

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 12, 2017

+ W.P.(C) 7936/2016, CM No. 32957/2016

CHINTU KUMARI

..... Petitioner

Through: Ms. Suroor Mander, Adv.

Versus

JAWAHARLAL NEHRU UNIVERSITY

..... Respondent

Through: Ms. Ginny J. Routray, Ms.
Anushka Ashok & 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. 209/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. 157/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, learned counsel for the petitioner are, the Petitioner is a student pursuing her M.Phil, at the Centre for Political Studies, School of Social Science, having completed her M.A. from 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 she and the student's union have categorically condemned such slogans. The High Level Enquiry Committee (hereinafter HLEC) had sent notices to the Petitioner seeking her presence before the

Committee and asking her to bring evidence to defend herself. At no point was the Petitioner informed of the exact charges against her. In response to the notices the Petitioner had on February 25, 2016 and February 26, 2016 had written to the HLEC denying raising alleged "anti- national" slogans and asked them to share the details of the charges and provide her with the evidence so that she can prepare her 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 her a Show Cause Notice finding her 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 she 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 her for defence, the lack of clarity on the conduct upon which the charges were based and the complete denial

of all the material evidence. She stated, she also denied all the charges levelled against her. 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. 157/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 (a) organising the event at Sabarmati ground; (b) shouting objectionable slogans in wrongfully organised event.

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 her prior to the hearing and only provided the evidence at the time of hearing. This was a voluminous

file which she was asked to inspect on the spot and which she 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 her. Petitioner was then asked to write an 'appeal' on the spot, during the hearing, thereby completely ignoring the Appeal already filed by her. Essentially, when one of the major grounds of appeal by the Petitioner was that she was never made aware of the evidence against her, the Appellate Authority allowed her a cursory examination of the material only during the hearing and told her 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 her appeal that, if there were any witnesses against her, she should have been given the chance to question them. The lack of opportunity to cross-examine witnesses during disciplinary proceedings by the Respondent as 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 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." Ms. Mander 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. She 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 her. 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 DRJ 299 (DB)*.

6. Further, she would submit the requirement of an undertaking to be filed by the Petitioner is a violation of her rights. The undertaking is vague, binding the Petitioner not to participate in any unauthorised activities even by her 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 her fundamental and constitutional rights. She prays for the reliefs as prayed in the writ petition be granted.

7. On the other hand, Ms. Ginny Routray, learned counsel for the respondent would submit, the Petitioner was given ample opportunities to appear and depose before the Enquiry Committee along with the liberty to carry materials and evidences in her defense 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 her to appear before the committee on February 26, 2016, however, the Petitioner abstained herself from appearing before the committee and clearing her stand. A letter and Email dated February 26, 2016 was addressed to the Petitioner which stated that -

*This is in continuation with our earlier notices sent to you. The expanded Committee would like to meet you on **29th February, 2016 at 3.00 pm in Room No.108, Administrative Block**, and get your statement. Please note that the temporary suspension from academic activity is only during the pendency of the enquiry which will be over on **3rd March, 2016** and the committee does not presume anyone guilty. This is the last opportunity for you to meet*

with the Committee and please do so without any apprehension.

The Petitioner however, still failed to present herself before the Committee.

8. Ms. Routray submitted, the Petitioner on February 26, 2016, addressed a letter to the HLEC wherein she stated that-

I am willing to participate in any free, fair and unbiased enquiry into the incidents of that day, but I know nothing about the composition of the Committee. 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. 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 you to take note of and address that the actions of the University have adversely affected not only safety and created a hostile work environment for me.

