

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 7511/2019 & CM APPL 31297/2019**

Date of Decision: 24.03.2023

**IN THE MATTER OF:**

GAYATRI BALU,  
D/O SHRI K. BALASUBRAHMANIAN  
R/O R.NO. 203, SHIPRA HOSTEL  
JAWAHARLAL NEHRU UNIVERSITY,  
NEW DELHI - 110067 ..... PETITIONER

Through: Mr. Gaurav Bhardwaj, Ms. Himani  
Kaushik and Mr. Rahul Bhati, Advocates

Versus

JAWAHARLAL NEHRU UNIVERSITY,  
THROUGH ITS REGISTRAR,  
JAWAHARLAL NEHRU UNIVERSITY  
NEW DELHI- 110067 ..... RESPONDENT NO. 1

CHIEF PROCTOR,  
ADMINISTRATIVE BUILDING,  
JAWAHARLAL NEHRU UNIVERSITY,  
NEW DELHI - 110067 ..... RESPONDENT NO. 2

Through: Ms. Ginny J. Rauthay and Mr. T. Bansal,  
Advocates for respondent No.1

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

**J U D G M E N T**

**PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The present petition has been filed under Article 226/227 of the Constitution of India seeking following reliefs:-

*“I. Issue an appropriate writ quashing OFFICE ORDER NO.50/CP/2018 dated 06.05.2019; and*

*II. Award the Petitioner costs related to the filing of the present Petition; and*

*Pass any such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case and/or in the interest of justice”.*

2. The brief facts of the case as stated by the petitioner are that on 09.02.2018, a protest against the ‘attendance rule’ was going on outside the SSS-I building of the respondent No.1-University. Mr. Rajbir Singh, a faculty member of the respondent No.1-University allegedly arrived at the spot, while the negotiations were going on; he is alleged to have then, pushed the petitioner at her chest and beaten her. On the same day, petitioner filed a written complaint at Police Station Vasant Kunj. On 02.05.2018, FIR No. 0214 of 2018 was registered at Police Station Vasant Kunj under Sections 354 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as ‘IPC’). On the same day, a counter FIR was filed by Mr. Rajbir Singh against the petitioner under Sections 323, 341, 506 and 34 of the IPC. On 05.11.2018, a notice was issued to the petitioner by the office of respondent No.2 to appear on 15.11.2018, and explain her position regarding the said incident. She appeared for the same on 15.11.2018. The petitioner thereafter received a Show Cause Notice to explain her defence against the initiation of disciplinary action on the ground of using abusive language and blocking faculty member from entering SSS-I building of respondent No.1-University. On 25.04.2019, the petitioner replied, stating her inability to be physically present. On 06.05.2019, an Office Order was issued to the petitioner holding her guilty and to pay a fine of Rs.10,000/-. On 16.05.2019, the petitioner

filed an appeal before the Vice Chancellor of the respondent No.1-University but received no response. Hence, the present petition.

3. Learned counsel appearing on behalf of the petitioner while challenging the impugned order dated 06.05.2019 submits that the same is in gross violation of the principles of natural justice. According to him, the petitioner was issued the Show Cause Notice dated 16.04.2019 and was called upon to submit her explanation. In response thereto, the petitioner on 18.04.2019 requested for time to appear before the authority. He explained that on account of the petitioner being out of town and doing field work, she could not appear. However, no extension was given and the impugned decision has been taken. He also submits that notwithstanding the fact that the petitioner was not given the opportunity of hearing even the Show Cause Notice is also unsustainable in the eyes of law as the same clearly predetermines the guilt of the petitioner and, therefore, such a Show Cause Notice cannot be sustained.

4. Learned counsel appearing on behalf of the respondents submits that not only on 16.04.2019 but even before 16.04.2019, the petitioner was served with the Show Cause Notice such as on 05.11.2018 and the petitioner did appear before the authority concerned on 15.11.2018. She, therefore, submits that the petitioner did not thereafter submit any explanation or asked for a cross examination or otherwise, therefore, the authority concerned was left with no discretion except to take the impugned decision.

