
(2013) 02 DEL CK 0084

In the Delhi High Court

Case No : Writ Petition (C) No. 4873 of 2012 and CM 9996 of 2012

Bhim Sen Singh

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Constitution of India, 1950 — Article 19(1), 311
Telegraph Act, 1885 — Section 3(6)

Citation : (2013) 02 DEL CK 0084

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Amrender Saran with Mr. Amit Kumar, Mr. Ankit Jain, Mr. Piyush Kaushik and Mr. Shantanu Bajaj, for the Appellant; Parag P. Tripathi, with Mr. Mohinder J.S. Rupal, Ms. Monisha Handa, Anurabh Ganguli for R-1, Ms. Pinky Anand, with Ms. Ankita Mishra, Aayush Chandra for R-2, 3 and 5 and Mr. Dhruv Mehta, with Ms. Beenashaw Soni, for R-4, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—By the present petition, the Petitioner, inter alia, seeks directions for quashing of the order of suspension dated 1st August, 2012 passed by the Respondent No. 5, restraining the Respondents from interfering in the functioning of the Petitioner as Principal of Respondent No. 2 and quashing of the appointment of the enquiry officer. A brief exposition of the facts is that the Petitioner was appointed as the Principal of Respondent No. 2 on 27th February, 1998. On 30th July, 2012 the Petitioner sent an invite for a press conference to be addressed by him as the Principal of Respondent No. 2 at 1.00 PM on 31st July, 2012 so as to apprise the media regarding the credentials of Respondent No. 5/ Chairman of the Governing Body of the college. In the press conference held on 31st July, 2012, the Petitioner leveled allegations against Respondent No. 5 in public and called for his removal. It was also alleged that Respondent No. 5 was considering selection of a person to the post of Vice-Principal of the college, who has been censured by an enquiry committee constituted a few years ago.

Allegations were also made against the Registrar of the University stating that she was mentally unfit and against the Vice- Chancellor of the University as well. In view of the press-conference held by the Petitioner, 7 members of the Governing Body wrote to Respondent No. 5 for convening a special meeting on emergent basis to consider the action of the Petitioner in calling and holding unauthorized press conference casting aspersion on the Chairman/ Respondent No. 5 and officials of the Delhi University, filing a civil suit for defamation against the Dean, Students Welfare University in his capacity as Principal without obtaining approval of the Governing Body and for considering the recommendations of the Selection Committee regarding appointment of Vice-Principal. The Petitioner sought recusal from attending the said emergent meeting as issues regarding him were to be considered. Even Respondent No. 5 expressed his desire to recuse but the other members of Governing Body decided against it and thus Respondent No. 5 participated in that meeting. The said special meeting of the Governing Body of the college was held on 1st August, 2012 which was attended by 9 out of 12 members of the Governing Body including Respondent No. 5. The Governing Body unanimously decided to institute an enquiry into the actions of the Petitioner and resolved to place him under suspension with immediate effect, subject to approval of the University of Delhi and simultaneously resolved to appoint Dr. S.P. Gupta as Vice-Principal of the college, subject to approval of the University of Delhi. Consequently, on the approval of the competent authority, the following office order was issued:

August 01, 2012

OFFICE ORDER

In terms of the provisions of Ordinances XII/XVIII of the University, Dr. Bhim Sen Singh, Principal, Kirori Mal College, is hereby placed under suspension with immediate effect pending conclusion of the enquiry into his actions. During the period of his suspension his entry into the college premises will be prohibited and Dr. Singh will not leave the station without the prior permission of the undersigned.

Dr. Bhim Sen Singh is directed to hand over the charge of the office of the Principal, Kirori Mal College to Dr. S.P. Gupta, Acting Principal of the College immediately.

CHAIRMAN, GOVERNING BODY

Kirori Mal College,

University of Delhi

Dr. Bhim Sen Singh,

Principal,

Kirori Mal College,

2. Thus, the present petition. As regards the grievance of the Petitioner with regard to leaving the station without prior permission of Respondent No. 5, learned counsel for Respondent No. 1 on instructions on 24th August, 2012 stated before this Court that the condition prohibiting the Petitioner from leaving the station without prior permission of the Chairman will not be pressed if the Petitioner is available for enquiry. So this grievance of the Petitioner stands satisfied.

