

(2006) 03 AHC CK 0218

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 66867 of 2006

Dr. Ram Pal Singh, Ex. Vice Chancellor, Chaudhary Charan
Singh University

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 23 Rule 1(3), 11, 80

Constitution of India, 1950 — Article 226

Uttar Pradesh State Universities Act, 1973 — Section 12(12), 13(1), 14, 15(6), 5

Citation : (2006) 03 AHC CK 0218

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : S.P. Gupta and Shailendra, for the Appellant; S.M.A. Kazmi, Anurag Khanna, R.N. Singh and Neeraj Tripathi and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan and Dilip Gupta, JJ.—The petitioner, who was occupying the august office of Vice Chancellor of Chaudhary Charan Singh University, Meerut (hereinafter referred to as the University) has prayed for quashing the order dated 5.8.2005, passed by the Chancellor of the University, by which the petitioner has been removed from his office in exercise of the powers under the provisions of U.P. State Universities Act, 1973 (hereinafter called the Act 1973).

2. The facts and circumstances giving rise to this case are that the petitioner was appointed as a Vice Chancellor of the University on 2.3.2003 for a period of three years. Upon receipt of certain complaints the Chancellor of the University initiated an inquiry against the petitioner in exercise of the powers conferred upon him u/s 12(12) of the Act 1973. A charge-sheet dated 28/3/2005 was served upon the petitioner containing 15 charges. The petitioner filed a reply to the said charge-sheet on 25.4.2005. The Inquiry Officer submitted a report to the Chancellor on 7.6.2005. A show cause notice along with the inquiry report

was served upon the petitioner on 9.6.2005 to which he submitted his reply on 22.7.2005. The impugned order of removal was then passed by the Chancellor on 5.8.2005, after consideration of the entire material on record including the reply of the petitioner.

3. Sri S.P. Gupta, learned Senior Counsel appearing for the petitioner has detailed his submissions against the impugned order pointing out that the inquiry was conducted in violation of principles of natural justice as the petitioner was never informed about any date in respect of holding the inquiry; no opportunity was given to the petitioner to cross examine any witnesses; no opportunity was given to him to lead oral evidence; the documents which had been relied upon by the Inquiry Officer while preparing the report were not served upon the petitioner; large number of fresh complaints were made and the same were accepted by the Inquiry Officer at a belated stage; certain affidavits were filed before the Inquiry Officer, but copies were not served upon the petitioner; the Inquiry Officer acted in an arbitrary and mala fide manner and that the disciplinary authority passed the order without considering the reply to the show cause submitted by the petitioner. He, therefore, submitted that the order of the Chancellor was liable to be quashed.

4. On behalf of the respondents, Sri R.N. Singh, learned Senior Counsel appearing for the Chancellor duly assisted by Sri Neeraj Tripathi, Shri S.M.A. Kezmi, learned Additional Advocate General, State of U.P. and Sri Anurag Khanna, learned Counsel appearing for the University have submitted that the petitioner indulged in bench hunting as he had earlier filed a writ petition before the Lucknow Bench to challenge the same order, but he subsequently filed an application to withdraw the petition as he wanted to bring on record certain facts which were not placed on record. The application was allowed with liberty to file a fresh petition. They submitted that he then filed the present petition but no new additional facts have been brought on record. It has further been submitted that there is no question of presumption of malice on the part of the Inquiry Officer, and even if for the sake of arguments it is assumed that the authority acted with a mala fide intent, then too it becomes irrelevant as the charges stand established. This Court has a very limited power of interference while undertaking judicial review in such matters and such a course is not warranted in the facts of this case. Thus, the petition is liable to be dismissed.

5. We have considered the rival submissions made by learned Counsel for the parties and have perused the record.

Withdrawal of the writ petition from Lucknow Bench:

6. The petitioner had earlier filed Writ Petition No. 32810 of 2005 before the Lucknow Bench of this Court against the order dated 5.8.2005. The matter was taken up on various dates. The petitioner then filed an application to withdraw the petition mainly on the ground that he wanted to bring on record certain additional facts. The application was allowed vide order dated 27.9.2005 and the

petition was dismissed as withdrawn with liberty to file afresh. In the counter affidavit it has been specifically stated in paragraph 3 that no new fact have been brought on record in this petition. In the rejoinder affidavit only a bald denial has been made without pointing out any such additional fact which could be said to have been brought on record in this petition.

7. Order 23, Rule 1 of the CPC (hereinafter called CPC) deals with withdrawal and adjustment of Suits, It permits a person to withdraw the Suit, but he cannot maintain another Suit unless he has taken the leave of the Court while withdrawing the earlier Suit. I

8. The issue of withdrawal is no more res integra. In Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others, , the Hon"ble Apex Court held as under:

...The principle underlying Rule 1 of Order XXIII of the Code, is that when a plaintiff once institutes a suit in a Court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the Court to file fresh suit. *Invito beneficium non datur*. The law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will lose it. In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason the code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in Sub-rule (3) of Rule 1 Order XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata contained in Section 11 of the Code

...It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition....

9. A Division Bench of Rajasthan High Court in Radha Krishna and Another Vs. The State of Rajasthan and Others, observed that undoubtedly, CPC does not apply to the writ jurisdiction, but the principles enshrined in its provision can be made applicable if they are in consonance with the rules framed by the High Court. It was held that the Court can permit a party to withdraw the petition with liberty to file a fresh one, but that power is subject to the conditions prescribed in the provisions of Order XXIII, Rule 1 CPC and not beyond it.

10. In Beniram and Others Vs. Gaiind and Others, , the Apex Court held that permission to withdraw a case with liberty to file afresh on the same cause of action can be granted provided it is in the interest of justice or advances the

cause of justice.

