



2024:DHC:1008



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

+ **W.P.(C) 15907/2023 and CM APP No. 64010/2023**

SWATI SINGH

..... Petitioner

Through: Mr. Abhik Chimni, Mr. Saharsh Saxena, Mr. Anant Khajuria and Ms. Riya Pahuja, Advocates

versus

JAWAHARLAL NEHRU UNIVERSITY Respondent

Through: Ms. Subhrodeep Saha for Ms. Monika Arora, Advocate

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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07.02.2024

1. The petitioner is a Ph D student at the centre for Russian Studies in the Jawaharlal Nehru University (JNU).

2. On 25 September 2023, the Proctor of the JNU wrote to the petitioner, informing the petitioner that a complaint, dated 13 September 2023, against the petitioner, had been received in the office of the Proctor in which it was alleged that the petitioner had misbehaved and manhandled a lady Security Guard of the JNU on 29 August 2023. The petitioner was, therefore, directed to appear before the Proctor on 3 October 2023 at 4 p.m. to explain her position. The petitioner was also advised to bring, with her, any evidence that she desired to tender in her defence. The concluding note in the letter

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indicated that the hearing of the petitioner before the Proctor was in the nature of a Proctorial Enquiry.

3. On 3 October 2023 i.e. the date fixed for hearing, the petitioner addressed an email to the Proctor, informing him that she was suffering from high fever, body pain and headache for which she had been advised medication and rest. She, therefore, sought rescheduling of the enquiry to another date. The petitioner annexed, with the email, the prescription by the physician at the JNU Health Centre.

4. On 6 October 2023, the Proctor addressed a second communication to the petitioner, again directing her to appear before him on 13 October 2023 at 3 p.m. to explain her position in respect of the complaint dated 13 September 2023 received against her.

5. On 9 October 2023, the petitioner addressed an email to the office of the Proctor, stating that she was out of station owing to some unavoidable event and was therefore not in a position to return at short notice. She enclosed, with the e-mail, her train ticket, and sought rescheduling of the date of the Proctorial Enquiry.

6. On 16 October 2023, the JNU addressed an email to the petitioner, requiring her to provide her deposition regarding the complaint against her by the next day, i.e., by 17 October 2023.

7. The petitioner responded by e-mail on the same day, 16 October 2023, reiterating that she was out of station and was not in a position



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to return at short notice. She submitted that a physical hearing in the Proctorial Enquiry was preferable as she desired to cross-examine witnesses/affected parties/complainants to the alleged incident of manhandling. She also sought to be provided with any audio-visual evidence, photographs, videos or CCTV footage which corroborated the allegations against her contained in the complaint before she was called to participate in the enquiry or depose regarding the incident.

8. Without condescending to agree to the petitioner's request as contained in the email dated 16 October 2023, the JNU issued a Show Cause Notice dated 30 October 2023 to the petitioner, which read thus:

“CPO/PNJR/JNU/2023/943-944 30th October, 2023

Show Cause Notice

In the Proctorial Enquiry, you (Ms Swati Singh, Registration Number: 200810054460, Enrolment Number: 20/55/MR/005 and Year of Admission: 2020, an M.Phil/Ph.D student, Centre of Russian Studies, School of Language, Literature and Culture Studies and a r/o 227, Godavari Hostel) were directed to appear before the Proctorial Committee in connection with your misbehavior and manhandling with a JNU security staff at Convention Centre, JNU on 29th August, 2023. Despite issuance of three call letters, you had failed to appear for hearing.

This kind of activity falls under Item 3, Category II (xxiv) and (xxv) 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”

and

(xxv) “Any other act which may be considered by the Vice-Chancellor or any other competent authority to be an act of violation of discipline and conduct”

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This is an act of indiscipline and misconduct. You are hereby asked to explain why disciplinary action should not be initiated against you for indulging in the above act.

Your reply should reach this office latest by **03rd November, 2023 (11 a.m.)**, failing which it will be presumed that you have nothing to say in your defense and this office will be free to take appropriate action against you.

