

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4022 of 2019

Dr. Qamar Ahsan, aged about 66 years, gender-Male, Son of S.M. Ahsan, resident of Srikrikshna Puri, P.O. and P.S. Srikrishna Puri, District- Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Old Secretariat, Patna.
2. The Higher Education Department, Government of Bihar, New Secretariat, Bailey Road, Patna through its Principal Secretary, Road Construction Department, Patna, Bihar.
3. The Principal Secretary, Higher Education Department, Government of Bihar, New Secretariat, Bailey Road, Patna, Bihar.
4. The Magadh University, Bodh Gaya through its Registrar, Magadh University, Bodh Gaya, Bihar.
5. The Registrar, Magadh University, Bodh Gaya, Bihar.
6. The Principal Secretary, Governor's Secretariat, Raj Bhawan, Patna, Bihar.
7. The Officer on Special Duty (Judicial), Governor's Secretariat, Raj Bhawan, Patna, Bihar.
8. The Chancellor, Magadh University, Governor's Secretariat, Raj Bhawan, Patna, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shashi Anugrah Narain, Sr. Advocate Mr. Piyush Lal, Advocate Mr. Binay Kumar, Advocate
For the Chancellor	:	Mr. Y.V. Giri, Sr. Advocate Mr. Rajendra Kumar Giri, Advocate
For the Magadh University	:	Mr. Ritesh Kumar, Advocate
For the State	:	Mr. Subhash Chandra Mishra (SC-16)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date : 02-11-2020

1. The present writ petition has been filed seeking quashing of the order dated 13.12.2018 passed by the Chancellor, Magadh University, Bodh Gaya, as communicated to the petitioner vide letter dated



13.12.2018, whereby and whereunder the petitioner has been directed to submit his resignation from the post of Vice-Chancellor, Magadh University, Bodh Gaya on or before 13.12.2018, failing which it shall be deemed that the petitioner has resigned from the said post. The petitioner has also challenged the Notification No. MU/47/ 2017-2092/Ra. Sa. (1) dated 07.08.2018, issued by the Governor's Secretariat, Raj Bhawan, Bihar, under the orders of the Chancellor, Magadh University, Bodh Gaya, whereby and whereunder a two member enquiry committee was constituted to enquire into the allegations against the petitioner. Consequently, the petitioner has prayed for quashing the enquiry report dated 26.09.2018. Lastly, the petitioner has prayed for holding and declaring that the petitioner was never removed from the post of Vice-Chancellor, Magadh University, Bodh Gaya pursuant to the aforesaid order dated 13.12.2018 and as a consequence thereof, he be deemed to have continued to discharge his duties and exercise his powers of the said post of Vice-Chancellor, Magadh University with effect from 13.12.2018 onwards



till date and to grant all consequential benefits arising therefrom.

2. The brief facts of the case are that the petitioner was initially appointed on the post of Lecturer in the subject of Economics on 11.01.1977 in S.D. Jain College, Ara under the Magadh University, Bodh Gaya, whereafter he was promoted on the post of Reader and then to the post of Professor whereupon he superannuated with effect from 31.03.2017. The petitioner is stated to have been appointed as Vice-Chancellor, B.N. Mandal University, Madhepura, whereafter he was appointed as the Vice-Chancellor of M.M.H. Arabic & Persian University, Patna, vide Notification dated 24.01.2008 and then vide Notification dated 07.05.2014, the petitioner was appointed as the Vice-Chancellor of Sido Kanhu Murmu University, Jharkhand. It is the case of the petitioner that considering the excellent track record of the petitioner, the Chancellor of the University of Bihar, vide Notification dated 20.03.2017 had appointed the petitioner as the Vice-Chancellor of the Magadh University, Bodh Gaya for a period of three years from



the date of assuming the charge of his office. The petitioner is stated to have assumed the charge of the said office on 28.03.2017 and had continued to work on the said post till the passing of the impugned order dated 13.12.2018.

3. It is the further case of the petitioner that vide Notification dated 07.08.2018, issued by the office of the Chancellor, Bihar, a Two Men Committee was constituted to enquire into the allegations received by the said office against the petitioner herein. The Enquiry Committee was constituted to hold enquiry against the petitioner with regard to total number of 18 charges framed against him, as enclosed with the Notification dated 07.08.2018. The Enquiry Committee had held its first meeting at the office of the Magadh University, Bodh Gaya on 21.08.2018. The aforesaid Committee is said to have met on couple of occasions and had also directed the petitioner to put forth his defense along with facts and evidence. In fact on 04.09.2018, one of the persons who had made allegations against the petitioner had also appeared before the Committee, apart from other



officials like the dean management, dean of departments of student welfare, commerce and law of the Magadh University, Bodh Gaya, who had also appeared *suo-moto* before the Committee and had handed over a petition in favour of the petitioner. At this juncture, the learned senior counsel for the petitioner has submitted that the petitioner was not afforded any opportunity to examine/cross-examine any of the persons who had raised allegations against him. Ultimately, the Committee had submitted its enquiry report dated 26.09.2018, holding 12 charges, out of a total number of 18 charges, to have been found to be proved/ partially proved. Thereafter, the Chancellor had issued notice dated 29.09.2018, enclosing a copy of the enquiry report dated 26.09.2018, calling upon the petitioner to submit his response to the charges which have been found to have been proved/partially proved as against him by the Committee. The petitioner had then requested for extension of time to file his reply vide his letter dated 09.10.2018, whereupon the petitioner was granted time till 12.11.2018 to file his reply, by a letter dated



29.10.2018 issued by the office of the learned Chancellor.

The petitioner had then submitted his reply to the enquiry report, vide letter No. 159/18 and letter No. 160/18, both dated 21.11.2018.

4. It is the further case of the petitioner that vide his letter no. 159/18 dated 21.11.2018, he had given specific replies to the charges and the findings arrived at by the Enquiry Committee, pointing out therein that the Enquiry Committee had completely ignored the relevant facts and he had also denied the charges levelled against him. Thereafter, the office of the Hon'ble Governor, Bihar, vide letter no. 3108 dated 06.12.2018, had issued a notice to the petitioner under Section 11 of the Bihar State Universities Act, 1976 calling upon him to show cause as to why he be not asked to resign from the post of Vice-Chancellor, Magadh University, failing which it would be presumed that he has nothing to say on the charges levelled against him and appropriate order shall be passed. The petitioner had then submitted his reply to the aforesaid notice dated 06.12.2018, vide letter No. 188/18 dated 12.12.2018, specifically pointing out that



the show cause notice dated 06.12.2018 contained two new allegations against him which were not part of the original 18 charges levelled against him and the same had been made without supplying him any documents, on which they were based apart from the same being not specific but vague. In such view of the matter, the petitioner had requested that he be supplied with the documents on the basis of which two new charges had been levelled against him and had further demanded that he be supplied with copies of rules and regulations which had been alleged to have been violated by him so that he could file an effective reply, however, none of the documents as demanded by the petitioner, vide his letter dated 12.12.2018, were supplied to him. It is also submitted that a preliminary reply, as contained in letter No. 192/18 dated 12.12.2018, was sent by the petitioner to the office of the Chancellor i.e. the Governor's Secretariat, Patna by Email on 13.12.2018 at 3:52 P.M.. Nonetheless, on 13.12.2018 itself, within a few hours of the petitioner having filed his aforesaid reply vide letter No. 192/18 dated 12.12.2018, to the show cause notice



dated 06.12.2018, the impugned order dated 13.12.2018 was passed by the Chancellor, Magadh University, Gaya and was communicated to the petitioner vide letter dated 3194 dated 13.12.2018, whereby and whereunder the Chancellor has held that the petitioner has failed to discharge the duties imposed upon him by or under the Act / the statues and the directions issued by the Chancellor and moreover the petitioner was/is also incapable of managing the affairs of the Magadh University, therefore, he should submit his resignation under Section 11 of the Bihar State Universities Act, 1976, from the post of Vice-Chancellor of the Magadh University on or before 13.12.2018, failing which it would be deemed that he has resigned from the said post and the said post would be deemed to be vacant.

5. The learned senior counsel for the petitioner Shri. Shashi Anugrah Narayan duly assisted by Sri. Piyush Lal, Advocate at the outset, has referred to Section 11 of the Bihar Universities Act, 1976, which is reproduced herein below:-



“11. Removal of the Vice-Chancellor- (1) If at any time and after such inquiry as may be considered necessary, it appears to the Chancellor that the Vice-chancellor-

(i) has failed to discharge any duty imposed upon him or under this Act, the Statutes, the Ordinances, or

(ii) has acted in a manner prejudicial to the interests of the University, or

(iii) is incapable in managing the affairs of the University, then the Chancellor may, notwithstanding the fact that the term of office of the Vice-Chancellor has not expired, require, the Vice-Chancellor, by an order in writing stating the reason therefor, and after consulting the State Government, to resign his post from the date, as may be specified in the order.

(2) No orders under sub-section (1) shall be passed unless a notice stating the specific grounds on which such action is proposed has been served and a reasonable opportunity to show cause against the proposed order has been given to the Vice-Chancellor.

(3) On and from the date specified in sub-section (1), it shall be deemed that the Vice-Chancellor has resigned his post and the office of



the Vice-Chancellor shall be deemed vacant.”

6. In this regard it is submitted that Section 11 of the Bihar State Universities Act, 1976 (hereinafter referred to as the “Act, 1976”) contains a mandatory requirement to the effect that before passing the final order of removal, the Chancellor is required to hold consultation with the State Government and such process of consultation should be effective and meaningful consultation and not merely an empty formality. The learned senior counsel for the petitioner has thus submitted that as per the procedure prescribed under Section 11 of the Act, 1976, an effective and meaningful consultation would be when on receipt of reply by the Vice-Chancellor to the show cause notice of proposed removal, the Chancellor considers the same, forms a tentative opinion for removal of the Vice-Chancellor, on the basis of materials on record and the reply of the Vice-Chancellor, whereafter the same is transmitted to the State Government in the Education Department so that the same is placed for consideration in the Education Department at various levels and is then finally placed



before the Minister-In-Charge of the Education Department who is thereafter, required to apply his mind and consider the materials on record as well as the tentative opinion of the Chancellor, whereafter, he is required to decide as to whether to accept the same or not and finally the decision of the said Minister-In-Charge is to be transmitted to the Chancellor, who upon receipt of such decision of concurrence is required to pass final order of removal. It is thus submitted that as far as the present case is concerned, the petitioner had filed his reply vide letter no. 192 dated 12.12.2018, to the show cause notice of proposed removal and the said reply was served in the office of the Chancellor by Email on 13.12.2018 at 3:52 P.M., nonetheless, on the same day itself i.e. on 13.12.2018, within hours of receipt of the said reply of the petitioner dated 12.12.2018, the Chancellor had passed the impugned order of removal dated 13.12.2018, which was then forwarded to the petitioner vide letter dated 13.12.2018. Thus, it is submitted that the sequence of events, as aforesaid, and the meager time line in between the receipt of the reply of the



petitioner and passing of the impugned order dated 13.12.2018, clearly shows that neither the Chancellor could have gone through the entire records running into several pages as well as formed an opinion of removal of the petitioner and sent the same to the Education Department where the same would have again been examined at length at various levels apart from being properly examined with due application of mind by the Departmental Minister and then would have been sent back to the Chancellor, for passing the final order of removal on 13.12.2018 itself. Thus, it is submitted that the records bear it out that there has been no consultation at all, let alone an effective and meaningful consultation between the Chancellor and the State Government. In this regard, the learned senior counsel for the petitioner has referred to paragraph no. 21 of the writ petition wherein the petitioner has made a pleading to the aforesaid effect and the learned senior counsel has also referred to paragraph no. 19 of the counter affidavit filed by the Director, Higher Education, Government of Bihar, Patna, wherein a bald statement has been made to



the effect that the impugned order has been passed after consulting the State Government, as stipulated under Section 11 (1) (iii) of the Act, 1976. It is thus submitted that it is incomprehensible as to how the Director has got personal knowledge about any effective and meaningful consultation having taken place and moreover no averment has been made in the counter affidavit to substantiate the factum of compliance of Section 11(1) (iii) of the Act, 1976, hence it is apparent that there has been no effective and meaningful consultation with the State Government before passing of the impugned order dated 13.12.2018 by the Chancellor. In this connection, the learned senior counsel for the petitioner has also referred to the counter affidavit filed on behalf of the Chancellor, by the Officer on Special Duty (University) in the Governor's Secretariat (Raj Bhawan), Patna and has referred to paragraph no. 20 wherein it has been merely stated that the order of dismissal has been passed after due deliberation by the Chancellor with consultation of the State Government and there is no infirmity in the same. The learned senior counsel for the petitioner has



submitted that it is strange as to how the Officer on Special Duty has personal knowledge about the consultation process. In nutshell, the learned senior counsel for the petitioner has submitted that the materials on record, averments made by the petitioner as also the averments made in the counter affidavit filed on behalf of the Chancellor and the State Government would show that there has been no consultation whatsoever in between the Chancellor and the State Government, before passing of the impugned order dated 13.12.2018 by the Chancellor, hence on this ground alone the impugned order dated 13.12.2018 is fit to be set aside. In this connection, the learned senior counsel for the petitioner has referred to a judgment rendered by the Hon'ble Apex Court, reported in **(2013) 16 SCC 206 (Ram Tawakya Singh vs. The State of Bihar &Ors.)**, paragraph nos. 29 to 34 whereof are reproduced herein below:-

“29. The word “consultation” used in Sections 10(2) and 12(1) of the BSU Act and Sections 11(2) and 14(1) of the PU Act is of crucial importance. The word “consult” implies a



conference of two or more persons or impact of two or more minds in respect of a topic/subject. Consultation is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points to evolve a correct or at least satisfactory solutions. Consultation may be between an uninformed person and an expert or between two experts. In either case, the final decision is with the consultor, but he will not be generally ignoring the advice of the consultee except for good reasons.

