

(2017) 10 DEL CK 0396

In the Delhi High Court

Case No : Civil Writ Petition No. 7914 Of 2016, Civil Miscellaneous No. 32751 Of 2016

Anwesha Chakraborty

APPELLANT

Vs

Jawaharlal Nehru University

RESPONDENT

Date of Decision : 12-10-2017

Acts Referred:

Constitution Of India, 1950 — Article 19(1)
Jawaharlal Nehru University Act, 1966 — Section 5(10), 35(2)(5)
Evidence Act, 1872 — Section 114
General Clauses Act, 1897 — Section 27

Citation : (2017) 10 DEL CK 0396

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Malavika Rajkotia, Vaibhav Vats, Soumya Maheshwari, Ginny J. Routray, Anushka Ashok

Final Decision : Allowed

Judgement

V. Kameswar Rao, J

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

â??In view of the facts & circumstances stated above, it is prayed that this Honâ??ble Court in public interest may be pleased to:

1. issue a writ of certiorari or any other writ, order or direction thereby quashing and setting aside the report of the High Level Enquiry

Committee set up by the respondent vide Office Order No. 203/CP/2016 dated 22.8.2016 of the Vice Chancellor punishing the petitioner,

and all other proceedings consequential to and arising out of the report of the High Level Enquiry Committee of the respondent University;

2. award the petitioner the costs of these proceedings;

3. Pass such further order or orders as this Honâ??ble Court may deem fit.â??

2. It is the case of the petitioner, post the events of February 09, 2016, the Respondent set up a 'proctorial enquiry' to enquire into the allegedly

sedition slogans raised during the event. However, this enquiry was superseded by the Vice Chancellor, who set up a ""High Level Enquiry

Committee"". The students identified by the HLEC sent a representation to the Committee, challenging its constitution and also requested that the

findings, charges, and the purported evidence be shared with them. The HLEC failed to respond to any of these requests. As per the HLEC

recommendations, the Petitioner was found guilty of ""lending her name in the poster titled ""Against the Brahminical collective conscience! Against the

judicial killing of Afzal Guru and Maqbool Bhatt..." in the name of cultural evening thus arousing communal and caste feelings."" Whereby a fine of

Rs.20,000/- was imposed upon the Petitioner. In order to protest the unfair manner in which the Petitioner, among other students, was punished by the

Respondent, some students of the University went on an indefinite hunger strike, followed by a mass hunger strike by some teachers of the University.

The Petitioner subsequently, approached this Court for quashing the aforementioned office order. This Court held that the Office Order will not be

given effect until disposal of the appeal filed by the Petitioner before the Vice Chancellor. The decision of the Chief Proctor was upheld and the

Petitioner was directed to deposit a sum of Rs.20,000/- as fine. The Petitioner has been subjected to an enquiry which was in violation of the principles

of natural justice. Any administrative inquiry devoid of the adherence to these principles does not stand. Reference is made by Ms. Rajkotia to the

judgments of the Supreme Court in AK Kraipak v. Union of India AIR 1970 SC 150 and State of Orissa v. Dr. (Miss) Binapani Dei and Ors. AIR

1967 SC 1269.

3. It is the submission of Ms. Malavika Rajkotia, that the impugned action of the respondent is bad for the following reasons:-

A. Violation of Principles of Natural Justice

The principles of natural justice have been violated at every step of the enquiry undertaken by the Respondent. The enquiry process suffered from the

following lacunae:

a. Biased Enquiry

4. The appellate authority is the Vice Chancellor whose approval had been granted for imposing the punishment under Office Order 150/CP/2016

dated April 25, 2016. The Vice Chancellor was already prejudiced against the Petitioner and was consequently incapable of appreciating evidence

from an unbiased perspective. The principle of *Nemo debet esse iudex in propria causa*"" means that no one should be a judge in his own cause is

applicable in this case. She referred to the judgment of the Supreme Court in the case reported as (1978) AIR 597 *Maneka Gandhi v. Union of India*,

wherein the Supreme Court has held that administrative action shall be held in a manner which is patently impartial and meets the requirements of

natural justice. In the instant factual matrix, it is clear that the appellate authority is the Vice Chancellor whose approval had been granted for imposing

the punishment. As such, the Vice Chancellor cannot be the appellate authority as he was already prejudiced against the petitioner and would have

been incapable of appreciating the evidence from an unbiased perspective.

b. Confrontation of Evidence

5. The Respondent failed to provide the Petitioner with copies of all statements and evidence collected by the High Level Enquiry Committee and

consequently used by the Appellate Authority. The Respondent provided the Petitioner with a series of haphazardly compiled documents which were

completely irrelevant and did not prove any of the charges made against the Petitioner. The Respondent has however, used these statements to level

serious and false charges against the Petitioner. She referred to the judgment of the Supreme Court in the case reported as (1955) AIR 65

Dhakeshwari Cotton Mills v. Commissioner of Income Tax. In denying the Petitioner the opportunity to examine the statements and documents

collected by the HLEC, the Respondent has denied the Petitioner of a fair opportunity making the enquiry process arbitrary and therefore illegal.

c. Cross examination

6. The Petitioner has also not been given the opportunity to cross examine persons or test the veracity of the persons examined by the committee and

to lead evidence in her defence. This clearly vitiates the process adopted by the Respondent. Clause (5) of Section 35(2) of the Statutes of the

University clearly states that a cross examination of the accused and the complainant is to be conducted in the proceedings conducted as part of a

proctorial enquiry. This opportunity has not been given to the petitioner in the instant scenario.

d. Notice

7. In addition to all of the lapses in the decision making process the Petitioner was not given notice about the proceedings which the Respondent

undertook to punish the Petitioner. She referred to the judgment of the Supreme Court in *Nagarjuna Construction Company Ltd. v. Government of*

Andhra Pradesh and Ors. 2008 (14) SCR 859.