3. As regards the grievance of the Petitioner regarding permission to enter the college, the Petitioner was directed to place on record the material showing that he was taking classes as a teacher. However, the said material has not been placed on record which would have fortified the claim of the Petitioner that his going to the college was essential in the interest of the students.

4. Learned counsel for the Petitioner contends that calling of the press conference dated 31st July, 2012 was not a misconduct. The action of the Respondents is mala-fide and biased as Respondent No. 5, who issued the show cause notice and presided over the Governing Body, was biased against the Petitioner because allegations were leveled against him by the Petitioner on 31st July, 2012 in the press conference. The statements made by the Petitioner in the press conference were based on facts because FIRs were registered and complaints have been filed against Respondent No. 5. Respondent No. 5 was terminated from the position of the Chairman of the Upras Vidyalaya on 16th July, 2011. Respondent No. 5 embezzled Rs. 91 lakhs as per the FIR registered against him at PS Vasant Vihar. Further, despite the fact that Dr. S.P. Gupta was censured by the enquiry Committee of the college, he was improperly appointed as the Vice-Principal and his selection was made by a Committee in which the Petitioner was not made a member, which is contrary to the resolution that provides for the modalities of appointment of the Vice-Principal. The manner and language of the order leaves no doubt that the order of suspension was a result of malice. The order is akin to an order of externment. Though the meeting for appointment of Dr. S.P. Gupta as the Vice-Principal was kept on 4th August, 2012, however it was preponed to 1st August, 2012. All actions were taken in haste in one day. The order of suspension is without show cause notice to the Petitioner and is not a reasoned order. For suspending the Petitioner prior approval of the Vice-Chancellor was required, however the same was not taken. The ex-post facto approval cannot cure the defect in the order, which is contrary to Ordinance XII Clause 7 of the Delhi University. Thus the order of suspension is a nullity in the eyes of law. In view of the alleged bias, Respondent No. 5 was barred from taking any action against the Petitioner. Despite the fact that the reply to the show cause notice was received only on 8th August, 2012, a letter was sent to the learned enquiry officer on 7th August, 2012 seeking his consent clearly shows the pre- determined mind. The charge-sheet is so biased that the

enquiry would be a mere farcical and the conclusion is inevitable. In Delhi University a fact finding enquiry is always conducted before directing a full-fledged inquiry which has been given a go by in the present case. Reliance is placed on A.K. Kraipak and Others Vs. Union of India (UOI) and Others, ; Justice P.D. Dinakaran Vs. Judges Inquiry Committee and Another, ; State of Punjab Vs. V.K. Khanna and Others, ; B.D. Gupta Vs. State of Haryana, ; ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others, , S. Parthasarathi Vs. State of Andhra Pradesh, and M.N. Gupta and Another Vs. University of Delhi and Others, .

5. Learned counsel for the Respondent Nos. 2, 3 & 5 contends that the press conference was held by the Petitioner in his capacity as Principal of the college in the college premises, using the machinery and stationery of the college casting false, defamatory, derogatory and scandalous imputations and aspersions against the senior officials and functionaries of University and college and thus are gross acts of misconduct. The Petitioner was also asked to attend the meeting requisitioned on urgent basis, however the Petitioner refused to attend. The Governing Body being the competent authority, through unanimous resolution dated 1st August, 2012 decided to take immediate action and initiate an enquiry in accordance with law against the Petitioner. The suspension order was passed by the competent authority and was duly approved by the Vice-Chancellor. The Petitioner has not challenged the authority of Respondent No. 5 till date though he was appointed in 2011 and no representation has been either made to the Chancellor, Vice-Chancellor or Executive Council. If the Petitioner had any grievance he should have made a representation to the competent authority and should not hold a press conference. The allegations of the Petitioner against Ms. Alka Sharma, the Registrar of Delhi University are wholly unfounded and that is why the Petitioner in his rejoinder affidavit has stated that he has tendered apology to the Registrar. Thus, the same shows that the Petitioner acted in a reckless and hasty manner. The Petitioner not only made allegations against Respondent No. 5, he did not even spare the Respondent No. 4 the Vice-Chancellor and the Registrar of the University. In the FIR registered against Respondent No. 5, no cognizance has been taken. Further the statement of the Petitioner that FIR is registered on the complaint of Ms. Anjali Manglik is also incorrect. There were no allegations against Dr. S.P. Gupta in the complaint dated 30th July, 2012 which related to the Gherao of the Principal. After an enquiry only a censure was awarded which is not a disqualification for appointment as Vice-Principal of the college. The Petitioner in his capacity as Principal filed a suit for damages for defamation against the Dean, Students Welfare without taking approval from the competent authority. He did not even comply with the instructions of the Delhi University relating to timely implementation of the semester system in all colleges. The contention that he was not made part of the selection Committee is also contrary to the record. The procedure for appointment of Vice-Principal was adopted as per the minutes of meeting dated 1st June, 1995 which were re-affirmed and according to which only views of the Principal were required to be ascertained and the Principal was not required to be