30. In order for two minds to be able to confer and produce a mutual impact, it is essential that each must have for its consideration fully and identical facts, which can at once constitute both the source and foundation of the final decision. Such a consultation may take place at a conference table or through correspondence. The form is not material but the substance is important. If there is more than one person to be consulted, all the persons to be consulted should know the subject with reference to which they are consulted. Each one should know the views of the other on the subject. There should be meeting of minds between the parties involved in the process of consultation on the material facts and points involved. The consultor cannot keep one consultee in dark about the views of the other consultee.



Consultation is not complete or effective before the parties thereto make their respective points of view known to the other and discuss and examine the relative merit of their views.

31. *In Chandramouleshwar Prasad v. Patna High Court [(1969) 3 SCC 56 : (1970) 2 SCR 666] this Court considered the question whether there was due compliance with Article 233(1) of the Constitution which provides that:*

“233. Appointment of District Judges.—(1)
Appointments of persons to be, and the posting and promotion of District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.”

32. *In Union of India v. Sankalchand Himatlal Sheth [(1977) 4 SCC 193 : 1977 SCC (L&S) 435] a Constitution Bench of this Court interpreted the word “consultation” appearing in Article 222(1) of the Constitution. Y.V. Chandrachud, J. (as he then was) referred to Words and Phrases (Permanent Edn., 1960, Vol. 9), Corpus Juris Secundum (Vol. 16-A, 1956 Edn.), the judgments in Rollo v. Minister of Town and Country Planning [(1948) 1 All ER 13 (CA)] , Fletcher v. Minister of Town and Country*



Planning [(1947) 2 All ER 496] and observed: (Sankalchand Himatlal Sheth case [(1977) 4 SCC 193 : 1977 SCC (L&S) 435] , SCC p. 227, para 38)

“38. ... Thus, deliberation is the quintessence of consultation. That implies that each individual case must be considered separately on the basis of its own facts. Policy transfers on a wholesale basis which leave no scope for considering the facts of each particular case and which are influenced by one-sided governmental considerations are outside the contemplation of our Constitution.”

While holding that a government notification appointing the petitioner as an officiating District and Sessions Judge was in violation of Article 233, a Constitution Bench of this Court observed: (Chandramouleshwar Prasad case [(1969) 3 SCC 56 : (1970) 2 SCR 666] , SCC p. 63, para 7)

“7. ... Consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other who has a counter proposal in his



mind which is not communicated to the proposer the direction to give effect to the counter proposal without anything more, cannot be said to have been issued after consultation.”

33. *In the same judgment, Krishna Iyer, J. expressed his views in the following words: (Sankalchand Himatlal Sheth case [(1977) 4 SCC 193 : 1977 SCC (L&S) 435] , SCC pp. 267-68)*

“103. The key words in this Article are ‘consultation’ and ‘transfer’. What is consultation, dictionary-wise and popular parlance-wise? It implies taking counsel, seeking advice. An element of deliberation together is also read into the concept. ‘To consult’ is to apply to for guidance, direction or authentic information, to ask the advice of — as to consult a lawyer; to discuss something together; to deliberate. (Hewey v. Metropolitan Life Insurance Co. [100 Maine 523 : 62 Att 600]) The word ‘consult’ means to seek the opinion or advice of another; to take counsel; to deliberate together; to confer; to apply for information or instruction. (Commr. v. John A. Wathen Distillery Co. [147 F 2d 998 (6th Cir 1945)]) ‘Consult’ means to seek opinion or advice of



another; to take counsel; to deliberate together; to confer; to deliberate on; to discuss; to take counsel to bring about; devise; contrive; to ask advice of; to seek the information of; to apply to for information or instruction; to refer to. Teplitsky v. City of New York [133 NYS 2d 260 (1954)]. Stroud's Law Lexicon defines 'consultation' thus:

'Consultation.[New Towns Act, 1946 (9 & 10 Geo. 6, c. 68), Section 1(1)]."Consultation with any local authorities". "Consultation means that, on the one side, the Minister must supply sufficient information to the local authority to enable them to tender advice, and, on the other hand, a sufficient opportunity must be given to the local authority to tender advice" per Bucknill, L.J., in Rollo v. Minister of Town and Country Planning [(1948) 1 All ER 13 (CA)] . See also Fletcher v. Minister of Town and Country Planning [(1947) 2 All ER 496].'

We consult a physician or a lawyer, an engineer or an architect, and thereby we mean not casual but serious, deliberate seeking of informed advice, competent guidance and considered opinion. Necessarily, all the materials in the



possession of one who consults must be unreservedly placed before the consultee. Further, a reasonable opportunity for getting information, taking other steps and getting prepared for tendering effective and meaningful advice must be given to him. The consultant, in turn, must take the matter seriously since the subject is of grave importance. The parties affected are high-level functionaries and the impact of erroneous judgment can be calamitous. Therefore, it follows that the President must communicate to the Chief Justice all the material he has and the course he proposes. The Chief Justice, in turn, must collect necessary information through responsible channels or directly, acquaint himself with the requisite data, deliberate on the information he possesses and proceed in the interests of the administration of justice to give the President such counsel of action as he thinks will further the public interest, especially the cause of the justice system. However, consultation is different from consentaneity. They may discuss but may disagree; they may confer but may not concur. And in any case the consent of the Judge involved is not a factor specifically



within the range of Article 222.”

34. *The facts encapsulated in the earlier part of this judgment show that the Chancellor has been consistently flouting the mandate of law and making appointments of Vice-Chancellors and Pro-Vice-Chancellors without effectively consulting the State Government and completely disregarding the requirement of academic excellence and experience. The appointments made by the Chancellor in 2010 were quashed by the learned Single Judge who found that there was virtually no consultation with the State Government. He opined that even though the Chancellor has some flexibility in suggesting the names which may come to his knowledge or domain but he is duty-bound to share the details with the State Government and then decide who is suitable to be appointed as Vice-Chancellor. The Division Bench approved the view taken by the learned Single Judge and observed that the objective of making consultation with the State Government mandatory is to ensure that the selection procedure is transparent and fair. The Division Bench observed that the State Government has the means to enquire into the background of the candidates and provide inputs to the Chancellor which could be extremely useful in making final choice of the candidate. The Division Bench also*



emphasised that consultation in such an important matter must be effective so that the Chancellor may make final choice after considering the information and inputs given by the State Government and that would obviate the risk of University being placed in the hands of wrong or unsuitable person.”

7. The second submission made by the learned senior counsel for the petitioner is that the impugned order dated 13.12.2018 is a non-speaking order, a perverse order and in fact no order in the eyes of law, as such has been passed in violation of the principles of natural justice. It is also submitted that the impugned order dated 13.12.2018 does not depict that any of the defense of the petitioner, as raised in his reply dated 12.12.2018, filed in response to the show cause dated 06.12.2018, has been considered inasmuch as the impugned order dated 13.12.2018, firstly, does not even refer to them and secondly does not mention as to how, why and on what count the defense of the petitioner was not correct so as to conclude that the petitioner has been found to be not fit to continue as a Vice-Chancellor. It is further submitted that the impugned order instead



of stating reasons for removal of the petitioner, simply quotes the three grounds for removal of a Vice-Chancellor, as enumerated under Section 11 of the Act, 1976. It is thus submitted that it is a well settled law that the administrative order and quasi judicial orders are required to be speaking orders containing reasons in their support and the same cannot be supported by counter affidavit, based on the file noting. In this regard, the learned senior counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Apex Court, reported in **(2010) 13 SCC 427 (Oryx Fisheries Private Limited vs. Union of India & Ors.)**, paragraph nos. 24 to 26, 36, 37 and 40 whereof are reproduced herein below:-

"24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.



25. Expressions like “a reasonable opportunity of making objection” or “a reasonable opportunity of defence” have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in *Khem Chand v. Union of India* [AIR 1958 SC 300], of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

26. S.R. Das, C.J. speaking for the unanimous Constitution Bench in *Khem Chand* [AIR 1958 SC 300] held that the concept of “reasonable opportunity” includes various safeguards and one of them, in the words of the learned Chief Justice, is: (AIR p. 307, para 19)

“(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;”

36. The appellant gave a reply to the show-cause notice but in the order of the third respondent by which registration certificate of the appellant was cancelled, no reference was made to the reply of the appellant, except saying that it is not satisfactory. The cancellation order is totally a non-speaking one. The relevant portion of the



cancellation order is set out:

“Sub.:Registration as an Exporter of Marine Products under the MPEDA Rules, 1972.

Please refer to Show-Cause Notice No. 10/3/MS/2006/MS/3634 dated 23-1-2008 acknowledged by you on 28-1-2008 directing you to show cause why the certificate of registration as an exporter, No. MAI/ME/119/06 dated 3-3-2006 granted to you as merchant exporter should not be cancelled for the following reasons:

- 1. It has been proved beyond doubt that you have sent sub-standard material to M/s Cascade Marine Foods, LLC, Sharjah.*
- 2. You have dishonoured your written agreement with M/s Cascade Marine Foods, LLC, Sharjah to settle the complaint made by the buyer as you had agreed to compensate to the extent of the value of the defective cargo sent by you and have now evaded from the responsibility.*
- 3. This irresponsible action has brought irreparable damage to India's*



trade relation with UAE.

Your reply dated 4-2-2008 to the show-cause notice is not satisfactory because the quality complaint raised by M/s Cascade Marine Foods, LLC, Sharjah have not been resolved amicably. Therefore, in exercise of the power conferred on me vide Rule 43 of the MPEDA Rules, read with Office Order Part II No. 1840/2005 dated 25-11-2006, I hereby cancel Registration Certificate No. MAI/ME/119/06 dated 3-3-2006 issued to you. The original certificate of registration issued should be returned to this office for cancellation immediately.

In case you are aggrieved by this order of cancellation, you may prefer an appeal to the Chairman within 30 days of the date of receipt of this order vide Rule 44 of the MPEDA Rules."

37. *Therefore, the bias of the third respondent which was latent in the show-cause notice became patent in the order of cancellation of the registration certificate. The cancellation order quotes the show-cause notice and is a non-speaking one and is virtually no order in the eye of the law. Since the same order is an appealable one it is incumbent on the third respondent to give*



adequate reasons.

40. In Kranti Associates [(2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below: (SCC pp. 510-12)

“(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as



indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is



not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor(1987) 100 Harv. L. Rev. 731-37.)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] , EHRR at p. 562, para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 : 2001 ICR 847



(CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions'.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

8. In this regard, the learned senior counsel for the petitioner has referred to yet another judgment rendered by the Hon'ble Apex Court, reported in **(1978) 1 SCC 405 (Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & ors.)**, paragraph nos. 8 and 39 whereof are reproduced herein below:-

"8. The second equally relevant matter is 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 affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by



additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16] :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.

39. *Even so, situations may arise which enacted law has not provided for. Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provision in Article 324 to take care of surprise situations. That power itself has to be exercised, not mindlessly nor mala fide, not arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor*



existing legislation. More is not necessary to specify; less is insufficient to leave unsaid. Article 324, in our view, operates in areas left unoccupied by legislation and the words “superintendence, direction and control, as well as ‘conduct of all elections’, are the broadest terms”. Myriad maybes, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election. It has been argued that this will create a constitutional despot beyond the pale of accountability; a Frankenstein's monster who may manipulate the system into elected despotism — instances of such phenomena are the tears of history. To that the retort may be that the judicial branch, at the appropriate stage, with the potency of its benignant power and within the leading strings of legal guidelines, can call the bluff, quash the action and bring order into the process. Whether we make a triumph or travesty of democracy depends on the man as much as on the Great National Parchment. Secondly, when a high functionary like the Commissioner is vested with wide powers the law expects him to act fairly and legally. Article 324 is geared to the accomplishment of free and fair elections expeditiously. Moreover, as held in Virendra [Virendra v. State of Punjab, AIR 1957 SC 896 : 1958 SCR 308] and Harishankar



[Harishankar Bagla v. State of M.P., AIR 1954 SC 465 : 1954 Cri LJ 1322 : (1955) 1 SCR 380] discretion vested in a high functionary may be reasonably trusted to be used properly, not perversely. If it is misused, certainly the Court has power to strike down the act. This is well established and does not need further case law confirmation. Moreover, it is useful to remember the warning of Chandrachud, J.:

“But the electorate lives in the hope that a sacred power will not so flagrantly be abused-and the moving finger of history warns of the consequences that inevitably flow when absolute power has corrupted absolutely. The fear of perversion is no test of power. [Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1, 251 (para 661) : (1976) 2 SCR 347, 657] ”

9. The learned senior counsel for the petitioner has next submitted that the Notification dated 07.08.2018 whereby Two Men Committee was constituted by the Chancellor, in exercise of powers under Section 9 (2) of the Act, 1976, is without jurisdiction and thus void *ab initio*.

10. At this juncture, it would be relevant to reproduce



Section 9(2) of the Bihar State Universities Act, 1976
herein below:-

*“9. **The Chancellor**-(2) The Chancellor shall have the powers to inspect the University, its buildings, laboratories, workshops and equipment, any college or hostel, the teaching or examinations conducted, or any act done by the University, and to get such inspection done by such person or persons who may be directed by him and to inquire or to cause an inquiry made, in like manner, in respect of any matter connected with the University [and it shall be the duty of the officers of the concerned University and college to render necessary assistance in such inspection:]*

Provided that the Chancellor shall, in every case, inform the Vice-Chancellor of his intention to inspect or inquire or to get the inspection or inquiry conducted and the University shall be entitled to representation therein.

