

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: July 12, 2018

Judgment delivered on: July 20, 2018

+ W.P.(C) 7980/2017, CM Nos. 34670-34671/2017 & 40556/2017

ROCKY TUSEED

..... Petitioner

Through: Mr. Mukul Gupta, Sr. Adv. with
Mr. Arjun Harkauli and
Mr. Tushar Gupta, Advs.

Versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Mr. Mohinder J.S. Rupal, Adv. and
Mr. Prang Newmai, Adv. for R-
1/University of Delhi Ms. Suman
Chauhan, Adv. with Mr. Jivesh Tiwari,
Adv. for Intervenor.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 40556/2017

This is an application filed by the petitioner seeking condonation of 15 days delay in filing reply to the intervenor application. For the reasons stated in the application, the delay of 15 days in filing reply to the intervenor application is condoned. Application stands disposed of.

W.P.(C) 7980/2017

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

“In the above premise, it is most humbly prayed that this Hon’ble Court be graciously please

i. Call for the records of the abovementioned election pertaining to the petitioner;

ii. to issue a writ of certiorari quashing the impugned order dated 06.09.2017 and all actions of the respondents’ before and after rejecting the candidature of the petitioner;

iii. to pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case.”

2. It is the case of the petitioner that he filed nomination for the post of President in the Delhi University Students Union (DUSU) elections on September 04, 2017. On the same day, a provisional list of 36 prospective candidates for the post of President was notified by the Chief Election Officer Sh. S.B. Babbar, the respondent No.2 herein on the basis of preliminary scrutiny. It is averred, on September 05, 2017, the respondent No.2 initiated an enquiry against the petitioner on the basis of an

“e-mail received by DUSU 2017-2018 Election Commission”

citing a disciplinary action against the petitioner taken by his college in the past. It is averred that the copy of the said e-mail was not supplied to him and the name of the sender of e-mail was kept secret. On September 06, 2017 information was sent by the Principal of the College in the affirmative that disciplinary action was taken against the petitioner. The e-mail of the Principal was sent by the University to Panel Lawyer and Deputy Dean (Legal) for their legal opinions.

3. It is alleged that the Panel Lawyer / Dy. Dean (Legal) had given a hurried affirmation. On the same day, the respondent No.2 declared the petitioner as non-eligible to contest the post of President, DUSU. It is stated the action is arbitrary and the statement of the Principal is contradictory to the character certificate issued. On the same day, the representative of the National Students Union of India, at the request of the petitioner filed a complaint through an e-mail stating arbitrary action of the Election Commission in rejecting the candidature of the petitioner.

4. A counter affidavit has been filed by the respondents, wherein it is stated that according to the Lyngdoh Committee

Recommendations, the candidate shall not have a previous criminal record, that is to say he should not have been tried and/or convicted of any criminal offence or misdemeanor. The candidate shall also not have been subject to any disciplinary action by the University authorities. It is stated the petitioner undertook to abide by the Code of Conduct for the candidates contesting DUSU elections. It is stated, as per the Code of Conduct every candidate is required to furnish an affidavit along with the security deposit, to the effect that (i) He/she does not have any previous criminal record and has not been subjected to any disciplinary action by the University / College (ii) Has not failed in the previous academic year or readmitted in the current year. A reference is also made to Clause 19 of the Code of Conduct, which provides that contravention of any of the above provisions of Code of Conduct may make candidate liable to be striped of his candidature, or his elected post, as the case may be. The College / University may also take appropriate disciplinary action against such violator. Further, Clause 22 of the Code of Conduct states, notwithstanding anything contained in the aforesaid Code of Conduct, the directives of the Supreme Court Judgement dated September 22, 2006 shall prevail. The

petitioner submitted an affidavit as required for contesting the Delhi University Students Union election 2017-2018 for the post of President. The petitioner stated in his affidavit that he has carefully read the constitution of DUSU; Code of Conduct for the candidates contesting DUSU elections; Lyngdoh Committee Recommendations as accepted by the Supreme Court vide its judgment dated September 22, 2006 in the case of *University of Kerala v. Council, Principals, Colleges, Kerala and others* and National Green Tribunal's order dated July 18, 2016 and he shall abide by all the rules/provisions contained thereto. In case of violation of the same, his candidature may be cancelled and he be stripped of his elected post, at any stage. The petitioner had filed his nomination on September 04, 2017 for the post of President in DUSU election. However, four complaints were received on September 04th and 05th, 2017 by the office of the respondent No.2 conducting the DUSU election that the petitioner does not fulfil the criteria for contesting the DUSU elections. He initiated the enquiry into the matter and the Principal of the Shivaji College where the petitioner studied was contacted. The Principal, Shivaji College then sent an e-mail confirming that the disciplinary action was taken against the petitioner. He had sent

a copy of the minutes of the meeting of the disciplinary committee along with the apology letter of the petitioner. It transpired that the complete record was sent to the respondent No.2 with regard to the disciplinary action taken against the petitioner by the said College in the year 2014 when the petitioner was student of the said College.

