

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Judgment delivered on: October 12, 2017**

+ W.P.(C) 7902/2016, CM No.32725/2016

**KANHAIYA KUMAR**

..... Petitioner

Through: Ms. Rebecca John, Sr. Adv.  
with Mr. Harsh Bora, Adv.

versus

**JAWAHARLAL NEHRU UNIVERSITY  
& ANR.**

..... Respondents

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

**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 the facts and circumstances stated above, it is most respectfully prayed that this Hon’ble Court be pleased to:*

*a. issue a writ of certiorari, or any other appropriate writ, order or direction, for calling for the records and quashing the Office Order No. 212/CP/2016 dated 22.8.2016 issued by Respondent No.2, the Office Order*

*No. 160/CP/2016 dated 25.4.2016, issued by Respondent No.2, and the report of the High Level Enquiry Committee and/or,*

*c) Pass any such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case and in the interest of justice."*

2. The facts pleaded and the submissions made by Ms. Rebecca John, learned Senior Counsel for the petitioner are, the Petitioner is a Ph.D student at Centre of African Studies, School of International Studies, Jawaharlal Nehru University (JNU) and was the elected President of the JNU Students' Union (JNUSU) at the relevant time. On February 09, 2016, a programme titled 'A Country without a Post Office' was organized by a group of students of JNU. The Petitioner had nothing to do with the event. After the programme, marches were taken out by two rival student groups, wherein sloganeering took place on both sides. On February 11, 2016, a High Level Enquiry Committee (HLEC) was set up "to inquire into the incident". FIR No. 110/2016, under Sections 124A/34, IPC, was also registered at PS Vasant Kunj North. The Terms of Reference of the HLEC were:

*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 action to be initiated by the university as per its statutes and guidelines.*

3. On February 12, 2016, the Petitioner was arrested. On the same day, the Respondent/JNU suspended eight students, including the Petitioner, for the period of the enquiry. According to Ms. Rebecca John, the power of the VC to suspend students, pending an enquiry, is contained in Rule 5(2) to the Appendix to Rules framed under Statute 32(5) of the JNU Act. However, this power is exercisable against a student only during the pendency of an enquiry contemplated under the Rules framed under Statute 32(5) of the JNU Act, i.e. an enquiry on 'student related matters pertaining to all acts of indiscipline', not a mere fact finding enquiry, as has been argued by the counsel for JNU.

4. On February 12, 2016, February 16, 2016 and February 18, 2016, the Petitioner was supposedly sent notices to join the HLEC proceedings to his hostel address and his email. However, as he was in police and judicial custody during this period, he did not receive any

notice. Furthermore, no notice was served on him in jail. Ms. John submitted, that none of the three notices stated the nature of the enquiry being conducted by the HLEC, as to whether it was a fact finding or a Disciplinary Enquiry. Further, the notices directed the Petitioner to *"bring any evidence, which you wish to submit in support of your defence"*. However, if the HLEC was merely a fact finding enquiry, as argued, then why was the Petitioner being asked to bring evidence in support of his defence. Lastly, according to her, it shows that the HLEC was not interested in giving any meaningful opportunity to the Petitioner to put forward his case, since he was in custody at the time. On February 22, 2016, the term of the HLEC was extended by the VC for a period of 1 week, i.e. till March 03, 2016, for the filing of the Enquiry Report. According to Ms. John, on March 02, 2016, this Court granted the Petitioner interim bail for a period of 6 months and he was released from jail on March 03, 2016. On March 04, 2016, a notice was pasted on the door of hostel room of the Petitioner, asking him to appear before the HLEC and present evidence in his defence. Nothing was stated in the notice as to what the allegation, if any, against the Petitioner was, and what was he

required to present his evidence in defence of. The Petitioner, therefore, did not appear before the HLEC for the following reasons.

- However, the legitimacy of this notice is questionable, since as per the HLEC Report, the HLEC issued only three notices to every student. Therefore, it can be argued that the HLEC Report, for all intents and purposes, was prepared prior to the issuance of this 'fourth notice' to the Petitioner.
- Lastly, the term of the HLEC was extended by the VC till March 03, 2016 to submit the Report, which was eventually submitted on March 11, 2016. Therefore, the notice given to the petitioner on March 04, 2016 to appear on March 08, 2016 was not meant to assist the fact finding because in any case, the Report was substantially ready by then.

