

(1992) 01 DEL CK 0019
In the Delhi High Court
Case No : C. W. No. 2628 of 1991

M. N. Gupta and Another

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 13-01-1992

Acts Referred:

Citation : AIR 1992 Delhi 212 : (1992) 47 DLT 673 : (1992) 22 DRJ 293

Hon'ble Judges : B.N. Kirpal, J;Arun Kumar, J

Bench : Division Bench

Advocate : S. C. Malik and Ms. Mamta Mehra, for the Appellant; Kapil Sibal and K. K. Lahiri, for the Respondent

Judgement

Arun Kumar, J.—The challenge in this writ petition is to the communication dated 13th August 1991 whereby petitioner No. 2, who is a member of the Governing Body of the Daulat Ram College (hereinafter referred to as the college) has been removed from membership and the communication dated 14th August 1991 whereby the Vice Chancellor has" nominated seven additional members to the Governing Body of the college for one year. Petitioner No. I has filed the present petition as Chairman and Mem ber of the Governing Body of the college while petitioner No. 2 has filed the petition on his own behalf. The petitioners have raised various grounds-in the writ petition in support of their case. However, we have confined our decision to the -challenge on the ground of non-compliance with the principles of natural justice. We feel that the impugned actions of respondents I to 3 are liable to be struck down on this ground alone.

The facts giving rise to the petition are that the college was started in the year 1960 as one of the constituent colleges of the University of Delhi. It has a Governing Body of fifteen members out of whom ten have been appointed by the Trust, two members are the nominees of the University, while two members are the teachers representative. The fifteenth member is the Principal of the college who is ex officio member secretary of the Governing Body. The Trust which established the college has always maintained a majority in the Governing Body.

The term of the Governing Body is for one year. The members of the Governing Body are approved by the University every year.

2. The trouble started since early 1991. On 21st February 1991 a memorandum was sent to the Vice-Chancellor by the Daulat Ram College Teachers Association (DRCTA) under the signatures of its Secretary wherein various allegations were made against the Governing Body of the college. When its members came to know about the said memorandum, a request was made to the University for a copy thereof vide letter dated 20th April 1991. A reply was sent to the University to the various allegations made against the Governing Body by the DRCTA. While this matter was pending consideration of the University on 30th May 1991 the names of the members of the new Governing Body of the college were sent to the Vice-Chancellor for approval. In the meanwhile the episode relating to Ms. Vijayan, a teacher of the college came up. Ms. Vijayan had been granted two years extension of service and the extended period was to expire on 30th September 1991. However, vide a communication dated 30th April 1991, she resigned from the college with effect from 31st July 1991. Her resignation was accepted by the Governing Body on 6th May 1991 and the Vice-Chancellor was informed of this on the same date. The Vice-Chancellor was not happy about the acceptance of resignation of Ms. Vijayan by the Governing Body and he expressed his disapproval of this action of the Governing Body through his letter dated 9th May 1991 and called upon the Governing Body of the college to reconsider her reemployment in the college. In spite of the said opinion expressed by the Vice-Chancellor Ms. Vijayan was relieved on 31st July 1991 and all her dues were settled. When informed about this the Vice-Chancellor again expressed his displeasure in his letter dated 12th July 1991 to the Governing Body of the college and still reiterated his letter dated 9th May 1991, which had required the General Body to reconsider the matter. The views of the Vice-Chancellor regarding re-employment of Ms. Vijayan were expressed in spite of the fact that there was no request from Ms. Vijayan herself in this connection nor she expressed any desire to withdraw her resignation. While this was pending, the approval of the Vice-Chan- regarding the names of the Governing Body which were sent to him on 30th May 1991 was received on 3rd July 1991.