5. On September 06, 2017 the respondent No.2 after considering the matter in entirety was of the view that nomination of the petitioner could not be accepted on the basis of complaints of disciplinary action taken against the petitioner by Shivaji College in the year 2014. Accordingly, the petitioner was informed of the decision of the Chief Election Officer, DUSU vide letter dated September 06, 2017. It is stated that the representation made by the petitioner against the cancellation of nomination was of no consequence in the given facts. It is urged that a strong action should be taken against the petitioner for breaching the election Code of Conduct of the University of Delhi and the Lyngdoh Committee report, as according to the respondents the petitioner had mislead the Court and has also deliberately suppressed the material facts and furnished false affidavit, which is a serious offence. The respondents have also

stated that the petitioner has failed to disclose that he was a student of M.A. Part I (Buddhist Studies) in the academic session 2016-2017 and could not clear paper 101 (first semester 2016), paper 201, 202 and 203 (second semester 2017). It is also stated that the petitioner after failing to clear his paper in M.A. (Buddhist Studies) Part I in the academic session 2016-2017 withdrew his admission from the Department of Buddhist Studies, University of Delhi. After withdrawing his admission, he took admission once again in M.A. Part-I (Buddhist Studies).

6. A rejoinder to the counter affidavit has also been filed.

7. It may be stated here that an application being CM No. 34670/2017 has been filed by one Rajat Choudhary, who is said to be a first year student of M.A. Political Science at Moti Lal Nehru College, University of Delhi, seeking his intervention. I may only state here that in his intervention application, the applicant therein has primarily stated that in terms of clause 6.5.7 of the Lyngdoh Committee, which has been accepted by the Supreme Court for implementation, clearly stipulates that the candidate shall not have a previous criminal record, that is to say he should not have been tried and/or convicted of any criminal offence or misdemeanor. According to the applicant, the

petitioner has not disclosed the material fact that in the year 2014 an FIR bearing No. 860 dated August 06, 2014 was registered against him in the Police Station Rajouri Garden under Section 308/323/341/34 and the petitioner was kept in judicial custody from August 28, 2014 to September 15, 2014. The applicant also averred that he has come to know from the reliable sources that the police has filed a charge sheet in the abovesaid matter and the petitioner is an under trial of the serious and grave offence like attempt to murder, criminal trespass etc. The applicant has also stated that the petitioner is also ineligible to contest the election, inasmuch as the petitioner took admission in M.A. (Buddhist Studies) in academic session 2016-2017 under the Roll No. MA (P) 8 and University Roll No. 71533. The petitioner appeared in the first semester under the said Roll number. However he suffered Essential Repeat – 101 in first semester and Essential Repeat – 201, 202, and 203 in the second semester of the said course. As per the election Code of Conduct, the petitioner was required to give an undertaking that he has no academic arrears, that is to say there are no pending papers to be cleared by him. In order to overcome the said clause of the Lyngdoh Committee, the petitioner on August 16, 2017 moved an application to the Head

of Department of Buddhist Studies, University of Delhi for the withdrawal / cancellation of his admission in the said course. The said application was accepted and his admission was cancelled. However, on August 16, 2017 itself a waiting list for the admission in the same course for which the petitioner had requested for cancellation appears in most callous manner and this waiting list reflects the name “..a.Rocky Tushir” and through this differently spelt name the petitioner took a fresh admission just at the difference of few hours after ditching the complete software of Delhi University in most fraudulent manner.

8. A reply has been filed by the petitioner. In the said reply, the petitioner challenged the maintainability of the application by the applicant. It is also stated, the scope and ambit of the writ petition as filed by him is limited to the decision of the respondent No.2 and has to be tested on the basis of material as was available on the file of the respondent No.2 and nothing more. In other words, it is stated that the respondent No.2 cannot alter or change its stand now before this Court. It is also stated that the applicant had lost the election to the petitioner and as such the application is a motivated one. A reference is also made to an FIR registered against the applicant. It is also stated that in