Sd/-
CHIEF PROCTOR

9. The petitioner replied to the aforesaid show cause notice dated 30 October 2023, reiterating her inability to be present in person and to depose before the Inquiry Committee. She also reiterated her request for being made available any audio-visual evidence, photographs, videos or CCTV footage which could be said to corroborate the allegations made against her in the complaint dated 13 September 2023 and reiterated her desire to cross-examine any witnesses, affected parties and the complainants to the alleged incident.

10. The JNU, thereupon issued Office Order No. 126/CP/2023 on 8 November 2023, rustivating the petitioner for two semesters and declaring her out of bounds from the JNU, with a strict warning not to repeat such indisciplined activity in future. The Office Order merits reproduction, in entirety, thus :

“CPO/PNJR/JNU/2023/ 8th November, 2023

OFFICE ORDER NO. 126/CP/2023

In the Proctorial Enquiry, Ms. Swati Singh, (Registration Number : 200810054460, Enrolment Number : 20/55/MR/005 and Year of Admission : 2020, an M.Phil/Ph.D student, Centre of Russian Studies, School of Language, Literature and Culture Studies and a

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r/o 227, Godavari Hostel) has been found guilty of manhandling a lady security guard and misbehaving with the other security guards posted at the gate of Convention Centre, JNU on 29 August, 2023. She also tried to interrupt the ongoing admission process by barging into the convention centre and tried to enter the Centre forcibly. *First call letter was issued to Ms. Swati Singh on 25 September 2023 to appear before the Proctorial committee for her deposition on 3 October 2023. She expressed her inability to attend the hearing at the Chief Proctor's office through an e-mail dated 3 October 2023 due to medical reason.*

However, the attached medical card produced from JNU Health Centre nowhere mentioned bed rest or isolation. Second call letter was issued to Ms. Swati Singh on 6 October 2023 to appear before the Proctorial committee for her deposition on 13 October 2023. She again expressed her inability to attend the hearing at the Chief Proctor's office through an e-mail dated 13 October 2023 as she was out of station. But the train ticket that she sent was of 4 October 2023. She booked the ticket on 25 August 2023. The third call letter was sent in the form of an e-mail to Ms. Swati Singh on 16 October 2023 asking her to send her deposition through e-mail by 17 October 2023 by 5.00 p.m. She replied through e-mail on 16 October 2023 that she was out of station. As per other CSO Report dated 12 October 2023, she was present on the campus for a protest on 11 October 2023. But she did not turn up for hearing after sending three call letters. She also did not bother to inform the Chief Proctor's Office that she was available for hearing. It clearly shows her non-seriousness to appear for the Proctorial enquiry and misleading the enquiry. A show-cause notice was issued to Ms. Swati Singh on 30 October 2023 to explain her position by 3 November 2023 by 11.00 a.m. She replied through e-mail on 2 November 2023, however it was not found satisfactory.

This kind of activity falls under Item 3, Category II (xxiv) and (xxv) of the Statute 32(5) of the Statute of the University which states that:-

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

and

(XXV) *"Any other act which may be considered by the V.C. or any other competent authority to be an act of violation of discipline and conduct".*

This act of Ms. Swati Singh is serious in nature, unbecoming of a student of JNU and calls for a strict disciplinary action against her.



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However, keeping her career prospects in mind, the Vice-Chancellor has taken a somewhat lenient view in the matter.

Ms. Swati Singh is rusticated for two semesters and declared out of bounds from the University with strict warning not to repeat such indisciplined activity in future. Anyone giving shelter to Ms. Swati Singh in any hostel/residences in the Campus shall invite disciplinary action against him/her.

This has the approval of the Vice-Chancellor.