5. I have heard learned counsel appearing on behalf of the parties and perused the record.

6. The first and foremost issue which requires to be adjudicated is whether the impugned order has been passed after following the principles of natural justice. The impugned order reads as under:-

"CPO/DPM/JNU/2019/

06 MAY, 2019

**OFFICE ORDER NO. 50/CP/2019**

*In the Proctorial Enquiry, Ms. Gayatri Balu (Registration Number : 21697, Enrolment Number : 15/6A/MS/007 and Year of Admission : 2015, an M.Phil/Ph.D student Centre for Women Studies. School of Social Sciences and a r/o 203, Shipra Hostel) has been found to be involved in using abusive language against a faculty member of JNU and blocking him from entering the building on 09th February, 2018 at 11.40 a.m. at SSS-1. This kind of activity is dangerous in nature and falls under Item 3. Category 11 (xxiv) of the Statute 32(5) of the Statutes of the University which states that:-*

*(xxiv) "Any intimidation or insulting behavior towards a student, staff or faculty or any other person".*

*This act of Ms. Gayatri Balu, is serious in nature, unbecoming of a student of JNU and calls for a strict disciplinary action against her. However, keeping her career prospects in mind, the Vice-Chancellor has taken a somewhat lenient view in the matter.*

*Ms. Gayatri Balu is fined Rs.10,000/- (Rupees ten thousand only) and (b) transfer of hostel from present hostel to another hostel with immediate effect with a strict warning not to repeat such act in future. She is directed to deposit the fine within 10 days from the issue of this letter and show the proof thereof to this office.*

*This has the approval of the Vice Chancellor".*

7. A perusal of the impugned order would clearly reveal that there is no discussion with respect to any of the explanation submitted by the petitioner.

On 16.04.2019, the petitioner was served with the Show Cause Notice. It is also a matter of record that on 18.04.2019, the petitioner requested for some time. Even the aforesaid aspect is not dealt with in the impugned decision as to why, once the Show Cause Notice was served on the petitioner, the time could not have been extended beyond 06.05.2019.

8. The Hon'ble Supreme Court in the case of ***Maneka Gandhi v. Union of India and Anr.***<sup>1</sup> emphasised on the importance of natural justice and *Audi Alteram Partem* i.e., the opportunity of being heard. Paragraph No.9 of the said decision is reproduced as under :-

*“9. We may commence the discussion of this question with a few general observations to emphasise the increasing importance of natural justice in the field of administrative law. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. Lord Morris of Borth-y-Gest spoke of this rule in eloquent terms in his address before the Bentham Club :*

*We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a "majestic" conception ? I believe it does. Is it just a rhetorical but vague phrase which can be employed, when needed, to give a gloss of assurance ? I believe that it is very much more. If it can be summarised as being*

---

<sup>1</sup> (1978) SCC 248

*fair play in action-who could wish that it would ever be out of action ? It denotes that the law is not only to be guided by reason and by logic but that its purpose will not be fulfilled; it lacks more exalted inspiration. (Current Legal Problems, 1973, Vol. 26, p. 16)*

*And then again, in his speech in the House of Lords in Wiseman v. Borneman [1971] A.C. 297, the learned Law Lord said in words of inspired felicity :*

*“...that the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be applied which, in "any particular situation or set of circumstance's, are right and just and fair. Natural justice, it has Been said\* is only "fair play in action." Nor do we wait for directions from Parliament. The common law has abundant riches there we may find what Byles, J.,' called "the justice of the common law.*

*Thus, the soul of natural justice is 'fair play in action' and that is why it has received the widest recognition, throughout the democratic world; In the United States, the right to an administrative hearing is regarded as essential requirement of fundamental fairness. And in England too it has been held that 'fair play in action' demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard. The rule was stated by Lord Denning, M.R. in these terms in Schmidt v. Secretary of State for Home*

