

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 12, 2017

+ W.P. (C) 7934/2016, CM No. 32953/2016

ANANT PRAKASH NARAYAN

..... Petitioner

Through: Ms. Suroor Mander, Adv.

Versus

JAWAHARLAL NEHRU UNIVERSITY

..... Respondent

Through: Ms. Ginny J.Routray, Ms.
Anushka Ashok and Ms.
Bhavna Pal, 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 Office Order No. 211/CP/2016 dated 22 August 2016 by the Chief Proctor of the University imposing punishment on Petitioner No.1 of a fine of Rs.5,000/- (Rupees Twenty Thousand Only) and the

requirement of furnishing an undertaking; and

ii). Issue a writ in the nature of Certiorari quashing the Order No. 159/CP/2016 dated 25 April 2016 by the Chief Proctor of the University imposing punishment on Petitioner and to declare the proceedings resulting in such punishment as void being violative of the fundamental and constitutional rights of the Petitioner; and

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

2. This Writ Petition seeks quashing of the order dated August 22, 2016 which is the order of the Appellate Authority (Vice Chancellor) of the Jawaharlal Nehru University through which the Petitioner has been punished with a fine of Rs. 5,000/- (Rupees Five Thousand Only) [initially Rs.20,000/- (Rupees Twenty Thousand)] and has been ordered to file an undertaking in a prescribed format.

3. The facts as contended by Ms. Suroor Mander are, the Petitioner is a student pursuing his M.Phil, at the Centre for the Study of Law and Governance, Jawaharlal Nehru University. Petitioner has been punished for 'participating in the organisation of the event' on February 9, 2016 at the JNU campus where some 'objectionable slogans' were allegedly raised, which the Petitioner has consistently denied and he and the student's union have categorically condemned such slogans. The High Level Enquiry Committee (hereinafter HLEC) had sent notices to the Petitioner seeking his presence before the Committee and asking him to bring evidence to defend himself. At no

point was the Petitioner informed of the exact charges against him. In response to the notices the Petitioner had on February 25, 2016 and February 26, 2016 written to the HLEC denying raising alleged "anti-national" slogans and asked them to share the details of the charges and provide him with the evidence so that he can prepare his defence. However, the High Level Committee did not respond to the Petitioner's letters or share the evidence so that the Petitioner could mount a cohesive defence. Without responding to the issues raised in above dated letters submitted by the Petitioner, on 14 March 2016, the High Level Committee issued him a Show Cause Notice finding him guilty of "(xxv) Any other act which may be considered by the VC or any other competent authority to an act of violation of discipline and conduct" which is residual clause available to the Vice Chancellor. It is contended by Ms. Mander, the Petitioner was not charged with organizing the meeting, or of raising slogans. Neither description of the conduct by which he did any of this, nor the details of what material was there in support thereof was supplied to the petitioner.

4. According to her, the Petitioner was provided a truncated copy of Report of the High Level Committee two days after the Show cause notice was served on the Petitioner. The Petitioner despite all the infirmities filed a reply to the show cause notice on March 18, 2016. In this reply too, the Petitioner placed on record the completely inadequate material 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. Ms. Mander stated, he also denied all the

charges levelled against him. Again without acknowledging or responding to the issues raised by the Petitioner or providing any of the materials relied upon by the Committee, the Proctor vide Order No. 159/CP/2016 dated April 25, 2016 issued by the Chief Proctor was served upon the petitioner imposing punishment of Rs.20,000/- (Rupees Twenty Thousand) for "Participating in organizing the event at Sabarmati Ground".

