

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 12, 2017

+ W.P.(C) 7912/2016, CM No. 32746/2016

GARGI ADHIKARI

..... Petitioners

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. 208/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 AS MENTIONED IN THE WRIT PETITION:-

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. 4389/2016 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 upholding the fine of Rs.20,000/- that has been imposed by HLEC on the petitioner with a direction to give an undertaking.

SUBMISSIONS:-

3. It is the submission of Ms. Malavika Rajkotia, that post the events of February 9, 2016, the Respondent set up a 'proctorial enquiry' to enquire into the allegedly objectionable slogans raised during the 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. 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. The Appellate Authority, despite having no evidence against the Petitioner and despite her not

being the organizer of the event in question, retained a fine of a sum of Rs 20,000. This is clearly indicative of the lack of application of mind in passing the order. It is an instance of gross miscarriage of justice. The Petitioner has been subjected to an enquiry which was in violation of the principles of natural justice. Any administrative inquiry devoid of the adherence to these principles does not stand in view of the judgment of the Supreme Court in the cases 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*.

Her submission are, the impugned action/orders are:-

A. Violation of Principles of Natural Justice

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 dated April 25, 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 requirement of natural justice. In the instant factual matrix it is clear that the Appellate Authority for the purposes of office order dated August 22, 2016 is the Vice Chancellor, whose approval had been granted for imposing the punishment under Office Order dated April 25, 2016. 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. According to Ms. Rajkotia, 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. It must be mentioned here that the Security deposition now submitted to the court against the Petitioner by the Respondent mentions her name only in the passing and does not attribute any specific 'objectionable' slogan to her. Further, the student deposition evidenced by the Respondent does not even mention the Petitioner's name anywhere. She relied on the judgment of the Supreme Court in the case reported as (1955) AIR 65 *Dhakeshwari Cotton Mills v. Commissioner of Income Tax*. She stated, 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. She submitted, 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. Ms. Rajkotia would submit, 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 relied on the judgment of the Supreme Court in *Nagarjma Construction Company Ltd. v. Government of Andhra Pradesh and Ors. 2008 (14) SCR 859*.

B. Non-Application of Mind

8. She submitted, 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 a 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. According to her, the Petitioner was not the organizer of the event in question and was present in capacity of being the security convenor, an elected representative to the Jawaharlal Nehru University Students Union (JNUSU). 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 referred to the judgments in *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. According to Ms. Rajkotia, 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.*" 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. She had submitted, 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 relied on the judgment of the Supreme Court in the case of *Anita Thakur & Ors. v. Govt of Jammu and Kashmir & Ors.* AIR 2016 SC 3808 and this Court in *Amritshava Kamal v. Jawaharlal Nehru University* 2007 (99) DRJ 528. 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 relied on the judgment of this Court in *Flora Gupta v.*

Jawaharlal Nehru University, MANU/DE/3042/2012.

11. 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 No.1 is Jawaharlal Nehru University (JNU) established and incorporated by an Act of Parliament in the year 1966. She would state, 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.

12. 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 that 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 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**, recommended **actions** to be initiated by the University **as per its statutes and guidelines**.*

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

Based on the report submitted by the Chief Security Officer, video clipping of the events and other related documents, the High Level Enquiry Committee, constituted by the Vice

*Chancellor, JNU, is of the opinion that **prima facie evidence of the occurrence** of the following offences exists:-*

- (i) Misrepresentation of the proposed event as a cultural evening although objective was to hold a political meeting.*
- (ii) Forcefully holding the event even 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 Ms. Routray, 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 12, 2016 wherein she was asked to appear before the Committee on February 15, 2016. Subsequently, a second notice was issued on February 16, 2016 asking her to appear before the Committee on February 18, 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.

15. According to Ms. Routray, 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/2016/1949, 50 (dated February 12, 2016), HLEC/JNU/2016/2067,68 (dated February 16, 2016) and HLEC/JNU/2016/2141, 66-67 (dated February 18, 2016) asking me to appear on 16 February, 18 February and 26 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' and to bring any evidence in my defense.

I have been a student in this University for over one semester and am also currently the elected JNUSU Councilor from the School of International Studies. I am also the Security Convenor of JNUSU.

The situation created both inside and outside the campus following the 9th February incident had resulted in extreme mental and physical stress for me.....

I, Gargi Adhikari, was not an organizer of the event, and had no part in "forcefully holding the event". As a representative of JNUSU, my presence in the Dhabas is routine. I was present during the event at Sabarmati Dhabas part of the audience.....