11. Order XXIII, Rule 1 CPC does not confer an unbridled power upon the Court to grant permission to withdraw the petition, with liberty to file afresh, on the same cause of action; it can do so only on the limited grounds mentioned in the provision of Order XXIII, Rule 1 CPC, and they are, when the Court is satisfied that the suit must fail by reason of some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the same subject matter, and that too, on such term as the Court thinks fit. The grounds for granting a party permission to file a fresh suit, include a formal defect, i.e., in the form or procedure not affecting the merit of the case, such as also of statutory notice, u/s 80 of the Code, mis-joinder of the parties or cause of action, non-payment of proper Court -fee or stamp fee, failure to disclose cause of action, mistake in not seeking proper relief, improper or erroneous valuation of the subject matter of the suit, absence of territorial jurisdiction of the Code or defect in prayer clause etc. Non-joinder of a necessary party, omission to substitute heirs etc may also be considered a ground in this respect, or where the suit was found to be premature, or it had become infructuous, or where relief could not be, and where the relief even if granted, could not be executed, may fall within the ambit of sufficient ground mentioned in that provision. (Vide *Konkan Trading Company Vs. Suresh Govind Kamat Tarkar and Others*, ; *Muktanath Tewari and Another Vs. Vidyashanker Dube and Others*, and *Ramrao Bhagwantrao Inamdar Vs. Babu Appanna Samage*,

12. In the instant case, none of the grounds on the basis of which, petitioner could file an application for withdrawal existed, thus there was no occasion for him to file the said application on the ground that he could not succeed in obtaining the interim relief and matter was not likely to be heard soon. The application was totally misconceived. Thus, the conduct of the petitioner amounts to nothing but Bench hunting.

13. Be that as it may, as the Lucknow Bench has granted the liberty to file a fresh petition, it is neither desirable nor possible for us to probe the issue any further.

Malice:

14. No mala fide has been alleged in the petition nor any person has been impleaded by name. Therefore, the issue of personal mala fide" does not require consideration. More so, there is nothing on record to substantiate such an allegation. Even otherwise, it is a settled legal proposition that if the charges are otherwise justifiable and stand proved on the basis of adequate evidence, the order does not stand vitiated on account of mala fide or political vendetta, by the statutory authority or any other person, even if the malice stands proved. (Vide *Sheonandan Paswan Vs. State of Bihar and Others*, ; and *State of Haryana and others Vs. Ch. Bhajan Lal and others*,

Scope of Judicial Review:

15. The question that arises for consideration is regarding the scope of judicial interference in matters of administrative decisions. Administrative action is stated to be referable to the broad area of governmental activities in which the repositories of power may exercise executive, quasi-legislative and quasi-judicial functions.

16. The parameters of the Court's power have been analysed by the Hon'ble Supreme Court in *Commissioner of Income Tax, Bombay and Others Vs. Mahindra and Mahindra Limited and Others*, and held that by now, the parameters of the Court's power of judicial review of administrative or executive action or decision and the grounds on which the Court can interfere with the same are well settled and it would be redundant to recapitulate the whole catena of decisions of this Court commencing from *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, case on the point. "It is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by irrelevant or extraneous matters the Court would be justified in interfering with the same."

17. In *Smt. Shalini Soni and Others Vs. Union of India (UOI) and Others*, wherein it had been held that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote.

18. In *State of U.P. and Others Vs. Renusagar Power Co. and Others*, it was held that exercise of administrative power will be set aside if there is a manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary.

19. The famous "Wednesbury Case" *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1947) 2 All ER 680 (CA) is considered to be a landmark in so far as the basic principles relating to judicial review of administrative or statutory actions are concerned. We quote a passage from the judgment of Lord Greene which is as follows:

It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters, which he is bound to consider. He must exclude from his consideration matters, which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the

authority.... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another.

20. The principles of judicial review of administrative action were further summarised in *Council of Civil Service Unions v. Minister for the Civil Services* 1984 (3) All. ER. 935 (commonly known as CCSU case) as "illegality", "procedural impropriety" and "irrationality". It was also observed that some more grounds could in future become available, including the "doctrine of proportionality" which was a principle followed by certain other members of the European Economic Community. Irrationality was explained as follows:

It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

21. In *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, the Supreme Court after referring to the aforesaid two cases namely *Wednesbury* case and *CCSU* case held:

We are of the view that even in our country-in cases not involving fundamental freedoms-the role of our courts/tribunals in administrative law is purely secondary and while applying *wednesbury* and *CCSU* principles to test the validity of executive action or of administrative action taken in exercise of statutory powers, the courts and tribunals in our country can only go into the matter, as a secondary reviewing court to find out if the executive or the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of *Wednesbury* and *CCSU* tests. The choice of the options available is for the authority; the court/tribunal cannot substitute its view as to what is reasonable.

22. In *Indian Railway Construction Co. Ltd. Vs. Ajay Kumar*, the Hon"ble Supreme Court held that the Court can exercise the power of judicial review if there is manifest error in the exercise of power or the exercise of the power is manifestly arbitrary or if a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated.

23. In *People's Union for Civil Liberties and Another Vs. Union of India (UOI)*, while dealing with the same issue, the Hon"ble Supreme Court observed that judicial review is permissible if it is found that formation of belief by the statutory authority suffers from mala fide, dishonesty or corrupt practice. The order can be set aside if it is held to be beyond the limits for which the power has been conferred upon the authorities by the Legislature or is based on the grounds extraneous to the legislation and if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction required thereunder.

24. In *State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo*, the Hon''ble Supreme Court held that judicial review of an administrative action is permissible only on the grounds of illegality, irrationality and procedural impropriety.