the past also, number of candidates were allowed by the Election Committee of the Delhi University to contest election despite having FIRs registered against their names. With regard to the FIR, it is stated by the petitioner, he has not been tried or convicted, hence the stipulation of 6.5.7 shall not be applicable. In other words, even though a charge sheet has been filed, but no charges have been framed against the petitioner. On the aspect of fresh admission, it is stated that the petitioner took admission in M.A. (Buddhist Studies) in the academic session 2016-2017 in the name Rocky Tuseed. He had already applied for change of name to ‘..a.Rocky Tushir’ and the same was published in the National Gazette on March 04, 2016. According to him, he was advised by the College authorities at the time of admission that he can get his name changed any time during the academic session 2016-2017 and that when petitioner requested the College authorities to change his name as per the Gazette notification during the academic session 2016-2017, the Authorities declined his request and asked him to get a decree from the Court to that effect. Thereupon, the petitioner moved a declaration suit before the Civil Judge, Patiala House Court, New Delhi which was consequently not decreed in his favour. The petitioner acted

upon the advise of the College authorities to take fresh admission in M.A. (Buddhist Studies) in academic year 2017-2018 under the new name ‘..a. Rocky Tushir’ and appeared in fresh entrance examination with the new name and cleared the same. But in order to take fresh admission the petitioner had to withdraw from his earlier course and apply for fresh admission in the academic session 2017-2018 based on his entrance result. It is stated that the College authorities rejected his request to admit the petitioner under his new name as all the other academic records reflected his old name and the suit for declaration was not decreed in his favour and instead offered to give him admission under his old name i.e Rocky Tuseed.

9. Mr. Mukul Gupta, learned Senior Counsel appearing for the petitioner submitted that the challenge in the present Writ petition is to the letter dated September 06, 2017, issued by the respondents rejecting the petitioner's representation against rejection of his nomination/candidature for election to the post of President of the DUSU. This was done after he was provisionally declared as a candidate on September 04, 2017. The only basis of the rejection is that the petitioner is alleged to be not eligible as some disciplinary action was taken against him and he has filed a

false affidavit. Mr. Mukul Gupta submitted, the respondent University appears to have held some sort of enquiry between September 5, 2017 and September 6, 2017 at the back of the petitioner. The contents of the inquiry were not disclosed to the petitioner. The petitioner was not associated with the said enquiry nor provided any opportunity of hearing, neither prior to the decision nor post decision. He was not given any material in respect of the alleged ground for his disqualification. Even on a subsequent representation dated September 7, 2017 to the Grievance Committee as well, he was not provided any hearing. However, it was only on September 7, 2017, the petitioner was provided with some of the documents exchanged relating to the said enquiry and thus the petitioner was compelled to file the Writ Petition on September 7, 2017 itself. Mr. Mukul Gupta stated, the petitioner did not had time to represent to the Grievance Committee against sketchy documents, as some of them were clearly procured and fabricated. The petitioner filed the writ merely to seek natural justice. The Delhi University for the first time on July 11, 2018, during the course of hearing provided copies of certain documents and another set of documents on July 12, 2018 after the judgment was reserved by

this Court relating to the said enquiry. Ex facie none of these documents were the basis of the rejection. None of these were filed with the counter affidavit.

10. It was the submission of Mr. Mukul Gupta, after the petitioner was declared successful, the defeated candidate on September 19, 2017 filed an application seeking intervention by placing certain facts and documents which were not part of the enquiry of the Delhi University. Thereafter, on January 04, 2018 the Delhi University filed its short counter affidavit to the writ petition, wherein also it was not disputed that either any notice was given or was the petitioner allowed to participate in the proceedings against him. Mr. Mukul Gupta submitted, the Delhi University in its short counter affidavit used all those documents which were used by the intervener in his application which did not form part of the supposed enquiry. Mr. Mukul Gupta at the outset, pointed out that such an application by the defeated candidate or anybody else, who is not party to such enquiry, is not permissible in the writ. The applicant is neither the complainant nor a witness in the Enquiry, and hence, is a third party. Further, even as per Lyngdoh Committee Report, the complainant and the person against whom an action is sought to

be taken will have to appear and make good its case. Mr. Mukul Gupta submitted, the present writ petition will have to be examined from the standard of Judicial Review of the administrative decision. It is well settled that Judicial Review is only permissible to the extent of finding out whether the process in reaching at the decision has been followed correctly and not to find out the correctness of the decision itself. Critical or independent analysis or appraisal of the materials/evidence by the Court exercising power of judicial review is not permissible unlike that by an Appellate Court. The Court while exercising the power of judicial review cannot substitute its own views for the views of the authority. It is not akin to adjudication of the case on merits as an appellate authority.