The Slogans that were given by JNU students were familiar ones against exploitation and injustice. I responded to those familiar slogans alongwith many other students.

16. It was her submission that 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, in fact even morning walkers were prohibited to enter the campus. Further, the Respondent was residing within the campus and had hand delivered all her letters/communications to the Administrative Building. So, the Petitioner deliberately avoided appearing before the committee and made baseless excuses not to do so. She stated, the Petitioner was an office bearer and thus, there was nothing stopping her from appearing and deposing before the HLEC. Also, since the Petitioner had no fear of her safety while being present at the event and responding to the slogans (as per her own admission) wherein a law and order situation was created, she should have had no hesitation in appearing before the HLEC especially since there was no incidents in the campus after September 09, 2016 and the Petitioner was very well residing within campus.

17. 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.

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

As I had mentioned in my earlier response, I am willing to cooperate with any fair, unbiased enquiry in accordance with the principles of natural justice. However, I note with concern that the HLEC has given me a final chance for deposition.

She submitted, the Petitioner was served four notices asking her to appear before the Committee on 4 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. According to her, the Petitioner never intended to appear before the Committee to begin with and therefore, sought excuses after excuses to avoid the

same.

19. She submitted, 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. Gargi Adhikari, Registration Number:805634, Enrolment No:15/4G/PI/001, Year of Admission: 2054, PH.D 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

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 depositions which led to issuance of the Show Cause Notice.

20. The Petitioner responded to the Show Cause Notice on March 18, 2016 wherein she stated that she was supplied with an incomplete HLEC report, which is incorrect as all the students were provided with the complete report, however, the recommendations for punishments were removed keeping in mind the sensitivity of the matter as a number of students were named in it. According to Ms. Routray, the petitioner's demand for documents is concerned had the Petitioner appeared/deposed before the committee the same would have been available before her to examine. She submitted, 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 submitted by JNU Security Office and scrutinizing various documents/posters related to this incident. The video submitted to the Committee by the CSO was duly authenticated by a Government approved agency: Truth Labs, Bangalore. Subsequently to enquiry procedure, the HLEC recommended 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 imposed a fine of Rs.20,000/-. The HLEC submitted its report along with recommendations to the Vice Chancellor on March 11, 2016.

21. She submitted that at the stage of appeal the decision is to be taken only from record before the deciding Appellate Authority. The 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 opportunity 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. 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. Gargi Adhikari (Registration Number-805634, Enrolment No: 15/4G/PI/001, Year of Admission: 2015, Ph.D Student, School of International Studies and a r/o. Room No.61, Koyna Hostel) guilty on the following counts.

*The university ‘**Rules and discipline and proper conduct of students of JNU**’, Clause 3-‘Category 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 o discipline and conduct’.*

As per the HLEC recommendation, Ms. Gargi Adhikari has been found guilty of

a) Shouting objectionable slogans in wrongfully9 organized event

This act on the part of Ms. Gargi Adhikari is serious in nature, unbecoming of a student of JNU and calls for stringent disciplinary action against her.

The Vice-Chancellor, in exercise of his powers vested in him under Statute 32 (5) of the Statutes of the University, has ordered that Gargi Adhikari is fined Rs. 20,000/- (Rupees twenty thousand only) and is also warned to be careful and not to get involved in such incidents in the future. Otherwise, a 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 his office, failing which the hostel facility will be withdrawn with immediate effect and further registration will not be allowed.

22. She submitted, subsequently on May 02, 2016, the Petitioner in her letter to the Vice-Chancellor appealed to withdraw the Office Order dated April 25, 2016 wherein she stated that-

This charge against me is completely false and without any basis, as I have not shouted any 'objectionable' slogan anywhere at any time. Neither was I the organizer of any event on 9th February 2016. Also, it is not clear to whom and in what sense is the slogan which has been wrongfully attributed to me 'objectionable'. Moreover, the Office Order does not even specify exactly where, which specific slogan and which specific 'wrongful' event on 9th February 2016 is

being referred to.

23. However, the Petitioner in her reply to the Show Cause Notice dated March 18, 2016 and Appeal dated May 02, 2016 did not deny raising the slogans despite the fact that the HLEC clearly outlined the slogans that were shouted. She stated, the Petitioner admitted to responding to familiar slogans however, did not counter the slogans that were outlined in the HLEC report. The Petitioner was seen shouting objectionable slogans by the Security Officer and the same was recorded in the HLEC report. The Petitioner's appeal was replied to on May 03, 2016 by the Respondent and the Petitioner was asked to meet the Chief Proctor to discuss the same. 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.