5. Ms. John would submit, on March 11, 2016, the Petitioner made two representations to the VC, one in his capacity as the President of JNUSU, and the other in his personal capacity. On March 15, 2016, the Petitioner received a Show Cause Notice dated March 14, 2016 (without being supplied the HLEC Report), declaring that the HLEC had found him guilty under Clause 3, Category II, Sub-Category (xxv),

of the 'Rules and Discipline and Proper Conduct of Students of JNU'. She submitted, it was not even stated as to what act he had been found 'guilty' of, nor was the material specified or provided to him (including the HLEC Report). Without any explanation as to the findings of the HLEC, he was directed to provide his reply by the next day. However, the time to file the reply was later extended to March 18, 2016. It is the submission of Ms. John that, in determining the "guilt" of the Petitioner, the HLEC exceeded its Terms of Reference, and it was only required to "recommend action to be initiated by the university as per its statutes and guidelines", and not to determine the "guilt" of any student. It was also not competent to do so as it was only a fact finding enquiry and not a Disciplinary Enquiry and could not have determined the guilt of the Petitioner without charging the Petitioner, without providing him with the material collected, and without giving him due opportunity to rebut the material against him. She would submit, Sub-Category (xxv), under which the Petitioner has been found guilty, is an open-ended residual clause in the list of categories of indiscipline. According to her, it is nowhere stated in the Show Cause Notice that the HLEC Report is provided to the Petitioner, although in the Counter

filed by the Respondent, it is claimed so.

6. She submitted on March 18, 2016, the Petitioner replied to the Show Cause Notice, wherein he objected to the notice and the HLEC's findings against him, without indicating the allegations or providing him with the relevant material or a due opportunity to rebut the said material, as it violated the principles of natural justice. On April 26, 2016, the Petitioner received the Office Order No. 160/CP/2016 dated April 25, 2016, wherein it was stated that as per the HLEC, he had been found guilty for the following acts;

- 'a) *being the part of the procession from Sabarmati ground to Ganga dhaba during which objectionable slogans were shouted,*
- b) *addressing an unauthorized gathering of some outsiders at Ganga Dhaba,*
- c) *not being duty bound to prevent such a gathering, instead he was found addressing it.'*

7. According to her, it was also stated that the above acts were in violation of Clause 3 of the 'Rules and Discipline and Proper Conduct of Students of JNU', Category II, Sub-Category (xxv), which 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'. A fine of Rs. 10,000 was imposed on him. She would submit, the acts 'a)' and 'b)' are both disputed by the Petitioner as a reading of the HLEC Report does not establish the said acts against the Petitioner. The act 'c)' is linguistically incomprehensible and is in fact, identical to act 'b)'. Furthermore, the finding of guilt and the punishment imposed are both illegal and also violate the principles of natural justice, as no enquiry contemplated under Statute 32(5) was ever conducted by JNU, although the guilt was determined under Clause 3 of the 'Rules and Discipline and Proper Conduct of Students of JNU', Category II, Sub-Category (xxv) of Statute 32(5). Lastly, Statute 32(5) contains detailed 'Norms and Procedures' and Rule 5, both of which have to be followed during the enquiry, in adherence with the principles of natural justice, and only after conducting such a proper enquiry can a student be found guilty under Rule 3 (Category I or Category II) and can a punishment under Rule 4 (Category I or Category II) be imposed. In the present case, none of the above was done.

8. She submitted, on May 03, 2016, the Petitioner filed an Appeal with the VC, wherein he reiterated the grievances as stated in the Reply to the Show Cause Notice, dated 18.03.2016, and questioned the findings of fact by the HLEC against him, which did not establish any guilty act on his part. He reiterated that he was never provided with the documents, statements, and other materials before the HLEC, nor had he been provided with an opportunity to rebut the said material. It was also stated that he had not been heard before the Office Order was passed against him. The Petitioner also sought all the relevant materials and documents from the VC. She submitted, in the Appeal, the, Petitioner also clearly refuted the HLEC's findings against him, and explained his presence at the scene. According to her, it is the Petitioner's case that he was called to the spot when the atmosphere had become tense. Once there, he made enquiries about what was happening, and also sought the identity cards of some of the persons who had gathered there, to ascertain their identity. He also tried to break up a scuffle between students from opposite sides.

9. Since the Petitioner received no response from the VC, he approached this Court in W.P. (C) No. 4380/2016 against the Office

Order No. CP/160/2016 dated April 25, 2016, the punishment imposed, the enquiry proceedings, and the HLEC report. On May 13, 2016, this Court directed the VC to decide the appeals filed by the students.

