delinquent was permitted to take notes there from three days prior to their examination and even one of the witnesses was not examined. The delinquent had not raised any objection during the enquiry that non furnishing of the copies of the statement had disabled him and in these circumstances it was held that no prejudice had been caused to him. In these circumstances on account of not furnishing the copies of the statement of two witnesses, it was held that the principles of natural justice were not violated and the delinquent had a fair hearing and the disciplinary proceedings were not set aside. In Mansoor Azam (Supra) it was held by a Single Judge relying on Controller of Examinations & Ors v. G.S.Sunder & Anr, (1993) Supp.3 SCC 82 that

in matters of enforcement of discipline, the Courts must be very slow in interference, as the authorities who are in-charge of education know best how to deal with situation and fine principles of law cannot be interpolated in their functioning. In the said case relied on by the respondents, the petitioner Mansoor Alam was debarred from taking admission in the university on account of his misconduct along with two others. The Court had found the punishment imposed upon him disproportionate to his misconduct and the matter was referred back to the University for re-consideration of the case of the petitioner for award of lesser punishment which was also awarded to other two students.

58. In G.S.Sunder (Supra) relied on by the respondents the principal of the college had brought malpractices conducted by students in the examination to the notice of the University. The malpractice had affected innocent and intelligent students, as G.S.Sunder had interchanged his roll number with that of another student K.R.Gandhi, as Gandhi used to be a better student. Consequently G.S.Sunder was passing all the examinations with good marks in those subjects where the roll number was interchanged whereas Gandhi failed in those subjects where the roll number were interchanged. However, K.R.Gandhi had scored good marks in all subjects in supplementary examination in which he had failed in the main examination. G.S.Sunder had first denied the knowledge about interchanging the roll

number, however, at the second sitting of enquiry he had given a statement admitting the commission of malpractice. A sub-committee was appointed and the Chairman of the Syndicate Sub Committee submitted the report and recommended the punishment. In these circumstances it was held by the Supreme Court that it was a case of systematic fraud conducted by G.S.Sunder and it could not be a sheer coincidence that in all the semesters Sh.G.S.Sunder had been scoring good marks and other student K.R.Gandhi had failed and in these circumstances there was nothing unbelievable in G.S.Sunder admitting his mistake and giving a statement to this effect. The case of the petitioner, however, is apparently distinguishable. Besides the continuous violations of the principles of natural justice and not conducting any enquiry, as what has been alleged is that a fact finding committee was appointed which did not examine any of the witnesses or recorded the statements in the presence of the petitioner nor gave the copies of the same to the petitioner but referred to alleged confession letters. In the first confession letter it is allegedly stated by the petitioner not to take any action against her and she would not join if she will be selected whereas the fact is that on 25th July, 2007 it had already been disclosed to her that she has scored very high marks and she has been selected. In the circumstances she won't have written on her own such a letter. A few minutes after writing the said confession she allegedly wrote second confession where she simply admitted her

alleged mistake that she took the examination paper from the room of Professor Uma Pati and in the third alleged confession she says that she wrote down the answers. In the fourth alleged confession she implicated her professor that he had told her that the entrance examination paper were in the drawer and she could take it from there. The petitioner had made categorical allegation against Ms. Aparna Dixit and other two persons regarding the pressure and coercion and the circumstances which they created under which the petitioner was left with no option but to write whatsoever was dictated to her which facts have not been refuted by Professor Aparna Dixit, respondent No.2 by filing her affidavit. In these circumstances, the alleged confessions of the petitioner cannot be accepted and cannot be the basis for inculcating her in any manner. In these circumstances the respondents cannot rely on the ratio of G.S.Sunder (Supra) in the facts and circumstances which is quite distinguishable.