Ms. Swati Singh
M.Phil/Ph.D student
C/o Chairperson
CRS/SLL&CS/JNU

CHIEF PROCTOR
Ms. Swati Singh
Room No. 227
C/o Senior Warden
Godavari Hostel/JNU"

11. The petitioner appealed against the aforesaid Office Order to the Vice Chancellor (VC) of the JNU on 13 November 2023. She submitted, in the said appeal, that, despite her request, she had not been provided any audio-visual evidence, photographs, videos or CCTV footage to corroborate the allegations contained in the complaint dated 13 September 2023, nor was any heed taken to the petitioner's request to provide her an opportunity to cross-examine the complainants to the said complaint or any witnesses or affected parties on whose evidence the Proctorial Enquiry sought to rely. She denied the allegations against her and stated that she had not either manhandled or misbehaved with the lady Security Guard; rather, it was submitted that the JNU security personnel misbehaved with her without any provocation. She submitted that the raw CCTV footage of the incident, if seen, would corroborate her statement. She asserted that she had protested against certain politically affiliated students being allowed to enter the JNU Convention Centre, whereupon she

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was ill-treated and manhandled by the security personnel. She exhorted the Proctorial Committee to release and examine the entire CCTV footage at the back entrance to the Convention Centre where the incident took place, whereupon the actual facts would become clear.

12. On 16 November 2023, the Associate Dean of Students, *vide* Office Order No. 09, rusticated the petitioner from the hostel in her occupation for a period of two semesters with immediate effect. It may be noted that, despite repeated attempts by the petitioner to oppose the directions to her to vacate the hostel, she was finally evicted from the hostel in her occupation on 24 November 2023.

13. On 23 November 2023, the Proctor wrote to the petitioner, informing her that the VC had examined and dismissed her appeal against the order dated 8 November 2023 (*supra*).

14. Aggrieved thereby, the petitioner has instituted the present writ petition before this Court seeking issuance of appropriate writs, quashing and setting aside the orders dated 8 November 2023, 16 November 2023 and 23 November 2023 as well as the order evicting her from the hostel in her occupation.

15. I have heard Mr. Abhik Chimni, learned Counsel for the petitioner and Mr. Subrodeep Saha, learned counsel for the respondent at considerable length.



16. Mr. Chimni submits that the impugned order has been issued in clear violation, not only of the main basic principles of natural justice and fair play but also of Statute 32(5) of the Statutes governing the JNU which read thus :

“Statute 32(5) of the Statutes of the University

As per this statute University has a Proctorial system where administration of student related matters pertaining to all acts of indiscipline are delegated to the Chief Proctor. He/She is assisted by two additional proctors; one of the proctors is a woman. Thus, the Proctorial Board comprises of a three member body.

Norms and Procedures followed during enquiry:

After receipt of a complaint it is scrutinized by the Proctorial Board to ascertain if it pertains to the jurisdiction of Proctorial Enquiry. Subsequently, either a one/two/three member(s) Proctorial Enquiry Committee is set up to conduct an in depth investigation into the matter. Proctorial enquiry is an internal enquiry of JNU and hence, no other person except the Board members is allowed to be present during hearings. The accused or complainants is not allowed to be represented by a third party. Similarly, He/She cannot have an observer during the process of enquiry.

After it is ascertained that an enquiry required, following procedure/norm is generally followed:

- (1) The complainant is called for hearing and his deposition is recorded.
- (2) The accused person(s) is called for recording his/her statement.
- (3) Witnesses mentioned by both parties is listed and they are called for recording their depositions.
- (4) Any evidence, from security staff/JNU staff or other persons, who were present there and had witnessed the incident are called and their statements recorded.
- (5) A cross-examination of the accused and the complainant is conducted.



- (6) If any material evidence, like audio/video tapes/paper documents etc. is available, the same is examined. The veracity is established from the person who submits these.
- (7) Finally a comprehensive report is prepared where specific charge against the accused is framed and a show cause notice is issued.
- (8) The defense given by the accused persons in the show cause notice is studied and examined.
- (9) Finally, a report is prepared and a per the "Rules of discipline and proper conduct of students of JNU," appropriate disciplinary action is recommended. (Rules of discipline and proper conduct of students of JNU is given in appendix).
- (10) Final report and recommendations is submitted to Vice-Chancellor for approval & final decisions.
- (11) Consequently, the award of punishment is conveyed to the student.
- (12) The punished student has the right to appeal against the punishment and Vice-Chancellor is the empowered authority to deal with appeals.
- (13) The abovementioned norms and procedures are generally followed. However, the Proctorial Board at its discretion can add additional norms or delete existing ones separately depending on the nature and need of the enquiry."