25. The principles applied in judicial review of administrative decisions have also been considered by the Hon''ble Supreme Court in *Tata Cellular Vs. Union of India*, held that in such a case the Court should keep in mind that the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made; the Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible; and quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

26. In *M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation and Others*, it was held by the Hon''ble Supreme Court:

Broadly stated, the courts would not interfere with the matter of administrative action or changes made therein, unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide.

27. In *Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others*, the Hon''ble Supreme Court held as follows:

Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.

28. In *Krishan Yadav and another Vs. State of Haryana and others*, the Hon''ble Supreme Court observed that it is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are a sacred trust. Such offices are meant for use and not abuse. From a Minister to a menial everyone has been dishonest to gain undue advantages. Thus, in such a fact situation, scope of judicial review attains paramount importance.

29. In *B. Ramanjini and Others Vs. State of Andhra Pradesh and Others*, the Supreme Court enlightened what approach the Courts should adopt while dealing with matters relating to cancellation of examination and after referring to *Bihar School Education Board (supra)* observed that in such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some

material for the Government to act one way or the other.

30. In *Union of India (UOI) and Others Vs. Tarun K. Singh and Others*, while deciding the similar case the Supreme Court held that "in view of the allegation of malpractice, the departmental authorities has held an enquiry into the matter and the result of that enquiry has revealed gross irregularities and illegalities", thus no interference was warranted with the order passed by the statutory authority.

31. In *Zora Singh*, the Hon''ble Apex Court while dealing with the issue of scope of judicial review, held as under:

The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior Court would not interfere if the finding can be sustained on the rest of the evidence. The reason is that in a writ petition for certiohari the superior Court does not sit in appeal, but exercises only supervisory jurisdiction and therefore, does not enter into the question of sufficiency of evidence.

(Emphasis added)

32. In *Govt. of A.P. and Others Vs. Mohd. Narsullah Khan*, the Hon''ble Apex Court held that judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority.

33. In *State of Orissa and Others Vs. Md. Illiyas*, the Hon''ble Apex Court held that where a Statutory Authority had reached a subjective satisfaction that an office bearer has fully abused the powers, rights and privilege vested in him and had acted in a manner prejudicial of the interest of the inhabitants of public at large, the Court should be very slow in interfering with such orders.

34. Regarding re-appreciation of evidence by the High Court, the Supreme Court in the case of *High Court of High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others*, clearly held as follows:

...In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the

conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court.

35. The Supreme Court in *Rae Bareilly Kshetriya Gramin Bank Vs. Bhola Nath Singh and others*, held as follows:

Under these circumstances, the question arises whether the High Court would be correct in law to appreciate the evidence and the manner in which the evidence was examined and to record a finding in that behalf. Judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. In this case, no such errors were pointed out nor any finding in that behalf was recorded by the High Court. On the other hand, the High Court examined the evidence as if it is a court of first appeal and reversed the finding of fact recorded by the enquiry officer and accepted by disciplinary authority. Under these circumstances, the question of examining the evidence, as was done by the High Court, as a first appellate court, is wholly illegal and cannot be sustained.

36. In *R.S. Saini Vs. State of Punjab and Others*, the Supreme Court observed as follows:

Before advert to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the (evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings).

A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority. Likewise, the High

Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard.

37. In the case of Lalit Popli Vs. Canara Bank and Others, the Supreme Court observed as follows:

While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

38. The decisions referred to by us clearly highlight the parameters of the Court's power of judicial review of administrative action or decision. The jurisdiction of the Courts in such a matter is very limited. The order can be set-aside if it is based on extraneous grounds or there are no grounds at all for passing it or the grounds are such that no one can reasonably arrive at the opinion. The Court does not sit as a Court of Appeal but merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fide, dishonestly or corrupt practice. In other words the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/ examined nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is permissible against the decision making process and not against the decision itself. This apart, even when some defect is found in the decision-making process, the Court must exercise its discretionary power under Article 226 of the Constitution with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference that the Court should intervene.

Principles of Natural Justice & Their Applicability;

39. It cannot be doubted that the principles of natural justice cannot be put into a strait-jacket formula and that its application will depend upon the fact situation obtaining therein. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. This is what has been held by the Supreme Court in K.L. Tripathi Vs. State Bank of India and Others, N.K. Prasada Vs. Government of India and Others, ; State of Punjab Vs. Jagir Singh, ;

Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another, ; and in Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others,

40. In The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference of the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

41. In Union of India and Another Vs. Tulsiram Patel and Others, the Hon''ble Supreme Court held:

Though the two rules of natural justice, namely, *nemo judex in causa sua* and *audi alteram partem*, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible.

42. It is equally well settled that the principles of natural justice must not be stretched too far and in this connection reference may be made to the decisions of the Supreme Court in Sohan Lal Gupta (Dead) thr. L.Rs. and Others Vs. Smt. Asha Devi Gupta and Others, ; Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., and Canara Bank and Others Vs. Shri Debasis Das and Others,

43. In Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, , the Hon''ble Supreme Court held that principles of natural justice are not inflexible and may differ in different circumstances. Rules of natural justice cannot remain the same applying to all conditions.

44. The Constitution Bench of the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., made reference to its earlier decisions and observed: -

In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , it was held that the rules of natural justice operate in areas not covered by any law. They do

not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why, they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

(Emphasis added)

45. The Hon"ble Supreme Court in *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, while considering the cancellation of the entire examination because of use of mass copy considered the scope of the principles of natural justice in such a matter and observed:

It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go....

46. After referring to the aforesaid decision, the Supreme Court in *Chairman, J and K State Board of Education Vs. Feyaz Ahmed Malik and Others*, , emphasised that the Board is entrusted with the duty of proper conduct of examinations.

47. In *Biswa Ranjan Sahoo and others Vs. Sushanta Kumar Dinda and Others*, the Hon"ble Supreme Court had the occasion to examine whether principles of natural justice were required to be followed in a matter where because of large scale malpractice in the selection process, the selection was cancelled and in this context it was observed:

Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given selection and appointment.