11. It was the submission of Mr. Mukul Gupta, that no show cause notice was ever served upon the petitioner nor such fact has even been contested by the respondent. He made a reference to the judgment in the case reported as **(2003) 4 SCC 557 Canara Bank v. Debasis Das** to contend that adherence to principles of natural justice is a must. The first and foremost rule under Principles of Natural Justice is Audi Alteram Partem. Notice is the first limb of this principle. It must be precise and

unambiguous. It should apprise the party determinatively of the case he has to meet along with adequate time to respond to the same. In the absence of a notice of this kind and such reasonable opportunity, the order passed becomes vitiated. In fact, it was held in the case reported as *(1967) 2 SCR 625 State of Tamil Nadu v. Dr. Miss. Binapani Dei* that even an administrative order which involves civil consequences has to be consistent with Principles of Natural Justice by informing the party of the case against him, the evidence in support thereof and giving him an opportunity of being heard and explaining the evidence against him. Similarly, it was held in the case reported as *(2013) 16 SCC 771 Mahipal Singh Tomar v. State of UP* that non providing of material would vitiate the order passed. In the case reported as *(1993) 3 SCC 259 DK Yadav v. JMA Industries*, it was held that it was a fundamental rule of law that no decision must be taken which affects the rights of a party without first being informed of the case and giving him/her an opportunity of putting forward his/her case. There is no material to show what materials were used to disqualify the petitioner. There is no show cause notice, no reply sought from the petitioner, no record of hearing and no speaking order on Court record till date. Mr. Mukul Gupta also

submitted, the intervenor applicant and the respondent University seek to validate the action of cancellation of nomination by producing fresh material before this Court. He submitted that this Court cannot go into these materials and the validity of the impugned order has to be judged only on the basis of the material before the authority and the reasons provided. It was held by the Constitution Bench of the Supreme Court in the case reported as ***AIR 1978 SC 851 Mohinder Singh Gill v. Chief Election Commissioner*** that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavits or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to the court on account of a challenge may get validated by additional grounds brought out. Further, the Supreme Court in the case reported as ***(1978) 2 SCC 586 Union of India v. HP Chothia*** held that material supplied by a third party who was not involved with the decision making process cannot be considered. Relying on ***Mohinder Singh Gill (Supra)***, it was held in the case reported as ***(2016) 1 SCC 724 State of Punjab v. Banddeep Singh*** that there can be no gainsaying that every decision of an

administrative or executive nature must be a composite and self-sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that an authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned order. Ultimately, the Supreme Court in the case reported as **(2013) 14 SCC 225 State of Maharashtra v. Namdeo** held that after exercising the power of judicial review, even if the Court comes to a decision that the order is flawed or perverse, the High Court can, at the most, remit the matter back to the authority. He submitted, the ground that the petitioner had an FIR against him is of no consequence as the disqualification as per the Lyngdoh Committee Report is attracted only if a person has been 'tried' or 'convicted' of an offence, whereas the petitioner was never tried for any criminal offence. In the Constitution Bench judgment reported as **(2014) 3 SCC 92 Hardeep Singh v. State of Punjab**, it has been held that the trial in a criminal case starts only once the charges have been framed and not before that. Hence, pendency of an FIR or even the filing of a chargesheet will be of no consequence. Mr. Mukul Gupta further submitted that none of the prescribed penalties were

imposed upon the petitioner as a consequence of the alleged disciplinary inquiry, which could be termed as disciplinary action by the college/University rules and as per the Lyngdoh Committee. Any other purported action which does not fall within the realm of prescribed penalties above cannot be termed as "disciplinary action" under the Lyngdoh Committee. According to him, it is an admitted case of the respondent University that as per the Code of Conduct, the guidelines laid by the Supreme Court affirming the Lyngdoh Committee Report shall be given credence over any other rule or provision made by the University. He also relies upon the following judgments in support of his contention:-

- (i) ***(2010) 10 SCC 408 State of Assam v. Union of India & Ors;***
- (ii) ***(2003) 9 SCC 592 Syed Naqshbandi v. State of Jammu and Kashmir;***
- (iii) ***AIR 1996 SC 1232 State of Tamil Nadu v. S. Subramaniam;***
- (iv) ***(2012) 5 SCC 443 Heinz India (P) Ltd. v. State of UP;***
- (v) ***(1997) 3 SCC 657 Rae Bareilly Kshetriya Gramin Bank v. Bhola Nath Singh***
- (vi) ***(1993) 3 SCC 552 Harpal Singh Chauhan v. State of UP;***

(vii) (2012) 6 SCC 357 Registrar General, High Court of Patna, v. Pandey Gajendra Prasad;