5. She submitted the Petitioner, was punished for charges that were neither raised in the show cause notice nor the Report of the High Level Committee. Despite the fact that the Punishment Orders were issued with the approval of the Appellate Authority (the Vice Chancellor), the Petitioner filed an appeal under Clause 32 (5) of the Statute to the Vice Chancellor against the punishment on 02 May 2016. The Petitioner along with others filed Writ Petition 4398 of 2016 before this Court seeking quashing of the punishment order. This Court disposed off the Petition as the Appeals filed by the Petitioner and others were pending before the Appellate Authority of the University. This Court also stayed the operation of the Appellate Authority's order for two weeks to allow for the same to be challenged before this Court. On June 16, 2016, the Petitioner was called upon by the Appeals Committee for the hearing. The Petitioner was not provided any material against him prior to the hearing and only provided the evidence at the time of hearing. This was a voluminous file which he was asked to inspect on the spot and which he was naturally unable to inspect. Petitioner later came to know that video

recordings were shown to others during the hearing but no video recordings were shown to him. She submitted, the Petitioner was then asked to write an 'appeal' on the spot, during his hearing, thereby completely ignoring the Appeal already filed by him. Essentially, when one of the major grounds of appeal by the Petitioner was that he was never made aware of the evidence against him, the Appellate Authority allowed him a cursory examination of the material only during the hearing and told him to write a statement which was treated as the Appeal, discarding the actual Appeal filed by the Petitioner after due thought and legal assistance. This procedure is unheard of, and for the reason that it violates every principle of natural justice. According to Ms. Mander, petitioner had also pointed out in his appeal that, if there were any witnesses against him, he should have been given the chance to question them. The lack of opportunity to cross-examine witnesses during disciplinary proceedings by the Respondent has earlier been held to be a violation of the principles of natural justice by this Court in ***Jawaharlal Nehru University v. Flora Gupta (2013) 133 DRJ 299 (DB)***, wherein according to her, this Court had observed about disciplinary proceedings held by the Respondent University that *"Even if it was not subjected to any rigid rules, the minimum that was required was to make the petitioner know about the allegation against her and the basis of said allegations and during the enquiry to allow her to know as to what deposition or evidence was adduced against her. Despite no rigid rules, if something is as stated against any person, he has a right to ask that person such questions which will impeach his deposition. There is no presumption in law that*

whatsoever will be stated before one-man enquiry committee by any professor or official of the University would be nothing but truth and has to be accepted as such." She submitted, the Appellate Authority has proceeded precisely on such an invalid presumption that the statement of a witness before the Enquiry Committee could be nothing but the truth. No avenue of cross-examination or even traversal of such statements has been provided to the Petitioner by the Respondent University. Ms. Mander submitted, the order of the Appellate Authority is bad for non-application of mind especially because it does not even advert to the grounds raised in the Appeal by the Petitioner or to the grounds raised by the Petitioner in Writ Petition (Civil) No. 4398/2016 through which the Petitioner had challenged the original order of punishment passed by the High Level Enquiry Committee of the Jawaharlal Nehru University. The following grounds of Appeal have also not been considered by the Appellate Authority at all, which amounts to complete non-application of mind:

i). No specific charge was framed against the Petitioner as required by Rule 7 of the Norms and Procedures. In fact, the Petitioner was punished for participation in organizing the event but the original show cause did not mention this allegation at all. The Petitioner was punished under the residuary clause, that is, "*(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.*" Petitioner has thus been punished for acts for which he was never asked to show-cause for.

ii) Petitioner's defence to show-cause has to be 'studied and examined'

under Rule 8 and then a report has to be prepared and appropriate punishment is to be recommended as per Rule 9. No such subsequent report has been prepared after studying and examining the defence of the Petitioners to the show cause notice. Thus, non-compliance of Rules 7, 8 and 9 has rendered the Petitioner unable to defend himself in any meaningful manner and has defeated the protection of due process available to Petitioner as per the University's own rules and the laws of the country.

iii) Neither a copy of the full report of the High Level Enquiry Committee was provided to the Petitioner, nor has any of the purported evidence like statements of witnesses or videos, been supplied to him. The Petitioner was only supplied with a truncated 8 pages of the High Level Enquiry Committee Report.

iv) Further, during the High Level Enquiry Committee proceedings no opportunity of cross examination of witnesses was given. The same has been held to be a violation of the principles of natural justice by this Court in *Jawaharlal Nehru University v. Flora Gupta (2013) 133 DR.T 299 (DB)*.