59. In Vaibhav Singh Chauhan (Supra) the candidate had a slip of paper in his possession which pertained to examination in question, which was recovered from him when the examination was going on. The material on the slip of paper pertained to the examination and in these circumstances it was held that it was immaterial whether the candidate had used the piece of paper for writing the examination or not and had set aside the decision of the High Court. Apparently the case relied on

by the respondents is distinguishable. In Narender Singh (Supra) the allegation against the candidate was of ragging and consequently he was not allowed admission to the third year. In the circumstances the decision not to admit the petitioner to the third year although he was not expelled was upheld and it was observed that it was necessary in the interest of justice among students. It was further held that a student has no right for admission in such a situation, even assuming that terminology used in the order of the principal does not clearly and fully express the intention to keep the candidate out of the college permanently. The High Court had further held that though one may have sympathy for a young person whose educational career is being lost, however, such sympathy cannot be allowed to influence the Court to impose on a college, a student whose presence in the campus is perceived by college authorities as a potential threat to the discipline and peaceful functioning of the college. In Dr. Harbhajan Singh Greasy (Supra) relied on by the respondents the finding of the enquiry officer were based on alleged admission of guilt which was not supported by any statement of the delinquent in writing. In these circumstances though the enquiry report was set aside, however, fresh enquiry was not directed by the Supreme Court as the delinquent had retired in the meantime. The Court had permitted pensionary benefits to the delinquent, however, had declined back wages.

60. Perusal of the enquiry record produced by the respondents reveals that the Vice Chancellor of respondent No.2 had appointed one man Enquiry Committee to look into the matter of selection of two candidates in pre Ph.D Program. The scope of the enquiry was to ascertain the correct facts relating to said matter in the context of deliberation done by the faculty and the statements/submissions allegedly made by the candidate. In this background the respondent No.3 had issued a communication to Professor Rakesh Bhatnagar, Dr.K.J.Mukherjee, Dr.H.Chaudhary, Professor S.K.Kar, Dr.Rajiv Bhat and Dr.S.Maitra to come to him on 18th January, 2008 for talking to them.

61. Respondent No.3 thereafter, on 18th January, 2008 recorded the statements of Dr.K.J.Mukherjee, Professor D.Choudhary, Professor S.K.Kar, Professor Rakesh Bhatnagar and Professor Uttam Pati. The statements of Dr. Shubhangshu Maitra and Dr.Bhatt was recorded on 23rd January, 2008. On both the dates the petitioner was not present nor the statements were recorded in her presence nor the copies of the statements recorded by the one man committee were given to the petitioner nor the petitioner was given any opportunity to cross examine these persons on the statements of which it has been inferred that the petitioner used unfair means by getting the question paper of the entrance examination in advance.

62. The statements of Aparna Dixit was also recorded on 18th January, 2008, however, her recorded statement also bears the date of 17th January, 2008. At that time also the petitioner was not present nor the copy of the said statement was given to her. Similarly the statement of Professor Uttam Pati was recorded on 18th January, 2008 in absence of petitioner. Another statement of Professor Uttam Pati is also on the file which was recorded on 17th January, 2008. Though copy of the notice directing the other witnesses to come for 'talk' on 18.1.2008 is on record but there is no copy of any notice to said two witnesses to come and 'talk' to one man committee/respondent no.3. When and how they were called and when their statements were recorded cannot be ascertained from the record of alleged enquiry.

63. The statement of Gargi Roy, another candidate who is also alleged to have used unfair means was also recorded on 17th December, 2007 who deposed that she was forced to write that she used unfair means to qualify the entrance examination. She categorically deposed that when she was leaving her office Professor Rakesh Bhatnagar followed her in the corridor and he had said "I did not like the statements you have written just now. Just write what I am telling you. Your boss has already fired you, but don't worry if you write as I want I will get you a job definitely, otherwise you and your future will be in great trouble."

64. According to Gargi Roy, another candidate, she was brought to Professor Bhatnagar's office again where she was made to write statements against Dr.Uttam Pati as she was working under his guidance in a project. Gargi Roy also deposed that she had submitted her retraction letter to the Rector-II. She categorically deposed that on 27th July, 2008 also she was abused by respondent No.2 Professor Aparna Dixit. She also produced her retraction letter dated 30th July, 2007 addressed to Rector-II.

