

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 12, 2017

+ W.P.(C) 7910/2016 & CM 32732/2016

ASHUTOSH KUMAR

..... Petitioner

Through: Ms.Nitya Ramakrishnan,
Mr.Shadan Farasat, Mr.Ahmed
Said, Mr.Vibhor Jain, Advs.

versus

JAWAHARLAL NEHRU UNIVERSITY

..... Respondent

Through: Ms.Ginny J.Rautray,
Ms.A.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:-

*“Petitioner respectfully prays that this Hon’ble Court may
be pleased to:*

*i) Issue a writ in the nature of certiorari quashing the
impugned order vide Order No.200/CP/2016 dated 22nd
August, 2016 by the Chief Proctor of the Respondent
University imposing the punishment of withdrawal of*

hostel facility for one year, i.e the monsoon and winter semesters of 2016-2017 and a fine of Rs.15,000/- and/or;

ii) Issue a writ in the nature of Certiorari quashing the impugned order vide Order No. 146/CP/2016 dated 25 April 2016 by the Chief Proctor of the Respondent University; and/or

iii) Pass any other order that this Hon'ble Court may deem fit and proper."

FACTS:-

2. The relevant facts as pleaded by the petitioner are, he is a Ph.D. Student in the School of International Studies, with a very good academic record. A meeting was requisitioned by some students after first seeking permission on February 09, 2016. The petitioner was not involved in the requisition of the meeting. It is averred that the respondent say that some 'objectionable' slogans were raised at the meeting which, in any case has been condemned by the petitioner and the Students Union. On February 11, 2016 the respondent constituted what it termed as a High Level Committee to enquire into the events related to the aforesaid meeting. The HLEC summoned the petitioner to appear before it to explain its position without any indication what it was that he must defend against. The petitioner was placed under suspension. Between February 12, 2016 to February 23, 2016, the petitioner was asked by three communications to appear and explain his position and also bring evidence in support of his defence. However, during this period, the Parliament was told that an interim

report had found him and other's guilty and have been suspended. On February 25, 2016, the petitioner wrote to the High Level Enquiry Committee in response to the directions seeking his appearance on February 26, 2016 wherein he denied organizing the alleged event or raising objectionable slogans. He informed that he had been given nothing, no charge, no material and that this is no way of conducting the enquiry. It is his case, that he wrote another letter on February 26, 2016 to the High Level Committee asking for material that was considered by the Committee to be against him. Without responding to his specific charges and material, the Proctor send a written communication to the petitioner asking him to come for seeking some clarification. The Proctor's communication did not acknowledge his letter on February 25, 2016 and February 26, 2016 nor did it take note of his request for basic requirements, such as the minimum of being informed of the nature and basis of charges against him. The petitioner received a show cause notice from Proctor, wherein he was charged the following:-

“(ix) Arousing communal, caste or regional feeling or creating disharmony among students;

(xi) Causing or colluding in the unauthorized entry of any person into the campus or in the unauthorized occupation of any portion 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 authority to be an act of violation of discipline and conduct.”

3. On March 16, 2016, the petitioner received an incomplete and undated copy of HLEC report, which contained only eight pages and on annexures or supporting documents. It cannot be said from what was given to him, what the date of the HLEC report is and what its basis was. The only stray references to him in these few pages are that he was present when a procession moved, that having gathered there, he among others was busy organizing the event, which did not form part of the charges and that he addressed the gathering, although no finding has been made against him that he said anything objectionable at all. On March 18, 2016, he responded to the show cause notice denying the charges leveled against him. It is his case, in his reply, that completely inadequate material was given to him for defence, the lack of clarity on the conduct upon which the charges were based and the complete denial of all the material evidence. He also denied the charges leveled against him. On April 25, 2016, the petitioner received one of the impugned orders dated April 25, 2016 issued by the Chief Proctor of the University wherein he was found guilty of; (a) organizing the event at Sabarmati Ground at 4.45 pm; (b) Addressing to the Group of students in wrongfully organized event and engaging in sloganeering and; (c) being part of the procession from Sabarmati ground to Ganga Dhaba during which objectionable slogans were shouted. The order also withdraws the hostel facility for the monsoon

and winter semester of 2016-17 and was also imposed a fine of Rs.20,000/-.

4. The petitioner filed an Appeal under Clause 32(5) of the Statute to the Vice Chancellor against the punishment. The petitioner received no reply from the Vice Chancellor. A communication was received from Chief Proctor for a meeting on May 06, 2016 regarding the Appeal. The petitioner replied to the same agreeing to meet but pointing out that the Chief Proctor is not the Appellate Authority, the petitioner filed a writ petition being W.P.(C) No. 4395/2016 challenging the HLEC proceedings and order dated April 25, 2016. Vide order dated May 13, 2016, this Court directed the respondents to consider the appeal of the petitioner and in the meantime, punishments imposed were kept in abeyance. The petitioner and other students also agreed to withdraw the strike, which fact was taken judicial notice in the order of this Court. On June 16, 2016, the petitioner appeared in person before the Appellate Committee/VC. Further, on June 20, 2016, the petitioner submitted a written statement to the Appellate Authority/VC. On August 22, 2016, order is passed by the Chief Proctor of the respondent University.

SUBMISSIONS:-

5. It is the submission of Ms. Nitya Ramakrishnan that the statute framed by the Respondent University to regulate the mode of disciplinary action against students, is Statute 32(5), which is also the subject matter of Division Bench Ruling of this Court in ***Jawaharlal Nehru University v. Flora Gupta 2013 (133) DRJ 299***. The Division

Bench fully upheld the Single Judge ruling on what should be the attributes of due opportunity in such disciplinary proceedings. Statute 32(5) envisages two reports:

- The first one preceding the issue of a show cause notice and framing charges against students and
- The second one succeeding the show cause notice – to be prepared after examining the student’s defence in reply to the same. Disciplinary action or punishment is to be recommended only in the second report, which is forwarded to the Vice Chancellor for decision.