3. Dust had, not yet settled on Ms. Vijayan's episode, when the incident - regarding disappearance of Miss Meeta Chaudhry, a resident student of the college came up. Miss Meeta Chaudhry took leave of absence from the college hostel on 18th January 1991 and since then as per the request made by her father, she was allowed to continue on leave from the college hostel till 15th April 1991. The leave of absence from hostel was sought by the girl's father on the ground that her mother was staying in the Tripura House for medical reasons and her daughter be allowed to stay with her while she was in Delhi. The Resident Commissioner of Tripura informed the college on 9th March 1991 that the girl was missing since 15th March 1991. Investigations about the disappearance of the said girl were going on and the C.B.I. had been entrusted with the task. The college was extending all co-operation and assistance to the investigating

agency. The Vice-Chancellor through a communication dated 9th August 1991 desired the Governing Body of the college to meet in an emergency session in view of the disappearance of Miss Chaudhry. It is stated in the petition that the Principal of the College along with the Warden and some teachers met the Vice-Chancellor and apprised him about this case and about the steps taken by the college and the cooperation extended to the police and the investigating agency. However, the issue was being highlighted in the media with a view to malign the college by some disgruntled elements. The first meeting of the newly formed Governing Body of the College took place on 10th August, 1991. Even before the letter dated 9th August, 1991 could be considered by the Governing Body of the college in its meeting held on 10th August, 1991, the said letter had been released to the Press. The Vice-Chancellor also referred to the case of Ms. Vijayan in his said letter which shows that although the case was closed so far as the college was concerned, the Vice-Chancellor had not been able to forget about it and was unable to countenance the action of the college Governing Body in accepting the resignation of Ms. Vijayan and relieving her of her post as desired by her in her resignation letter.

4. Petitioner No. 1 was elected as the Chairman of the newly constituted Governing Body of the college in its first meeting held on 10th August, 1991. There was trouble in the very first meeting which led to three members, i.e. two University representatives and one teachers' representative walking out from the meeting after recording a protest note. The Governing Body, however, transacted its business. As noticed earlier, on 10th August, 1991 news items had appeared in the Press highlighting the displeasure of the Vice-Chancellor towards the Governing Body of the college. On 12th August, 1991 again it appeared in the Press that expulsion of Mr. A. D. Mithal (petitioner No. 2) from membership of the Governing Body of the college was being sought for his remarks "some women deserve to be burnt" alleged to have been made by him during the meeting of the Governing Body of the college held on 10th August, 1991. As per the Press reports, there was demand for expansion of the Governing Body of the college under the provisions of Statute 30(I)(D) of the University so that the University representatives along with teachers' nominees could outnumber the Trust nominees on the Governing Body. The Press reports, however, suggested that the immediate cause for seeking action against the Governing Body of the college were the incidents relating to Ms. Vijayan, Miss Chaudhry and for the action against Mr. A. D. Mithal was his alleged remark about women during the course of the Governing Body meeting on 10th August, 1991. On 12th August, 1991 the teachers of the college stayed away from classes demanding immediate action against Mr. A. D. Mithal, member of the Governing Body for his alleged remarks. This was followed by a letter dated 13th August, 1991 from the Vice-Chancellor to Mr. Mithal which needs reproduction:-

"Dear Mr. Mithal,

It has been brought to the notice of the University that during the course of a

meeting of the Governing Body you made a remark that "some women deserve to be burnt" in the context of a discussion whether even wrong conventions should be followed just because they were conventions (i.e. the convention of Sati). The University considers such an approach and attitude highly deplorable. Such an observation, made anywhere regardless of the locus is unworthy, but gets aggravated in the context and the college where it was made.

In view of this, the University would like to intimate you that your association with the Governing Body of the Daulat Ram College now ceases with immediate effect.

Yours sincerely,

Sd/-"

5. This is the action of respondent No. 2 against Mr. Mithal which has been challenged in this writ petition.

The Executive Council of the University met on the same day, i.e. on 13th August, 1991, under the Chairmanship of the Vice-Chancellor, and approved his action qua Mr. Mithal. Exercising its powers under Statute 30(I)(d) it further authorised the Vice-Chancellor to nominate Additional Members to the Governing Body of the college. The authorisation led to the Vice-Chancellor nominating seven new members to the Governing Body of the college who have been arrayed as respondents 4 to 10 in the writ petition. The Principal of the college was informed about the nomination of the seven members vide letter dated 14th August, 1991 by the Deputy Registrar (Colleges) of the University.