48. In *Union of India and Others Vs. O. Chakradhar*, , the Hon''ble Supreme Court considered the question whether it was necessary to issue individual show cause notices to each selected person when the entire selection was cancelled because of widespread and all pervasive irregularities affecting the result of selection and it was observed:

The illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable.

49. In the case of *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , the Hon''ble Supreme Court refused to interfere on the ground of breach of principles of natural justice by observing that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

50. Validity of an order is to be tested on the touch-stone of doctrine of prejudice. (Vide *Jankinath Sarangi Vs. State of Orissa*, *K.L. Tripathi Vs. State Bank of India and Others*, *Sunil Kumar Banerjee Vs. State of West Bengal and Others*, *Major G.S. Sodhi Vs. Union of India (UOI)*, ; *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, ; *Krishan Lal Vs. State of Jammu & Kashmir*, ; *State Bank of Patiala and others Vs. S.K. Sharma*, ; *S.K. Singh Vs. Central Bank of India and Others*, ; *State of U.P. Vs. Harendra Arora and Another*, *Oriental Insurance Co. Ltd. v. S. Balakrishnan* AIR 2001 SC 2400; and *Debotosh Pal Choudhary Vs. Punjab National Bank and Others*,

51. In *Syndicate Bank and Others Vs. Venkatesh Gururao Kurati*, the Apex Court held as under:

To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice.

52. In *State of Assam and Another Vs. Mahendra Kumar Das and Others*, , the dismissal of a Police Sub Inspector, in pursuance of a disciplinary enquiry, held against him, had been set aside by the High Court on the ground that the enquiry officer had collected certain information/material behind his back and the said material was not made available to the delinquent officer. The Hon''ble Apex Court held that unless such an information is relied upon by the enquiry officer or the disciplinary authority, the allegation of violation of principles of natural justice cannot be entertained.

53. In *Chandrama Tewari Vs. Union of India (UOI)* (through General Manager, Eastern Railways), while dealing with a similar issue, the Supreme Court held as under:

However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the Enquiry Officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice can not successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authority cited on behalf of the appellant we find that the obligation to supply copy of a document is confined only to material and relevant documents and the enquiry would be vitiated only if non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer.

54. This cause was considered by the Supreme Court in in the case of State of Uttar Pradesh and Others Vs. Ramesh Chandra Mangalik, in which it has been observed:

Learned Counsel for the appellant has further submitted that particular documents copies of which are said to have not been supplied are not indicated by the respondent much less in the order of the High Court nor their relevance has been pointed out. The submission is that the delinquent will also have to show as to in what manner any particular document was relevant in connection with the inquiry and what prejudice was caused to him by non-furnishing of a copy of the document. In support of this contention, reliance has been placed upon a case reported in Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), It has been observed in this case that the obligation to supply copies of documents is confined only to material and relevant documents which may have been relied upon in support of the charges. It is further observed that if a document even though mentioned in the memo of charges, has no bearing on the charges or if it is not relied upon or it may not be necessary for cross-examination of any witness, non-supply of such a document will not cause any prejudice to the delinquent. The inquiry would not be vitiated in such circumstances. In State of Tamil Nadu Vs. Thiru K.V. Perumal and others, relied upon by the appellant, it is held that it is for the delinquent to show the relevance of a document a copy of which he insists to be supplied to him. Prejudice caused by non-supply of document has also to be seen. In yet another case relied upon by the learned Counsel for the appellant reported in State of U.P. Vs. Harendra Arora and Another, it has been held that a delinquent must show the prejudice caused to him by non-supply of copy of document where order of punishment is challenged on that ground.

Learned Counsel for the appellant submitted that no material or document has

been relied upon by the Inquiry Officer, copy of which or inspection thereof may not have been allowed to the respondent. No material has been obtained after the date of hearing nor any such material has been made use of by the Inquiry Officer. It is further submitted that in the judgment of the High Court it has nowhere been indicated that any material or document, copy of which has not been supplied to the respondent, was used much less any prejudice, if caused to the respondent. Learned Counsel for the respondent could not pinpoint any particular document which may have been made use of by the Inquiry Officer for establishing the charges leveled against the respondent, copies of which or inspection thereof may not have been allowed to the delinquent by the Department. No submission has been advanced on behalf of the respondent on the point of prejudice which may have been caused to the - respondent by non-supply of document, if any. The High Court has also not gone into the question of the relevance of the documents copies of which are said to have not been supplied to the respondent and consequent prejudice, if caused. We therefore find that the finding of the High Court that principles of natural justice have been violated for non-supply of documents to the respondent is not sustainable. The cross-examination of a witness which was sought for, had unfortunately died which fact was also brought to the notice of the respondent.

55. While dealing with the similar case, i.e., removal of the Vice Chancellor and dealing with the grievance that no opportunity of hearing or participation in the inquiry had been given to the then Vice Chancellor, in *Dr Umrao Singh Choudhary Vs. State of M.P. and Another*, , the Apex Court held that the principles of natural justice does not supplant the law, but supplement the law. Its application may be excluded either expressly or by necessary implication. In the said case while considering the provisions of the Madhya Pradesh Vishwavidyalay Adhiniyam, 1973, the Apex Court held that by virtue of the provisions of Section 14 of the Act, application of the principles of natural justice had been dispensed with, and therefore if the inquiry had been held without giving an opportunity to the petitioner, therein, that would not vitiate the order of removal of the Vice Chancellor.