11. The learned senior counsel for the petitioner has submitted that the power of the Chancellor to hold an enquiry into the functioning of a Vice-Chancellor of a University and to take action for his removal is provided for under Section 11 of the Act, 1976, which also



specifies the procedure and is a special power of the Chancellor pertaining to removal of a Vice-Chancellor, only in case he does not function as per the Act, statutes and bye-laws, whereas the power under Section 9 of the Act, 1976 is a general power of the Chancellor for the purposes of ensuring that the University functions as per the Act, statutes and bye-laws, hence it provides that Chancellor would afford an opportunity to the University to remedy defects in its functioning based on enquiry. Thus, it is submitted that while Section 11 of the Act, 1976 empowers the Chancellor to hold an enquiry, however, the same does not provide that such enquiry should be as per Section 9 of the Act, 1976, hence it is amply clear that the Chancellor, under Section 11 of the Act, 1976, does not have any jurisdiction to get an enquiry conducted for removal of the Vice Chancellor, therefore, the constitution of a Two Men Enquiry Committee vide Notification dated 07.08.2018, for removal of the petitioner, is itself without jurisdiction and *void ab initio*, consequently the enquiry report dated 26.09.2018, the show cause notice dated 29.09.2018, the



other show cause notice dated 06.12.2018 and the impugned order of removal dated 13.12.2018 are all vitiated.

12. In this connection, the learned senior counsel has referred to three judgments rendered by the Hon'ble Apex Court, citations whereof are being enumerated herein below along with their relevant paragraphs:-

(i) **(2014)8 SCC 319 (Commercial Tax Officer, Rajasthan vs. Binani Cements & Anr.)**, paragraph nos. 31, 32, 34, 35 and 38 to 41 whereof are reproduced herein below:-

"31. At the outset, we would observe that the High Court has erred in reaching its conclusion by holding that:

(a) the respondent Company would fall into all the three categories of industries referred to in the Scheme, that is to say it is a new unit which is a "large-scale unit", a "prestigious new unit" and also a "very prestigious unit";

(b) the classification of a new unit viz. small scale, medium scale and large scale under Item 1-E on the basis of scale of investment



does not denude a new industrial unit of any type of the special status of "pioneer", "prestigious" and "very prestigious" unit under Items 4 and 5 to also exclude operation of general entry; and

(c) the special entry would not exclude the applicability of general entry in context of the Scheme so as to exclude the operation of Items 4, 6 and 7.

Thereby implying that though there exists an overlap between the general and special provision, the general provision would also be sustained and the two would co-exist.

32. *Before we deal with the fact situation in the present appeal, we reiterate the settled legal position in law, that is, if in a statutory rule or statutory notification, there are two expressions used, one in general terms and the other in special words, under the rules of interpretation, it has to be understood that the special words were not meant to be included in the general expression. Alternatively, it can be said that where a statute contains both a general provision as well as specific provision, the latter must prevail.*

34. *It is well established that when a general law and a special law dealing with some aspect*



dealt with by the general law are in question, the rule adopted and applied is one of harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This principle finds its origins in the Latin maxim of generalia specialibus non derogant i.e. general law yields to special law should they operate in the same field on same subject (Vepa P. Sarathi, Interpretation of Statutes, 5th Edn., Eastern Book Company; N.S. Bindra's Interpretation of Statutes, 8th Edn., The Law Book Company; Craies on Statute Law, S.G.G. Edkar, 7th Edn., Sweet & Maxwell; Justice G.P. Singh, Principles of Statutory Interpretation, 13th Edn., Lexis Nexis; Craies on Legislation, Daniel Greenberg, 9th Edn., Thomson Sweet & Maxwell, Maxwell on Interpretation of Statutes, 12th Edn., Lexis Nexis).

35. *Generally, the principle has found vast application in cases of there being two statutes: general or specific with the latter treating the common subject-matter more specifically or minutely than the former. Corpus Juris Secundum, 82 C.J.S. Statutes § 482 states that when construing a general and a specific statute pertaining to the same topic, it is necessary to consider the statutes as consistent with one another and such statutes therefore should be*



harmonised, if possible, with the objective of giving effect to a consistent legislative policy. On the other hand, where a general statute and a specific statute relating to the same subject-matter cannot be reconciled, the special or specific statute ordinarily will control. The provision more specifically directed to the matter at issue prevails as an exception to or qualification of the provision which is more general in nature, provided that the specific or special statute clearly includes the matter in controversy (Edmond v. United States [137 L Ed 2d 917 : 520 US 651 (1997)], Warden v. Marrero [41 L Ed 2d 383 : 417 US 653 (1974)]).

38. *The adoption of the aforesaid rule in application of principle of harmonious construction has been explained by Kasliwal, J. while expressing his partial dissent to the majority judgment in St. Stephen's College v. University of Delhi [(1992) 1 SCC 558] as follows: (SCC p. 642, para 140)*

“140. ... The golden rule of interpretation is that words should be read in the ordinary, natural and grammatical meaning and the principle of harmonious construction merely applies the rule that where there is a general provision of law dealing with a subject, and a special provision dealing with



the same subject, the special prevails over the general. If it is not constructed in that way the result would be that the special provision would be wholly defeated. The House of Lords observed in Warburton v. Loveland [(1831) 2 Dow & Cl 480 : 6 ER 806 : (1824-34) All ER Rep 589 (HL)] as under: (ER p. 814)

‘No rule of construction can require that, when the words of one part of a statute convey a clear meaning ... it shall be necessary to introduce another part of the statute which speaks with less perspicuity, and of which the words may be capable of such construction, as by possibility to diminish the efficacy of the [first part].’

(emphasis supplied)

[Anandji Haridas and Co. (P) Ltd. v. S.P. Kasture [AIR 1968 SC 565 : (1968) 1 SCR 661], Patna Improvement Trust v. Lakshmi Devi [AIR 1963 SC 1077 : 1963 Supp (2) SCR 812], Ethiopian Airlines v. Ganesh Narain Saboo [(2011) 8 SCC 539 : (2011) 4 SCC (Civ) 217], Usmanbhai Dawoodbhai Memon v. State of Gujarat [(1988) 2 SCC 271 : 1988 SCC (Cri) 318], South India Corpn. (P) Ltd. v. Board of Revenue [AIR 1964 SC 207 :



(1964) 4 SCR 280] , Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh kumar Sheth [(1984) 4 SCC 27] .]

39. In J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. State of U.P. [J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. State of U.P., AIR 1961 SC 1170 : (1961) 3 SCR 185] , this Court has clarified that not only does this rule of construction resolve the conflicts between the general provision in one statute and the special provision in another, it also finds utility in resolving a conflict between general and special provisions in the same legislative instrument too and observed that: (AIR pp. 1174-75, paras 9-10)

“9. ... We reach the same result by applying another well-known rule of construction that general provisions yield to special provisions. The learned Attorney General seemed to suggest that while this rule of construction is applicable to resolve the conflict between the general provision in one Act and the special provision in another Act, the rule cannot apply in resolving a conflict between general and special provisions in the same legislative instrument. This suggestion does not find support in either principle or authority. The



rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. In Pretty v. Solly [(1859) 26 Beav 606 : 53 ER 1032] (quoted in Craies on Statute Law at p. 206, 6th Edn.), Romilly, M.R., mentioned the rule thus: (ER p. 1034)

'The rule is that wherever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.'

The rule has been applied as between different provisions of the same statute in numerous cases some of which only need be



mentioned: De Winton v. Brecon
Corpn. [(1859) 26 Beav 533 : 53 ER
1004] , Churchill v. Crease [(1828) 5 Bing 177
: 130 ER 1028] , United States v. Chase [34 L
Ed 117 : 135 US 255 (1890)]
and Carroll v. Greenwich Insurance Co. [50 L
Ed 246 : 199 US 401 (1905)]

10. Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that Clause 5(a) has no application in a case where the special provisions of Clause 23 are applicable.”

40. Lord Cooke of Thorndon pointed out, however, in *Effort Shipping Co. Ltd. v. Linden Management S.A.* [1998 AC 605 : (1998) 2 WLR 206 : (1998) 1 All ER 495 (HL)] that the maxim is not a technical rule peculiar to English statutory interpretation, rather it “represents simple common sense and ordinary usage”. Bennion, *Statutory Interpretation*, 5th Edn. (2008), p. 1155 states that it is based, like other linguistic canons of construction, “on the rules of logic,



grammar, syntax and punctuation, and the use of language as a medium of communication generally". As Lord Wilberforce observed in Associated Minerals Consolidated Ltd. v. Wyong Shire Council [1975 AC 538 : (1975) 2 WLR 81 (PC)] , AC p. 554, that it is still a matter of legislative intention, which the courts endeavour to extract from all available indications.

41. *In Waverly Jute Mills Co. Ltd. v. Raymon & Co. (India) (P) Ltd. [AIR 1963 SC 90 : (1963) 3 SCR 209] and Union of India v. India Fisheries (P) Ltd. [AIR 1966 SC 35] this Court has observed that when there is an apparent conflict between two independent provisions of law, the special provision must prevail. In CCE v. Jayant Oil Mills (P) Ltd. [(1989) 3 SCC 343 : 1989 SCC (Tax) 423] , this Court has accepted the aforesaid rule as "the basic rule of construction" that is to say "a more specific item should be preferred to one less so." In Sarabjit Rick Singh v. Union of India [(2008) 2 SCC 417 : (2008) 1 SCC (Cri) 449] , this Court has in fact followed the aforesaid precedents thus: (SCC p. 438, para 58)*

"58. The Act is a special statute. It shall, therefore, prevail over the provisions of a general statute like the Code of Criminal Procedure."



(ii) (2014) 2 SCC 401(*J. Jayalalithaa & Ors. vs. State of Karnataka*), paragraph nos. 34 and 35 whereof are reproduced herein below:-

“34. There is yet an uncontroverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim expressio unius est exclusio alterius, meaning thereby that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible.

35. In State of U.P. v. Singhara Singh [AIR 1964 SC 358] this Court held as under: (AIR p. 361, para 8)

“8. The rule adopted in Taylor v. Taylor [(1875) 1 Ch D 426] is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid



down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.”

(iii) (2015) 4 SCC 544 (Mackinnon Mackenzie & Co. Ltd. vs. Mackinnon Employees Union), paragraph nos. 42 & 43 whereof are reproduced herein below:-

“42. Apart from the said decisions, this Court has followed the Privy Council of 1939 and Chancellor's decisions right from the year 1875 which legal principle has been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh [AIR 1954 SC 322 : 1954 Cri LJ 910 : 1954 SCR 1098] and the same has been followed until now, holding that if a statutory provision prescribes a particular procedure to be followed by the authority to do an act, it should be done in that particular manner only. If such procedure is not followed in the prescribed manner as provided under the statutory provision, then such act of the authority is held to be null and void ab initio in law. In the present case, undisputedly, the statutory provisions of Section 25-FFA of the ID Act have not been complied with and therefore,



consequent action of the appellant Company will be in violation of the statutory provisions of Section 25-FFA of the ID Act and therefore, the action of the Company in retrenching the workmen concerned will amount to void ab initio in law as the same is inchoate and invalid in law.

43. It would be appropriate for us to refer to the decision of this Court in Babu Verghese v. Bar Council of Kerala [(1999) 3 SCC 422] , to show that if the manner of doing a particular act is prescribed under any statute, and the same is not followed, then the action suffers from nullity in the eye of the law, the relevant paragraphs of the above said case are extracted hereunder: (SCC pp. 432-33, paras 31-32)

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor [(1875) LR 1 Ch D 426] which was followed by Lord Roche in Nazir Ahmad v. King Emperor [(1935-36) 63 IA 372 : (1936) 44 LW 583 : AIR 1936 PC 253 (2)] who stated as under: (Nazir Ahmad case [(1935-36) 63 IA 372 : (1936) 44 LW



583 : AIR 1936 PC 253 (2)] , IA pp. 381-82)

'... where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.'

32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* [AIR 1954 SC 322 : 1954 Cri LJ 910 : 1954 SCR 1098] and again in *Deep Chand v. State of Rajasthan* [AIR 1961 SC 1527 : (1962) 1 SCR 662] . These cases were considered by a three-Judge Bench of this Court in *State of U.P. v. Singhara Singh* [AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2) : (1964) 1 SCWR 57] and the rule laid down in *Nazir Ahmad case* [(1935-36) 63 IA 372 : (1936) 44 LW 583 : AIR 1936 PC 253 (2)] was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

13. The learned senior counsel for the petitioner has next contended that the enquiry conducted by the Enquiry Committee was in violation of the principles of natural justice inasmuch as on 24.08.2018, though the Enquiry Committee had heard five persons and on



04.09.2018 it had heard one more person, all of whom had made allegations against the petitioner leading to the enquiry in question, however, the petitioner was not afforded any opportunity by the Enquiry Committee to either examine or cross-examine these six persons. It is also submitted that the petitioner was never supplied with the copies of the deposition of the said six persons, hence the petitioner was not made aware as to what has been deposed against him and as to what documents have been submitted before the Enquiry Committee against him. It is further submitted that the Enquiry Committee had not supplied any specific and exact charges finalized by it to the petitioner on which it had held the enquiry i.e. the 18 charges mentioned in the enquiry report and the petitioner had become aware of the exact and specific charges against him, on which the enquiry was held, only when the enquiry report was attached to the letter dated 29.09.2018, issued by the Chancellor to the petitioner herein, as also upon receipt of the same by the petitioner. The learned senior counsel for the petitioner has also submitted that the petitioner



was not afforded a reasonable opportunity to defend himself by the Chancellor inasmuch as he was never afforded an opportunity of hearing by the Chancellor under Section 11 of the Act, 1976, till the passing of the impugned order dated 13.12.2018. It is submitted that Section 11 of the Act, 1976 clearly provides that before passing of the final order, the Chancellor would afford a reasonable opportunity to the Vice-Chancellor to defend himself, however, no such opportunity was ever given to the petitioner by the Chancellor. It is submitted that it is a well settled law that a quasi judicial order such as the impugned order dated 13.12.2018 should be passed only after affording a reasonable opportunity, and such opportunity also includes the right of the person, against whom such order is to be passed, to be granted a chance of hearing, even though the same is not provided for under the statute.