She says, whatever the nomenclature or mode of the body that may initiate the enquiry, punishment can only be imposed in terms of Clause 5(1) of Statute 32(5). This clause mandates “due opportunity” as well as a charge by an enquiry following normal procedure. What this due opportunity entails and what the normal procedure should involve is laid down in the *Flora Gupta (supra)* judgment, which squarely binds the Respondent University.

6. According to her, this Court in *Flora Gupta (supra)* has noted the requirement of two distinct enquiries, to ensure due opportunity, in the following terms:

“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. (emphasis supplied)

7. She submitted, the procedure under Statute 32(5) also stipulates that the deposition of witnesses should be recorded and if material evidence is available or submitted, the same should be verified by the person who submits those. It is unarguable that there must be application of mind at every stage – to whether there must be a charge at all and if so for what, and later to whether the charge is established after objectively assessing the defence and only thereafter to the punishment. The Student has a right to appeal a punishment imposed after following the aforesaid procedure. It was her submission that the appellate process must show an objective assessment of the grounds of appeal.

8. The procedure outlined above is in keeping with the basic rules of fair play. She submitted, that the norm cannot be varied at will and the process followed should be the Statute or a process analogous to

the same. She referred to the *Flora Gupta (supra)* in extenso.

9. According to her, the judgment of *Flora Gupta (supra)* mandates compliance with some norms, i.e., when the witnesses were examined etc. and the process leading to the imposing of punishment, should have the important attributes of the opportunity, i.e., that all the material against the student should be disclosed and the opportunity to cross-examine must be given.

10. She submitted, notice should be given to the accused student on the basis of the allegation against him. The enquiry report should indicate compliance with natural justice. The enquiry report should be self-explanatory, and the rationale for the inferences drawn by the enquiry committee should be comprehensible. Copy of the enquiry report must be given to the accused student along with the show cause notice.

11. According to her, in the present case, communications to the petitioner were sent on 12th, 16th and 23rd February, 2016 asking him to present himself before the HLEC. These communications asked the petitioner to explain his position and bring his defence without giving him the least idea of what he was to defend himself against. The petitioner had been placed under suspension on February 12 itself and Parliament had been informed that a set of students had been “found guilty”. The University was under siege and students had been viciously attacked by vigilantes. The Petitioner was outside the University until February 22, 2016 but wrote the University authorities

expressing his misgivings by a letter dated February 19 following which, the authorities issued a notice dated February 23 asking him to be present on February 26, 2016. By his replies of February 25 and 26, 2016, the petitioner explained that without any material or information on what he was expected to defend, it was hardly fair to summon him. He also brought to the attention of the authorities that his organization had outright condemned some of the slogans raised at the meeting of February 9, 2016. Strangely, nowhere has this ever been noticed by the authorities.

12. Without either responding to or complying with his repeated requests for the material evidence, and witnesses, depositions, by letter dated March 10, 2016, the Respondent authorities, asked the Petitioner to come for “some clarifications” on March 16, 2016. Yet, even before the petitioner could get to the Proctor’s office on March 16, 2016, he was served with a show cause notice on March 14, 2016. No document accompanied the same.

13. It was her submission, that the process uptill Show cause notice was vitiated. She has submitted the following.

(a) Petitioner was asked to bring his defence even well before any preliminary enquiry had taken place but nevertheless, he was told nothing on the “basis of the allegations” or even the allegations themselves as stipulated by *Flora Gupta (supra)*.

b) The Respondent authorities ignored the Petitioner’s clear request for the material against him, made in these words

by his letter dated February 26, 2016.

“The principles of natural justice entail that I should be given full opportunity to appreciate the charges against me, who my accusers are, what is the specific nature and substance of the complaint (s) against me, and the material evidence on which such charges are based. One of this has been provided to me.”

Instead, he was called for a clarification by the Proctor’s letter dated March 10, 2016, which said:

“You are requested to come to his office on March 16, 2016 at 3.00 p.m. and meet the undersigned in Room No. 108, Administrative Building in connection with seeking some clarification.”

- c) Evidently, the authorities felt that a clarification was required. Yet, even without securing that clarification, charges were framed on March 14, 2016. This shows malice in law on the part of the Respondent authorities. ‘Malice in law’ is defined as malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.

14. She submitted, between the Petitioner’s communications of February 25, 2016 and February 26, 2016 and of the HLEC report of some uncertain date in March, there was a gap and yet the HLEC did not factor in what was stated so explicitly in these communications even regarding the event of February 9, 2016 nor followed the mandate of Flora Gupta, of which JNU could not claim ignorance.

This is sufficient to show that the exercise was neither fair nor mindful of the imperatives of serious fact finding.

15. According to Ms. Ramakrishnan, the show cause notice listed three heads of charge : (i) Arousing communal, caste or regional disharmony, (ii) Causing or colluding in unauthorized entry or occupation of any person into the campus premises, and (iii) any other act which may be considered by the VC or any other competent authority to be an act of violation of discipline and conduct.

16. She submitted, the show-cause notice sets out heads of charge in terms of misconduct as specified in Statute 32(5). However, it does not set out the particular conduct of the student that is alleged to tantamount to the heads specified in the Statute. Furthermore, the third charge, i.e., “any other act which may be considered by the VC or any other competent authority to be an act of violation of discipline and conduct” is not a charge at all, and no defence is possible to such a charge. This provision in the statute [**Category II, sub-category (xxv) of Clause 3 of the JNU Students’ Discipline and Conduct Rules under Statute 32 (5)**] is meant to enable the administration to add to the listed situations of misconduct, if and when found necessary. In other words, it is residual power to notify some act as misconduct, but is, by itself, no head of charge or misconduct. That would be an absurdity both semantically and logically. Even as per Item 7 of the ‘**Norms and Procedures followed during enquiry**’, there has to be a specific charge – the specifics are not meant to be filled in at will after the defence is called for – which is precisely what has been done in

this case.