a member of the selection committee. The mala-fides have to be strictly proved and mere allegations of mala-fide are of no consequence. The Petitioner has been suspended by the competent authority in view of the misconduct and suspension is not a punishment.

6. The requisition of the Governing Body meeting was not by the Respondent No. 5 but by 7 members of the Governing Body. Though Respondent No. 5 wanted to recuse but he was stopped from recusing by 7 members. The decision to suspend the Petitioner and conduct an enquiry was not of Respondent No. 5 alone but was a unanimous and collective decision of the entire Governing Body. The other members of the Governing Body have not been made parties to the present petition. Reliance is placed on *Tata Cellular Vs. Union of India*, . The decisions in *A.K. Karipak* and *P.D. Dinakaran* (supra) have no relevance to the facts of the present case, as they were final orders and not interim orders. Further, the Respondent No. 5 has not acted as a Judge in his own cause. The Governing Body had only recommended the enquiry and suspension. The final order is of the Respondent No. 4. the Vice-Chancellor as the office order dated 1st August, 2012 has been issued after the approval of Respondent No. 4. In serious cases suspension is warranted, as in the present case the Petitioner in his rejoinder affidavit has stated that he would call a press conference again. The Petitioner is using the college premises, stationery and all other material for his own purposes which is not permissible. Seeking the consent of the enquiry officer in advance cannot vitiate the decision of the Committee to hold the enquiry. The contention that the suspension order is non-speaking is wholly erroneous as the documents preceding thereto i.e. the letter requisitioning the meeting, the agenda and the minutes of the meeting clearly indicated the reasons for suspension. Further, in any case the suspension order is not required to be speaking order. The Court can look into the reasons from the attending documents resulting in passing the impugned order. The reliance of the Petitioner in *Oryx Fisheries Pvt. Ltd.*(supra) is misconceived as the said case related to confiscation of goods. Reliance is placed on *South Bengal State Transport Corporation Vs. Ashok Kumar Ghosh and Others*, wherein it was held that there is no infirmity even if enquiry officer is appointed first. The decision of the Governing Body has merged into the order of Respondent No. 4 after he granted the approval. In *Oriental Bank of Commerce and Another Vs. R.K. Uppal*, it was categorically held that a brief speaking order as a final order was sufficient and it need not be detailed with reasons.

7. Reliance is also placed on *Tushar D. Bhatt Vs. State of Gujarat*, . Relying upon *Shobhana Bhartia and Ors. Vs. NCT of Delhi and Anr.* CrI.M.C. 35/2005 decided on 21st September, 2007 it is contended that protection of good will and name of a person is an essential right. Reliance is also placed on *Sewakram Sobhani Vs. R.K. Karanjia Chief Editor, Weekly Blitz and Others*, . Relying upon *State of Orissa Vs. Bimal Kumar Mohanty*, it is contended that the Petitioner has admitted in the pleadings that he would further held a press conference. In *U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan*, stay of suspension by the High Court was held to be patently illegal by the Supreme Court and it was held

that persons who charged of serious misconduct should be kept away. Though misconduct has not been defined in the University calendar, however the same has been comprehensively defined in State of Punjab and Others Vs. Ram Singh Ex. Constable, . The Petitioner breached the form of agreement of service for college teachers. Clause 5 of the Annexure to Ordinance XII of the University calendar entitles the Governing Body to determine the misconduct of the teacher. Respondent No. 5 committed no illegality in not recusing from the meeting. Reliance is placed on R.K. Anand Vs. Registrar, Delhi High Court, to state that path of recusal is often a convenient and soft opinion. In any case, though the allegations are against both the Respondent No. 5 the Chairman of the Governing Body and Respondent No. 4 the Vice-Chancellor, it cannot be said that they committed any illegality in not recusing and passing the impugned order. Hence, there is no merit in the present petition and the same be dismissed.

