

(2014) 01 CHH CK 0029
In the Chhattisgarh High Court
Case No : W.P. (C) No. 890 of 2012

Craig McLeod

APPELLANT

Vs

Guru Ghasidas University

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Central Universities Act, 2009 — Section 26, 28, 28(2), 33, 34
Constitution of India, 1950 — Article 226, 32
Penal Code, 1860 (IPC) — Section 186, 294, 323

Citation : (2014) 2 CGLJ 240

Hon'ble Judges : Pritinker Diwaker, J

Bench : Single Bench

Advocate : Mateen Siddiqui, Advocate for the Appellant; Ashish Shrivastava, Rajiv Shrivastava, Mira Ansari, Prateek Sinha, Vivek Shrivastava, Advocates, N.K. Shukla, K.A. Ansari, Senior Advocates, and Arun Sao, Dy. AG, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Pritinker Diwaker, J.

1. Challenge in the present petition is to the order dated 07.01.2011 (Annexure P-1) passed by Vice Chancellor, Gum Ghasidas University, Bilaspur rustivating the petitioner for a period of five years from University and its affiliated colleges. Facts of the case in brief are that at the relevant time the petitioner was a student of 4th semester of B.E., Computer Science and Engineering in an institute run by the University in its campus. On 02.02.2010 when Prof. C.P. Dhurri was taking the class of 4th semester of B.E., Computer Science and Engineering, the petitioner reached in the class late and asked him to record his attendance. The petitioner also requested Prof. Dhurri for recording his attendance of previous dates as well but his request was turned down by him saying that the petitioner was in the habit of not attending the classes and making such requests time and again. After the class also the petitioner persuaded Prof. Dhurri for giving him the attendance for the classes which he did

not attend. The petitioner also threatened Prof. Dhurri saying that he would be implicated in a false case. When all this conversation was going on between the petitioner and Prof. Dhurri, another Assistant Professor of the Department namely Shri Rajesh Mahule also reached there and asked the petitioner to behave in a decent and disciplined manner and not to use abusive and offensive language with Prof. Dhurri but instead of correcting himself, the petitioner misbehaved with Shri Mahule also using filthy language.

2. After this incident when Shri Mahule was sitting in the staff room, at 12.15 P.M. the petitioner went there, started abusing and misbehaving with him. He also physically assaulted him with a chair inflicting injury on his forehead and tried to strangle him but due to intervention of other teaching staff members he could be saved from the clutches of the petitioner. Even while leaving the staff room the petitioner continued abusing and threatening Shri Mahule of life and dire consequences. Thereafter a complaint was made by Shri Mahule against the petitioner to the Director of Information and Technology Department and to the Police of Police Station Koni, Bilsapur, as well for which crime No. 94/2010 was registered for the offences under Sections 294, 506-B, 323 and 186 IPC.

3. Further facts of the case unfolded are that an emergent meeting of Proctorial Board was held on 02.02.2010 at 5.00 P.M. in the institute of Information and Technology and the entire matter was discussed by the Proctorial Board consisting of six members. After considering the facts and circumstances of the case and the complete sequence of incident the Proctorial Board prima facie found the petitioner to be guilty of misbehaving with the Professors and also assaulting Shri Mahule. Proctorial Board also came to the conclusion that the act of indiscipline on the part of the petitioner comes within the purview of violation of students' code of conduct and amounts to creating a hindrance in the discharge of official duties. Proctorial Board also recommended the expulsion of the petitioner from the University.

4. After considering the report of the Proctorial Board dated 02.02.2010, the petitioner was suspended from the University with immediate effect to avoid any law and order problem. Entry of the petitioner in the University campus was also prohibited till final decision of the matter and this suspension order was duly communicated to the petitioner on 03.02.2010. On 04.02.2010 disciplinary committee of the Institute of Information and Technology headed by its Director also conducted internal enquiry and submitted the report recommending expulsion of the petitioner from the University in view of seriousness of the incident of marpeet with the Professors on 02.02.2010. On 04.02.2010 a show cause notice (Annexure P-5) was served on the petitioner by the University along with copy of the recommendation of the Proctorial Board informing him that the Proctorial Board had recommended for his rustication and he was required to show cause as to why he should not be rusticated permanently. Petitioner was also informed that if no reply was tendered by him then the proceedings would be drawn against him.