6. Before proceeding further we may note that there are various allegations of mala fides made against the Vice-Chancellor in the writ petition. However, the Vice-Chancellor has not chosen to file any affidavit in reply. Two affidavits have been filed on behalf of respondents 1 to 3 at different stages of the case. Both the affidavits are by the Registrar. It is the Registrar who has chosen to deny the allegations of mala fides made against the Vice-Chancellor. There is a specific allegation made in the writ petition that the Vice-Chancellor was harbouring displeasure against the Governing Body of the college. It would have been proper that the Vice-Chancellor should have refuted such allegations which were made against him personally. However, since we are proceeding to decide this writ petition only on the question of non-compliance of the principles of natural justice, we need not go further into this aspect.

7. First we deal with the case of removal of Shri A. D. Mithal, petitioner No. 2 from membership of the Governing Body of the college. The Vice-Chancellor has based his action on Statute I 1(G) of the University. The relevant portion of Statute I I (G) is Cl. (4) which is reproduced as under:

"Clause (4) - If, in the opinion of the Vice-Chancellor, any emergency has arisen which requires that immediate action should be taken, the Vice-Chancellor shall take such action as he deems necessary and shall report the same for

confirmation at the next meeting to the authority, which, in the ordinary course, would have dealt with the matter."

8. We have already reproduced the letter whereby petitioner No. 2 was removed from membership of the Governing Body of the college. The contents of the entire letter read in the context of the provision referred to above show that there is nothing to indicate that the Vice-Chancellor formed his opinion regarding any emergency having arisen requiring immediate action on his part against petitioner No. 2. Even affidavits filed on behalf of the University do not speak of or suggest existence of any situation of emergency on account of the alleged utterance by petitioner No. 2. The existence of emergency has neither been stated nor its nature spelled out in the affidavits filed on behalf of the University. The case of the University in this -behalf is based on an acceptance by the Vice-Chancellor that the alleged remarks were made by petitioner No. 2 in the meeting of the Governing Body of the college held on 10th August, 1991. It has been stated that petitioner No. 2 has been removed from the membership of the Governing Body of the college in exercise of powers, inter alia, under Statute I I (G) to ensure observance of the University Statutes, Acts, Ordinances and Regulations in the emergent situation in which respondent No. 2 found himself. What was the emergent, situation is nowhere- indicated. It has been further stated on behalf of the University that the question of issuance of any show cause notice to petitioner No. 2 did not arise since it was not a case of dismissal from service but was merely a case of removal as a member of the Governing Body in public interest in exercise of emergent powers conferred on the Vice-Chancellor of the Delhi University. The University doubts that there is any fundamental right which inheres in the petitioner to be member of a Governing Body of an educational institution. On the other hand to justify action against petitioner No. 2 reliance has been placed on Art. 51A(e) of the Constitution of India which casts a duty to denounce practices derogatory to the dignity of women. It is stated that this duty is absolute and fundamental and it was, inter alia, in the discharge of this fundamental, duty that the respondents sought to remove petitioner No. 2 from the Governing Body of the college. The exact statement is -"in view of his conduct and remarks made at the meeting of the Governing Body on August 11, 1991".

9. Thus as per the counter affidavit , the respondents have proceeded on the basis that petitioner No. 2 did make the alleged remarks in the meeting of the Governing Body of the college held on 10th August, 1991 and it is this which led to the Vice-Chancellor to remove him from the membership of the Governing Body in exercise of his powers under Statute 11(G) of the University. While doing this, the Vice-Chancellor was also purportedly fulfilling his constitutional duty to denounce practices- derogatory to the, dignity of women. There was no requirement or need to issue any show cause notice before taking such an action against petitioner No. 2, according to the respondents. Of course, during the course of hearing it has been further urged on behalf of the University that the question of existence of emergency which led to the Vice-Chancellor exercising

his powers under Statute I 1(G), is not justiciable. On the basis of the above case set up by the University, the following points arise for consideration: -

- (a) Is the question of existence of emergency justiciable ?
- (b) If so, was there an emergency requiring the Vice-Chancellor to take action under Statute I I (G) ?
- (c) Did the Vice-Chancellor form the requisite opinion before exercising powers under Statute I I (G)(4) ?
- (d) Are the principles of natural justice attracted ?
- (e) Will a post-decisional hearing serve the purpose ?