Further, she would submit the requirement of an undertaking to be filed by the Petitioner is a violation of his rights. The undertaking is vague, binding the Petitioner not to participate in any unauthorised activities even by his presence and not to commit any act which is against the dignity of the University. Petitioner fears that the vagueness inherent in this undertaking, which is in any case

unjustified, lead to a further violation of his fundamental and constitutional rights. She prays for the reliefs as prayed in the writ petition be granted.

6. On the other hand, Ms. Ginny Routray, learned counsel for the respondent would submit 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. The Petitioner failed to respond to this first notice dated February 12, 2016. Subsequently, a second notice was issued on February 16, 2016. A third notice was served to the Petitioner on February 18, 2016 asking him to appear before the committee on February 26, 2016, however, the Petitioner abstained himself from appearing before the committee and clearing his stand. She would state, that the Petitioner had addressed a letter dated February 19, 2016 to the Vice Chancellor, which was replied to vide letter dated February 23, 2016 which stated that-

This is in reference to your letter dated 19th February, 2016 addressed to Vice Chancellor, JNU in connection with an incident that took place on 9th February, 2016 near Sabarmati and Ganga Hostel. The same has been forwarded to the High Level Enquiry Committee, JNU.

In the regard, three notices were sent though email and to your respective centre, school and residential address to

present yourself before the High Level Enquiry Committee. A copy of the third notice sent to you is enclosed herewith.

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, New Delhi to explain your position in this regard. You may also bring any evidence, which you wish to submit in support of your defence.

Upon failing to present yourself on the date and time appointed for the hearing, it shall be presumed that you have nothing to say in this matter. In such circumstances, the matter will be decided in your absence.

According to her, the Petitioner however, still failed to present himself before the Committee despite admittedly being in the campus from February 22, 2016.

7. The Petitioner on February 25, 2016, a day before he was to appear before the HLEC, addressed a letter to the HLEC which stated that-

I have also come to know that this committee has suspended me from JNU, and barred me from all academic activity, based on an 'interim report' and even before the committee heard one single word from me on the episode.....

I am afraid however that the actions of the committee so far have severely prejudiced my case already.....

This has left me very scared that my enquiry has been terribly prejudiced already by the existing committee. I have not said one word to the committee, before they decided that I was guilty and had to be suspended.

As you can well understand, I am extremely stressed and tense now. Lunch- mobs have been demanding that I be hanged, the JNU committee has suspended me without even listing to me. Assorted videos (some of which have been proven to be doctored) have been used to pass a verdict on JNU and JNU students. I want to participate in the JNU enquiry in a conducive atmosphere where I can speak without fear of being prejudged, without bias or prejudice.

I would like to state clearly that I deny all allegations made against me of raising anti-national slogans and organizing a meeting in contravention of JNU's rules.

Ms. Routray would submit, the HLEC responded to the above mentioned letter vide letter and Email dated February 25, 2016. It was stated that-

This is to acknowledge your letter dated 25th February, 2016. We would like to make it clear that the committee has not presumed any one guilty. The temporary suspension

from academic activity is only during pendency of the enquiry which will be over on 3rd March, 2016. Therefore, please come and depose before the committee without any apprehension.

Further, according to her **Prima Facie** considering the **seriousness of the offences** (based on the report submitted by the Chief Security Officer, video clipping of the events and other related documents) 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.

8. The Petitioner on the day he was to appear before the HLEC i.e. February 26, 2016, addressed a letter to the Committee wherein he stated that-

That 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 complain(s) against me, and the material evidence on which such charges are based. None of this has been provided to me. The principles of natural justice also enable me full opportunity to present my case, have witnesses examined by the Enquiry Committee, and to cross-examine the witnesses who have accused and/or deposed against me.....

I would like to state that I am willing to cooperate with my fair enquiry committee. However, in the interest of natural justice, the concerns I have listed (which accrue to me as a citizen of this nation) in this letter need to be addressed. I sincerely request you to provide me the information I seek, and explicitly put into place the unequivocal guarantee of the principles of natural justice. I am fully ready to cooperate with an impartial, unbiased enquiry.