5. On 06.02.2010 a detailed reply to the show cause notice was submitted by the petitioner addressed to Vice Chancellor admitting the incident and making certain allegations against the aforesaid two Professors. Petitioner has denied the allegations of misbehavior or using abusive language against the Professors and stated that he had an argument with the Professors and he was just trying to convince Prof. Dhurri regarding his attendance. Further defence of the petitioner was that when he had a discussion with Prof. Dhurri, Shri Mahule was not present and likewise when he was discussing with Shri Mahule, Prof. Dhurri was not there. According to the petitioner he was abused by Shri Mahule in the name of his mother saying that he may be the son of Member of Parliament but even her mother could not save him. Petitioner further stated that the decision taken by the Proctorial Board recommending his rustication is biased one and not in accordance with law. On 10.02.2010 a letter was issued by the University to the petitioner informing that after considering his reply to the show cause notice the Vice Chancellor had decided to give personal hearing to the petitioner and therefore he was required to personally remain present in the chamber of Vice Chancellor on 12.02.2010 at 11.00 A.M. After receiving the aforesaid letter on 11.02.2010 petitioner made a request for postponement of the date of personal hearing from 12.02.2010 to 19.02.2010 on which date he would appear personally before the Vice Chancellor along with his father. In reply to the request of the petitioner made on 11.02.2010, the University again informed him that the presence of his father was not required at the time of personal hearing of the petitioner and he may remain present for the said purpose on 16.02.2010 at 11.00 A.M. in the chamber of Vice Chancellor. On 16.02.2010 the petitioner again sent a request letter to the Vice Chancellor stating that in view of his hospitalization he was unable to remain personally present on that day. In the meantime, on 15.02.2010 W.P. (C) No. 694/2010 was filed by the petitioner before this Court challenging the orders dated 03.02.2010 and 04.02.2010.

6. On 17.02.2010 while entertaining the writ petition of the petitioner notices were issued to the respondents and an interim direction was granted in favour of the petitioner to the effect that if final decision had not been taken by the University till then, it shall not be taken till the next date of hearing. On 24.02.2010 the case was adjourned for filing rejoinder of the petitioner and the interim order was continued. On 17.06.2010 when the matter was taken up by this Court, liberty was given to the University to take final decision at the earliest preferably within a period of one week and submit the same before this Court.

7. It appears that pursuant to the liberty granted by this Court, on 18.06.2010 a letter was issued to the petitioner again giving him an opportunity of personal hearing on 19.06.2010 at 12.00 noon before the Vice Chancellor. At the same time an order was also passed relaxing the entry of the petitioner in the University campus for the said purpose. On 19.06.2010 the petitioner presented himself before the Vice Chancellor and he was supplied one questionnaire asking him to submit the reply of 16 questions related to incident and an understanding was arrived at for further hearing in the first week of July. On 21.06.2010 a letter

was issued to one Nishant Behar, Lecturer of the Department, Shri Anil Pandey, Shri Satish Saraf and Francis Joseph-the employees of the University informing them that further hearing of the enquiry would be on 29.06.2010 and they were directed to remain present on that day along with all the information and relevant record. From the order it appears that all the four persons remained present before the Vice Chancellor along with the record and their statements were also recorded. Shri Mahule was also directed to remain present before the Vice Chancellor on 28.06.2010 at 04.30 P.M. along with all the information and record and likewise almost a similar letter was issued to Prof. Dhurri for his presence on that day at 4.00 P.M. On the said date oral and written statements of both the persons were recorded by the University. On 28.06.2010 a letter was issued to one Junaid Khan-the witness of the petitioner for his presence before the Vice Chancellor on 02.07.2010 at 4.00 P.M. and accordingly his statement was recorded on 02.07.2010. On 02.07.2010 the petitioner was also served a letter directing him to remain present on 05.07.2010 for personal hearing. On the said date 12 persons as named in Annexure P-30 were also asked to remain present along with necessary information. By another letter dated 02.07.2010 four members of Proctorial Board were informed to remain present on 05.07.2010 before the Vice Chancellor. On 05.07.2010 apart from the petitioner, Prof. Dhurri, Shri Muhale, Shri Satish Saraf, Shri Anil Pandey and Shri Francis Josheph were present before the Vice Chancellor and their statements were also recorded.

8. On 6.7.2010 the petitioner made a request to the University for supplying the statements of the witnesses. On 10.7.2010 copy of the statements was duly supplied to the petitioner and on the said date, by another letter a copy of CD of the proceedings dated 5.7.2010 was also given to the petitioner. On 17.10.2010 the petitioner was again informed by the University that he had already been supplied with copy of all the documents and CD and if he so desired could file his representation to the Vice Chancellor within seven days of receiving this letter. On 22.7.2010 in W.P. (C) No. 694/10 an order was passed by this Court asking Prof. Dhurri and Mahule to remain present before this Court on 26.7.2010. The petitioner was also directed to tender personal apology to respondents No. 4 & 5 on the said date. This order was passed by this Court as in the said writ petition the petitioner had tendered unconditional apology. On 24.7.2010 Shri Pradeep Sukhla, Rajesh Mahule and C.P. Dhurri were informed by the University along with the copy of the order of this Court dated 22.7.2010 asking them to ensure compliance of the said order. On 29.7.2010 these three persons were asked by the University to remain present before the Court on 6.8.2010. On 6.8.2010 the matter was adjourned to 9.8.2010 and on 9.8.2010 it was recorded in the order sheet that the petitioner had gone to tender his apology to the professors accompanied by several persons. It was further recorded that the order dated 2.2.2010 shall remain stayed and the petitioner was directed to maintain discipline. It was also directed by the Court that the matter shall be heard in due course. Aggrieved by the said order, the University preferred SLP (Civil) No.