I would like to state that I am willing to cooperate with any fair enquiry committee. However, in the interest of natural

justice, the concerns I have listed (while 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 would also submit, the Petitioner without having appeared 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, she would have been privy to all the information and evidence collected by the HLEC, moreover, she would have been given the right to cross examine. It is reiterated that the Petitioner was served with 4 notices to appear before the Committee, the Petitioner herself failed to avail the opportunity given to her and thus, there was **no violation of Principles of Natural Justice and Fair Play**. Further, she would submit the Petitioner's letter dated February 26, 2016 is similar to another Petitioner's letter (in terms of exact content and style of writing) also dated February 26, 2016 in **W.P. (C) No.7934/16, Anant Prakash Narayan V. Jawaharlal Nehru University**, therefore making it evident that there was no application of mind on part of the Petitioner and she thus colluded and conspired with the other Petitioners to boycott the disciplinary proceedings and thus, making a mockery of the entire process by claiming violation of the principles of natural justice. According to Ms. Routray, same trend is observed in her subsequent

communications as well.

10. She stated, subsequently, on February 29, 2016 the Petitioner addressed another letter to the HLEC, when she was to appear before the HLEC, wherein she stated that-

I can categorically state that I condemn the statements calling for the dismemberment of India. I would also like to state on record that it is important for campus to initiate and encourage dialogue.

I also notice, that in your letter that the HLEC has only afforded me a final chance for depositions. Opportunity to have witnesses examined in my defence and to cross-examine the person(s) who have complained against me and the witnesses against me if any, is part of any fair procedure.

11. She submitted that in order for the Petitioner to examine the witnesses, she had to be present before the Committee. Without recording her statement before the Committee, the Petitioner could not cross examine as per the University Statutes. The detailed guidelines for enquires as laid down under Statute 32(5) of the Statutes of the University clearly state the following-

- 1) *The complaint is called for hearing and his deposition is recorded.*
- 2) *The accused person(s) is called for recording his/her*

statement.

- 3) *Witnesses mentioned by both parties is listed and they are called for recording their depositions.*
- 4) *Any evidence, from security staff/JNU staff or any other person, who were present there and had witnessed the incident are called and their statements are recorded.*
- 5) *A **cross examination** of the accused and complainant is conducted.*

12. According to Ms. Routray, it is thus evident from the above step 2 pertains to recording of statement of the accused and whereas, cross-examination is only step 5. Thus, it was necessary for the Petitioner to appear before the Committee and record her statement before she could cross-examine. Further, 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 (Ms. Chintu Kumari, Registration Number: 23353, Enrolment No: 13/62/MS/014, Year of Admission : 20123M.Phil/Ph.D. Student, Centre for Political Studies, School of Social Sciences, JNU, New Delhi) have been found guilty on the following account under the Cause 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.

13. The Show Cause Notice further asked the Petitioner to explain why **disciplinary action** should not be initiated against her for indulging in the above mentioned act. The Petitioner was asked to submit her 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 her defence and the office would proceed further in the matter. The Petitioner responded to the Show Cause Notice on March 18, 2016 wherein she reiterated the contents of her previous communications and stated that-

Questions and issues raised by me in my letter dated 25 February and 26 February 2016 addressed to the High 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.

14. She would submit, the letters mentioned by the Petitioner were acknowledged. Further, the Petitioner was requested to appear before the committee so that her concerns could be met. However she still chose not to appear. The Petitioner further stated that-

I continue to hold the position that I am willing to participate in the disciplinary inquiry 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 repeated queries I was not informed that I would be allowed to cross examine any 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?

15. According to Ms. Routray, 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 Procedures 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 us 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 writing.

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

17. She stated, that 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 her, 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.

18. 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 the alleged “permission” immediately being withdrawn by the DOS, the event was carried on which led to an enormous law and order situation. 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.

19. 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 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**.*

20. It was contended by her, that 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, 2016 and **Third Notice** on February 18, 2016

along with a communication dated February 26, 2016 to the Petitioner, directing her to appear before the committee and explain her position about the incident that took place on February 09, 2016 near Sabarmati and Ganga Hostel. Despite this the Petitioner failed to appear before the committee. The above mentioned notices were dispatched via the Central Dispatch of the University which is an independent department within the University. She would state, the notices were served at all her known addresses including her 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 she would not be available in the hostel. Ms. Routray’s submission was despite notice being served the petitioner still failed to appear before the Enquiry Committee. Thus the Petitioner herself lost the opportunity to appear before the committee and clear her stand.

