

(2008) 07 DEL CK 0258

In the Delhi High Court

Case No : Writ Petition (C) 6512 of 2007

Harpal Singh Sangwan

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311(2)

Industries (Development and Regulation) Act, 1951 — Section 18, 18AA, 18AA(1)

Citation : (2008) 07 DEL CK 0258

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Aarti Mahajan, for the Appellant; Arvind Nigam and Amit Bansal, for the Respondent

Judgement

Vipin Sanghi, J.—The petitioner was student of M.A.(Russian) in the department of Slavonic and Finno Ugrain Studies, University of Delhi during the years 2005-07. He appeared in the final year examination, and while awaiting the result for the said examination, the petitioner in pursuit of his quest for further knowledge appeared in the entrance examination on 8.7.2007 for the Post Graduate course in "Hindi Journalism" for the session 2007-2008. His result of the M.A. (Russian) final year examination was declared on 2.8.2007. In the first week of August 2007, the petitioner learnt that the list of candidates who had cleared the entrance examination for the post graduate course in "Hindi Journalism" was out. The petitioner further learnt that his name had been initially displayed in the list of successful candidates, but the same was substituted with another list which did not include his name. On 6.8.2007, the petitioner states that he received the impugned notification dated 30.7.2007 issued by the respondent university which reads as follows:

The University Administration has received complaints and reports indicating acts of gross indiscipline committed by Shri Harpal Singh Sangwan, a student of M.A. in Russian Studies, University of Delhi, South Campus. Such acts of indiscipline

include physical assault, threat to use physical force against the members of teaching community and students of the Department. It has also come to the light of the authorities that Shri Harpal Singh Sangwan is in a habit of misbehaving with and abusing teachers, students and non-teaching staff of the University. These acts and examples constitute gross indiscipline within the meaning of Clause 3, particularly Sub clause (a) and (i) of Ordinance XV-B of the University.

After carefully examining the matter in detail, the Vice Chancellor, under the powers vested under Ordinance XV-B, has, in order to maintain discipline, directed that Shri Sangwan be not admitted in any course in the University of Delhi for a period of next 5 years.

2. The impugned notification came as a blot from the blue and purported to deny him his right to pursue further study in the University for a period of five years. On account of the aforesaid notification, it appears that the petitioner was sought to be denied admission to the aforesaid post graduate course in "Hindi Journalism".

3. Accordingly, the petitioner filed the present petition under Article 226 of the Constitution of India seeking a writ of certiorari to quash and set aside the impugned notification dated 30.7.2007 issued by respondent No. 3; a direction to restraint the respondents from acting in pursuance of the aforesaid notification; a direction to the respondents to permit the petitioner to take admission to any course in the University of Delhi and to consider his candidature for the said post graduate course in "Hindi Journalism" for which he had cleared the written examination. He also sought a restraint against the respondent University from finalizing the process of filling up all the seats for the year 2007-2008 batch in the said post graduate course in "Hindi Journalism" without considering the candidature of the petitioner.

4. This Court issued notice to the respondents on 5.9.2007 which was accepted by learned Counsel for the respondent in Court. On 14.9.2007, this Court passed an interim direction to keep one seat reserved in P.G. Certificate Course in "Hindi Journalism" in South Campus, subject to final outcome of the writ petition. The respondents did not file their response/counter affidavit and consequently vide order dated 12.12.2007, the Court granted one final opportunity to the respondents to file the counter affidavit within two weeks while imposing costs of Rs. 30,000/- upon the respondent. Thereafter the respondents have filed their counter affidavit.

5. During the pendency of the petition, the respondent University issued a notification on 26.11.2007 stating that the competent authority had decided to grant post decisional hearing to the petitioner and had accordingly constituted a committee consisting of Professor V.K. Bhasin, Department of Zoology as the Chairperson and Dr. M. Rahman, Acting Proctor as the Member "to look into the complaints against Shri Harpal Singh Sangwan". This notification further states:

"Now therefore, the Committee mentioned above will afford a post decision hearing to Shri Sangwan with regard to his grievance relating to imposition of punishment under Ord. XV-B after giving a proper notice for the said hearing". The Committee was expected to give its report to the Vice Chancellor within ten days from the date of issue of the notification. The Chairperson of the enquiry committee, Professor V.K. Bhasin issued a notice dated 26/28.11.2007 giving the petitioner an opportunity to appear before the committee for a hearing on 3.12.2007 with regard to his grievance relating to imposition of punishment under Ordinance XV-B along with the relevant records, if any, in support of his case. He was also given an option to present his case before the Committee through a written statement. On 3.12.2007, the petitioner appeared before the said Committee. The Committee put to the petitioner the four complaints which formed the basis of the action against him. The four complaints were as follows:

i) Complaint of misbehaviour dated 10.11.2005 from one Mr. Neeraj Dubey (Roll No. 135) of Certificate course in Russian Language, addressed to the Security Incharge, University of Delhi South Campus wherein the complainant was abused and beaten up by two ex-students.