56. Thus, in view of the above, law can be summarised that principles of natural justice are not embodied rules. No strait-jacket formula can be laid down in this regard as it depends upon the facts and circumstances of each case. In a particular case where the facts remain undisputed and undeniable, observation of these principles would render a futile exercise or useless/empty formality. In the application of the concept of fair play there has to be real flexibility. There is no such thing as a mere technical infringement of the said principles. Application of the said principles has to be in conformity with the statutory provisions and subject matter of the case. However, one, who alleges violation of these principles, must further establish that prejudice has been caused to him for non-observance of principles of natural justice.

57. The case of non-supply of documents or evidence recorded behind the back

of the delinquent, or not giving the opportunity to cross-examine the witnesses, seems to suffer from serious irregularity, but unless it is established that the material so collected in violation of the principles of natural justice has been used by the Enquiry Officer or the disciplinary authority, no such grievance can be raised.

Case on Merits:

58. The case requires to be considered on merits in the light of the aforesaid settled legal propositions. The role of a teacher had always been considered of paramount importance in the society from times immemorial. In *re The Kerala Education Bill* AIR 1957 SC 956 the Hon'ble Apex Court explained the importance of the post of the Principal observing that he is the key post in the running of the institution. "He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified (through him) and he is the focal point on which outsiders look at the school."

59. In *Aldo Maria Patroni and Another Vs. E.C. Kesavan and Others*, the Court observed as under:

The post of the Head Master is of pivotal importance in the life of the school. Around him wheels the tone and temper of the institution; on him depends the continuity of its tradition, the maintenance of discipline and the efficiency of its teaching.

60. In *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, , the Hon'ble Supreme Court held that it is upon the Principal and Teachers of a College that the tone and temper of an institution and its education depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching.

61. Similar view has been reiterated in *The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another*, In *Marathwada University Vs. Seshrao Balwant Rao Chavan*, , the Hon'ble Supreme Court has dealt with the importance of the post of the Vice Chancellor in detail. The Hon'ble Supreme Court referred to the *The University Education Commission* in its report (Vol. I December 1948 to August 1949) has summarised the powers and duties as follows (at 421):

Duties of Vice-Chancellor- A Vice-Chancellor is the chief academic and executive officer of his university. He presides over the court (Senate) in the absence of the Chancellor, Syndicate (Executive Council) Academic Council, and numerous committees including the selection committees for appointment of staff. It is his duty to know the senior members of the staff intimately and to be known to all members of the staff and students. He must command their confidence both by adequate academic reputation and by strength of personality. He must know his university well enough to be able to foster its points of strength and to foresee possible points of weakness before they become acute. He must be the "keeper

of the university's conscience", both setting the highest standards by example and dealing promptly and firmly with indiscipline and malpractice of any kind. All this he must do and it can be done as constitutional ruler; he has not, and should not have autocratic power. Besides this he must be the chief liaison between his university and the public, he must keep the university alive to the duties it owes to the public which it serves, and he must win support for the university and understanding of its needs not merely from potential benefactors but from the general public and its elected representatives. Last, he must have the strength of character to resist unflinchingly the many forms of pressure to relax standards of all sorts, which are being applied to universities today.

62. This has been approved by the Education Commission, 1964-66. In the report of the Education Commission, 1971 (at 610-11 para 13,32) it was stated;

The person who is expected, above, all, to embody the spirit of academic freedom and the principles of good management in a university is the Vice-Chancellor. He stands for the commitment of the university to scholarship and pursuit of truth and can ensure that the executive wing of the university is used to assist the academic community in all its activities. His selection should, therefore, be governed by this overall consideration.

63. Dr. A.H. Homadi in his wise, little study about the role of the Vice-chancellor in the university administration in developing countries has this to state (at 49):

64. The President or the Vice-Chancellor:

The President must be willing to accept a definition of educational leadership that brings about change to the academic life of the institution. He must be fired by a deep concern for education. He should instill a spirit and keenness about growth and development in such a way that the professariate feels that their goals are interlinked with those of the University, that their success depends upon the success of the University. The professors should be given detailed information about the jobs that they have to perform and their good performance should be given due recognition by administration leadership. Even such small encouragement will boost their morale to greater heights. The President should have faith in his own abilities as well as on the abilities of other professors and administrators and should provide guidelines about the kind of efforts he would like his professors and administrators to make, setting an example by his own actions and exercises. The negative force of fear, when used and no one denies that an element of hard-headedness is sometimes required as a persuasive inducement to professors and administrators of university should be employed judiciously. Under no circumstances should the apathy and belligerence of the professors and administrators be aroused. These call for strong but sympathetic leadership in the President.

65. The Court further observed as under:

The Vice-Chancellor In every university is thus the conscience keeper of the

University and constitutional ruler. He is the principal executive and academic officer of the University. He is entrusted with the responsibility of overall administration of academic as well as non-academic affairs. For these purposes, the Act confers both express and implied powers on the Vice-Chancellor. The express powers include among others, the duty to ensure that the provisions of the Act, statutes, Ordinances and Regulations are observed by all concerned.

66. In *Prof. Yashpal and Another Vs. State of Chhattisgarh and Others*, the Hon'ble Supreme Court has referred to various reports given by the Commissions, wherein it had been observed that "the intellectual pioneers of civilisation are to be found and pruned in the Universities, which are the sanctuary of the inner life of the nation." It becomes the primary duty of the University to maintain the highest standard of its teaching and examination as the personality and capacity of the students are developed only in educational institutions, and that is too, to the utmost by teachers who should themselves put at work at the frontiers of knowledge in their respective fields. Degrees of the University must connote a high standard of scholarly achievements in passing out students. The function of the University is not only to preserve and disseminate advanced knowledge but also to furnish intellectual leadership and moral tone to the society. It also plays an important role in promoting national integration and a common culture, and in bringing about the social transformation that is desired.