17. Mr. Chimni points out that the impugned Office Order dated 8 November 2023, despite having expressly been issued under Statute 32(5) was actually in breach thereof. Besides, he submits that the Office Order dated 8 November 2023, as well as the appellate order dated 23 November 2023, were both completely unreasoned and did not even condescend to discuss the defence that the petitioner had put up. He emphasises that the only evidence against the petitioner was the statement of the Security Guard, who was the supposed target of the petitioner's alleged misdemeanour.



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18. In such circumstances, Mr. Chimni submits that the impugned order cannot sustain.

19. Responding to Mr. Chimni's submissions, Mr. Saha submits that there was no infraction whatsoever of Statute 32(5) which was followed in letter as well as in spirit. He submits that the entire incident had arisen out of the complaint dated 13 September 2023 which was actually in the form of a security report, and a copy of which was forwarded to the petitioner along with the letter dated 25 September 2023 calling upon the petitioner to appear before the Proctor on 3 October 2023. He also seeks to point out that the petitioner was called thrice for recording of her statement. On each occasion, the petitioner demurred from appearing. In so far as her second request for adjournment, dated 13 October 2023, was concerned, Mr. Saha submits that though the petitioner claimed to have been out of Delhi since 3 October 2023, she was actually found in the JNU campus in a protest march on 13 October 2023.

20. Moreover, he submits that the petitioner had, in her appeal, as much as admitted the alleged incident. To support this assertion, Mr. Saha relies on the following passage from her appeal :

“...I would also like to refute the alleged charges on which I have been punished. The alleged incident of ‘manhandling’ and ‘misbehaving’ with a lady security guard was, in reality, the very reverse. I was shoved many times by the JNU security personnel without any provocation. I am sure that any fair viewing of the full raw CCTV footage will corroborate this.



I was actively participating in assisting newly admitted UG students at the Convention Centre from 28th August 2023 to 1st September 2023. In the process of assisting the new students, I was standing outside the back gate of the Convention Centre.

Similar to the previous day, I was again standing at the gate on 29th August 2023, providing assistance to new students in the admission process. Things were proceeding fine, however, I observed that some students affiliated to the ABVP were allowed to enter the Convention Centre. I objected to this since none of the other students from various other student organisations were being allowed entry inside the Convention centre by the security personnel.

Instead of ensuring a uniform rule for all, the security personnel started arguing and shouting at me. Several members of the ABVP started demanding that the guards push me away from where I was standing so that they could monopolise the space. Subsequently, a security guard inappropriately touched me and manhandled me repeatedly. I continued to loudly express my discomfort regarding this.

While the security guards were manhandling me, ABVP students including Ashutosh and Kanhaiya recorded me without my consent and verbally harassed me. Despite raising objections against the recording and the harassment by both ABVP members and the security personnel, senior security guards took no notice of this. I would urge you to advise the Enquiry Committee to release the entire footage of the CCTV camera placed at the back entrance to the Convention Centre where the incident took place.

Similarly, on 6th September 2023, while I was at the Convention Centre, the same 10-15 male students affiliated to ABVP surrounded me, threatened me and verbally assaulted me with vulgar comments and slut shamed me. This took place in the presence of members of different organisations and neutral students, who were assisting newly admitted students on that day. This abuse by my fellow JNU students impacted me severely and caused severe distress, and I shared this account in a statement to the JNU student community, which I released on the same day (6 September) [Annexure A]. ABVP members also then circulated messages on whatsapp calling me "rakshasi", "pisachini" and "tadaka". The next day, the JNUSU and student organisations such as BAPSA, SFI and DSF also issued public statements condemning such harassment of women students [Annexure B (1,2,3)] Several other students who witnessed the incident also shared their sympathy with me and other women students. These witnesses need to be examined in the course of any free and fair enquiry into the chain of events.



