

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 12, 2017

+ W.P.(C) 7828/2016, CM No. 32352/2016
ANIRBAN BHATTACHARYA

..... Petitioner

Through: Mr. Trideep Pais and Ms.
Vrinda Bhandari, Advs.

versus

JAWAHARLAL NEHRU UNIVERSITY THR
ITS REGISTRAR
JAWAHARLAL NEHRU UNIVERSITY

..... Respondent

Through: Ms. Ginny J. Rautray, Ms.
Kanchan Kaur Dhodhi and Ms.
Anushka Ashok, Advs.

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed with the following prayers:-

“In the facts and circumstances set out above, it is most respectfully prayed that this Hon’ble Court be pleased to:

a) issue a writ of certiorari or any other appropriate writ, order or direction calling for the records, quash and set aside respondent’s

i) Office Order No. 197/CP/2016 dated 22.8.2016;

ii) Appellate Committee proceedings dated Nil, based

on which Office Order No. 197/CP/2016 dated 22.8.2016 came to be passed;

iii) Office Order No. 143/CP/2016 dated 25.4.2016;

iv) Report of the High Level Enquiry Committee constituted by the respondent vide Notifn. No. Reg./Misc/16 dated 11.02.2016;

v) all other proceedings consequential to and arising out of the report of the High Level Enquiry Committee constituted by the respondent vide Notifn. No. Reg./Misc/16 dated 11.02.2016;

b) award the petitioner the costs of these proceedings;

c) Pass such further order or orders as this Hon'ble Court may deem fit."

2. The relevant facts as pleaded by the petitioner and contended by Mr. Pais are, a poetry reading event was held on the campus of the Respondent University on February 09, 2016, which attracted severe media frenzy, and led to widespread public animosity towards some students of the University, including the Petitioner. There were acts of violence in the Patiala House Court Complex against some students and even renowned Senior Counsel appointed by the Supreme Court. In these grim circumstances, the Petitioner, fearing for his safety, went into hiding on February 11, 2016. On the same day, the Respondent

set up a proctorial enquiry committee to look into the incident, and later withdrew the said proctorial enquiry committee and instead set up the HLEC to enquire into the event, identify any lapses which may have occurred, and recommend any actions to be initiated by the University. Although the Respondent was aware that the Petitioner was in hiding, the HLEC's proceedings were conducted in a rushed manner in the Petitioner's absence and its Final Report was forwarded to the Vice Chancellor on March 11, 2016.

3. The Petitioner remained in hiding till February 21, 2016, on account of the tense atmosphere at JNU and the violent attacks on the JNUSU President, Kanhaiya Kumar. He returned to the University premises on February 21, 2016, and stayed there till February 23, 2016. Subsequently, he moved W.P.(Crl.) No. 610/2016 and was arrested. He remained in Police and judicial custody till March 18, 2016, when he was released on bail.

4. That meanwhile, a "Show Cause Notice" dated March 14, 2016 issued by the Chief Proctor was sought to be served on the Petitioner on March 15, 2016, while he was incarcerated, which declared the Petitioner "have been found guilty" for violating the JNU Students'

Discipline and Conduct Rules and called upon him to explain by March 16, 2016 “why action should not be initiated against him”. The Show Cause Notice did not enclose a copy of the HLEC Report. This was followed by a letter dated March 16, 2016 issued by the Chief Proctor, extending the Petitioner’s time to respond to the Show Cause Notice till March 18, 2016 and enclosing a copy of the HLEC Report. Being in Tihar Jail, amidst the circumstances described above, the Petitioner viewed the send communications, purportedly holding him guilty without nay notice of ongoing proceedings, with suspicion and declined to receive the same. However, the Petitioner through his lawyer requested the University to supply him with the necessary details / information / documents pertaining to the enquiry, on March 18, 2016, which request was admittedly received but not even acknowledged by the Respondent.

5. It is the case of the petitioner, that he was released from Tihar Jail on bail on March 18, 2016 (which fact was admittedly known to the Respondent), but was still not informed of the proceedings against him. However, the Chief Proctor, with the approval of the Vice Chancellor, issued an order dated April 25, 2016 finding the Petitioner

guilty of violating the JNU Rules of Discipline and imposed a punishment of rustication till July 15, 2016, declared him out of bounds the entire campus w.e.f July 25, 2016 for a period of 5 years, and ordered the removal of his name from the rolls of the University forthwith during this period. Even after this order, the Petitioner vide letter dated May 03, 2016 wrote to the Chief Proctor and the VC, indicating the denial of natural justice on account of lack of notice and denial of reasonable opportunity to present his case; sought a recall of Office Order dated April 25, 2016; and again requested copies of relevant materials. When this letter was also met with no response from the University, the Petitioner was compelled to approach this Court through W.P.(C) 4130/2016, in which this Court noted that the Petitioner cannot be condemned unheard, and directed the Vice Chancellor of the Respondent to hear the Petitioner and other aggrieved students in an appeal.

6. The Petitioner thereafter filed an appeal on June 03, 2016 before the Vice Chancellor of the Respondent, highlighting the various deficiencies of the proceedings before the HLEC and the Chief Proctor, along with applications seeking the material information /

documents. Without acknowledging the receipt of the appeal, the Chief Proctor directed the Petitioner to personally appear before the Vice Chancellor at 11.00 am to 16.06.2016, to which the Petitioner again responded with a request for access to information / materials prior to the filing of the appeal. It may be noted that the hearing on June 16, 2016 was of 16 students, with the Appellate Committee allocating a 15 minute slot to each student to make his / her case. Moreover, during his slot, the Petitioner pointed out his handicap in making any representations without access to the relevant materials. In response, he was given a voluminous set of files to read and respond to 'by writing his appeal' in his 15 minute slot. The Petitioner thus wrote a letter dated June 17, 2016 (received on June 20, 2016) indicating the denial of reasonable opportunity to make his case, in terms of the principles of natural justice, as well as the specific requirements of the JNU Rules of Discipline. Once again, he requested access to the materials considered by the authorities at various stages, although he received no reply. Thereafter, the Impugned Order was passed in total violation of the prescribed rules and principles of natural justice, and completely ignoring the

representations made by the Petitioner through his multiple communications, as well as during the hearing.

7. Mr. Trideep Pais, learned counsel for the petitioner would submit, the petitioner was not served notice of the HLEC proceedings, which were concluded behind his back while he was in hiding (fearing for his life) and later, while he was in police and judicial custody.

8. He stated, HLEC could not have entered findings of his innocence or guilt or recommend punishment to be imposed, since its terms of reference extended only to recommending “actions to be initiated by the University as per its statutes and guidelines”, making it in the nature of a preliminary, fact-finding enquiry, and not a disciplinary enquiry. He would rely on the following judgments:-

(i) Nirmala J. Jhala v. State of Gujarat (2013) 4 SCC 301;

(ii) Nandita Narain v. Delhi University, 2015 SCC Online Delhi 6498.

9. He submitted, as is clear from the Respondent’s counter affidavit and documents placed on record in these proceedings, that the Respondent conducted no separate disciplinary enquiry – either in terms of the JNU Rules of Discipline and Conduct, or on any other

terms – after the HLEC submitted its report, and in fact relied solely on the HLEC Report. He would highlight, that respondent stated that the Petitioner ‘was punished’ by the HLEC. This pleading stands affirmed by the Show Cause Notice dated March 14, 2016 issued by the Respondent which notes that the Petitioner has ‘*been found guilty*’, the Impugned Order dated April 25, 2016 which imposes punishment on the basis of the Petitioner having been found “guilty” by the HLEC, as well as the Appellate Committee’s note dated September 06, 2016 on the hearing dated June 16, 2016 which also notes that the Petitioner ‘*was punished*’ by the HLEC. In this background, and in view of the decisions, referred to, the Impugned Order is vitiated for being premised on the HLEC Report, which is admittedly an outcome of a fact finding committee’s proceedings which were conducted behind the back of the Petitioner, and could not have rendered findings of guilt and recommended punishment.