65. The enquiry record also has another statement of Gargi Roy recorded on 17th January, 2008 and the letter of Sh.Subhash C.Gupta father of Flora Gupta dated 29th July, 2007 addressed to Professor Kumar Adhikari, Rector-II along with a letter dated 30th July, 2007 by petitioner to Rector-II retracting her alleged confessions.

66. Whether the character certificate was to be issued or not was not the scope of enquiry, however, the letters addressed by the petitioner to the Dean, School of Biotechnology and other letters to Professor Kumar Adhikari; Professor Rajendra Prasad asking for character certificate are also on the record of the enquiry. There is no explanation as to why the certificate demanded by the petitioner was not issued to her till 9th

April, 2008 and thereafter, it was issued with the stipulation that an enquiry committee has been constituted against her.

67. The minutes of faculty meeting held on 27th July, 2007 on the basis of which, it appears decision was taken to have the matter enquired are as under:-

“The Dean reported to the faculty that the two girls, Miss Gargi Roy and Miss Flora Gupta were called to talk after the meeting of July 25, 2007 was over. Prof.Rakesh Bhatnagar and Prof.Pati were present during the meeting with the girls.

The Dean read out all the statements given by the two girls. After the statements were read, Prof.Pati told that he has received a letter in his mail box two hours ago and brought it from his office. The letter was from Miss Flora Gupta addressed to Prof.Uttam Pati with a copy marked to the President Students Union (copy of the letter enclosed).

The faculty unanimously resolved that the entire matter be referred to the administration to carry out investigation into this matter.

The faculty also resolved that the two girls be called and informed that an enquiry into the matter will be taking place, where in Miss Roy broke down and stated that she would prefer that no enquiry be held otherwise her career might be ruined.”

68. Surprisingly though a number of persons were present on 27th July, 2007 but the minutes are signed by respondent No.2 only. The record of the enquiry also has the minutes of faculty meeting held on

25th July, 2007 which is also signed only by respondent No.2 which is as under:-

“The faculty discussed about very high marks scored by the two girls of the school. However, the faculty resolved that the declaration of the results should not be withheld because it holds up the admission process.

The faculty resolved that the matter should be investigated and authorized the Dean to take adequate steps.”

69. If it was resolved not to withhold the result, then why the result of the petitioner was not disclosed has not been explained. There is no decision on the file by anyone that pending the decision to conduct an enquiry, the petitioner be not admitted to the course. If that be so then why she was not admitted has not been satisfactorily explained by the counsel for the respondents.

70. The plea of the petitioner is that she had given the retraction letter on the next day to respondent no.2, however she refused to accept it. This allegation has not been categorically denied by the said respondent by filing an affidavit. There are other allegations against the said respondent as to how she forced petitioner to write alleged four confession letters. Though these allegations have been denied by the Registrar, Mr. Avais Ahmed but they have not been denied by respondent no. 2. The counter affidavit filed on behalf of University which is supported by the affidavit of the registrar does not even

disclose that respondent no. 2 had disclosed the facts on the allegation made against her to the said registrar. In the circumstances the inevitable inference is that the allegations made by the petitioner against respondent no. 2 have remained un-rebutted. If the respondent no. 2 had refused to accept the retraction letter given by the petitioner, then sending the retraction letter by the petitioner to the students union and another to Prof. Uttam Pati who had produced the same on 27th July, 2007, two days after the alleged confessions were taken, cannot be construed to be implausible or an afterthought.

71. By letter dated 30th July, 2007 addressed to Professor D.B.Bhattacharya, Vice Chancellor of respondent No.1, respondent No.2 had sought a full fledged enquiry in the matter. A one man Enquiry Committee was ordered and the one man Enquiry Committee on the basis of alleged statements recorded on 18th January, 2008, 17th January, 2008 and 23rd January, 2008 gave the report holding that the petitioner had access to the question paper prior to the entrance examination.