17. She had stated, the Supreme Court rulings are that the charge in disciplinary proceedings must not be vague and must state the specific acts or omission that form the basis of the allegations. She referred to the judgment of the Supreme Court in *Union of India and Ors. V. Ghyan Chander Chattar, (2009) 12 SCC 78*, to contend, the charges should be specific, definite and giving details of the incident, which formed the basis of charge.

18. According to Ms. Ramakrishnan, the show cause notice was not even accompanied by any enquiry report that could indicate to the Petitioner what he was accused of and on what basis, which is in violation of both Statute 32(5) as well as the DB judgment in *Flora Gupta (supra)*, as pointed above. However, on March 16, 2016 a truncated copy of 8 pages of the HLEC Report was given to the Petitioner, from which crucial information was missing. The list of witnesses examined was deliberately omitted from the information given. The video clips on which the HLEC relied were not given and details relating to their authorship, agency and verification were also concealed. The fact that, in a gross violation of fairness and due procedure, the HLEC had already recommended punishment, was also kept from the students. None of the annexures to the HLEC report was given. The Petitioner was not even informed that he could inspect the records. Nor was he enabled to access the relevant material against him in any other way.

19. She would submit, a truncated copy of the HLEC report was given to the petitioner on March 16, 2016. According to her, there was no material against him, and perhaps the secrecy was maintained to conceal this fact. The portions of the HLEC given to the Petitioner did not indicate the basis on which the Petitioner had been charged. Even the complete report fails to supply any rational basis of the charges. The references to the Petitioner were three, namely; (i) that he was “busy organizing the event”, (ii) that he “addressed the meeting”, and (iii) that he “was present” in the procession from Sabarmati Ground to Ganga Dhaba. None of these references, by themselves, make out the charges in the show cause notice dated March 14, 2016, which were: (i) Arousing communal, caste or regional disharmony, (ii) Causing or colluding in unauthorized entry or occupation of any person into the campus premises, and (iii) any other act which may be considered by the VC or any other competent authority to be an act of violation of discipline and conduct. She submitted, the content of the Petitioner’s so called “address” to the meeting is not even suggested. Nor there is any evidence on that aspect.

20. According to Ms. Ramakrishnan, the HLEC did not factor the Petitioner’s replies of February 25, 2016 and February 26, 2016 even though the report was not written until considerably later, sometime in March. The HLEC records that “a number of intimations was sent to students to appear before the Enquiry Committee out of which many students responded and gave their depositions”. However, what was

said in these depositions and by whom is not referred to, much less analyzed, in the HLEC Report.

21. She submitted that it is evident from the record that the Petitioner was never told of the dates on which witnesses were to depose against him, even before the HLEC. The evidence was not taken in his presence, nor was it conveyed to him. If the HLEC was a fact-finding enquiry, then too it is flawed for failing to be self-explanatory, and failing to show the basis of its conclusions or even the barest discussion of probabilities. It does not indicate the dates on which witnesses were examined or the substance of their depositions. It does not mention the source of the videos or the name of the maker of those videos. At any rate, the portions given to the Petitioner contained no such information. These omissions are all in violation of the attributes of the opportunity as per *Flora Gupta (supra)*.

22. According to Ms. Ramakrishnan, in terms of *Flora Gupta (supra)*, even such an enquiry should be conducted in a manner analogous to prescribed statute with full participation. And, if it were to be made the basis of punishment, then it should have enabled a meaningful participation of the student concerned. Yet, without even charging the students, the HLEC recommended serious punishments, in gross defiance of basic principles of fairness and also *Flora Gupta (supra)*. These were the precise punishments imposed later.

23. She would submit, the HLEC is vitiated, not merely because of its nomenclature or composition. It is vitiated because it contains no

basis for its findings, and is not supported by depositions or an application of mind to the facts brought before it or to the record. Its references to the Petitioner are not supported by any intelligible foundation such as names of witnesses or the substance of his utterances. The first references, relating to Petitioner “organizing the event”, is stated to be based on depositions of two security personnel, Mr. O.P. Yadav and Mr. V. P. Prasad, neither of whose depositions are part of even the documents filed in Court. They were, as stated before, never provided to the Petitioner, and have not even been provided till date. In fact, the only deposition filed by the Respondent is of one Mr. Naveen Yadav, the Chief Security Officer, which only says that the Petitioner “was present” at Sabarmati Ground on the relevant day and nothing more. The second reference to the Petitioner in the HLEC Report relates to him “addressing the meeting”. However, it is not stated on what basis or on whose deposition his finding has been reached. The third reference to the Petitioner says that “as per the deposition of eye witnesses”, he was present in the procession from Sabarmati Ground to Ganga Dhaba; however, neither are these eye witnesses named nor have any such depositions been provided to the Petitioner till date. Naveen Yadav, the only witness on record, does not support the HLEC findings on any of the three counts.

24. She stated, the perversity of the process is evident from the fact that (i) in the HLEC Report, only two witnesses, O.P. Yadav and V.P. Yadav, have been named as witnesses to the Petitioner organizing the event (ii) in court, where it is claimed that the entire record has been

placed, only one statement made a different person altogether – Naveen Yadav – has been provided to the Petitioner, which statements says no more than that the Petitioner was present and (iii) at the appeal, two witnesses (**“Gaurav Bali and Mr. Devendra Singh Bisht”**), who have hitherto never been mentioned, have been suddenly relied upon as primary evidence against the Petitioner. None of these real or imagined depositions have ever been given to the Petitioner. At any rate, there is no consistency or logic in the proceedings or record with regard to what, if any, was the material against the Petitioner and who, if any, were the witnesses, and what was it that they saw.