10. It will be convenient to take up the first and second points together.

11. As already noticed, the affidavits on behalf of the respondents are completely silent about the existence of any situation of emergency in the University on account of the alleged remarks made by petitioner No. 2. No details of any disturbing situation or threat to law and order etc. have been given. Nothing is stated as to what would have happened if such a swift action was not taken by the Vice-Chancellor against petitioner No.2. The affidavits of the University merely say that the emergency powers were exercised by the Vice-Chancellor without stating anything as to whether actually there was any situation of emergency prevailing in the University justifying exercise of emergency powers. During the course of hearing a feeble attempt was made to show a situation of emergency by referring to a letter from the Teachers' Association of the college that they had abstained from work on 12th August, 1991. To justify the exercise of the emergency powers and to show existence of emergency, it was also submitted, of course orally at the hearing, that it was the beginning of the academic session and there were incidents of ragging in the women's colleges which could have flared up. We fail to understand what connection these incidents of ragging, if any, could have to the alleged remark of petitioner No. 2. To us, these submissions appear to be just an attempt to justify an action which has been taken under a provision which can be availed of only in a situation of emergency. We are not convinced that there was any situation of grave emergency prevailing in the University justifying the impugned action taken against petitioner No. 2.

12. Now coming to the justifiability part of the argument, we are of the opinion that the facts and circumstances of the case do not preclude us from going into this aspect. We are fortified in this view by the decisions of the Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, ; and *Swadeshi Cotton Mills Vs. Union of India (UOI)*, .

13. It has been held by the Supreme Court in the latter case that existence of emergency is justifiable and if questioned must be at least proved prima facie. The following observations are apt AIR 1981 SIC 818:

"On the other hand, Shri Nariman submits that the High Court was clearly in error in holding that the satisfaction of the Central Government with regard to the necessity of taking immediate action was not open to judicial review at all. It is emphasised that the very language of the provision shows that the necessity for taking immediate action is a question of fact, which should be apparent from the relevant evidence in the possession of the Government.

We find merit in this contention. It cannot be laid down as a general proposition that whenever a statute confers a power on an administrative authority and makes the exercise of that power conditional on the formation of an opinion by that authority in regard to the existence of an immediacy, its opinion in regard to that preliminary fact is not open to judicial scrutiny at all. While it may be conceded that an element of subjectivity is always involved in the formation of such an opinion, but, as was pointed out by this Court in *Barium Chemicals*, the existence of the circumstances from which the inferences constituting the opinion, as the *sine qua non* for action, are to be drawn, must be demonstrable, and the existence of such "circumstances", if questioned, must be proved at least *prima facie*."

14. In the present case not to speak of *prima facie* proof, there is not even a plea regarding existence of emergency, much less about its nature. Therefore, on both the points we hold against the respondents.

15. When the very existence of emergency on which the impugned action is sought to be based, has been questioned, it is the duty of the respondents to plead necessary facts and place material on record, at least to *prima facie* show existence of emergency in order to justify the exercise of emergency powers. To this extent the issue is justiciable. The respondents have failed to discharge this burden. Therefore, we are of the view that there was no such grave emergency prevailing in the University to justify exercise of powers under Statute I I (G)(4) by the Vice-Chancellor. It is worth pointing out here that the Executive Council was meeting on the same date, i.e. 13th August, 1991 when the impugned action was taken by the Vice-Chancellor against petitioner No. 2. The matter could have been placed before the Executive Council in the first instance.