B. Non-Application of Mind

8. The order passed is itself flawed in many respects. The imposition of the same penalty on all concerned students barring two, in spite of huge

differences in the acts that they have been held guilty of, reflects lack of application of mind as well as a complete ignorance of the principles of

sentencing that an administrative body entrusted with holding an enquiry must be aware of. Moreover, while the Appellate Authority has limited itself

to the question of quantum of punishment, it has failed to provide any reasons for the punishment imposed. The fact that the orders passed against all

the students were in boilerplate language furthers the factum of lack of application of mind by the Appellate Authority. She referred to the judgments

in the case of *Commissioner of Police v. Ghordandas* 1952 SC 16 and *D'Souza v. State of Bombay* 1956 SCR 382.

C. Application of Patently Illegal University Rules

9. The Respondent has punished the Petitioner under rules which are illegal and void. The Petitioner's alleged acts have been classified as a Category

II misconduct falling under clause (xxv), which reads,

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

provision is too vague and wide. It can encompass any act of a student, and should therefore be considered void. Clause (10) of Statute 32(5) of the

Statutes of the University state that the Vice Chancellor shall make the final decisions in any enquiry and shall approve the punishment imposed by the

enquiry committee. Clause (12) of Statute 32(5) of the Statutes of the University state that the Vice Chancellor shall also be the appellate authority.

Under these provisions, the Vice Chancellor is required to be involved in the process of enquiry at the first instance. However, he is also required to sit

in appeal over the same matter. This is in violation of the basic principle that a person cannot sit in appeal against their own order.

D. Violation of the Fundamental Right to Freedom of Speech and Expression

10. The order passed by the HLEC and later confirmed by the Appellate Authority is not only violative of the Principles of Natural Justice but also

deprives the Petitioner of her right to protest an activity to raise political issues which is her constitutional right under Article 19 (1) of the Constitution

of India, 1950. She relied on the judgment of the Supreme Court in the case of Anita Thakur & Ors. v. Govt of Jammu and Kashmir & Ors AIR 2016

SC 3808, wherein it was held that the right to peacefully protest is a fundamental right guaranteed by the Constitution. The involvement of the

Petitioner in the event held at the Sabarmati Dhaba on 9th February 2016 was peaceful the role played by her in the said event cannot be construed to

be disruptive or giving rise to caste and communal feelings. She referred to the judgment of this Court in Amritshava Kamal v. Jawaharlal Nehru

University 2007 (99) DRJ 528.

11. The past conduct of the Respondent is reflective of the fact that there exists a tendency in the Respondent to hold inquiries in a mala fide manner,

sidelining the interests of the students. In the abovementioned case, it was found that the Respondent had not provided the Petitioner with opportunity

or notice before the inquiry against the Petitioner. In support of this submission, Ms. Rajkotia referred to the judgment of Flora Gupta v. Jawaharlal

Nehru University Manu/De/3042/2012.

12. On the other hand, Ms. Ginny Routray learned counsel for the respondent would submit, the Petitioner was given ample opportunity to appear and

depose before the Enquiry Committee along with the liberty to carry materials and evidences in her defense at the stage of Enquiry, Show Cause

Notice and Appeal. The Petitioner failed to respond to the first notice dated February 17, 2016 wherein she was asked to appear before the

Committee on February 18, 2016.

Subsequently, a second notice was issued on February 18, 2016 asking her to appear before the Committee on February 19, 2016. A third notice was

served to the Petitioner on February 19, 2016 asking her to appear before the committee on February 26, 2016, however, the Petitioner abstained

herself from appearing before the committee and clearing her stand.

13. The Petitioner on March 02, 2016, addressed a letter to the HLEC wherein she stated that-

I have received three email communications from the High Level Enquiry Committee Nos. HLEC/JNU/2016/2086, (dated February 17,

2016), HLEC/JNU/2016/2114 (dated February 18, 2016) and HLEC/JNU/2016/2218 (dated February 19, 2016) asking me to appear on

18th February, 19th February and 26th February, respectively, before a High Level Enquiry Committee to explain my position on a

incident that took place on 9th February, 2016 near Sabarmati and Ganga Hostel and to bring any evidence in my defense.

In the circumstances following the 9th of February an extremely volatile situation has been created both inside and outside the campus

which has resulted in extreme mental and physical stress for me.....

Due to continuous media trial of JNU and JNU students, I feel insecure because the prevailing atmosphere in JNU, the city, and indeed the

country is not conducive to a proper and fair investigation, making depositions and statements without fear impossible.....