10. On June 16, 2016, the Petitioner appeared before the Appellate Committee. During the appellate hearing, it is claimed that he was allowed to peruse multiple volumes of documents and video evidence. She submitted, he was in the room for about 15-20 minutes. Furthermore, despite his requests, none of the witnesses were called for cross-examination, nor were photocopies of relevant documents/testimonies provided. The video evidence was also not shown. She submitted that, in the Minutes of the Appellate hearing, these facts have been concealed, and an omnibus statement has been made for all, stating that "ample time" to examine all the files was given to the students. Even during the Appellate hearing, the Petitioner raised concerns about the constitution of the HLEC and unfair procedure followed by it. However, instead of addressing the legitimate grievances raised by the Petitioner, the Appellate Committee instead converted the hearing into a cross-examination of

the Petitioner. He was questioned whether he was present at the Sabarmati Dhaba to attend the event on February 09, 2016. However, even as per the HLEC's findings and the impugned Office Order, it has never been JNU's case that the Petitioner "attended" the event in question. Secondly, it is stated that the Petitioner "did not respond" to these queries. The appeal, in any event, contains his comprehensive response to the limited information in his possession. She stated, the questions pertaining to breach of discipline, on account of his participation in the event, and his purported awareness of the withdrawal of permission, could not have been asked, and go even beyond even the HLEC findings. Thereafter, the Minutes record what has been the Petitioner's consistent defence, that "he had been instrumental in diffusing tension between the two groups of students converging at the event. He claimed that he was instrumental in forming the human chain with the help of the security personnel between the two feuding groups". Ms. John would submit that the defence of the Petitioner has consistently been stated by him throughout, including in his bail application filed in February 2016, before the HLEC Report came out. It was also stated although this

defence given by the Petitioner is his response to the queries raised by the Committee, yet it is stated in the Minutes that the Petitioner "did not respond to the aforesaid queries". Thereafter, in the 'Recommendations', it is stated that the Petitioner "did not make any specific appeal", although in the order dated May 13, 2016, this Court has specifically noted 'the appeals' filed by the students, and directed the VC to decide them. She would submit the reliance was placed on the evidence of OP Yadav, CSO, and Devender Singh Bisht, Security Incharge. Neither of the two statements were ever supplied to the Petitioner, and do not form part of the response made by JNU in these proceedings. What is supplied is the statement of Mr. Navin Yadav, Chief Security Officer. Finally, the punishment recommended by the Committee was completely baseless and not supported by the HLEC's findings.

11. She submitted, the Counter is based on an incorrect reading of the appeal filed by the Petitioner. The Petitioner never waived his objection as claimed by JNU, and the reliance on the letter written by the Petitioner on June 15, 2016, does not further the case of JNU. Even here, the Constitution of the HLEC has been challenged, the fact

that students were not allowed to place their case was highlighted, the fact that the Show Cause Notice was devoid of reasons. The non-supply of necessary documents, had also been questioned. In the end, the Petitioner has offered his full cooperation to the Appellate Committee, but hopes that the Committee gives the students the full and fair opportunity to place their case.

12. On August 22, 2016, the Petitioner was served with the impugned Office Order No. 212/CP/2016, imposing the same punishment of fine of Rs. 10,000, and direction to furnish an undertaking.

13. In substance the submission of Ms. John are, the HLEC were merely fact finding proceedings, and it could not have determined the guilt of the Petitioner. Further, why was the Petitioner directed to bring evidence in his defence, in the notices issued to him. Even if the HLEC arrived at certain findings against the Petitioner, it was necessary for the VC to issue a charge notice and then conduct a Disciplinary Enquiry, giving the Petitioner a proper opportunity to counter the allegations against him, supply him with the materials collected and allow him the right to cross-examine the relevant

witnesses. Further, the HLEC could not have recommended punishment against the Petitioner, since it had not followed the procedure under Statute 32(5). The three notices given to the Petitioner by the HLEC reflect complete non-application of mind, as it was universally known that the Petitioner was in jail at the time. However, in the Counter, it has been stated by JNU that the Petitioner "abstained" from appearing and was "absent".