14. In this regard, the learned senior counsel for the petitioner has relied upon various judgments rendered by the Hon'ble Apex Court, citations whereof along with their relevant extracts are being enumerated herein



below:-

(i) (1978) 1 SCC 405 (Mohinder Singh Gill & Anr. vs. Chief Election Commissioner, Delhi & Ors.), paragraph nos. 37(b) and 77 whereof are reproduced herein below:-

“37(b) Since the text of the provision is silent about hearing before acting, is it permissible to import into Article 324(1) an obligation to act in accord with natural justice?”

77. We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the Rules and inferentially where it has not specified it is otiose. There is no such sequitur. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Article 324 vests a wide power and where some direct consequence on candidates emanates from its exercise we must read this functional obligation.”

(ii) (1978) 1 SCC 248 (Maneka Gandhi vs. The Union of India & Ors.), paragraph nos. 8, 14 and 15 whereof are reproduced herein below:-

“8. The question immediately arises: does the procedure prescribed by the Passports Act, 1967 for impounding a passport meet the test of



this requirement? Is it “right or fair or just”? The argument of the petitioner was that it is not, because it provides for impounding of a passport without affording reasonable opportunity to the holder of the passport to be heard in defence. To impound the passport of a person, said the petitioner, is a serious matter, since it prevents him from exercising his constitutional right to go abroad and such a drastic consequence cannot in fairness be visited without observing the principle of audi alteram partem. Any procedure which permits impairment of the constitutional right to go abroad without giving reasonable opportunity to show cause cannot but be condemned as unfair and unjust and hence, there is in the present case clear infringement of the requirement of Article 21. Now, it is true that there is no express provision in the Passports Act, 1967 which requires that the audi alteram partem rule should be followed before impounding a passport, but that is not conclusive of the question. If the statute makes itself clear on this point, then no more question arises. But even when the statute is silent, the law may in a given case make an implication and apply the principle stated by Byles, J., in Cooper v. Wandsworth Board of Works [(1863) 14 CBNS 180 : (1861-73) All ER Rep Ext 1554] :

“A long course of decisions, beginning



with Dr Bentley case and ending with some very recent cases, establish that, although there are no positive works in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature.”

The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice. In fact, there are two main principles in which the rules of natural justice are manifested, namely, nemo judex in causasua and audi alteram partem. We are not concerned here with the former, since there is no case of bias urged here. The question is only in regard to the right of hearing which involves the audi alteram partem rule. Can it be imported in the procedure for impounding a passport?

14. Now, as already pointed out, the doctrine of natural justice consists principally of two rules, namely, nemo debet esse judex in propria causa : no one shall be a judge in his own cause, and audi alteram partem : no decision shall be given against a party without affording him a reasonable hearing. We are concerned here with the second rule and hence we shall confine



ourselves only to a discussion of that rule. The learned Attorney-General, appearing on behalf of the Union of India, fairly conceded that the audi alteram partem rule is a highly effective tool devised by the courts to enable a statutory authority to arrive at a just decision and it is calculated to act as a healthy check on abuse or misuse of power and hence its reach should not be narrowed and its applicability circumscribed. He rightly did not plead for reconsideration of the historic advances made in the law as a result of the decisions of this Court and did not suggest that the Court should retrace its steps. That would indeed have been a most startling argument coming from the Government of India and for the Court to accede to such an argument would have been an act of utter retrogression. But fortunately no such argument was advanced by the learned Attorney-General. What he urged was a very limited contention, namely, that having regard to the nature of the action involved in the impounding of a passport, the audi alteram partem rule must be held to be excluded, because if notice were to be given to the holder of the passport and reasonable opportunity afforded to him to show cause why his passport should not be impounded, he might immediately, on the strength of the passport, make good his exit from the



country and the object of impounding the passport would be frustrated. The argument was that if the audi alteram partem rule were applied, its effect would be to stultify the power of impounding the passport and it would defeat and paralyse the administration of the law and hence the audi alteram partem rule cannot in fairness be applied while exercising the power to impound a passport. This argument was sought to be supported by reference to the statement of the law in S.A. de Smith's Judicial Review of Administrative Action, 2nd Edn., where the learned author says at p. 174 that "in administrative law a prima facie right to prior notice and opportunity to be heard may be held to be excluded by implication..... where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of a preventive or remedial nature". Now, it is true that since the right to prior notice and opportunity of hearing arises only by implication from the duty to act fairly, or to use the words of Lord Morris of Borth-y-Gest, from "fair-play in action", it may equally be excluded where, having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action does not demand its implication and even warrants its exclusion. There are certain



well recognised exceptions to the audi alteram partem rule established by judicial decisions and they are summarised by S.A. de Smith in Judicial Review of Administrative Action, 2nd Edn., p. 168 to 179. If we analyse these exceptions a little closely, it will be apparent that they do not in any way militate against the principle which requires fair-play in administrative action. The word "exception" is really a misnomer because in these exclusionary cases, the audi alteram partem rule is held inapplicable not by way of an exception to "fair-play in action", but because nothing unfair can be inferred by not affording an opportunity to present or meet a case. The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law "lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation". Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is



a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that “natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances”. The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in Russel v. Duke of Norfolk [(1949) 1 All ER 109] that “whatever



standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal : it may be a hearing prior to the decision or it may even be a post-decisional remedial hearing. The audi alteram partem rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise. This circumstantial flexibility of the audi alteram partem rule was emphasised by Lord Reid in Wiseman v. Borneman [1971 AC 297 : (1969) 3 All ER 275] when he said that he would be "sorry to see this fundamental general principle degenerate into a series of hard and fast rules" and Lord Hailsham, L.C., also observed in Pearlberg v. Varty [(1971) 1 Weekly Law Reports 728] that the courts "have taken in increasingly sophisticated view of what is required in individual cases". It would not, therefore, be right to conclude that the audi alteram partem rule is excluded merely because the power to impound a passport might be frustrated, if prior notice and hearing were to be given to the person concerned before



impounding his passport The Passport Authority may proceed to impound the passport without giving any prior opportunity to the person concerned to be heard, but as soon as the order impounding the passport is made, an opportunity of hearing, remedial in aim, should be given to him so that he may present his case and controvert that of the Passport Authority and point out why his passport should not be impounded and the order impounding it recalled. This should not only be possible but also quite appropriate, because the reasons for impounding the passport are required to be supplied by the Passport Authority after the making of the order and the person affected would, therefore, be in a position to make a representation setting forth his case and plead for setting aside the action impounding his passport. A fair opportunity of being heard following immediately upon the order impounding the passport would satisfy the mandate of natural justice and a provision requiring giving of such opportunity to the person concerned can and should be read by implication in the Passports Act, 1967. If such a provision were held to be incorporated in the Passports Act, 1967 by necessary implication, as we hold it must be, the procedure prescribed by the Act for impounding a passport would be right, fair and just and it would



not suffer from the vice of arbitrariness or unreasonableness. We must, therefore, hold that the procedure “established” by the Passports Act, 1967 for impounding a passport is in conformity with the requirement of Article 21 and does not fall foul of that article.

15. *But the question then immediately arises whether the Central Government has complied with this procedure in impounding the passport of the petitioner. Now, it is obvious and indeed this could not be controverted, that the Central Government not only did not give an opportunity of hearing to the petitioner after making the impugned order impounding her passport but even declined to furnish to the petitioner the reasons for impounding her passport despite request made by her. We have already pointed out that the Central Government was wholly unjustified in withholding the reasons for impounding the passport from the petitioner and this was not only in breach of the statutory provision, but it also amounted to denial of opportunity of hearing to the petitioner. The order impounding the passport of the petitioner was, therefore, clearly in violation of the rule of natural justice embodied in the maxim audi alteram partem and it was not in conformity with the procedure prescribed by the Passports Act, 1967. Realising that this was a fatal defect which*



would void the order impounding the passport, the learned Attorney-General made a statement on behalf of the Government of India to the following effect:

1. The Government is agreeable to considering any representation that may be made by the petitioner in respect of the impounding of her passport and giving her an opportunity in the matter. The opportunity will be given within two weeks of the receipt of the representation. It is clarified that in the present case the grounds for impounding the passport are those mentioned in the affidavit in reply dated August 18, 1977 of Shri Ghosh except those mentioned in para 2(xi).

2. The representation of the petitioner will be dealt with expeditiously in accordance with law.

This statement removes the vice from the order impounding the passport and it can no longer be assailed on the ground that it does not comply with the audi alteram partem rule or is not in accord with the procedure prescribed by the Passports Act, 1967.”



(iii) (1988) 2 SCC 602(A.R. Antulay vs. R. S. Nayak),
paragraph nos. 55, 59 and 60 whereof are reproduced
herein below:-

“55. Shri Jethmalani urged that the directions given on 16-2-1984, were not per incuriam. We are unable to accept this submission. It was manifest to the Bench that exclusive jurisdiction created under Section 7(1) of the 1952 Act read with Section 6 of the said Act, when brought to the notice of this Court, precluded the exercise of the power under Section 407 of the Code. There was no argument, no submission and no decision on this aspect at all. There was no prayer in the appeal which was pending before this Court for such directions. Furthermore, in giving such directions, this Court did not advert to or consider the effect of Anwar Ali Sarkar case [AIR 1952 SC 75 : 1952 SCR 284 : 1952 Cri LJ 510] which was a binding precedent. A mistake on the part of the court shall not cause prejudice to anyone. He further added that the primary duty of every court is to adjudicate the cases arising between the parties. According to him, it is certainly open to a larger Bench to take a view different from that taken by the earlier Bench, if it was manifestly erroneous and he urged that the trial of a corrupt Chief Minister before a High Court, instead of a judge designated by the State Government was



not injurious to public interest that it should be overruled or set aside. He invited us to consider two questions: (1) does the impugned order promote justice? and (2) is it technically valid? After considering these two questions, we are clearly of the opinion that the answer to both these questions is in the negative. No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity. Four valuable rights, it appears to us, of the appellant have been taken away by the impugned directions:

“(i) The right to be tried by a Special Judge in accordance with the procedure established by law and enacted by Parliament.

(ii) The right of revision to the High Court under Section 9 of the Criminal Law Amendment Act.

(iii) The right of first appeal to the High Court under the same section.

(iv) The right to move the Supreme Court under Article 136 thereafter by way of a second appeal, if necessary.”

59. *Here the appellant has a further right*



under Article 21 of the Constitution — a right to trial by a Special Judge under Section 7(1) of the 1952 Act which is the procedure established by law made by the Parliament, and a further right to move the High Court by way of revision or first appeal under Section 9 of the said Act. He has also a right not to suffer any order passed behind his back by a court in violation of the basic principles of natural justice. Directions having been given in this case as we have seen without hearing the appellant though it appears from the circumstances that the order was passed in the presence of the counsel for the appellant, these were bad.

60. *In Nawab Khan Abbaskhan v. State of Gujarat [(1974) 2 SCC 121 : 1974 SCC (Cri) 467 : (1974) 3 SCR 427 : 1974 Cri LJ 1054] it was held that an order passed without hearing a party which affects his fundamental rights, is void and as soon as the order is declared void by a court, the decision operates from its nativity. It is proper for this Court to act ex debito justitiae, to act in favour of the fundamental rights of appellant."*

(iv) (1986) 3 SCC 229 (Kashinath Dikshita vs. Union of India & Ors.), paragraph nos. 2, 3 & 10 to 14 whereof are reproduced herein below:-

"2. *The scope of the inquiry whether the*



impugned order of dismissal [Dated June 11, 1969] is null and void is restricted to two facets. Whether the principles of Natural Justice were violated by the respondents by refusing to supply to the appellant (1) copies of the statements of the witnesses examined at the stage of preliminary inquiry preceding the commencement of the inquiry, and (2) copies of the documents said to have been relied upon by the disciplinary authority in order to establish the charges against the appellant [Who was holding the post of Superintendent of Police, Bijnor Uttar Pradesh] . Such is the position having regard to the fact that this Court [Per Bhagwati, J. (as he then was) and Kailasam, J. as per order dated October 25, 1977] whilst granting special leave, has so restricted the scope of the appeal in the following terms:

“Special leave granted limited only to the question whether there was any violation of Article 311 of the Constitution in regard to the documents and the statement of witnesses referred to in the affidavit of the petitioner dated February 12, 1977.”

3. *As many as eight charges, charges of serious nature, were levelled against the appellant who was at the material time holding the post of Superintendent of Police. The appellant was*



exonerated of all the charges except and save Charges 1 and 2 and Charge 8 partly. The particulars of the charges were set out in the statement of allegations accompanying the charge-sheet [Dated April 3, 1962]. The appellant challenged the impugned order of dismissal from service in the High Court on a number of grounds. The High Court repelled all the contentions and dismissed the writ petition. It is not necessary to advert to these contentions inasmuch as the controversy has now been narrowed down to one central issue viz. whether there has been violation of principles of natural justice by reason of:

(i) failure to supply copies of the statements of witnesses recorded ex parte at the pre-enquiry stage; and

(ii) the failure to supply copies of the documents on which reliance was placed by the Department to establish the charges before the enquiry commenced.

