

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 12, 2017

+ W.P.(C) 7911/2016, CM No. 32744/2016

AISHWARYA ADHIKARI

..... Petitioner

Through: Ms. Malavika Rajkotia,
Mr. Vaibhav Vats and
Ms. Soumya Maheshwari, Advs.

Versus

JAWAHARLAL NEHRU UNIVERSITY

..... Respondent

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

**CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO**

J U D G M E N T

V. KAMESWAR RAO, J

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

*“In view of the facts & circumstances stated above, it is
prayed that this Hon’ble Court in public interest may be
pleased to:*

1. *issue a writ of certiorari or any other writ, order or
direction thereby quashing and setting aside the report of*

the High Level Enquiry Committee set up by the respondent vide Office Order No. 207/CP/2016 dated 22.8.2016 of the Vice Chancellor punishing the petitioner, and all other proceedings consequential to and arising out of the report of the High Level Enquiry Committee of the respondent University;

- 2. award the petitioner the costs of these proceedings;*
- 3. Pass such further order or orders as this Hon'ble Court may deem fit."*

FACTS:-

2. The facts as averred by the petitioner are on February 09, 2016 a poetry reading event was organized. The poster said "A Country Without a Post Office". As per Statute 32(2), the University has a proctorial system where administration of students related matters pertaining to acts of indiscipline are delegated to the Chief Proctor. He/she is assisted by two additional proctors; one of the proctors is a woman. On February 11, 2016, a proctorial inquiry was set up and an appeal was made to all concerned, especially students to submit all audio/video evidences regarding the incident by February 26, 2016. On February 11, 2016, the Vice Chancellor set up a High Level Enquiry Committee superseding the Proctorial Enquiry Committee. The HLEC was given the deadline of February 22, 2016 for submitting the report. The HLEC submitted a preliminary report, which was accepted by the Vice Chancellor and the Chief Proctor was asked to implement the recommendations. On February 12, 2016,

HLEC sent a letter directing the petitioner to appear before the HLEC on February 15, 2016. On February 16, 2016, the HLEC sent second notice to the petitioner directing her to appear before the HLEC on February 18, 2016. On February 18, 2016, the HLEC sent third notice to the petitioner directing her to appear before the HLEC on February 26, 2016. On February 23, 2016 the Vice Chancellor had approved appointment of two more Members in HLEC. On March 11, 2016, the HLEC submitted its report. On March 15, 2016, a show cause notice was issued to the students wherein they were directed to file reply by 4 pm on March 16, 2016. Deadline to file reply was increased by few days till March 18, 2016. On March 18, 2016, reply was filed by the students, wherein they had sought that the copy of the complaint, details of the witnesses and their depositions, list of documents, proof/evidence/findings, if any relied on and all documents, statements, and material, if any, relied upon by, during the course of the enquiry, be provided, in order to enable them to file a detailed written response. Thereafter, sufficient time may be granted to make an effective response to the findings. On April 25, 2016, the Chief Proctor after obtaining the approval of the Vice Chancellor issued order holding the petitioner guilty under Clause 3, of category-II sub-category (xxv), whereby the VC imposed a fine of Rs.20,000/- on the petitioner. A writ petition is filed by the petitioner being W.P.(C) No. 4393/2016 wherein this Court passed an order holding that the office order dated April 25, 2016 shall not be given effect to until the appeal filed by the petitioner is decided. On August 22, 2016, order is passed in the appeal whereby the fine of Rs.20,000/- was reduced to

Rs.5,000/- with a direction to file an undertaking.

SUBMISSIONS:-

3. It is the submission of Ms. Malavika Rajkotia, post the events of February 09, 2016, the Respondent set up a 'proctorial enquiry' to enquire into the allegedly objectionable slogans raised during this event. However, this enquiry was superseded by the Vice Chancellor, who set up a "High Level Enquiry Committee". The students identified by the HLEC sent a representation to the Committee, challenging its constitution and also requested that the findings, charges, and the purported evidence be shared with them. She states, the HLEC failed to respond to any of these requests. On April 25, 2016, the Chief Proctor, after obtaining approval of the Vice Chancellor, issued an office order, holding the Petitioner guilty under clause 3, of "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. Further the VC imposed a fine of Rs. 20,000/-, upon the Petitioner. According to her, this was done despite the Petitioner's name being not mentioned in the HLEC report even once. In order to protest the unfair manner in which the Petitioner, among other students, was punished by the Respondent, some students of the University went on an indefinite hunger strike, followed by a mass hunger strike by some teachers of the University. She stated, the Petitioner subsequently, approached this Court for quashing the aforementioned office order. This Court held that the Office Order