67. Relevant provisions of the Act 1973 are quoted hereunder.

68. Section 12(12) of the Act reads as under:

If in the opinion of the Chancellor, the Vice Chancellor wilfully omits or refuses to carry out the provisions of this Act or abuses the powers vested in him, or if it otherwise appears to the Chancellor that the continuance of the Vice Chancellor in office is detrimental to the interest of the University, the Chancellor may, after making such inquiry as he deems proper, by order, remove the Vice Chancellor.

69. Section 13(1) of the Act 1970 reads as under:

Section 13(1) Powers and duties of the Vice Chancellor: The Vice Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University, including the constituent colleges and the institutions maintained by the University and its affiliated and associated colleges.

70. Sub-section (4) says that it shall be the duty of the Vice Chancellor to ensure the faithful observance of the provisions of this Act, the statutes and the ordinances, and he shall without prejudice use the powers of the Chancellor (under Section 10 and 68) possessed of such powers, as may be necessary in that behalf.

71. The aforesaid statutory provisions make it crystal clear that it is the solemn duty of the Vice Chancellor to ensure the compliance and observance of the

statutory provisions of the Act and further to ensure that all the actions taken by the University are in strict adherence to the said statutory provisions.

72. Thus, the aforesaid provisions make it clear that in case the Vice Chancellor fails to perform his duties or to ensure the compliance of the statutory provisions of the Act 1973, he can be removed from his office after following the procedures prescribed for that purpose.

73. Petitioner was confronted with 15 charges. Some of them are of very grave nature, and most of the charges relate to supervisory negligence of the petitioner.

74. The first issue that has to be examined is regarding providing ample opportunity to the petitioner to defend himself against the charges levelled. From the facts brought on record, it is clear that the charge sheet was served on the petitioner on 28th March, 2005 and on his request, the time for giving reply to the charge sheet was extended. The petitioner on 25th April, 2005 submitted his detailed reply to the charges along with annexures running into 265 pages. The Inquiry Officer also stationed himself at Meerut for four days and proceeded with the enquiry during which period, the petitioner met the Inquiry Officer and placed his version.

75. The contention of the petitioner, in essence, is that he had demanded certain documents but copies were not supplied to him. The petitioner has relied on his written request dated 23.06.2005, copy whereof is Annexure-7 to the supplementary affidavit filed by the petitioner. A perusal of the said request made by the petitioner indicates that there is no indication of any prejudice having been caused to the petitioner for non-supply of any particular material. Neither the writ petition nor the supplementary affidavit indicate as to how the petitioner was prejudiced and which document, which the petitioner had demanded would have made a difference in setting out his defence. The burden definitely lay on the petitioner to demonstrate any prejudice, which he has failed to discharge before us. It may also be pointed out that the Chancellor of the University who is the disciplinary authority had supplied all the documents to the petitioner and had given him all the opportunity to file his reply. It cannot therefore be contended by the petitioner that the documents had not been supplied to him at all. The Supreme Court has in *Canara Bank Vs. V.K. Awasthy*, held that in a given case post-decisional hearing can obliterate the procedural deficiency of a prededstional hearing and the relevant paragraph is quoted below:

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...As is rightly pointed out by learned Counsel for the appellant, unless failure of justice is occasioned or that it would not be in public interest to do so in a particular case, this Court may refuse to grant relief to the employee concerned. (See *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, . It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can

obliterate the procedural deficiency of a pre-decisional hearing. (See Charan Lal Sahu Vs. Union of India,

76. The findings recorded in the opening pages of the impugned order dearly indicate that ample opportunity was granted to the petitioner to rebut the charges. We have, therefore, no hesitation in holding that the petitioner was given adequate opportunity to defend himself and he has failed to demonstrate before us which particular material could have caused prejudice to his defence. The burden lay on the petitioner and this cannot be disputed in view of the proposition of law laid down in the case of Syndicate Bank v. Venkatesh (supra), The contention that the impugned order and the entire proceedings are in violation of principles of natural justice is, therefore, unsustainable.

77. Charge No. 15 is in respect of running of distant education courses in contravention of the provisions of the Act 1973. The petitioner in his reply in respect of the said charge, had stated that he had proceeded to act only in accordance with the sanction of the Executive Council and that secondly, the matter pertaining to the orders passed by the Chancellor stopping such distant education centres, were sub-judice before the Hon"ble High Court. The Petitioner in his reply to the said charge also pointed out that the said distant education programme was started after taking the approval of the University Executive Council in its meeting held on 25.4.2004, wherein, the Vice Chancellor himself had been given the responsibility to take decision in this regard. The Inquiry Officer after considering the evidence on this issue recorded the finding that 104 centres of distant education programme had been opened by the University in the year 2004-05 without seeking approval of the Chancellor and the Government. The said centres had been opened in violation of the statutory provisions of the Act 1973. Method of providing University Degrees through private bodies stood defined into the form of distant education programme and/or being run for personal gains. The charge in this regard stood fully proved.

78. In his objection to the inquiry report the petitioner submitted before the Chancellor, the disciplinary authority, that the matter was subjudice before this Court, and therefore, no comments were required to be tendered. The disciplinary authority considered the Issue along with the reply submitted by the petitioner and came to the conclusion that running of the said centres was violative of the provisions of the Act 1973. The distant education centres could not have been opened at all without amendment of the Act 1973 in view of the provisions of Section 52(5) of the Act, and admittedly, there has been no amendment in the Act. Therefore, the ordinance promulgated by the University in this regard was null and void and the charge stood fully proved.