I also note with concern that in your letter that the HLEC has only afforded me a final chance for deposition but no opportunity to have

witness examined in my defence or to cross-examine the person(s) who have complained against me and the witnesses he/she/they have

presented. This is against my natural rights for justice.....

14. Ms. Routray would submit, the Petitioner feeling unsafe within the campus is not a viable excuse since the Respondent had taken steps to ensure

the safety and tight security for all the students within the campus, in fact even morning walkers were prohibited to enter the campus. Further, the

Petitioner was residing within the campus and had hand delivered all her letters/communications to the Administrative Building. It is thus, evident that

the Petitioner deliberately avoided appearing before the committee and made baseless excuse not to do so. She would further submit that had the

Petitioner appeared/deposed before the committee she would have been given the opportunity to access all the documents. She stated, even though

the Petitioner and other students were not provided the copies of the documents at the stage of show cause, the same were available to them to

access had they appeared before the committee to depose. Thus, they

themselves failed to avail the opportunity provided to them. She submitted that the Petitioner would have been given an opportunity to cross examine had she come forward to record her statement.

15. A Show Cause Notice dated March 14, 2016 was issued to the Petitioner which stated that-

As per the High Level Enquiry Committee findings, you (Ms. Anwesha Chakarborty, Registration No: 34427, Enrolment No: 15/62/MS/038,

Year of Admission: 2015, M. Phil./ Ph.D Student, Centre for Political Studies, School of Social Sciences, JNU, New Delhi) have been found

guilty on the following account under the Clause 3, Category II of Rules and discipline and proper conduct of students of JNU.

(xxv) Any other act which may be considered by the VC or any other competent authority to be an act of violation of discipline and conduct

16. According to Ms. Routray, the Show Cause Notice further asked the Petitioner to explain why disciplinary action should not be initiated against

her for indulging in the above mentioned acts. The Petitioner was asked to submit her reply to the Chief Proctor's Office latest by March 16,

2016, 17:00 hrs later extended till March 18, 2016 failing which it would be presumed that the Petitioner has nothing to say in her defense and the

office would proceed further in the matter. The Petitioner responded to the Show Cause Notice on March 18, 2016 wherein she stated that she was

supplied with an incomplete HLEC report. In this regard, Ms. Routray had submitted that all the students were provided with the complete report,

however the recommendations for punishments were removed keeping in mind the sensitivity of the matter as a number of students were named in it.

Insofar as the plea of the petitioner that the committee was non-representative and biased, it was her submission that the demand for democratization

from the JNUSU students Council is not based on any Rule or Statute of the Respondent University. Further, regarding the Petitioner's demand

for documents, she reiterated that had the Petitioner appeared/deposed before the committee the same would have been available before her to

examine.

17. According to Ms. Routray, at the stage of appeal the decision is to be taken only from record before the deciding Appellate Authority. Rules under

the Statute 32(5) state that the punished student has the right to appeal against

the punishment and Vice Chancellor is the empowered authority to deal with Appeals. The Petitioner chose not to avail opportunities given to her, both at the stage of enquiry, and at the stage of Show Cause Notice by wilfully not responding to the same, hence the Writ Petition on this ground alone is not maintainable.

18. She further stated, the Petitioner is a student studying in JNU and resident of Hostel in JNU. The Respondent is Jawaharlal Nehru University

(JNU) established and incorporated by an Act of Parliament in the year 1996. That at 12 pm on February 09, 2016 the Respondent got to know that

some students were planning to host an "anti-national event" in the evening at Sabarmati Dhaba. A meeting was called in the Vice

Chancellor's Office, wherein it was discovered that permission was sought from the Additional Dean of Students by the Petitioner on the false

pretext of holding a poetry reading competition at Sabarmati Dhaba. Despite the alleged "permission" immediately being withdrawn by the DOS,

the Petitioner carried on with the event which led to an enormous law and order situation. On February 11, 2016 forthwith a High Level Enquiry

Committee (HLEC) was constituted by the Vice-Chancellor to enquire into the incident that took place on February 09, 2016 in the Respondent's

campus. By virtue of Section 5(10) of the JNU Act read with Statute 32(1) of the Statutes of the University-

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

She would submit, the HLEC superseded the Proctorial Enquiry vide letter dated February 11, 2016 wherein it is stated that

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

withdrawn.

Further, the HLEC followed SOP being norms in view of the nature and the need of the enquiry. The terms of reference of the Enquiry entailed

formulation of SOP. She stated the SOP norms are essentially analogous to the Norms recommended for a Proctorial enquiry. She also submitted, that

the 3 member Committee later expanded to 5 by the Vice-Chancellor mainly consisted of University Professors and since it was an internal enquiry of

JNU, no third party was allowed to be present during hearing. Further, no one

was allowed to be represented by a third party. The terms of Reference for the Committee was:

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

19. According to her, on February 12, 2016 Office Order No.115/CP/2016 was passed, which stated as follows-

Based on the report submitted by the Chief Security Officer, video clipping of the events and other related documents, the High Level Enquiry

Committee, constituted by the Vice-Chancellor, JNU, is of the opinion that prima facie evidence of the occurrence of the following offences exists:-

- (i) Misrepresentation of the proposed event as a cultural evening although objective was to hold a political meeting.
- (ii) Forcefully holding the event even when the permission to hold it was withdrawn by the DOS.
- (iii) Creating a law and order situation on campus both at Sabarmati Hostel and Ganga Dhaba.
- (iv) Shouting unconstitutional slogans, and making derogatory remarks about the nation.