12. On the other hand, Mr. Mohinder J.S. Rupal, learned counsel for the respondents submitted as directed by this Court the record of the Chief Election Officer, DUSU election 2017 relating to complaints received against the Petitioner as well as the response received from Principal Shivaji College has been already tendered for consideration by this Court. He submitted during oral arguments before this court, the petitioner has himself filed part of the record of the Disciplinary proceedings to which he was subjected to while undergoing B.A. History (Honours) Course in Shivaji College in the year 2014. Nowhere the petitioner has alleged in the petition that the said record was made available only subsequently as was otherwise alleged orally by the counsel for the petitioner. He stated, the petitioner has also filed with the Writ Petition, the two legal opinions separately sought by the Chief Election Officer before passing the Impugned Order dated September 06, 2017 rejecting the Candidature of the Petitioner. The petitioner malafidely and intentionally suppressed this material fact while contesting for the post of President DUSU election 2017, though Lyngdoh Committee guideline 6.5.7

specifically lay down the eligibility criteria for candidates wherein it has been clearly mentioned that "the Candidate shall also not have been subject to any disciplinary action by the University authorities". He submitted, not only this, the Petitioner had also sworn an affidavit and submitted the same before the Chief Election Officer as per mandatory requirement to contest election wherein in Clause 5 of the said affidavit the Petitioner falsely stated that "I have not been subjected to any disciplinary action by the University/College". He in the said affidavit also gave an undertaking that he has carefully read (i) the Constitution of DUSU (ii) Code of Conduct for the Candidates contesting DUSU Elections, (iii) Lyngdoh Committee recommendations as accepted by the Supreme Court of India vide its judgment dated September 22, 2006 in the case entitled "University of Kerala v. Councils, Principals, Colleges Kerala & Ors". And (iv) National Green Tribunal's order dated July 18, 2016. He promises to abide by all the Rules/Provision contained thereto. In case of violation of any of this by him, his candidature may be cancelled/he may be stripped of his elected post, at any stage.

13. Mr. Rupal further submitted, the petitioner has not denied

this affidavit tendered before the Chief Election Officer, DUSU Election 2017. Hence all the documents referred above have been admitted by the Petitioner and thus admitting that he was subjected to disciplinary proceedings while studying in Shivaji College. He also submitted, that the petitioner gave a representation to the Chief Election Officer on September 07, 2017. None of the grounds as sought to be raised during the oral arguments have been raised either in the said representation or in the Writ Petition. Hence, there is no case made out by the Petitioner to seek any challenge to the impugned order dated September 06, 2017. He stated, though the Chief Election Officer has rejected the Candidature of the Petitioner on the sole ground that he was subjected to disciplinary action and consequently furnished a false affidavit in this regard but this Court may also take judicial notice of another vital fact, that the petitioner also violated the law as laid down by the Supreme Court in the case of *University of Kerala (supra)*, more particularly Clause 6.5.4. Mr. Rupal stated, the complaints received against the Petitioner, the 'Petitioner indeed had academic arrears. But to overcome this prohibition took fresh admission in the same course. But even this could not overcome

the express undertaking given by the Petitioner in the affidavit sworn and tendered before the Chief Election Officer that "I have not failed in the preceding academic year/or readmitted in the current year". It is well laid down principle of law that what cannot be done directly cannot be done indirectly. Thus on all counts the Candidature of the Petitioner for the post of President deserve to be rejected and hence the Impugned Order dated September 06, 2017 passed by the Chief Election Officer is valid and proper. The result of the Petitioner was declared subject to the outcome of the present Writ Petition as per the Interim order passed by this Court. He seeks the dismissal of the present writ petition.

14. Having heard the learned counsel for the parties, at the outset it is necessary to reproduce the law laid down by the Supreme Court in the case of *University of Kerala (supra)* wherein the Supreme Court had accepted the recommendations made by the Lyngdoh Committee and directed that the recommendations made by the Lyngdoh Committee shall be followed in all College / University elections. The relevant recommendations for the purpose of this case are 6.5.7 and 6.5.8, which reads as under-

“6.5.7. The candidate shall not have a previous criminal record, that is to say he should not have been tried and/or convicted of any criminal offence or misdemeanor. The candidate shall also not have been subject to any disciplinary action by the University authorities.

6.5.8. The candidate must be a regular, full-time student of the college/university and should not be a distance/proximate education student. That is to say that all eligible candidates must be enrolled in a full-time course, the course duration being at least one year.”

15. In the petition, the petitioner has challenged the communication dated September 06, 2017, the same reads as under-

“Dear Mr. Rocky Tuseed,

Please refer to your representations given today challenging the denial of your nomination for contesting for the post of President, Delhi University Students’ Union (DUSU). Your representation was sent to (1) a Delhi University Panel Lawyer and (2) Deputy Dean (Legal). Their response to your representation are attached. The opinion of both is that you are not eligible to contest the DUSU elections.”