16. The next question is about the formation of opinion by the Vice-Chancellor before exercising his powers under Statute I 1(G)(4). For this the only material on record is the letter of the Vice-Chancellor dated 13th August, 1991 addressed to petitioner No. 2. The letter starts with the words "it has been brought to the notice of the University ". Merely something being brought to the notice of the University cannot be a substitute for the words "in the opinion of the Vice-Chancellor". One could understand if nothing had been said. In such an event it could have been possible to argue that the Vice-Chancellor formed his opinion and on that basis wrote the letter. But having said that it has been brought to the notice of the University, and nothing else, it is difficult to accept that the Vice-Chancellor formed the requisite opinion that an emergency had arisen so as to enable him to exercise powers under Statute I 1(G)(4). No record, has been

made available before us to show that before issuing the impugned letter the Vice-Chancellor had recorded his opinion about a situation of emergency having arisen on account of the -alleged remarks of petitioner No. 2. For this reason alone, the action of the Vice-Chancellor under Statute I I (G)(4) is liable to be struck down.

17. This brings us to the question of applicability of principles of natural justice. Principles of natural justice, as we all know, are basically a requirement of fair play in action. That is why it is not possible to put them in a straight jacket or define them precisely. The requirements of fair play may change with the change in circumstances and, Therefore, natural justice has to be adjusted to a given situation. It is capable of being molded according to the exigencies of a situation. Various decisions of the Supreme Court and the High Courts have adverted to the principles of natural justice and have highlighted their importance. While speaking about natural justice Krishna Iyer, J. observed in *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, :-

"Natural justice is no unruly horse, no lurking land mine, 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 pro- 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 to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt - that is the conscience of the matter."

18. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, the Supreme Court observed that the phrase "natural justice" is not capable of static and precise definition. However, a duty to act fairly is generally implied irrespective of whether the power conferred on a statutory body or tribunal, is administrative or quasi judicial. These rules can supplement the law but cannot supplant it. Rules of natural justice are not embodied rules. Being means to end and not an end themselves; it is not possible to make an exhaustive catalogue of such rules. As generally understood the rule of natural justice or *audi alteram partem* as it is often called, envisages that a party should know the case which it has to meet and it should have an opportunity to meet the same. This rule is very flexible and adapts itself to the various situations in which it has to be observed. It can adjust and harmonise the need for speed and obligation to act fairly. It can be modified and the measure of its application can be cut short in reasonable proportion to the exigencies of the situation. However, it cannot be sacrificed at the altar of administrative convenience or celerity. Ultimately as to what extent and in what measure this rule of fair hearing will apply at the pre-decisional stage will depend upon the degree of emergency, if any, having all the facts and circumstances of a particular case.

19. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, , it was further observed :

"In short this rule of fair play 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 being heard and the hearing must be genuine hearing and not an empty public relations exercise."

20. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , the Supreme Court was faced with observance of the principles of natural justice in an emergent situation, This is what the Court observed (at p. 872 of AIR):

"So now we are face to face with the naked issue of natural justice and its pro tern exclusion on ground of necessity and non-stultification of the on-going election. The Commission claims that a direction for re-poll is an "emergency" exception. The rules of natural justice are rooted in all legal systems, not any "new theology" and are manifested in the twin principles, of *nemo iudex in sua causa* and *audi alteram partem*. We are not concerned here with the former since no case of bias has been urged. The grievance ventilated is that of being condemned unheard. Sporadic applications or catalogue of instances cannot make for a scientific statement of the law and so we have to weave consistent criteria for application and principles for carrying out exceptions. If the rule is sound and not negated by statute, we should not devalue it nor hesitate to hold every functionary who affects others" right to it. The *audi alteram partem* rule has a few facets two of which are (a) notice of the case to be met; and (b) opportunity to explain."

21. This argument was met with the following observations - "should the cardinal principles of hearing as condition for decision making be martyred for the cause of administrative immediacy? We think not. The full panoply may not be there but a manageable minimum may make do."