10. *This application was unceremoniously rejected by the Board on December 20, 1963 [p. 139 of the SLP paper-book: Please refer to your Application No. KND/BI-2, dated December 3, 1963 regarding copies of documents and statement cited in evidence. The Board of Inquiry regrets that it is not possible for them to accede to your request*



since you have already been allowed by government an access to the relevant official records for the purpose of preparing your written statement as provided under sub-rule (4) of Rule 5 of the All India Services (Discipline and Appeal) Rules, 1955.] . It is thus clear that the appellant's request for supply of copies of relevant documents and statements of witnesses has been refused in no unclear terms. We do not consider it necessary to burden the records by quoting the extracts from the letters addressed by the appellant and the reply sent to him. The extracts quoted hereinabove leave no room for doubt that the disciplinary authority refused to furnish to the appellant copies of documents and copies of statements. When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority



assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it. It is not even the case of the respondent that there was involved any consideration of security of State or privilege. No doubt the disciplinary authority gave an opportunity to the appellant to inspect the documents and take notes as mentioned earlier. But even in this connection the reasonable request of the appellant to have the relevant portions of the documents extracted with the help of his stenographer was refused. He was told to himself



make such notes as he could. This is evident from the following passage extracted from communication dated July 25, 1962 from the disciplinary authority to the appellant:

“The Government has been pleased to allow you to inspect all the documents mentioned in Annexure II to the charge-sheet given to you. While inspecting the documents, you are also allowed to take notes or even prepare copies, if you so like, but you will not be permitted to take a stenographer or any other person to assist you. In case you want copies of any specific documents, from out of those inspected by you, the request will be considered on merits in each case by the government. In case you want to inspect any document, other than those mentioned in Annexure II, you may make a request accordingly, briefly indicating its relevancy to the charge against you, so that orders of the government could be obtained for the same As pointed out above, if you wish to have copies of any specific documents, from those inspected by you, you should make a request in writing accordingly, mentioning their relevancy to the charge, so that orders of Government could be obtained.



Government, however, maintains that you are not entitled to ask for copies of documents as a condition precedent to your inspection of the same. I am further to add that in case you do not inspect the documents on the date fixed, you will do so at your own risk."

11. *And such a stance was adopted in relation to an inquiry whereat as many as 38 witnesses were examined, and 112 documents running into hundreds of pages were produced to substantiate the charges. In the facts and circumstances of the case we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case. We are not prepared to accede to the submission urged on behalf of the respondents that there was no prejudice caused to the appellant, in the facts and circumstances of this case. The appellant in his affidavit [P. 309 of SLP paper-book] has set out in a tabular form running into twelve pages as to how he has been prejudiced in regard to his defence on account of the non-supply of the copies of the documents. We do not consider it necessary*



to burden the record by reproducing the said statement. The respondents have not been able to satisfy us that no prejudice was occasioned to the appellant.

12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself. We do not consider it necessary to quote extensively from the authorities cited on behalf of the parties, beyond making passing reference to some of the citations, for, whether or not there has been a denial to afford a reasonable opportunity in the backdrop of this case must substantially depend



upon the facts pertaining to this matter.

13. The appellant relied on Tirlok Nath v. Union of India [1967 SLR 759 (SC)] in support of the proposition that if a public servant facing an inquiry is not supplied copies of documents, it would amount to denial of reasonable opportunity. It has been held in this case:

“Had he decided to do so, the document would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the FIR and the statements recorded at Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry.”

Reliance has also been placed on State of Punjab v. Bhagat Ram [(1975) 1 SCC 155 : 1975 SCC (L&S) 18 : AIR 1974 SC 2335 : (1975) 2 SCR 370] and State of U.P. v. Mohd.



Sharif [(1982) 2 SCC 376 : 1982 SCC (L&S) 253 : (1982) 2 LLJ 180] in support of the proposition that copies of statements of witnesses must be supplied to the government servant facing a departmental inquiry. It has been emphatically stated in State of Punjab v. Bhagat Ram [(1975) 1 SCC 155 : 1975 SCC (L&S) 18 : AIR 1974 SC 2335 : (1975) 2 SCR 370] by this Court as under: [SCC p. 156, SCC (L&S) p. 19, paras 6, 7 and 8]

“The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry



is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."

14. *In view of the pronouncements of this Court it is impossible to take any other view. As discussed earlier the facts and circumstances of*



this case also impel us to the conclusion that the appellant has been denied reasonable opportunity to defend himself. In the result, we are of the opinion that the impugned order of dismissal rendered by the disciplinary authority is violative of Article 311(2) of the Constitution of India inasmuch as the appellant has been denied reasonable opportunity of defending himself and is on that account null and void. We accordingly allow the appeal. The judgment of the High Court is set aside. The impugned order of dismissal dated November 10, 1967 passed against the appellant is quashed and set aside. We further declare that the impugned order of dismissal is a nullity and nonexistent in the eye of law and the appellant must be treated as having continued in service till the date of his superannuation on January 31, 1983. Taking into account the facts and circumstances of this case and the time which has elapsed we are of the opinion that the State Government should not be permitted to hold a fresh inquiry against the appellant on the charges in question. We therefore direct the State Government not to do so."

15. The learned senior counsel for the petitioner has submitted that the impugned order dated 13.12.2018 is also bad inasmuch as the same is based on two new



charges against the petitioner for which no enquiry was held either by the Chancellor or by the illegally constituted Enquiry Committee.

16. The learned senior counsel for the Chancellor Shri Y. V. Giri, assisted by Shri. Rajendra Kumar Giri, Advocate has taken this Court to the counter affidavit filed on behalf of the Chancellor and it has been submitted that in terms of the Bihar State Universities Act, 1976, as amended up to date, the Vice-Chancellor holds the office during the pleasure of the Chancellor. At this juncture, for a quick reference, it would be proper to reproduce the relevant provisions of the Universities Act, 1976, herein below:-

“Section 10(3)(a): The Vice-Chancellor shall be whole time officer and shall hold office during the pleasure of the Chancellor.”

17. The learned senior counsel for the Chancellor has also referred to Section 11(1) of the Act, 1976 to submit that the wording of Section 11(1) of the Act, 1976 is very clear and it says that all the three, or any one of the conditions of Section 11(1) of the Act, 1976, enumerated



from Sub-Clause (i) to (iii) must 'appear to the Chancellor', to have been satisfied. This obviously means that if the Chancellor is satisfied about existence of all or any one of the above three conditions then he can proceed with the provisions contained in Section 11(2) of the Act, 1976 for removal of the Vice-Chancellor. It is submitted that before issuance of show cause notice under Section 11(2) of the Act, 1976, the Chancellor is not required to give proof of existence of all or any of the three conditions of Section 11(1) of the Act, 1976. It is also submitted that as per the provisions contained in Section 11(1) of the Act, 1976, the Chancellor is not obliged to direct for an inquiry in every case and the legislature has left it to the wisdom of the Chancellor. If the Chancellor considers it necessary then only he is required to direct for an inquiry.

18. The Ld. Senior Counsel for the Chancellor has submitted that the Chancellor after having received several complaints from different corners of the society was pleased to constitute a Two Men Inquiry Committee under the provisions contained in Section 9(2) of the



Universities Act, 1976, to enquire into the matter. Shri S.P. Sinha I.A.S. (Retd.) and Dr. S.N. Guha, the former Vice Chancellor of Aryabhatta Knowledge University, Patna were made members of the Committee which was notified on 07.08.2018. The said notification is already annexed with the writ petition as Annexure-P/3 at page No. 64 thereof. It is stated that the Committee had submitted its report on 26.09.2018 which was placed before the Chancellor for necessary orders. On the orders of the Chancellor, vide Governor's Secretariat letter no. MU-2017-2480/GS(I), dated 29.09.2018, the Vice-Chancellor (Dr. Qamar Ahsan), was asked to submit his reply to the inquiry report of the Committee which was annexed with the aforesaid letter, within a fortnight. Subsequently, the petitioner was again requested to send his reply positively by 12.11.2018, vide Governor's Secretariat letter no. MU-2017-2480/GS(I), dated 29.10.2018. The petitioner had then submitted his detailed reply vide letter no. V. C. Res/159/18 dated 21.11.2018, which was placed before the Chancellor for his consideration and for passing necessary orders. It is



further stated that in the meantime a writ petition being CWJC No. 20385/2018 was filed by one Siya Balmiki Evening College, Gitanagar, Nawada before this Hon'ble Court and the Hon'ble High Court, vide order dated 11.10.2018, expressed its strong displeasure about the functioning of the Magadh University's authorities and a copy of the order sheet was directed to be communicated to the Chancellor of the Universities of Bihar. The Chancellor, after having gone through the order dated 11.10.2018, passed by the Hon'ble High Court in the aforesaid writ petition bearing CWJC No. 20385 of 2018, took a serious note of the observations made therein regarding the functioning of the University under the Vice Chancellorship of Dr. Qamar Ahsan i.e the petitioner herein. Thereafter, on the orders of the Chancellor, a clarification was sought from the Vice-Chancellor Dr. Qamar Ahsan in the matter of Siya Balmiki Evening College, Geetanagar, Nawada, however, he did not submit his clarification in the matter.

19. The Ld. Senior Counsel for the Chancellor has further submitted that after having considered every



aspect of the matter and after having considered the reply of the petitioner to the report of the Two Men Committee, the Chancellor was of the view that the petitioner has failed in discharging his duties, as imposed upon him by virtue of the Bihar State Universities Act, 1976 as amended up to date, the Statutes and the Ordinance made thereunder and further, the petitioner, as the Vice-Chancellor of the University, has also acted in a manner pre-judicial to the interest of the University. In the opinion of the Chancellor, the circumstances also reveal that the Vice Chancellor Dr. Qamar Ahsan was/is incapable of managing the affairs of the University. After due consideration of the report of the Two Men Inquiry Committee and the explanation submitted by the petitioner in the matter, the Chancellor had ordered to ask the petitioner to submit his show cause reply as to why he should not be asked to resign from the post of Vice Chancellor, Magadh University, Bodh Gaya. It is stated that the Chancellor was also of the view that the petitioner had failed to streamline several examinations pertaining to various courses, which are pending since a



long time and moreover, various irregularities in the functioning of the University were being reported to Raj Bhawan regularly. It has also been stated that in the opinion of the Chancellor, there were several instances of the petitioner having circumvented/disobeyed the orders of the Chancellor.

20. The Principal Secretary to the Chancellor had then, vide letter no. MU-4/2017-3108/GS(I) dated 06.12.2018, under the provisions contained in Section 11(1) & (2) of the Bihar State Universities Act, 1976 and upon the orders of the Chancellor of the Universities of Bihar, had requested the petitioner to submit his show cause reply within seven days positively, as to why he be not asked to resign from the post of Vice-Chancellor of the Magadh University, Bodh Gaya, failing which it shall be presumed that he had nothing to say with regard to the said charges and appropriate order would be passed. A copy of the show cause notice was also communicated to the petitioner by email on the very same day. The petitioner had then submitted his reply vide letter no. VC Res./192/18 dated 12.12.2018, which was placed before



the Chancellor for his kind consideration.

21. The Ld. Senior Counsel for the Chancellor has submitted that in the meantime during the hearing of the aforesaid Siya Balmiki Evening College case, the Hon'ble Court, vide order dated 12.12.2018, was pleased to observe as follows:-

"Since the recommendation for grant of approval of affiliation to the State Government was made under the orders of the Vice-Chancellor himself, I would request the Chancellor, Universities of Bihar to get the entire matter inquired into by constituting a Committee which can go deep into the matter, since I am of the prima facie view that in the facts and circumstances as disclosed in the order dated 11.10.2018, recommendation for grant of approval of affiliation could not have been made without extraneous consideration. For the said reason, I am of the view that some stern legal action at high level, deterrent in nature is imperative to avoid recurrence of such thing infuture."

22. It is stated that after careful examination and consideration of the entire facts and circumstances and also after due consideration of the explanation submitted



by the petitioner, vide his letter no. V. C. Res./192/18 dated 12.12.2018, the Chancellor was of the firm view that the petitioner has failed to discharge the duties imposed upon him under the provisions of the Bihar State Universities Act, 1976, the Statutes framed thereunder and the directions issued on behalf of the Chancellor, as the head of the University. The Chancellor was also of the view that the petitioner is incapable of managing the affairs of the University and as a consequence thereof, action under Section 11(1) of the Act, 1976 is required to be taken against him. Accordingly, the Chancellor, had directed the petitioner, after due consultation with the State Government, to resign from the post of Vice Chancellor of Magadh University, Bodh Gaya on 13.12.2018, failing which it was stipulated that it would be deemed that the petitioner has resigned from the said post and the office of the Vice-Chancellor, Magadh University shall be deemed to be vacant. The order of the Chancellor dated 13.12.2018 was communicated to the Vice-Chancellor, Dr. Qamar Ahsan i.e the petitioner herein, vide Governor's Secretariat letter no. MU-47/2017-3194/GS(I), dated



13.12.2018.