will not be given effect until disposal of the appeal filed by the Petitioner before the Vice Chancellor. She stated, the Appellate Authority clearly stated that the petitioner's involvement in the event on February 09, 2016 cannot be established beyond doubt. Yet the authority has imposed a fine of Rs.5,000/- on the Petitioner by way of the Chief Proctor's order. According to Ms Rajkotia, this is clearly indicative of lack of application of mind in passing the order. It is a gross miscarriage of justice. The Petitioner has been subjected to an enquiry which was in violation of principles of natural justice. Any administrative inquiry devoid of the adherence to these principles does not stand. She refers to the case of *AK Kraipak v. Union of India AIR 1970 SC 150* and *State of Orissa v. Dr. (Miss) Binapani Dei and Ors AIR 1967 SC 1269*.

She would submit the following:-

A. Violation of Principles of Natural Justice

According to Ms Rajkotia, the principles of natural justice have been violated at every step of the enquiry undertaken by the Respondent. The enquiry process suffered from the following lacunae:

a. Biased Enquiry

4. The appellate authority is the Vice Chancellor whose approval had been granted for imposing the punishment under Office Order No.155/CP/2016. The Vice Chancellor was already prejudiced against the Petitioner and was consequently incapable of appreciating

evidence from an unbiased perspective. The principle of "*Nemo debet esse judex in propria causa* " means that no one should be a judge in his own cause is applicable in this case. She referred to the judgment of the Supreme Court in the case reported as **(1978) AIR 597 Maneka Gandhi v. Union of India**, wherein the Supreme Court has held that administrative action shall be held in a manner which is patently impartial and meets the requirements of natural justice. In the instant factual matrix, it is clear that the appellate authority is the Vice Chancellor whose approval had been granted for imposing the punishment. As such, the Vice Chancellor cannot be the appellate authority as he was already prejudiced against the petitioner and would have been incapable of appreciating the evidence from an unbiased perspective.

b. Confrontation of Evidence

5. The Respondent failed to provide the Petitioner with copies of all statements and evidence collected by the High Level Enquiry Committee and consequently used by the Appellate Authority. The Respondent provided the Petitioner with a series of haphazardly compiled documents which were completely irrelevant and did not prove any of the charges made against the Petitioner. Moreover, the only student deposition furnished by the Respondent to the Court now does not mention the Petitioner's name even once. She refers to the judgment in the case reported as **(1955) AIR 65 Dhakeshwari Cotton Mills v. Commissioner of Income Tax**. In denying the Petitioner the opportunity to examine the statements and documents collected by the

HLEC, the Respondent has denied the Petitioner of a fair opportunity making the enquiry process arbitrary and therefore illegal.

c. Cross examination

6. According to Ms. Rajkotia, the Petitioner has also not been given the opportunity to cross examine persons or test the veracity of the persons examined by the committee and to lead evidence in her defence. This clearly vitiates the process adopted by the Respondent. Clause (5) of Section 35(2) of the Statutes of the University clearly states that a cross examination of the accused and the complainant is to be conducted in the proceedings conducted as part of a proctorial enquiry. This opportunity has not been given to the petitioner in the instant case.

d. Notice

7. In addition to all of the lapses in the decision making process the Petitioner was not given notice about the proceedings which the Respondent undertook to punish the Petitioner. She would refer to the judgment of the Supreme Court in the case of *Nagarjuna Construction Company Ltd. v. Government of Andhra Pradesh and Ors* 2008 (14) SCR 859.

B. Non-Application of Mind

8. According to Ms. Rajkotia, the order passed is itself flawed in many respects. The imposition of the same penalty on all concerned students barring two, in spite of huge differences in the acts that they

have been held guilty of, reflects lack of application of mind as well as a complete ignorance of the principles of sentencing that an administrative body entrusted with holding an enquiry must be aware of. Moreover, while the Appellate Authority has limited itself to the question of quantum of punishment, it has failed to provide any reasons for the punishment imposed. It must be mentioned here again that the Petitioner was not the organizer of the event in question and was present in capacity of being an elected representative of the Gender Sensitization Committee Against Sexual Harassment (GSCASH). The fact that the orders passed against all the students were in boilerplate language furthers the factum of lack of application of mind by the Appellate Authority. She would refer to the judgments, in the case of *Commissioner of Police v. Ghordandas* 1952 SC 16 and *D'Souza v. State of Bombay* 1956 SCR 382.