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I had received a call letter from the Chief Proctor's office dated 25th September, 2023 informing me that a complaint dated 13th September, 2023 was filed against me alleging that I manhandled and misbehaved with a security guard. I was asked to depose on 3rd October, 2023. I had sent an email to the Chief Proctor's office on 3rd October, 2023 stating my inability to appear in the inquiry due to my medical condition. I received one more call letter on 6th October and another show-cause notice on 30th October. I responded to both of them by email seeking more time owing to engagements at family events and requesting a rescheduling of my deposition. I expressed my wish to physically appear and depose before the committee and cross-examine witnesses if any. I also requested that audio-visual evidence and CCTV footage of the alleged incident, if any, be made available.

However, my right to defend myself in person was denied to me. The show cause notice dated 30th October stated that I have been served three call letters, however, I have received only two. I also clarified this to the Chief Proctor's Office.

Without providing me any further opportunity to depose before the Inquiry, an order of rustication and out of bounds was served to me through an office order dated 8th November 2023 [Annexure C]. I consider this to be unjust and severely detrimental to my academic career. If my PhD is paused for two semesters at this late stage and I am further evicted from my hostel and the university, it will be insurmountably difficult for me to resume my studies.

I request you earnestly, both on humanitarian grounds and also for the sake of ensuring fairness and justice, to allow me to depose before the inquiry, with which I am willing to fully cooperate. All the allegations against me are prima facie incorrect, and the action against me is motivated. I am confident that an examination of evidence and witnesses in the inquiry would establish my innocence.

I seek your kind consideration in reviewing my rustication order and look forward to your intervention in resolving the matter in a fair and just manner.

Regards,

Swati Singh
20/55/MR/005
Ph.D Student"



submissions. In the short note, it is asserted that having herself demurred from participating in the Proctorial Enquiry, it did not lie in the mouth of the petitioner to allege violation of the principles of natural justice or of Statute 32(5). Para 5 of the short note merits reproduction in its entirety thus:

“5. Decision substantiated with evidential findings (preponderance of probability) :

In view of the evidential findings, it was clear that the petitioner manhandled a lady security guard at JNU Convention Centre on 29.08.2023, thus humiliating a woman security guard at a public place. This kind of activity was serious in nature and was unbecoming for the petitioner to be JNU student.

Details of the evidence relied upon are as follows:

- Security report dated 13.09.2023;
- Depositions of security personals;
- Video recording of the incident dated 29.08.2023.
- Train ticket e-mailed by petitioner alongwith CSO report dated 12.10.2023 and video evidence to note the petitioner is deliberately evading the process.”

22. Mr. Saha has placed reliance on the judgment of the Supreme Court in *Jagdish Singh v. Punjab Engineering College*¹ as well as the judgment of the Division Bench of the High Court of Allahabad in *Keshav Chandra v. Inspector of Schools*², and of a learned Single Judge of the High Court of Calcutta in *Bikas Sarkar v. UOI*³.

Analysis

23. The law since *Taylor v. Taylor*⁴ and moving, thereon, through

¹ (2009) 7 SCC 301

² ILR 1954 Vol. 2 All 36

³ 2023 SCC Online Cal 5636

(1875) 1 Ch D 426



the decision of the Privy Council in *Nazir Ahmed v. King Emperor*⁵ and a plethora of the decisions of the Supreme Court including *State of U.P. v. Singhara Singh*⁶ and, most recently, *Vivek Narayan Sharma v. UOI*⁷, is that, where the applicable statutes or legislation requires a particular act to be done in a particular manner, that act must be done in that manner or not done at all, all other modes of doing the act being necessarily forbidden.