8. On behalf of Respondent No. 4 it is contended that bald allegations have been leveled against Respondent No. 4. The test laid down by the Supreme Court with regard to malice or ill-will is not satisfied. Reliance is placed on Indian Railway Construction Co. Ltd. Vs. Ajay Kumar, and Jasbir Singh Chhabra and Others Vs. State of Punjab and Others, .

9. Learned counsel on behalf of Respondent No. 1 University of Delhi contends that there is no averment of the Petitioner that the University flouted any rules. The allegations were in relation to the Registrar which were withdrawn. The argument of the learned counsel for the Petitioner that before passing the resolution for suspension prior consent ought to have been taken is not conceived by the law, as approval of an action can only be taken after the resolution has been passed by the Governing Body. The Petitioner never raised his concerns qua Respondent No. 5 either to Respondent No. 1 or Respondent No. 4. In view of the doctrine of necessity and that the Petitioner cannot make the situation a fate-accomplice, the Respondent No. 3 & 5 along with the other members of the Governing Body took the necessary action. Reliance is placed on M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation, . The present is a case of self-induced malice/ self-induced equity which is not permissible in law.

10. In rejoinder learned counsel for the Petitioner has relied upon Dr. (Mrs.) Usha Puri Vs. Governing Body, Aditi Mahavidhyalaya, Univ. of Delhi and Others, wherein this Court held that the requirement of prior approval of the University before an order of suspension is passed is mandatory in nature. Relying upon Annexure to Ordinance XII Clause 7, it is stated that the Governing Body cannot take a decision without prior approval of the Vice-Chancellor's to suspend the Petitioner. Thus, the decision in the present case is contrary to the mandatory requirements which has been upheld by this Court in Dr. (Mrs.) Usha Puri Vs. Governing Body, Aditi Mahavidhyalaya, Univ. of Delhi and Others, . Arguments as raised have been reiterated in rebuttal. Though in rebuttal compilation of judgments have been handed over, however none was cited before this Court.

11. I have heard learned counsel for the parties. The issues arising in the present petition are:

- (i) Whether the suspension order is required to be a speaking order?
- ii) Whether a show cause notice was required to be issued to the Petitioner before passing the order of suspension?
- iii) Whether it was essential to conduct a fact finding enquiry before directing a full-fledged enquiry against the Petitioner?
- iv) Whether the order of suspension and enquiry were passed in non-compliance of provision requiring prior approval?
- v) Whether issuance of show cause notice to the Petitioner was a sham as the enquiry officer had already been appointed?
- vi) Whether there was malice and bias in the order of suspension/enquiry passed by the Governing Body/Respondent No. 3?

12. The contention of the learned counsel for the Petitioner that the suspension order is a non-speaking order and is thus liable to be set aside deserves to be rejected. Admitted facts of the case are that the Petitioner on the letter head of the college in his capacity as the Principal of the college called for the press conference. The agenda note preceding the meeting of the Governing Body which was circulated to the Petitioner, clearly stated that it was requisitioned to consider the recent action of the Petitioner in calling and holding an unauthorized press conference on 31st July, 2012 casting aspersions on the Chairperson of the Governing Body of the college and officials of the University, the recent action of the Petitioner in instituting the defamation suit against the Dean, Students Welfare of the University of Delhi in his capacity as Principal, Kirori Mal college without obtaining the permission of the Governing Body and to consider the recommendations of the Selection Committee regarding appointment of the Vice-Principal of the college. The Petitioner duly acknowledged the receipt of the said agenda and in response thereto even wrote to the Respondent No. 5 seeking exclusion from the meeting as the agenda concerned him. A suspension order is not a substitute for a charge sheet. There is no requirement in law that a suspension order should be a speaking order. In *R.R. Pandey Vs. Managing Director, U.P. Jal Nigam and Another*, it was held:

6. We have already observed above that there is indication of the nature of charges against the petitioner in the suspension order. We have also observed that detailed charges need not be mentioned in the suspension order, as the suspension order is not a substitute for a charge-sheet.