32358/2010 before the Apex Court and on 29.11.2010 the following order was passed by the Apex Court:

Issue notice.

Interim stay of the impugned order of the High Court to the extent it says the passing of the final order in the disciplinary enquiry against the respondent. Consequently, the Enquiry Authority may submit report subject to final decision.

9. Pursuant to the order of the Apex Court, order impugned (Annexure P/1) has been passed rustivating the petitioner from the University for five years.

10. This rustication order was challenged by the petitioner in the present writ petition i.e. W.P. (C) No. 890/2012. However, on 10.5.2012 present writ petition was withdrawn by the petitioner with liberty to file appropriate application before the Apex Court. On 16.8.2012 Civil Appeal preferred by the petitioner was finally disposed of by the Apex Court granting liberty to the petitioner to revive the present writ petition by filing appropriate application and subsequent to the order of the Apex Court this petition has been revived vide order dated 10.9.2012 passed in M.C.C. No. 774/2012.

11. Counsel for the petitioner has challenged the order of rustication on the following grounds:

(i) that the decision of the Proctorial Board dated 2.2.2010 (Annexure P/4) is bad in the eye of law as while passing the said order Proctorial Board has not considered clause 11 of Ordinance 27 (Annexure P/7),

(ii) that the Proctorial Board had never given any opportunity to the petitioner to present his case and unilaterally after hearing the two professors, a finding has been recorded against the petitioner;

(iii) that not only the Proctorial Board has recommended the expulsion of the petitioner but has also stated that the above said punishment would be imposed on the petitioner through Register of the University and in the transfer certificate of the petitioner the said punishment would be recorded and thereby a decision was already taken to punish the petitioner and the recommendation was merely a formality and later on so-called post-decisional hearing was given by the Vice Chancellor which is not sustainable in the eye of law;

(iv) that even Director, I.T., had recorded a finding against the petitioner without affording any opportunity to him and the said finding is bad in the eye of law;

(v) that simultaneously two findings have been recorded-first by the Proctorial Board and the second by the Director, I.T., which are not permissible under the law;

(vi) that while conducting enquiry the Vice Chancellor had never apprised the petitioner of the charges leveled against him and in an hurried manner the so-called fact finding enquiry was conducted by the Vice Chancellor in complete

violation of principles of natural justice;

(vii) that the petitioner was allegedly heard just to complete the paper formality and in fact the order (Annexure P/1) has been passed ignoring the material fact on record including the reply of the petitioner;

(viii) that from the beginning the Vice Chancellor was adamant to ensure rustication of the petitioner and with pre-determination the formalities have been completed;

(ix) that initially the procedure for punishing the petitioner was started under Ordinance 27 but subsequently the order has been passed under the Statute 28 (4) framed under the Central University Act, 2009 meaning thereby that the initial proceedings were drawn against the petitioner under the ordinance of old provisions whereas while punishing the petitioner the University has amended the provision which is not permissible under the law;

(x) that as per Statute 28 (2) Proctor should have been appointed by the University but at the time of taking action against the petitioner there was no Proctor in the University and the Vice Chancellor had no authority to take disciplinary action against the petitioner;

(xi) that though according to the Vice Chancellor some enquiry was conducted by him but copy of no such enquiry report has ever been supplied to the petitioner and here also the principle of natural justice has been completely violated;

(xii) that the petitioner is not interested to avail alternative remedy available to him under Sections 34 and 35 of the Act of 2009 by filing appeal to the Executive Council of the University because the said remedy is not an efficacious one to the petitioner. Furthermore, the Executive Council would act under the direction of Vice Chancellor who seems to be adamant from the beginning to punish the petitioner and as such, the said remedy would be a futile exercise for him;

(xiii) that as per order sheet dated 19.6.2010 recorded by the Vice Chancellor (Annexure D/16) it is revealed that it was agreed by the parties for further hearing in the first week of July but again the matter was taken up on 21.6.2010 (Annexure D/20) which clearly demonstrates as to the manner in which the so-called enquiry was conducted by the Vice Chancellor and the Vice Chancellor was adamant to take serious action against the petitioner;

(xiv) that the incident had taken place on 2.2.2010 and prior to the said date respondent No. 4 namely Rajesh Mahule was not known to the petitioner or that he was his teacher and therefore, even if in the heat of passion the petitioner had uttered few words against Shri Mahule, it can not be termed such a serious act fixing liability on the petitioner of insulting his teacher;

(xv) that while preparing CD of the proceedings of the enquiry and while recording the statements of the witnesses, clear assurance was given by the Vice Chancellor that said recording would not be used against the petitioner and

therefore, any transcription made from the said CD can not be used as evidence against him;

(xvi) that in the so-called enquiry proceedings signatures of the petitioner are not there and thus it is difficult to ascertain as to which is the correct document and which is concocted one;

(xvii) that once the enquiry was defective, no de novo enquiry can be ordered to fill up the lacuna in the earlier enquiry conducted by the University;

(xviii) enquiry has been conducted by the Vice Chancellor who himself has acted as the disciplinary authority which is not permissible under the law.