ii) Complaint dated 2.12.2005 from Dr. A. Venkat Raman, Deputy Proctor, University of Delhi South Campus addressed to Prof. A. Maurya, Head, Department of Slavic Studies, UDSC wherein it was reported that on 2.12.2005, the said Shri Harpal Singh Sangwan abused and misbehaved with the security staff and the Deputy Proctor when they were handling with one Mr. Sandeep Singh, Roll No. SCRC-215, an Ex Student of Certificate Course in Russian. Mr. Sandeep Singh was one of the two students against whom a complaint was registered by Mr. Neeraj Dubey.

iii) Complaint dated 17.4.2007 from Shri Ravindra Kumar, Private Secretary to the Director, UDSC addressed to the Director, UDSC about the misbehaviour by the said Shri Harpal Singh Sangwan.

iv) Complaint dated 1.5.2007 from Prof. S.K. Vij, Head, Department of Slavonic & Finno Ugrian Studies, UDSC, addressed to the Director, UDSC about the act of misbehaviour by the said Shri Harpal Singh Sangwan wherein he shouted at the complainant and insulted before other faculty members in the HoD's office.

6. The petitioner sought copies of the complaints so that he could file reply to them. The hearing was thereafter fixed on 10.12.2007. The petitioner replied to the aforesaid notice which was delivered on 3.12.2007. He submitted another reply on 10.12.2007, to the specific complaints against him. Thereafter it appears that the enquiry committee prepared its report on 26.12.2007 which was given to the petitioner for his comments on or about 4.1.2008. The petitioner gave his response dated 31.1.2008 to the enquiry report. Thereafter the respondent University passed a further order dated 8/9.5.2008 stating that the Vice Chancellor has, after considering all the facts and circumstances of the case and the report of the enquiry committee, and after having examined the

matter in depth come to the conclusion that the response of the petitioner is unsatisfactory and unacceptable and that there are no grounds for review of its decision dated 27.7.2007 which culminated in the impugned order dated 30.5.2007 and hence the decision dated 27.7.2007 was upheld. The order dated 8/9.5.2008, inter alia, states that the Vice Chancellor has gone through the details of the case, findings of the Committee and the subsequent response of Mr. Sangwan, the petitioner and has taken into account:

(a) that the subsequent memorandum was issued to him to afford him one more opportunity to present his side for defence, but his response thereto was vague, and unsatisfactory which did not explain the charges against him and hence it was unacceptable;

(b) that in his response, Mr. Sangwan did not offer any evidence or material to disprove the allegations that the Committee had concluded as proven;

(c) that in his response Mr. Sangwan did not bring out any material irregularity or omission in the inquiry proceedings;

(d) that Mr. Sangwan's assertions in denying the charges were in the nature of statements without any evidence or proof which was grossly unacceptable since the charges against him had been proved;

(e) that in his response, Mr. Sangwan has not indicated any such ground that the Inquiry Committee ought to have taken into account but failed to take into account, that could have had significant impact on the enquiry proceedings or its findings; and

(f) that the material facts and ground realities of this case have remained unaltered;

7. The petitioner's representation dated 31.01.2008 and the order dated 8/9th May, 2008 have been produced at the time of hearing and the petitioner has been required to place them on record. The same have, accordingly, been placed on record by petitioner vide Additional Affidavit dated 15.07.2008.

8. The first submission of learned Counsel for the petitioner is that the impugned notification dated 30.7.2007 is patently illegal and arbitrary, inasmuch as, it is evidently in violation of the Principles of Natural Justice. The said order had been passed without any notice, much less an opportunity to the petitioner to show cause against such a drastic action as to debar him from studying in the University for a period of five years. The order is non-speaking. It ought to have been preceded with a show cause notice and a hearing since it vitally affected the petitioner's rights of pursuing further studies in the respondent University. It is further submitted by the learned Counsel for the petitioner that in a case like the present a post decisional hearing cannot be an adequate substitute. The impugned notification cannot be saved by resort to the cover up exercise resorted to by the respondents of pretending to give a post decisional hearing to the petitioner. In this regard reliance is being placed by the petitioner on the

decision of the Supreme Court in K.I. Shephard and Others Vs. Union of India (UOI) and Others, and Shri Shekhar Ghosh Vs. Union of India (UOI) and Another, .

9. Learned Counsel for the petitioner further submits that even the so called post decisional hearing granted to the petitioner was an eye wash and was also in violation of the Principles of Natural Justice. The respondents have completely failed to establish any of the allegations made against the petitioner for taking action under Ordinance XV-B. Ordinance XV-B which deals with maintenance of discipline among students of the University states that "All powers relating to discipline and disciplinary action are vested in the Vice Chancellor". Clause 3(a) of Ordinance XV-B states: "Without prejudice to the generality of power to enforce discipline under the Ordinance, the following shall amount to acts of gross indiscipline:

a) Physical assault or threat to use physical force, against any member of the teaching and non-teaching staff of any institution/department and against any student within the University of Delhi;

10. Clause 4 prescribes the action that could be taken to maintain discipline by the Vice Chancellor. The relevant extract of Clause 4 reads as follows:

4. Without prejudice to the generality to his/her powers relating to the maintenance of discipline and taking such action in the interest of maintaining discipline as may seem to him/her appropriate, the Vice-Chancellor may, in the exercise of his/her powers aforesaid order or direct:

(a) that any student or students be expelled; or

(b) ...