79. It may be pertinent to mention here that as the petitioner himself had submitted that the matter was subjudice on the date he submitted the reply on 22nd July, 2005. The said cases were disposed of by this very Bench giving the Judgment In leading case, Allahabad College of Engineering and Management Vs. His Excellency, The Chancellor, M.J.P. Rohilkhand University and Others, This

Bench considered various provisions of the Act 1973, and particularly, the provisions of Sections 5, 51 and 52 and came to the conclusion that in view of the provisions u/s 5 of the Act, the University was not permitted to impart education beyond the territorial limits of the State of Uttar Pradesh and without prior notification in the gazette issued by the State of Uttar Pradesh amending the Act. Therefore, it was not permissible for the University to establish the study centres in the State or outside the State beyond its territorial limits. Such an action, therefore, could not be justified so long as the Act remained un-amended. It was permissible for the University to undertake the said exercise only in accordance with the procedure prescribed by law. It was for the various bodies under the Act 1973 to examine the feasibility of requiring the Universities to conduct courses through distant learning and make suitable amendments in the Act, in the University Statutes and then frame the Ordinances. A large number of students have been asked to deposit a huge amount of money for securing admission and fees etc. This Court did not permit them to continue with the studies rather the centres were directed to refund the amount to the candidates.

80. The said Judgment and order dated 25.7.2005 was challenged before the Hon"ble Apex Court by filing the SLP 2005 CC 8726 Virendra Singh and Anr. v. Chancellor and Ors. and Writ Petition No. 496 of 2005, Ranjit Singh and Ors. v. Chancellor and Ors. Matters were heard by the Hon"ble Apex Court on 3rd December, 2005. The petitioners therein withdrew the writ petition as well as the SLP (Defective). Thus, the judgment and order dated 25.7.2005 attained finality.

81. From the aforesaid judgment and order it is evident that opening the distant education centres by the Meerut University was in flagrant violation of the statutory provisions of the Act 1973. By this process of the University not only private centres have been benefited financially but the misconduct committed by the petitioner has been of a very high magnitude. The Executive Council had authorised the Vice Chancellor- petitioner to act in accordance with law. Executive Council itself was not competent to authorise the Vice Chancellor to proceed in contravention of the statutory provisions. Therefore, merely because the Executive Council had authorised the petitioner to take steps in this regard, cannot absolve him from the responsibility to act and proceed only in consonance with the statutory provisions. Thus, the submissions in this regard are by no means tenable.

82. Charge No. 8 relates to receiving honorarium for conducting the CPMT-2004 Admission Test coupled with the fact of not furnishing the account of a huge amount collected by the University in this regard. The evidence on record indicates that Rs. 5,17,85,000.00 were collected from the students appearing for the Test. Ten per cent share of the total income from examination amounting to Rs. 51,78,500.00 was paid to the State Government. Some amount had been distributed amongst the authorities of the University which was not in consonance with the statutory provisions and its account had not properly been maintained.

83. Shri S.P. Gupta, learned Senior Advocate appearing for the petitioner tried his best to satisfy the Court by showing some figures but he miserably failed to furnish the account of the entire amount. It is neither desirable nor permissible for this Court to sit in appeal against the order of the Chancellor and satisfy itself regarding the accounts, but even this attempt made by Shri Gupta miserably failed and no fault can be found with the finding recorded by the Inquiry Officer.

84. Charge No. 11 is regarding the construction of the work worth over rupees twenty-five crore without following the prescribed procedure and in some cases even tenders had not been invited. There was no advertisement for tenders for MBA, Urdu, Zoology, Answer Book M.Phil Department and Fine Arts etc.. The University Engineers were not competent to enter into and sign the contract and assess the quality of work, in view of the provisions of Section 15(6) of the Act 1973. The issue was examined by the Court microscopically as Shri S.P. Gupta, teamed Senior Counsel took us through the various documents to show that the findings recorded by the Inquiry Officer as well as the agreement expressed by the disciplinary authority were not justified. One find that remains intact is that for the construction worth rupees 18-20 crores there was no advertisement at all and the work was assigned to the contractors without even calling for tenders. Undoubtedly, in some of the cases tenders had been invited but admittedly not for the aforesaid work. Thus, there had been grave financial irregularity. More so, the contract had been executed by the Engineer of the Construction Department though the statutory provisions require that the agreement should be executed by the Finance Officer/Finance Controller. Thus, no interference is required in view of the findings recorded on this charge.

85. Charge No. 5 relates to acting by the Vice Chancellor in collusion with other employees of the University in making recommendation for affiliation of C.L Degree College, Rethani for the academic session 2004-05 on the basis of fake/forged no-objection certificates. Subsequently recommendations were made to cancel the said affiliation by the University vide its letter dated 28.9. 2005. We do not find any force in the submission made on behalf of the petitioner that at the initial stage recommendation had been made on the basis of the inspection report and no objection certificates issued by the various authorities for the simple reason that it was the sole responsibility of the petitioner before signing the letter of recommendation to satisfy himself that he was making the recommendation after the fulfilment of the required formalities.

86. Charge No. 14 reads as under: -

Serious irregularities were committed in University Printing work and the concerned account was not maintained.

87. We do find force in the submissions made by Shri S.P. Gupta, learned Senior Counsel for the petitioner that no enquiry could be conducted on such a vague charge as no particulars of any printing work had been given.

88. In Surath Chandra Chakrabarty Vs. State of West Bengal, the Hon'ble Apex

Court held that It is not permissible to hold an enquiry on vague charges as the same does not give a clear picture to the delinquent to make an effective defence because he may not be aware as what is the allegation against him and what kind of defence he can put in rebuttal thereof. The Supreme Court observed as under:

The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which It is proposed to be taken into consideration in passing orders has to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.

89. In a case where the charge-sheet is accompanied with the statement of facts and the allegation are not specific in charge-sheet but are crystal clear from the statement of charges, in such a situation as both constitute the same document, it may not be held that as the charge was not specific, definite and clear, the enquiry stood vitiated. (Vide *State of Andhra Pradesh Vs. Sree Rama Rao*, Thus, where a delinquent is served with a charge-sheet without giving specific and definite charge and no statement of allegation is served along with the charge-sheet, the enquiry stands vitiated as having been conducted in violation of the principles of natural justice.