16. A perusal of the same would reveal that the said

communication was accompanied by the opinions of the Panel Lawyer and the Deputy Dean (Legal). The said opinions are annexed at pages 29 and 30 of the paper book. Suffice to state, the action to declare him ineligible was primarily because of disciplinary action taken by the College where the petitioner had studied for his graduation.

17. It was the submission of Mr. Mukul Gupta that the respondent Authority appears to have held some sort of enquiry between September 05, 2017 and September 06, 2017 at the back of the petitioner and the contents of the enquiry were not disclosed to the petitioner nor was he associated with the said enquiry nor provided any opportunity of hearing nor prior to the decision nor post the decision. He was not given any material in respect of the alleged ground for his disqualification. In support of his submission he had referred to the communications exchanged between the respondent No.2 and the Shivaji College where the petitioner had studied at pages 25 and 26. Suffice to state, the initial communication sent by the respondent No.2 was on September 05, 2017, to the Principal of the Shivaji College. He had called upon the Principal to check the veracity of the statements made therein and the attachment thereto. In response

to the same, the Principal confirms the fact that the disciplinary action was taken against the petitioner. A copy of the minutes dated November 05, 2014 of the Disciplinary Committee and the apology letter received from the petitioner were attached. Pursuant thereto, the respondent No.2 sought legal opinions, a reference of which is already made above.

18. Mr. Rupal sought to justify the disciplinary action initiated by the College by referring to pages 27 and 28 of the writ petition, which are the minutes of the Disciplinary Committee held on November 05, 2014 and apology letter submitted by the petitioner on September 18, 2014. The minutes of the meeting dated November 05, 2014 refers to his apology and his request to allow him to appear in the final year exam. The minutes of the meeting also stated that his entry in the college without prior permission is also banned. During hearing, Mr. Rupal had produced some of the documents related to the disciplinary action initiated against the petitioner. On July 11, 2017, he placed before the Court a compilation of documents, which included complaints made by certain students; minutes of the meeting of the Disciplinary Committee held on April 01, 2014 summoning the petitioner before the Committee on

numerous times when the petitioner refused to appear. The apology letter of the petitioner, letters of the students; minutes of the Disciplinary Committee dated April 09, 2014 wherein the Disciplinary Committee decided to suspend the petitioner and another student till they take their annual exam and a notice issued by the Convener of the Disciplinary Committee with a photograph of the petitioner stating that the entry of the petitioner, who is the student of B.A. Hons. (History), Fourth Semester into the College is strictly prohibited.

19. After the orders were reserved, a compilation of documents was filed by Mr. Rupal wherein he has annexed certain complaints dated September 04, 2017 and September 05, 2017 received against the petitioner by the Election Commission of the Delhi University from some students with regard to the petitioner having not cleared certain papers of the M.A. (Buddhist Studies); the petitioner having taken re-admission and the disciplinary action having been taken against the petitioner. As is clear from the above, the respondent No.2 on the receipt of the complaints did sought information from the Principal of the Shivaji College where the petitioner had studied. Based on the information, the action was taken by the respondent No.2. The

process, which has been carried out by the respondent No.2 is to ascertain the contents of the complaints. No doubt, the two documents i.e minutes of the meeting of September 05, 2014 and the apology letter of the petitioner were not put to the petitioner before the impugned action was taken, but the same is not fatal. Unfortunately, the petitioner does not refer to such an action having been taken against him in his affidavit given along with his nomination. He also does not mention about such an action having been taken against him in the petition. The action against the petitioner was on the basis of a complaint made by some students, which inter-alia stated that the petitioner and his friend, had physically abused one student. It is not the case of the petitioner, at least in the writ petition that the action, which has been taken is not a disciplinary action. Much reliance has been placed by Mr. Gupta on the Provisional-cum-Character Certificate dated July 19, 2016 issued by the College wherein it is stated that the petitioner bears a good moral character and has a good conduct during his stay in the College. The plea of the respondents that the certificate was given since he was allowed to appear in the examination after he apologized for his conduct and the same does not mean that there was no disciplinary

proceedings initiated against the petitioner at the relevant time by the College is appealing. In any case, since the stand of the respondents is based on the disciplinary action initiated against the petitioner and the minutes of the meeting of the Disciplinary Committee held on November 05, 2014 and the apology letter of the petitioner himself having been placed on record, the onus is surely on the petitioner to satisfy the conscious of the Court that the action of the respondents to bar the petitioner from entering the College is not a disciplinary action. Such a submission even though made would not hold any credence for the simple reason, the compilation of documents as filed by Mr. Rupal, a copy of which was given to Mr. Mukul Gupta, more specifically the minutes of the Disciplinary Committee dated April 09, 2014 does show that the Committee intended to rusticate the petitioner but reviewed its decision by suspending him till the annual exam are taken. In any case, the minutes of the meeting of November 05, 2014 does clearly conclude that the entry of the petitioner without prior permission is banned. The apology letter of the petitioner reads as under:-