25. Further, the HLEC report refers to the video clips with no mention of the maker of the record. One of the video clips used for the enquiry is not authenticated even by the Forensic Laboratory. Thus, the HLEC report suffers from flaws of the kind that the Division Bench Judgment in **Flora Gupta (supra)** found to be serious. Yet, the report went so far as to recommend punishments.

26. The HLEC report is thus flawed in its process and the decision making based on it is equally flawed. She would submit, even the order of guilt and punishment are flawed. Despite the handicaps of the opaque process, the Petitioner replied to the show cause notice on March 18, 2016, but his defence contentions do not find a place anywhere in the scheme of things. He expressly denied all three actions referred to against him in the HLEC Report; of organizing the event, addressing the meeting and being part of the procession. He

further said that his organization had condemned the slogans allegedly raised at the event. He also said that the principles of natural justice had not been followed, as he had neither been given the material that formed the basis of the findings against him, nor was he informed of the dates when witnesses were deposing, nor was he allowed to cross-examine them. He pointed out that the copy of the HLEC report given to him was incomplete, and in any case, did not correspond with the charges stated in the show cause notice. However, no second report considering this submissions was prepared as required by Statute 32 (5) (Items (8) and (9) under the '*Norms and Procedures followed during enquiry*'). Further, none of these submissions in his defence were taken into account by the Respondent authorities while passing the impugned orders of punishment.

27. By order dated April 25, 2016, the punishment of withdrawal of hostel facilities for one year (monsoon and winter semesters of 2016-17) and fine of Rs.20,000/- was imposed on the Petitioner. The counts on which he was found guilty in this order are altogether different from those in the show cause notice. Evidently, the heads of charge relating to communal disharmony and collusion in unauthorized entry were not sustained and so dropped. Still, the residuary power was unjustly converted into the head of charge, even in regard to which there is no evidence on record, even in the material furnished even at this belated stage to the court.

28. According to Ms. Ramakrishnan, the process of appeal is also vitiated. Statute 32(5) refers to an appeal against the punishment.

This provision envisages fidelity to all other requirements of the Statue. It also envisages that punishment shall be recommended only after the student is enabled to make his defence. As none of those requirements were met in this case, it is not tenable to contend that the appeal should be limited to the quantum of punishment, especially when the High Court had directed hearing of the appeals as preferred. In any event, the Appellate Authority did not at all advert to any of the grounds of appeal, but instead made a farce of the process by subjecting the student to a veritable inquisition. The Appeal proceedings has erroneously claimed that the Petitioner refused to answer the inquisition, although his position on all the queries had already been twice, on record. Therefore, this was not a fair proceeding.

29. She submitted, the Appellate proceedings introduces completely new witnesses. The appellate proceedings before the Vice-Chancellor on 16.06.2016 record that the evidence relied upon to find the Petitioner guilty includes “the security staff Mr. Gaurav Bali and Mr. Devendra Singh Bisht, Deputy Manager, G4S”, who “wrote in their depositions that Mr. Kumar was present and was among the students putting up poser, mike and speaker for the event at Sabarmati ground” As stated before, neither of these two witnesses were even named in the HLEC Report. Yet, their names and depositions have been sought to be introduced for the first time at the late stage of the hearing of the appeal. Their depositions have also not been provided to the Petitioner *till date*, even though they have been relied upon as primary

evidence in the Petitioner's appeal. This shows that evidence has been interpolated at will at each stage.

30. She would submit, crucial documents never provided to petitioner. The Petitioner was not provided any of the depositions, documents and materials against him even at the time of the appellate proceedings although he sought them once again as early as in May 2016. In fact, several crucial documents/material have only been filed in court much later on 22nd September, 2016 along with the Short Reply of the Respondent in these writ proceedings. This crucial material includes:

1. Complete HLEC Report;
2. CD of recording along with report by Truth Labs;
3. Office Order 115/CP/2016 dated 12th February, 2016 ordering suspension of students pending enquiry;
4. Communication dated 11th February, 2016 of the Chief Security Officer;
5. Covering letter of the video clips sent by ABVP students on 1st March, 2016;

31. It is her submission that, the Petitioner has till date not been provided copies of the depositions of either the real or imagined; old or new names referred to at various points whether it be Mr. Gaurav Bali, Mr. Devendra Singh Bisht, Mr. S.S. Palni, Mr. O.P. Yadav, Mr.

V.P. Yadav etc. Non-supply to the Petitioner of the above material during the appellate proceedings vitiated the appellate proceedings. Showing the material to the students at the appeal hearing is no compliance with natural justice. At any rate, there was hardly time or occasion to put the same to any meaningful use: The incriminating material, if any, is required to be given to enable him or her to show cause before guilt is adjusted or punishment imposed. The failure to give the Petitioner access to the material against him, before imposition of punishment vitiated the same and was indeed a ground of appeal. Once the appeal was enabled by this Court, the Petitioner sought this material even in his appeal memo. Yet, for the next two months, he was not given access to the same. At the appeal proceedings, even if the claim that the material was *shown* to him is believed, it does not admit of any opportunity to rebut. And is thus of no consequence.

32. The Respondent University has contended in its Short Reply that in the appellate proceedings, it provided the Petitioner as well as each of the other students “three hours” to examine the documents and material against them. This contention of the university is not tenable and in any case, meaningless. The contention is not tenable since there was admittedly 21 students who came in for hearing that day, and the hearings were admittedly spread over 12 hours. In the notices to the appellate proceedings, specific time slots just 15 minutes apart were given to each of the 21 students. Thus, each student could only have held a maximum of 30 minutes to examine the material,

simultaneously with the interview, and therefore the possibility of giving each of them 3 hours does not arise. Even 3 hours at that final stage is absurdly insufficient to go through the voluminous documents.