(c) be not for a stated period, admitted to a course or courses of study in a college, department or institution of the University; or

(d) ...

(e) ...

(f) ...

11. Learned Counsel for the petitioner submits that a perusal of the notice issued by the enquiry committee would show that even at that stage the petitioner was not informed as to what were the charges against him, much less the material on which the charges were based. No documents were supplied to the petitioner which formed the basis of the charges. There was nothing to which the petitioner could have responded at that point of time. On 3.12.2007, he was confronted with four complaints alleged to have been made against him. He was provided the copies of these complaints, only upon his request. Out of these four complaints, one was of 10.11.2005 and another of 2.12.2005 i.e over 18 months prior to the passing of the impugned order dated 30.7.2007, while the other two were of

17.5.2007 and 1.5.2007.

12. Learned Counsel for the petitioner then took me through the four complaints which formed the basis of the impugned action. Before I proceed to examine the issue of legality of the procedure adopted by the enquiry committee, I proceed to consider the issue as to whether, in a case like the present, a post decisional hearing could be an adequate substitute to save the impugned action of the respondents from the vice of arbitrariness.

13. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, , the appellant challenged the order passed by the Government of India in exercise of its power u/s 18-AA(1)(a) of the Industries (Development and Regulation) Act, 1951 for taking over the management of the company by the National Textile Corporation on the ground of non-compliance of the principle of audi alteram partem. The Full Bench of this Court took the view that Section 18-AA(1) (a), (b) excludes that the requirement of giving prior hearing to the party affected by an order thereunder and that Section 18(F) expressly provides for a post decisional hearing to the owner of the industrial undertaking, the management whereof is taken over u/s 18-AA. It was also held by the Full Bench of this Court that the taking over of management u/s 18-AA is not vitiated by failure to grant a prior hearing. The Supreme Court reversed the decision of the Full Bench of this Court by a majority decision on the aforesaid aspects. The ratio of the majority view, as found in the head note of the decision reads as follows:

Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz: (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle- as distinguished from an absolute rule of uniform application - seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fairplay "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the

maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

14. In paragraph 67 and 68 of the judgment, the Supreme Court interpreted the expression "that immediate action is necessary" used in Section 18AA and concluded that it could not be said that the use of such an expression excludes absolutely, by inevitable implication, the application of the cardinal canon of fair play in all cases where Section 18-AA(1)(a) may be invoked. The Supreme Court held that the use of the expression "immediate action" could at best be construed as "without prior investigation". Dispensing with the requirement of such prior investigation does not necessarily indicate an intention to exclude the application of the principles of natural justice or the duty to act fairly by affording to the owner of the undertaking likely to be affected at the pre-decisional stage, wherever practicable, a short measure fair hearing adjusted, attuned and tailored to the exigency of the situation. The Supreme Court held that the audi alteram partem rule is a very flexible, malleable and adaptable concept of natural justice to adjust and harmonise the need for speed and obligation to act fairly. It can be modified and the measure of its application cut short in reasonable proportion to the exigencies of the situation. In the ultimate analysis, the question as to what extent and in what measure this rule of fair hearing will apply at the pre-decisional stage would depend upon the degree of urgency, if any, evident from the facts and circumstances of the particular case.

15. In K.I. Shephard (supra), action was initiated for amalgamation of three private banks with Punjab National Bank, Canara Bank and State Bank of India respectively. Various employees of the said three banks were adversely affected since they were being taken out of employment as a result of the amalgamation. The Supreme Court held that the rights of the employees who were excluded from employment were vitally affected by the decision to amalgamate and they ought to have been heard before taking any decision to this effect. One of the questions that arose before the Supreme Court was as to whether the employees who were affected could be given a post decisional hearing. The Supreme Court rejected the suggestion that the post decisional hearing was an adequate remedy for the affected employees, and while doing so, the Supreme Court held as under:

Natural justice has various facets and acting fairly is one of them. RBI which monitored the three amalgamations was required to act fairly in the facts of the case. The situation necessitated a participatory enquiry in regard to the excluded employees. Since the decision to exclude them from service under the transferee banks is grounded upon a set of facts the correctness whereof they deny, if an opportunity to know the allegations and to have their say had been afforded, they could have no grievance on this score. The action deprives them of their livelihood and brings adverse civil consequences and could obviously not be taken on the ipse dixit of RBI officers without verification of facts. It is quite

possible that a maneuvering officer of the banking company adversely disposed of towards a particular employee of such bank could make a report against such employee and have him excluded from further service under the transferee bank. The possibility of exclusion on the basis of some mistake such as to identity cannot also be ruled out. There is all the more apprehension of this type as the process has to be completed quickly and very often the records of a large number of employees have to be scrutinised. We are of the view that rules of natural justice apply to administrative action and in the instant cases the decision to exclude a section of the employees without complying with requirement of natural justice was bad.

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Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilisation and the content thereof is often considered as a proper measure of the level of civilisation and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalised so that a hearing commensurate to the situation is afforded before a section of the employees is thrown out of employment.