(xix) Punishment awarded to the petitioner is too harsh because as per ordinance 7 the rustication as provided is for a period of two years and not five years.

12. In support of his submission, counsel for the petitioner has relied upon the decisions of Supreme Court in the matter of Sohan Lal Gupta (Dead) thr. L.Rs. and Others Vs. Smt. Asha Devi Gupta and Others, ; in the matter of Punjab National Bank and Others Vs. K.K. Verma, ; in the matter of Shri Shekhar Ghosh Vs. Union of India (UOI) and Another, ; in the matter of V.C., Banaras Hindu University and Others Vs. Shrikant, ; in the matter of Commr. of Police and Others Vs. Sandeep Kumar, ; in the matter of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, and in the matter of Taranjeet Singh Mohan Singh Sawhny and Others Vs. District Deputy Registrar Cooperative Societies and Others, .

13. Counsel for the respondent/University made the following submissions:

(i) Present petition is liable to be dismissed as it has been filed without availing statutory alternative remedy available to the petitioner as provided u/s 34(2) and 35 of the Central Universities Act and statutes 2009. He submits that against the rustication order the petitioner can raise either a dispute before arbitration tribunal or file an appeal before the executive council. In support of this argument counsel for the respondent/University has placed reliance on the decisions of Apex Court and this Court as well in the matter of The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another, ; in the matter of Union of India (UOI) and Another Vs. Guwahati Carbon Ltd., ; in the matter of Nivedita Sharma Vs. Cellular Operators Assn. of India and Others, , in the matter of Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, , in the matter of A.S. Motors Pvt. Ltd. Vs. Union of India (UOI) and Others, , in the matter of Kesar Enterprises Ltd. Vs. State of U.P. and Others, , in the matter of Ramchandraroy v. University of Allahabad AIR (1956) All. 40 and in the matter of Union of India and another Vs. SC Jain, W.P. (C) NO. 1648/2000.

(ii) Show cause notice dated 04.02.2010 was issued to the petitioner and after receiving his reply dated 06.02.2010 personal hearing was also offered to him and as some inconvenience was shown by him, he was accommodated as per his

convenience.

(iii) Before passing the impugned order full opportunity was granted to the petitioner, he was permitted to cross examine the witnesses as per his desire and even personal hearing was also offered to him.

(iv) No separate charge-sheet was issued to the petitioner as the same was not required because he was fully aware of the fact as to what indiscipline was done by him and for what he was required to file reply. He submits that from the letters dated 02.02.2010 (annexure P-3) and 03.02.2010 it is clear as to what was the charge against the petitioner and for which he was supposed to reply. Further giving the reference of show cause notice dated 04.02.2010 he submits that even the report of the Proctorial Board was duly supplied to the petitioner and thus he was fully aware of its act.

(v) Reply to the show cause notice was submitted by the petitioner in which he has never objected that he was not aware about the allegations leveled against him nor he pointed out as to for what he was required to file reply. Thus, submission of formal charge-sheet was not required in the given facts and circumstances of the case.

(vi) The petitioner has failed to point out as to what prejudice has been caused to him even if formal charge sheet was not supplied to the petitioner.

(vii) The argument of the petitioner that the University has first proceeded against the petitioner under ordinance 27 of the Old Act and then switched over to statute 28 of the Act of 2009 is not correct because the impugned order has been passed by the Vice Chancellor under statute 28 which empowers the Vice Chancellor alone to pass such order. If meeting of the Proctorial Board was convened and any recommendation has been made, that will not prove the fact that proceedings were initiated against the petitioner as per ordinance 27 of the old Act.

(viii) As per statute 28 of the Act of 2009 no procedure has been prescribed for initiating the proceedings against the petitioner but yet by complying the principle of natural justice after giving full opportunity to the petitioner to defend his case the impugned order has been passed.

(ix) The petitioner once has admitted the incident in his reply, there remains nothing for him to contest.

(x) Had the petitioner been aggrieved by any action of the University, he would have definitely filed some complaint to the Vice Chancellor or to the higher authorities but the same has not been done by him and this conduct on the part of the petitioner clearly demonstrates that he was involved in assaulting the teachers and therefore his rustication is strictly in accordance with law.

(xi) In the disciplinary proceedings against the student for assaulting the teachers, the jurisdiction of this Court is very limited and in fact no interference

is called for in such cases.

(xii) Whatever procedure has been adopted by the University, was never objected to by the petitioner, he duly participated in the proceedings, cross examined the witnesses and thus at this stage he cannot be allowed to point out any so called lacuna in initiating the proceedings against him.

