

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 12, 2017

+ W.P. (C) 7942/2016, CM No. 32966/2016

MUJEEB HUSSAIN GATTOO

..... Petitioner

Through: Ms. Nitya Ramakrishnan,
Ms. Warisha Farasat, Mr.
Ahmed Said, Ms. Rudrakshi
Deo & Mr. Vibhor Jain, 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:-

“It is, therefore, most respectfully prayed that this Hon’ble Court may be pleased

a. Call for the records of the High Level Enquiry Committee (HLEC) & the Appellate Authority constituted by the Respondent,

b. Issue a writ of certiorari, or other appropriate writ, quashing the Office Order No. 199/CP/2016, dated

22.08.2016 of the Chief Proctor and the Appellate Authority of the Respondent University,

c. Issue a writ of certiorari, or other appropriate writ, quashing the Office Order No.145/CP/2016 dated 25 April 2016 issued by the Chief Proctor of the Respondent University against the Petitioner, the report of the HLEC, and all consequent orders related to the HLEC proceedings;

d. Pass any other order that this Hon'ble Court may be pleased to pass in the interest of justice."

THE FACTS:-

2. The facts as averred by the petitioner are, on February 11, 2016 a Proctorial Enquiry Committee was constituted to enquire into the incident that occurred near Sabarmati Dhaba, JNU on February 09, 2016. However, on the same day i.e February 11, 2016 the Proctorial Enquiry was immediately replaced by the High Level Enquiry Committee (HLEL for short) to enquire into the incident of February 09, 2016 without giving any reasons whatsoever for not conducting a proctorial enquiry as mandated by the Statute 32(5) of the University.

3. On February 18, 2016, he received first e mail from the Chief Proctor asking him to appear before the HLEC for some clarifications. It is stated, the petitioner received the same e mail on February 19, 2016 from his supervisor to which he replied he was out of campus because of health issues. It is his case on February 24, 2016 he again

received e-mails from the Chief Proctor and Chairperson of the Department with some details. He replied on February 27, 2016 to both the e-mails from the Chief Proctor that he could not appear before the HLEC on those specific dates as he was having health issues and was out of city recuperating from an illness at home in Kashmir. On February 29, 2016 the Chief Proctor asked him by e-mail as, when he would be back to JNU; to which he replied that he had been advised complete bed rest for two weeks and would be back only on March 03, 2016. On March 09, 2016 he sent an e-mail to JNU informing them about his recovery. He asked for permission to deal with some prior academic commitments and assured them of presenting himself before the HLEC for clarifications on March 21, 2016, to which the JNU had not replied.

4. It is his case, that on March 15, 2016, he was shocked to receive an e-mail from his supervisor whereby he was informed that the petitioner has been found guilty of arousing communal, caste or regional feeling among the students in the context of incident that took place on February 09, 2016 in the JNU campus. It is averred that the findings against him without hearing him by the Authorities, more so, when has informed them about his serious health problems is untenable. According to him, when the Authorities were fully informed by the petitioner about the fact that he was outside Delhi attending a conference in Kerala and he could not even received copy of the show cause notice issued to him, despite this the Authorities have held him guilty and they demanded that he put forward a

defence, which would effectively mean that he would have to file a reply even without looking at the show cause notice. On March 16, 2016, he received a call from his supervisor informing that the report of the HLEC has been received. However, the petitioner was not given a copy of the said report in the e-mail dated March 15, 2016. It is averred in the petition that on March 18, 2016, the petitioner submitted a short reply to the e-mail dated March 15, 2016 even though he was not even informed about the charges made against him and the materials upon which he was found guilty. Upon returning to his hostel, the petitioner found a show cause notice dated March 14, 2016, which also failed to outline any charges made against the petitioner. On April 25, 2016, he was informed vide letter dated April 25, 2016 by the University that he was guilty of and being punished with rustication for two semesters on account of (a) being part of the procession from Sabarmati ground to the Ganga Dhaba during which objectionable slogans were shouted; (b) being part of the group in which many outsiders were present whereas the total number of participants in the booking form were seven only.

5. It is his case that discrepant terms in the show cause notice and the order of punishment dated April 25, 2016 indicate total non application of mind. He refers to the earlier order dated May 13, 2016 passed by this Court in different writ petitions wherein this Court had stayed the Office order dated April 25, 2016 and directed the University to consider the appeals of all the students punished. On May 17, 2016, the petitioner filed an appeal under Section 32(5) of the

Statute of the University against Office order dated April 25, 2016. On June 14, 2016 he received an e-mail from his supervisor in which he was informed that he must depose before the Vice Chancellor, JNU on June 16, 2016 at 11.30 am at his office. He rushed back to Delhi to depose before the Committee as he was in Kashmir, since the holidays had started. The petitioner therefore, e-mailed to the Vice Chancellor requesting him that he be permitted to depose before him following week because he had to make travel arrangements within a day and given the tourist season in Kashmir, air fares were very expensive. According to him, he also added that if the extension was not possible then the petitioner was willing to depose on June 16, 2016 itself. The petitioner however, did not receive any reply from the Vice Chancellor, so he reached Delhi within a day and deposed before the Appellate Authority on the said date and time. On June 16, 2016, he came to the Vice Chancellor's office to depose. It is averred that on August 22, 2016 the impugned order of the Appellate Authority was received by him on August 24, 2016 whereby the petitioner has been rusticated for two semesters on the basis of the recommendation of the HLEC was passed by the University against him. It is his case that even before the Appellate Authority, he was denied a meaningful opportunity to defend himself. Neither before the HLEC which, recommended the punishment nor before the Appellate Authority which passed the order against the petitioner, he was explained all the charges against him or the details or the basis of the severe punishment that was given to him. The Appellate Authority order dated August 22, 2016 is lacking in material details and credible

evidence, on the basis of which the petitioner was eventually punished. It is averred, that the Appellate Authority order merely consist of two small sentences under the heading '*evidence*', which are incomplete, cursory and completely unreliable. It mentions the depositions of eye witnesses without naming the witnesses or giving details of the actual role of the petitioner.