7. The charges mentioned in the impugned order are serious enough in the event of their being established to warrant major penalty. It may be mentioned that suspension itself is not a punishment. There are situations that call for immediate action against a Government servant or a servant of some other body.

In view of the seriousness of the misconduct or the circumstances immediate action may be required. It is not therefore, necessary to give opportunity of hearing or detailed reasons in the suspension order as a suspension order is not a quasi-judicial order at all. A suspension order is an administrative order and hence the rules of natural justice need not be complied with before passing a suspension order. The rules of natural justice have to be complied with only when a penalty is being imposed e.g. dismissal of service or reduction of salary, but as stated above a suspension order is not a penalty.

13. Suspension literally means the act of debarring an officer for the time being from functioning at a particular position. Suspension is not a penalty and it does not reduce the officer to a lower rank and hence no show cause notice is required to be given before suspending a Government servant. This issue came up for consideration before the Kerala High Court in *Mayuranathan Vs. State of Kerala and Another*, wherein the learned Single Judge considering the line of decisions by different High Courts held that since an order of suspension is not a penalty or substantive punishment, it does not attract the provision of Article 311 of the Constitution of India and thus no show cause notice is required to be issued before imposing the same. Thus there is no merit in the contention of the learned counsel that a show cause notice was required to be issued to the Petitioner before passing the order of suspension.

14. For the next issue raised i.e. whether it was essential to have conducted a fact finding enquiry before directing a full-fledged enquiry against the Petitioner, learned counsel for the Petitioner has laid a great stress on the fact that when action was taken against Dr. S.P. Gupta who was appointed as Vice-Principal a fact finding enquiry was conducted before taking disciplinary action, however in the case of the Petitioner the same has been dispensed with. The Petitioner has not been able to show from the Calendar of University of Delhi that a fact finding enquiry is essential before conducting a departmental enquiry against a Lecturer/ Principal of the College. No doubt, the University or the Governing Body of the college would be within its right to conduct a fact finding enquiry where the facts are complicated or not apparently clear such as in a case of defalcation of accounts etc., however in the present case, the reason for the resolution of Respondent No. 3 to suspend the Petitioner and hold an enquiry against him is the conduct of the Petitioner in holding a press conference without approval in his capacity as a Principal in college premises, leveling allegations against the Chairman of the Governing Body and the officers including the Vice-Chancellor of the Delhi University and filing a civil suit in the same capacity. The facts are not disputed by the Petitioner. The press conference's material is available with the Petitioner as well as the Respondents. An affidavit of a reporter is also placed on record fortifying the facts that the Petitioner held a press conference on 31st July, 2012. Thus holding of a fact finding enquiry for prima facie ascertaining the facts was not a requisite in the present case. Hence, this contention is also liable to be rejected.

15. As regards non-compliance of the mandatory requirement of prior approval in terms of the Annexure to Ordinance XII Clause 7, learned counsel for the Petitioner states that as per Clause 7 no decision of suspension can be taken without the prior approval of the Vice-Chancellor and thus the Governing Body could not have resolved to suspend the Petitioner without the prior approval of the Vice-Chancellor. This contention of the learned counsel for the Petitioner is based on an erroneous reading of Clause 7 of Annexure to the Ordinance XII, which provides as under:

7. The question of termination of the services of the Principal/Teacher or his suspension, shall not be decided by the College/ Institution without the prior approval of the Vice-Chancellor.