9. Ms. Routray submission was, the Petitioner had served the above mentioned letter by hand to the Administrative Building on the same day on which he was to appear before the Committee, as submitted by the Counsel for the Petitioner. It is thus evident that the Petitioner never intended to appear and depose before the Committee and therefore sought excuses not to do so. The Petitioner's Counsel further stated that the Petitioner was apprehensive to appear before the committee due to the charged environment in and outside the campus, however, the Petitioner was present in the campus from February 22, 2016 and even delivered the letter by hand to the Administrative building, thus, the Petitioner sought excuse after excuse to avoid the proceedings. It is further submitted that the Petitioner, deliberately having failed to appear before the Committee, cannot claim that the principles of natural justice have not been followed by the Respondent. Had the Petitioner appeared before the Committee, he would have been privy to all the information and evidence collected by the HLEC, moreover he would have been given the right to cross

examine. She would reiterate, the Petitioner was served with 4 notices to appear before the Committee, the Petitioner himself failed to avail the opportunity given to him and thus, there was **no violation of Principles of Natural Justice and Fair Play**. Further, she would submit, a Show Cause Notice dated March 14, 2016 was issued to the Petitioner which stated that-

As per the High Level Enquiry Committee findings, you (Mr. Anant Prakash Narayan, Registration Number: 50976, Enrolment No: 12/74/MG/022, Year of Admission: 2012, M. Phil/Ph.D. Student, Centre for the study of Law and Governance, JNU, New Delhi) have been found guilty on the following account under the Clause 3, Category II of Rules and discipline and proper conduct of students of JNU.

(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.

10. According to her, 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 March 16, 2016, 17:00 hrs, which later extended till March 18, 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. A copy of HLEC report was also conveyed to the Petitioner which

clearly outlined the act and conduct of the Petitioner based on the depositions which led to issuance of the show cause notice.

11. She submitted, the Petitioner responded to the Show Cause Notice on March 18, 2016 wherein he stated that-

Questions and issues raised by me in my letter dated 25 February and 26 February 2016 addressed to the High Court Level Enquiry Committee have neither been addressed nor acknowledged by the Committee. It is also striking that the same has not been addressed by the committee even in its report.

12. It was the submission of Ms. Routray, that the letters mentioned by the Petitioner were acknowledged. Further, the Petitioner was requested to appear before the committee so that his concerns could be met. She would state, it was fifth time, the Petitioner was asked to appear before the Committee; however he still chose not to appear. According to her, the Petitioner further stated that-

I continue to hold the position that I am willing to participate in the disciplinary enquiry process after I am made aware of the charges against me and the issues raised by me are answered.....

Moreover, it is important to note that the depositions and the evidence that form the basis of the findings against me have not been served with the show-cause or the subsequent

report. Without a copy of the depositions or a list of witnesses against me or a chance of cross examining them, I have been judged guilty against University rules and principles of natural justice.....

Despite my request queries I was not informed that I would be allowed to cross examine my witnesses. In any case, the right of cross examination has no meaning unless the student knows what is it that is being said and by whom.... Without the material proposed to be used against me, or an indication of when I would get an opportunity of cross examination, what effective defence can I take?

13. She submitted, that the Petitioner was not provided with copies of documents as the University in its wisdom and in view of the atmosphere, considering the sensitivity of the matter and in the interest of the witnesses' safety only provided for the same to be inspected before the Committee. Further, the Norms and Procedure along with SOP state that-

8. Members of the committee will sign a confidentiality/Non-Disclosure Statement.

9. Any information shared confidentially to the Committee to the Committee members will not be shared by them after the terms of the Enquiry committee is over.

10. No cell phone will be brought into the committee room

when any person comes to depose before it.