14. She submitted that, the entire proceedings of the HLEC and its resultant Report, are vitiated for the following reasons:

- a. The Respondents failed to serve him with a notice intimating him about the initiation of the enquiry against him and whether it was a Fact Finding or the Disciplinary enquiry.
- b. The terms of reference of the HLEC were not disclosed to the Petitioner either publically or through personal communication. The notice from the HLEC to other students was that it was "examining the events of 9 February 2016".
- c. The notice was pasted on the door of the Petitioner's hostel room, directing him to appear before the HLEC, was devoid of any material particulars, and was therefore, not legally tenable

notice for participation in the enquiry. Reliance was placed on **Ms. Flora Gupta V. Jawahar Lai Nehru University & Others**; W.P. (C) No. 5725/2008.

d. The failure to provide him an opportunity to make out his defence before the HLEC, also violates Rule 5(1) of the 'Rules Of Discipline And Proper Conduct Among The Students Of The University' framed in terms of Section 5(10) of the JNU Act read with Statute 32(1) of the Statutes of the University. The Office Order No. 160/CP/2016 dated April 25, 2016, is also illegal, as no Disciplinary Enquiry was conducted between the Show Cause Notice and this order.

15. She also submitted, the Appellate Committee itself failed to observe the principles of natural justice during the appellate hearing, for the following reasons:

- i) It failed to provide the Petitioner with the physical copies of all statements and evidence collected by the HLEC and consequently relied upon by the Appellate Committee.
- ii) It failed to provide him an opportunity to cross-

examine the relevant witnesses, or to lead evidence in his defence.

iii) The appellate hearing was conducted by the Committee as a cross-questioning session, which was presumptive of his guilt.

iv) The Appellate Committee deliberately did not give him sufficient time to peruse the voluminous documents and depositions collected by the HLEC, to deny him the opportunity to counter the allegations against him.

v) The two statements of witnesses relied upon by the Appellate Committee were not supplied to the Petitioner and do not form part of the paperbook.

Reliance was also placed on the judgment of **Delhi Transport Corporation v. DTC Mazdoor Congress & Ors.; 1991 Supp (1) see 600 (para 202), and Nawabkhan Abbaskhan v. State of Gujarat; (1974) 2 SCC 121 (para 20).**

She submitted because Sub-Category (xxv) of Category II of Clause 3 of the 'Rules and Discipline and Proper Conduct of Students of JNU', under which the Petitioner has been found guilty, is vague and is *ultra*

*vires*, in as much as it allows for a punishment without specifying any culpable conduct.

16. 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.

17. She stated, on February 11, 2016 forthwith a High Level Enquiry Committee (HLEC) was constituted by the Vice-Chancellor to enquire into the incident that took place on February 09, 2016 in the Respondent’s campus. By virtue of Section 5(10) of the JNU Act read with Statute 32(1) of the Statutes of the University-

*“The Vice Chancellor has been vested with all the powers relating to discipline and disciplinary action in relation to students.”*

She stated, 3 Member Committee later expanded to 5 by the Vice-Chancellor mainly consisted of University Professors and since it was an internal enquiry of JNU, no third party was allowed to be present during hearing. Further, no one was allowed to be represented by a third party. The terms of reference for the committee was:

- (i) *To enquire into the incident and ascertain sequence of events.*
- (ii) *Identify any lapses that may have taken place, and*
- (iii) *On the basis of **the findings**, recommend **actions** to be initiated by the University **as per its statutes and guidelines**.*

18. 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.*

19. She would submit, the Petitioner was given ample opportunities to appear and depose before the Enquiry Committee with liberty to adduce any material and evidence in his defense both at the stage of Enquiry, Show Cause Notice and Appeal. Notices were served to all students on February 12, 2016, February 16, 2016, February 18, 2016. Subsequently, on March 04, 2016 a notice by HLEC was pasted outside the Petitioner's hostel room door which clearly stated that-

*An incident that took place on 9<sup>th</sup> February, 2016 near Sabarmati and Ganga Hostel is being investigated by the High Level Enquiry Committee, JNU.*

***You are directed to appear before the Enquiry Committee on 8<sup>th</sup> March, 2016 at 3.00 pm in Room No. 201, Administrative Building, JNU, New Delhi to explain your position in this regard. You may also bring any evidence, which you wish to submit in support of your defence.***

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

20. She submitted, the Petitioner failed to come forward and make his statement/depose before the said forum. According to her, on March 04, 2016 the term of the HLEC was extended till March 11, 2016 just to accommodate the Petitioner and provide him with an opportunity to appear/depose before the HLEC. However, the Petitioner himself failed to avail the opportunity given to him and thus, there was no violation of Principles of Natural justice and fair play by the Respondent. Further, according to her, the Petitioner in his representations dated March 11, 2016 acknowledges the receipt of notice and the Petitioner had been claiming that he was in support of the University and would cooperate with the investigation, yet failed to appear before the Committee or cooperate with it. The Petitioner in his representation dated March 11, 2016 stated that *I have got a letter for appearance before the HLEC on 8<sup>th</sup> March .....That I had*