33. She would highlight the contradictions in respondent's version of the manner of conducting appellate proceedings. Firstly, the impugned final order of punishment says that the Petitioner "*co-operated with the Appellate Authority*", while the enclosed record of proceedings of the Appellate Authority says that when the Committee members tried to ask the Petitioner questions, "*he did not co-operate with them*". Secondly, the Appellate Authority's order notes that the Petitioner did not answer the questions put to him, when in fact, answers to the same had been given by the Petitioner. However, it appears the Appellate Authority did not wish to note down answers that were exculpatory of, or favourable to, the Petitioner. For instance, there was no reason for the Petitioner to refuse to answer the question, "*Were you involved in the organization of the incident on February 9, 2016*"?, since he has been denying the same since his earliest communications.

34. She also submitted, the punishment imposed on the petitioner-of withdrawal of hostel facilities for a year, fine of Rs.15,000/-, and revocation of registration on non-payment of fine- is not only based on improper procedure and little evidence, but is also disproportionate. It is inconsistent with the principles of proportionality of punishment which are to be observed in disciplinary proceedings, as is settled law. She relied on the judgment of the Supreme Court in **Ranjit Thakur v.**

Union of India and Others, (1987) 4 SCC 611.

35. She stated, the above decision has been followed by this Court in *Akshay Chaudhary & Anr. V. University of Delhi & Anr., 2010 SCC OnLine Del 3061 : (2010) 174 DLT 645*, where the punishment imposed on a college student was reduced based on the principle of proportionality, and the fact that the educational institution “must necessarily have an introspective and a rational faculty as to why lesser penalty cannot be imposed” keeping the interest of the student’s career in mind.

36. She would submit, in the present case, the non-application of mind by the Respondent authorities, in relation to the quantum of punishment imposed on the Petitioner, is apparent from the following reasons.

Firstly, the misconduct that has been alleged is not borne out by the record at all, and even if the misconduct that is made out by the record is taken at the highest possible, the punishment is still disproportionate to the gravity of such misconduct. The only statement put on record by the university is that of Mr. Naveen Yadav, and this statement merely says that the Petitioner was present at the event. Thus, the material on record against the Petitioner, even taken at its highest, only suggests that he was present at the event on the relevant date, and nothing more. Therefore, even if the university were to punish the Petitioner, it ought to have taken into account that punishing mere presence at a non-violent gathering with withdrawal of hostel facilities

for an entire year and imminent revocation of registration for non-payment of fine, is disproportionate punishment.

Secondly, the fact that the Petitioner was merely present at the event should also have been seen in light of his good track record as a student at the Respondent university. His academic record has been very good, and he has not been indicated for any previous act of indiscipline by the university. The Petitioner has been attending the centre for Russian and Central Asian Studies at the School of International Studies of the university for three years. Even in his M. Phil., which he finished from the same Centre in 2014, he had a cumulative grade point average of 7.0. He has also held the positions of the President of the JNU Students' Union in the past. These factors also called for leniency in the quantum of punishment imposed on him, even if he was to be punished for mere presence at the event.

Thirdly, the HLEC provided no rationale for why, despite the same material (as per record) being available against some other students of the university too, the HLEC recommended lesser punishment for them as compared to the Petitioner. The statement of Mr. Naveen Yadav names four other students of the university, besides the Petitioner, as being "present" at the event. These students are Ms. Shweta Raj, Mr. Rama Naga, Mr. Anant Prakash Narayan and Ms. Aishwarya Adhikari. However, the HLEC's recommendations show that while each of these four students have been punished with a fine of Rs.20,000/-, the Petitioner has been punished additionally with deprivation of hostel facilities for a year. No reason for

recommending this differential and disproportionate punishment was provided by the HLEC. The HLEC also did not hear the students before deciding the quantum of punishment to be recommended for each of them, which recommendations in any case were a violation of statutory procedure. Thus, the disproportionate punishment recommended against the Petitioner was thereafter imposed on him by the first order of punishment impugned.

Fourthly, the punishment against the Petitioner was substantially upheld by the Appellate Authority, which reduced a modest amount of Rs.5,000/- from the fine without truly factoring in his prayers for leniency based on the harsh impact the punishment would have on his right and access to education. In his written appeal dated May 02, 2016 to the university, besides raising the ground of his good academic record, the Petitioner also stated that he is an outstation student of humble financial means, who relies on UGC grant to finance his studies and on hostel facilities provided by the Respondent university. He said that being removed from the hostel for two semesters at this stage would effectively deprive him of access to his research. Library and guide facilities as he has no place to stay in Delhi, which is prohibitively expensive. Thus, the punishment imposed on the Petitioner would cause irreparable harm to his career pursuits and his right to education. The Petitioner also voiced these concerns in his written statement dated June 20, 2016 to the Appellate Authority after the appellate hearing had taken place. Despite all this, his punishment was largely upheld by the Appellate Authority in the

second impugned order. The impact on the Petitioner's education was not taken into account.

37. For the reasons set out hereinabove, Ms. Ramakrishnan stated that the HLEC report as well as impugned orders of punishment dated April 25, 2016 and August 22, 2016 should be quashed and the punishment awarded to the Petitioner be set aside.

38. On the other hand, Ms. Ginny Rotray learned counsel for the respondent would submit, the Petitioner is a student studying in JNU and resident of Hostel in JNU. He was also the President of JNUSU last year. The Respondent No.1 is Jawharlal Nehru University (JNU) establishment 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.

39. 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.”

