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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 16.11.2012

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**LPA 570/2012 &
CM No. 14010/2012**

JAWAHAR LAL NEHRU UNIVERSITY

..... Appellant

Through : Mr. Vikram Nandrajog with
Mr. Gagan Minocha, Advocates.

versus

FLORA GUPTA

..... Respondent

Through : Mr. Jatan Singh, *Amicus Curiae*.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. In this appeal, the Appellant University assails the impugned judgment dated 6.7.2012 passed by learned Single Judge in W.P. (C) 5725 of 2008 whereby he has set aside Inquiry Committee report dated 7.3.2008 as well as the Office Order no. 08/CP/2008 dated 5.8.2008. The Appellant University was furthermore directed to pay costs amounting to Rs. 30,000/- and admit the respondent to Ph.D course in the ensuing session.

2. The brief facts are that the respondent (hereafter “the writ petitioner”), appeared for the Ph.D entrance examination for the session of 2007-08, in the Appellant University (hereafter “JNU”). She had completed her M.Sc. in Biotechnology. The writ petitioner had sought quashing of an Inquiry Committee

report dated 7.3.2008 and also of the office Order no. 08/CP/2008 dated 5.8.2008 whereby Vice Chancellor of JNU, under Statute 32 of the University ordered that the entire JNU campus to be “out of bounds” for her for five years and debarred her from taking admission in any program of study at the JNU, for the next five academic years. She had also prayed for directions to the JNU to admit her in the Ph.D programme after providing her the fresh character certificate for the term of 2003-05, during which she had completed her Master of Science in Biotechnology.

3. It had been alleged by the writ petitioner that that on 25th July, 2007 prior to formal declaration of the Ph.D entrance results, she was called by Ms. Aparna Dixit, Dean, School of Biotechnology, the second respondent, to her office. On reaching that office, she found that two other professors, namely, Mr. R. Bhatnagar and Mr. Uttam Pati were also present there. She alleged that the second respondent told her that she had secured the first rank among the candidates and had therefore, topped the merit list. To the petitioner’s surprise, despite securing a very high position in the examination, she was pressurized not to get herself registered. She further disclosed that she was threatened by the second respondent 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 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. It was alleged that though she did not succumb to the pressures at that time, abuses and even physical force was brought to bear on her, resulting in her being confined to the room of the second respondent. The petitioner further alleged that she was threatened that if she did not write the confession, her image

would be maligned by falsely publicizing that the petitioner was having illicit sexual relations with Professor Uttam Pati; that when she still refused to comply with these demands, she was locked into the room and was not even given water; she also noticed that others were present to help the second respondent, due to which she got scared and succumbed to the pressure, and thereafter wrote whatsoever was dictated to her by Ms. Aparna Dixit. Thereafter, whatsoever was dictated by Ms. Aparna Dixit, was written by the petitioner. Even that did not satisfy the second respondent and therefore, asked the petitioner re-write it and later directed Professor R.Bhatnagar to dictate certain statements and coerced the petitioner to write the same. The petitioner, on being asked to modify the statement, yet again, declined to do so, due to which reason she was even slapped by the second respondent. Left with no other choice the petitioner again wrote whatsoever was dictated to her. She retracted these so called confessions, in a letter written to Prof. Uttam Pati, the same day.

4. The writ petitioner alleged that she had been informed on 11th January, 2008 about a single member inquiry committee comprising of Professor Rameshwar Singh, constituted by the Vice Chancellor of JNU against her selection in the Ph.D Programme. The committee allegedly prepared a report, on 7-3-2008; a copy of that was not furnished to her. In the report, the committee had apparently rejected the retraction, as well as the retraction of another student, who had similarly made a confession, which likewise she retracted, in relation to admission to the Ph. D programme. 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. She replied to the show cause notice by on 18-07- 2008 contending, *inter-alia*, that she could not comprehend on what grounds the inquiry committee had arrived at the conclusion that she had access to the

examination paper and that she was also unable to answer the allegation against her as inquiry committee report dated 7th March, 2008 was not given to her. It was alleged that the impugned order of the Vice Chancellor was vitiated because it was preceded by no inquiry, and that the entire action was baseless.

5. JNU alleged that the petitioner was guilty of misconduct as she had obtained illegal access to the Ph.D. entrance examination paper of the School of Biotechnology, JNU and had thereafter appeared in the exam. As a result she scored exceptionally high marks i.e. 58 1/2 out of 70 in the written examination; the same was therefore vitiated. This was brought to the notice of the Vice Chancellor of JNU who appointed a one man inquiry committee comprising of Prof. Rameshwar Singh, (third Respondent). He enquired into the matter and submitted his report on 7.3.2007 finding that the petitioner had prior access to the question paper. That report was accepted by the Vice Chancellor of JNU pursuant to which the order dated 5.8.2008 was passed whereby the Vice Chancellor exercised the power vested in him under Section 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.

6. JNU denied that the petitioner was a brilliant student or that she was forced to write the confession by second respondent as to make the seat available for another student. It was JNU's position that the petitioner's allegations were baseless and *mala fide*. It was alleged that the Petitioner, while doing her M.Sc. in the year 2005 from the School of Biotechnology did not join any course. In her M.Sc. course, the petitioner was ranked 12 in a batch of 14 and she had secured a cumulative grade point average (CGPA) of 5.18 out of 9 thus, barely qualifying

for appearing in the Ph.D. entrance test. JNU also stated that the petitioner had failed to clear the Ph.D. entrance exam of JNU in 2005 and 2006. It was also alleged that the writ petitioner worked 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 JNU alleged that the theory question paper for the Ph.D. entrance exam for 2007 was compiled, and typed out under supervision of Prof. Uttam Pati. The JNU alleged that the writ petitioner and Ms Gargi Roy, who was also working as a Junior Research Fellow, managed to secure access to the question papers of the Ph.D. entrance exam and both of them had obtained very high marks. This aroused suspicion of the faculty members of the School of Biotechnology. 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 JNU also averred that the petitioner had never complained to the police at that 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. JNU conceded that the Petitioner had filed a criminal complaint dated 26-05-2008 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. JNU stated that later a show cause notice dated 15th July, 2008 was issued against the petitioner stipulating why disciplinary action should not be taken against her.