*sought for an extension of time because being a President, JNUSU. I got mandate of JNUSU Council not to appear HLEC unless HLEC democratized as per resolution of JNU Council. Therefore, allow me more time for deposition till JNU administration suitably carry out modification in HLEC in the tune with JNUSU students Council. Ms. Routray submitted that the demand for democratization from the JNUSU students Council is not based on any Rule or Statute of the Respondent University, as confirmed by the Petitioner's Counsel during arguments. It is her submission in any event, even the extension sought was conditional seeking modification of "HLEC in the tune with JNUSU students Council". Further, the HLEC gave its report on March 11, 2016 and completed its mandate.*

21. She would submit, 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 11<sup>th</sup> February, 2016 of the Chief Proctor stands withdrawn.*

Further the HLEC followed **SOP** norms in view of the nature and the need of the enquiry. The terms of reference of the Enquiry

entailed formulation of SOP. She would state, the **SOP** norms are essentially analogous to the Norms recommended for a Proctorial enquiry. Under Clause 7 of the Norms and Procedures followed during enquiry a Show Cause Notice was issued to the Petitioner on March 14, 2016 along with the HLEC Report which stated that *High Level Enquiry Committee was constituted by the Vice Chancellor on 11<sup>th</sup> February 2016 around an event organized by some students.....*

*The Terms of Reference for the 3 Member Committee*  
was:

- 1) To enquire into the incident and ascertain sequence of events*
- 2) Identify any lapses that may have taken place, and*
- 3) On the basis of the findings, recommend actions to be initiated by the university as per its statutes and guidelines.*

22. According to her, the Show Cause Notice stated that-

*As per the High Level Enquiry Committee findings, you (Mr. Kanhaiya Kumar, Registration Number: 29277, Enrolment No: 11/4C/MI/004, Year of Admission:*

*2011, M.Phil./Ph.D. Student, Centre of African Studies, School of International Studies, JNU, New Delhi) have been found guilty on the following account under 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.*

*During the incident which took place on 09 Feb 2016 in the JNU campus. You are hereby asked to explain why disciplinary action should not be initiated against you for indulging in the above*

*Your reply must reach the Chief Proctor's Office latest by 16 Mar 2016, 1700 hrs, failing which it will be presumed that you have nothing to say in your defence and this office will proceed further in the matter.*

23. She would submit, the HLEC report clearly recorded the conduct of the Petitioner, which attracted the charge given in the Show cause notice. In his reply to the Show Cause Notice dated March 18, 2016 the Petitioner, instead of responding to the charge made and giving his defence, wrongly stated that he wasn't provided with a copy

of the HLEC Report and questioned the setting up and composition of the HLEC. According to her, a copy of the HLEC Report was provided to each and every student and if the Petitioner would have appeared before the committee, he would have even been given an opportunity to inspect the documents. Thus, the Petitioner himself declined to avail the opportunity provided to him for his own political aspirations *"I got mandate of JNUSU Council not to appear HLEC unless HLEC democratized as per resolution of JNU Council."* It is further submitted that at the stage of appeal the decision is to be taken only from record before the deciding 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.*

24. She stated, the Enquiry under 32(5) is essentially a “fact finding enquiry based on the “findings” of which, charges are framed as per the Scheme provide. She would state, the HLEC followed Standard Operating Procedures devised by the HLEC specifically for the said enquiry during the course of enquiry. The HLEC spent considerable time in examining all the evidences pertaining to the event which

included taking written depositions of eye witnesses and security officials, posters, form for seeking permission, examining the video clips submitted by JNU Security Office and scrutinizing various documents/posters related to this incident. The video submitted to the Committee by the CSO was duly authenticated by a Government approved agency: Truth Labs, Bangalore. Further, the HLEC Report stated that-

### *3. Sabarmati Ground*

*According to some depositions, Mr. Kanhaiya Kumar came late to this venue, while still other say that he only joined the procession.* She submitted, since there were conflicting statements regarding the Petitioner's presence at the venue, the same was not taken into consideration while recommending the charges to be drawn.