40. According to her, 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**.*

41. The HLEC followed Standard Operating Procedures devised by the HLEC specifically for the said enquiry during the course of enquiry. The Petitioner was given ample opportunity to appear and depose before the Enquiry Committee along with the liberty to carry materials and evidences in his defence 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. Further, the Respondent again vide letter dated February 23, 2016 wrote to the Petitioner that *We understand that you are present on the JNU campus since 22nd February, 2016. You are again directed to appear before the Enquiry Committee on 26th February, 2016 at 11:00 am in Room No.108, Administrative Building JNU, New Delhi to explain your position in this regard.* However, the Petitioner failed to do so. The Petitioner wrote to the HLEC on February 25, 2016 a day before he was asked to appear before the committee wherein he acknowledged the receipt of the notices but refused to appear before the committee as he felt that it unfair and biased, further, he claimed that he felt unsafe. Ms. Routray stated, that extra precautions were taken to ensure safety of the students. There were no attacks on students within the JNU campus and moreover, the Petitioner was already present on JNU campus from at least February 22, 2016. Therefore, it is clear that the Petitioner did not intend to cooperate with the Respondents though claimed by him in his representations; the Petitioner was further expected to cooperate with the proceedings as he was former President of JNUSU. The Petitioner was well aware of the charges against him of creating law and order situation and holding an event in contravention to JNU's rules. According to Ms. Routray, in his written response he admitted that he was part of the event and also the procession and he raised slogans. The deposition of the Chief Security Officer clearly shows that the Petitioner participated at the event. He was also identified with raised hands in the authenticated video.

42. She would submit, that since the Petitioner failed to come forward and make his statement/depose before the said forum, he is deemed to have accessed the files on which the HLEC Report is based as he himself failed to avail the opportunity given to him and thus, there was **no violation of Principles of Natural justice and fair play**. She stated, the Petitioner waived his right for availing all due opportunities. The petitioner again wrote to the HLEC on February 26, 2016 instead of appearing before it provided in the Notice dated February 18, 2016. The Petitioner alleged that the Suspension Order was passed without allowing the Petitioner to speak in his defense, which is incorrect. The order is very clear 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, was 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 when 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.*
- (iii) *Shouting unconstitutional slogans, and making*

derogatory remarks about the nation.

43. 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. Subsequently, a letter was addressed to the Petitioner by the Chief Proctor on March 10, 2016 which stated that-

You are required to come to this office on 1603.2016 at 3.00 p.m. and meet the undersigned in Room No.108, Administrative Building in connection with seeking more clarification.

44. However, the Petitioner failed to do so. Further, a Show Cause Notice was issued on March 14, 2016 which was served to the Petitioner along with the HLEC Report. The Show cause Notice asked the Petitioner to explain why disciplinary action should not be initiated against him. The Petitioner in his reply to the Show Cause Notice dated March 18, 2016 stated that he was not allowed to cross examine witnesses as per the guidelines laid down under Statute 32(5) of the Statutes of the University and that the Show Cause Notice clearly states that I have been found guilty of the offence. *This is a denial of due process as required by even the barest standards of natural justice.* In this regard, she had stated, that the accused was

called for recording his statement. Further, other evidence and witnesses are called to depose before the committee followed by a cross examination of the accused and the complainant. However, in this case **since the Petitioner never came forward to record his statement the opportunity to cross examine cannot be availed.**

45. She reiterates her aforesaid submissions by stating 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, examining the video clips submitted by JNU Security Office and scrutinizing various documents/posters relating to the 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 withdrawn from hostel facility for one year and imposed a fine of Rs.20,000/-. Thus, there is no illegality, arbitrariness and full opportunity was afforded to the Petitioner.

46. In the order dated April 25, 2016, it was stated that-

With reference to the 9 February 2016 incident of JNU campus, the High Level Enquiry Committee (HLEC) was found Mr. Ashutosh Kumar (Registration Number-71291,

Enrolment No:12/45/MI/004, Year of Admission: 2012, M. Phil./PH.D. Student, Centre for Russian and Central Asian Studies, School of International Studies and a r/o. Room No,34, Kaveri Hostel) guilty on the following counts.

As per the HLEC recommendation, Mr. Ashutosh Kumar has been found guilty of

- a) Organizing the event at Sabarmati ground at 4.45 pm*
- b) Addressing to the group of students in wrongfully organized event and **engaged in sloganeering***
- c) Being part of the procession from Sabarmati ground to ganga Dhaba during which objectionable slogans were shouted.*

This act on the part of Mr. Ashutosh Kumar is 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 the hostel facility of Mr. Ashutosh Kumar be withdrawn for both monsoon and winters semesters of 2016-017) and has also imposed a fine of Rs.20,000 (Rupees twenty thousand only). He is directed to deposit the fine by 13 May 2016 and show the proof thereof to this office, failing which the Hostel facility will be withdrawn with

immediate effect and further registration will not be allowed.

All the Hostels of the University will remain out of bounds of Mr. Ashutosh Kumar during this period. Anyone giving shelter to Mr. Ashutosh Kumar in any premises of the University will invite strict disciplinary action against the persons(s) concerned.

47. Further, on May 02, 2016, the Petitioner appealed against the above mentioned Office Order wherein he denied the allegations levelled against him and falsely claimed that he wasn't aware of the charges levelled against him. He further claimed that he was not given an opportunity to study the evidence and depositions against him. According to her, the charges framed against the Petitioner were based on eye witness depositions, video clippings and the depositions by security officials. Further, the Petitioner's own statements were used as evidence against him.

48. She stated, this Court in W.P. (C) 4395/2016 vide Order dated May 13, 2016 directed that the Order shall not be given effect till the appeals of the petitioners are heard and disposed of. Subsequently, the Petitioner was given provisional admission to continue in the present semester keeping in view the Order dated May 13, 2016 of this Court.