20. She would submit, the HLEC followed Standard Operating Procedures devised by the HLEC specifically for the said enquiry during the course of

enquiry. The HLEC spent considerable time in examining all the evidences pertaining to the event which included taking written depositions of eye

witnesses and security officials, posters, form for seeking permission, examining the video clips submitted by JNU Security Office and scrutinizing

various documents/posters related to this incident. The video submitted to the committee by the CSO was duly authenticated by a Government

approved agency: Truth Labs, Bangalore. Subsequently to enquiry procedure, the HLEC recommended that the Petitioner be charged under Category

II of (Rules of Discipline and Proper Conduct of Students of JNU) of the students of University and imposed a fine of Rs.20,000/-. The HLEC

submitted its report along with recommendations to the Vice Chancellor on March 11, 2016.

21. According to her, the Chief Proctor, after perusing the report of the HLEC,

issued a Show Cause Notice on March 14, 2016 along with an extension dated March 16, 2016 and a copy of HLEC report to the Petitioner. The Respondent subsequently on April 25, 2016, after more than a month, passed an office order wherein it was stated that-

With reference to the 9 February 2016 incident of JNU campus, the High Level Enquiry Committee (HLEC) has found Ms. Anwesha

Chakraborty (Registration Number-34427, Enrolment No: 15/62/MS/038, Year of Admission: 2015, M.Phil./PH.D Students, Centre for

Political Studies, School of Social Sciences) guilty on the following counts.

The University's Rules and discipline and proper conduct of students of JNU, Clause 3- Categories of misconduct and

indiscipline, Category-II, Sub- Category (xxv) prohibits Any other act which may be considered by the VC or any other competent

authority to be an act of violation of discipline and conduct.

As per the HLEC recommendation, Ms. Anwesha Chakraborty has been found guilty of

a) Lending her name in the poster titled 'Against the Brahminical collective conscience! Against the judicial killing of Afzal Guru and

Maqbool Bhatt' in the name of Cultural Evening thus arousing communal and caste feelings

This act on the part of Ms. Anwesha Chakraborty is serious in nature, unbecoming of a student of JNU and calls for stringent disciplinary

action against her. In view of this and keeping her career in mind, the Vice Chancellor has taken a somewhat lenient in the matter.

Ms. Anwesha Chakraborty is fined Rs. 20,000/- (Rupees twenty thousand only) and is also warned to be careful and not to get involved in

such incidents in the future. Otherwise, a stringent disciplinary action will be taken against her. She is directed to deposit the fine by 13

May 2016 and show the proof thereof to this office, failing which the hostel facility will be withdrawn with immediate effect and further

registration will not be allotted.

22. Subsequently on May 02, 2016, the Petitioner in her letter to the Vice Chancellor appealed to withdraw the Office Order dated April 25, 2016

wherein she stated that-

This charge against me is completely false and without any basis, as the object of the cultural evening was to inspire students to oppose

caste oppression and communal feelings.

According to Ms. Routray, the purpose of the event mentioned in the booking requisition form and in the poster were different. The booking requisition

form stated that permission was sought to hold a "Poetry Reading" A Country Without a Post Office at Sabarmati Dbaba on 9 February 2016

from 5 pm- 7:30 pm whereas the Poster stated-

"Against the Brahmanical Collective Conscience! Against the judicial killing of Afzal Guru & Maqbool Bhat! In solidarity with the

struggle of the Kashmiri people for their democratic right to self-determination! We invite you for a cultural evening of protests with

poets, artists, singers, writers, students, intellectuals, cultural activists 9th February, Tuesday, 5pm, Sabarmati Dhaba. There will also be an

art exhibition & and a photo exhibition portraying the history of the occupation of Kashmir & the people's struggle against it. We invite

everyone to join us in protest, in rage against the occupation and in solidarity with the valiant people of Kashmir.

23. She states, the Petitioner's name was mentioned in the poster along with the undertaking attached to the booking requisition form, however,

her name was later on struck off from the undertaking. Further, the Petitioner did not respond to the charge levelled against her in the Order dated

April 25, 2016 regarding her name on the Poster. The Chief Proctor on May 03, 2016 addressed a letter to the Petitioner wherein it was stated that-

With reference to your representation dated 2 May 2016 it is informed that Chief Proctor desired to meet you and discuss.

24. She submitted, this Court vide Order dated May 13, 2016 directed that the Order shall not be given effect till the appeals of the petitioners are

heard and disposed of. Subsequently, the Petitioner was given provisional admission to continue in the present semester keeping in view the Order

dated May 13, 2016 by the Delhi High Court.

25. That the Respondent finally issued the Office Order No.201/CP/2016 dated August 22, 2016 wherein it was stated that-

Evidence

1. She lent her name to be printed in an objectionable poster titled "Against

the Brahmanical collective conscience! Against the judicial killing of Afzal Guru and Maqbool Bhattâ?|â?? in the name of cultural evening thus arousing communal and caste feelings.