7. JNU had also alleged that the Petitioner and the other candidate, Ms. Roy had unusually high marks for the written test, for the year, contrary to their previous performance. It was also alleged that no student usually secured such

high marks. It was alleged 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 as 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.

8. The petitioner was then called on 25-07-2007 and was questioned by Ms. Aparna Dixit, Prof. Uttam Pati and Prof. R. Bhatnagar after which she confessed to have adopted illegal means. According to JNU, the Petitioner's confessions were made in the presence of the said three members, in a fair and transparent manner without any threat or coercion to her. 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 the second respondent. The allegation that the petitioner had written the retraction letter to the second respondent was not admitted and, she did not report her alleged version to any other authority in JNU as well. It was alleged by JNU that in a subsequent meeting held attended by 8 faculty members 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, Prof. Rameshwar Singh was appointed as the one man inquiry committee to enquire into the matter.

9. JNU 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 entire matter. As regards the inquiry conducted by Prof. Rameshwar Singh and the Petitioner's argument that she was not allowed to cross-examine the witness nor the witnesses' testimonies were recorded in her presence, it was alleged that no witnesses were examined in the inquiry. According to the respondents, this was neither a Governmental departmental inquiry, nor was it subjected to any rigid rules as to cross-examine the witnesses and that the inquiry in any case met the requirements of the principles of natural justice and thus, was valid and proper.

10. The learned single judge, in the impugned judgment, after an elaborate discussion of the entire facts, and the applicable law, concluded that:

76. 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.

11. The impugned judgment thereafter considered Ordinance 25 which stipulates the procedure for dealing with the cases of use of unfair means and then concluded as follows:

“...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.

80. 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.

81. 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. 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.”

12. Mr. Vikram Nandrajog, learned counsel for JNU, contended that the impugned judgment cannot be sustained, and that the Single Judge should have reserved liberty to the authorities to conduct an inquiry, having regard to the totality of circumstances, once it was found that there was no inquiry. It was submitted that the writ petitioner’s track record, previously in the University, was consistently dismal. She was not a brilliant but a mediocre student, barely able to qualify for appearing in the Ph.D entrance examination. It was submitted that her previous performance in that examination showed very poor results; her sudden and phenomenal success was inexplicable, and roused the suspicions of the faculty members. It was submitted that during the course of her being confronted, the confession was made in writing. The inquiry committee was satisfied that the statement reflected the correct facts, and her later retractions, an afterthought. Moreover, submitted counsel, the writ petitioner approached the criminal court much later, complaining pressurization and coercion. However, the police filed a final report recommending closure of the case, and dropped investigation. Having regard to these facts, the Vice Chancellor acted within his powers, to issue the

impugned order. It was submitted that in any case, though the major portion of the five year period had lapsed, this Court should at least modify the impugned judgment of the Single Judge, and require the petitioner to appear in a fresh Ph. D examination.

13. Counsel for the writ petitioner, on the other hand, contended that though the relief was granted, more than four years of the punishment imposed, i.e. declaration of her being out of bounds, and the ban on her taking any exam, remained in force, thus depriving her of substantial relief. It was submitted that the entire basis of JNU's action was on the petitioner's confession which had been immediately retracted by her. No inquiry had taken her statement into account; she had been deprived of the opportunity to cross examine those who leveled serious allegations against her.

14. This Court has carefully considered the submissions of the parties, and gone through the impugned judgment. The learned Single Judge took into consideration the official files of the JNU, as well as the relevant documents, including the report of the committee. The impugned judgment noted that:

“59. 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.60. 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.

61. 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.

62. 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 follower 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."

63. 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.

71. 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 statue 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 statue or ordinance of the University.

72. 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.

73. 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

74. 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."

15. It is evident that what weighed with the learned Single judge, while setting aside the impugned order, was that the writ petitioner was not afforded any

opportunity. From the earliest point of time, she kept insisting that the confession recorded was the result of intimidation, and not of her choice. She was neither summoned for any properly instituted inquiry, nor was allowed to cross examine witnesses. The one man committee's procedure was contrary to all canons of fairness; besides, the impugned judgment has listed several glaring procedural irregularities which beset its hearings. In the backdrop of these findings, the learned Single Judge concluded – taking into consideration the length of time when the penal order was operative, that the Appellant-University should allow the writ petitioner to proceed, after admitting her to the Ph. D course.

16. After carefully considering all the circumstances, this Court is of the opinion that the larger ends of justice would be best served if the directions and findings in the impugned judgment are left undisturbed. The petitioner was inflicted with an adverse order, without a semblance of fairness; that order has remained operative for the larger part it was to be in force – i.e. more than four out of five years. No serious infirmities in the conclusions drawn or the application of law are discernable in the impugned judgment. For these reasons, this court declines to entertain the appeal; it is accordingly dismissed, without any order as to costs.

S. RAVINDRA BHAT, J

CHIEF JUSTICE

NOVEMBER 16, 2012