We may now point out that the learned single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.

16. In *H.L. Trehan and Others Vs. Union of India (UOI) and Others*, , the Supreme Court held that there could be no deprivation or curtailment of any

existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provision of Article 14. The Supreme Court further held that a post decisional opportunity of hearing does not sub-serve the rules of natural justice. Once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. The authority who embarks upon the post decisional hearing will only proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post decisional hearing. The Supreme Court therefore did not uphold the action of the authority, which was sought to be defended on the ground that after taking the action, an opportunity of hearing had been granted to the employees with regard to the change of their conditions of service.

17. In *Shekhar Ghosh (supra)*, once again the issue arose as to whether the post decisional hearing could meet the ends of justice in that case. On the basis of certain complaints made by his juniors, the appellant, Shekhar Ghosh had been given a show cause notice making accusations against him that he had bribed another employee for the change of his lien. He filed his reply to the said show cause notice. Thereafter he was repatriated to his original place of work. He challenged his repatriation before the Central Administrative Tribunal (CAT). The CAT dismissed the Original Application on the ground that his name in the seniority list had been included by way of a mistake and that there was no illegality or infirmity in the action taken in repatriating the appellant. His writ petition was also dismissed by the High Court, holding that the petitioner had been afforded a notice and a hearing before passing the impugned order. The High Court held that "On the representation made by the other employees the respondents took all the care and caution, the enquiry had been conducted and only after detection of the mistake and after giving opportunity of hearing to the petitioner he was reverted."

18. The Supreme Court reversed the decision of the High Court. In paragraphs 10-14, the Supreme Court held as follows:

10. The appellant had asked for production of his service records which was declined. Respondents, therefore, indisputably proceeded on the basis that a mistake occurred in making an entry in the service book of the appellant. The mistake committed admittedly, thus, was on the part of the respondents.

11. The mistake was said to have been detected on the basis of the complaint made by four employees. Serious allegations had been made against the appellant therein. If the allegations made therein were correct, then not only the appellant but also other officers of the department, whom he had allegedly paid bribe for forging the documents, were guilty of misconduct.

12. The appellant had never been supplied with a copy of the said complaint. No

disciplinary proceedings were initiated against him. No charge was framed, nor any witness was examined. No Inquiry Officer was appointed to conduct an enquiry into the allegations on the charges of misconduct framed against the appellant in that behalf.

13. The order dated 21.11.1996 clearly demonstrates that the Senior Divisional Officer, Kota, without holding an enquiry arrived at a finding that his original post was that of Khalasi in Wagon Repair Shop, Kota and his lien had been cancelled. He was directed to be repatriated. Despite arriving at such a finding, a post-decisional hearing was sought to be afforded to the appellant.

14. A post decisional hearing was not called for as the disciplinary authority had already made up its mind before giving an opportunity of hearing. Such a post-decisional hearing in a case of this nature is not contemplated in law. The result of such hearing was a foregone conclusion.

19. After noticing its own decisions in various other cases, the Supreme Court, in paragraphs 22 and 23 observed:

22. Requirements to comply with the principles of natural justice would, therefore, vary from case to case. If upon giving an opportunity of hearing to an affected employee, it is possible to arrive at a different finding, the principles of natural justice must be complied with....

23. In this case, Respondents accept that appellant was entitled to a hearing. All the necessary ingredients of principles of natural justice were thus required to be complied with. Appellant as noticed hereinbefore had not been given adequate opportunity of hearing inasmuch as: (i) the hearing was sought to be given was a post-decisional one, which is bad in law; (ii) a copy of the complaint was not supplied to appellant at furtherance if not proposed that a mistake was sought to be rectified; (iii) No charges were framed; (iv) no witness was examined; and (v) no Inquiry Officer arrived at any finding that appellant was guilty of the charges leveled against him.

20. From the above decisions it is apparent that a post decisional hearing cannot be a substitute for a pre-decisional hearing. Where a pre-decisional hearing is not excluded by Statute, only in cases of exceptional urgency, where it is not possible to give a pre-decisional hearing on account of the emergent situation, the pre-decisional hearing may be dispensed with, provided, a full review or appeal on merits against the decision is available. However, even in such cases, minimum compliance of the rules of Natural Justice should be observed to the extent possible.

21. As noticed above, two of the four complaints against the petitioner are of the year 2005, while the other two are of 17.4.2007 and 1.5.2007. Therefore, before issuing the impugned notification dated 30.7.2007, the respondents had sufficient time to give notice to the petitioner and to conduct an enquiry before proceeding to debar him from taking admission in the University for a period of

five years. A perusal of Ordinance XV-B shows that the same does not exclude the compliance of the Principles of Natural Justice. It did not even lay down any condition with regard to the time period within which action could have been taken by the Vice Chancellor against the petitioner. There was no tearing hurry to issue the impugned notification. An order, in exercise of power under Ordinance XV-B could be passed at any time of the academic session and there is no requirement that it should have been passed before the student takes admission in any other course in the University.