11. No statement will be issued to the press during the enquiry period and also after the enquiry period.

12. All communication from the University to the Committee and vice a versa will be in the writing.

14. She submitted, that even though the Petitioner and other students were not provided the copies of the documents at the stage of show cause, the same was available to them to access had they appeared before the committee to depose. Thus, they themselves failed to avail the opportunity provided to them. She would further submit the petitioner would have been given an opportunity to cross examine had he come forward to record his statement. She would rely on the judgment of the Supreme Court in the matter of ***K.L. Tripathi V. State Bank of India & Ors. (1984) 1 SCC 43.***

15. She stated, at the stage of appeal the decision is to be taken only from record before the 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, at the stage of enquiry, by admittedly not appearing before the Committee despite being in the campus, hence the Writ Petition on this ground alone is not maintainable.

16. According to her, the petitioner is a student studying in JNU

and resident of Hostel in JNU. The Respondent 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 on the false pretext of holding a poetry reading competition at Sabarmati Dhaba. Despite all alleged “permission” immediately being withdrawn by the DOS, the event was carried on, which then led to an enormous law and order situation.

17. She stated, 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.”

The HLEC superseded the Proctorial Enquiry vide letter dated February 11, 2016 wherein it is stated that-

This committee supersedes the Proctorial Enquiry Committee and the earlier notice dated 11th February, 2016 of the Chief Proctor stands withdrawn.

18. According to her, the HLEC followed **SOP** being norms in view of the nature and the need of the enquiry. The terms of reference of the Enquiry entailed formulation of **SOP**. The SOP norms are essentially analogous to the Norms recommended for a Proctorial enquiry. 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 enquiry 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 **action** to be initiated by the University **as per its statute and guidelines**.*

19. It was contended by her, the Petitioner was given ample opportunities to appear and depose before the Committee along with the liberty to carry materials and evidences. The Committee issued their **First Notice** on February 12, 2016 and subsequently **Second Notice** on February 16, 2026 and **Third Notice** on February 18, 2016 along with a communication dated February 23, 2016 to the Petitioner, directing him to appear before the committee and explain his position about the incident that took place on February 09, 2016 near Sabarmati and Ganga Hostel. Despite this 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 would state, the notices were served at all his know 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. Ms. Routray’s submission is despite notices being served, the Petitioner failed to appear before the Enquiry Committee. Thus, the Petitioner himself lost the opportunity to appear before the committee and clear his stand.

20. According to her, one week extension i.e. upto March 03, 2016 to submit the recommendations was granted to HLEC. Thereafter the terms of the Enquiry Committee was further extended till March 11, 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 the 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 Office 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. Subsequently to enquiry procedure, the HLEC 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 fined Rs.20,000. The HLEC submitted its report along with recommendations to the Vice Chancellor on March 11, 2016.

21. She submitted, the HLEC gave ample opportunities to the Petitioner and after repetitive reminders and notices the Petitioner chose not to appear. According to her, 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 March 14, 2016 and along with an extension dated March 16, 2016 along with a copy of HLEC report to the Petitioner.

22. She submitted, the Respondent subsequently on April 25, 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. Anant Prakash Narayan (Registration Number- 50976, Enrolment No: 12/74/MG/022, Year of Admission: 2012, M. Phil/Ph.D. Student, Centre for the study of Law and governance and a r/o. Room No.11, Lohit 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 (xxv) prohibits 'Any other act which may have considered by the VC or any other competent authority to be an act of violation of discipline and conduct'.

As per the HLEC recommendation, Mr. Anant Prakash has been found guilty of

a. Participating in organizing the event at Sabarmati ground

This act on the part of Mr. Anant Prakash Narayan is very serious in nature, unbecoming of a student of JNU and calls for stringent disciplinary action against him. In view of this and also keeping his career prospects in mind, the Vice Chancellor has taken a somewhat lenient view in the matter.

Mr. Anant Prakash Narayan is fined Rs.20,000/- (Rupees twenty thousand only) and is also warned to be careful and not to get involved in such incidents in the future. Otherwise, a more stringent disciplinary action will be taken against him. He is directed to deposit the fine by 13 May 2016 and show the proof thereof to this office, failing which hostel facility will be withdrawn with immediate effect and further registration will not be allowed.