10. According to Mr. Pais, the respondent University in compliance with Statute 32(5) of the Statutes has framed the Rules. He draws my attention to Rule 5 (1) of the Rules, which stipulates:

“No punishment shall ordinarily be imposed on a student unless he / she is found guilty of the offence for which he / she has been charged by a proctorial any other in other inquiry after following the normal procedure and providing due opportunity

to the student charged for the offence to defend himself’.

11. According to him, the rule therefore, has three important elements:

- the student must be charged by the authority conducting the enquiry – where the enquiry into the misconduct/indiscipline is being conducted by a proctorial board, the charge must be by the proctorial board, and when the enquiry into the misconduct / indiscipline is being conducted by some other enquiry committee, the charge must be framed by that enquiry committee.
- normal procedure must be followed;
- the student must be given due opportunity to defend himself against the charge.

12. He states, the respondent’s action against the petitioner is in violation of Rule 5 (1) of the JNU Rules of Discipline since he was not “charged” by a proctorial or other inquiry; “normal procedure” was not followed; and he was not given “due opportunity” to defend himself.

13. According to Mr. Pais, during the course of arguments, the Respondent initially claimed that the HLEC was the disciplinary enquiry committee and had issued notice to the petitioner by mail and in person, before finding him guilty. When the petitioner pointed that

HLEC could not have found him guilty as the terms of reference did not include examining the guilt or innocence of the petitioner; that the HLEC had not complied with the rule stipulated by JNU statutes; and it had not complied with the minimum principles of natural justice, the Respondent changed its stand and contended that the HLEC had not determined the Petitioner's guilt and that the HLEC was merely a preliminary fact-finding enquiry. Thus, it is the Respondent's own case that the HLEC was merely a fact finding body. Despite this, the HLEC has entered findings on the Petitioner's guilt and recommended punishments to be imposed on him. He submitted, that the said findings are totally unsustainable, inasmuch as the HLEC, quite apart from being legally incompetent to enter such findings, did not follow the mandatory procedure of Rule 5 (1) of the JNU Rules of Discipline.

14. With regard to the proceedings before the HLEC, he stated, the Respondent has produced notices allegedly addressed to the Petitioner and had sought to contend that the Petitioner chose not to participate in the HLEC's proceedings despite the same. However, the respondent has failed to adduce any proof of service of these notices on the petitioner, and more particularly the record itself indicates these

notices were not served on the Petitioner. According to Mr. Pais:-

- The notice dated February 12, 2016 remained undelivered as per the noting, which incidentally dealt with the caretaker of the Tapti Hostel (while the Petitioner was in Brahmaputra).
- The notices dated February 16, 2016 and February 18, 2016 are not accompanied by any proof or mode of service or dispatch.
- Pertinently, no effort was even attempted to be made to serve the Petitioner by email, despite JNU being fully aware of his email.
- The document sought to be put forth as proof of service, Counter is merely an internal register, without any proof of dispatch.

15. He reiterates, that the Petitioner as admittedly in hiding for fear of his life throughout the period of issuance of these notices. Mr. Pais stated, even assuming that these notices were served on the petitioner, it is apparent that they contain no charges and cannot even be described as “show cause notices” inasmuch as they do not specify the allegation/action in respect of which the Petitioner is being called upon to show cause. The notices produced by the Respondent simply

refer to “an incident” on 09.02.2016 and direct the petitioner to appear at a particular date and time *“to explain your position in this regard” and to “bring any evidence, which you wish to submit in support of your defence”*, without setting out any allegation / charge or indicating any action proposed to be taken. As such, these notices do not meet the basic legal requirements of a show cause notice, let alone a notice of charges.

16. According to him, even the show-cause notice dated March 14, 2016 that was sought to be served on him while he was in judicial custody at Tihar Jail, is not a ‘notice of charge’ in terms of Rule 5 (1) because-

a) The charge has to be framed by a proctorial or any other enquiry, in the instant case, the ‘show cause notice’ is not issued by the HLEC, which was the only enquiry set up by the Respondent. Admittedly, the HLEC had already conducted its proceedings and forwarded its Report to the Vice Chancellor on March 11, 2016.

b) It does not state that the petitioner is being charged; it only states that the petitioner has “been found guilty” by the HLEC.

c) The notice merely asks the Petitioner to show cause as to why

“disciplinary action should not be initiated” against him. As such, the only consequence which could follow from this notice was the initiation of a disciplinary enquiry against the Petitioner. If the petitioner had responded to the show cause notice and the Respondent had found his response satisfactory, proceedings against the Petitioner would then have been dropped. On the other hand, if the petitioner did not respond to the show cause notice or if his response was found unsatisfactory, the next step in terms of Rule 5(1) could only have been to institute a “proctorial or other enquiry”. It was then for the “proctorial or other enquiry” to frame charges against the petitioner. The show cause notice therefore, did not, as it could not have done, frame any charges against the Petitioner in terms of rule 5 (1).

17. He had submitted, a show cause notice must indicate the penalty / action proposed to be taken. He referred to ***Gorkha Security Services v. Government (NCT of Delhi), (2014) 9 SCC 105*** by contending in the instant case, the only action specified in the show cause notice was initiation of disciplinary action and not imposition of punishment. Consequently, the only action which could have followed was what was specified in the show cause notice.

18. Additionally, according to him, the Show Cause Notice, by stating that the Petitioner “*has been found guilty*” prior even to the initiation of the disciplinary enquiry against him clearly indicates the predetermined mind of the disciplinary authority. In this regard, he referred to *Oryx Fisheries v. Union of India (2010) 13 SCC 427* and *Tilakchand Magatram v. Kamala Prasad Shukla, 1995 Supp, (1) SCC 21* in support of his submission.

19. Mr. Pais would submit, the despite the petitioner repeatedly asking what procedure would be followed – first by the HLEC, and then by the Appellate Committee –the Respondent never informed the Petitioner. The Petitioner wrote to the respondent asking what procedure would be followed in the enquiry to be conducted against him on March 18, 2016, on May 03, 2016, on June 16, 2016 and June 17, 2016. However, the Respondent did not reply to any letter.

20. On procedure, he had submitted

- Petitioner was not informed the identity of the complainant
- The complainant’s statement was not recorded in Petitioner’s presence;
- The Petitioner was not called to record his statement;
- No lists of witnesses were called from the complainant or from the petitioner, so that they could be called to record their depositions;
- The Petitioner was not told what evidence was being received against him and thus what was the case against him;
- Petitioner was not informed of what material evidence – audio recordings, video recordings, paper documentation etc. were available, who was producing that material

evidence before the Committee; and how its veracity was being established;

- No comprehensive report was prepared, no specific charge was framed against petitioner, no show cause notice was issued to Petitioner in respect of any specific charge;
- The Petitioner was not given opportunity to cross-examine the complainant or any of the witnesses, even though HLEC relied on it.

21. It was his submission, even the abbreviated procedural safeguards followed in the cases of those accused of sexual harassment were not followed by the HLEC.

‘The Revised Rules and Procedures of the Gender Sensitization Committee against Sexual Harassment’ to be followed by the committee examining allegations of sexual harassment, provide for:

- Within two days of the institution of enquiry proceedings, the committee is mandated to prepare a summons with details of the complaint such as location, date and time on which the incident is alleged to have occurred and hand over the same to the complainant as well as to the defendant along with a copy of the rules and procedures applicable to the sexual harassment committee.
- The enquiry committee will make available to the defendant a copy of the original complaint lodged by the complainant.
- The complainant and the defendant will submit lists of witnesses.
- The defendant, the complainant and the witnesses will be intimated at least 72 hours in advance, in writing, of the date,

time and venue of the enquiry proceedings.