6. Ms. Nitya Ramakrishnan, learned counsel for the petitioner would at the outset submit that, the facts in the counter affidavit vis a vis the Petitioner are false and inaccurate. According to her, the facts alleged in paragraph 22, page 12 of the short affidavit as well as other facts filed by the Respondent University that the petitioner had spent three hours on June 16, 2016 with the pertinent files and the evidences against him are denied. She submitted, the Petitioner reached the VC's office at 11:30 am for deposition (as he had been informed in an email). The Security guard asked him to wait for some time. He was asked to sit inside a room where other students were also present. After sometime Umar was asked to enter the VC's office, followed by Ashwati. The Petitioner entered VC's office at around 12:55 pm. At most the meeting lasted for about 30-40 minutes. It is important to bring to the notice of this court that petitioner could never have accessed the concerned documents for three hours because he caught a flight the same afternoon for which he reached the airport by 2: 15 pm, booked tickets by (2 :25 p.m), attained boarding pass and was through the security check by 3 pm. Thus, it is impossible that the Petitioner could have been inside for three hours as alleged by the

Respondent University and still taken the flight that afternoon on time. The Petitioner could not access the materials against him due to severe time constraint is also proven by the short written statement submitted by him during the meeting where he specifically mentions that he has not looked at the files.

7. It is the submission of Ms. Ramakrishnan, that the Punishment imposed is grave, arbitrary without following due process, and would completely jeopardizes the Petitioners' education and career prospects. The Petitioner has been a good and conscientious student throughout as his academic record will prove. The Petitioner qualified the National Eligibility Test held in December 2014 and June 2015. He has also published several papers and book reviews, attended conferences and workshops as well. If the punishment is allowed to stand, it will adversely affect his right to education and livelihood, both of which are Fundamental Rights. Since he has already submitted his PHD synopsis, a rustication from campus for two semesters, will cause irreparable harm to the Petitioners' academic and career pursuits, which will affect him lifelong.

8. She would submit, the proceedings of the High Level Enquiry Committee (HLEC) have been marred by serious concerns of lack of due process and arbitrariness, and have been conducted in contravention of well- established principles of natural justice the detailed guidelines for inquiries as laid down under Statute 32(5) of the Statutes of the University (the Proctorial Enquiry guidelines) adversely affecting the Petitioners' right to be heard. Moreover, the

provision of appeal in the Regulations becomes illusory, if the student is not aware of what persuaded the disciplinary authority, after the show cause notice and the reply thereto, in its decision ,to sustain a finding of guilt and award a penalty. Even on the award of penalty, the student must be heard. In fact the very opaqueness of the process vitiates the same and renders the punishment unjust.

9. She also submitted, the Petitioner was denied opportunity to defend himself- charges were not explained, materials against him were not made available, no opportunity to cross examine witnesses, and other violations of natural justice. The Petitioner has been denied any meaningful opportunity to defend himself either before the HLEC or the Appellate Authority in order to clear his name and present his version of the events. Neither before the HLEC recommended the punishment nor before the Appellate Authority passed the order against the Petitioner, was he ever explained the charges against him or the details or the basis of the severe punishment that was given to him. The impugned order of the Appellate Authority dated August 22, 2016 is lacking in material details or credible evidence on the basis of which the Petitioner was eventually punished. In the Appellate Authority's order there are merely two small sentences under the heading of evidence, which are incomplete, cursory and completely unreliable. According to her, the flimsy evidence as per the Order dated August 22, 2016 against the Petitioner is as below:

"1 Participation in objectionable sloganeering during the event, which is evidenced from videos authenticated by Truth Labs.

2. Being part of the group (as per the deposition of eye witnesses) in which many outsiders were present, whereas the total number of participants mentioned in the booking form were seven only.”

It only mentions the deposition of eye-witnesses without either naming the witnesses or giving the details of the actual role of the Petitioner. Moreover, the Petitioner does not even know who these eyewitnesses against him were, leave aside the opportunity of cross-examining them or testing their evidence.

10. She also submitted, the Petitioner was never given the materials against him. The Appellate Authority has also falsely claimed that the Petitioner was given ample time by the committee to examine all the materials against him before he could write his appeal and he read through these files and wrote his appeal. This is completely false. In fact, during the meeting the Petitioner was confronted with a dossier and was told by the Appellate Authority that it contained the documents on the basis of which the High Level Inquiry Committee had taken a decision. The Petitioner was asked if he wanted to see the contents in the file to which he answered in the affirmative. She would state, the Petitioner said that he would want to examine these documents but that he could not examine the contents of a dossier so quickly and if he could be given the material he could evaluate and provide answers to the same. He was not allowed to do the same as he was clearly told by the Appellate Authority that he would have to look through the materials quickly then and there. The Petitioner realized that there could be no way that he could have opened and examined

and understood the documents within a few minutes. Thus, the Petitioner did not open the file and access the dossier against him at the meeting. Clearly, the production of the documents was just a formality to show that due process was being followed whereas the Appellate Authority had no intention of allowing the Petitioner to access the materials against him. Therefore, the Appellate authority denied to the Petitioner a meaningful opportunity to examine the materials against him. She would state, the order of the Appellate Authority also falsely claimed that the Petitioner was provided a set of file (Security depositions, copies of relevant videos, copies of statements given by witnesses, copies of all correspondence, copies of the report of HLEC, all other documentary proof) used by the HLEC to arrive at the punishment against the Petitioner. In fact, when the Petitioner asked the Appellate Authority to give him time to examine the documents or take them back with him so that he could look at them carefully and assess what was the nature of the allegation against him, the Appellate Authority refused to let him take the documents. As submitted above, it is clear that the Petitioner was not given any meaningful opportunity or ample time to examine the materials against him during the meeting.