(xiii) Copy of the documents including CD was duly supplied to the petitioner and no objection has been raised by him regarding the same and there is no averment in this petition that the documents were not supplied to him.

(xiv) The CD which has been given to the petitioner is a piece of evidence which can be used against him.

(xv) After completion of enquiry on 17.07.2010 the petitioner was asked a very specific question by the Vice Chancellor whether he wanted to make any submission or take any defence but he did not reply thereto and therefore the enquiry was closed and order was passed.

(xvi) Petitioner had made a request only for the presence of Prof. CP Dhurri in the investigation and he did not even bother to make a request for cross examination of this witness or any other witnesses, as is clear from document of Annexure D-7.

(xvii) Right from very beginning the petitioner was neither regular in attending the classes nor he was serious towards his studies and the very purpose of his coming to the institution was to pass time and disrupt the educational activities. He is not having a good academic record and in first and second semester examination he failed in some of the subjects and even in the supplementary examination he remained absent and ultimately was declared unsuccessful.

(xviii) The petitioner's conduct is not only an offence under the provisions of Indian Penal Code but it has a wide repercussion and gives a very indecent message to all other students to violate the academic norms and spoil the academic atmosphere in the University.

14. Shri Rajeev Shrivastava counsel for respondents No. 3 & 7 while adopting the arguments of University submits that Proctorial Board has merely made the recommendation and as per the Act of 2009 and the statute made thereunder it was the Vice Chancellor who was empowered to take action. He submits that the Proctorial Board was not required to summon the petitioner because as soon as the Proctorial Board came to know about the incident, an emergent meeting was called and thereafter with the consensus of all the members, recommendation was made to take action against the petitioner and in fact report of the Proctorial Board was as a sort of investigation to facilitate Vice Chancellor to take further action against the petitioner.

15. Dr. Shukla appearing for respondents No. 4 & 5 also adopted the arguments advanced on behalf of University. He however adds that the petitioner did not

cross-examine Shri Rajesh Mahule and this clearly shows that whatever Shri Rajesh Mahule had deposed against the petitioner has been admitted by him. Likewise, Shri Ansari counsel for respondent No. 6 also adopts the arguments of the University with an addition that after receiving complaint from the teachers, the Director also conducted the enquiry and recommended action against the petitioner.

16. A preliminary objection has been raised by the counsel for the respondents regarding maintainability of this petition on account of alternative remedy available to the petitioner. True it is that as per provisions of Sections 34 and 35 there exists an alternative remedy to the petitioner either to approach the executive council by filing an appeal or to approach the arbitrator but considering the fact that the petitioner has not shown any faith on the respondent/authority as according to him the authority from the beginning is adamant to take action against him, this petition has traveled up to the Supreme Court and the Supreme Court has given liberty to the petitioner for reviving the same, this Court is of the considered view that in the facts and circumstances of the case alternative remedy is not a bar for this Court to hear the case and accordingly this Court has proceeded to decide the same on its own merits.

17. Before advertng to the facts of the case in hand it seems appropriate to state that initially Guru Ghasidas University was a State university and in the year 2009 the same became the central university and the Act of 2009 came into existence. Section 26 of the Act of 2009 talks about the statute to be made for various purposes whereas Section 28 provides for ordinance in addition to the Act and the statutes. Section 28(2) of the Act of 2009 reads as under:

28(2) The first Ordinances shall be made by the vice-Chancellor with the previous approval of the Executive Council and the Ordinances so made may also be amended, repealed or added to at any time by the Executive Council in the manner prescribed by the Statutes:

Provided that in the case Guru Ghasidas Vishwavidyalaya and Doctor Harisingh Gour Vishwavidyalaya, and Hemvati Nandan Bahuguna Garhwal University, till such time as the first Ordinances are not so made, in respect of the matters that are to be provided for by the Ordinances under this Act and the Statutes, the relevant provisions of the Statutes and the Ordinances made immediately before the commencement of this Act under the provisions of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, and the Uttar Pradesh State Universities Act, 1973, respectively, shall be applicable in so far as they are not inconsistent with the provisions of this Act and the Statutes.

Likewise Sections 33, 34 and 35 of the said Act read as under:

33. (1) Every employee of the University shall be appointed under a written contract, which shall be lodged with the University and a copy of which shall be furnished to the employee concerned.

(2) Any dispute arising out of the contract between the University and any employee shall, at the request of the employee, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the employee concerned and an umpire appointed by the Visitor.

(3) The decision of the Tribunal shall be final and no suit shall lie in any civil court in respect of the matters decided by the Tribunal:

Provided that nothing in this sub-section shall preclude the employee from availing of the judicial remedies available under articles 32 and 226 of the Constitution.

(4) Every request made by the employee under sub-section (2) shall be deemed to be a submission to arbitration and Conciliation Act, 1996.