- The complainant and the defendant would have the right to cross-examine all witnesses.
- All proceedings of the enquiry committee will be recorded in writing and its proceedings, along with the statements of witnesses will be endorsed by the persons concerned in token of authenticity.
- Any documents sought to be tendered in evidence will be supplied to the adverse party.

22. He had submitted, there is no such Standard Operating Procedure, which could be followed.

- The Respondent filed what it claimed was the Standard Operating Procedure as Annexure N. Annexure N however is not one but two documents, one titled, 'Norms and Procedure to be followed by the Enquiry Committee' and another titled 'Norms and Procedure to be followed during the enquiry'.
- A bare perusal of both these documents indicate that this procedure was specifically devised for this particular enquiry into '*the event that has occurred*'; Thus, it was not normal procedure in any manner.

23. It is his submission, the 'Standard Operating Procedure' does not contemplate due opportunity - A bare perusal of the contents of the

‘Standard Operating Procedure’ evinces a total departure from the norms usually followed in a disciplinary enquiries, since no show cause notice, framing of charges or an opportunity to raise a defence, let alone right to cross-examination or other necessary facets of the principles of natural justice are contemplated. Consequently, “due opportunity to the student charged for the offence to defend himself” as required by Rule 5(1) was neither contemplated, nor granted by the HLEC.

24. He has referred to the judgments of this Court in *Amritashav Kamal v. JNU, 2007 (99) DRJ 528* and *JNU v. Flora Gupta, (2013) 133, DRJ 299 (DB)*.

25. Mr. Pais stated, the petitioner was not given ‘due opportunity’ to defend himself. He qualifies his submission by stating ‘due opportunity’ to defend in disciplinary proceedings includes, being informed clearly of the charges levelled; witnesses being examined in the presence of the person charged; person charged being given a fair opportunity to cross-examine witnesses and challenge the credibility of evidence and material tendered; person charged being given a fair opportunity to examine witnesses in defence; and findings being recorded, with reasons in support of the findings. In the present case, charges were not framed against the petitioner, evidence was led behind his back, and when the Petitioner asked for copies of the evidence so he could decide how to challenge it, he was refused. Further, the petitioner was not allowed to lead defence evidence. Clearly, thus, the petitioner was denied ‘due opportunity’ in terms of

Rule 5 (1) of the JNU Rules of discipline. In this regard, he referred to the following judgments:

- (i) *LIC v. R.K. Mahajan, 2015 SCC Online Del. 13616;***
- (ii) *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra (2013) 4 SCC 465;***
- (iii) *State of UP v. Shatrughan Lal (1998) 6 SCC 651;***
- (iv) *Committee of Management, Kisan Degree College v. Shambhu Saran Pandey and Ors. (1995) 1 SCC 404.***

26. It was also his submission, that the Appellate Committee's recommendations, and Office Order dated August 22, 2016, are in violation of the Principles of Natural Justice because the Appellate Committee asked the petitioner to defend himself without first providing the him with all the material on the basis of which he was being proceeded against:

27. The petitioner repeatedly asked for all documents on the basis of which disciplinary proceedings were being taken against him, as well as details pertaining to the rules of which violation was alleged. However, the Respondent never applied or even acknowledged receipt of:

- Letter dated 18th March, 2016.
- Letter dated 3rd May, 2016.
- Appeal to the Vice Chancellor dated 03.06.2016, which comprised the Memorandum of Appeal along with enclosed applications dated 27th May, 2016
- Letter dated 16th June, 2016
- Letter dated 17th June, 2016 received by the Respondent

on 20th June, 2016.

28. He stated, the non-supply of these documents was also pressed by the Petitioner in his earlier petition, W.P.(C) 4130/2016, based on which this Court had to pass order dated May 27, 2016 allowing him to file appeal, noting that it was a continuation of the main proceedings.

29. He would submit, the respondent cannot invite this Court to appreciate /re-appreciate evidence in answer to the petitioner's contention that the respondent violated applicable statutes and rules, and violated the principles of natural justice applicable to disciplinary proceedings. In other words, the petitioner has challenged Respondent's decision-making process on the grounds that the process violated applicable statutes and rules and basic principles of natural justice applicable to the disciplinary proceedings. The petitioner has contended that he was denied due opportunity to defend himself, inter alia because, he was denied access to the materials forming the basis of the findings against him.

30. This is particularly crucial because the petitioner placed on record vide his letter of June 17, 2016, that from a quick scan of some of the documents shown to him on June 16, 2016 he noticed that *"they purported to be a record of some statements, which statements were replete with falsehoods, and even worse, partial truths that were even more misleading than the outright falsehoods"*. If the respondent had followed statutes, rules, and the principles of natural justice, and had given the petitioner all the relevant material, and had taken evidence in

his presence instead of behind his back, the petitioner could have cross-examined / questioned / tested the veracity of the evidence / material against him and could have offered material in his defence.

31. As such, having denied the petitioner due opportunity to contest the merits of the allegations against him by violating statutes, rules and the principles of natural justice, it is not now open to the respondent to invite this Court under Article 226 to appreciate / re-appreciate evidence. In this regard, he has drawn my attention to the decision in ***Union of India v. P. Gunasekaran (2015) 2 SCC 610***. He reiterates his submission that the respondent cannot now be permitted to place the materials considered by it, for the first time, for scrutiny before this Court which is exercising its writ jurisdiction.

32. It was his submission, even before this Court, the Respondent has not placed all the material on the basis of which the HLEC or the Appellate Committee determined his guilt. He has stated, the preamble to the HLEC report states that it took the depositions of 7 university officials to establish the sequence of events. The body of the HLEC report is entirely reconstructed from ‘deposition’ taken by the HLEC and the HLEC refers to “depositions file”, “other depositions file”, and “security Deposition file”.

33. According to him, the Appellate Committee’s order of August 22, 2016 also states that

- “it went through the depositions by security staff of JNU, depositions of students, perusal of video clips..”

- it refers to the “written deposition of the of the Chief Security Officer to the HEC dated March 01, 2016.
- it refers to depositions of the security staff when its states “.. the same can be evidenced from the depositions of the security staff who went to inform...”, “.. has been withdrawn as per the deposition of Mr. O.P. Yadav (Operations Manager, G4S) and Mr. V.P. Yadav (Security Supervisor, G4S)
- Even the letter of the appellate committee of September 06, 2016 states that the documents included “written statements of security staff, students”.

34. He had stated, that the abovementioned ‘depositions’ have not been placed before this Court. In any event, it is not open to the Respondent, at this stage, to introduce reasons for its orders by way of pleadings and submissions made before this Court, which are not contained in the orders themselves. He referred to the judgment of the Supreme Court in *M.S. Gill v. Chief Election Commissioner, (1978) 1 SCC 405*.

35. It was his submission, the recommendations of the Appellate Committee and Officer Order of August 22, 2016, do not even advert to, let alone deal with, any of the grounds of challenge taken up by the Petitioner. He had stated, petitioner’s appeal raised eight grounds of challenge, serially A-H. Appellate Committee’s recommendation does not even refer to a single ground of challenge raised by the

petitioner, let alone decide or reject any of the grounds. In fact, according to him, petitioner's appeal of June 03, 2016 appears to have entirely escaped respondent's notice, and the Appellate Committee's recommendation and the respondent's decision to accept that recommendation, have been made entirely in ignorance of the petitioner's appeal. According to him, this is evident from the fact that although petitioner had appealed on 03 June, 2016, respondent's notice informing the petitioner of appeal hearing was, in relevant part, worded thus: "*you are requested to appeal to the Vice Chancellor, Appellate authority of the University, and depose on 16th June, 2016 at 11:15 AM*". Therefore, although the petitioner had already appealed on 03 June, 2016 as late as 16th June, 2016, the respondent was still communicating with the petitioner as if the petitioner had not lodged his appeal. Moreover, despite the filing of the appeal, the Appellate Committee directed the petitioner to 'write' his appeal during the hearing on June 16, 2016.