*Affairs [1969] 2 Chancery Division 149 :-where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf". The same rule also prevails in other Commonwealth countries like Canada, Australia and New Zealand. It has even gained access to the United Nations. Vide American Journal of International Law, Vol. 67, page 479. Magarry, J., describes natural" justice "as a distillate of due process of law". Vide Fontaine v. Chesterton (1968) 112 S G 690. It is the quintessence of the process of justice inspired and guided by fair play in action'. If we look at the speeches of the various law Lords in Wiseman's case, it will be seen that each one of them asked the question "whether in the particular circumstances of the case, the Tribunal acted unfairly so that it could be said that their procedure did not match with what justice demanded", or, was the procedure adopted by the Tribunal 'in all the circumstances unfair' ? The test adopted by every law Lord was whether the procedure followed was "fair in all the circumstances" and 'fair play in action' required that an opportunity should be given to the tax payer "to see and reply to the counter-statement of the Commissioners" before reaching the conclusion that "there is a prima facie case against him." The inquiry must, therefore, always be : does fairness in action demand that an opportunity to be "heard should be given to the person affected ?”*

9. The Hon'ble Supreme Court in **SBP & CO v. Patel Engineering Ltd. & Anr.**<sup>2</sup> discussed the importance of the principles of natural justice and 'fair hearing'. Paragraph Nos. 137, 138 and 139 of the said judgment are reproduced as under :-

*“137. In Mohinder Singh Gill v. Chief Election Commission after considering several cases, Krishna Iyer, J. stated :*

---

<sup>2</sup> (2005) 8 SCC 618

*"48. Once we understand the soul of the rule as fairplay in action and it is so - we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet: Its essence is good conscience in a given situation; nothing more - but nothing less."*

*138. In Nally Bharat Engineering Co. Ltd. v. State of Bihar, the Government, on an application by a dismissed workman transferred his case from one Labour Court to another Labour Court without issuing a notice or giving opportunity to the employer. Setting aside the order and referring to several cases, the Supreme Court invoked the 'acting fairly' doctrine. The Court stated:*

*"Fairness, in our opinion, is a fundamental principle of good administration. It is a rule to ensure the vast power in the modern State is not abused but properly exercised. The State power is used for proper and not for improper purposes. The authority is not misguided by extraneous or irrelevant considerations. Fairness, is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. To use the time hallowed phrase that 'justice should not only be done but be seen to be done' is the essence of fairness equally applicable to administrative authorities. Fairness is thus a prime test for proper and good administration. It has no set form or procedure. It depends upon the facts of each case."*

*De Smith states:*

*"The principal value of the introduction of the 'duty to act fairly' into the courts' vocabulary has been to assist them to extend the benefit of basic procedural protections to situations where it would be both confusing to characterize as judicial or even quasi-judicial, the decision-makers' functions, and inappropriate to insist on a procedure analogous to a trial."*

*139. It is thus clear that the doctrine of 'fairness' has become all pervasive. As has been said, the 'acting fairly' doctrine proved useful as a device for evading confusion which prevailed in the past. "The courts now have two strings to their bow." An administrative act may be held to be subject to the requirement and observance of natural justice either because it affects rights or interests and hence would involve a 'duty to act judicially' or it may be administrative, pure and simple, and yet, may require basic procedural Page 1853 protection which would involve 'duty to act fairly'.*

10. It is settled law that the requirement of natural justice is applicable not only to judicial or quasi-judicial orders but also to administrative orders with civil consequences to the party in question, unless it is expressly excluded by a law which is otherwise valid. The doctrine of natural justice is not merely a matter of procedure but of substance and any action taken in contravention of natural justice is violative of the holy trinity of fundamental rights guaranteed by Articles 14, 19, and 21 of the Constitution of India.

11. In view of the aforesaid, this court holds that the impugned order is in violation of principles of natural justice. Once the Show Cause Notice was given to the petitioner, either the petitioner should have been heard or specific findings should have been recorded as to why the request for adjustment was not possible.

12. The impugned order is, therefore, set aside. Respondent No. 1-University however, would be at liberty to take a fresh decision if so necessitated after hearing the petitioner, in accordance with law.

13. Needless to state that if the respondent No. 1-University decides to take up the matter afresh, the hearing of the petitioner should take place without being influenced by the language used in the Show Cause Notice. In the event, respondent No.1-University decides to pass a fresh order after compliance of principles of natural justice, the petitioner shall co-operate in the conclusion of the enquiry and shall not seek unnecessary adjustments. This court has not expressed any opinion on the merits of the case.

14. With the aforesaid directions, the petition stands disposed of alongwith pending application.

**PURUSHAINDRA KUMAR KAURAV, J**

**MARCH 24, 2023**

*p'ma*

न्यायमेव जयते