72. The enquiry committee did not give any notice to the petitioner as to what is the basis of the allegation made against her. No documents or material was supply to her on the basis of which it was prima facie inferred that she had access to examination paper before the

examination. The one-man committee has followed its own procedure which is not based on any statute or ordinance of respondent no. 1. He issued notice to some of the witnesses to have talk with them. The alleged talk was reduced into writing and has been treated as the statements on the basis of which the one-man enquiry committee inferred that the allegation against the petitioner was made out. The copies of alleged 'talk' between the one-man committee and witnesses were not given to the petitioner. Petitioner was also not allowed to 'talk' to such witnesses whose statements became the basis of alleged fact-finding committee. Consequently, the petitioner had no opportunity to ask questions from such witnesses in order to impeach whatsoever had been stated by them. After recording the statement of such persons as detailed hereinabove, the one-man committee did not ask petitioner to give her version or to adduce evidence in support of her defense. The petitioner has made a specific allegation that respondent no. 2 did all this to accommodate his favorite persons which allegation has not been denied by respondent no. 2 by filing her affidavit. The whole procedure adopted by one-man committee is whimsical and without any basis and is not sustainable under law or based on any statute or ordinance of the University.

73. The respondents have also taken conflicting and contradictory stands. The respondents have contended in response to the plea that

the petitioner was not allowed to cross examine the witnesses alleging that “as such no witnesses were examined in the enquiry”. If that be so then on what basis the enquiry committee could give its report holding that the allegations against the petitioner were made out. Regarding violation of principles of natural Justice it is alleged that it was not a departmental enquiry nor it was subjected to any rigid rules. Even if it was not subjected to any rigid rules, the minimum that was required was to make the petitioner know about the allegation against her and the basis of said allegations and during the enquiry to allow her to know as to what deposition or evidence was adduced against her. Despite no rigid rules, if something is as stated against any person, he has a right to ask that person such questions which will impeach his deposition. There is no presumption in law that whatsoever will be stated before one-man enquiry committee by any professor or official of the University would be nothing but truth and has to be accepted as such. The learned counsel for the respondents has not given a single satisfactory explanation as to how the one-man enquiry met the requirements of principles of natural Justice. The only answer is that it was a fact-finding committee. If it was a fact-finding committee in which neither the delinquent had to be explained as to what was against her and what was the basis of that and what deposition or evidence was adduced against and the findings of the one-man committee were only prima facie, then a regular enquiry ought to have been conducted

afterwards. The fact-finding enquiry conducted by one-man committee has not met the requirements of principles of natural Justice on any count.

74. The enquiry committee has also held that the petitioner admitted that she had written the statements before the respondent no. 2 and other persons. This is not disputed that the statements were written by her. What is disputed is whether she had given the alleged confession on her own or she was coerced or pressurized to write the alleged confessions within a span of one hour. The enquiry committee has noticed the statement of Prof. Uttam Pati who stated that the statements were dictated by Prof. Bhatnagar and Prof. Dixit, respondent no.2 and the petitioner and another student did not write the statements on their own. There is apparently no finding that the four different statements were given by the petitioner on her own free will

75. The grounds on which administrative action is subject to control by judicial review are, "illegality"; "irrationality" and "procedural impropriety". The Court will be entitled to interfere in such matters if the decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. To be "irrational" it has to be held that on material, it is a decision "so outrageous" as to be in total defiance of logic or moral standards. If the power is exercised on the basis of facts

which do not exist having which are patently erroneous, such exercise of power shall be vitiated. Exercise of power will be set aside if there is manifest error in the exercise of such power or the exercise of power is manifestly arbitrary. To arrive at a decision on "reasonableness" the court has to find out if the respondents have left out a relevant factor or taken into account irrelevant factors.

76. The respondent no. 3's report dated 7.3.2008 is in total defiance of logic and any rationality and has manifest errors. The said respondent has left out relevant factors and has taking into account irrelevant factors. The case of the respondents is also not that the petitioner had stolen the question papers or had access to them by any other illegal means without the knowledge of paper setter Prof. Uttam Pati. In the circumstances the deposition of the said witness was very material. The said witness did not say that he gave access to the petitioner to the question paper. It was not even put to him that he had allowed the petitioner to see the question papers and note down the questions and solve the answers. Surprisingly though it is stated that the decision was taken to take action against the said Professor, however, it has not been divulged or disclosed that any enquiry was conducted against the said Professor or not. The whole approach of the respondents is completely outrageous and in defiance, logic. The

culpability of the petitioner could be established only on the basis of culpability of the said Professor.