### *5. Procession*

*Crowd gathered at Sabarmati Ground, then suddenly started moving towards Ganga Dhaba in a procession. Both sides suddenly started moving. One the one side*

*in the procession Umar Khalid, Ashutosh, Rama Naga and Kanhaiya Kumar were also present. And on the other side Saurabh Sharma, Vinit Lal and Shruti Agnihotri were also present. There was a scuffle between both groups, but no violence was reported as both these sides were separated by a human chain made by the security guards. She submitted, that the Petitioner's Counsel had stated that the Petitioner was involved in forming a human chain between two of the opposing groups. However, this statement is false as per the eye witness deposition as well as the duly authenticated video clips, wherein it is clearly visible that security guards had formed a human chain wherein the Petitioner is nowhere to be seen.*

#### *6. Ganga Dhaba*

*As per many eye witness depositions, Mr. Kanhaiya Kumar, Rama Naga and Anirban addressed the gathering here, however what they said was not audible to them.*

25. Subsequent to enquiry procedure, the HLEC **recommended** that the Petitioner be charged under Category II of (Rules of Discipline and Proper Conduct of Students of JNU) of the statutes of the University and imposed a fine of Rs. 10,000/-. The HLEC submitted its report along with recommendations to the Vice Chancellor on March 11, 2016. She submitted, only corroborative evidence was given credence to. The Registrar's statement that the petitioner was in his room when news of the event broke was not given credence to as the Petitioner wasn't seen entering and exiting the room in the CCTV footage. Thus, on the basis of the recommendation of the HLEC the Petitioner was issued a Show Cause Notice on March 14, 2016.

26. It was the submission of Ms. Routray, the petitioner in his reply to the Show Cause Notice dated 18.03.2016 acknowledged the receipt of the same and stated that I am also unable to comprehend; *how I could have been found "guilty" without my participation in the proceedings conducted by the HLEC. What are the findings of the HLEC, and what are the basis of those findings? Can those findings*

*be arrived at without any participation?..... In any event, could the show cause notice have been issued without proving me a complete copy of the report and the findings of the HLEC?* She submitted that the Petitioner was given due opportunity to appear before the committee and depose before it. If the petitioner would have chosen to appear before the committee he would have been given the opportunity to inspect the documents and conduct cross-examination, however, the petitioner declined to avail the said opportunity. It is further submitted that each and every student was provided with a copy of the HLEC along with the Show Cause Notice.

27. Additionally, the Petitioner alleged that the enquiry process violated the principles of natural justice and fair play and questioned the composition of the committee for being non representative and biased, which is untenable. The Respondent subsequently on 25.04.2016, after more than a month, passed an office order wherein it was stated that:

*With reference to the 9 February 2016 incident of JNU campus, the High Level Enquiry Committee (HLEC) has found Mr. Kanhaiya Kumar*

(Registration Number- 29277, Enrolment No: 11/4C/MI/004, Year of Admission: 2011, M. Phil. /Ph.D. Student, Centre For African Studies, School of International Studies and a r/o. Room No. 123(0), Brahmaputra Hostel) guilty on the following counts.

The university '**Rules and discipline and proper conduct of students of JNU**', Clause 3- '**Categories of misconduct and indiscipline**', Category-II, Sub-Category (xxv) prohibits '**Any other act which may be considered by the VC or any other competent authority to be an act of violation of discipline and conduct.**

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

- a) Being the part of the procession from Sabarmati ground to Ganga Dhaba during which objectionable slogans were shouted
- b) Addressing an unauthorized gathering of some outsiders at Ganga Dhaba

*c) Being duty bound to prevent such a gathering, instead he was found addressing it*

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

*Mr. Kanhaiya Kumar is fined Rs. 10,000/- (Rupees ten thousand only) and is warned to be careful and not to get involved in such incidents in future. He is directed to deposit the fine by 13 May 2016 and show the proof thereof to this office, failing which the hostel facility will be withdrawn with immediate effect and further registration will not be allowed.*

28. The Petitioner further on May 03, 2016 filed an Appeal before the Vice- Chancellor wherein he projected that he was called to the event in his capacity as the President of JNUSU and the only address he made to the gathering was to call upon the persons present there to

disperse. She submitted, this Court in W.P. (C) 4380/2016 vide Order dated May 27, 2016 directed that the Order shall not be given effect till the appeals of the petitioners are heard and disposed of. Subsequently, on June 15, 2016 the Petitioner appealed to the Vice-Chancellor asking for documents on the basis of which the HLEC recommended punishment. She would submit, had the Petitioner attended the proceedings, he would have had access to the said documents. Further, at the stage of Appeals, a student can only appeal against the punishment imposed.