23. The Ld. Senior Counsel for the Chancellor has submitted that the order of dismissal of the petitioner has been passed after due deliberation by the Chancellor and upon due consultation with the State Government, as such there is no infirmity in the same. The order of the Chancellor is a speaking order and contains the facts and circumstances under which the same has been passed, after following the principles of natural justice. It is further submitted that the Vice-Chancellor holds office during the pleasure of the Chancellor and the conduct of the petitioner, as well as his incapability to manage the affairs of the University, was more than sufficient for the Chancellor to withdraw his pleasure, in the interest of the University, since the continuance of the petitioner as the Vice-Chancellor of Magadh University, Bodh Gaya was prejudicial to the interest of the University. It has also been submitted that the removal of the petitioner was necessary in the interest of the University since the Chancellor had come to the conclusion that the petitioner has failed to discharge his duties as a Vice-



Chancellor, as imposed upon him by or under the provisions of the Universities Act, Statutes and Ordinances framed thereunder as also the directions issued on behalf of the Chancellor as the head of the University and moreover, the petitioner had acted in a manner prejudicial to the interest of the University apart from being incapable of managing the affairs of the University.

24. The learned senior counsel appearing for the Chancellor has referred to Section 10 (3) (a) of the Act, 1976 to submit that the Vice-Chancellor, who is appointed by the Chancellor in consultation with the State Government, can continue in the office subject to the pleasure of the Chancellor. The learned senior counsel for the Chancellor has also referred to Section 11 of the Act, 1976 to contend that enquiry is not mandatory. It is also submitted that enough opportunity has been granted to the petitioner to put forth his defense and the best proof of grant of reasonable opportunity to show cause against the proposed order is that not only one but two show cause notices dated 29.09.2018 and



29.10.2018 were served on the petitioner, whereafter the petitioner had submitted his reply dated 21.11.2018. It is also submitted that even thereafter, the petitioner was served with a show cause notice dated 06.12.2018, asking the petitioner to submit reply as to why he should not be asked to resign from the post of Vice-Chancellor, Magadh University, Bodh Gaya. Thus, it is submitted that there has been no violation of the principles of natural justice. In this connection, the learned senior counsel for the petitioner has relied upon a judgment rendered by the Hon'ble Apex Court, reported in **AIR 1968 SC 292 (Dr. Bool Chand vs. Chancellor, Kurukshetra University)**, paragraph nos. 2, 4, 5, 8, 20 and 21 whereof are reproduced herein below:-

“2. In March 1965 the appellant was appointed Professor and Head of the Department of Political Science in the Punjab University. On June 18, 1965, the appellant was appointed Vice-Chancellor of the Kurukshetra University by order of Mr Hafiz Mohd Ibrahim — who was the Chancellor of the University. After Mr Hafiz Mohd. Ibrahim vacated the office of Chancellor of the University, Sardar Ujjal Singh, Governor of Punjab



held the office of Chancellor. On March 31, 1966, the Chancellor Sardar Ujjal Singh ordered that the appellant be suspended from the office of Vice-Chancellor, and by another order the Chancellor issued a notice requiring the appellant to show cause why his services as Vice-Chancellor of the Kurukshetra University be not terminated. The appellant submitted his representation, and shortly thereafter filed a petition in the High Court of Punjab for a writ in the nature of mandamus quashing the order and the notice dated March 31, 1966. On May 8, 1966 the Chancellor passed an order in exercise of the power under sub-clause (vi) of clause 4 of Schedule I to the Kurukshetra University Act, 1956, read with Section 14 of the Punjab General Clauses Act, 1898, terminating with immediate effect "the services" of the appellant "from the office of Vice-Chancellor of the Kurukshetra University". The petition was then amended by the appellant, and a writ of certiorari or appropriate writ calling for the record and quashing the order dated May 8, 1966, terminating the services of the appellant was also claimed. The High Court rejected the petition filed by the appellant. Against that order, with certificate granted by the High Court, this appeal has been preferred.

4. There is no express provision in the



Kurukshetra University Act or the Statutes thereunder which deals with the termination of the tenure of office of Vice-Chancellor. But on that account we are unable to accept the plea of the appellant that the tenure of office of a Vice-Chancellor under the Act cannot be determined before the expiry of the period for which he is appointed. A power to appoint ordinarily implies a power to determine the employment. In S.R. Tiwari v. District Board, Agra [AIR 1964 SC 1680 : (1964) 3 SCR 55] it was observed by this Court at p. 67:

“Power to appoint ordinarily carries with it the power to determine appointment, and a power to terminate may in the absence of restrictions express or implied be exercised, subject to the conditions prescribed in that behalf, by the authority competent to appoint.”

A similar view was also expressed in Lekhraj Sathramdas Lalvani v. N.M. Shah, Deputy Custodian-cum-Managing Officer, Bombay [AIR 1966 SC 334 : (1966) 1 SCR 120] . That rule is incorporated in Section 14 of the Punjab General Clauses Act 1 of 1898. That section provides:

“Where by any Punjab Act, a power to make any appointment is conferred, then, unless a



different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority by it in exercise of that power.”

5. Counsel for the appellant urged that since the general rule is given a statutory form, the validity of the exercise of the power to determine the tenure of the office of the appellant must be found in Section 14 of the Punjab General Clauses Act. Counsel says that Section 14 has no application to the interpretation of the Kurukshetra University Act, because clause 4(vii) of the Statutes which prescribes that the appointment of a Vice-Chancellor shall ordinarily be for a period of three years discloses a different intention. But clause 4(vii) of the Statutes does not purport to confer upon a person appointed Vice-Chancellor an indefeasible right to continue in office for three years: the clause merely places a restriction upon the power of the Chancellor, when fixing the tenure of the office of Vice-Chancellor.

8. It was also urged that whereas provision was made by clause 6 of the Annexure to Ordinance XI that the services of the teachers may be summarily determined on the ground of



misconduct there was no such provision for determination of the employment of the Vice-Chancellor and that also indicated an intention to the contrary within the meaning of Section 14 of the Punjab General Clauses Act. We are unable to agree with that contention. It is true, the office of the Vice-Chancellor of a University is one of great responsibility and carries with it considerable prestige and authority. But we are unable to hold that a person appointed a Vice-Chancellor is entitled to continue in office for the full period of his appointment even if it turns out that he is physically decrepit, mentally infirm, or grossly immoral. Absence of a provision setting up procedure for determining the employment of the Vice-Chancellor in the Act or the Statutes or Ordinances does not, in our judgment, lead to the inference that the tenure of office of Vice-Chancellor is not liable to be determined. The first contention raised by counsel for the appellant must therefore fail.

20. *The proceeding resulting in the order passed by the Chancellor does not suffer from any such infirmity as would justify this Court in holding that the rules of natural justice were not complied with. It is unnecessary in the circumstances to consider the argument advanced by the Additional Solicitor-General that even if Mr Hafiz Mohd.*



Ibrahim was aware of the order passed by the President ordering compulsory retirement of the appellant from the Indian Administrative Service, it was still open to his successor Sardar Ujjal Singh to determine the tenure of office of the appellant as Vice-Chancellor, if in his view it appeared, having regard to the antecedents of the appellant, that the appellant was unfit to continue as Vice-Chancellor.

21. We agree with the High Court that the appellant had the fullest opportunity of making his representation and that the enquiry held by the Chancellor was not vitiated because of violation of the rules of natural justice."

25. The learned senior counsel for the Chancellor has next contended that the finding of facts reached at by the Chancellor / the Enquiry Committee, as a result of the appreciation of evidence cannot be re-opened or questioned in a writ proceeding inasmuch as an error of law which is apparent on the face of the record can be corrected by a Writ Court, but not an error of fact, however, grave it may appear to be. In this connection, the learned senior counsel has referred to a judgment rendered by the Hon'ble Apex Court, reported in **AIR**



1964 SC 477 (Syed Yakoob vs. K. S. Radha krishnan & ors.), paragraph no. 7 whereof is reproduced herein below:-

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be



reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised



(vide Hari Vishnu Kamath v. Syed Ahmad Ishaque [(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam [(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168])"

26. The learned senior counsel has referred to yet another judgment rendered by the Hon'ble Apex Court reported in **(2014) 11 SCC 85 (Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Limited)**, paragraph no. 17.1(i), 18, 19 and 22 whereof are reproduced herein below:-

"17.1. (i) Whether the exercise of power by the High Court under Articles 226 and 227 of the Constitution and setting aside the award of reinstatement, back wages and other consequential reliefs and awarding Rs 1,00,000 towards damages is legal and valid?

18. *The appellant has claimed that the High Court has modified the award passed by the Labour Court which has awarded reinstatement of the appellant with full back wages and other consequential benefits to simply awarding compensation to the tune of Rs 1,00,000 by the High Court in lieu of reinstatement with back wages and consequential benefits which order is bad in law in the light of the legal principles laid*



down by this Court in the catena of cases.

19. *In Heinz India (P) Ltd. v. State of U.P. [(2012) 5 SCC 443 : (2012) 3 SCC (Civ) 184 : (2013) 3 SCC (Cri) 198] , this Court, on the issue of the power of the High Court for judicial review under Article 226, held as under: (SCC pp. 467-68, para 60)*

“60. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of ‘judicial review’ one is instantly reminded of the classic and oft-quoted passage from Council of Civil Service Unions v. Minister for Civil Service [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] , where Lord Diplock summed up the permissible grounds of judicial review thus: (AC pp. 410 D, F-H and 411 A-B)

‘... Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the



grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". ...

By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the Judges, by whom the judicial power of the State is exercisable.

By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury [Associated Provincial Picture Houses Ltd. v. WednesburyCorpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] unreasonableness". It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that Judges by their training and experience should be well



equipped to answer, or else there would be something badly wrong with our judicial system. ...

I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an Administrative Tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

22. *A careful reading of the judgments reveals that the High Court can interfere with an order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court*



granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer Point (i) in favour of the appellant.”

By referring to the aforesaid judgment rendered in the case of **Bhuvnesh Kumar Dwivedi** (supra), the learned senior counsel for the Chancellor has submitted that none of the conditions mentioned in paragraph no. 19 of the said judgment have been breached while passing the impugned order dated 13.12.2018, hence the same is not required to be interfered with.

27. The learned senior counsel for the Chancellor, on the issue of pleasure theory, as referable to Section 10 (3) (a) of the Act, 1976, has referred to a judgment rendered by the Hon'ble Apex Court, reported in **(1994) 5 SCC 267 (Dr. Rash Lal Yadav vs. The State of Bihar & Ors.)**, paragraph nos. 2, 3 and 10 whereof are reproduced herein below:-

“2. The appellant denied these allegations in his writ petition and tried to justify the decision to shift the office of the Board to the new premises on



a higher rent. He also denied the allegations made against him in regard to the conduct of interviews, his behaviour vis-a-vis the other members of the Board and the enhancing of the application and interview fees. He questioned the validity of the order by which he came to be removed on diverse grounds including the ground that the same was in blatant violation of the principle of natural justice. His counsel at the hearing of the petition raised four submissions in the main, namely, (i) subsection (7) of Section 10 of the Act if interpreted to confer an absolute power of removal upon the State Government, the same would be wholly arbitrary and unreasonable and in total violation of the principle of natural justice, (ii) the doctrine of pleasure applied only to the cases of government servants/public servants employed under the State and not to persons who were statutory authorities, such as the Chairman of the Board, (iii) even if it is assumed that the doctrine of pleasure applied there being no guidelines prescribed for the exercise of such power, the power could only be exercised consistently with the rule of natural justice, and (iv) in any case the order was tainted with malice both in law and fact. So far as the ground of malice is concerned, the appellant alleged that the Cabinet Minister in charge of Secondary Education was responsible for



his removal as the appellant did not succumb to his pressures to select for appointment his favourites. Annoyed by the appellant's unbending and upright attitude and finding no other alternative to have his way, the said Minister exercised mala fide the power conferred by sub-section (7) of Section 10 of the Act to remove him and appoint his man as the Chairman of the Board. In support of his say he has produced certain chits and letters written by the said Minister and his Cabinet colleagues recommending certain persons including the son-in-law of the former for selection to various posts. Lastly it was contended by the appellant that since he was appointed on a tenure post he was entitled as of right to continue on the post till the expiry of the period for which he was appointed and could not be removed in an arbitrary and summary manner. He also denied the allegation made by Smt Saroj Bala, Dr. Lakha and other members of the Board about his abrasive or rude behaviour. In short the appellant denied all the allegations made against him in the State's counter which were not specifically admitted.

3. On the first question regarding the application of the pleasure doctrine, the High Court, departing from the view expressed in the case of R.P. Raja v. State of Bihar [1987 PLJR 275] , held that it was difficult to subscribe to the view



that the application of the doctrine is limited only to members of public service and cannot be extended to other offices such as the Chairman of the Board. In the view of the High Court there was nothing in the doctrine to inhibit the State Legislature to treat it as a pure service concept limited in its application to public service under the State. It was, therefore, open to the Legislature to extend it to the office in question. On the question of application of the principles of natural justice the High Court noticed that while that requirement was specifically found in Section 10(7) of the Ordinance that preceded the Act, it was deliberately dropped while enacting the Act thereby manifesting the legislative intendment not to apply the same. The High Court, therefore, rejected the submission that the said requirement must be read into the said provisions to save it from the vice of being ultra vires Article 14 of the Constitution. According to the High Court before power is exercised under Section 10(7) of the Act the State Government must satisfy itself on the basis of material on record that the continuance of the person as Chairman of the Board would prove detrimental to the Board's interest. If the State's action is challenged it would be necessary for the State to satisfy the court by production of the material, that it had acted bona fide and not



arbitrarily. Before exercise of power under Section 10(7) the Government must satisfy itself that there existed relevant material on record establishing the factual requirements necessary to reach the conclusion that his further continuance in office would be detrimental to the interest of the Board. Once that is shown no further enquiry is permissible and the order can only be questioned on the ground of malice. Next, on a proper reading of the provisions of the Act, the High Court ruled that the Act did not confer unguided and absolute power of removal but the power was coupled with a duty to act only if the material on record went to show that his continuance in office would be detrimental to the Board's interest. Therefore, the contention that Section 10(7) was ultra vires Article 14 cannot be countenanced. Nor can it be questioned on the ground that it violates the principles of natural justice. The High Court points out that the Board performs a public function and if the Chairman of the Board is found acting in a manner prejudicial or detrimental to the interest of the Board, a duty is cast on the Government to protect public interest by removing such a Chairman. Albeit before such action is taken the Government must satisfy itself from the material placed before it that it must exercise the extraordinary power vested in it by the Act to



protect public interest. The High Court also found as a fact that such material did exist to justify the Government's action. The High Court also found as a fact that the material placed before it did not prove the allegation of malice or lack of bona fides. In this view of the matter the High Court dismissed the writ petition. Hence this appeal by special leave.