16. The obvious implication of clause 7 is that suspension order passed would not be given effect to without the prior approval of the Vice- Chancellor. Clause 7 does not and cannot contemplate that before a decision is taken by the Governing Body the same should be approved by the Vice- Chancellor as canvassed by the learned counsel for Petitioner. An approval cannot be granted in vacuum. Original record was produced before this Court. A perusal of the original record shows that the decision of the Governing Body of Kirori Mal college held on 1st August, 2012 to institute an enquiry into the action of the Petitioner and to place him under suspension forthwith, pending the conclusion of this enquiry, subject to the approval of the University of Delhi, was sent to the Delhi University. On this communication a note was put up by Deputy Registrar college to Dean College who in turn put it up to the Vice-Chancellor. The Vice-Chancellor after pursuing the relevant material noted that the action precipitated was unfortunate and highly intemperate as well as objectionable behavior of the Petitioner which conduct was unbecoming of any member of the University's Community let alone Principal, and thus approved the action on 1st July, 2012 itself. Pursuant to the approval of the decision of the Governing Body, a confidential letter was addressed to the Petitioner by Respondent No. 5 which was endorsed as "received a sealed letter at 12.45 PM". Thus, before the office order was issued and served on the Petitioner, prior approval of the Vice-Chancellor/ Respondent No. 5 was duly taken as contemplated in Clause 7. Merely because the resolution of the meeting states that the resolution is subject to the approval of the University of Delhi it does not mean that the approval of the competent authority i.e. Vice- Chancellor was not taken. In fact, the Governing Body had only passed a resolution regarding suspension of the Petitioner and institution of an enquiry, however, the same culminated into an order only after the approval of the Vice-Chancellor. In Dr. (Mrs.) Usha Puri (supra) relied on by learned counsel for the Petitioner the issue before this Court was whether the Petitioner therein could be asked to go on administrative leave by the governing body pending decision of the Vice Chancellor to grant approval to the proposed action of the governing body to suspend the Petitioner from service. In the said decision this Court reiterated that a teacher/Principal of a college cannot be suspended without the prior approval of the Vice- Chancellor of

the Delhi University. As noted earlier, Clause 7 has been duly complied with in the present case as approval of the Vice-Chancellor has been taken prior to issuance of the suspension order to the Petitioner.

17. Regarding the next issue learned counsel for the Petitioner has strenuously argued that before considering the explanation of the Petitioner pursuant to the show cause notice, a request for meeting was made to the Hon''ble former Judge of the Supreme Court seeking his consent for being appointed as an enquiry officer and thus the show cause notice was a mere empty formality and the authorities had pre-determined themselves to conduct an enquiry. In the case in hand, the facts reveal that on 7th August, 2012 the Governing Body of the college in its meeting had resolved to approach Hon''ble former Judge of the Supreme Court seeking his consent for conducting the enquiry into the actions of the Petitioner. In the meeting of Governing Body held on 30th August, 2012 the memorandum of charge was considered and it was resolved to be served upon the Petitioner who was directed to file his reply by 8th September, 2012 and the next meeting was convened for 10th September, 2012. In the meeting of 10th September, 2012 the reply of the Petitioner was found to be unsatisfactory, thus the Governing Body resolved to hold the enquiry into the actions of the Petitioner and requested the Hon''ble former Judge of the Supreme Court to conduct the same. A prior consent of the enquiry officer would not necessarily vitiate a subsequent decision. In *South Bengal State Transport Corporation Vs. Ashok Kumar Ghosh and Others*, the Hon''ble Supreme Court while distinguishing *State of Punjab v. V.K. Khanna* (supra) held:

13. In our opinion, it may be open for a disciplinary authority to initiate the departmental proceedings on consideration of the reply of an employee but as an absolute proposition of law it cannot be said that before initiating the departmental enquiry or appointing an enquiry officer, reply of the delinquent employee is required to be obtained and considered unless it is the requirement of the rules. There may be cases where the charges are of such a nature that the disciplinary authority may not require any reply from the delinquent employee but straightaway initiate the departmental enquiry and appoint an enquiry officer.

14. In the present case the bus was checked by the flying squad of the appellant Corporation itself and in view of what has been found by it, the disciplinary authority while framing the charge had appointed the enquiry officer. We are of the opinion that mere appointment of an enquiry officer while framing the charge-sheet, even before considering the reply of the delinquent employee, does not reflect any bias.

15. Now referring to the authority of this Court in *State of Punjab Vs. V.K. Khanna and Others*, , relied on by the High Court, same is clearly distinguishable. In the said case the charge-sheet dated 24-4-1997 was issued to the delinquent employee who happened to be the Chief Secretary of the State and he was asked to submit his reply within 21 days but even before his reply, the Chief Minister made a statement on 27-4-1997 that a Judge of the High Court would look into

the charge against him. The aforesaid act of the Chief Minister coupled with other factors led this Court to conclude that the action was actuated by bias. In the present case the facts are completely different.