36. He stated, that not applying mind to relevant grounds of appeal is a grave failure to exercise jurisdiction on the part of the Appellate Committee that vitiates its recommendation and the respondent's decision taken on the basis of that recommendation.

37. He had submitted, Appellate Committee's failure to deal with the petitioner's grounds of challenge is particularly egregious since this Court had held that an appeal was continuation of the main proceedings and that the petitioner could not be condemned without his appeal being heard and considered.

38. The petitioner was thus first punished by order of the Vice

Chancellor dated April 25, 2016. The rules framed under the JNU statutes provided that the appellate authority against orders of punishment was the Vice Chancellor, and since it was the Vice Chancellor himself who had passed the first order of punishment, the Petitioner challenged that order before this Court in W.P.(C) 4130/2016. This Court had passed an order on May 13, 2016 in petitions filed by other students who had also been punished by the VC for the same incident, stating that “..... *An appeal is continuation of the main proceedings and no date of hearing is fixed in the present appeals, this Court is of the opinion that the petitioners cannot be condemned unheard*”.

39. He would submit, the petitioner’s punishment is grossly disproportionate, inasmuch as, the Respondent’s punishment declaring the petitioner out of bounds from the University of five year, w.e.f Monsoon Semester, 2016 has ensured that the Petitioner will not be able to give his viva voce, which is usually held on the University Campus, and is necessary pre-requisite for the conferral of his Ph.D. even though he has already submitted his Ph.D in July, 2016. The effect of the Appellate Committee’s decision is that the Petitioner’s entire time spent at the Respondent University from 2009 will come to nought since he will not be awarded a Ph.D till 2021. Further, by declaring the Petitioner out of bounds till 2021, the Respondent has also made it impossible for the Petitioner to ever meet his supervisors (whether in relation of his viva voce or for other academic work); apply for any job at the Respondent University itself (whether as a Research Assistant or in a teaching position as Assistant Professor);

attend a conference or seminar there; or partake in the public and academic life at the prestigious University, whether as part of his new job or in general. This will have a serious deteriorous effect on the Petitioner's professional future and will prove to be a great impediment in finding a job. Thus, the Respondent's punishment is grossly disproportionate. He presses for the reliefs as prayed for.

40. Ms. Ginny Routray, learned counsel for the respondent, on the other hand submitted that the petitioner was given ample opportunities to appear and depose before the Enquiry Committee along with the liberty to carry materials and evidences in his defense both at the stage of Enquiry, Show Cause Notice and Appeal. However, he failed to respond to the 3 notices dated February 12, 2016, February 16, 2016 and February 18, 2016 and further, refused to accept and respond to the Show cause Notice dated March 14, 2016. She had submitted that since the Petitioner failed to come forward and make his statement / depose before the said forums, he himself failed to avail the opportunity given to him and thus, there was no violation of Principles of Natural Justice and fair play.

41. According to Ms. Routray, that at the stage of appeal the decision is to be taken only from record before the deciding Appellate Authority. Rules under the Statute 32 (5) state that the *punished student has the right to appeal against the punishment and Vice-Chancellor is the empowered authority to deal with Appeals*. The Petitioner chose not to avail opportunities given to him, both at the stage of enquiry, by admittedly going underground and evading law,

and at the stage of Show Cause Notice by willfully not responding to the same, hence the writ petition on this ground alone is not maintainable.

42. She would submit, the petitioner is a student studying in JNU and resident of Hostel in JNU. The respondent no.1 is Jawaharlal Nehru University (JNU) established and incorporated by an Act of Parliament in the year 1966. That at 12 pm on February 09, 2016, the Respondent got to know that some students were planning to host an “anti-national event” in the evening at Sabarmati Dhaba. A meeting was called in the Vice Chancellor’s Office, wherein it was discovered that permission was sought from the Additional Dean of Students by the petitioner on the false pretext of holding a poetry reading competition at Sabarmati Dhaba. Despite the alleged “permission” immediately being withdrawn by the DOS, the Petitioner carried on with the event which led to an enormous law and order situation.

43. On February 11, 2016 forthwith a High Level Enquiry Committee (HLEC) was constituted by the Vice-Chancellor to enquire into the incident that took place on February 09, 2016 in the Respondent’s campus. By virtue of Section 5 (10) of the JNU Act read with Statute 32 (1) of the Statutes of the University-

“The Vice Chancellor has been vested with all the powers relating to discipline and disciplinary action in relation to students.”

44. She submitted the 3 member Committee later expanded to 5 by the Vice-Chancellor mainly consisted of University Professors and

since it was an internal enquiry of JNU, no third party was allowed to be present during hearing. Further, no one was allowed to be represented by a third party. The terms of reference for the Committee was:

- (i) *To enquire into the incident and ascertain sequence of events.*
- (ii) *Identify any lapses that may have taken place, and*
- (iii) *On the basis of **the findings**, recommend **actions** to be initiated by the University **as per its statutes and guidelines**.*

45. Subsequently, on February 12, 2016 Office Order No. 115/CP/2016 was passed, which stated as follows:-

*Based on the report submitted by the Chief Security Officer, video clipping of the events and other related documents, the High Level Enquiry Committee, constituted by the Vice Chancellor, JNU, is of the opinion that **prima facie evidence of the occurrence** of the following offences exists:-*

- (i) *Misrepresentation of the proposed event as a cultural evening although objective was to hold a political meeting.*
- (ii) *Forcefully holding the event even where the permission to hold it was withdrawn by the DOS.*
- (iii) *Creating a law and order situation on campus both at Sabarmati Hostel and Ganga Dhaba.*

(iv) *Shouting unconstitutional slogans, and making derogatory remarks about the nation.*

46. Prima facie considering the *seriousness of the offences*, and in order to enable a fair enquiry into the incident, the Enquiry Committee had recommended that the Petitioner along with certain other students be academically suspended from JNU with immediate effect during pendency of the enquiry. However, they were allowed to stay in their respective hostels as guests during the period of enquiry.

47. That the Petitioner was given ample opportunities to appear and depose before the committee along with the liberty to carry materials and evidences in his defence. The Committee issued their **First Notice** on 12.02.2016 and subsequently **Second** and **Third Notice** on 16.02.2016 and 18.02.2016 respectively to the Petitioner, directing him to appear before the committee and explain his position about the incident that took place on 09.02.2016 near Sabarmati and Ganga Hostel. The notices clearly mentioned that in the event the Petitioner fails to present before the Committee on the said date, it will be presumed that he has nothing to say in this matter, despite this the Petitioner failed to appear before the committee. The above mentioned notices were dispatched via the Central Dispatch of the University which is an independent department within the University. She submitted the notices were served at all his known addresses including his Hostel room and email-id. Further, as per the Hostel Manual of the University concerning Norms governing Hostel Life Chapter 2, Clause 2.5.3, states that – “*A resident who wishes to stay out late or*

remain absent overnight shall inform the warden concerned in the prescribed form.” However, there was no intimation on behalf of the petitioner that he would not be available in the hostel, therefore, it is presumed that the notices were served.