24. The statutes of the JNU, in Statute 32(5) sets out a specific protocol to be followed in Proctorial Enquiries. Where a statute merely states that the principles of natural justice are required to be followed, the authority acting under the statute enjoys far greater latitude regarding the manner in which it can act, and the protocol to be followed by it in that regard. The Court, in such a situation, has only to satisfy itself that there has been compliance with the principles of natural justice as they generally stand recognized.

25. Where, however, the Statutes set out a particular procedure, as has been set out in Statute 32(5), that procedure must be regarded as having been consciously prescribed as the envisaged minimum for compliance with the principles of natural justice and fair play.

26. Inasmuch as Statute 32(5) sets out a specific procedure for conduct of the Proctorial Enquiry, the Proctorial Enquiry, if conducted, had to abide by the said procedure and could not have been conducted in any other way. It would be hazardous for the Court to,

⁵ AIR 1936 PC 253
⁶ AIR 1964 SC 358



in the face of the stipulated procedure, regard any part thereof as directory or dispensable, as that would throw open the doors for arbitrariness, with the University being free to jettison, at its own whim and fancy, any part of the procedure prescribed by the statute.

27. It is true that Statute 32(5) states that the procedure envisaged therein is that which is “generally” to be followed. The word “general” is defined, in P. Ramanatha Aiyar’s Law Lexicon (5th Edn), thus:

“Principal; universal, common to all, or to the greatest number. Relating to a genus or kind; pertaining to a whole class or order; belonging to a whole rather than to a part, having relation to all; that which pertains to a majority of the individuals which compose a genus or whole; widely spread, not specific.”

In *Biharilal Rada v Anil Jain*⁸, the Supreme Court cited, with approval, the following definition of “general”, from Black’s Law Dictionary:

“... It relates to the whole kind, class, or order. ... Pertaining to or designating the genus or class, as distinguished from that which characterises the species or individual; universal, not particularised, as opposed to special; principal or central, as opposed to local; open or available to all, as opposed to select; obtaining commonly, or recognised universally, as opposed to particular; universal or unbounded, as opposed to limited; comprehending the whole or directed to the whole, as distinguished from anything applying to or designed for a portion only. Extensive or common to many.”

“Generally”, therefore, does not, however, mean “ordinarily” though, in everyday speech, we tend to use one for the other. The High Court of Mysore, in its decision in *Padmanabhacharya v State of Mysore*⁹, underscored the difference between the expressions, by holding that

⁷ (2023) 3 SCC 1

(2009) 4 SCC 1



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“the word ‘generally’ means as a general rule, whereas the word ‘ordinarily’ means ‘in the large majority of cases but not invariably’.”

28. Statute 32(5), therefore, requires that, as a general rule, the procedure that it envisages *is to be followed*. If, in a particular case, it is *impossible* to do so, then, *perhaps*, one or the other ingredients of the procedure may be dispensed with. Even in such a case, a conscious decision to do so, with cogent and convincing reasons, must be forthcoming, not only “on the file” but also communicated to the student concerned.

29. In the present case, however, no such decision is forthcoming. Absent strict compliance with the protocol envisaged by Statute 32(5), therefore, the impugned decision would necessarily stand vitiated.

30. It is clear, from the facts, that the JNU has acted in breach of the procedure prescribed in Statute 32(5). Statute 32(5) envisages a very clearly delineated procedure, which requires, as one step following the other,

- (i) recording of the deposition of the complainant,
- (ii) recording of the statement of the accused person,
- (iii) recording of the statements of the witnesses mentioned by the complainant and the accused,
- (iv) recording of the evidence of the JNU staff or other persons present at the occasion who witnessed the incident,
- (v) cross-examination of the accused and the complainant,



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- (vi) examination of any material evidence like audio/video tapes or paper documents *after establishing their veracity from the persons who submitted them*,
- (vii) preparation of a final comprehensive report setting out the specific charge against the accused,
- (viii) issuance of a show cause notice to the accused,
- (ix) study and examination of the defence of the accused,
- (x) preparation of a report recommending appropriate disciplinary action,
- (xi) preparation of a final report and submission of the recommendations to the VC for approval, and
- (xii) award of punishment to the students and conveying of the decision to him/her.