11. It was also the submission of Ms. Ramakrishnan that the Appellate Authority has without applying its mind dismissed the appeal saying that the Petitioner did not make any specific appeal to absolve himself from the charges made by HLEC. The Appellate Authority has completely overlooked the fact that one of the main

grievances of the Petitioner has been that he was never even made aware of the specific charges by the HLEC before he was convicted and held guilty. Moreover, even the Appellate Authority did not apprise the Petitioner of the specific charges against him but asked him some very general questions including:

"Do you feel that slogan raised at the events at both locations were objectionable?

Did you participate in objectionable sloganeering during the event".

The Petitioner was never informed exactly as to what these objectionable slogans were or who they were objectionable to during the entire meeting.

12. She would state, the High Level Enquiry Committee failed to follow due process inasmuch as, on March 15, 2016 the Petitioner has been found guilty of a set of arousing communal feelings. It was after arriving at a finding of guilt that he was informed of some vague charges by an email. There was a complete refusal on part of the concerned JNU authorities to grant the Petitioner any time to even submit a cursory explanation leave alone a considered reply. Obviously, since he had not been provided with any materials based on which he was found guilty, he could not defend himself. Given such a short deadline, he was forced to quickly make a small submission without even knowing the specific charges against him.

13. Furthermore, the Petitioner was not even sent officially by

email a copy of the HLEC report before he was required to submit his reply to the aforesaid email. On March 16, 2016 around (3:31 pm), his supervisor called him saying that he has received a report of the High Level Enquiry Committee, JNU where certain findings have been made against the Petitioner. He asked the Petitioner to find the High Level Enquiry Committee Report online. What was available online was only 8 pages of the report. A major portion of the report was concealed from the online copy. In spite of the severe handicap of being completely in the dark about the material said to obtain against him, the Petitioner gave a reply to the show cause notice. The Petitioner does not know what application of mind there was to the points raised in his reply dated March 18, 2016.

14. By Office Order No. 145/CP/2016 dated April 25, 2016 was informed that he was guilty of and being punished with rustication for two semesters on account of:-

(a) being the part of the procession from Sabarmati ground to the Ganga Dhaba during which objectionable slogans were shouted (b) being part of the group in which many outsiders were present, whereas the total number of participants mentioned in the booking form were seven only."

15. Ms. Ramakrishnan would submit, the Petitioner finally received the show cause notice of March 14, 2016 once he went back to the hostel, which was much after he had submitted his reply to the email dated March 15, 2016 but even the show cause notice failed to outline

any charges against him. Instead, it once again stated that he had been found guilty of arousing communal, caste or regional feeling.

16. She submitted, the show cause notice was silent on what aspect of his conduct was tantamount to arousing communal feelings. Indeed the phrase 'arousing communal, caste or regional feeling among the students' is completely vague. The purported show cause notice, was after concluding guilt. It was not accompanied by even a full copy of the HLEC, much less deposition of witnesses and other material on which the charges were founded. The Proctorial Enquiry Regulations and decisions of this Court require that all the material including witness statements be provided to the student facing disciplinary action, and that the student be given an opportunity to cross examine witnesses. This requirement was observed only in the breach. The discrepant terms of the show cause email of March 15, 2016 notice of March 14, 2016 and the order of punishment dated April 25, 2016 also indicate complete non-application of mind, and that none of the points raised in the reply to the email by the Petitioner.

17. She would submit, the Petitioner fully cooperated with the authorities. The Appellate Authority has wrongly recorded that the Petitioner did not cooperate with them. The Petitioner answered all the questions that were put to him by the Appellate Authority. In fact, the Petitioner within a days notice rushed back so that he would be available in Delhi to depose before the Committee. The Petitioner on the June 14, 2016 received an e-mail from his supervisor in which he was informed that he must depose before the Vice Chancellor, JNU

on June 16, 2014 at 11:30 at the Vice Chancellor office. The Petitioner was at the time at home in Kashmir since the holidays had started. The Petitioner therefore e-mailed the Vice Chancellor requesting him that he be permitted to depose before him the following week because he had to make travel arrangements within a day, and given the tourist season in Kashmir, airfares were very expensive. The petitioner added that if the extension was not possible then the Petitioner was willing to depose on the June 16, 2016 itself. The Petitioner did not receive any reply from the Vice Chancellor so he reached Delhi within a day and deposed before him on the said date and time. It is pertinent to mention here that the JNU administration did not respond to the emails of the Petitioner except once. The punishment awarded affects the Petitioners' Fundamental Right to Education and Livelihood, is also grossly disproportionate even to the charges as stated. Although the charges are factually incorrect, the Petitioner submits that even on the face of it, none of them reveals moral turpitude or any conduct so reprehensible that it must be visited with such a severe punishment as rustication.

18. She would state, the Freedom of Speech & Expression is a salient right guaranteed by the Indian Constitution Finally, even if the allegation made in the Report of the High Level Enquiry Committee against the Petitioner, even assuming without admitting them to be true, clearly fall within the realm of protected free speech. The Right to Freedom of Speech and Expression has been interpreted liberally by this Court as well as other High Courts of the country to encompass

even the right to dissent. Most recently, this Court in *Priya Pillai* held that the core aspect of democracy is the freedom of an individual to be able to freely operate, within the framework of the laws enacted by the Parliament.