*“To,
The Principal*

Shivaji College,

Raja Garden,

New Delhi

18 September 2014

Respected Madam,

Subject: Apology Letter

I Rocky Tuseed student of BA History Hons IInd year apologize for the mistake. I am extremely sorry for my past incidents. As I earlier applied for the NOC three times but I did not get NOC, so I want to continue in Shivaji College only. I gave 1st application to Hemant Lamba and next 2 application to PA, Principal Madam and now the admission and migration procedure have also stopped in other Colleges of Delhi University. I request to you to allow me to study in this prestigious College. I apologize for all my mistakes and my misbehavior and I assure that this won't happen again in future and I promise that I won't take part in any anti-social activity."

20. The said decision was followed by issuance of a notice banning his entry without permission by the College authorities, which is unprecedented. The petitioner has not challenged the complaints made against him; constitution of the Disciplinary Committee / the proceedings held by the Disciplinary Committee nor the banning of his entry in the College and also the issuance

of notice by the College Authorities for the information of all. Further, the said action having been taken against the petitioner on an apology tendered by him makes it clear that he accepts his misdemeanor, which resulted in the extreme action of banning his entry in the College, would surely demonstrate that the same was the disciplinary action against him, which does not require framing of any charge against him. The affidavit given by the petitioner that he was not subject to any disciplinary action by the University authorities, was not correct. Surely, the ground on which the petitioner was declared ineligible i.e there was a disciplinary action against him has caused no prejudice to him, if the material regarding the disciplinary action was not put to him before the impugned action was taken as he was privy to such information and was himself required to disclose it in the affidavit and the petition.

21. I may only refer to Ordinance XV B of the University, which relates to maintenance of discipline amongst the students of the University. The same reads as under:-

Ord. XV-B Maintenance of Discipline among Students of the University;

1. All powers relating to discipline and disciplinary action are

vested in the Vice-Chancellor.

2. The Vice Chancellor may delegate all or such powers as he/she deems proper to the Proctor and to such other persons as he/she may specify in this behalf.

3. Without prejudice to the generally to power to enforce discipline under the Ordinance. The following shall amount to acts of gross indiscipline.

a) Physical assault or threat to use physical force, against any member of the teaching and nonteaching staff of any institution/Department and against any student within the University of Delhi.

b) Carrying of, use of, or threat to use of weapons.

c) Any violation of the provisions of the Civil Rights Protection Act, 1976.

d) Violation of the status, dignity and honor of students belonging to the scheduled castes and tribes:

e) Any practice-whether verbal or otherwise-derogatory of women:

f) Any attempt at bribing or corruption in any manner:

g) Willful destruction of institutional property:

h) Creating ill-will or intolerance on religious or communal grounds:

i) Causing disruption in any manner of the academic functioning of the University system

j) Ragging as per ordinance XV-C

4. Maintenance of discipline and taking such action in the interest of maintaining discipline as may seem him/her

appropriate, the Vice-Chancellor, may in the exercise of his/her powers aforesaid order or direct that any students or students

a) Be expelled: or

b) Be, for a stated period rusticated; or

c) Be not for a stated period, admitted to a course or courses of study in a College, Department or Institution of the University

OR

d) Be fined with a sum of rupees that may be specified: or

e) Be debarred from taking a University or College or Departmental Examination or Examinations for one or more years: or

f) That the result of the students or students concerned in the Examination or Examinations in which he/she or they have appeared be cancelled.

5. The Principals of the Colleges, Heads of the Halls, Dean of Faculties, Heads of Teaching Departments in the University, the Principal, School of Correspondence Courses and Continuing Education and Librarian shall have the authority to exercise all such disciplinary powers over students in their respective Colleges, Institutions, Faculties and Teaching Departments , in the University as may be necessary for the proper conduct of the Institutions, Halls and teaching in the concerned Departments. They may exercise their authority through, or delegate authority to, such of teachers in their Colleges, Institutions or Departments as they may specify for these purposes.”

22. From the above, it is clear that the action of the College to ban the entry of the petitioner was for maintaining the discipline

in the College, and as such a disciplinary action.