31. In the present case, there have been several breaches of this procedure, not all of which can be explained away by asserting that the petitioner had not attended the enquiry despite three requests. Mr. Saha submitted that the statement of the complainant had in fact been recorded. If so, no copy thereof was provided to the petitioner. Neither was the petitioner provided with the audio/video tapes regarding the alleged incident. *As per the paragraph from the written note of arguments submitted by Mr. Saha extracted in para 21 (supra), in arriving at the decision to rusticate the petitioner, reliance had been placed by the JNU on the security report dated 13 September 2023, depositions of security personnel and the video recording of the incident dated 29 August 2023 and a CSO report dated 12 October 2023. It is not in dispute that the petitioner was not provided any copy*



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either of the depositions of the security personnel, or of the video recording of the incident, or of the CSO report dated 12 October 2023, though all three have, admittedly, been used by the Proctorial Committee against the petitioner. This, by itself, is in flagrant violation of the most basic tenets of natural justice, and vitiates the impugned decision in its entirety.

32. The petitioner had, repeatedly, requested the JNU to be made available copies of the material against her, so that she could test the veracity thereof. The written note submitted by Mr. Saha acknowledges that the decision to punish the petitioner was taken after, *inter alia*, relying on the depositions of the security personnel. It was incumbent upon the JNU, in view of condition (5) in Statute 32(5), to provide the petitioner copies of the said statements and permit her to cross-examine the deponents thereof.

33. Similarly, as the video recording of the incident was also relied upon, by the JNU, to arrive at a final decision, the petitioner was required, per clause (6) of Statute 32(5), to be provided a copy of the said evidence. Besides, Clause (6) also required the veracity of the audio/video tapes to be established from the persons who had submitted them. This, too, was admittedly never done. The importance of complying with this statutory requirement stands underscored in the present case as the petitioner herself submitted that, if the raw CCTV footage of the rear entrance to the campus was carefully viewed, it would become apparent that the petitioner had not assaulted the security personnel, but that the actual ground position



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was *vice versa*. There is no observation, much less any finding, either in the punishment order or in the appellate order, regarding this submission of the petitioner.

34. The JNU has not sought to contend, either in its counter affidavit to the writ petition or during arguments in Court, that any exercise of establishing the veracity of the audio/video recording relating to the alleged incident had ever been undertaken. If that is so, by virtue of clause (6) of Statute 32(5), the audio/video recording could not have been relied upon at all.

35. Besides the aforesaid clear breaches, not only of the express requirements of the procedure to be followed in Proctorial Enquiries as envisaged by Statute 32(5), there was further breach in compliance with the requirements of the Statute as, admittedly no comprehensive report, as required by clause (7) of Statute 32(5)(7) was prepared before issuance of the show cause notice to the petitioner.

36. In fact, Statute 32(5) envisages preparation of *three* reports. It goes without saying, even if it is not so expressly stated in Statute 32(5) that the accused student would have to be provided copies of the said reports. In the context of disciplinary proceedings, this principle stands settled by the oft-cited decision in *UOI v. Mohd Ramzan Khan*¹⁰. Apart from the pre-Show Cause Notice report envisaged by clause (7), clause (8) of Statute 32(5) required the defence of the petitioner to be studied and examined, whereafter *two more reports*



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were required to be prepared in terms of Statutes 32(5)(9) and 32(5)(10). The counter affidavit of the JNU does not indicate that any such reports were prepared. If such reports were prepared, it was incumbent on the JNU to provide copies of the said reports to the petitioner. Apparently because no such reports were ever prepared, no copies thereof were ever provided to the petitioner.

37. A reading of Statute 32(5) also indicates that the decision to punish the petitioner as well as the decision on the appeal preferred by the petitioner against the punishment were required to be reasoned, taking into consideration the defence raised by the petitioner. In the present case, however, Office Order dated 8 November 2023 whereby the JNU decided to rusticate the petitioner, and the appellate order dated 23 November 2023, were both completely unreasoned. They make no reference to the contentions of the petitioner either in her reply or in her appeal, or to the evidence on which the JNU sought to rely to arrive at a finding against the petitioner. There is no prior enquiry report or any other document which could indicate that the decision to confirm the allegations against the petitioner had been arrived at with due application of mind.