19. On the other hand, Ms. Ginny Routray, the learned counsel for the respondent would submit, the Petitioner was given ample opportunities to appear and depose before the Enquiry Committee along with the liberty to carry materials and evidences in his defense both at the stage of Enquiry, Show Cause Notice and Appeal. The Petitioner failed to respond to the first notice dated February 18, 2016. Subsequently, a second notice was issued on February 19, 2016 to which the Petitioner responded on February 21, 2016 via Email that he was out of campus due to some health issues. **Pertinently**, the Petitioner is silent on which date he left the campus and on whose authorization. A third notice was served to the Petitioner via Email on February 24, 2016 asking him to appear before the committee on February 26, 2016, however, the Petitioner abstained himself from appearing before the committee and clearing his stand and sent an Email on February 27, 2016 stating that he cannot appear before the committee due to health issues. Ms. Routray would state, that the Petitioner has failed to place on record any document pertaining to his illness or his authorized absence from the campus. Further, an Email was sent to the Petitioner by the Chief Proctor on February 29, 2016 asking the Petitioner as to when he would return to the campus, the Petitioner responded that he would return on March 10, 2016.

Another Email was sent by the Petitioner on March 09, 2016 a day before he was scheduled to return to campus stating that he has some prior academic commitments and would thus, only return on March 21, 2016. It must be noted that the Petitioner never once mentioned the said academic commitments in his previous communications. Moreover, even after returning to the campus, the Petitioner failed to contact the Proctor. Therefore, a Show Cause Notice dated March 14, 2016 was issued to the Petitioner. She would further submit, that 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.**

20. The Petitioner on March 17, 2016 wrote to the Respondent wherein he admits to participating in the event, the Petitioner stated that -

On February 9, 2016, I reached the programme hours after it had already started, which was essentially a cultural event organised by some of JNU students. The invitation to the event was open for all and I myself came across the same through a poster put up in the University campus. As I reached the venue the event was already going on and many students had gathered there.

No slogan was raised by me that can be considered to be illegal or unconstitutional or not protected speech under Article 19(1)(a) of the Constitution of India. Even the

allegation made in the Report of the High Level Enquiry Committee against me, even assuming without admitting them to be true, clearly fall within the realm of protected free speech. If any slogan that is not protected free speech under Indian Constitution was raised by anyone else at the gathering, I cannot be held responsible for the same. I participated in the programme hours after it had started and left the venue much before it had ended.

21. According to Ms. Routray, the petitioner's allegations that he was not aware of the charges against him, are not tenable when he goes on to admit that he had accessed the HLEC Report online and thus, was very well aware of the charges levelled against him. She would state, in this letter the Petitioner merely claims that he was denied a fair opportunity to be heard. However, it is evident that the petitioner gave excuses for not appearing before the committee, be it his health or that he had to present a paper. She submitted that the Petitioner has not placed on record either before the Proctor or before the Appellate Committee any document to evidence the same. The Petitioner further prayed that-

I would like to finally submit that, therefore, the findings against me by the HLEC, JNU are discarded, and I be given a fair opportunity to defend myself in consonance with mandatory statutory provisions and the principle of natural justice.

22. She would submit, the show cause notice was an opportunity that was given to the Petitioner to come forward and defend himself. However apart from letter dated March 17, 2017, he failed to contact the office of the Proctor after he came back to the campus. She would also submit, that the Petitioner never demanded to inspect the documents that were relied upon by the HLEC for recommending punishment till Office Order No.145/CP/2016 dated April 25, 2016 was passed wherein the Petitioner was rusticated for both monsoon and winter semesters 2016-2017.

23. According to her, at the stage of appeal the decision is to be taken only from record before the Appellate Authority. Rules under the Statute 32(5) state that the *punished student has the **right to appeal against the punishment** and Vice Chancellor is the empowered authority to deal with Appeals.* The Petitioner chose not to avail opportunity given to him, at the stage of enquiry, by admittedly being out of campus, Also the Petitioner has not controverted his participation at the event and sloganeering there. The slogans attributed to the Petitioner have been detailed in the HLEC report and have not been contravened by the Petitioner. The Petitioner only questions the **Unconstitutionality** of the same. She would submit, the Respondent is only concerned with discipline of students, thus, the Petitioner's statement that the slogans shouted by him were not unconstitutional or illegal and were within the realm of protected free speech under Article 19(1)(a) of the Constitution of India are irrelevant as the Petitioner was charged for *Arousing communal, caste*

or regional feeling or creating disharmony among students by indulging in sloganeering and being the part of the procession from Sabarmati ground to the Ganga Dhaba during which objectionable slogans were shouted. In view of this, and as per the regulations in this premise, the slogans were therefore, found objectionable. As the factum of sloganeering and participation in an unauthorized event stood proved and admitted hence, the Writ Petition, on this ground alone, is not maintainable.