23. Further, the action, which has been taken by the respondents is in conformity with the affidavit submitted by the petitioner that in the eventuality there is any violation of the Code of Conduct for the candidates contesting DUSU elections / Lyngdoh Committee Recommendations, as accepted by the Supreme Court, his candidature may be cancelled. This issue can be seen from another perspective, inasmuch as when an affidavit is filed by a candidate contesting the election, the Authority concerned is within its right to verify the contents of the affidavit. The respondent No.2 was within his right to write to the Principal of the College to verify the contents of the affidavit submitted by the petitioner. In such an eventuality also, the Principal (in this case) or any other Authority, would be within its right to submit such material to the respondent No.2 if he has any material in his possession contradicting the contents of the affidavit, which have a bearing on the eligibility of a candidate for standing in the election. This Court cannot lose sight of the fact that the Supreme Court has accepted the recommendations of the Lyngdoh Committee, which clearly stipulates if a candidate had a disciplinary action, the same would be a non-eligibility for such a

student to stand in the election. The spirit underlying the recommendation is that a person should have a clean record for standing in the election, cannot be lost sight of.

24. Insofar as the judgments relied upon by Mr. Gupta are concerned, the case of ***Canara Bank v. Debasis Das (supra)*** shall not be applicable in the facts of this case, inasmuch as the petitioner does not dispute that Disciplinary Committee was constituted against him for certain misdemeanor and resulted in banning of his entry into the College and a notice for the information of all was also issued, that too, on the apology tendered by him, which is part of the writ petition.

25. Similar, is the position in the cases of ***State of Tamil Nadu v. Dr. Miss. Binapani Dei (supra)***, ***Mahipal Singh Tomar (supra)***, ***D.K. Yadav (supra)***.

26. In so far as the submission of Mr. Gupta that the court while exercising the power of judicial review cannot substitute its own views with the views of the Authority by relying upon ***Syed Naqshbandi (supra)***, ***State of Tamil Nadu (supra)***, ***Heinz India (P) Ltd. (supra)***, ***Rae Bareli Kshetriya Gramin Bank (supra)***, ***Harpal Singh Chauhan (supra)*** and ***Registrar General, High Court of Patna v. Pandey Gajendra Prasad (supra)*** is

concerned, there is no dispute on the said proposition. My finding above, does not amount to this Court substituting its own views with the views of the Authority. Rather, this Court has only tested the view taken by the Authority that the disciplinary action having been taken against the petitioner, the petitioner shall be ineligible in terms of the Code of Conduct / Lyngdoh Committee Recommendations as accepted by the Supreme Court. The said judgments are distinguishable.

27. Now coming to the application filed by the applicant namely Rajat Choudhary is concerned, Mr. Gupta has opposed the maintainability of the application as the same is by a person, who was defeated by the petitioner. There is no dispute that the action challenged is of the Delhi University declaring the petitioner ineligible for contesting the post of President. It is the legality of the said action, which has to be decided by this Court. The applicant has sought his intervention on the ground that the petitioner was also ineligible, as per other recommendations of the Lyngdoh Committee, which have been accepted by the Supreme Court, is no reason to seek his intervention, as he is neither proper nor a necessary party. Mr. Gupta may be right in contending that the order has to be tested on the reasoning given

by the University in declaring the petitioner ineligible, which submissions have already been noted above by relying upon various judgments of the Supreme Court including *Mohinder Singh Gill (supra)*, *Union of India v. H.P. Chothia (supra)*, *State of Punjab v. Bandeep Singh (supra)* is appealing. I do not see any merit in the application for intervention. But at the same time, it must be noted, the petitioner in his affidavit has stated “*That I have not failed in the preceding academic year and / or re-admitted in the current year*” which in view of the fact that the petitioner got admission in M.A. Buddhist Studies in August, 2017 in which elections were held, is an incorrect fact.

28. During the course of his submissions, Mr. Mukul Gupta did mention that the tenure of the petitioner as a President would come to an end in the month of August, 2018. This Court is of the view, in view of the petitioner’s affidavit and Lyngdoh Committee recommendations as accepted by the Supreme Court, this Court is bound to decide the issue, which has arisen in this matter. Moreover, this Court had already in its order dated September 12, 2017, allowed the declaration of the result to the post of President, subject to the outcome of the writ petition. The issue raised in the present petition goes to the root whether the

petitioner could at all stood for election to the post of President. The answer to which is “No”. In view of the above discussion, this Court is of the view that the challenge to the communication dated September 06, 2017 rejecting the representation of the petitioner and treating the petitioner to be ineligible for the post of President, Delhi University Students Union cannot be faulted. The writ petition is dismissed. No costs.

CM No. 34671/2017

Dismissed as infructuous.

JULY 20, 2018/ak

V. KAMESWAR RAO, J