22. It appears that the impugned notification was issued in haste to somehow block the move of the petitioner to take admission in the P.G Certificate Course in "Hindi Journalism" for the academic session 2007-08. Therefore, in my view the post decisional hearing stated to have been granted to the petitioner was not a legally sustainable substitute.

23. Mr. Nigam has sought to justify the decision to give a post decisional hearing to the petitioner by reference to the legal opinion sought by the University. In my opinion, the same is neither here nor there. The said opinion cannot bring to life the still born action of the respondent in issuing the impugned notification dated 30.7.2007. In any event, it does not appear that the University sought any opinion on the aspect as to whether the impugned notification itself could have been issued without complying with the principles of natural justice.

24. Mr. Nigam relied on Narender Singh Vs. University of Delhi and Others, . This was a case where a student had been denied admission to the college on account of his involvement in ragging. In my view, this decision has no application in the facts of this case for the reason that the Court itself examined the material placed on record and came to the conclusion that the respondent University and the disciplinary committee perceived that the petitioner was a threat to the discipline and peaceful functioning of the college and by the impugned action, they intended to prevent the return of the petitioner to the college to avoid his presence in the college campus. However, in the present case, as would become clear from the following discussion there is no material whatsoever, apart from the unsubstantiated complaints relied upon by the respondent.

25. Reliance is also placed by Mr. Nigam on Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others, . In this decision, the Supreme Court held that the principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straitjacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. While interpreting the provisions, a court of law cannot be unmindful of the hard realities of life. The approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than "precedential". In certain circumstances, application of the principles of natural justice can be modified and even excluded. Both in England and in India, it is well established that where a right to a prior notice and an opportunity to be

heard before an order is passed would obstruct in the taking of prompt action, such a right can be excluded. It can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion. The maxim *audi alteram partem* cannot be invoked if import of such maxim would have the effect of paralyzing the administrative process or where the need for promptitude or the urgency so demands. The principles of natural justice have no application when the authority is of the opinion that it would be inexpedient to hold an enquiry and it would be against the interest of security of the Corporation to hold an enquiry and it would be against the interest of security of the Corporation to continue in employment the offender workman when serious acts were likely to affect the foundation of the institution."

26. Merely relying on the aforesaid extract without stating why it was not possible in the facts of this case to comply with the Principles of Natural Justice is not sufficient. In para 44 of this decision, the Supreme Court observed that the normal rule is that a person must have a fair trial and a fair appeal and he cannot be asked to be satisfied with an unfair trial and a fair appeal. The Court also noticed the general principle that pre-decisional hearing is better and should always be preferred to post-decisional hearing.

27. Paragraph 50 of this decision is also relied upon wherein the Supreme Court noted its earlier decision in *Satyavir Singh and Others Vs. Union of India (UOI) and Others*, . The Supreme Court in *Satyavir Singh (supra)* held that taking an appropriate action in exceptional circumstances is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. Normally, it is the officer on the spot who is the best judge of the situation and his decision should not be interfered with lightly.

28. In *Satyavir Singh (supra)*, the Court was concerned with the dismissal orders passed against some of the employees of the Research and Analysis Wing (RAW) without holding enquiry as contemplated by Article 311(2) of the Constitution. In my view even this decision has no application in the facts of this case. That was a case pertaining to the employees of the RAW which is one of the intelligence and under-cover agencies of the country. In the facts of that case, the Court affirmed the action dispensing with the enquiry under Article 311(2) of the Constitution. Mr. Nigam, then relied on the observations of the Supreme Court in *M.C. Mehta V. Union of India (1997) 6 SCC 237*, wherein the Supreme Court held that if it is clear that if on the admitted and indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the Principles of Natural Justice. I cannot appreciate how this observation of the Supreme Court advances the respondent's defence. Even Mr. Nigam could not dispute the position that in the present case it could not be said that the only conclusion that the enquiry committee could have arrived at, had the petitioner been given a pre decisional hearing, to hold him guilty of the allegations made against him.

29. I now proceed to examine the issue of legality of the procedure adopted in the conduct of the enquiry against the petitioner conducted at the post decisional stage and the legality of the order dated 8/9th May, 2008 passed by the respondents.

30. The first complaint is stated to have been made by a student called Neeraj Dubey on 10.11.2005. This complaint merely states that the complainant is a student of Russian language certificate course. In the morning of that day, two boys came to him. They took him aside and started abusing him. He also stated that he was beaten by them. This complaint neither names the two boys accused of having assaulted the complainant, nor the petitioner herein.

31. The next complaint dated December 2, 2005 is stated to have been made by Dr. A.Venkat Raman, Deputy Proctor, University of Delhi South Campus, Delhi University addressed to professor A.Maurya, Head of the Department of Slavonic Studies. In this complaint, Dr. A. Venkat Raman complained about the behavior of the petitioner. It was stated that the petitioner very frequently and unnecessarily interfered in the security management of South Campus. On many occasions he had used abusive language and had been threatening not only the security guards and security officers but also the students of other departments, staff in the University hostels and sanitary staff of various departments. It was further stated that on 10.11.2005, one student from Russian Language Certificate Course, Mr. Sandeep Singh had beaten up another student, Neeraj Dubey. While acting on the complaint of the student, the security staff were prevented from performing their duty by the intervention of the petitioner. As a result, Mr. Sandeep Singh ran away from the campus. It was further alleged that the petitioner had misbehaved with the complainant, Dr. A. Venkat Raman during his intervention. It was further stated that on 2.12.2005 when Sandeep Singh appeared in the Campus, the security officers accosted him for questioning but were prevented from doing so and were abused by the petitioner.