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

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

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

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

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

26. According to her, the HLEC followed **SOP** being norms in view of the nature and the need of the enquiry. The terms of reference of the Enquiry entailed formulation of **SOP**. The SOP norms are essentially analogous to the Norms recommended for a Proctorial enquiry. The 3 member Committee later expanded to 5 by the Vice-Chancellor mainly consisted of University Professors and since it was an internal enquiry of JNU, no third party was allowed to be present during hearing. Further, no one was allowed to be represented by a third party. The terms of Reference for the Committee was:

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

27. It was contended by her, that the Petitioner was given ample

opportunities to appear and depose before the committee along with the liberty to carry materials and evidences in her defense. That the Committee issued their **First Notice** on February 18, 2016 and subsequently **Second** and **Third Notice** on February 19, 2016 and February 24, 2016 respectively to the Petitioner, directing him to appear before the committee and explain his position about the incident that took place on February 09, 2016 near Sabarmati and Ganga Hostel. Despite this the Petitioner failed to appear before the committee. The above mentioned notices were dispatched via the Central Dispatch of the University which is an independent department within the University. She would state, the notices were served at all his known addresses including his Hostel room and email-id. Further, as per the Hostel Manual of the University concerning Norms governing Hostel Life Chapter 2, Clause 2.5.3, states that-*“A resident who wishes to stay out late or remain absent overnight shall inform the warden concerned in the prescribed form.”* However, there was no intimation on behalf of the Petitioner until 21.02.2016 that he would not be available in the hostel nor has he mentioned from what date he left the hostel.

28. Ms. Routray reiterates, despite notices being served, the Petitioner still failed to appear before the Enquiry Committee. The Petitioner's defense of not joining the enquiry was that he was out of campus due to some health issues and would contact the Respondents once he was back. Further, on February 29, 2016, the Chief Proctor of the University had sent an Email asking when he would return back to

the campus, to which the Petitioner had replied that he had been advised complete bed rest for 2 weeks and hopefully would be back after March 10, 2016. Thus, the Petitioner himself lost the opportunity to appear before the committee and clear his stand.

29. According to her, meanwhile, one week extension i.e. upto March 03, 2016 to submit the recommendations was granted to HLEC. Thereafter the term of the Enquiry Committee was further extended till March 11, 2016. The HLEC followed Standard Operating Procedures devised by the HLEC specifically for the said enquiry during the course of enquiry. The HLEC spent considerable time in examining all the evidences pertaining to the event which included taking written depositions of eye witnesses and security officials, posters, SMS withdrawing consent to hold Anti-National event, form for seeking permission, examining the video clips submitted by JNU Security Office and scrutinizing various documents/posters related to the incident. The video submitted to the Committee by the CSO was duly authenticated by a Government approved agency: Truth Labs, Bangalore. Subsequent to enquiry procedure, the HLEC recommended that the Petitioner be charged under Category II of (Rules of Discipline and Proper Conduct of Students of JNU) of the statutes of the University and be rusticated for 2 Semesters. The HLEC submitted its report along with recommendations to the Vice-Chancellor on March 11, 2016.

30. She would submit, the HLEC gave ample opportunities to the Petitioner and after repetitive reminders and notices the Petitioner

chose not to appear. According to her, the recommendation for disciplinary action was based on the findings of the HLEC. The HLEC recommended charges as well as punishment as per the statutes and guidelines of JNU. The Chief Proctor, after perusing the report of the HLEC, issued a Show Cause Notice on March 14, 2016 and along with an extension dated March 16, 2016 along with a copy of HLEC report to the Petitioner. The Show Cause Notice stated that-

As per the High Level Enquiry Committee findings, you (Mr. Mujeeb Gattoo, Registration Number: 57205, Enrolment No: 12/66/MS/011, Year of Admission: 2012, M.Phil/PhD. Student, Zakir Hussain Centre for Educational Studies, School of Social Science, JNU, New Delhi) have been found guilty on the following accounts under the Clause 3, Category II of Rules and discipline and proper conduct of students of JNU.

- (ix) Arousing communal, caste or regional feeling or creating disharmony among students*
- (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 act.

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 defense and this office will proceed further in the matter.

31. Ms. Routray would state, the Petitioner again vide his Email dated March 16, 2016, to the Chief Proctor and the Vice-Chancellor of the University acknowledged that the notification from the HLEC was received by the Chairperson of his Department and sought time till March 17, 2016 to reply, he further stated that he was attending a conference. On March 17, 2016, the Petitioner with respect to the Respondent's Email dated March 14, 2016 stated that he had not been provided a copy of the Show Cause Notice issued to him. The Petitioner also stated that he had not been given a fair opportunity to be heard and that the Principles of Natural Justice have not been complied with. He further stated that he had been found guilty without following the due process of law. According to Ms. Routray, the Petitioner was called multiple times and numerous opportunities were given to him to appear and depose before the committee but the Petitioner chose to avoid the proceedings thus, leaving the Respondent with no other remedy but to go ahead and issue a Show Cause Notice. She would state, it is therefore clear that the petitioner was never interested in joining the enquiry. The Chief proctor even extended the time till March 18, 2016 for replying to the Show Cause Notice to enable the Petitioner to reply to the same.

32. The Respondent subsequently on April 25, 2016, after more

than a month, passed an office order wherein it was stated that-

With reference to the 9 February 2016 incident of JNU campus, the High Level Enquiry Committee (HLEC) has found Mr. Mujeeb Gattoo (Registration Number- 57205, Enrolment No: 12/66/MS/011, Year of Admission: 2012, M.Phil./Ph.D. Student, Zakir Hussain Centre For Educational Studies, School Sciences and a r/o. Room No.137, Kaveri 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 (ix) prohibits 'Arousing communal. Caste or regional feeling or creating disharmony among students'.*

As per the HLEC recommendation, Mr. Mujeeb Gattoo has been found guilty of

a) Participating in the objectionable sloganeering during the event

*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. Syed Umar Khalid had been found guilty of

(a) being the part of the procession from Sabarmati ground to Ganga Dhaba during which objectionable slogans were shouted.