24. Further, she submitted that on June 16, 2016 the Petitioner appealed against the HLEC proceedings wherein she stated that she was unaware of the charges levelled against her and claimed that she was not provided with documents. She stated, that had the Petitioner appeared/deposed before the committee she would have been given the opportunity to access all the documents. It is further submitted that the Show Cause Notice and subsequently the Office Order dated April 25, 2016 clearly mentioned the charges levelled against the Petitioner. She submitted that the Petitioner was not provided with

copies of documents as the University in its wisdom and in view of the atmosphere, considering the sensitivity of the matter and in the interest of the witnesses' safety only provided for the same to be inspected before the Committee. Further, the Norms and 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 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 also after the enquiry period.*

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

25. She would submit, that 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 further submitted that the Petitioner would have been given an opportunity to cross examine had she come forward to record her statement. She referred

to the judgment of the Supreme Court in the matter of ***K.L. Tripathi V. State Bank of India & Ors. (1984) 1 SCC 43.***

26. According to Ms. Routray, without prejudice to the fact that the allegations levelled against JNU authorities in the Affidavit dated September 05, 2016 are wrong and denied. The Petitioner in the said affidavit stated that-

As I entered the room which consisted of all the members of the appellate authority, the first statement made by the committee was that, they were to listen to my appeals process. They declared that they are willing to cooperate with me and listen to my appeals process. They declared that they were willing to cooperate with me and listen to my appeal.....

They persistently inquired about my presence in the event of 9th February. I clearly put forward my statement and said that until and unless the documents that I have asked for were provided to me and a break was made with the HLEC report to initiate a fresh start, I could not state anything on the matter. Moreover, I had already clarified to the HLEC that I was present in my capacity as the Security Committee Convenor of JNUSU. I also reiterated my doubts with the entire process of HLEC, where the principal of natural justice has been so clearly flouted. Upon this, the Vice Chancellor accused me of not cooperating with the HLEC

process willingly, never communicating with the committee, and getting to know my charges.....

The Appellate Committee stated that given my appeal that it was difficult for me to make any comments on the HLEC report, as no documents were supplied despite my repeated requested to the committee, they said that they were willing to share all the documents that clarified the accusations brought by the University against me.....

Even after going through the depositions of some of the Security Staff of JNU, I did not have any clarity as to what were the charged against me. I could not find my name being mentioned more than once in the entire bunch of documents.....

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

Evidence

1. She shouted objectionable slogans in wrongfully organized event, which is evidenced from the deposition of Mr. O.P. Yadav (Operations Manager, G4S) as reflected in the HLEC report (Page 16).

Recommendations

Ms. Adhikari did not make any specific appeal to absolve

herself from the charges made by the HLEC. On the contrary she questioned the formation of HLEC itself, and asked for documents and evidence related to her involvement in the event. The Committee thereupon considers the recommendations of the HLEC on the aforesaid student highly justifiable. Therefore, the punishment recommended by the HLEC i.e. “A fine of Rs.20,000” stands as it is. In addition to this, she has to submit an undertaking in a prescribed format to the Chief Proctor.

28. She submitted, 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 this enquiry. The 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*** 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.

29. Ms.Routray stated, the Respondent has acted within their authority, exercised their judgement in good faith, and followed the applicable laws. The constitutional provisions, the provisions of the Act, the Statute and the Ordinances and the Principles of natural justice have been complied with by the Respondent. The Petitioner was served with notices at her hostel, in her various addresses and was asked to show cause and was also given opportunity to defend herself before the enquiry committee. 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 states, 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 v. UOI and Ors 2006 (5) SCC 88.***

She prays, this Court to dismiss the Writ Petition of the Petitioner.