(5) The procedure for regulating the work of the Tribunal shall be prescribed by the Statutes.

34. (1) Any student or candidate for an examination whose name has been removed from the rolls of the University by the orders or resolution of the Vice-Chancellor, Discipline Committee or Examination Committee, as the case may be, and who has been debarred from appearing at the examination of the University for more than one year, may, within ten days of the date of receipt of such orders or copy of such resolution by him, appeal to the Executive Council and the Executive Council may confirm, modify or reverse the decision of the Vice-Chancellor or the Committee, as the case may be.

(2) Any dispute arising out of any disciplinary action taken by the University against a student shall, at the request of such student, be referred to a Tribunal of Arbitration and the provisions of sub-sections (2), (3), (4) and (5) of section 33 shall, as far as may be, apply to a reference made under this sub-section.

35. Every employee or student of the University or of a College or Institution maintained by the University shall, notwithstanding anything contained in this Act, have a right to appeal within such time as may be prescribed by the Statutes, to the Executive Council against the decision of any officer or authority of the University, or, the Principal or the management of any College or an Institution, as the case may be, and thereupon the Executive Council may confirm, modify or reverse the decision appealed against.

18. So far as applicability of ordinance 27 framed under the old Act is concerned, it is apparent from sub Section 2 of Section 28 of the Act of 2009 that till the new ordinance is framed by the University, old ordinance may be made applicable.

19. In the present case, on 2.2.2010 itself the meeting of Proctorial Board was conducted and the Proctorial Board had recommended the action against the petitioner. Even assuming that the meeting of the Proctorial Board was

conducted under ordinance 27, it was not necessary for the Proctorial Board to issue show cause notice to the petitioner or to record the statements of the witnesses. Clause 11 of ordinance 27 states that the Proctorial Board may give show cause notice or may record the statements but it is not mandatory for the Proctorial Board to follow any such procedure. In the case in hand the Proctorial Board has not passed any order against the petitioner but the order has been passed by the Vice Chancellor and thus even if the Proctorial Board has not given any show cause notice to the petitioner or recorded the statement of any witness, it will not hamper the case of the University. Likewise, the Director, IT had also conducted the internal enquiry and given the report to the higher authority. The Proctorial Board and the Director, IT were not under obligation to hear the petitioner before forwarding their recommendations as their enquiries were the internal ones.

20. There is no substance in the argument of the counsel for the petitioner that the petitioner was required to be heard by the Proctorial Board and the Director, IT. Likewise, there is no substance in the argument of the counsel for the petitioner that two enquiries could not have been made at a time and that the second enquiry so conducted is not permissible under the law. However, there is substance in the argument advanced on behalf of the University that the Proctorial Board has not taken a decision nor it was competent to take a decision of rustication in view of the Act of 2009. As per statute 28 it is the vice Chancellor alone who is empowered to take disciplinary action in relation to the students of the University. Statute 28 reads as under:

28. (1) All powers relating to the maintenance of discipline and disciplinary action in relation to the students of the University shall vest in the Vice Chancellor.

(2) There shall be a Proctor of the University to assist the Vice-Chancellor in the exercise of the powers referred to in clause (1), who shall be appointed by the Executive Council from amongst the Professors and Associate Professors in the manner Prescribed by the Ordinances.

(3) The Vice-Chancellor may delegate all or any of the powers referred to in clause (1), as he deems proper, to the Proctor and to such other officers as he may specify in this behalf.

(4) Without prejudice to the generality of his powers relating to the maintenance of discipline and taking such action, as may seem to him appropriate for the maintenance of discipline, the Vice-Chancellor may, in exercise of such powers, by order, direct that any student or students be expelled or rusticated, for a specified period, or be not admitted to a course or courses of study in a College, Institution or Department or a School of the University for a started period, or be punished with fine for an amount to be specified in the order, or be debarred from taking an examination or examinations conducted by the University, College, Institution or Department or a School for one or more years, or that the results of the student or students concerned in the examination or examinations

in which he or they have appeared be withheld or cancelled.

(5) The Principals of Colleges, Institutions, Deans of Schools of Studies and Heads of teaching Departments in the University shall have the authority to exercise all such disciplinary powers over the students in their respective Colleges, Institutions, Schools and teaching Departments in the University, as may be necessary for the proper conduct of such Colleges, Institutions, Schools and teaching Departments.

(6) Without prejudice to the powers of the Vice-Chancellor and the Principals and other persons specified in clause (5), detailed rules of discipline and proper conduct shall be made by the University and the Principals of Colleges, Institutions, Deans of Schools of Studies and Heads of teaching Departments in the University may also make such supplementary rules and they deem necessary for the purposes stated therein.

(7) At the time of admission, every student shall be required to sign a declaration to the effect that he submits himself to the disciplinary jurisdiction of the Vice-Chancellor and other authorities of the University.

21. In the case in hand, rustication order has been passed by the Vice Chancellor under the provisions of Act of 2009 and the statutes made thereunder.