(b) being the part of the group in which many outsiders were present, whereas the total number of participants mentioned in the booking form were seven only.

These charges on the part of Mr. Mujeeb Gattoo are very serious in nature, unbecoming of a student of JNU and calls for stringent disciplinary action against him.

The Vice-Chancellor, in exercise of his powers vested in him under Statute 32(5) of the Statutes of the University, has ordered that Mujeeb Gattoo be rusticated for both monsoon and winter semesters 2016-2017.

His name shall stand removed from the rolls of the University forthwith.

The re admission of Mr. Mujeeb Gattoo in the University after the expiry of the rustication period shall be subject to his conduct during this period.

33. As per the HLEC Report the presence of a group of outsiders was noted by the Security staff and confirmed by many other eye witnesses. This group of people were shouting the following slogans: “Kashmir ki azadi tak, jang rahegi, jang rahegi”, “Bharat ko ragda, de ragda”, “zor se ragdo, de ragda”, “Aeen Hindustan ka, manzoor nahi, manzoor nahi”, “Go India go back”, “we want freedom”. The Petitioner was seen sloganeering along with this group. As per the depositions the following slogans were also made by this particular group “Hum kya mange azadi”, “Indian army murdabad”, “Pakistan zindabad”, “Bharat ki barbadi tak, jung rahegi”, “Kitne maqbool maroge, ghar ghar se maqbool niklega”, “JNU prashasan murdabad”, “Kashmir ki junta jung karo, hum tumhare sath he”. The Petitioner was further witnessed raising the slogans “hum kya chahte hai azadi”, “hum cheen ke lenge azadi”. Further, in **Q6 vide clip**, the Petitioner is seen raising slogans, “hum kay chahti hain azadi”, “hum cheen ke lenge azadi”. She would state, Q8 video clip was relied upon till 1 minute 19 seconds as a sudden shift in the noise floor was found and further there were abrupt changes in the pitch and intensity contours thereafter. She would also state, the Petitioner was called, as the HLEC wanted to seek clarifications regarding the event but on studying the evidence, the HLEC noted the role of the Petitioner. He was very much present at the event and had even participated and sloganeered (which the Petitioner admits). Thus, the Petitioner was charged as per the Office Order dated April 25, 2016 and rusticated for both monsoon and winter semesters 2016-2017.

34. Further, in his appeal dated May 17, 2016 the Petitioner only raised points on views taken by the HLEC and challenged the setting up of the same without giving any defense with respect to the events which unfolded on February 09, 2016. He did not controvert the findings of the HLEC, nor does he deny shouting the slogans. He had himself lost the opportunity to defend himself by not even responding to the simple queries raised by the Appellate Committee. The Petitioner claimed that he was never given the complete HLEC Report nor copy of the documents such as deposition of witnesses etc, used by the HLEC to recommend the punishment imposed. However, the Petitioner in his letter dated March 17, 2016 admits to have accessed the complete HLEC Report. Further, it is her submission that this is the first time the Petitioner had demanded for copies of documents and had never done so until Office Order dated April 25, 2016 was passed. According to her, the reliability of documents before a Quasi-Judicial Authority is not the same as in criminal/civil matters; even probable evidence is taken note of. She referred to the judgment of the Supreme Court in *M.V. Bijlani Vs. UOI & Ors. (2006) 5 SCC 88*.

35. She submitted, 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 of the Order dated May 13, 2016 of this Court. The Petitioner filed an appeal dated May 17, 2016 before the Vice Chancellor wherein the Petitioner sought revocation of the Office

Order No.145/CP/2016 dated April 25, 2016. The Respondent requested the Petitioner to appear before the Vice Chancellor, JNU on June 16, 2016 at 11:30 am at the VC's office to which the Petitioner replied that it is difficult for him to travel as only one day is left and due to tourist season in Kashmir, the tickets would be very expensive and thus, requested to depose in the next week so that travel arrangements could be more convenient and affordable. He also mentioned that if not possible for the next week, he would depose on June 16, 2016 itself. The Petitioner did appear before the committee on the said date. Some of the parties who had failed to appear before the Appeals Committee on the said day were permitted to do so on July 04, 2016. Hence, great effort was made by the Appeals Committee to ensure that adequate opportunity was accorded to all the parties and were given substantial time to make their representations based on the Show Cause Notice and HLEC Report before the Appeals Committee.

36. That the Respondent finally issued the Office Order No.201/CP/2016 dated August 22, 2016 wherein the Petitioner was rusticated for 2 semesters (i.e., Monsoon and Winter Semester, 2016-2017). It was stated *that Mr. Gattoo initially argued that he did not raise any slogans but after the committee confronted him with authenticated video evidence he responded by saying that whether it was objectionable to raise the slogans which he had raised and to who these slogans were objectionable.* Further, in his Appeal dated June 16, 2016 the Petitioner stated that *before I was about to leave, I was*

shown a video, in which I am present, uttering slogan hum kya chahte Azadi, Hum cheen ke lenge Azadi. In its response I reiterate that I be provided a material of the authenticity of video and what is objectionable to in the slogans and to whom? Further, the Petitioner did not make any specific appeal to absolve himself from the charges made by the HLEC but instead questioned the formation of the HLEC. Therefore, the committee considered the recommendation of the HLEC highly justifiable.