C. Application of Patently Illegal University Rules

9. The Respondent has punished the Petitioner under rules which are illegal and void. The Petitioner's alleged acts have been classified as a Category II misconduct falling under clause (xxv), which reads, "*Any other act which may be considered by the V.C. or any other competent authority to be an act of violation of discipline and conduct.*" She states, this provision is too vague and wide. It can encompass any act of a student, and should therefore be considered void. Clause (10) of Statute 32(5) of the Statutes of the University state that the Vice Chancellor shall make the final decisions in any enquiry and shall approve the punishment imposed by the enquiry

committee. Clause (12) of Statute 32(5) of the Statutes of the University state that the Vice Chancellor shall also be the appellate authority. Under these provisions, the Vice Chancellor is required to be involved in the process of enquiry at the first instance. However, he is also required to sit in appeal over the same matter. This is in violation of the basic principle that a person cannot sit in appeal against their own order.

D. Violation of the Fundamental Right to Freedom of Speech and Expression

10. According to Ms. Rajkotia, the order passed by the HLEC and later confirmed by the Appellate Authority is not only violative of the Principles of Natural justice but also deprives the Petitioner of her right to protest an activity to raise political issues which is her constitutional right under Article 19 (1) of the Constitution of India, 1950. She refers to the judgment of *Anita Thakur & Ors. v. Govt of Jammu and Kashmir & Ors. AIR 2016 SC 3808* to contend that the right to peacefully protest is a fundamental right guaranteed by the Constitution. The presence of the Petitioner at the Sabarmati Dhaba on 9th February 2016 was peaceful and coincidental and it cannot be construed to be disruptive. She also referred to the judgment of *Amritshava Kamal v. Jawaharlal Nehru University 2007 (99) DRJ 528*. with reference to the Respondent University's conduct.

11. She submitted, the past conduct of the Respondent is reflective of the fact that there exists a tendency in the Respondent to hold

inquiries in a mala fide manner, sidelining the interests of the students. In the abovementioned case, it was found that the Respondent had not provided the Petitioner with opportunity or notice before the inquiry against the Petitioner. She also referred to the judgment of *Flora Gupta v. Jawaharlal Nehru University Manu/DE/3042/2012*.

12. On the other hand, Ms. Ginny Routray, learned counsel for the respondent would submit, that 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. She stated, at 12 pm on February 09, 2016 the Respondent got to know that some students were planning to host an “anti-national event” in the evening at Sabarmati Dhaba. A meeting was called in the Vice Chancellor’s Office, wherein it was discovered that permission was sought from the Additional Dean of Students by the Petitioner on the false pretext of holding a poetry reading competition at Sabarmati Dhaba. Despite the alleged “permission” immediately being withdrawn by the DOS, the Petitioner carried on with the event which led to an enormous law and order situation.

13. 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.”

She submitted, 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.

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 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**.*

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

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

- (i) Misrepresenting of the proposed event as a cultural evening although objective was to hold a political meeting.*
- (ii) Forcefully holding the event even when the permission to hold it was withdrawn by the DOS.*
- (iii) Creating a law and order situation on campus both at Sabarmati Hostel and Ganga Dhaba.*
- (iv) Shouting unconstitutional slogans, and making derogatory remarks about the nation.*

14. According to her, prima facie considering the **seriousness of the offences**, and in order to enable a fair enquiry into the incident, the Enquiry Committee had recommended that the Petitioner along with certain other students be academically suspended from JNU with immediate effect during pendency of the enquiry. However, they were allowed to stay in their respective hostels as guests during the period of enquiry. 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 the first notice dated February 16, 2016 wherein she was asked to appear before the Committee on February 18, 2016. Subsequently, a second notice was issued on February 18, 2016 asking her to appear before the Committee on February 19, 2016. A third notice was served to the Petitioner on February 19, 2016 asking her to appear before the committee on February 26, 2016, however, the Petitioner abstained from appearing before the committee and clearing her stand.