Recommendations

Ms. Chakraborty did not make any specific appeal to absolve herself from the charges made by the HLEC. On the contrary she questioned the formation of HLEC itself, and asked for documents and evidence related to her involvement in the event. The Committee thereupon considers the recommendations of the HLEC on the aforesaid student to be highly justifiable. Therefore, the punishment recommended by the HLEC i.e. â??A fine of Rs. 20,000â?stands as it is. In addition to it, she has to submit an undertaking in a prescribed format to the Chief Proctor.

26. She would also state, without prejudice to the fact that the allegations levied against JNU authorities in her Affidavit dated September 05, 2016 are wrong and denied. The Petitioner stated that-

They told me my offence lies in agreeing to a â??cultural eventâ? which was â??plannedâ? to raise â??anti-nationalâ? feeling within the University space. On saying I find nothing wrong in giving m name to a poster, which is the only evidence against me, I was asked whether I will participate in any such activities afterwardsâ?|â?|â?|.

On further refusing to answer this I was told that I am not being â??co-operativeâ? with the Committee. Then I was given a pile of files to look into in the next room with one of the members of HLEC for as long as it would take me.

By the Petitionerâ??s own admission it is evident that she was given sufficient time to go through the documents and further, she does not deny giving her name in the Poster which led to a law and order situation on February 09, 2016 nor does she express regret for the same.

27. That the Universityâ??s autonomy mean its right of self-government particularly, itâ??s right to carry on its legitimate activities without interference from any outside authority. That the petitioner against whom charges were framed was given adequate opportunity to defend herself, and the committee followed the rules of natural justice while holding the enquiry. That it is a settled law that matters falling within the jurisdiction of

educational authorities should normally be left to their decision and this Court would not interfere unless it thinks it must do so in the interest of justice.

This Court in *Jawaharlal Nehru University V. Flora Gupta*, LPA 570/2012 & CM No.14010/2012 held that-

The grounds on which administrative action is subject to control by judicial review are, 'illegality'; 'irrationality' and

'procedural impropriety'. The Court will be entitled to interfere in such matters if the decision is tainted by any vulnerability like

illegality, irrationality and procedural impropriety. To be 'irrational' it has to be held that on material, it is a decision 'so

outrageous' as to be in total defiance of logic or moral standards. If the power is exercised on the basis of facts which do not exist having

which are patently erroneous, such exercise of power shall be vitiated. Exercise of power will be set aside if there is manifest error in the

exercise or such power is manifestly arbitrary. To arrive at a decision on 'reasonableness' the court has to find out if the respondents

have left out a relevant factor or taken into account irrelevant factors.

28. She would state, the Respondent's action is within their authority and exercise their judgment in good faith, and followed the applicable laws.

The constitutional provisions, the provisions of the Act, the Statute and the Ordinances and the principles of natural justice have been complied with by

the Respondent. The Petitioner was served with notices at her hostel, in her various addresses and was asked to show cause and was also given

opportunity to defend herself before the enquiry committee. The Petitioner was given ample opportunity to defend but she herself lost the opportunity

by not even responding to the simple queries raised by the Appellate Committee.

29. That the Legal Submissions made and judgments relied upon in *Umar Khalid V. JNU*, W.P. Â© 7826/2016 and *Anirban Bhattacharya V. JNU*,

W.P. Â© 7828/2016 may be read as part and parcel of the present submissions. The judgments are:-

(i) *K.L. Tripathi v. State Bank of India and Ors* 1984 (12) SCC 43;

(ii) *State of Gujarat v. Pagi Bhura Bhai Rumal Bhai* AIR 1969 Gujarat 260;

(iii) *Ajeet Seeds Ltd. V. K. Gopal Krishnaiah* 2014 (1) SCC 685;

(iv) *Chief Commissioner of Income Tax (Administration) Bangalore v. V.K. Gururaj and Ors.* 1996 (7) SCC 275;

- (v) State of Punjab v. Bakhshish Singh 1997 (6) SCC 381;
- (vi) Suresh Koshy George v. University of Kerala AIR 1969 SC 198;
- (vii) State Bank of Patiala v. S.K. Sharma 1996 (3) SCC 36;
- (viii) Ram Chander Roy v. Allahabad University AIR 1956 ALL 40;
- (ix) V. Ramana v. APSRTC & Ors 2005 (7) SCC 335;
- (x) M.V. Bijlani Vs. UOI & Ors. (2006) 5 SCC 88.

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

30. Having heard the learned counsel for the parties and perused the written arguments/submissions submitted by the counsels, it is noted that the

subject matter of this petition is, the orders passed by the Competent Authority whereby a penalty in the nature of fine of Rs.20,000/- was imposed on

the petitioner, which order was upheld by the Appellate Authority with a direction to file an undertaking. The enquiry relates to the events held on

February 09, 2016 at the University Campus. The grounds of challenge by the petitioner are that the same has been held in violation of Statute 32(5)

of the Statutes of the University; proceedings have been held in violation of principles of natural justice; the action is actuated by malafide as the

University is also reviving stale proceedings by issuing notice to some of the concerned students in respect of incidents of 2015. On a reading of order

dated August 22, 2016, there is no connection between the findings of fact and violation of Rules of the respondent University. The orders have been

issued without giving the relevant material relied upon by the respective Authorities. The HLEC has prejudged the petitioner and the action taken on

the basis of the report of the Committee is not impartial and unbiased. The HLEC did not even reply to the petitioner's request for documents, on

the basis of which she has been found guilty. The impugned action has serious consequences for the petitioner's academic career. No

Rule/Statute or Ordinance, under which petitioner has been punished has been stipulated. The Appellate Authority premised its decision on the refusal

of the students to sign a vague undertaking that would have resulted in severe curtailment of their fundamental rights.