32. The petitioner in his replies before the Enquiry Committee stated that the complaint by Neeraj Dubey does not concern him. He went on to say that he had got the said dispute amicably settled and compromise application was with the security officer. He further stated that there was no question of his preventing any one and that it was the staff who were violating at will the fundamental rights of the students. It was also stated that Dr. A. Venkat Raman had fabricated the complaint since no complaint was received from the staff. The petitioner in his reply before the Committee in relation to this particular complaint denied the allegations as being totally untrue.

33. Learned Counsel for the petitioner submits that despite the aforesaid denial of the charges by the petitioner, the enquiry committee did not actually conduct any enquiry into the aforesaid allegations of the petitioner. Neither of the complainants, Neeraj Dubey nor Dr. A. Venkataraman were called to make their statements even to say that they had made the complaints. Even the security staff who were allegedly prevented by the petitioner from performing their duties

or threatened by the petitioner, were not called by the Committee. Merely on the basis of the said stale complaints of November and December 2005, the impugned drastic action was taken of debarring the petitioner for a period of five years on 30.7.2007 and that too without any affording any opportunity to show cause against such action. Learned Counsel for the petitioner further submits that the complaint made by Dr. A. Venkata Raman had, in fact been disposed of by Professor A. Maurya, the Head of the Department of Slavonic Studies. This stand of the petitioner was taken in his response filed before the Vice Chancellor after receiving the enquiry report.

34. The third complaint was dated 17.4.2007, made by one, Mr. Ravinder Kumar, P.S in the office of the Director, South Delhi Campus addressed to the Director, University of South Delhi Campus. The allegations in this complaint made by Sh. Ravinder Kumar was with regard to the aggressive and threatening behavior of the petitioner towards the complainant and the other administrative staff. He stated that the petitioner had been seeking an appointment with the Director for a number of days. The complainant had made efforts to contact the petitioner on his mobile phone. On each occasion when he tried to contact the petitioner, he disconnected the phone. He further stated that in the presence of Shri Sweer Singh, the Security Officer and Shri Suresh, Office Attendant, the petitioner on 17.4.2007 denied having received any phone calls from the complainant's office, and that he further shouted at the complainant and called him a liar. With regard to this complaint, the enquiry committee did not reach to any conclusion. The enquiry report concluded that the Committee had decided not to go into further details about the said complaint. Consequently, the charges made against the petitioner in the complaint of Mr. Ravinder Kumar could not be said to have been proved. Moreover, even in relation to this particular complaint the complainant, Mr. Ravinder Kumar or the other two witnesses, namely Mr. Sweer Singh and Mr. Suresh were neither called nor produced to make a statement before the enquiry committee.

35. The only other complaint made against the petitioner was made by Professor S.K. Vij on 1.5.2007. In his complaint, the complainant stated that on 20.4.2007 when a meeting of the Departmental Council was being held, the petitioner barged into the meeting to make certain demands/claims. He was requested to wait for some time as the meeting was in progress. Later he was invited to make his representation. At that stage he behaved in a manner unbecoming of a student. He shouted and insulted the complainant and other members of the staff when they tried to intervene. He even demanded that the complainant should go for a psychological test besides making other baseless allegations. Pertinently, the complainant also enlists the names of ten other persons who were stated to be present at the time of the said incident. He also stated that this was not an isolated incident and in the past as well the petitioner had misbehaved with the teachers, students and non-teaching staff in the office. In his reply to the enquiry committee, the petitioner stated that all the facts were distorted. He further stated that no staff present had made any complaint in this

regard. He also placed as Annexure `A", a certificate addressed "To whom it may concern" signed by seven students including himself. In this certificate signed by six other students, it was, inter alia, stated that after waiting for an hour or so, these students went inside and gave details of all the problems to the complainant. The enquiry committee in its report records that during the course of the enquiry, Mr. Sangwan had admitted that he entered the room of Mr. S.K. Vij, Head of the Department without his permission when the Head of the Department was presiding over a meeting of the Committee. From this, the enquiry committee concluded that "Shri Sangwan has failed to maintain proper discipline wherein he forcibly entered into the room of his Head of Department when a statutory meeting was going on. He further misbehaved with his HOD and other faculty members under the guise of redressing some grievances of self and other students". Hence the allegation made at para 3 (iv) was taken as proved beyond any doubt.