15. She stated, the Petitioner on February 26, 2016, the day on which she was to appear before the HLEC, addressed a letter to the HLEC wherein she stated that-

I have received three email communications from the High Level Enquiry Committee Nos.HLEC/JNU/2016/1963 (dated February 12, 2016), HLEC/JNU/2016/2069, 70 (dated February 19, 2016) asking me to appear on 16th February, 18th February and 26th February, respectively, before a High Level Enquiry Committee to explain my position on 'an incident that took place on 9th February, 2016 near Sabarmati and Ganga Hostel.

In the circumstances following the 9th of February an extremely volatile situation has been created both inside and outside the campus which has resulted in extreme mental and physical stress for me..... I feel insecure

because the prevailing atmosphere in JNU, and city and indeed the country is not conducive to a proper and fair investigation, making depositions and statements without fear impossible.....

I, Aishwarya Adhikari, was not an organizer of the event, and had no party in “forcefully holding the event.” I did participate in the event as part of the audience and agreed with many other students and organizations that the administration had cancelled the event barely minutes before it was scheduled to start because of the complaint made by ABVP.....

As a representative of GSCASH, my presence in the Dhabas is routine. Far from creating a law and order situation, my presence there enabled me to resolve a situation that created a law and order problem. I saw near the Godavari bus stop that a women student was having an altercation with a group of students led by Saurabh Sharma and Gaurav Kumar Jha. The women student alleged that she was inappropriately manhandled by them a while ago. I went to Ganga Dhaba at the request of that woman student to receive a complaint to the GSCASH regarding the incident.....

I categorically state that I did not initiate or respond to any such slogans during the event.....

There was an unfamiliar group within the larger gathering at the Sabarmati Dhaba on 9th February. I have never seen any of those participants within JNU and I suspect that they not students of our university. Many of them had their faces covered. This group seemed to be pursuing its own agenda within the gathering of students, raising unfamiliar and disturbing slogans causing surprise and unease within the general gathering. I do not think any of them JNU students present there responded to their slogans.

The slogans that were raised by the JNU students present in the Sabarmati Dhaba were familiar ones against oppression and injustice, which have been raised in many protest events in the past. I did not initiate any slogans on that day but responded to the familiar slogans like many other students.....

16. According to Ms. Routray, the Petitioner feeling unsafe within the campus is not a viable excuse since the Respondent had taken steps to ensure the safety and tight security for all the students within the campus and, in fact even morning walkers were prohibited to enter the campus. Further, the petitioner was residing within the campus and had hand delivered all her letters/communications to the Administrative Building, from which it is evident that the Petitioner deliberately avoided appearing before the committee and made baseless excuses not to do so. Further, according to Ms. Routray the Petitioner on one hand stated that she did not initiate nor respond to

slogans during the event and on the other hand goes on to say that she did not initiate any slogans but responded to familiar slogans. It is therefore evident from the Petitioner's contradictory statements that she was very much present in the event and did in fact raise slogans thus, contributing in worsening the situation. According to Ms. Routray, the stand of the Petitioner that she was present at the event as a representative of GSCASH and on the basis of a complaint of a female student; however, there was no written complaint before GSCASH nor before this court, which shows that any such complaint was even made. As per the rules any such complaint would have to be filed before GSCASH within a specified period. Further, the Security Deposition of Naveen Yadav clearly stated that the Petitioner was very much present when the event was being organized at 4:45 pm.

17. Mr. Routray stated, the Respondents on February 26, 2016 addressed an Email/letter to the Petitioner wherein it was 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 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 above mentioned letter is therefore the fourth notice that was issued to the Petitioner. However, the Petitioner still failed to appear before the Committee.

On February 29, 2016 the Petitioner again wrote to the HLEC wherein she reiterated the contents of her previous letter and further stated that-

I also note with concern that your letter that the HLEC has only afforded me a final chance for deposition but no opportunity to have witnesses examined in my defence or to cross-examine the person(s) who have complained against me and the witnesses he/she/they have presented. This is against my natural rights for justice. Any fair and free Enquiry can only take place when the university comes to normalcy.

18. Ms. Routray's submission is that the Petitioner was served 4 notices asking her to appear before the Committee on four different dates i.e. February 15, 2016, February 18, 2016, February 26, 2016 and finally February 29, 2016. The Petitioner still however failed to appear on all four dates and did not provide any valid reason of not doing so. She stated, the Petitioner never intended to appear before the Committee to begin with and therefore, sought excuses after excuses to avoid the same. Further, the Petitioner would have been given an opportunity to cross examine had she come forward to record her statement. She stated, 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. Aishwarya Adhikari, Registration Number: 1984, Enrolment No: 14/40/HI/112, Year of Admission: 2014, M.A. Student, School of International Studies, 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.