22. The other point raised by the petitioner in this case that the enquiry conducted by the Vice Chancellor was de hors the principle of natural justice as even the charge sheet was not supplied to the petitioner, has no force because from the letters dated 2.2.2010 and 3.2.2010 it is apparent as to what was the charge against the petitioner and for which he was asked to reply. Even while passing the suspension order of the petitioner dated 2.2.2010 it was categorically mentioned as to for what act the petitioner was suspended. Similarly, the report of the Proctorial Board was also given to the petitioner while issuing the show cause notice and thus it cannot be said that the petitioner was not aware of the allegations made against him and that in view of non supply of separate charge sheet he could not defend himself. While submitting the reply to the show cause notice the petitioner had admitted the incident dated 2.2.2010 regarding reaching the class room late and arguments with the teachers though he has denied the act of marpeet with Shri Rajesh Mahule. Even while submitting reply to the show cause notice, the petitioner did not object that he was not aware of the facts of the case nor had objected before the Vice Chancellor when he had given opportunity to him to present his case. In such a case of indiscipline even if no formal charge sheet has been issued to the petitioner, it will not vitiate the action of the University.

23. This Court further finds no force in the argument advanced on behalf of the petitioner that the Vice Chancellor was adamant to ensure rustication of the petitioner as no such evidence has been adduced by the petitioner to show the alleged adamant approach of the Vice Chancellor. Even no personal mala fides have been made by the petitioner against the Vice Chancellor at the time of

conducting enquiry against him. There is no force in the argument of the counsel for the petitioner that as the Proctor has not been appointed by the University under statute 28 (2), Vice Chancellor could not have passed the impugned order. Neither the Act of 2009 nor the statutes made thereunder prohibit the Vice Chancellor to pass any such order.

24. Next point argued by the counsel for the petitioner is that the manner in which the enquiry has been conducted itself is not permissible under the law and that even the copy of the enquiry report has not been supplied to him. Under the Act of 2009 no procedure has been prescribed for the Vice Chancellor or the University before taking any disciplinary action against the student and in the absence of any such procedure what the Vice Chancellor was required to do was to give opportunity to the petitioner to defend his case. After giving show cause notice to the petitioner, his reply was sought and then personal hearing was given to him. Twice the petitioner requested the Vice Chancellor for accommodating him in the personal hearing and giving a date and on both the occasions the dates were given to him and only thereafter he was heard by the Vice Chancellor. As regards the fact that on 19.6.2010 after giving hearing to the petitioner, the case was adjourned for July 2010 and then the same could not have been taken early as there was a direction of the Court to pass the order and as such there appears to be no illegality or irregularity in preponement of the hearing. It is not the case of the petitioner that when the hearing was preponed the petitioner was not aware of the date.

25. So far as the argument of the petitioner that recording of CD could not have been used against him and the said CD cannot be treated as evidence against him is concerned, in view of introduction of Information and Technology Act and the progress in science, even if the CD was recorded, there is no illegality in the same. From the transcript of the CD (Annexure D-35) it is apparent that the same might have been recorded considering the demeanor of the petitioner. Even from the CD transcript it is clear that the petitioner raised his objection for preparation of the said CD saying that no such permission has been granted by the Court. The Vice Chancellor was fully justified in making such CD saying that he recorded the same so that afterwards contents of the same can be seen. Here again transparency and fair play on the part of the Vice Chancellor can be seen. When the petitioner objected to the supply of correct CD, it was ensured by the Vice Chancellor that he would get copy of the recording and upon application moved by the petitioner the same was supplied by the petitioner. It is not the case of the petitioner that there was any tampering with the contents of the CD or that he had not been supplied the complete CD. Nowhere the petitioner has raised his objection to this effect. From the CD transcript it is further apparent that examination of the witnesses has been done in the presence of the petitioner and he was permitted to cross examine them.

26. From the proceedings of the enquiry it is further revealed that the Vice Chancellor had given full opportunity to the petitioner and he had even put a

specific question whether any additional submission was to be made by him or not but he replied in negative. Petitioner had only made a request for the presence of Prof. C.P. Dhurri and even did not bother to cross examine the witness in detail. There was no request from the petitioner to cross examine the most important witness namely Rajesh Mahule whom the petitioner had beaten in the staff room. Thus there was no reason for the Vice Chancellor to disbelieve the statement of Shri Rajesh Mahule.

27. This Court also finds no force in the argument of the petitioner that the CD cannot be used as evidence against the petitioner and the same can only be used if proved as per the provisions of Evidence Act. In such disciplinary enquiry there is no strict application of the Evidence Act and I am fully satisfied with the manner in which the CD was recorded, copy of which was supplied to the petitioner and most importantly existence and authenticity of the same has not been denied by the petitioner at any point of time.