48. She submitted that despite notices being served, the petitioner still failed to appear before the Enquiry Committee. Moreover, the Petitioner never came forward to give his statement regarding the incident on 09.02.2016 let alone as much as deny his involvement in the same. The petitioner only came forward to appeal his punishment when he was directed by this Court to do so vide order dated 27.05.2016. She further submitted that Mr. Kanhaiya Kumar was arrested on 12.02.2016 and keeping in view that Mr. Kanhaiya Kumar was released on bail on 02.03.2016; he was given another opportunity to join the enquiry. Since the petitioner was evading law and therefore and cannot be permitted to claim indulgence of the Court.

49. According to Ms. Routray, the Enquiry Committee placed the said notices vide Emails along with service Report as **Annexure III** thereto. Meanwhile one week extension, i.e., up to 03.03.2016 to submit the recommendation was granted to HLEC. Thereafter the term of the Enquiry Committee was further extended till 11.03.2016. The HLEC followed Standard Operating Procedures devised by the HLEC specifically for the said enquiry during the course of enquiry. The HLEC spent considerable time in examining all the evidences pertaining to the event which included taking written depositions of eye witnesses and security officials, posters, SMS withdrawing consent

to hold Anti-National event form for seeking permission, examining the video clips submitted by JNU Security Officer and scrutinizing various documents / posters related to this incident. The video submitted to the Committee by the CSO was duly authenticated by a Government approved agency: Truth Labs, Bangalore. Subsequent to enquiry procedure, the HLEC recommended that the petitioner be charged under Category II of (Rules of Discipline and Proper Conduct of Students of JNU) of the statutes of the University and be rusticated till July 15, 2016 out of bounds from JNU Campus w.e.f July 25, 2016 for five years. The HLEC submitted its report along with recommendations to the Vice Chancellor on 11.03.2016.

50. She submitted that the HLEC gave ample opportunities to the petitioner and after repetitive reminders and notices the Petitioner chose not to appear. She would submit, the recommendation for disciplinary action was based on the findings of the HLEC. The HLEC recommended charges as well as punishment as per the Statutes and guidelines of JNU. The Chief Proctor, after perusing the report of the HLEC, issued a Show Cause Notice on 14.03.2016 and along with an extension dated 16.03.2016 along with a copy of HLEC report to the Petitioner. The Show Cause Notice stated the grounds under Clause 3 of Category II as –

(vi) *Furnishing false certificates or false information in any manner to the University.*

(ix) *Arousing communal, caste or regional feeling or crating disharmony amongst students.*

(xi) *Causing or colluding in the unauthorized entry of any person into the campus or in the unauthorized occupation of any portion of the University premises including halls of residences, by any person.*

(xxv) *Any other act which may be considered by the VC or any other competent to be an act of violation of discipline and conduct.*

51. The Show Cause Notice further asked the Petitioner to explain why **disciplinary action** should not be initiated against him for indulging in the above mentioned acts. The petitioner was asked to submit his reply to the Chief Proctor's Office latest by 16.03.2016, 17:00 hrs later extended till 18.03.2016 failing which it would be presumed that the Petitioner has nothing to say in his defence and the office would proceed further in the matter. She also submitted, the notice to the Petitioner was served in Tihar Jail, New Delhi which he categorically denied and refused to receive and also refused to give anything in writing. Even after the Petitioner was released on bail on 18.03.2016 he never responded to the Show Cause Notice. She submitted that instead of replying to the Show Cause Notice on his own account, a communication dated 18.03.2016 was received by the Chief Proctor's office from a person claiming to be the Petitioner's Counsel. The same was not given credence to for the following reasons as firstly, the students were well aware that it was an internal enquiry and thus, no third party representation was permitted. Secondly, the Petitioner himself having refused acceptance of the notices as recorded

by the Superintendent of Central Jail, no credence could otherwise be given to this fact as the Petitioner never requested / informed that he would be represented by a Counsel at that stage or any time thereafter.

52. According to Ms. Routray, on the Petitioner's failure to reply to the Show Cause Notice, the Respondent subsequently on 25.04.2016, after more than a month, passed an office order wherein it was stated that –

With reference to the 9 February 2016 incident of JNU Campus, the High Level Enquiry Committee (HLEC) has found Mr. Anirban Bhattacharya (Registration Number-7012477, Enrolment NO.09/61/MS/001, Year of Admission: 2009, M. Phil/Ph.D Student, Centre for Historical Studies, School of Social Sciences and a r/o. Room No. 226E, Brahmaputra Hostel) guilty on the following counts.

The University 'Rules and discipline and proper conduct of students of JNU', Clause-3 – 'Categories of misconduct and indiscipline', Category-II, Sub-Category (vi) prohibits 'Furnishing false certificates or false information in any manner of the University'.

As per the HLEC recommendation, Mr. Anirban Bhattacharya has been found guilty of

- a) Giving undertaking in the false pretext to hold a "Poetry Reading-A Country without a Post*

Office” at Sabarmati Dhaba on 9 February 2016 from 5.00 pm to 7.30 pm.

- b) not following the University procedure for holding the event.*
- c) misinforming the university security about the permission of event having been granted.*

The University ‘rules and discipline and proper conduct of Students of JNU’, Clause-3 ‘Categories of misconduct and indiscipline’, Category-II, Sub-Category (xi) prohibits ‘Arousing communal, caste or regional feeling or creating disharmony among students.’

As per the HLEC recommendation, Mr. Anirban Bhattacharya had been found guilty of

- a) lending his name in the poster titled “Against the Brahminical collective conscience! against the judicial killing of Afzal Guru and Mazboor Bhatt “in the name of Cultural Evening thus arousing communal and caste feelings.*

The University ‘Rules and discipline and proper conduct of students of JNU’, Clause 3 – ‘Categories of misconduct and indiscipline’, Category-II, sub-Category (ix) prohibits ‘Causing or colluding in the unauthorized entry of any person into the campus or in the unauthorized occupation of any portion of the University premises, including Halls of residences by any person’.

As per the HLEC recommendation, Mr. Anirban Bhattacharya had been found guilty of

(a) being the part of the group in which many outsiders were present, whereas the total number of participants mentioned in the booking form were seven only.

The university ‘Rules and discipline and proper conduct of Students of JNU’, Clause – 3 – ‘Categories of misconduct and indiscipline’, Category-Ii, Sub-category (xxv) prohibits ‘Any other act which may be considered by the VC or any other competent authority to be an of violation of discipline and conduct’.

As per the HLEC recommendation, Mr. Anirban Bhattacharya had been found guilty of

(a) addressing to the group of students in a wrongfully organized event and was found engaged in sloganeering.

(a) being the part of the procession from Sabarmati ground to the Ganga Dhaba during which objectionable slogans were shouted.

(b) Putting up objectionable posters and setting up a public addressing system at Sabarmati ground.

These charges on the part of Mr. Anirban Bhattacharya are very serious in nature, unbecoming of

a student of JNU and calls for stringent disciplinary action against him.

The Vice-Chancellor, in exercise of his powers vested in him under Statute 32 (5) of the Statutes of the University, has ordered that Mr. Anirban Bhattacharya be rusticated till 15th July, 2016 and then declared out of bounds from the entire JNU Campus w.e.f 25th July, 2016 for a period of 5 years. His name shall stand removed from the rolls of the University forthwith during this period. He is also debarred from taking admission in any programme of study of JNU during this period.

53. She stated, this Court in W.P.(C) 4130/2016 vide order dated 27.05.2016 directed that Order shall not be given effect till the appeal of the petitioner is heard and disposed of. Subsequently, the petitioner was given provisional admission to continue in the present semester keeping in view the order dated 27.05.2016 of this Court.