31. The respondent has justified its action by contending that the Enquiry Proceedings were held by following the principles of natural justice and the

Rules/Statutes. It is the petitioner, who failed to come forward and depose before the Committee. That apart, the respondent has also highlighted the seriousness of the charges for which the petitioner was held guilty. That apart, the appellate proceedings were held after giving due opportunity to the petitioner to inspect the documents and after inspection of the documents and upon hearing and inability of the petitioner to answer the queries put by the Appellate Authority, the appellate order was passed.

32. There is no dispute that the petitioner had filed an Appeal dated May 02, 2016. It is also a conceded fact that the Vice Chancellor-Appellate Authority had held its meeting on July 04, 2016. There is also no dispute that the petitioner was shown the record of the enquiry. The parties are at variance about the duration for which the record was shown. It is a conceded fact that a hearing was given to the petitioner on the same day, which resulted in the passing of the appellate order on August 22, 2016.

33. Clause 12 of the Norms and Procedure followed during enquiry stipulates that every punished student has a right to appeal. In the case in hand, after this Court had passed the order on May 13, 2016 in the earlier writ petition filed by the petitioner being W.P.(C) No. 4390/2016, the respondent University issued a communication dated June 24, 2016 asking the petitioner to appeal to the Vice Chancellor and depose on July 04, 2016. The communication does not refer to the fact that the petitioner shall be given the relevant record/documents for inspection. Be that as it may, the learned counsel for the parties agree that the files/records/documents before the HLEC were given to the petitioner on July 04, 2016 to enable her to peruse the same and make submissions on the same day. Even assuming, three hours were granted to the petitioner to inspect the documents on July 04, 2016, some time need to have been granted to the petitioner to apply her mind on the evidence so noted by her during the inspection, which was against her and to make an effective appeal. Surely, for such purposes, she may have required reasonable time to prepare her case, which may include seeking legal advice. The procedure evolved by the Appellate Committee to allow inspection of the documents/records and hearing her could not be in conformity with the principles of natural justice and the law laid down by the Supreme Court in the case of Associated Cement Company Ltd. v. Workmen and another (1964) 3 SCR 652, wherein the Supreme Court was

considering an appeal arising out of an industrial dispute between the appellant and the respondent workman with regard to dismissal of five workmen employed by the appellant company. One of the issue was that before the enquiry was actually held on June 11, 1952, notice was not given to Malak Ram, one of the workmen telling him about the specific date of the enquiry. The Supreme Court held that failure to intimate to the workman concerned about the date of the enquiry may, by itself, not constitute an infirmity in the enquiry, but, on the other hand, it is necessary to bear in mind that it would be fair if the workman is told as to when the enquiry is going to be held so that he has an opportunity to prepare himself to make his defence at the said enquiry and to collect such evidence as he may wish to lead in support of his defence. The Supreme Court held, on the whole, it would not be right that the workman should be called on any day without previous intimation and the enquiry should begin straightaway. The Supreme Court held, such a course should ordinarily be avoided in holding domestic enquiries. In other words, the Supreme Court has held that an incumbent should be given sufficient opportunity/time to consider the evidence, which has come against him and to collect evidence in support of his defence. In the case in hand, no such time was given to the petitioner. That apart, if the material is being shown to the petitioner, on July 04, 2016, surely, some time should have been given to the petitioner to enable her to supplement her appeal already filed by her on May 02, 2016. This would be in conformity with the concept of fair play in action, which is the basis of natural justice. That apart, even in these proceedings, the respondent has not filed, the complete record of the HLEC. In fact, in some of the connected petitions, a stand has been taken in the written submissions that only certain documents relied upon by HLEC were filed before this Court and the entire evidence, documents, notices and proceedings are maintained by the respondent in its official files. The same are available for any other scrutiny as and when the same is requisitioned before the Court. Even if some depositions were filed along with the written arguments in some connected cases, the same are in Hindi. Even otherwise, the HLEC report refers to deposition of some eye witnesses, which are in the deposition files. It is not clear, who these witnesses are, who are being referred to. All the evidence, documents, notices and proceedings being in the official files, there was no occasion for

this Court/counsel for the petitioner to look into the same for a proper appreciation/justification of the impugned orders.

34. That apart, I note, the petitioner, in her appeal dated May 02, 2016 has raised several grounds. A perusal of the order dated August 22, 2016, it is

seen that the Appellate Authority has not dealt with the said grounds. The Supreme Court in the case reported as (2013) 6 SCC 530 Chairman, Life

Insurance Corporation of India and others v. A. Masilamani, in para 19 held as under:-

“19. The word “consider”, is of great significance. The dictionary meaning of the same is, “to think over”, “to regard as”, or

“deem to be”. Hence, there is a clear connotation to the effect that, there must be active application of mind. In other words, the term

“consider” postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority, should reflect intense

application of mind with reference to the material available on record. The order of the authority itself, should reveal such application of mind. The

appellate authority cannot simply adopt the language employed by the disciplinary authority, and proceed to affirm its order. (Vide: Indian Oil Corpn.