77. After the conclusion of the alleged fact-finding enquiry in which no established procedure was followed and the one-man committee talked to certain witnesses, wrote down their statements thereafter and concluded that the allegations against the petitioner were made out by giving a report dated 7th March, 2008, the copy of the said report was not given to the petitioner on one pretext or another for a considerable period. A show cause notice dated 15th July, 2007 was given asking petitioner to show cause as to why disciplinary action be not initiated against them without giving the copy of the enquiry report. Another show cause notice of the same date was thereafter given after the receipt of reply dated 18th July, 2008 categorically stipulating that the petitioner does not know on what grounds the enquiry committee has arrived at the conclusion as stated in the show cause notice because even the copy of the enquiry report had not been given to her. Thereafter, on another copy of show cause notice dated 15.7.2008, an endorsement dated 21st July, 2008 at 5.00 P.M was made by the Chief Proctor contending that the copy of the enquiry report is enclosed with the notice and the petitioner was asked to give reply by 23rd July, 2008, i.e within 24 hours. Apparently sufficient time was not given to the petitioner to reply to show cause notice. The respondents are unable to

give any cogent reason as to why the copy of the enquiry report was not given to the petitioner earlier. Perusal of the report dated 7th March, 2008 reveals that it is not self explanatory and merely on the basis of the report, the rationale for the inferences drawn by the one-man enquiry committee cannot be comprehended. The petitioner had therefore demanded the copies of the statements and the documents on the basis of which the report was given by communication dated 23rd July, 2008. No reasons had been disclosed as to why the copies of the documents and the statement of witnesses were not required to be given to the petitioner. Every step taken by the respondents in awarding the punishment to the petitioner in the facts and circumstances is in violation of the principles of natural Justice.

78. The respondent no.1 has an ordinance which stipulates the procedure for dealing with the cases of use of unfair means. The relevant ordinance of the respondents is as under:-

25. *ORDINANCE RELATING TO THE USE OF UNFAIR MEANS BY STUDENTS IN EVALUATION

1. Definitions:

For the purposes of this Ordinance:

- (a) Evaluation means and includes all learning processes followed by evaluation such as quizzes, term papers, assigned readings, laboratory tests, seminars mid-semester examinations and end-semester examinations and research papers including dissertations and theses.
- (b) Student means a student on active rolls of the University.

- (c) Semester implies Monsoon or Winter semester of an Academic year.
- (d) The use of unfair means implies any dishonest or unfair means or indulging in disorderly conduct including plagiarism during the course of study in a programme at the University.
- (e) Committee means the Standing Committee of the Academic Council for looking into the cases of use of unfair means by the students.

2. Constitution of the Standing Committee:

- (a) On the recommendations of the Vice-Chancellor, the Academic Council shall constitute a Standing Committee consisting of the following:
 - (i) Two Deans; and
 - (ii) The Dean of the School from where the case of use of unfair means by student(s) reported (to be co-opted);

Provided that if the reported case of the student(s) happens to be from the School whose Dean is already represented in the Committee, then the Vice-Chancellor shall nominate another Dean to be a member of the Committee.

- (b) An Officer of the University nominated by the Vice-Chancellor will function as non-member Secretary of the Committee.

- 3.** A student of the University who is reported to have indulged in use of unfair means in any aspect of evaluation inclusive of quizzes, term papers, assigned readings, laboratory tests, seminars, mid-semester or end-semester examinations and or have indulged in plagiarism while writing research publications/articles including dissertations and theses would made himself/herself liable for disciplinary action as may be determined by the committee of the Academic Council dealing with cases of use of unfair means.