29. Further, on June 16, 2016 the Petitioner appeared before the Appellate Committee wherein he refused to answer even basic questions such as *Were you present at the Sabarmati Dhaba to attend the event on 9<sup>th</sup> February, 2016?* In response to the same he said he will only cooperate with Appellate committee if committee will address his earlier representations, where he questioned the constitution of HLEC, its functioning, availability of complete report of HLEC. This demand was however futile at the stage of Appeals. Moreover, he refused to respond to other queries as well. The Appeals Committee noted that the Petitioner, through his appeals dated

03.05.2016 and 15.06.2016, projected himself as being instrumental in defusing tension between two groups of students converging at the event. He claimed that he was instrumental in forming a human chain with the help of the security personnel between the two feuding groups. He was however, despite it not being normal procedure given ample time by the committee to examine all the files before he could write his appeal. The following evidence against the Petitioner was available-

*1. Mr. O.P Yadav, CSO, JNU wrote in his depositions that Mr. Kanhaiya Kumar was a part of the procession from Sabarmati ground to Ganga Dhaba during which objectionable slogans were shouted.*

*2. Mr. Devendra Singh Bisht, Security incharge wrote in his depositions that Mr. Kanhaiya Kumar addressed a gathering of students consisting of outsiders at Ganga dhaba in JNU campus on 9<sup>th</sup> February, 2016.*

According to Ms. Routray, the Committee further stated, *the Petitioner has not made any specific appeal to absolve himself from the charges made by the*

*HLEC. On the contrary he has questioned the formation of the HLEC itself, and asked for documents and evidence related to his involvement in the event. The committee strongly feels that his attitude is unbecoming of a leader of the students' union of the University. Instead of cooperating with the Appeals Committee and assisting them in the process of fact-finding and setting an example, he has side-stepped the important question did he use his influence to stop the uneventful event from being continued". The committee thereupon considers the recommendations of the HLEC i.e. "Fine of Rs. 10,000/-" stands as it is. In addition to it he has to give an undertaking on a prescribed format to Chief Proctor office.*

30. She further submitted, after the opportunity to depose before the Appeals Committee was given to him, as also access to the documents including the video clips was given to him, has not made any further representation. On 22.08.2016 Office Order No. 212/CP/2016 (Page 251) was

passed wherein it was stated that-

*With reference to the 9February 2016 incident on JNU and as per the Hon 'ble High Court Order dated 13 May 2016, Mr. Kanhaiya Kumar (Registration Number: 29277, Enrolment No: 11/4C/MI/004, Year of Admission: 2011, M.Phil/Ph.D. student. Centre of African Studies, School of International Studies and a r/o. Room No. 123(0), Brahmaputra Hostel) was requested to appear and depose before the Vice Chancellor, the Appellate Authority of the University, on 16 June 2016 at 4.15 pm.....*

*The punishment,' as recommended by the Appellate Authority, on Mr. Kanhaiya Kumar is fine of Rs. 10000/-. The payment of fine will have to be made within two weeks from the date of the implementation of this order. In addition, as per the Appellate Authority recommendation, Mr. Kanhaiya Kumar is also directed to submit the attached undertaking within two weeks of the receipt of this order.*

31. That the University's autonomy means its right of self-government and particularly, it's right to carry on its legitimate activities without interference from any outside authority. That the Appellant against whom charges were framed was given adequate opportunities to defend himself, and the committee followed the rules of natural justice while holding this enquiry. That it is a settled law that matters falling within the jurisdiction of educational authorities should normally be left to their decision and this Court would not interfere unless it thinks it must do so in the interest of justice. 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.

32. That 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 Vs. UOI & Ors. (2006) 5 SCC 88.*

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

33. Having heard the learned counsel for the parties and peruse the written arguments submitted by the counsels, it is noted that the subject matter of this petition is, the challenge to the orders passed by the Competent Authority whereby a penalty of fine of Rs.10,000/- was imposed on the petitioner, which order was upheld by the Appellate Authority with a direction to file an undertaking. The penalty was

pursuant to an enquiry conducted with regard to the events held on February 09, 2016 at the University Campus. The grounds of challenge to the order of penalty inter-alia are the enquiry has been held at the petitioner's back as the petitioner was in judicial custody during the period. The enquiry was a fact finding enquiry, which is not an enquiry under the Rules framed under Statute 32(5) of the JNU Act. The petitioner despite representations was not given the relevant materials or due opportunity to rebut the said materials and the same was in violation of principles of natural justice. It is his case that the HLEC report does not establish the guilt as found in the order dated April 25, 2016 against the petitioner. That apart, it is his case that he was not given a proper hearing before the Appellate Authority; inspection of documents was a formality; the statements and other materials of the HLEC have not been provided to him to make the hearing of appeal, a more meaningful one. The petitioner has raised certain grounds on the interpretation of Rules and the scope of the enquiry proceedings.