21. According to her, one week extension i.e. up March 03, 2016 to submit the recommendations was granted to HLEC. Thereafter the term 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 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. 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 fined Rs.20,000. The HLEC submitted its report along with recommendations to the Vice Chancellor on 11.03.2016.

22. She would submit, 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.

23. 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 Ms. Chintu Kumari (Registration Number- 23353, Enrolment No: 13/62/MA/014, Year of Admission: 2013, M. Phil./ Ph.D. Student, Centre for Political Studies, School of Social Sciences and a r/o. Room No.114, Koyna 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 be considered by the VC or any other competent authority to be an act of violation of discipline and conduct’.*

As per the HLEC recommendation, Ms. Chintu Kumari has been found guilty of

- a. Organizing the event of Sabarmati Ground at 4.45 pm*
- b. Shouting objectionable slogans in wrongfully organized event.*

This act on the part of Ms. Chintu Kumari is very serious in nature, unbecoming of a student of JNU and calls for stringent disciplinary action against her. In view of this and also keeping her career prospects in mind, the Vice-Chancellor has taken a somewhat lenient view in the matter.

Ms. Chintu Kumari is fined Rs.20,000/- (Rupees twenty thousand only) and is also warned to be careful and not to

got involved in such incidents in the future. Otherwise, a more stringent disciplinary action will be taken against her. She 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.

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 the 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-

In the beginning she was asked by the Appellate Authority

“Were you present at Sabarmati Dhaba to attend the event on 9th February, 2016?”

She responded by saying that she was present at Sabarmati Dhaba for around 20 to 25 minutes when these slogans were raised and when further probed by the members on “why did she shout objectionable slogans during the event?” She responded by saying that “She was talking to her friends when the event transpired and she did not raise any objectionable slogans”. She further answered the questions framed by the committee.

Ms. Kumari was given ample time by the Committee to examine all the files before she could write her appeal and she read through these files and wrote her appeal.

26. It was her submission that the Appellate Authority taking a lenient view imposed a fine of Rs.5000/- on the Petitioner. Further, the following evidence was relied on-

Evidence-

1. The evidence available against her indicates that she was present at the Sabarmati Ground during the event and was involved in it, as the security depositions referred to by the HLEC report indicate. However, she admitted in her appeal that she was not Sabarmati Dhaba only for 20-25 minutes to have tea and she was speaking to her friends at the Dbaha

2. *The available evidence i.e. security depositions referred to by the HLEC, indicate that was involved in arranging logistics for the event. However, she argued that she was not part of any group which, organized the event nor did she shout objectionable slogans.*

27. She would justify the finding inasmuch as the statement of Naveen Yadav has been corroborated by both O.P. Yadav and V.P. Yadav as they were all present at the venue. She would submit, that as per the HLEC Report, the Petitioner was seen organizing the event and was also seen participating by Security Officials. However, considering the Petitioner's Appeal and her willingness to cooperate, the same was not taken into account. She would also submit the copies were admittedly inspected by the Petitioner before the Appellate Committee.

28. According to Ms. Routray, the Petitioner in her communications and appeal stated that she was not the organizer of the event nor she 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.* Keeping in view of this, even though the fine of the Petitioner was reduced the same was not waived.

29. That the University's autonomy means its right of self-government particularly, it is 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 herself, 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 stated this Court in ***Jawaharlal Nehru University V. Flora Gupta, LPA 570/2012 & CM No.14010/2012*** 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.

30. 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 and was also given opportunity to defend herself before the enquiry committee. The Petitioner however deliberately avoided proceedings.