23. The Petitioner appealed against the above mentioned Office Order vide letter dated May 02, 2016 wherein the Petitioner reiterated the contents of his previous communications and asked to set aside the said Office Order further denying the charges levelled against him. The Chief Proctor vide letter dated May 02, 2016 to the Petitioner bearing the subject *Appeal to withdraw Office order no.159/CP/2016 dated 25 April 2016* stated that *With Regard to your representation dated 2 May 2016, on the subject noted above, it is informed that Chief Proctor desired to meet you and discuss.* The Petitioner responded to the same on May 10, 2016 and stated that he would meet the Chief Proctor, however failed to do so.

24. She stated, this Court 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. The Respondent vide their letter dated June 13, 2016 to the Petitioner stated that-

With reference to your appeal against the Report/recommendations of all High Level Enquiry Committee (HLEC), regarding 9 February incident JNU campus, you are requested to appear before the Vice-Chancellor, Appellate Authority of the University, and depose on 16 June 2016 at 4.00 p.m. at Vice Chancellor's Office.

25. According to Ms. Routray, the Respondent finally issued the Office Order No.201/CP/2016 dated August 22, 2016 wherein it was stated that *Mr. Anant Prakash Narayan was very cooperative with the Appellate Authority during the investigation and he appealed that he comes from a poor family.* Therefore, the Appellate Authority taking a lenient view imposed a fine of Rs.5000/- on the Petitioner. Further, it was stated that-

On being asked by the Appellate Authority “Were you present at the Sabarmati Dhaba to attend the event on 9th February, 2016?” Mr. Narayan responded by saying that he was not present at the event. When probed further whether he was part of the group organizing the event, he responded that he was not an organizer of the event.

However, he explained certain incidents at the event in his oral deposition and also gave the same in writing. He was given ample time by the committee to examine all the files before he could write his appeal. The fact however remain that he was an active participant at the event. He further responded to the questions asked by the committee.

Mr. Narayan was given ample time by the committee to examine all the files before he could write his appeal and he read through these files and wrote his appeal

Evidence-

1. Mr. Narayan participated in organizing the event which is corroborated by the depositions of the Security Staff of the University viz. Mr. O.P. Yadav (Operations Manger, G4S) and Mr. V.P. Yadav (Security Supervisor, G4S) referred to by the HLEC.

26. She would justify the finding inasmuch as the statement of Naveen Yadav has been corroborated by both Mr. O.P.. Yadav and Mr. V.P. Yadav and also by the G4S Daily Diary Register which contained details of the complaint. She would also state, that in his appeal dated June 16, 2016, the Petitioner has never once stated that he was not shown the documents or insufficient time was given to inspect the documents. Further, no rejoinder was filed to controvert the veracity of the depositions.

27. According to Ms. Routray, the Petitioner in his communications and appeal stated that he was not the organizer of the event nor he was a party seeking permission for the event. However, the HLEC Report clearly stated that *among other students who were gathered there who were busy organizing the event were Mr. Ashutosh Kumar, Mr. Rama Naga, Ms. Shweta Raj, Ms. Chintu Kumari, Mr. Anant Prakash and Ms. Banojyotsna Lahri.* She would state, the Petitioner did admit that he was a participant in the event, he stated that *I did not initiate any such slogans during the event and am confident that the slogans that I tailed alongside many other students assembled in the dhaba, were neither unconstitutional nor derogatory.* Keeping in view this, even though the fine on the Petitioner was reduced the same was not

waived. She also stated, the Petitioner was found to be involved in FIR No.110/16 u/s 124A/34 dated February 11, 2016 wherein he was to appear before the Inspector North, Vasant Kunj Police Station.

28. That the University's autonomy means its right of self-government particularly, it's 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 the enquiry. That 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. She would refer to the judgment of this Court in **Jawaharlal Nehru University V. Flora Gupta, LPA 570/2012 & CM No. 14010/2012** wherein it was held as under:-

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 facts.