34. The respondent has justified its action by contending that the Enquiry Proceedings were held by following the principles of natural justice. 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 resulted in passing of the appellate order.

35. There is no dispute that the petitioner had filed Appeals before and pursuant to the directions given by this Court in an earlier round of writ petition on May 03, 2016 and June 15, 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 given the record of the enquiry to peruse. The parties are at variance about the duration for which the record was shown. It was contended by the petitioner despite his request, none of the witnesses were called for cross examination nor the photocopies of relevant documents/testimonies were provided. The video evidence was also not 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 impugned order on August 22, 2016.

36. 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. 4380/2016, the respondent University issued a communication dated June 13, 2016 asking the petitioner to appeal to the Vice Chancellor and depose on June 16, 2016. The communication does not refer to the fact that the petitioner shall be given the relevant record/documents for inspection. Be that as it may, the learned counsel for the parties agree that the files/records/documents before

the HLEC were given to the petitioner on June 16, 2016 to enable him to peruse the same and make submissions on the same day. Even assuming, three hours were granted to the petitioner to inspect the documents on June 16, 2016, some time need to have been granted to the petitioner to apply his mind on the evidence so noted by him during the inspection, which is against him and to make an effective appeal. Surely, for such purposes, he may have required reasonable time to prepare his case, which may include seeking legal advice. The procedure evolved by the Appellate Committee to allow inspection of the documents/records and hearing him could not be in conformity with the principles of natural justice and the law laid down by the Supreme Court in the case of *Associated Cement Company Ltd. v. Workmen and another (1964) 3 SCR 652*, wherein the Supreme Court was considering an appeal arising out of an industrial dispute between the appellant and the respondent workman with regard to dismissal of five workmen employed by the appellant company. One of the issue was that before the enquiry was actually 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 to consider the evidence, which has come against him and to collect evidence in support of his defence. In the case in hand no such time was given to the petitioner. That apart, if the material is being shown to the petitioner, on June 16, 2016, surely, some time should have been given to the petitioner to enable him to supplement his appeals already filed by him on May 03, 2016 and June 15, 2016. This would be in conformity with the concept of fair play in action, which is the basis of natural justice. Not only that, 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 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. Even if some depositions are filed along with the written arguments in some connected cases, the same are in Hindi. They were also filed after the counsel in this writ petition had advanced their arguments. Even otherwise, the HLEC report refers to deposition of some eye witnesses which are in the deposition file. It is not clear who these witnesses are, who are being referred to. All the evidence, documents, notices and proceedings being in the official files, there was no occasion for this Court/counsel for the petitioner to

look into the same for a proper appreciation/justification of the impugned orders. Further, I note the petitioner had, raised several grounds in his appeal, which are identical to the one raised in this petition.

37. A reading of the order dated August 22, 2016, it is seen that the grounds have not been dealt by the Appellate Authority. 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.

38. 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 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.

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 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, para 7 on which reliance

was placed by Ms. Routray, the Supreme Court was considering a submission that the Vice Chancellor had not made available to the appellant a copy of the report submitted by the Inquiry Officer before asking him to make a representation. The Supreme Court rejected the contention by holding that the enquiry was held after due notice to him and in his presence. He was allowed to cross examine the witnesses examined in the case and he was permitted to adduce evidence in rebuttal of the charge. The Supreme Court also held, no Rule was brought to its notice, which stipulated the supply of report. The Supreme Court also observed that it was not the case of the appellant that he had asked for the copy of the report, which was denied to him. The judgment relied upon by Ms. Routray is distinguishable, inasmuch as the petitioner did not participate in the proceedings/the proceedings were held in his absence. Further, the Appellate Authority itself has offered to allow inspection of the documents/record of HLEC. The petitioner had asked for the documents/record/material in his appeals dated May 03, 2016 and June 15, 2016. The Appellate Authority having allowed the inspection, reasonable time should have been given to the petitioner to supplement the appeals already filed by him on May 03, 2016 and June 15, 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 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 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. 4380/2016, 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.32725/2016**

Dismissed as infructuous.

**V. KAMESWAR RAO, J**

**OCTOBER 12, 2017/ak**