Ltd. & Anr. v. Santosh Kumar, (2006) 11 SCC 147; and Bhikhubhai Vithlabhai Patel & Ors. v. State of Gujarat & Anr., AIR 2008 SC 1771).

In view of the aforesaid judgment of the Supreme Court, it is expected that the Appellate Authority should have disposed off the appeal by a reasoned

and speaking order. This I say so, there is nothing in the Rule, relating to appeal which says otherwise i.e it is not necessary for the Appellate

Authority to pass a reasoned order.

35. Insofar as the plea of Ms. Malavika Rajkotia that the Vice Chancellor having involved in the process of enquiry at the first instance, cannot sit in

appeal against his own order is concerned, the same is without any merit for more than one reason. Firstly, the petitioner by appearing before the

Appellate Authority on June 16, 2016 has submitted to the jurisdiction of the Appellate Authority i.e. the Vice Chancellor. Secondly, the vires of Rule

12 contemplating an appeal to the Vice Chancellor is not under challenge.

36. Insofar as the judgments relied upon by Ms. Routray are concerned, in K.L. Tripathi (supra), the issue, which fell for consideration was with

regard to a challenge to the departmental enquiry by an employee on the ground

that he was not provided opportunity to cross examine. The Supreme Court held that in the absence of any lis as to the facts, allegations having been not disputed by the delinquent officer, no prejudice has been caused.

37. The issue, which has been considered by me in the aforementioned paras is only with regard to, whether sufficient opportunity was given to the petitioner to inspect the documents at the appellate stage and then submit an appropriate appeal after the inspection, so as to make the appellate proceedings meaningful and purposeful. Hence, the judgment would have no relevance.

38. Insofar as the judgment in the case of State of Gujarat v. Pagi Bhurabhai Rumbalbai (supra), is concerned, in the said case the Gujarat High Court held that the delinquent has no right to seek a personal hearing at the appellate stage. In the case in hand, the personal hearing having been agreed to and granted by the University, it cannot be contended by Ms. Routray that the personal hearing was not required.

39. In Ajeet Seeds Limited (supra), para 10 on which the reliance was placed, relates to a conclusion with regard to Section 114 of the Evidence Act, which enables the Court to presume that in common course of natural events, a communication made would have been delivered at the address of the addressee. A reference was made to Section 27 of the General Clauses Act, which gives rise to presumption that service of notice has been effected when it is sent to the correct address by registered post. The said judgment has no applicability on the limited issue being considered and decided by this Court.

40. In Hira Nath Mishra and others v. The Principal, Rajendra Medical College, Ranchi and another (1973) 1 SCC 805, the Supreme Court was concerned with a case where the appellants, the male students of a Medical College lived in the College hostel. A confidential complaint was received by the Principal from thirty six girl students residing in the Girls Hostel of the College alleging that the appellants with some others at late night had entered into the compound of the Girls Hostel and walked without clothes on them. The Principal constituted an Enquiry Committee consisting three Members of the staff. The identification through photographs was carried out and the Girls by and large could identify the appellants from the photographs. The appellants were called before the Committee one after the

other. They were explained the contents of the complaint. Due care was taken not to disclose the names of the Girls, who made the complaint. The appellants denied the charges and said they were in the Hostel at that time.

The Supreme Court held as under:-

(i) The complaint made to the Principal related to an extremely serious matter as it involved not merely internal discipline but the safety of

the girl students living in the Hostel under the guardianship of the college authorities. These authorities were in loco parentis to all the

students-male and female who were living in the Hostels and the responsibility towards the young girl students was greater because their

guardians had entrusted them to their care by putting them in the Hostels attached to the college. The authorities could not possibly dismiss

the matter as of small consequence because if they did, they would have encouraged the male student rowdies to increase their questionable

activities which would, not only, have brought a bad name to the college but would have compelled the parents of the girl students to

withdraw them from the Hostel and, perhaps, even stop their further education. The Principal was, therefore, under an obligation to make a

suitable enquiry and punish the miscreants.

(ii) The Police could not be called in because if an investigation was started the female students out of sheer fright and harm to their

reputation would not have cooperated with the police. Nor was an enquiry, as before a regular tribunal, feasible because the girls would

not have ventured to make their statements in the presence of the miscreants because if they did, they would have most certainly exposed

themselves to retaliation and harassment thereafter. The very reasons for which the girls were not examined in the presence of the

appellants, prevailed on the authorities not to give a copy of the report to them. It would have been unwise to do so.

(iii) Therefore, the authorities had to devise a just and reasonable plan of enquiry which, on the one hand, would not expose the individual

girls to harassment by the male students and, on the other, secure reasonable opportunity to the accused to state their case. The course

followed by the Principal was a wise one.

(iv) Under the circumstances of the case, the requirements of natural justice

were fulfilled, because principles of natural justice are not inflexible and may differ in different circumstances.â??