90. In *Sawai Singh Vs. State of Rajasthan*, the Apex Court held that even in a domestic enquiry the charge must be clear, definite, and specific as it would be difficult for any delinquent to meet the vague charges. Evidence adduced should not be perfunctory even if the delinquent does not take the defence or make a protest that the charges are vague. That does not save the enquiry from being vitiated for the reason that there must be fair-play In action, particularly, in respect of an order involving adverse or penal consequences.

91. In *U.P.S.R.T.C. and Ors. v. Ram Chandra Yadav* AIR 2000 SC 3596 while dealing with a similar case, the Apex Court held as under:

In other words, what is required to be examined is whether the delinquent knew the nature of accusation, whether he has been given an opportunity to state his case and whether the departmental authority has acted in good faith. If these requirements are satisfied then it cannot be said that the principle of natural justice has been violated.

92. The purpose of holding enquiry against any person is not only with a view to establish the charge against him or impose the penalty, rather It is conducted with the object of recording the truth and in that sense the outcome of an

enquiry may either result in establishing or vindicating his stand and result in his exoneration. Therefore, fair action on the part of the authority concerned is of a paramount necessity.

93. The authority concerned cannot penalise the delinquent on an allegation not a part of the charge-sheet, as it would be an order beyond the charge against the delinquent and it cannot be sustained. [Vide Vishwanath Mishra v. U.P. Public Services Tribunal and Ors. (1985) 2 SLR 708].

94. In view of the above, law can be summarised that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and shall give details of the incident which forms the basis of charges. No enquiry can be sustained on the vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.

95. However, the petitioner himself understood the charge in a meaningful manner, as he submitted a detailed reply giving particulars of all the printing works. Therefore, the grievance that the charge was vague and could not be understood by the petitioner becomes only an academic issue and does not require to be examined at all further.

96. The charge related to serious/financial irregularities in printing work and not maintaining the accounts thereof by the University. The explanation furnished by the petitioner that certain printing had to be done from outside i.e., Bareilly a distant place to maintain confidentiality. In fact, petitioner had earlier been working as Principal in Bareilly Degree College, but as the tenders had not been invited, no formality had been completed and orders had been issued for supplying the copies etc. approximately for fifty-two lacs rupees. At least answer books etc. should have been printed after inviting tenders as there could be no confidentiality in this regard and that may be relevant only for the purpose of printing of question papers. By adopting this method, huge amount could have been saved. There has been a litigation in this regard as some petitions had been filed and interim order dated 6.2.2004 was obtained. We do not see any cogent reason for not agreeing with the finding recorded by the Inquiry Officer that financial norms had not been observed by the University for which the petitioner along with Registrar and Finance Controller can be held responsible.

97. Charge No. 9 relates to admission test in the course of B.Ed for the session 2003-04 as fake vouchers had been prepared and thereby serious financial irregularities had been committed in connection with the application of admission test. The account of income received from the admission test fee had not been maintained properly, and thus the charge of financial irregularities stood proved. Considering the explanation furnished by the petitioner the disciplinary authority had dropped the charge.

98. Charge No. 3 had been that during the academic session 2003-2004

petitioner permitted 50% as against 15% permissible quota of students to be admitted in management quota and earned financial gain. Petitioner submitted his reply relying upon some interim order passed by this Court in respect of other Universities. However, so far as this University is concerned the interim order passed by this Court has been otherwise. Charge has been found proved to the extent that the petitioner helped many institutions running B.Ed. Course, to admit students in excess of the management quota. We do not see any reason to hold that finding so recorded was perverse, being not based on evidence or contrary to the evidence on record.

99. We have also examined the findings recorded by the Inquiry Officer on other charges and re-appreciation of the same by the learned Chancellor, i.e. the disciplinary authority. As no serious infirmity can be found therein, the remaining charges do not require detailed elaboration and we find ourselves in agreement in toto in regard to the findings recorded in respect of those charges by the Inquiry Officer as approved and accepted by the disciplinary authority.

100. From a conspectus of what has been stated herein above, we find that the petitioner has not conducted himself in a manner which may justify any of his actions. The petitioner, in our opinion, has blatantly misused and abused his position and office both as Vice Chancellor of the University in steering himself recklessly without any respect for the law and in a manner which is contrary to all norms of discipline. The University, instead of being portrayed as an example of purity of academic life, was converted into a commercial venture designed to suit the interest of the petitioner. The conclusions drawn by the Inquiry Officer as also the Chancellor cannot be said to suffer from any perversity or an incorrect assessment of the situation. We must also make reference to the observations made by the Supreme Court in *Dr. Bool Chand Vs. The Chancellor, Kurukshetra University*, in respect of the order passed by the Chancellor of the University terminating the services of the Vice Chancellor of the University. The Hon'ble Supreme Court held:

In the very scheme of our educational set-up at the University level, the post of Vice Chancellor is of very great importance, and if the Chancellor was of the view after making due enquiry that a person of the antecedents of the appellant was unfit to continue as Vice Chancellor, it would be impossible, unless the plea that the Chancellor acted maliciously or for a collateral purpose is made out, for the High Court to declare that order ineffective. The plea that the Chancellor acted mala fide was raised, but was not pressed before the High Court.

101. In the instant case, allegations of mala fide or bias have not been made either against the Inquiry Officer or the Chancellor. In view of the law referred to herein above, the wide latitude has to be given to the disciplinary authority in such matters and it is neither desirable nor permissible for the Court to re-appreciate the evidence in the manner suggested by the learned Senior Counsel appearing for the petitioner. If his submission is accepted, this Court would function as an appellate authority.

102. We, therefore, see no reason to interfere with the impugned order. The writ petition is accordingly dismissed.