37. That the University's autonomy means its right of self-government particularly, it's right to carry on its legitimate activities without interference from any outside authority. That the petitioner against whom charges were framed was given adequate opportunities to defend himself, and the committee followed the rules of natural justice while holding the enquiry. That it is a settled law that matters falling within the jurisdiction of educational authorities should normally be left to their decision and this Court would not interfere unless it thinks it must do so in the interest of justice. She stated, this Court in ***Jawaharlal Nehru University V. Flora Gupta, LPA 570/2012 & CM No.14010/2012*** held that-

The grounds on which administrative action is subject to control by judicial review are, "illegality", "irrationality" and "procedural impropriety". The Court will be entitled to interfere in such matters if the decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. To be "irrational" it has to be held that on

material, it is a decision “so outrageous” as to be in total defiance of logic or moral standards. If the power is exercised on the basis of facts which do not exist having which are patently erroneous, such exercise of power shall be vitiated. Exercise of power will be set aside if there is manifest error in the exercise or such power is manifestly arbitrary. To arrive at a decision on “reasonableness” the court has to find out if the respondents have left out a relevant factor or taken into account irrelevant factors.

38. That the Respondent has acted within their authority, exercised their judgment in good faith, and followed the applicable laws. The constitutional provisions, the provisions of the Act, the Statute and the Ordinances and the principles of natural justice have been complied with by the Respondent. The Petitioner was served with notices at his hostel, in his various addresses and was asked to show cause and was also given opportunity to defend himself before the enquiry committee. The Petitioner deliberately avoided proceedings on the pretext of being unwell and out of town. He claimed it as a justified reason for not attending the enquiry proceedings. This conduct of the Petitioner does not attract any empathy from the authorities and this is only a ploy to gain political mileage out of these proceedings. The Petitioner was given ample opportunity to defend but he himself lost the opportunity by not even responding to the simple queries raised by the Appellate Committee.

39. She would submit, that only certain documents relied upon by

the HLEC were filed before this Court and the entire evidences, documents, notices and proceedings are maintained by the Respondent in its official files. The same are available for any other scrutiny as and when the same may be requisitioned by this Court.

40. She would state, the Legal Submissions made and judgments relied upon in Umar Khalid V. JNU, W.P. (C) 7826/2016 and Anirban Bhattacharya V. JNU, W.P. (C) 7828/2016 may be read as part and parcel of the present submissions. The judgments relied upon by her 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;*

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

41. 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 petitioner was imposed a penalty of rustication for both the Monsoon and Winter semester 2016-2017 with a direction that his name shall be removed from the Rolls of the University forthwith, which penalty was upheld by the Appellate Authority on August 22, 2016 with a direction to give undertaking. The enquiry relates to the events held on February 09, 2016 at the University Campus. The grounds of challenge by the petitioner are that the same was held without following the due process and in contravention of the well established principles of natural justice and the detailed guidelines for enquiries as they come under Statute 32(5) of the Statutes of the University. The charges were not explained, materials against him were not made available, no opportunity to cross examine was given. The finding of the HLEC is perverse. Even the procedure adopted by the Appellate Authority was in total disregard to the principles of natural justice. The Appellate Authority had falsely claimed that the petitioner was given ample opportunity to examine all the materials before he could write his

appeal. Despite the petitioner asking that he be given material, so as to enable him to evaluate and provide answers to the same the request was not accepted. The production of the documents at the appellate stage was only formality to show due process was being followed whereas the Appellate Authority had no intention to allow the petitioner to access the materials against him. It is also the ground of the petitioner that the freedom of speech and expression is a salient right guaranteed by the Indian Constitution and without admitting that the allegations are true, the same fall within the realm of protected free speech.

42. 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.

43. There is no dispute that the petitioner had filed an Appeal dated May 17, 2016 pursuant to the directions given by this Court in earlier round of litigation filed by the petitioner on May 13, 2016. It is a

conceded fact that the Vice Chancellor-Appellate Authority had held its meeting on June 16, 2016. There is also no dispute that the petitioner was shown the record of the enquiry. The parties are at variance about the duration for which the record was shown. It is a conceded fact that a hearing was given to the petitioner on the same day, which resulted in the passing of the appellate order on August 22, 2016. In his appeal dated May 17, 2016, the petitioner has stated that basis for punishment is factually inaccurate. It was his stand that he did not participate in organizing the event. He was not party seeking permission for the event. He has not been given the materials on the basis of which the HLEC has concluded that he was one of the organizer of the event. The show cause notice did not specify the charge against him nor any material by which it was proposed to be established, was shown. The enquiry against him had violated the Statutes and the relevant Rules of the University. The HLEC report was truncated as he was given only eight pages. It was only the report, which was shared with him, not the corresponding annexures, depositions, statement of witnesses. He states, that the finding of the HLEC is perverse. Neither the HLEC report nor the order dated April 25, 2016 shows application of mind. In the end, he states that without any opportunity to study the evidence and depositions against him, he is prejudiced.

44. Clause 12 of the Norms and Procedure followed during enquiry stipulates that every punished student has a right to appeal. In the case in hand, after this Court had passed the order on May 13, 2016 in the

earlier writ petition filed by the petitioner, the respondent University issued a communication dated June 13, 2016 asking the petitioner to appeal to the Vice Chancellor and depose on June 16, 2016. The petitioner filed the appeal on May 17, 2016. The communication does not refer to the fact that the petitioner shall be given the relevant record/documents for inspection. Be that as it may, the learned counsel for the parties agree that the files/records/documents before the HLEC were given to the petitioner on June 16, 2016 to enable him to peruse the same and make submissions on the same day. Even assuming, three hours were granted to the petitioner to inspect the documents on June 16, 2016, some time need to have been granted to the petitioner to apply his mind on the evidence so noted by him during the inspection, which was against him and to make an effective appeal. Surely, for such purposes, he may have required reasonable time to prepare his case, which may include seeking legal advice. The procedure evolved by the Appellate Authority to allow inspection of the documents/records and hearing him could not be in conformity with the principles of natural justice and the law laid down by the Supreme Court in the case of *Associated Cement Company Ltd. v. Workmen and another (1964) 3 SCR 652*, wherein the Supreme Court was considering an appeal arising out of an industrial dispute between the appellant and the respondent workman with regard to dismissal of five workmen employed by the appellant company. One of the issue was that before the enquiry was actually held on June 11, 1952, notice was not given to Malak Ram, one of the workmen telling him about the specific date of the enquiry. The Supreme Court held