49. The Petitioner has also in his appeal 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 February 09, 2016. On June 13, 2016 a letter was served to the Petitioner which stated that-

*With reference to your appeal against the Report/recommendations of the High Level Enquiry Committee (HLEC), regarding 9 February, 2016 incident on JNU campus, you are requested to appear before the Vice-Chancellor, Appellate Authority of the University, and **depose** on 16 June 2016 at 11.45 a.m. at Vice-Chancellor's Office.*

50. On June 20, 2016, the Petitioner wrote a letter to the Vice Chancellor wherein he stated that- *"It is only for the first time on June 16, 2016 I was shown some files and told I could if wanted look at some of the material....."*. She stated, that in his written statement dated June 20, 2016 the Petitioner has not sought for further inspection of documents and further, the final Office Order was passed only on August 22, 2016. According to her, the petitioner further stated that *"I was shown a video clip and I pointed out that I was nowhere to be seen in the same....."*. As per the deposition of the security officials and other eye witnesses, it is clear that the Petitioner was very much present at the venue. Furthermore, the Petitioner can be seen in the duly authenticated video clips as well. Also, after inspection of records on June 16, 2016, the Petitioner does not controvert veracity of any deposition in the above mentioned letter. From the HLEC Report he is well aware that the deposition of the security staff was

relied upon while constructing his role in the event. Hence, he has availed full opportunity and not assailed the order on sufficiency of evidence after inspecting the same on June 16, 2016.

51. On August 22, 2016 Office Order No.200/CP/2016 passed by the Respondent which stated that-

With reference to the 9 February 2016 incident on JNU campus and as per the Hon'ble High Court Order dated 13 May 2016, Mr. Ashutosh Kumar (Registration Number: 71291, Enrolment No: 12/45/MI/004, Year of Admission: 2012, M.Phil./PhD. Student, Centre For Russian and Central Asian Studies, School of International Studies and a r/o. Room No.261 (old), Brahmaputra Hostel) was requested to appear and depose before the Vice Chancellor, the Appellate Authority of the University, on 16 June 2016 at 11.45 a.m.

During his deposition before the Appellate Authority, Mr. Ashutosh Kumar Co-operated with the Appellate Authority and asked for leniency.

The punishment, as recommended by the Appellate Authority, on Ashutosh Kumar is withdrawal of hostel of one year (i.e., Monsoon and Winter Semester, 2016-17) and fine of Rs.15000/-. The payment of fine will be have to be made within two weeks from the date of implementation of this order. In addition, as per the Appellate Authority

recommendation, Mr. Ashutosh Kumar is also directed to submit the attached undertaking within two weeks of the receipt of this order.

52. She stated, the Appellate Committee went through the depositions by the security staff of JNU, depositions of students, perusal of video clips and documents on record to reconstruct the incident and determine the role of Mr. Ashutosh Kumar in the February 9, 2016 event on JNU campus. The Petitioner was provided a complete set of files (security depositions, copies of relevant videos, copies of statements given by witnesses, copies of all correspondences, copies of the report of HLEC, all other documentary proof) used by the HLEC to arrive at the punishment with respect to the Petitioner.

53. The Petitioner having been given ample time by the committee to examine all the files before he could write his appeal and he did read through the files and made an appeal which was contradictory in terms of his initial statement that he did not see any video of the event, and again in a subsequent statement dated June 20, 2016 he claims that he was shown a video clip, the action cannot be faulted. The following evidence was relied upon:-

- 1. The security staff Mr. Gaurav Bali and Mr. Devendra Singh Bisht, Deputy Manager G4S wrote in his depositions that the Petitioner was present and was among the students putting up poster, mike and speaker*

for the event at Sabarmati Ground?

2. As per the deposition of security staff the petitioner addressed a group of students in wrongfully organized event and was engaged in sloganeering.

3. As per the statements of eye witnesses, security persons, students and report of HLEC, the Petitioner was part of the procession from Sabarmati ground to Ganga dhaba during which objectionable slogans were shouted.

54. In this appeal dated May 02, 2016, the Petitioner had questioned the formation of HLEC itself, and asked for documents and evidence related to his involvement in the event. The Petitioner denied his involvement in the event and stated that he was present at the Sabarmati Dhaba on 9th February, 2016 for a short while. He also denied that he took part in the procession from Sabarmati to Ganga Dhaba. He stated that he is a son of an ordinary Railway employee and hence he cannot afford to pay fine of Rs.20,000. **The committee taking a lenient view recommended that his punishment may be moderately reduced by the Appellate Authority.** The committee recommended that his hostel facility should be withdrawn for one year and he has to pay a fine of Rs.15,000/-. In addition, he has to give an undertaking on a prescribed format to Chief Proctor office. The Petitioner however failed to controvert and address the charges levied against him i.e. the charge of sloganeering and putting up posters as mentioned in the HLEC. He only challenged the charge of organizing

the event.

55. That the University's autonomy means its right of self-government and particularly, its right to carry on its legitimate activities without interference from any outside authority. That the petitioner 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 submit that it is a settled law that matters falling within the jurisdiction to 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. She relied on the judgment of this Court in ***Jawaharlal Nehru University V. Flora Gupta, LPA 570/2012 & CM No.14010/2012***, wherein it was held that-

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 or such 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.

56. It is the submission of Ms. Routray that the Respondent has acted within their authority, exercised their judgment in good faith, and followed the applicable laws. The constitutional provisions, the provisions of the Act, the Statute 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, in his various addresses and was asked to show cause along with the opportunity to defend himself before the enquiry committee and at the stage of Appeals. Only certain documents relied upon by the 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 may be requisitioned before the Court. She has stated, the Legal Submissions made and judgments relied upon in Umar Khalid V. JNU, W.P. (C) 7826/2016 and Anirban Bhattacharya V, JNU, W.P. (C) 7828/2016 may be read as part and parcel of the present submissions. The said judgments 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 & Ors.* (2006) 5 SCC 88.

In view of the above facts and circumstances, she prayed for the dismissal of the writ petition.