18. In *V.K. Khanna* (supra) it was held that actions not otherwise bona fide, would not ipso facto amount to be mala fide. Their Lordships held that the concept of fairness in administrative action has been the subject matter of considerable judicial debate but there is total unanimity on the basic element of the concept to the effect that the same is dependent upon the facts and circumstances of each matter pending scrutiny before the Court and no straight jacket formula can be evolved therefore. As a matter of fact fairness is synonymous with reasonableness and on the issue of ascertainment of meaning of reasonableness, common English parlance referred to as what is in contemplation of an ordinary man of prudence similarly placed. Similarly the existence of mala fide intent or biased attitude cannot be put on a straight jacket formula but depend upon facts and circumstances of each case. Further in the said case the conduct of issuing notifications though in haste was held to be bona fide. It was a series of actions on the part of the successive government which persuaded the Court to hold that the action of the government was high handed, arbitrary and mala fide. In the present case, no order appointing the enquiry officer had been passed and only an appointment for meeting so as to seek the consent of the Hon'ble former Judge of the Supreme Court was sought. It was not necessary that the request would have been accepted by the Hon'ble former Judge. Further in the present case the Petitioner is not disputing his action in calling the press on the 31st July, 2012 and making imputations against the authorities.

19. The next issue is whether the enquiry being held is farcical. The Constitution Bench decision in *A.K. Kraipak & Others* (supra) relied upon by learned counsel for the Petitioner is guidance to all Courts as regards construing mala fide and bias. It was laid down that the Courts have to see whether there is a reasonable ground for believing that there was a likelihood of bias and a mere suspicion of bias is not sufficient. In deciding the question of bias, the Courts have to take into consideration human probabilities and ordinary course of human conduct. It was held that the concept of natural justice has undergone a great deal of change in years. In the past, it was thought that it included just two rules namely (1) no one shall be a judge in his own case (*Nemo debet esse iudex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. In the present case, the enquiry against the Petitioner is being conducted by a retired Hon'ble Judge of the Supreme Court. There are no allegations of bias or mala fide against the Enquiry Officer or that the principles of natural justice are not being followed. The Governing Body of which the Respondent No. 5 was the Chairman was only a recommendatory authority for order of suspension and enquiry to be conducted.

The final decision in the form of approval thereon was taken by the Vice Chancellor of the Delhi University i.e. Respondent No. 4. Even in P.D. Dinakaran (supra), the Hon''ble Judge was dealing with a case regarding the constitution of the Committee for enquiry. Thus, the legal position laid down in the decisions cannot be imported to an order passed recommending institution of an enquiry and suspension pending the enquiry. Learned counsel or the Petitioner has laid lot of stress on the proposition that no person can be a judge in his own cause. There can be no dispute to this proposition. However, the issue in the present case relates to recommending an enquiry and suspension pending enquiry, to the competent authority. The enquiry is not being conducted by Respondent No. 5 but by an independent person. The decision to institute an enquiry and pending enquiry suspend the Petitioner was not taken by Respondent No. 5 individually but unanimously by the Governing Body and against other members of the Governing Body neither any mala fide are alleged nor they have been made party to the present petition. This Court cannot pre- determine that the enquiry would be farcical when the same is not being conducted by any of the Respondents but by an independent officer.

20. The next issue is whether there was malice and bias in the order of suspension/ enquiry passed by the Governing Body/ Respondent No. 3. Learned counsel for the Petitioner has laid lot of stress on this issue and it is stated that Respondent No. 5 has acted as a Judge in his own cause. Since the Petitioner leveled allegations against him which were based on documentary evidence, the Respondent No. 5 could not have passed the resolution of the Governing Body dated 1st August, 2012 and the participation of the Respondent No. 5 in the meeting itself is sufficient to set aside the resolution on the ground of mala-fide. The facts as stated in affidavit by the Respondent are that pursuant to a request on 31st July, 2012 for an emergent meeting to be held on 1st August, 2012 by 7 members of the Respondent No. 3, the Respondent No. 5 called a meeting wherein the Petitioner was also invited, however he recused himself. The Respondent No. 5 sought recusal from the meeting. However all the other members of the Respondent No. 3 unanimously decided against the recusal of the Respondent No. 5 from the meeting. Further a unanimous decision by 9 members of the Governing Body including Respondent No. 5 was taken to institute an enquiry on the misconduct of the Petitioner and to place him under suspension. It may be noted that no mala-fides are alleged against the other 8 members of the Governing Body by the Petitioner herein. Thus, merely because of allegations against Respondent No. 5 a unanimous decision of the Governing Body which is taken by 8 other members cannot be said to be a mala-fide exercise of power. Further the governing body including Respondent No. 5 as the Chairman was only a recommendatory body. The decision was taken by Respondent No. 4 the Vice Chancellor of the Delhi University who granted the approval. Even looking to the facts from another angle, if the contention of the Petitioner is to be accepted then no action can be taken against an incumbent for such misconduct as he can get away by alleging bias against the competent