10. *The Act contemplates the setting up of a Board with perpetual succession and a common seal comprising a Chairman and four Members possessing certain qualifications set out in sub-section (4) of Section 10. The remuneration to be paid to them has been indicated in sub-section (5) and sub-section (6) indicates the maximum term or duration of appointment. According to that sub-section the term of office of the Chairman/Member shall be three years from the date of taking charge or during the pleasure of the State Government. On a plain reading of the said sub-section it becomes immediately clear that the initial tenure will not exceed three years but this shall be during the pleasure of the State Government which means that the State Government shall have the right to curtail the tenure to less than three years also. If it does not do so and if the incumbent completes the full tenure of three years, the State Government may*



extend the term for such period as it deems appropriate so, however, that the total period shall not exceed six years. Therefore, neither the Chairman nor the Members have any right to continue for three years. A contrary interpretation would clearly violate the letter and spirit of the law. True it is that the said sub-section could have been better worded but in our view the language does convey the legislative purpose quite clearly. Sub-section (7) then states that if the State Government is satisfied that the Chairman/Member is incapable of working or refuses to work or works in a manner detrimental to the interest of the Board, it may by notification remove such Chairman/Member by giving him one month's written notice or one month's pay in lieu of notice with effect from the date of the notification. It is obvious from the plain language of this sub-section that the underlying idea is that the power may be exercised in public interest, that is, to protect the Statutory Board from harm that may be caused to it by a Chairman/Member who is incapable of working or who refuses to work or conducts himself in a manner injurious to the Board's interest. The matter is left to the subjective satisfaction of the State Government which subjective satisfaction must be reached on relevant material on record and not on the whim and sweet



will of the Government. The power cannot be exercised unless relevant material is placed before the State Government on the basis of which the State Government as a reasonable person is able to conclude that one or more of the conditions mentioned in the sub-section exists and therefore, it is necessary to exercise power of removal to safeguard the Board from harm. The power is clearly coupled with the twin duty, firstly to ensure that circumstances do exist for the exercise of the power of removal of the Chairman or Member, as the case may be, and secondly to safeguard the institution from harm that may be caused by the continuance of such Chairman or Member on the Board. In the ultimate analysis the power has to be exercised in public interest and for public good because the State Government is duty bound to protect the image and credibility of the Board so that people's faith in the Board is not shaken. Of course, if the State Government exercises the power vested in it under the said sub-section and if the exercise of such power is challenged in court, the State Government will have to satisfy the court that it exercised the power bona fide and on material relevant to establishing the existence of the factual situation necessary for exercise of the said power. That can at best be the extent of judicial scrutiny. The High Court did examine the



material on which the State Government's decision for removal was founded, vide paragraph 51-A of the judgment, and came to the conclusion that there was justification for the exercise of power and, therefore, the State Government was justified in ordering removal. Similarly, the High Court also examined the allegation of mala fides in paragraphs 52 and 53 of the judgment and spurned the said charge. These decisions of the High Court are based on the assessment of facts and ordinarily this Court is loathe to re-evaluate the same unless it is shown that the High Court's appreciation of facts has resulted in miscarriage of justice. No such case is made out. We, therefore, see no reason to interfere with the High Court's assessment on both these points. There being no serious infirmity in the High Court's evaluation of the factual data, we see no reason to dilate on the said points."

28. The learned senior counsel for the Chancellor has next contended that it is a well settled law that even if one of the charges, if held proved and is sufficient for imposition of penalty by the disciplinary authority or the appellate authority, the Court would be loath to interfere with that part of the order. In this connection, the learned senior counsel has referred to a judgment



rendered by the Hon'ble Apex Court, reported in **(1996) 3 SCC 750 (State of U.P. & Ors. vs. Nand Kishore Kumar Shukla)**, paragraph no. 7 whereof is reproduced herein below:-

“7. It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a government servant based upon the proved misconduct against the government servant. Its proportionality also cannot be gone into by the court. The only question is whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the respondent to disable him from seeking any appointment elsewhere. Under these circumstances, we think that the High Court was wholly wrong in setting aside the order.”

Thus the learned senior counsel for the Chancellor has submitted that even if the two new charges levelled



against the petitioner, with regard to which the petitioner alleges that no enquiry was held, are not taken into consideration, the other charges, which have been proved/partially proved are enough to sustain the punishment imposed upon the petitioner vide the impugned order dated 13.12.2018, hence on this score as well there is no infirmity, as far as the impugned order dated 13.12.2018 is concerned.

29. As regards the contention of the learned senior counsel for the petitioner to the effect that no opportunity of personal hearing has been afforded to the petitioner herein by the Chancellor, the learned senior counsel for the Chancellor has submitted that there is no provision in the Act, 1976 for affording any opportunity of personal hearing to the Vice-Chancellor and moreover the petitioner had also never sought opportunity for a personal hearing. In this connection, the learned senior counsel has referred to a judgment rendered by the Hon'ble Apex Court, reported in **(2013) 8 SCC 20 (Nirma Industries Limited & Anr. Vs. Securities & Exchange Board of India)**, paragraph nos. 16, 17, 35, 36 and 38



whereof are reproduced herein below:-

“16. We have heard very elaborate submissions made by Mr Shyam Divan, learned Senior Counsel on behalf of the appellants and Mr Pratap Venugopal for SEBI. Mr Divan submits that the main issue involved in this appeal is whether under Regulation 27(1)(d), SEBI has power to grant exemption to the appellants from the requirement of making a public offer under Regulation 10. The alternative issue framed by Mr Divan is as to whether de hors Regulation 27(1)(d), SEBI would still have the residual power to grant exemption. Apart from the aforesaid two legal issues, Mr Divan's primary submission is based on breach of rules of natural justice. He submits that the order passed by SEBI has been passed without granting any opportunity of hearing to the appellants. Even if the regulations do not specifically provide for the grant of an opportunity of hearing, it ought to be read into the regulations in view of the drastic civil consequences, which the appellants would suffer under the impugned order passed by SEBI upheld by SAT. Mr Divan has straightaway pointed out to the order passed by SEBI on 30-4-2007 rejecting the request made in letter dated 22-9-2006 for withdrawal of the public offer. He has pointed out the observations made in para 4 of the aforesaid



order, which are as under:

“We are of the view that the acquirer should have done due diligence before invocation of pledge, and refrained themselves from invoking their pledge if circumstances so warranted. Such circumstances, arising out of omission on the part of the acquirers to have taken due precaution or business misfortunes, in our opinion, are not reasons sufficient enough to merit withdrawal of the open offer.”

17. The aforesaid conclusions, according to Mr Divan, are not supported by any reasons let alone sufficient reasons. The order passed by SEBI, according to him, is non-speaking and, therefore, ought to have been quashed on that ground alone.

35. Mr Venugopal has further pointed out that apart from the appellants, even the merchant bankers did not make a request for a personal hearing. He submitted that grant of an opportunity for a personal hearing cannot be insisted upon in all circumstances. In support of this submission, he relied on the judgment of this Court in Union of India v. Jesus Sales Corpn. [(1996) 4 SCC 69] The submission cannot be brushed aside in view of the observations made by this Court in the aforesaid



judgment, which are as under:

“5. The High Court has primarily considered the question as to whether denying an opportunity to the appellant to be heard before his prayer to dispense with the deposit of the penalty is rejected, violates and contravenes the principles of natural justice. In that connection, several judgments of this Court have been referred to. It need not be pointed out that under different situations and conditions the requirement of compliance with the principle of natural justice vary. The courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances



made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded.”

36. Taking into consideration the facts and circumstances of this case, we are unable to accept



the submission of Mr Shyam Divan with regard to the breach of rules of natural justice, in this case, merely because the appellants were not given a personal hearing.

38. In our opinion, the aforesaid provisions are of no assistance to the appellants. Firstly, neither the appellants nor their merchant bankers requested for an opportunity for a personal hearing. Secondly, in the present case, SEBI has not issued any instructions or directions under Section 11, which requires that the rules of natural justice be complied with. Thirdly, it cannot be said that the appellants had been condemned unheard as the entire material on which the appellants were relying was placed before SEBI. It is upon consideration of the entire matter that the offer of the appellants was rejected. This is evident from the detailed order passed by SEBI on 30-4-2007. The letter indicates precisely the exceptional circumstances mentioned by the appellants seeking to withdraw the public announcement. Each and every circumstance mentioned was considered by SEBI. Therefore, it cannot be said that the appellants have been in any manner prejudiced by the non-grant of the opportunity of personal hearing. Therefore, the submission made by Mr Shyam Divan with regard to the breach of



rules of natural justice is rejected."

30. The learned senior counsel for the Chancellor has also submitted that the onus is clearly on the petitioner to positively establish his case on the basis of materials available and he cannot rely on the weakness and absence of defence of the respondents herein to discharge such onus, hence in absence of appropriate proof regarding either the enquiry having been held *de hors* the principles of natural justice or there being no effective and meaningful consultation in terms of Section 11(1)(iii) of the Act, 1976, the petitioner herein has failed to positively establish his case, hence the present writ petition is fit to be dismissed.

31. In this connection, the learned senior counsel for the petitioner has referred to a judgment reported in **(2011) 12 SCC 220 (Rangammal vs.Kuppuswami & Anr.)**, paragraph nos. 21, 34 and 36 whereof are reproduced herein below:-

"21. Section 101 of the Evidence Act, 1872 defines "burden of proof" which clearly lays down that:



“101.Burden of proof.—Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

34. *It has been further held by the Supreme Court in State of J&K v. Hindustan Forest Co. [(2006) 12 SCC 198] wherein it was held that the onus is on the plaintiff to positively establish its case on the basis of the material available and it cannot rely on the weakness or absence of defence to discharge the onus.*

36. *The onus was clearly on the plaintiff to positively establish his case on the basis of material available and could not have been allowed by the High Court to rely on the weakness or absence of defence of the defendant-appellant herein to discharge such onus. The courts below thus have illegally and erroneously failed not to cast this burden on Respondent 1-plaintiff by clearly misconstruing the whole case and thus resulted into recording of findings which are wholly perverse and even against the admitted*



case of the parties.”

32. The learned counsel appearing for the State has submitted that the impugned order dated 13.12.2018 has been passed by the Chancellor after adequate consultation with the State Government, as is mandated under Section 11(1)(iii) of the Act, 1976, hence the present writ petition is fit to be dismissed.

33. In rejoinder, the learned senior counsel for the petitioner has submitted that the doctrine of pleasure, as aforesaid, is always subject to the process of law. In this connection, the learned senior counsel has referred to a judgment, reported in **(1998) 8 SCC 194 (Basudeo Tiwary vs. Sido Kanhu University & Ors.)**, paragraph nos. 10 to 12 whereof are reproduced herein below:-

“10. In order to impose procedural safeguards, this Court has read the requirement of natural justice in many situations when the statute is silent on this point. The approach of this Court in this regard is that omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing — it may be implied from the nature of



the power — particularly when the right of a party is affected adversely. The justification for reading such a requirement is that the court merely supplies omission of the legislature (vide Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405 : AIR 1978 SC 851]) and except in case of direct legislative negation or implied exclusion (vide S.L. Kapoor v. Jagmohan [(1980) 4 SCC 379 : AIR 1981 SC 136]).

11. *In the light of these principles of law, we have to examine the scope of the provision of Section 35(3) which reads as follows:*

“35. (3) Any appointment or promotion made contrary to the provisions of the Act, statutes, rules or regulations or in any irregular or unauthorised manner shall be terminated at any time without notice.”

12. *The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the provisions of the Act, statutes, rules or regulations or in any irregular or unauthorised manner. The condition precedent for exercise of this power is that an appointment had been made contrary to the Act, rules, statutes and regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the*



Act, statutes, rules or regulations, etc., a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily enquiry will have to be held and in holding such an enquiry, the person whose appointment is under enquiry will have to be issued a notice. If notice is not given to him, then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as noticed by this Court in D.T.C. Mazdoor Sabha case [1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213 : AIR 1991 SC 101] . In such an event, we have to hold that in the provision, there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, statute, rule or regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice. That is how Section 35(3) in this



case will have to be read.”

34. I have heard the learned counsel for the parties and perused the materials on record. The first issue raised by the learned senior counsel for the petitioner is regarding the Chancellor having no jurisdiction to constitute a Two Men Enquiry Committee vide Notification dated 07.08.2018, in exercise of powers under Section 9(2) of the Act, 1976. In this regard, this Court finds that the very language of Section 11 of the Act, 1976 vests discretion with the Chancellor to or not to make an enquiry. Therefore, in the present case, if the Chancellor has thought it proper to get an enquiry conducted, the said decision of the Chancellor cannot be faulted with. Moreover, the petitioner has failed to demonstrate as to what prejudice has been caused to him by the decision of the Chancellor to constitute a Two Men Enquiry Committee, hence the aforesaid issue raised by the petitioner is baseless/unfounded and fit to be rejected inasmuch as it cannot be said that the Chancellor is not vested with the power to make an enquiry.