54. The petitioner in regard to the aforesaid Office Order and on this Court's direction vide order dated 27.05.2016, filed an appeal dated 03.06.2016 before the Vice-Chancellor wherein the Petitioner raised points on views taken by the High Level Committee and challenged the setting up of the High Level Enquiry Committee (HLEC) without giving any defense with respect to the events that unfolded on 09.02.2016. She emphasized that Notice dated 13.06.2017 with reference to the Report / recommendations of the HLEC regarding 9 February 2016 incident on JNU campus stated that

the Petitioner was requested to appeal to the Vice-Chancellor, Appellate Authority of the University and depose on 16 June 2016 at 11 a.m. at the Vice-Chancellor's Office. The hearing with respect to the appeal took place on 16.06.2016. The Respondent again granted time to some of the students to appear before the committee on 04.07.2016 who had failed to appear on 16.06.2016. The petitioner in his *Appeal under Statute 32 of the second schedule to the Jawaharlal Nehru University Act of 1966* stated-

I had not received any of the documents based on which you had levied punishment on me. In fact, I have still not been given any of those documents. I have, however, accessed some portion of the report of the High Level Enquiry Committee ("HLEC"), on which Office Order 144/CP/2016 claims to be based.

55. She submitted that each and every appellant had spent nearly three hours with all the documents and examined them in the presence of the one member of the Appellate Committee. The Petitioner further stated that the *said Office Order No. 144/CP/2016 and the decision to punish me is based on no enquiry and no material* and that the *Office Order is further contrary to Rule 5 (1) of the Rules of Discipline and Proper Conduct's stipulation of providing me with a due opportunity to defend myself*. She further submitted that the Petitioner was served with one notice after the other including a Show Cause Notice which he failed to acknowledge.

56. She would submit, the Respondent finally issued the Office Order NO. 197/CP/2016 dated 22.08.2016 wherein it was stated that

the petitioner *refused to answer questions and did not make any specific appeal to absolve himself from the charges made by the High Level Enquiry Committee*. The petitioner was asked the following questions:-

Were you present at Sabarmati Dhaba to attend the event on 9th February, 2017?

The Petitioner said that *“he will not speak anything until and unless he is provided with a photocopy of all documents requested by him in his earlier representation to the University Authorities”*. She submitted, the petitioner was provided with a complete set of files (security depositions, copies of relevant vides, copies of statements given by witnesses, copies of all correspondences, copies of report of HLEC, all other documentary proof) used by HLEC to arrive at the punishment with respect to the petitioner.

57. The Petitioner was asked further questions but he refused to cooperate.

The Questions were as under-

1. *Did you organize the event even after the objections were raised and permissions were denied by the administration?*
2. *Why did not provide a false pretext of poetry reading for the event whereas the event was totally different from what was suggested in the requisite form?*
3. *Why did you misinform the security that permission has been granted?*

4. *Are you aware that lending you name to an event, which speaks of caste and communal identities may cause problems on the campus?*
5. *Your addressing the group of students, shouting slogans, putting up the posters and setting up the public address system was also an act of indiscipline. Give your comments.*

Thus, according to Ms. Routray, the Petitioner was declared out of bounds from JNU campus w.e.f Monsoon Semester 2016, for five years.

58. She submitted that till date the petitioner has not volunteered to convey as to whether he was present during the event of 9 February, 2016 let alone admit or deny his involvement in the same. If the Petitioner had given his statement on the event, it may have given rise to certain issues as a result of which a further enquiry would have been initiated. However, the Petitioner never made any statement to controvert the findings of HLEC, show cause and Order dated 25.04.2016 despite being released on bail on 18.03.2016. Even at the stage of filing of Rejoinder the Petitioner has not denied even one of the documents which have been relied upon by the Disciplinary Authority while issuing Office Order dated 25.04.2016 nor has he stated what prejudice has been caused to him. The documents are as under-

1. His signature on the Booking Requisition Form.
2. Statements given in the said Requisition Form.
3. The Posters bearing his name.

4. Duly authenticated videos.
5. Deposition by Security Staff officials.
6. Deposition of eye witness.

59. Ms. Routray's submission was that the University's autonomy means its right of self-government and particularly, it's right to carry on its legitimate activities without interference from any outside authority. That the Appellant against whom charges were framed was given adequate opportunities to defend himself, and the committee followed the rules of natural justice while holding this enquiry. She would state, it is a settled law that matters falling within the jurisdiction of educational authorities should normally be left to their decision and this Court would not interfere unless it thinks it must do so in the interest of justice.

60. That the Respondent has acted within their authority, exercised judgment in good faith, and followed the applicable laws. The constitutional provisions, the provisions of the Act, the Statutes and the Ordinances and the principles of natural justice have been complied with by the Respondent. The Petitioner was served with notices at his hostel, at his various addresses including in jail and was asked to show cause and was also given opportunity to defend himself before the enquiry committee. The petitioner deliberately went into hiding from authorities and avoided legal proceedings and claimed it as a justified reason for not attending the enquiry proceedings. This conduct of the Petitioner does not attract any empathy from the authorities and this is only a ploy to gain political mileage out of these proceedings. The

Petitioner was given ample opportunity to defend but he himself lost the opportunity by not even responding to the simple queries raised by the Appellate Committee.

61. She submitted that this Court would only interference in matters where the punishment is disproportionate. However, in this case the petitioner was found guilty of the same offence, the previous year as well. Therefore, the punishment has been imposed considering all the available evidence and keeping in view the facts and circumstances of the case. The judgments relied upon by learned counsel for the respondent are:-

- (i) ***K.L. Tripathi v. State Bank of India and Ors 1984 (12) SCC 43;***
- (ii) ***State of Gujarat v. Pagi Bhura Bhai Rumal Bhai AIR 1969 Gujarat 260;***
- (iii) ***Ajeet Seeds Ltd. V. K. Gopal Krishnaiah 2014 (1) SCC 685;***
- (iv) ***Chief Commissioner of Income Tax (Administration) Bangalore v. V.K. Gururaj and Ors. 1996 (7) SCC 275;***
- (v) ***State of Punjab v. Bakhshish Singh 1997 (6) SCC 381;***
- (vi) ***Suresh Koshy George v. University of Kerala AIR 1969 SC 198;***

- (vii) *State Bank of Patiala v. S.K. Sharma* 1996 (3) SCC 36;
- (viii) *Ram Chander Roy v. Allahabad University* AIR 1956 ALL 40;
- (ix) *V. Ramana v. APSRTC & Ors* 2005 (7) SCC 335.
- (x) *M.V. Bijlani Vs. UOI and Ors.*, 2006 (5) SCC 88.

She seeks the dismissal of the writ petition.

62. Having heard the learned counsel for the parties and peruse the written arguments submitted by the counsels, it is noted that the subject matter of this petition is, the orders passed by the Competent Authority whereby a penalty of rustication till July 15, 2016 and then declared out of bounds from the entire JNU Campus w.e.f July 25, 2016 for a period of five years, was imposed on the petitioner, which order was upheld by the Appellate Authority. The enquiry relates to the events held on February 09, 2016 at the University Campus. The grounds of challenge by the petitioner are that the same was held without any notice to him as, at the relevant time he was hiding and lodged in Tihar jail, which aspect was known to the Authorities. In other words, for compelling reasons, he could not attend the enquiry. That apart, the proceedings have been held in violation of the JNU Rules of Discipline without furnishing the documents on which he has been held guilty. That apart, it is his case that he was not given proper hearing before the Appellate Authority; inspection of documents was a formality inasmuch as only fifteen minutes were given to him for the same. It is noted that the petitioner has also raised certain grounds on

the interpretation of the Rules and the scope of the Enquiry Proceedings, held under the said Rules against him.