38. There is, therefore, clear substance in Mr. Chimni's contention that, in the entire exercise that was carried out, the only material against the petitioner was the initial security report and, perhaps the statement of the Security Guard, who complained against her.

39. Mr. Saha also sought to contend that, in fact, the second request



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for adjournment, made by the petitioner, was not *bona fide* as, though she stated that she had travelled out on 3 October 2023, she was found participating in a rally in Delhi on 11 October 2023. That submission, too, is, however, predicated on a CSO report dated 12 October 2023 (as is admitted in the extract from the written submission tendered by Mr. Saha and reproduced in para 21 *supra*, which was neither shown to the petitioner, nor was any explanation sought from her in that regard.

40. Even if the petitioner had not participated in that enquiry, it did not absolve the JNU of its requirement to provide the petitioner with all the material against her to enable her to put up a proper defence. Though Mr. Saha sought to submit that the material against the petitioner could not be provided to her as she never appeared on the days when she was called to appear, he has not been able to draw my attention to any provision which stipulates that the accused student would be made available the material against her, or him, only when she, or he, appears before the Proctorial Enquiry. Arriving at a decision that a person is culpable of a particular misconduct or offence without providing to the person the material and the evidence on which the decision is admittedly based, as acknowledged in the written note submitted by Mr. Saha, amounts to clear and flagrant violation of the principles of natural justice and fair play.

An Advisory Note

41. Discipline in students in educational institutions is of the

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essence. There can be no compromise in that regard. While there can be no proscription against students engaging in political activities, they cannot be allowed to do so in a manner which would disrupt normal campus life, or the orderly conduct of affairs in the educational institution of which they are a part. Educational campuses cannot, particularly, be allowed to be converted into political platforms, to propagate party politics. Genuine causes can be promoted, but in a manner which is conducive to peace and harmony, and which does not compromise on the core function of the institution, which is to educate an entire generation to be the leaders of tomorrow. Disruptive activities by students have, therefore, to be sternly dealt with, and there is no room, whatsoever, for sympathy in such cases. Failure, on the part of the institution concerned, to follow the sanctified statutory procedure for dealing with such cases results in challenges such as the present, and in the Court having, on the ground of unsustainable breach of the statutory protocol, to set aside the action taken by the institution. If the student concerned is innocent, that, of course, would be just and fair; on the other hand, if the student is actually complicit in the allegations against her, or him, victory in a judicial battle harbours the pernicious possibility of her, or him, being emboldened to continue such activities. If, therefore, the University, or institution, is serious about instilling discipline in its premises, it has to ensure that enquiries conducted against students suspected of unpardonable indiscipline, and punishments awarded consequent thereto, are in strict compliance with the statutory protocol. I have to pen this advisory note only because this is the third case, in two weeks, in which I have had to interfere with the punishment awarded to students suspected of



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seriously disruptive activities only because the University, or institution, concerned has been casual about following the statutory protocol in proceeding against the allegedly erring student.

Conclusion

42. Resultantly, the impugned orders dated 8 November 2023, 16 November 2023 and appellate order dated 23 November 2023 as well as the decision to rusticate the petitioner and evict her from the premises in her occupation cannot sustain on facts or in law. They are accordingly quashed and set aside.

43. The petitioner is, therefore, directed to be reinstated in the JNU and allotted a hostel for her accommodation.

44. This shall, however, not prevent the JNU from proceeding against the petitioner, if it so desires, strictly in accordance with law and in complete compliance with the provisions of Statutes governing the JNU.

45. The writ petition stands allowed to the aforesaid extent with no orders as to costs.

C.HARI SHANKAR, J

FEBRUARY 7, 2024/yg

Click here to check corrigendum, if any

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