- 4.(a)** Any faculty member finding a student of the University indulging in the use of unfair means will report in writing to

the Chairperson of the Centre with copies to the Dean of the School concerned and the Co-ordinator (Evaluation) for placing before the Committee dealing with cases of use of unfair means for its appropriate consideration and directions.

- (b)** The concerned Centre/School shall forward their views to the Committee within 15 days of the receipt of the said communication from the faculty member. In case no views are received from the concerned Centre/School, the Committee will proceed suo moto.
- 5.** The Committee will provide a student alleged to have been involved in the use of unfair means, fair and reasonable opportunity to prove his/her innocence before pronouncing him/her as guilty.
- 6.** The Committee shall be entitled to exercise all or any of the powers relating to discipline and disciplinary action in relation to any student as contained in the Statute 32 of the Statutes of the University as may be delegated to it by the Vice-Chancellor.
- 7.** A student awarded punishment by the Committee dealing with the cases of use of unfair means shall be entitled to make an appeal to the Vice-Chancellor within 30 days of the award of punishment.
- 8.** In all matters relating to discipline and disciplinary action against students for use of unfair means, the decision of the Vice-Chancellor shall be final and no further appeal shall be against it.

79. According to the learned counsel for the respondents, the said ordinance and the procedures set therein is not applicable in the case of the petitioner as she was not a student of respondent no.1. According to him a student under the said ordinance is one who is on the active roll of the University. The respondents however, cannot deny that in the entrance examination a student who is on the active role of the

University or other candidates who are not on the active roll of the university could appear. In case of use of unfair means in the entrance examination, the respondents could not use two types of procedures in the facts and circumstances. Even if, strictly speaking the ordinance 25 regarding use of unfair means was not applicable to a candidate who was not on active roll, the same procedure ought to have been followed by the respondents.

80. University Grants commission activities are regulated under Act 33 of 1972. The power and functions of the Commission were detailed by the Act 59 of 1984 (w.e.f. 1.10.1984). Section 12 A (1) (g) defines 'student' which is as under:

“(g) “Student” includes a person seeking admission as a student.”

In the circumstances in dealing with the case of the petitioner for alleged use of unfair means, the respondents ought to have followed the same procedure as stipulated in ordinance 25 even if a strictly speaking it was not applicable to the petitioner. Therefore for the foregoing reasons and in the totality of the facts and circumstances, the Office order No.08/CP/2008 dated 5th August, 2008 and the enquiry report dated 7th March, 2008 cannot be sustained in the facts and in law and they are set aside.

81. On setting aside the order of punishment and the enquiry report, the next question is whether the matter should be remanded to the respondent for fresh enquiry in accordance with the procedure analogous to the procedural detailed in ordinance 25 or to direct the respondents to allow the petitioner to join Ph.D course now as she has already lost five years. Even if the lapse of the petitioner is established after a proper enquiry, the punishment for debarment for more than five years could not be granted. The petitioner has already undergone the punishment for a lapse which has not been established against her.

82. Even if the matter is remanded and fresh enquiry is conducted and if the petitioner is found guilty, she cannot be imposed more severe punishment than what had been awarded to him. The High Court/Tribunal, while exercising the power of judicial review, should not normally substitute its own conclusion on penalty and impose some other penalty. However, if the punishment imposed by the disciplinary authority or by the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/applicant authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. In the circumstances, remanding the matter to the respondents would result in imposing more stringent punishment on

the petitioner than what has been awarded to her without establishment of her culpability.

83. Therefore, in the peculiar facts and circumstances, the matter is not remanded for fresh enquiry and the order of punishment being office order no. 08/CP/2008 and consequence thereof are set aside. The writ petition is therefore, allowed. The respondents are directed to admit the petitioner to Ph.D course in the ensuing session forthwith. Considering the facts and circumstances the petitioner is also awarded the costs of Rs.30,000/. Cost be paid within four weeks. With these directions the writ petition is allowed. All the pending applications also stand disposed of.

ANIL KUMAR, J.

July 6, 2012

k/vk