authority. In *Tata Cellular Vs. Union of India*, even the presence of father as one of the members of the Committee was held to be not vitiating the decision of the Committee and it was held that no bias could be attributed.

114. Mr. B.R. Nair was not a decision-maker at all. He was one of the recommending authorities. As Director General of Communication as well as Telecom Authority his involvement in the approval and selection of tender was indispensable. He came to be appointed as Member (Services) on 29-5-1992. By virtue of the notification dated 28-7-1992 Mr. B.R. Nair became the Director General of Telecommunication. As such, he could exercise all the powers u/s 3(6) of the Indian Telegraphs Act of 1885. Such a Telecom Authority has the right to grant cellular operating licences to the successful party and also reject any bids without assigning any reason. Registration fees, security deposit and other financial charges shall be fixed by the licensor in consultation with the Telecom Authority. This is what is stated in the financial bid. Therefore, Mr. B.R. Nair could not dissociate himself from the decision-making process. It is under these circumstances the High Court rightly applied the doctrine of necessity. This Court in *Charan Lal Sahu Vs. Union of India*, dealt with this doctrine which is stated as follows: (SCC p. 694, para 105)

The question whether there is scope for the Union of India being responsible or liable as joint tort-feasor is a difficult and different question. But even assuming that it was possible that the Central Government might be liable in a case of this nature, the learned Attorney General was right in contending that it was only proper that the Central Government should be able and authorised to represent the victims. In such a situation, there will be no scope of the violation of the principles of natural justice. The doctrine of necessity would be applicable in a situation of this nature. The doctrine has been elaborated, in Halsbury's Laws of England, 4th Edn., p. 89, paragraph 73, where it was reiterated that even if all the members of the Tribunal competent to determine a matter were subject to disqualification, they might be authorised and obliged to hear that matter by virtue of the operation of the common law doctrine of necessity. An adjudicator who is subject to disqualification on the ground of bias or interest in the matter which he has to decide may in certain circumstances be required to adjudicate if there is no other person who is competent or authorised to be adjudicator or if a quorum cannot be formed without him or if no other competent tribunal can be constituted.

21. The next issue is misconduct. Learned counsel for the Petitioner has stated that holding a press conference is not a misconduct and thus neither an enquiry could have been conducted thereon nor he could be suspended. Whether the Petitioner has misconducted himself or not is a subject matter of the disciplinary enquiry held against the Petitioner. It would not be appropriate for this Court to return a finding thereon in these proceedings except to note that though misconduct has not been defined in the University calendar, however the fact that highest standards of discipline are required to be maintained in a University

cannot be denied. The right of speech and expression as guaranteed under Article 19(1) of the Constitution of India has to be balanced keeping in mind the smooth and efficient running of the educational system. In the case in hand the Petitioner did not raise any grievance regarding the appointment of Shri S.P. Gupta as the Vice Principal of the college or the Respondent No. 5 as the Chairman of the Governing Body of the College to the Chancellor, Vice-Chancellor or Executive Council of the University but straight away went to the Press, which prima facie would be contrary to maintaining the discipline and high standards required to be maintained in educational institutions. In *M.H. Devendrappa (supra)*, the Hon''ble Supreme Court while dealing with Rule 22 of the Service Rules of the Karnataka State Small Industries Development Corporation held the making of the public statements against the head of the organization as detrimental to the proper functioning of the organization or its internal discipline. Thus, it would be open to the Petitioner to raise this issue before the enquiry officer. In view of the aforesaid discussion, the petition and application are dismissed being devoid of merit. However, it is clarified that any observations made in this order will have no bearing on the Enquiry.