From the above, it is noted that, keeping in view the nature of allegations against the male students; to protect the identity of the complainants, the girl students, the Supreme Court had upheld, the nature of enquiry conducted by the University as being in compliance with the principles of natural justice. The aforesaid judgment of the Supreme Court has no applicability in the facts of this case and also on the limited issue that is being decided by this Court.

41. Insofar as the judgment of the Supreme Court in the case of Suresh Koshy George (supra) is concerned, in para 7 on which reliance was placed by Ms. Routray, the Supreme Court was considering a submission that the Vice Chancellor had not made available to the appellant a copy of the report submitted by the Inquiry Officer before asking him to make a representation. The Supreme Court rejected the contention by holding that the enquiry was held after due notice to him and in his presence. He was allowed to cross examine the witnesses examined in the case and he was permitted to adduce evidence in rebuttal of the charge. The Supreme Court also held, no Rule was brought to its notice, which stipulated the supply of report. The Supreme Court also observed that it was not the case of the appellant that he had asked for the copy of the report, which was denied to him. The judgment relied upon by Ms. Routray is distinguishable, inasmuch as the petitioner did not participate in the proceedings/the proceedings were held in her absence. Further, the Appellate Authority itself has offered to allow inspection of the documents/record of HLEC. The petitioner had asked for the documents/record/material in her appeal dated May 02, 2016. The Appellate Authority having allowed the inspection, reasonable time should have been given to the petitioner to supplement the appeal already filed by her on May 02, 2016. The judgment has no applicability, at least on the limited issue that is being decided by this Court.

42. Insofar as the judgment of the Allahabad High Court in the case of Ram Chander Roy (supra) wherein reliance was placed on paras 24 and 25, relates to the power of the Vice Chancellor to impose any punishment in maintaining the discipline of the University. There is no dispute on the said proposition of law. Insofar as the plea that the right of cross examination was

denied is concerned, the High Court held that it was not convinced that in a case where Head of an Educational Institution takes disciplinary proceedings, it is necessary that he must give an opportunity to the student to cross examine the witnesses, who may be examined by him in order to satisfy himself that an occasion has arisen for taking disciplinary action against him. In matter of discipline, the Head of Educational Institution does not act as a judicial or a quasi judicial Tribunal. The Disciplinary power vested in any Officer or the Head of an Institution is a power which is absolutely necessary for and ancillary to the exercise of administrative functions in that capacity. Suffice to state, 32(5) of the Statutes of the University lays down the procedure. In any case, as stated above, on a limited issue, which is being decided, this judgment would not have any applicability.

43. In *State Bank of Patiala and Others v. S.K. Sharma* (supra), Ms. Routray who relied upon para 35 to contend that no prejudice has resulted to the petitioner on account of non furnishing him the copy of the statements of witnesses as it cannot be said that he did not have a fair hearing is concerned, there is no dispute, in view of the position of law noted above, but the limited time given by the Appellate Authority to the petitioner to inspect the documents/material/record and to give a hearing on the same day would not be in conformity with the principles of natural justice. Surely, the Authority empowered under the Statute is required to give a reasonable opportunity to make the very purpose of the power being exercised by such Authority meaningful.

44. Insofar as *State Bank of Punjab and others v. Bakhshish Singh* (supra) is concerned, there is no dispute that the Court cannot sit as an Appellate Authority over and above the conclusion of the Disciplinary Authority that a particular act was a gravest act of misconduct warranting dismissal. As stated above, on the limited issue that is being decided by this Court, this judgment would have no relevance.

45. Insofar as *Chief Commissioner of Income Tax (Administration), Bangalore v. V.K. Gururaj and others* (supra) is concerned, the said judgment is on the proposition of deemed service, which in any case has no applicability for the reasons already stated.

46. Insofar as the judgment in the case of *V. Ramana v. APSRTC and Ors* (supra) is concerned, the same relates to the issue of judicial review with

regard to punishment. The same has no applicability in view of limited issue that is being decided by this Court.

47. Insofar as the reliance placed by Ms. Routray on the judgment of M.V. Bijlani (supra) is concerned, in view of the limited issue that is being

decided by this Court, this judgment would have no relevance.

48. In view of my above discussion, the writ petition is allowed to the extent that the Appellate Order dated August 22, 2016 is set aside and the

matter is remanded back to the Appellate Authority with a direction to grant an opportunity of inspection to the petitioner, the record of the HLEC for

two continuous days during office hours only by notifying the date and time to the petitioner for the same and upon such inspection, the petitioner shall

have one week time to file a Supplementary Appeal, upon which the Appellate Authority shall give a hearing to the petitioner on a date and time fixed

by the Appellate Authority, who thereafter shall, by considering the appeal(s) already filed by the petitioner and the Supplementary Appeal, if any,

pass a reasoned order as expeditiously as possible preferably within six weeks thereafter. Till such time, the order dated April 25, 2016 shall not be

given effect to. It is also made clear in view of the undertaking given by the petitioner in W.P.(C) No. 4390/2016 the petitioner shall not indulge in any

strike or dharna or agitation or coercive action in future in connection with the issue, till such time the proceedings between the parties attain finality.

No costs.

CM No. 32751/2016 (for stay)

Dismissed as infructuous.