28. It is misconception on the part of the petitioner that on 19.6.2010 several persons were called by the Vice Chancellor for recording their evidence but the evidence of none of the witnesses was recorded and only the statement of the petitioner was taken. Number of persons were though called but not only for recording the evidence and they were also informed that the enquiry was going on and therefore they were required to be present. Some of the witnesses may have been directed to remain present along with the record and some for other purpose but it is for the Vice Chancellor to decide as to whose statement has to be recorded and whose statement is not to be recorded. There is no substance in the argument of the petitioner that statements of the witnesses were recorded behind his back and therefore the same cannot be used against him. From the transcript of the CD it is clear that the petitioner had ample opportunity to cross examine-the witnesses and whether he wanted to add anything or not it is he who did not chose to cross examine Shri Rajesh Mahule and stated that he did not want to add anything.

29. This Court does not find force in the argument of counsel for the petitioner that Vice-Chancellor could not have passed the order impugned as he himself was the inquiry officer in the case. Under the Act and the statute it is the Vice Chancellor alone who is empowered to take disciplinary action against such persons. Vice-Chancellor had given full opportunity to the petitioner before taking any final decision and his action cannot be termed as lacking compliance of principles of natural justice. This Court finds no force in the arguments of the counsel for the petitioner that there was no direction by this Court to prepare CD and therefore the same could not have been done and that it was assured by the Vice Chancellor that said CD would not be used against him. From the transcript of the CD it is clear that no such assurance was given by the Vice Chancellor with respect to the use of same against the petitioner. Rather it reflects that same was made to keep everything transparent so that in future the same could not be objected to by the petitioner. As regards signature of the petitioner on the

proceedings while recording the CD, its contents have not been disputed by the petitioner at any point of time and therefore the same cannot be said to be inadmissible. This Court finds no force in the argument of the counsel for the petitioner that punishment imposed on the petitioner is disproportionate to the act committed by him. Here is a case where the petitioner had beaten his teacher and thus rustication for a period of five years does not appear to be unreasonable.

30. Before hearing this matter finally on several dates, efforts were made by this Court asking the petitioner to go to the concerned teacher and tender unconditional apology. Though all the time willingness has been shown by the petitioner and a statement to this effect was also made yet no sincere efforts were made in this behalf. On one occasion the petitioner had a telephonic talk with the teacher and he asked him to come to a particular place to tender apology to him. Earlier on few occasions the petitioner had gone to meet his teacher along with several persons and all this shows that he had no intention to tender unconditional apology.

31. This Court does not find any force in the argument of the petitioner that misinterpreting the order of the Apex Court dated 29.11.2010 the Vice Chancellor has parsed the order of rustication. Had there been any violation of the said order of the Supreme Court, the petitioner could have sought clarification of the same before the Supreme Court itself when his civil appeal was disposed of. While disposing of the civil appeal, the Supreme Court has noted as under:

The turn of events, given the lapse of time, did not form a legal basis for interdicting completion of the inquiry against Craig Macleod. While the High Court may have intended to bring a quietus to the entire episode, it should have kept in mind that maintenance of discipline in the University is equally important for a conducive academic environment and that the larger interests of a student. In *Varanaseya Sanskrit Vishwavidyalaya and Another v. Rajkishore Tripathi (Dr.)*, 1997 1 SCC 279 it was observed that in matters of discipline or administration of the internal affairs of a University, the courts should be most reluctant to interfere.

32. So far as various judgments cited by the petitioner regarding principle of natural justice while conducting the enquiry are concerned, true it is that a person cannot be punished without giving him opportunity of hearing but present is not a case where opportunity was not given to the petitioner and the order has been passed behind his back. Rather in this case full opportunity was granted to the petitioner to put forth his case.

33. Discipline and good conduct on the part of the student is a virtue and its violation a vice. The act of the petitioner herein in hurling abusive and offensive language and then assaulting his mentor within the university campus speaks a lot about his mental perversion, may be punctuated with a sense of ego, which is

generally seen in the children hailing from so-called high profile society. Of course, the main task of the mentor is to give a proper shape to the future of the disciple by bringing out the dormant creative tendencies but this requires a sufficient amount of discipline on the part of the disciple to give a conducive environment where the person imparting education feels secure in accomplishing his task. If the student, as in the present case, indulges in any immoral activity which ultimately corrodes the education imparting system, sorry to say, is a never washable blot not only for the individual but the institution as a whole. The sacrosanct bond between the teacher and the student must be kept intact and for doing this it is the foremost moral responsibility of the student to display all sincerity, honesty, sobriety and uprightness. Nobody should nurture a feeling of desecrating the academic environment of an institution because howsoever high you may be, law is above you. One and all, particularly the students must vote virtue and veto vice so that the sanctity of student-teacher relationship is not spoiled. In view of the factual and legal discussion made here-in-above, this Court is of the considered opinion that the order impugned has been passed after giving the petitioner full opportunity of hearing. There is no illegality or irregularity in the same. Petition thus being devoid of any substance is liable to be dismissed and it is dismissed as such.