36. It is pertinent to note that no grievance was, in fact, made by Professor Vij with regard to the fact that the petitioner had entered the room when the meeting was on. This is clear from the fact that even in the complaint, Professor Vij states that the petitioner was requested to wait for some time as the meeting was in progress. Later he was invited to make his representation. This shows that upon being asked to wait to be heard, the petitioner left the meeting and allowed it to proceed without any intervention and again presented himself before Professor Vij only upon being sent for. The real grievance contained in the complaint is with regard to the alleged misbehavior of the petitioner with Prof. Vij in the presence of ten other named persons. It is absolutely unclear as to how the mere presence of the petitioner in the said statutory meeting when he was sent for, could be taken to conclude that he had misbehaved with Professor Vij. Not one of the ten other persons and not even the complainant, Professor Vij were called by the enquiry committee.

37. Mr. Nigam submitted that so far as the complaint made by Mr. S.K. Vij is concerned, the petitioner in his response did not deny the acts of misbehavior attributed to him. He submits that, therefore, the enquiry Committee was entitled to proceed on the basis that since there was no denial, it tantamounted to an implied admission of his guilt by the petitioner. I do not agree with the submission of Mr. Nigam either. As noticed hereinabove, in his response to the said complaint, the petitioner has stated that the facts are distorted; that no staff present has made any complaint in this regard and that 7 students had given a certificate with regard to what had transpired in the said meeting with Professor Vij. Therefore, it cannot be said that the petitioner did not deny the allegations made in the complaint of Profession Vij. Moreover, the enquiry committee itself does not proceed on the basis of the so-called admission of guilt by the petitioner as contended by Mr. Nigam. This appears to be merely an argument weaved by Mr. Nigam on account of his own ingenuity.

38. It was for the University to have produced at least some kind of evidence

before the enquiry committee to substantiate the allegations made against the petitioner in the first instance with an opportunity to him to deal with the evidence and to confront the University's witnesses. If such a mockery of an enquiry is accepted as a legal enquiry, it would become very easy for the University to victimize any student or ex-student by collecting such like complaints and proceedings to debar the person from studying in the University, by assuming the complaints to be true without taking any steps to substantiate and prove the allegations in a fair and reasonable manner. Even co-students, staff and teachers would get a free handle to make complaints against any student and mar his career. It is true that it is not for the courts to assess for itself as to whether the allegations are true or not by evaluating the evidence. However, the Court would at least satisfy itself whether the proceedings were fairly conducted, such that the person accused of misconduct or misbehavior has got a reasonable opportunity to defend the charges against him, and whether or not there was some material evidence and basis for the action taken against the person concerned, which vitally affect his civil rights. As aforesaid, in the present case, apart from the four complaints, two of which are of the year 2005, no material whatsoever was produced in the enquiry, or required to be produced by the enquiry committee to substantiate any of the complaints.

39. In fact, it appears that the so called enquiry was a mere eye wash. It was not even meant to be an enquiry. The notification whereby the enquiry committee was constituted required the Committee to submit its report to the Vice Chancellor within ten days when there were four different complaints involving different set of people with a host of witnesses involved in these alleged instances. Not a single witness, not even the complainants were called by the Committee to make their statements to support their complaints. In fact such an enquiry cannot be called an enquiry, since the committee really made no effort to enquire into any of the allegations against the petitioner, much less into his defence in respect of each of them. The so called enquiry is not based on any material or evidence whatsoever. The decision in *Shekhar Ghosh (supra)* supports the submission of the petitioner that the so-called enquiry conducted against him even at the post decisional stage was totally illegal and of no effect.

40. Now coming to the order dated 8/9.5.2008, it is again seen that the same has been passed on a totally unsustainable basis. It appears that the Vice Chancellor did not even apply his mind to the enquiry report and merely accepted the said report mechanically. Since it is the Vice Chancellor under Ordinance XV-B who is the competent authority to decide the action to be taken in respect of any gross indiscipline, either he should have held the enquiry of his own, or if he had chosen to have the enquiry conducted through an enquiry committee, he should have at least analysed the evidence if any, produced in the enquiry proceedings before accepting the enquiry report as the gospel truth. The onus to prove his innocence has been placed by the Vice Chancellor on the petitioner, as is evident from his observation that the petitioner did not offer any evidence or material to dispute the allegations that the Committee had concluded

as proven. The Vice Chancellor does not appear to have even considered as to how, and on the basis of what material, the allegations which were totally unsubstantiated, were taken to be proved. This order of the Vice Chancellor betrays lack of understanding on his part of even the basic Principles of Natural Justice and fairness.

41. At this stage, I must also take note of the submission of the petitioner qua Dr. Deepak Paintal, the Vice Chancellor of Delhi University who has been arrayed as respondent No. 2 in his personal capacity in the writ petition. It is the case of the petitioner that he has been raising various issues concerning the University which, according to him, appear to have annoyed the Vice Chancellor. He further states that " the Vice Chancellor of the University, Dr. Deepak Paintal and the petitioner, are both experts in the field of genetics. There is a lot of controversy against genetically modified foods and the petitioners has strongly opposed as a farmer activist, the Vice Chancellor's view on the same at national and international meetings, W.T.O etc."