29. She submitted, that the Respondent has acted within their authority, exercised their judgement 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, at his various addresses and was asked to show cause and was also given opportunity to defend himself before the enquiry committee. The Petitioner however deliberately avoided proceedings. She would also submit, only certain documents relied upon by the HLEC were filed before this Court and the entire evidences, documents, notices and proceedings are maintained by the Respondent in their official files. The same are available for scrutiny as and when the same may be requisitioned before the Court.

30. She would state, 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 judgments so relied 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.

31. Having heard the learned counsel for the parties and considered the written arguments/synopsis submitted by the counsels, it is noted that the subject matter of this petition is, the orders passed by the Competent Authority on April 25, 2016 whereby a penalty in the nature of fine of Rs.20,000/- was imposed on the petitioner, which order was upheld by the Appellate Authority with modification by

reducing the fine to Rs.5,000/- with a direction to file 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 same was held in violation of principles of natural justice, inasmuch as despite his asking the documents to be supplied to him, the same were not given; he had not received any reply from HLEC regarding the issues raised by him nor HLEC had asked him to collect the depositions; even the show cause notice received by him included a residuary clause, which has not been explained by the Proctor leaving the petitioner to guess what the actual charges against him are. He received only a truncated eight pages of HLEC report, which was undated. The HLEC report does not refer to a specific deposition, on which the finding is based. The only deposition placed on record by the respondent, is the statement of Naveen Yadav. Mere presence on location cannot be construed to mean that the petitioner was an organizer of the event. In reply to show cause notice, he had asked for the depositions to be made available. The Office order dated April 25, 2016 does not refer to the fact that the petitioner had filed reply on March 18, 2016. The petitioner was found guilty of something entirely different than the charges mentioned in the show cause. The petitioner appealed against the order dated April 25, 2016 on May 02, 2016. Even the appellate proceedings held on June 16, 2016 were formality as he was only given fifteen minutes to peruse the files and documents. He was not shown the video evidence that is part of the Court records. The Appellate Authority did not consider the appeal filed by the petitioner but had asked the petitioner to file a fresh appeal

before the Appellate Authority. The Appellate Authority does not give any basis for disregarding the petitioner's statement and taking the statement of O.P. Yadav and V.P. Yadav at face value. The right of cross examination was denied to the petitioner.

32. The respondent has justified the impugned action contending that the enquiry proceedings were held following the principles of natural justice and the Rules/Statutes. It is the petitioner, who failed to come forward and depose before the Authority. That apart, the respondent also highlighted the seriousness of the charges for which the petitioner was held guilty. The petitioner had never intended to appear and depose before the Authority. 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, the appellate order was passed.

33. There is no dispute that the petitioner had filed an Appeal dated May 02, 2016. It is 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 appellate order on August 22, 2016. In his appeal dated May 02, 2016, the petitioner has stated that basis for punishment is factually inaccurate. It was his stand that he did not participate in organizing the event. He was not

party seeking permission for the event. He has not been given the materials on the basis of which the HLEC has concluded that he was one of the organizer of the event. The show cause notice did not specify the charge against him nor any material by which it was proposed to be established, was shown. The enquiry against him had violated the Statutes and the relevant Rules of the University. The HLEC report was truncated as he was given only eight pages. It was only the report, which was shared with him, not the corresponding annexures, depositions, statement of witnesses. He stated, that the finding of the HLEC is perverse. Neither the HLEC report nor the order dated April 25, 2016 shows application of mind. In the end, he stated that without any opportunity to study the evidence and depositions against him, he is prejudiced.

34. 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. 4398/2016, 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 require 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 issue 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, 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 are filed along with the written arguments in this case, the same are in Hindi. They were also filed after counsel for the petitioner had advanced her arguments. Even otherwise, the HLEC report refers to deposition of 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.

35. Further, from the reading of the order dated August 22, 2016, it is seen that the Appellate Authority has not dealt with the grounds of appeal dated May 02, 2016. 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.

36. 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.

37. 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.

38. Insofar as the judgment in the case of *State of Gujarat v. Pagi Bhurabhai Rumalbhai (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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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. 4398/2016 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. 32953/2016 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

OCTOBER 12, 2017/ak