35. The next issue which has been raised by the learned senior counsel for the petitioner is regarding the petitioner having not been afforded an opportunity of personal hearing before passing of the impugned order dated 13.12.2018, as such the same has resulted in violation of the principles of natural justice, hence the impugned order dated 13.12.2018 is fit to be set aside on this ground alone. In this regard, this Court finds that Section 11 (2) of the Act, 1976 only postulates serving of a notice upon the Vice-Chancellor, stating the specific grounds on which such action, as stipulated under Section 11 (1) (iii) of the Act, 1976 is proposed and further contemplates grant of reasonable opportunity to show cause against the proposed order, before an order is passed under sub-section (1) of Section 11 of the Act, 1976. Therefore, since the petitioner has been afforded ample opportunity to submit his reply, inasmuch as not one but as many as three notices dated 29.09.2018, 29.10.2018 and 06.12.2018 were served upon the petitioner and moreover there is no provision under Section 11 of the Act, 1976 to provide any opportunity of personal hearing,



apart from the fact that the petitioner had never sought for an opportunity of personal hearing, this Court finds that the said issue raised by the petitioner is devoid of any merit, especially in view of the law laid down by the Hon'ble Apex Court in the case of **Nirma Industries Limited & Anr.** (supra). Consequently, this Court finds that there has been no violation of the principles of natural justice so as to render the impugned order dated 13.12.2018 void.

36. The other issue raised by the learned senior counsel for the petitioner is that the enquiry conducted by the Enquiry Committee is in violation of the principles of natural justice, thus the enquiry report stands vitiated inasmuch as neither the petitioner was granted an opportunity to examine/cross-examine the allegationist nor he was supplied with specific and exact charges so as to enable him to submit an effective defence. In this regard, this Court finds that while exercising the powers of judicial review under Article 226 of the Constitution of India, the High Court cannot sit over the findings of the disciplinary authority and find fault with it nor can it re-



appreciate the evidence. It is equally a well settled law that a Court while exercising power of judicial review cannot sit in judgment over the orders passed by the inferior courts or tribunals as an appellate authority. Reference be had to a judgment rendered by the Hon'ble Apex Court in the case of **Syed Yakoob** (Supra). It is also a well settled law that *judicial review is permissible only to the extent of finding out as to whether the process in reaching the decision has been observed correctly and not the decision itself, as such*. In this connection, it may be relevant to refer to a judgment rendered by the Hon'ble Apex Court, reported in **(2003) 9 SCC 592 (Syed T. A. Naqshbandi vs. The State of Jammu & Kashmir & Ors.)**, paragraph no. 7 whereof is reproduced herein below:-

"7. We have carefully considered the submissions of the learned counsel appearing on either side, in the light of the governing position of law and the material facts placed on record. Much of the grievance sought to be vindicated seems to be merely born out of certain baseless assumptions and incorrect understanding of events, which took place with their own personal perception of the same, carried away also more by



the grievance in not being favoured with due recognition of their so-called entitlements. The grievance in this regard is sought to be further justified by adopting one or the other circumstances in a manner to suit their own stand rather than viewing the relevant facts in their proper perspective or on an objective process of understanding. Assumed grievances apart, it must be sufficiently substantiated to have firm or concrete basis on properly established facts and further proved to be well justified in law, for being countenanced by the court in exercise of its powers of judicial review. As has often been reiterated by this Court, judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions of administration of justice with which we are concerned in this case, by going into the correctness as such of ACRs or the assessment made by the Committee and approval accorded by the Full Court of the High Court.”

37. This Court would also rely upon a judgment rendered



by the Hon'ble Apex Court in the case of **State Bank of Patiala v. S.K. Sharma**, reported in (1996) 3 SCC 364, paragraph No. 28, 32, 33 and 35 whereof are quoted herein below:-

"28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk [(1949) 1 All ER 109 : 65 TLR 225] way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405 : (1978) 2 SCR 272]) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India [(1982) 1 SCC 271 : 1982 SCC (Cri) 152] and Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664] .) As pointed out by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262], the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable — a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All



ER 935 : (1984) 3 WLR 1174 : 1985 AC 374, HL] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing — applying the test of prejudice, as it may be called — that any and every complaint of violation of the rule of *audi alteram partem* should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding — which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., *Liberty Oil Mills v. Union of India* [(1984) 3 SCC 465]. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of *audi alteram partem* altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction



ought to be made between violation of the principle of natural justice, *audi alteram partem*, as such and violation of a facet of the said principle. In other words, distinction is between “no notice”/“no hearing” and “no adequate hearing” or to put it in different words, “no opportunity” and “no adequate opportunity”. To illustrate — take a case where the person is dismissed from service without hearing him altogether (as in *Ridge v. Baldwin* [1964 AC 40 : (1963) 2 All ER 66 : (1963) 2 WLR 935]). It would be a case falling under the first category and the order of dismissal would be invalid — or void, if one chooses to use that expression (*Calvin v. Carr* [1980 AC 574 : (1979) 2 All ER 440 : (1979) 2 WLR 755, PC]). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (*Managing Director, ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]) or without affording him a due opportunity of cross-examining a witness (*K.L. Tripathi* [(1984) 1 SCC 43 : 1984 SCC (L&S) 62]) it would be a case falling in the latter category — violation of a facet of the said rule of natural justice — in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair



hearing. It would not be correct — in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.

32. Now, coming back to the illustration given by us in the preceding para, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are



but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise.

33. We may summarise the principles emerging from the above discussion. [These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee]:

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent



officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision g expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity



inspite of the delinquent officer/employee asking for it. The prejudice is self- evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory characters the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provisional which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said



requirements either expressly or by his conduct. If he is found to have waived its then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could no be waived by him, then the Court or Tribunal should make appropriate directions [include the setting aside of the order of punishment], keeping in mind the approach adopted by the Constitution Bench in B. Karunkar. The ultimate test is always the same viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice [rule of audi alteram] and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" "no fair hearing".



(a) In the case of former, the order passed would undoubtedly be invalid [one may call it "void" or a nullity if one chooses to]. In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule [audi alteram partem]. (b) But in the latter case, the effect of violation [of a facet of the rule of audi alteram] has to be examined from the standpoint of prejudice; in other word in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle [No.5] does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem [the primary principle of natural justice] the Court/ Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the



interests of state or public interest may call for a curtailment of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.

35. For the above reasons, we hold that no prejudice has resulted to the respondent on account of not furnishing him the copies of the statements of witnesses. We are satisfied that on account of the said violation, it cannot be said that the respondent did not have a fair hearing or that the disciplinary enquiry against him was not a fair enquiry. Accordingly, we allow the appeal and set aside the judgment of the High Court affirming the judgments of the trial court and appellate court. The suit filed by the respondent shall stand dismissed."

38. This Court would now rely upon a judgment rendered by the Hon'ble Apex Court in the case of **K.L. Tripathi v. State Bank of India**, reported in (1984) 1 SCC 43, paragraph No. 33 whereof is quoted herein below:-

"33. The party who does not want to controvert the veracity of the evidence from record or testimony gathered behind his back cannot



expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases."

39. In view of the law laid down by the Hon'ble Apex Court in a catena of Judgments, specially the ones rendered in the cases of State Bank of Patiala Vs. S.K. Sharma (Supra), K.L. Tripathi Vs. State Bank of India (Supra) and Managing Director, ECIL v. B. Karunakar, reported in (1993) 4 SCC 727, this Court finds that in cases where on question of facts there is no dispute, no real prejudice would be caused to a party aggrieved by the punishment order, in absence of any formal opportunity of cross-examination and the same would not per se invalidate or vitiate the decision arrived at fairly. It is equally a well settled law that the approach and test adopted in the B. Karunakar case [(1993) 4 SCC 727] should govern all cases where the complaint is not that there was no hearing (no notice, no



opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry (i.e not affording due opportunity of cross-examining a witness etc.) and in such cases, the validity of the punishment order has to be tested on the touchstone of prejudice.

40. Now coming back to the facts of the present case, this Court finds that firstly there is no dispute on the question of facts, inasmuch as no such argument has been made during the course of hearing of the present case, as such it can be concluded that no real prejudice has been caused to the petitioner, in absence of any formal opportunity of cross-examination, thus the same would not per se invalidate or vitiate the decision arrived at by the Chancellor. Secondly, in absence of any argument being made on behalf of the petitioner regarding any kind of grave prejudice being caused to him on account of not being granted an opportunity to examine/cross-examine the allegationist, the enquiry conducted by the Enquiry Committee cannot be said to



be in violation of the principles of natural justice, consequently, the enquiry report cannot be said to be vitiated, on this ground alone. Therefore, the aforesaid issue raised by the learned senior counsel for the petitioner is held to be sans any merit.

41. This Court is also of the considered view that the finding of the Enquiry Committee, as arrived at in the enquiry report cannot be re-appreciated and only the decision making process can be reviewed especially in view of the fact that the petitioner has failed to bring on record such materials which would conclusively prove that the enquiry conducted by the Enquiry Committee is in violation of the principles of natural justice.

42. Now, coming to the next issue raised by the learned senior counsel for the petitioner to the effect that the impugned order dated 13.12.2018 is bad because it is based on two new charges levelled against the petitioner for which no enquiry was held by the Chancellor or for that matter by the Enquiry Committee. In this regard, this Court finds that out of total number of



18 charges, keeping aside the said two new charges, 12 number of charges have been found to be proved/partially proved by the Enquiry Committee and the Chancellor has also accepted the said findings of the Enquiry Committee, hence applying the ratio of the judgment rendered by the Hon'ble Apex Court in the case of ***State of U.P. & Ors. vs. Nand Kishore Kumar Shukla*** (supra), to the effect that even if one charge is sufficient to sustain the punishment in question, the order of punishment is not required to be interfered with, this Court finds that even if the two new charges levelled against the petitioner, with regard to which the petitioner alleges that no enquiry was held, are not taken into consideration, the other charges, which have been proved/partially proved are enough to sustain the punishment imposed upon the petitioner vide the impugned order dated 13.12.2018, hence on this score as well there is no infirmity, as far as the impugned order dated 13.12.2018 is concerned, hence the said issue raised by the petitioner is held to be without any merit.

43. Now, this court would advert to the other two



grounds raised by the learned senior counsel for the petitioner i.e. (i) under Section 11 (I) (iii) of the Act, 1976, it is a mandatory requirement that before passing of the final order of removal, the Chancellor is required to hold a consultation with the State Government, which is required to be an effective and meaningful consultation and not merely a formality and the same has not been done by the Chancellor, hence on this ground alone the impugned order dated 13.12.2018 is required to be set aside and (ii) the impugned order dated 13.12.2018 is an unreasoned and a non-speaking order, which does not deal with any of the issues raised by the petitioner in his various replies submitted in response to the various show cause notices issued by the Chancellor, hence the impugned order dated 13.12.2018 suffers from perversity, as such deserves to be set aside. As far as the issue of consultation, by the Chancellor with the State Government, before requiring the Vice-Chancellor to resign from his post, is concerned, this Court finds that neither the counter affidavit filed on behalf of the Chancellor nor the counter affidavit filed on behalf of the



State Government i.e. on behalf of the respondent no. 3 has explicitly and appropriately dealt with the said issue inasmuch as merely a bald statement, in a single sentence, has been made to the effect that proper consultation has been made, however, no material has been brought on record to show the mode and manner of consultation especially in view of the starting fact that immediately after few hours of the petitioner having filed his reply to the show cause notice on 13.12.2018 at 3:52 P.M., the impugned order dated 13.12.2018 was passed, which demonstrates that there has been neither effective nor meaningful consultation by the Chancellor with the State Government, before passing of the impugned order dated 13.12.2018. Consequently, this Court finds that on account of absence of an effective and meaningful consultation, as postulated under Section 11(1) (iii) of the Act, 1976, the order impugned dated 13.12.2018 is unsustainable in the eyes of law, hence is quashed. This Court further finds that the impugned order dated 13.12.2018, passed by the Chancellor is on the very face of it a non-speaking order which neither assigns any reasons nor deals with any of the defence raised by the petitioner



in his replies dated 21.11.2018/12.12.2018/13.12.2018 and on the contrary, the impugned order dated 13.12.2018, instead of stating reasons to remove the petitioner, simply quotes the three grounds of removal of a Vice-Chancellor, as enumerated under Section 11 (1) of the Act, 1976 and moreover, the said order dated 13.12.2018 also does not specify as to why, how and on account of what reason the said three grounds of removal are satisfied so as to warrant removal of the petitioner. Consequently, this court is of the view that the impugned order dated 13.12.2018 is wholly unreasoned and does not deal with the replies of the petitioner and moreover, no cogent, clear and succinct reasons have been furnished in support of the impugned order dated 13.12.2018, which is an indispensable component of a decision making process, hence, the impugned order dated 13.12.2018 stands vitiated, hence, this Court has no option but to set aside the impugned order dated 13.12.2018, passed by the Chancellor, on



this ground as well, especially in view of the said issue being squarely covered by the principles of law laid down by the Hon'ble Apex Court in the case of **ORYX Fisheries (P) Ltd. Vs. Union of India**, reported in **(2010) 13 SCC 427**.

44. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, the writ petition stands allowed and the impugned order dated 13.12.2018, passed by the Chancellor, Magadh University, Bodh Gaya stands quashed, however, liberty is reserved to the Chancellor to proceed further in the matter, in accordance with law.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	27.05.2019
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