19. 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 acts. The Petitioner was asked to submit her reply to the Chief Proctor's Office latest by March 16, 2016, 17:00 hrs later extended till March 18, 2016 failing which it would be presumed that the Petitioner has nothing to say in her defense 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 admissions by Petitioner and depositions which led to issuance of the Show Cause Notice. Further, the HLEC report clearly outlined the slogans that were shouted during the event by the JNU students and by a group of outsiders, which included JNU student identified as "Mujeep Gatto".

20. The Petitioner responded to the Show Cause Notice on March

18, 2016 -

As I have mentioned in my earlier communications to you, I feel that the HLEC has functioned in violation of the principles of natural justice. The “show cause” notice issued to me is in continuation of an arbitrary process, where I am being asked to explain “violation of discipline and conduct” without being provided any evidence of specific instance of such a “violation”.

21. Ms. Routray stated, the Petitioner cannot claim that there was a disregard of the Principles of Natural Justice since the Petitioner was served with four notices to appear on four different dates yet the Petitioner chose to ignore them and not appear before the Committee. She stated, the Petitioner without having appeared before the Committee cannot claim that the principles of natural justice have not been followed by the Respondents, had she appeared before the Committee she would have been privy to all the evidence available before the HLEC. 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. Pertinently, the Petitioner has not denied having raised slogans outlined in the HLEC report in her said reply to the Show Cause Notice after having admitted to raising slogans in her letter dated February 26, 2016. Therefore, the office order dated April 25, 2016 came to be passed.

22. 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 her, both at the stage of enquiry, and at the stage of Show Cause Notice by wilfully not responding to the same, hence the Writ Petition on this ground alone is not maintainable.

23. She stated, the Petitioner was aware of the charges against her as the same were available in the Suspension Order dated 12.02.2016. However, the Petitioner in her reply to the Show Cause Notice dated 18.03.2016 and Appeal dated 02.05.2016 did not elaborate on the slogans despite stating that she only responded to familiar slogans. The Petitioner did not deny shouting the slogans that were mentioned in the HLEC report. Further, 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 witnesses' safety only provided for the same to be inspected. Further, the Norms and Procedures along with SOP stated 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 writing.*

24. According to Ms. Routray, even though the Petitioner and other students were not provided the copies of the documents at the stage of show cause, 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. She states, the Petitioner would have been given an opportunity to cross examine had she come forward to record her statement.

25. She also 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 by this Court. That without prejudice to the fact that the allegations levied against JNU authorities in the Affidavit dated September 05, 2016 are wrong and denied. The same is evidenced in the Petitioner's Affidavit wherein she stated that-

First statement made by the Vice-Chancellor was that, they

were there to listen to my appeals process. He declared that they were willing to cooperate with my and listen to my appeal.....

Dr. Krishnendra Meena, one of the members, opened a particular file, which contained depositions of the security staff. The depositions by these staff were written in Hindi. Since Hindi is not my mother tongue, it was impossible for me to read through them.....

The Vice Chancellor suggested that one of the members shall read the depositions out to me, in the adjacent room, following which I was supposed to fill in a deposition form and make my statement.....

While Dr. Krishnendu Meena searched for my name in the depositions, he started a casual conversation.....

He also stated that it would be very difficult for him to read out all the deposition in Hindi to me. After a while, he said he could not find any documents suggesting my present/involvement in the event in question other than one document where my name, along with several other students, was mentioned.

26. That the Respondent finally issued the Office Order No.201/CP/2016 dated August 22, 2016 wherein it was stated that-

During her deposition before the Appellate Authority and

investigation thereon her involvement in the event could not be established beyond doubt.

The punishment, as recommended by the Appellant Authority, on Ms. Aishwarya Adhikari is fine of Rs,5000/-.

The payment of fine will have to be made within two weeks from the date of the implementation of this order.

27. Ms. Routray submitted, the Appellate Authority had taken into consideration the fact that the Petitioner's involvement could not be ascertained beyond doubt by the HLEC in its report nor with the available evidence apart for one document wherein the Petitioner's name was mentioned. Moreover, the Petitioner herself admitted to sloganeering therefore, there was no requirement for any additional finding. Thus, taking the contents of her letters in entirety, wherein she admits to being present at the venue and responding to familiar slogans, the Appellate Authority did not find any anomaly in the same and therefore, her punishment was reduced from Rs.20,000/- to Rs.5000/-.