31. 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 any other scrutiny as and when the same may be requisitioned by this Court. She would state, the Legal Submissions made and judgements 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 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.

She prayed this Court should dismiss the writ petition of the petitioner.

32. Having heard the learned counsel for the parties and perused the written arguments/submissions 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 modified to the extent that the fine has been reduced to Rs.5,000/- 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 same is in violation of the judgment of this Court in the case of ***Jawaharlal Nehru University v. Flora Gupta (supra)***. The enquiry was conducted in violation of principles of natural justice without

supplying any material at any point of time; no opportunity of cross examination of the witnesses was given. The petitioner was never specifically charged with any act that required explanation, let alone a defence. She was not informed of the acts which contributed to such a charge or the evidence and material by which the said charge was to be established. The petitioner was charged of a residual clause, which has not been explained in the show cause notice. The Statute envisages that there be a report before the show cause notice and also that there be another report after the application of mind post show cause notice and before imposition of penalty. The only material, the petitioner had accessed to, for the purpose of understanding the charges against her was the truncated extract of HLEC report. The petitioner replied to the show cause notice without being aware of the material against her. The punishment did not take into account the petitioner's reply to the show cause notice. The punishment is disproportionately harsh to the alleged charge against the petitioner. The Appellate Authority has also not conducted the proceedings in accordance with the principles of natural justice. The petitioner was not shown the video recordings. No opportunity was given to review all the material in any meaningful way. The petitioner was asked to write the appeal on the spot during the hearing completely ignoring the appeal already filed by her on May 02, 2016. The Appellate Authority has only allowed a cursory examination of the material during the hearing and told her to write a statement, which was treated as an Appeal discarding the actual appeal filed by the petitioner after due thought and legal assistance.

33. On the other hand, 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.

34. 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. It appears on June 16, 2016, after the appellate proceedings were held, the petitioner made a representation wherein she had detailed the sequence of events that had taken place during the appeal hearing. She had referred to what according to her had transpired during the appeal proceedings. She has also stated that it was only for the first time on June 16, 2016, she was shown some files

and told she could, if wanted, look at some of the materials. As she was confronted with a heap of papers, she could hardly prepare or submit anything in that regard. She also referred to the questions that were put to her by the Appellate Authority. She has requested that the aforesaid points be kept in mind before deciding the appeal.

35. 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, 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 her 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 her mind on the evidence so noted by her during the inspection, which was against her and to make an effective appeal. Surely, for such purposes, she may have required reasonable time to prepare her case, which may include seeking legal advice. The procedure evolved by the Appellate Authority to allow inspection of the documents/records and asking her to submit appeal and hearing her 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 her to

supplement her appeal already filed by her on May 02, 2016. This would be in conformity with the concept of fair play in action, which is the basis of natural justice. It is noted, the appellate order refer to available evidence to mean security depositions referred to by HLEC. The HLEC, insofar as the petitioner is concerned referred to deposition of O.P. Yadav, V.P. Yadav and Palani. The respondent has filed the deposition of Navin Yadav. It is noted that the arguments were heard and completed on March 15, 2017. It is only along with the submissions, the depositions of certain persons including V.P. Yadav, O.P. Yadav were filed, that too in Hindi. Even otherwise, it is noted that the HLEC report refers to deposition of some eye witnesses, which are in the deposition files. It is not clear, who these witnesses are, who are being referred to. All the evidence, documents, notices and proceedings being in the official files, there was no occasion for this Court/counsel for the petitioner to look into the same for a proper appreciation/justification of the impugned orders. Further, the petitioner in his appeal dated May 02, 2016 has raised several grounds, which are almost similar to the one raised in this petition.

36. On a reading of the order dated August 22, 2016, it is seen that the Appellate Authority has not dealt with the said grounds. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

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

43. 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 acts 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.

44. 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, 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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. 32957/2016 (for stay)

Dismissed as infructuous.

OCTOBER 12, 2017/ak

V. KAMESWAR RAO, J