63. The respondent has justified its action by contending that the Enquiry Proceedings were held by following the principles of natural justice. It is the petitioner, who failed to come forward and depose before the Committee. That apart, the respondent has also highlighted the seriousness of the charges for which the petitioner was held guilty. That apart, the appellate proceedings were held after giving due opportunity to the petitioner to inspect the documents and after inspection of the documents and upon hearing and inability of the petitioner to answer the queries put by the Appellate Authority resulted in passing the appellate order.

64. There is no dispute that the petitioner had filed an Appeal pursuant to the directions given by this Court in an earlier round of writ petition filed by the petitioner on June 03, 2016. It is also a conceded fact that the Vice Chancellor-Appellate Authority had held its meeting on June 16, 2016. There is also no dispute that the petitioner was shown the record of the enquiry. The parties are at variance about the duration for which the record was shown. It is a conceded fact that a hearing was given to the petitioner on the same day, which resulted in the passing of the impugned order in the month of August, 2016. It is the case of the petitioner that he wrote a letter dated June 17, 2016 indicating the denial of reasonable opportunity to make his case in terms of principles of natural justice and the requirements of the JNU Rules.

65. In his letter dated June 17, 2016, the petitioner has stated that on June 16, 2016 he was asked to go through five voluminous files and when he said he need at least three hours to go through the files, the same was refused and was told to go through the documents and make written representation, if he so wished. It is his case that he could able to scan some of the documents from which it is noted that the statements made in the enquiry were falsehood. He stated, he made a request for relevant documents mentioned in his appeal and in his earlier request dated June 16, 2016 in order that his right to appeal is meaningful and not a formality. That apart, it was argued by Mr. Pais that the petitioner, in his appeal had raised eight grounds of challenge, which have not been considered by the Appellate Authority. The Appellate order was passed on August 22, 2016.

66. Clause 12 of the Norms and Procedure followed during enquiry stipulates that every punished student has a right to appeal. In the case in hand, after this Court had passed the order on May 27, 2016 in the earlier writ petition filed by the petitioner being W.P.(C) No. 4130/2016, the respondent University issued a communication dated June 13, 2016 asking the petitioner to appeal to the Vice Chancellor and depose on June 16, 2016. The communication does not refer to the fact that the petitioner shall be given the relevant record/documents for inspection. Be that as it may, the learned counsel for the parties agree that the files/records/documents before the HLEC were given to the petitioner on June 16, 2016 to enable him to peruse the same and make submissions on the same day. Even

assuming, three hours were granted to the petitioner to inspect the documents on June 16, 2016, some time need to have been granted to the petitioner to apply his mind on the evidence so noted by him during the inspection, which was against him and to make an effective appeal. Surely, for such purpose, he may require reasonable time to prepare his case, which may include seeking legal advice. In fact, the petitioner vide his letter dated June 17, 2016 reiterated his earlier request to make available the documents to make appeal more meaningful. The procedure evolved by the Appellate Committee to allow inspection of the documents/records and hearing him could not be in conformity with the principles of natural justice and the law laid down by the Supreme Court in the case of *Associated Cement Company Ltd. v. Workmen and another (1964) 3 SCR 652*, wherein the Supreme Court was considering an appeal arising out of an industrial dispute between the appellant and the respondent workman with regard to dismissal of five workmen employed by the appellant company. One of the issue was that before the enquiry was actually actually held on June 11, 1952, notice was not given to Malak Ram, one of the workmen telling him about the specific date of the enquiry. The Supreme Court held that failure to intimate to the workman concerned about the date of the enquiry may, by itself, not constitute an infirmity in the enquiry, but, on the other hand, it is necessary to bear in mind that it would be fair if the workman is told as to when the enquiry is going to be held so that he has an opportunity to prepare himself to make his defence at the said enquiry and to collect such evidence as he may wish to lead in support of his defence. The

Supreme Court held, on the whole, it would not be right that the workman should be called on any day without previous intimation and the enquiry should begin straightaway. The Supreme Court held, such a course should ordinarily be avoided in holding domestic enquiries. In other words, the Supreme Court has held that an incumbent should be given sufficient opportunity to consider the evidence, which has come against him and to collect evidence in support of his defence. In the case in hand, no such time was given to the petitioner. That apart, if the material is being shown to the petitioner, on June 16, 2016, surely, some time should have been given to the petitioner to enable him to supplement his appeal already filed by him on June 03, 2016. This would be in conformity with the concept of fair play in action, which is the basis of natural justice. Not only that, even in these proceedings, the respondent has not filed on record, the complete record of the HLEC. In fact, in some of the connected petitions, a stand has been taken that only certain documents relied upon by HLEC were filed before this Court and the entire evidence, documents, notices and proceedings are maintained by the respondent in its official files. The same are available for any other scrutiny as and when the same is requisitioned before the Court. Even if some depositions were filed along with the written arguments in some connected cases, the same are in Hindi. They were also filed after the petitioner's counsel in this writ petition had advanced the arguments. Even otherwise, the HLEC report refers to deposition of some eye witnesses, which are in the deposition files. It is not clear, who these witnesses are, who are being referred to. All the evidence, documents,

notices and proceedings being in the official files, there was no occasion for this Court/counsel for the petitioner to look into the same for a proper appreciation/justification of the impugned orders. The submission of Mr. Pais, the petitioner in his appeal has raised several grounds but the Appellate Authority has not dealt with those grounds, is appealing.

67. On a reading of the order dated August 22, 2016, it is seen that the grounds have not been dealt with by the Appellate Authority. The Supreme Court in the case reported as **(2013) 6 SCC 530 Chairman, Life Insurance Corporation of India and others v. A. Masilamani**, in para 19 held as under:-

“19. The word “consider”, is of great significance. The dictionary meaning of the same is, “to think over”, “to regard as”, or “deem to be”. Hence, there is a clear connotation to the effect that, there must be active application of mind. In other words, the term “consider” postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority, should reflect intense application of mind with reference to the material available on record. The order of the authority itself, should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority, and proceed to affirm its order. (Vide: Indian Oil Corpn. Ltd. & Anr. v. Santosh Kumar, (2006) 11 SCC 147; and Bhikhubhai Vithlabhai Patel & Ors. v. State of Gujarat & Anr., AIR 2008 SC 1771).

Suffice to state, in view of the aforesaid judgment of the Supreme Court, it is expected that the Appellate Authority should have disposed off the appeal by a reasoned and speaking order. This I say so, there is nothing in the Rule, relating to appeal which says otherwise i.e it is not necessary for the Appellate Authority to pass a reasoned order.

68. Insofar as the judgments relied upon by Ms. Routray are concerned, in *K.L. Tripathi (supra)*, the issue, which fell for consideration was with regard to a challenge to the departmental enquiry by an employee on the ground that he was not provided opportunity to cross examine. The Supreme Court held that in the absence of any lis as to the facts, allegations having been not disputed by the delinquent officer, no prejudice has been caused. The issue, which has been considered in the aforementioned paras was only with regard to, whether sufficient opportunity was given to the petitioner to inspect the documents at the appellate stage and then submit an appropriate appeal after the inspection to make the appellate proceedings meaningful and purposeful. Hence, the judgment would have no relevance.

69. Insofar as the judgment in the case of *State of Gujarat v. Pagi Bhurabhai Rumalbai (supra)*, is concerned, in the said case the Gujarat High Court held that the delinquent has no right to seek a personal hearing at the appellate stage. In the case in hand, the personal hearing having been agreed by the University, it cannot be contended by Ms. Routray that the personal hearing was not required.

70. In *Ajeet Seeds Limited (supra)*, para 10 on which the reliance was placed, relates to a conclusion with regard to Section 114 of the Evidence Act, which enables the Court to presume that in common course of natural events, a communication made would have been delivered at the address of the addressee. A reference was made to Section 27 of the General Clauses Act, which gives rise to presumption that service of notice has been effected when it is sent to the correct address by registered post. The said judgment has no applicability on the limited issue being considered and decided by this Court.