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 herself, and the committee followed the rules of natural justice while holding the enquiry. According to her, 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 referred to the judgment of this Court in ***Jawaharlal Nehru University V. Flora Gupta, LPA 570/2012 & CM No.14010/2012*** wherein it is held -

The ground 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.

29. 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 her hostel, in her various addresses and was asked to show cause and was also given opportunity to defend herself before the enquiry committee. That the Petitioner claimed physical and mental stress as justified reason for not attending the enquiry proceedings. This conduct of the Petitioner does not attract any empathy from the authorities. The

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

30. She stated, the Legal Submissions made and judgments relied upon in Umar Khalid V. JNU, W.P. (C) 7826/2016 and Anirban Bhattacharya V. JNU, W.P. (C) 7828/2016 may be read as part and parcel of the present submissions. The 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 v. UOI and 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 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 whereby a penalty in the nature of fine of Rs.20,000/- was imposed on the petitioner, which order was modified by the Appellate Authority to the extent that the fine was reduced 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 has been held in violation of Statute 32(5) of the Statutes of the University; inasmuch as due opportunity was not given in violation of principles of natural justice; the action is actuated by malafide as the University is also reviving stale proceedings by issuing notice to some of the concerned students in respect of incidents of 2015. On a reading of order dated August 22, 2016, there is no connection between the findings of fact and violation of Rules of the respondent University. The orders have been issued without giving the relevant material relied upon by the respective Authorities. The HLEC has prejudged the petitioner and the action taken on the basis of the report of the Committee is not impartial and unbiased. The HLEC did not even reply to the petitioner's request for documents, on the basis of which she has been found guilty. The impugned action has serious

consequences for the petitioner's academic career. No Rule/Statute or Ordinance, under which petitioner has been punished has been stipulated. The Appellate Authority premised its decision on the refusal of the students to sign a vague undertaking that would have resulted in severe curtailment of their fundamental rights.

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

33. There is no dispute that the petitioner had filed an Appeal dated May 02, 2016. It is also a conceded fact that the Vice Chancellor-Appellate Authority had held its meeting on June 16, 2016. There is also no dispute that the petitioner was shown the record of the enquiry. The parties are at variance about the duration for which the record was shown. It is a conceded fact that a hearing was given to the petitioner on the same day, which resulted in the passing of the appellate order on August 22, 2016.

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. 4393/2016, 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 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 Committee to allow inspection of the documents/records 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. That apart, even in these proceedings, the respondent has not filed, the complete record of the HLEC. In fact, in some of the connected petitions, a stand has been taken in the written submissions that only certain documents relied upon by HLEC were filed before this Court and the entire evidence, documents, notices and proceedings are maintained by the respondent in its

official files. The same are available for any other scrutiny as and when the same is requisitioned before the Court. Even if some depositions were filed along with the written arguments in some connected cases, the same are in Hindi. Even otherwise, the HLEC report refers to deposition of some eye witnesses, which are in the deposition files. It is not clear, who these witnesses are, who are being referred to. All the evidence, documents, notices and proceedings being in the official files, there was no occasion for this Court/counsel for the petitioner to look into the same for a proper appreciation/justification of the impugned orders. This I say so, the appellate order refers to the fact that one of student has in his depositions stated the petitioner was involved in the event at Ganga dhaba. Further, the petitioner, in her appeal dated May 02, 2016 has raised several grounds including that the disciplinary action against her was in violation of principles of natural justice and had also sought for certain documents, so that she could present her case.

35. Suffice to state, from the reading of the order dated August 22, 2016, it is seen that the Appellate Authority has not dealt with the said grounds. 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).

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 plea of Ms. Malavika Rajkotia that the Vice Chancellor having involved in the process of enquiry at the first instance, cannot sit in appeal against his own order is concerned, the same is without any merit for more than one reason. Firstly, the petitioner by appearing before the Appellate Authority on June 16, 2016 has submitted to the jurisdiction of the Appellate Authority i.e. the Vice Chancellor. Secondly, the vires of Rule 12 contemplating an appeal to the Vice Chancellor is not under challenge.

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

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 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, the 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 her the copy of the statements of witnesses as it cannot be said that she 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.

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 two continuous 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. 4393/2016 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. 32744/2016 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

OCTOBER 12, 2017/ak

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