57. Having heard the learned counsel for the parties and perused the written arguments submitted by the counsels, it is noted that the subject matter of this petition is a challenge to the order passed by the Competent Authority whereby a penalty of withdrawal of hostel

facility of the petitioner for both the monsoon and winter semester of 2016-2017 and a fine of Rs.20,000/- was imposed on the petitioner, which order was modified to the extent that the fine has been reduced to Rs.15,000/ by the Appellate Authority with a direction to give an undertaking. 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 whole process till the show cause notice is vitiated as the respondent Authorities have ignored the petitioner's request for the material against him; the charges framed against the petitioner in the show cause notice are in violation of Statute 32(5), it does not set out the particular conduct of the petitioner that is alleged against him that; (i) arousing communal, caste or regional disharmony; (ii) causing or colluding in unauthorized entry or occupation of any person into the campus premises. Further, the third charge i.e any other act, which may be considered by the Vice Chancellor or any other Competent Authority to be an act of violation of discipline and conduct is not a charge at all and no defence is possible for such a charge; the show cause notice was not even accompanied by the enquiry report that could indicate to the petitioner what he was accused of and on what basis. It was only on March 16, 2016 a truncated copy of eight pages of HLEC report was given to the petitioner, from which crucial information was missing. The list of witnesses examined was deliberately omitted from the information given. The HLEC itself had recommended punishment was also not supplied to the petitioner. None of the annexures to the HLEC report were given. The petitioner was not told that he could inspect the

record. One of the grounds of challenge includes that the finding of the HLEC report is perverse. The HLEC report did not factor the petitioner's replies on February 25/26, 2016. The deposition of two security personnel O.P. Yadav and V.P. Yadav have not been provided till date. The only deposition filed by the respondent is of Naveen Yadav, Chief Security Officer. In the appeal, two witnesses Gaurav Bali and Devendra Singh Bisht, who have never been mentioned, have been suddenly relied upon as primary evidence against the petitioner. One of the grounds is even the punishment imposed is disproportionate to the charge. Appeal process has also been challenged, inasmuch as showing the material to the students at the appeal hearing is no compliance with the principles of natural justice. Even otherwise, there was hardly any time or occasion to put the same to any meaningful use.

58. The respondent, on the other hand justified its action stating that the enquiry proceedings have been held by following the principles of natural justice. It is the petitioner, who failed to come forward and depose before the Committee despite notices. That apart, the respondent has highlighted the seriousness of the charge for which the petitioner was held guilty. It is the stand of the respondent that due notice was given to the petitioner to inspect the documents and upon hearing during which the petitioner denied his involvement in the event and stated that he was present at Sabarmati Dhaba on February 09, 2016 for a short while; it is the stand of the respondent that he denied that he took part in the procession from Sabarmati to Ganga

Dhaba; the petitioner has also stated, he being a son of an ordinary railway employee, he cannot afford to pay fine of Rs.20,000/-. The respondent's stand is, the Appellate Committee taking a lenient view recommended that the punishment may be moderately reduced by the Appellate Authority and accordingly, the appellate order was passed on August 22, 2016. In other words, the respondent has justified the impugned action.

59. 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 13, 2016 in the earlier writ petition filed by the petitioner being W.P.(C) No. 4395/2016, 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 purposes, he may have required reasonable time to prepare his case, which may include seeking legal advice. 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 issues was that before the enquiry was 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/time 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 May 02, 2016. This would be in conformity with the concept of fair play in action, which is the basis of natural justice. That apart, 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 in the written submissions 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 are requisitioned before the Court. Even if some depositions were filed along with the written arguments in some connected cases, the same are in Hindi. Even otherwise, the HLEC report refers to deposition of some eye witnesses which are in the deposition file. It is not clear who the 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.

60. That apart, it is seen that the petitioner in his appeal dated May 02, 2016 has raised the following grounds:-

(a) He was never informed of the specific offence, he said to have committed;

(b) The only material he had accessed to for the purpose of understanding the charges against him was the truncated extract of HLEC;

(c) The charges framed against him in the show cause notice have not been established;

(d) He has been punished for being the organizer of the event and for shouting objectionable slogans, which have been denied by him in his reply to the show cause notice;

(e) The enquiry which has been conducted against him is in violation of the Statutes and the relevant Rules of the University;

(f) The penalty imposed against him is disproportionately harsh.

(g) Without an opportunity to study the evidence and depositions against him, he is prejudiced as he cannot mount a reasonable defence or bring his own defence to the fore.

61. That apart, I note that the petitioner vide his letter dated June 20, 2016 has referred to the proceedings held on June 16, 2016. He has also referred to the fact, for the first time on June 16, 2016, he was shown some files and told that he can look at some of the material. He stated at the hearing he was confronted with a heap of papers, he could hardly prepare or submit anything in that regard.

62. Suffice to state, from the reading of the order dated August 22, 2016, it is seen that the Appellate Authority has not dealt with the said grounds except referring to some under the heading

“Recommendations”. That apart, I would like to state that 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).

63. 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.

64. 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.

65. The issue, which has been considered by me in the aforementioned paras is 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, so as to make the appellate proceedings meaningful and purposeful. Hence, the judgment would have no relevance.

66. 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 to and granted by the University, it cannot be contended by Ms. Routray that the personal hearing was not required.

67. 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.

68. 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.”

69. 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.

70. 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 May 02, 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 May 02, 2016. The judgment has no applicability, at least on the limited issue that is being decided by this Court.

71. 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 lays down the procedure. In any case, as stated above, on a limited issue, which is being decided, this judgment would not have any applicability.

72. 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 non 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.

73. 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.

74. 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.

75. 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.

76. 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.

77. 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 with a

direction to grant an opportunity of inspection to the petitioner, 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 a reasoned 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. 4395/2016 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. 32732/2016 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J
OCTOBER 12, 2017/ak