71. In *Hira Nath Mishra and others v. The Principal, Rajendra Medical College, Ranchi and another* (1973) 1 SCC 805, the Supreme Court was concerned with a case where the appellants, the male students of a Medical College lived in the College hostel. A confidential complaint was received by the Principal from thirty six girl students residing in the Girls Hostel of the College alleging that the appellants with some others at late night had entered into the compound of the Girls Hostel and walked without clothes on them. The Principal constituted an Enquiry Committee consisting three Members of the staff. The identification through photographs was carried out and the Girls by and large could identify the appellants from the photographs. The appellants were called before the Committee one after the other. They were explained the contents of the complaint. Due care was taken not to disclose the names of the Girls, who made the complaint. The appellants denied the charges and

said they were in the Hostel at that time. The Supreme Court held as under:-

(i) The complaint made to the Principal related to an extremely serious matter as it involved not merely internal discipline but the safety of the girl students living in the Hostel under the guardianship of the college authorities. These authorities were in loco parentis to all the students-male and female who were living in the Hostels and the responsibility towards the young girl students was greater because their guardians had entrusted them to their care by putting them in the Hostels attached to the college. The authorities could not possibly dismiss the matter as of small consequence because if they did, they would have encouraged the male student rowdies to increase their questionable activities which would, not only, have brought a bad name to the college but would have compelled the parents of the girl students to withdraw them from the Hostel and, perhaps, even stop their further education. The Principal was, therefore, under an obligation to make a suitable enquiry and punish the miscreants.

(ii) The Police could not be called in because if an investigation was started the female students out of sheer fright and harm to their reputation would not

have cooperated with the police. Nor was an enquiry, as before a regular tribunal, feasible because the girls would not have ventured to make their statements in the presence of the miscreants because if they did, they would have most certainly exposed themselves to retaliation and harassment thereafter. The very reasons for which the girls were not examined in the presence of the appellants, prevailed on the authorities not to give a copy of the report to them. It would have been unwise to do so.

(iii) Therefore, the authorities had to devise a just and reasonable plan of enquiry which, on the one hand, would not expose the individual girls to harassment by the male students and, on the other, secure reasonable opportunity to the accused to state their case. The course followed by the Principal was a wise one.

(iv) Under the circumstances of the case, the requirements of natural justice were fulfilled, because principles of natural justice are not inflexible and may differ in different circumstances.”

From the above, it is noted that, keeping in view the nature of allegations against the male students; to protect the identity of the complainants, the girl students, the Supreme Court had upheld, the nature of enquiry conducted by the University as being in compliance with the principles of natural justice. The aforesaid judgment of the

Supreme Court has no applicability in the facts of this case and also on the limited issue that is being decided by this Court.

72. Insofar as the judgment of the Supreme Court in the case of **Suresh Koshy George** (*supra*) is concerned, in para 7 on which reliance was placed by Ms. Routray, the Supreme Court was considering a submission that the Vice Chancellor had not made available to the appellant a copy of the report submitted by the Inquiry Officer before asking him to make a representation. The Supreme Court rejected the contention by holding that the enquiry was held after due notice to him and in his presence. He was allowed to cross examine the witnesses examined in the case and he was permitted to adduce evidence in rebuttal of the charge. The Supreme Court also held, no Rule was brought to its notice, which stipulated the supply of report. The Supreme Court also observed that it was not the case of the appellant that he had asked for the copy of the report, which was denied to him. The judgment relied upon by Ms. Routray is distinguishable, inasmuch as the petitioner did not participate in the proceedings/the proceedings were held in his absence. Further, the Appellate Authority itself has offered to allow inspection of the documents/record of HLEC. The petitioner had asked for the documents/record/material in his appeal dated June 03, 2016. The Appellate Authority having allowed the inspection, reasonable time should have been given to the petitioner to supplement the appeal already filed by him on June 03, 2016. The judgment has no applicability, at least on the limited issue being decided by this Court.

73. Insofar as the judgment of the Allahabad High Court in the case of *Ram Chander Roy (supra)* wherein reliance was placed on paras 24 and 25, relates to the power of the Vice Chancellor to impose any punishment in maintaining the discipline of the University. There is no dispute on the said proposition of law. Insofar as the plea that the right of cross examination was denied is concerned, the High Court held that it was not convinced that in a case where Head of an Educational Institution takes disciplinary proceedings, it is necessary that he must give an opportunity to the student to cross examine the witnesses, who may be examined by him in order to satisfy himself that an occasion has arisen for taking disciplinary action against him. In matter of discipline, the Head of Educational Institution does not act as a judicial or a quasi judicial Tribunal. The Disciplinary power vested in any Officer or the Head of an Institution is a power which is absolutely necessary for and ancillary to the exercise of administrative functions in that capacity. Suffice to state, 32(5) of the Statutes of the University laid down the procedure. In any case, as stated above, on a limited issue, which is being decided, this judgment would not have any applicability.

74. In *State Bank of Patiala and Others v. S.K. Sharma (supra)*, Ms. Routray who relied upon para 35 to contend that no prejudice has resulted to the petitioner on account of not furnishing him the copy of the statements of witnesses as it cannot be said that he did not have a fair hearing is concerned, there is no dispute on the proposition, in view of the position of law noted above, but the limited time given by

the Appellate Authority to the petitioner to inspect the documents/material/record and to give a hearing on the same day would not be in conformity with the principles of natural justice. Surely, the Authority empowered under the Statute is required to give a reasonable opportunity to make the very purpose of the power being exercised by such Authority meaningful.

75. Insofar as *State Bank of Punjab and others v. Bakhshish Singh (supra)* is concerned, there is no dispute that the Court cannot sit as an Appellate Authority over and above the conclusion of the Disciplinary Authority that a particular act was a gravest act of misconduct warranting dismissal. As stated above, on the limited issue that is being decided by this Court, this judgment would have no relevance.

76. Insofar as *Chief Commissioner of Income Tax (Administration), Bangalore v. V.K. Gururaj and others (supra)* is concerned, the said judgment is on the proposition of deemed service, which in any case has no applicability for the reasons already stated.

77. Insofar as the judgment in the case of *V. Ramana v. APSRTC and Ors (supra)* is concerned, the same relates to the issue of judicial review with regard to punishment. The same has no applicability in view of limited issue that is being decided by this Court.

78. Insofar as the reliance placed by Ms. Routray on the judgment of *M.V. Bijlani (supra)* is concerned, in view of the limited issue that

is being decided by this Court, this judgment would have no relevance.

79. In view of my above discussion, the writ petition is allowed to the extent that the Appellate Order dated August 22, 2016 is set aside and the matter is remanded back to the Appellate Authority to enable the Appellate Authority to grant an opportunity of inspection to the petitioner of the record of the HLEC for continuous two days during office hours only by notifying the date and time to the petitioner for the same and upon such inspection, the petitioner shall have one week time to file a Supplementary Appeal, upon which the Appellate Authority shall give a hearing to the petitioner on a date and time fixed by the Appellate Authority, who thereafter shall, by considering the appeal(s) already filed by the petitioner and the Supplementary Appeal, if any pass an order as expeditiously as possible preferably within six weeks thereafter. Till such time, the order dated April 25, 2016 shall not be given effect to. It is also made clear in view of the undertaking given by the petitioner in W.P.(C) No. 4130/2016, the petitioner shall not indulge in any strike or dharna or agitation or coercive action in future in connection with the issue till such time the proceedings between the parties attain finality. No costs.

CM No. 32352/2016 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

OCTOBER 12, 2017/ak