that failure to intimate to the workman concerned about the date of the enquiry may, by itself, not constitute an infirmity in the enquiry, but, on the other hand, it is necessary to bear in mind that it would be fair if the workman is told as to when the enquiry is going to be held so that he has an opportunity to prepare himself to make his defence at the said enquiry and to collect such evidence as he may wish to lead in support of his defence. The Supreme Court held, on the whole, it would not be right that the workman should be called on any day without previous intimation and the enquiry should begin straightaway. The Supreme Court held, such a course should ordinarily be avoided in holding domestic enquiries. In other words, the Supreme Court has held that an incumbent should be given sufficient opportunity/time to consider the evidence, which has come against him and to collect evidence in support of his defence. In the case in hand, no such time was given to the petitioner. That apart, if the material is being shown to the petitioner, on June 16, 2016, surely, some time should have been given to the petitioner to enable him to supplement his appeal already filed by him on May 17, 2016. This would be in conformity with the concept of fair play in action, which is the basis of natural justice. That apart, even in these proceedings, the respondent has not filed on record, the complete record of the HLEC. In fact, a stand has been taken in the written submissions that only certain documents relied upon by HLEC were filed before this Court and the entire evidence, documents, notices and proceedings are maintained by the respondent in its official files. The same are available for any other scrutiny as and when the same are

requisitioned before the Court. Even if some depositions are filed along with the written arguments in some cases, the same are in Hindi. Even otherwise, the HLEC report refers to deposition of some eye witnesses, which are in the deposition files. It is not clear, who these witnesses are, who are being referred to. All the evidence, documents, notices and proceedings being in the official files, there was no occasion for this court/counsel for the petitioner to look into the same for a proper appreciation/justification of the impugned orders.

45. The petitioner in his appeal dated May 17, 2016 has stated that the punishment imposed is grave and completely jeopardized his education and career prospects. The finding of guilt of arousing communal feeling was based on certain vague charges. The show cause notice was silent on the aspect of his conduct. The show cause notice was not accompanied by full copy of HLEC report, much less deposition of witnesses and other material on which, the charges were founded. There was a complete refusal on the part of the respondent to grant him any time to even submit a cursory explanation. As he was not given the material, he could not defend himself. Major portion of the HLEC report was concealed. The provisions of Statute 32(5) of the Statutes of the University have not been followed. The provision of appeal in the Regulations becomes illusory if the student is not aware of what persuaded the Disciplinary Authority after the show cause notice and the reply thereto, in its decision to sustain a finding of guilt and award a penalty. He denied of having raised any objectionable slogans and the finding against him are false and

baseless. He also stated, that the penalty is grossly disproportionate even to the charges as stated.

46. Further, 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 Vitlabhai 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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.

52. Insofar as the judgment of the Supreme Court in the case of **Suresh Koshy George** (*supra*) is concerned, in para 7 on which

reliance was placed by Ms. Routray, the Supreme Court was considering a submission that the Vice Chancellor had not made available to the appellant a copy of the report submitted by the Inquiry Officer before asking him to make a representation. The Supreme Court rejected the contention by holding that the enquiry was held after due notice to him and in his presence. He was allowed to cross examine the witnesses examined in the case and he was permitted to adduce evidence in rebuttal of the charge. The Supreme Court also held, no Rule was brought to its notice, which stipulated the supply of report. The Supreme Court also observed that it was not the case of the appellant that he had asked for the copy of the report, which was denied to him. The judgment relied upon by Ms. Routray is distinguishable, inasmuch as the petitioner did not participate in the proceedings/the proceedings were held in his absence. Further, the Appellate Authority itself has offered to allow inspection of the documents/record of HLEC. The petitioner had asked for the documents/record/material in his appeal dated May 17, 2016. The Appellate Authority having allowed the inspection, reasonable time should have been given to the petitioner to supplement the appeal already filed by him on May 17, 2016. The judgment has no applicability, at least on the limited issue that is being decided by this Court.

53. Insofar as the judgment of the Allahabad High Court in the case of *Ram Chander Roy (supra)* wherein reliance was placed on paras 24 and 25, relates to the power of the Vice Chancellor to impose any

punishment in maintaining the discipline of the University. There is no dispute on the said proposition of law. Insofar as the plea that the right of cross examination was denied is concerned, the High Court held that it was not convinced that in a case where Head of an Educational Institution takes disciplinary proceedings, it is necessary that he must give an opportunity to the student to cross examine the witnesses, who may be examined by him in order to satisfy himself that an occasion has arisen for taking disciplinary action against him. In matter of discipline, the Head of Educational Institution does not act as a judicial or a quasi judicial Tribunal. The Disciplinary power vested in any Officer or the Head of an Institution is a power which is absolutely necessary for and ancillary to the exercise of administrative functions in that capacity. Suffice to state, 32(5) of the Statutes of the University lays down the procedure. In any case, as stated above, on a limited issue, which is being decided, this judgment would not have any applicability.

54. 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.

55. 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.

56. 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.

57. 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.

58. 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.

59. 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 earlier writ petition 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. 32966/2016 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

OCTOBER 12, 2017/ak