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 on April 25, 2016 whereby the Authority has imposed a penalty of fine of Rs.20,000/- on the petitioner, which order has been upheld by the Appellate Authority with a direction to give an undertaking. The enquiry relates to the events held on February 09, 2016 at the University Campus. The grounds of challenge by the petitioner are that the respondent has failed to follow the procedural Rule of Discipline and Proper Conduct among students of the University framed in terms of Section 5(10) of JNU Act read with Statute 32(5) of the Statutes of the University. The petitioner has not violated any Rules of the University. The show cause notice is in terms of residuary provision, the same is too wide and can encompass any act of a student and should therefore be considered void. It is her ground that under the provisions the Vice Chancellor is required to be involved in the process of enquiry at the first instance. However, he is not required to sit in appeal over the same matter. This is in violation of basic principle that a person cannot sit in appeal against its own order. The proceedings of the HLEC are in violation of principles of natural justice as there was no notice to her. The action of the respondent is actuated with malafides as is clear from the fact that the University is now reviving stale proceedings by issuing notice to some of the concerned students. The Appellate Authority has also conducted the proceedings in violation of principles of natural justice. The Appellate Authority has failed to provide any reasons for the punishment imposed. The Appellate Authority has assumed that the appeal of the petitioner was only directed against the constitution of HLEC and not against the decision per-se. The nature of questions

asked by the Appellate Authority have no relevance to the charge against the petitioner. The Appellate Authority had failed to provide the petitioner with copies of statements and evidence collected by the High Level Enquiry Committee and consequent use by the Appellate Authority and failure to afford an opportunity to the petitioner to cross examine the persons, test veracity of persons examined by the Authority and to lead evidence in her defence, vitiates the process adopted by the respondent. It is her ground that the Appellate Authority has presumed guilt on the part of the petitioner. It is also her ground that the Appellate Authority has failed to give sufficient time to the petitioner to peruse the depositions against her and to submit response to the same. It is also her ground, the Appellate Authority failed to take into account that the proceedings of the HLEC and action on the same have serious consequences for the petitioner's academic career. It is also her ground, that the Appellate Authority had failed to state the Disciplinary Rule, Statute or ordinance under which the petitioner has been punished.

32. 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.

33. There is no dispute that the petitioner had filed an Appeal dated May 02, 2016. It is a conceded fact that the Vice Chancellor-Appellate Authority had held its meeting on June 16, 2016. There is also no dispute that the petitioner was shown the record of the enquiry. The parties are at variance about the duration for which the record was shown. It is a conceded fact that a hearing was given to the petitioner on the same day, which resulted in the passing of the appellate order on August 22, 2016. In her appeal dated May 02, 2016, the petitioner has stated the allegations against her are wrong. She has not been given the materials on the basis of which the HLEC has concluded against her. The show cause notice did not specify the charge against her nor any material by which it was proposed to be established, was shown. The enquiry against her had violated the Statutes and the relevant Rules of the University. The HLEC report was truncated. It was only the report, which was shared with her, not the depositions, list of witnesses. She stated, that the finding of the HLEC is perverse.

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) 4389/2016, 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 Authority 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 on record, the complete record of the HLEC. In fact, in some of the connected petitions, a stand has been taken in the written submissions that only certain documents relied upon by HLEC were filed before this Court and the entire evidence, documents, notices and proceedings are maintained by the respondent in its official files. The same are available for any other scrutiny as and when the same is requisitioned before the Court. Even if some depositions are filed along with the written arguments in some cases, the same are in Hindi.

Even otherwise, the HLEC report refers to deposition of eye witnesses, which are in the deposition files. It is not clear, who these witnesses are, who are being referred to. All the evidence, documents, notices and proceedings being in the official files, there was no occasion for this court/counsel for the petitioner to look into the same for a proper appreciation/justification of the impugned orders.

35. Further, it may be stated here that in her appeal dated May 02, 2016, the petitioner has raised several grounds. 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).

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

36. Insofar as the 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 herself 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 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 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 reliance placed by Ms. Routray on the judgment of *M.V.Bijlani (supra)* is concerned, in view of the limited issue that is being decided by this Court, this judgment would have no relevance.

48. In view of my above discussion, the writ petition is allowed to the extent that the Appellate Order dated August 22, 2016 is set aside and the matter is remanded back to the Appellate Authority with a direction to grant an opportunity of inspection to the petitioner, the record of the HLEC for continuous two days during office hours only by notifying the date and time to the petitioner for the same and upon such inspection, the petitioner shall have one week time to file a Supplementary Appeal, upon which the Appellate Authority shall give a hearing to the petitioner on a date and time fixed by the Appellate Authority, who thereafter shall, by considering the appeal(s) already filed by the petitioner and the Supplementary Appeal, if any, pass a reasoned order as expeditiously as possible preferably within six weeks thereafter. Till such time, the order dated April 25, 2016 shall not be given effect to. It is also made clear in view of the undertaking given by the petitioner in W.P.(C) No. 4389/2016 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. 32746/2016 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

OCTOBER 12, 2017/ak