42. He has further labeled the impugned notification dated 30.7.2007 as being a result of, inter alia, malafides on the part of the respondents which includes the Vice Chancellor. Also from the various responses given by the petitioner to the respondents, and correspondences undertaken by him , it is seen that there is a sprinkling of various allegations made against the Vice Chancellor from time to time. Despite being made as a party respondent in his personal capacity, the Vice Chancellor, Mr. Deepak Paintal has chosen not to file an affidavit to controvert the allegations made against him. However, at this stage, I do not think it necessary to go into the aspect of the personal mala fides attributed to Mr. Deepak Paintal, and I am leaving this aspect open for the petitioner to raise, in case the petitioner wishes to raise the same at any subsequent stage, if he feels that he has been wronged on account of the mala fides of any particular person.

43. Mr. Nigam submits that the petitioner was not a student of the University as on 30.7.2007 since he had already completed his M.A Russian Language course when the impugned order was passed on 30.7.2007. To this, learned Counsel for the petitioner has countered by submitting that the result of the petitioner for the said post was declared only on 2.8.2007 and till the results are declared it could not be said that the petitioner has qualified in the said examination. He therefore continued to remain a student of the University. Counsel for the petitioner contends that the impugned notification itself describes the petitioner as a student of the University.

44. The aforesaid submission of Mr. Nigam is advanced to justify the failure to hold any enquiry against the petitioner prior to the issuance of the impugned notification. In my view, apart from the submission of the respondents that the petitioner was not a student as on 30.7.2007 being incorrect, the same, in any case does not justify the failure of the respondents in complying with the Principles of Natural Justice. The respondents have themselves described the petitioner as a student of M.A in Russian Studies in the impugned notification

itself. Moreover his result for the said examination had not been declared when the impugned notification was issued on 30.7.2007. It appears that the decision on the basis of which the impugned notification was issued had been taken by the Vice Chancellor on 27.7.2007 i.e. even prior to 30.7.2007. In my view, not much turns on this aspect. Whether or not the petitioner was a student at the time when the notification dated 30.7.2007 was issued, he would be entitled to be informed about the charges against him as well as the action proposed to be taken against him and to be heard in the matter before taking action so drastic as to debar him from pursuing any study in the University for 5 long years. It is true that Ordinance XV-B does not prescribe the procedure which is to be adopted to conduct the enquiry. Therefore, the enquiry had to be conducted in compliance with the basic Principles of Natural Justice. In the present case there was absolutely no compliance of the Principles of Natural Justice prior to the issuance of the impugned notification dated 30.7.2007.

45. For the aforesaid reasons, in my view, the impugned notification dated 30.7.2007 and all proceedings subsequent thereto including the order dated 8/9.5.2008 whereby the Vice Chancellor has decided not to recall or review his aforesaid notification, deserve to be quashed. I accordingly quash the same.

46. The next issue that remains to be considered and decided upon is as to what relief the petitioner can be granted in the facts of this case. When the petition was initially filed, the result of the PG certificate course of "Hindi Journalism" had been declared. The respondent does not dispute the position that the petitioner had in fact qualified in the written examination. The process of selection for the said test entailed an entrance test followed by an interview. The Court had passed an interim order on 14.9.2007 directing the respondents to keep one seat reserved in PG Certificate Course in "Hindi Journalism" in South Campus, subject to the outcome of the writ petition. In the meantime, the academic year 2007-2008 has already come to a close. In fact the entrance test for admission to the academic session 2008-09 has already been held and the petitioner has obviously not been able to take the said examination since the impugned notification dated 30.7.2007 was staring him in his face. The petitioner submits that he has been prevented from applying for any other course for the current academic session, 2008-09 since the impugned notification dated 30.7.2007 continued to remain operative. The petitioner had moved C.M.12243/2007 along with the writ petition seeking stay of the operation of the impugned notification dated 30.7.2007. However, the said relief had not been granted by the Court and the only relief granted, as aforesaid, was to reserve one seat for the petitioner in the said post. The fact that the hearing of the petition has been delayed on account of the conduct of the respondents is also evident from the record of this case. On 12.12.2007 on account of the non-filing of the counter affidavit by the respondents, the respondents were subjected to costs of Rs. 30,000/-. In these facts and circumstances, in my view, the petitioner should not be made to suffer on account of the delay caused by the respondents and the consumption of some time in deciding this petition. As it is, the petitioner has lost out on one academic

year.

47. Looking to all the circumstances, I am of the view that it would be fair and reasonable to direct the respondents to consider the entrance test result of the petitioner for the examination 2007-08 for the current academic year, and on that basis to proceed to hold his interview for admission to the "Hindi Journalism" P.G Certificate Course for the academic year 2008-09. The petitioner shall be called for interview by the respondents by issuing a written communication against acknowledgement within ten days from the date of receipt of this judgment. In case the petitioner is otherwise eligible to apply for any other course, and in which there are still vacancies/seats available, the petitioner would be entitled to apply for the same within ten days from the date of receipt of this judgment. A certified copy of this judgment shall be sent by the Registry for compliance to the respondent University without any delay.

48. The petitioner has been subjected to absolutely arbitrary and illegal acts which have resulted in his being deprived of his right to study in the University for one year. In my view this is a fit case for grant of exemplary costs. Considering the fact that the respondent has already been subjected to costs of Rs. 30,000/-, I impose further cost of Rs. 30,000/- to be paid by the respondents to the petitioner.