"In *Wiseman v. Borneman* (1967) 3 All ER 1045, there was a hint of the competitive claims of hurry and hearing. Lord Reid said "Even where the decision has to be reached by a body acting judicially, there must be a balance between the need for expedition and the need to give full opportunity to the defendant to see material against him". We agree that the elaborate and sophisticated methodology of a formalized hearing may be injurious to promptitude so essential in an election underway. Even so, natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. To work it altogether may not be a stroke of fairness except in very exceptional circumstances."

Disclosure of the prominent circumstances and asking for an immediate Explanation orally or otherwise may, in many cases, be sufficient compliance. It is even conceivable that an urgent meeting with the concerned parties summoned at an hour's notice, or in a crisis, even a telephone call, may suffice.

If all that, is not possible as in the case of a fleeing person whose passport has to be impounded lest he should evade the course of justice or a dangerous nuisance needs immediate abatement, the action may be taken followed immediately by a hearing for the purpose of sustaining or setting aside, the action: to the extent feasible."

22. The question is, are the rules of natural justice attracted in the present case? It is urged on behalf of the respondents that there is no requirement in the statutory provision for compliance with the principles of natural justice. Secondly, being a member of the Governing Body of a college is not such a right as would entail giving a right of hearing before removal from membership. Thirdly, it is submitted that in the circumstances in which the power was exercised, the principles of natural justice even if attracted, can be dispensed with. This argument is based on the existence of alleged situation requiring swift action. None of these arguments impress us so as to enable us to hold that the principles of natural justice need not be observed in the present case. The non-existence of a requirement of show cause or hearing before action is taken in the statute under which the powers are exercised, cannot be a ground for noncompliance with the principles of natural justice. This has been so held by the Supreme Court in various decisions including those in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, ; *S.L. Kapoor Vs. Jagmohan and Others*, and *Swadeshi Cotton Mills Vs. Union of India (UOI)*, . The provision under which the impugned action has been taken, i.e. Statute I 1(G)(4), of course, does not refer to any show cause notice being given prior to the action. But this does not mean that the provision excludes compliance with such a basic right.

23. Petitioner No. 2 is a man of some status as has been disclosed in the writ petition. He has denied having made the statement which is imputed to him. The effect of the impugned action is that he has been condemned without a hearing. Without even putting it to him, the Vice-Chancellor has accepted that he made the offending state ment. The action got wide publicity including mention in the Press. Petitioner No.2 has been defamed and maligned for something which he claims he never stated. The only material placed before us to show that petitioner No. 2 made the remarks in question is the letter of a teacher of the college dated 12th August, 1 991 and some Press reports in the daily newspapers of 12th August, 1991. The, two University nominees of the Governing Body have filed affidavits in this Court in the present proceedings saying that petitioner No. 2 made the offending - remarks in the meeting of the Governing Body on 10th August, 1991. These very representatives as well as teachers" representative who wrote to the Vice-Chancellor on 12th August, 1991 about the alleged remark of petitioner No. 2, wrote protest notes while leaving that meeting of the Governing Body on 10th August, 1991. There is nothing stated in these notes about the alleged remarks. If the remarks had been made in their presence, it would have found mention in their notes. Therefore,, there may be doubts about the remarks having been actually made by petitioner No. 2. The least that the Vice-Chancellor could do before taking the

impugned action was to call upon petitioner No. 2 to find out at least whether he made such remarks or not. As already observed, the principles of natural justice can be molded or adjusted to a given situation and if there was any such real emergency, may be the Vice-Chancellor could enquire on telephone from petitioner No. 2 whether such remarks were made by him, Courts have recognised even a telephonic show cause as sufficient in a given situation. We have already referred to certain observations in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, which are apt in this context.

24. Now about whether the impugned action visits any civil consequences or affects any rights of petitioner No.2. Here again we do not agree with the respondents that the impugned action does not affect petitioner No. 2. Firstly, it tarnishes the reputation. of petitioner No. 2 and defames him in the public eye for having made certain derogatory remarks against women which the petitioner No. 2 says he never did. The Vice-Chancellor, while issuing the letter to petitioner No. 2 simultaneously released it to the Press. This resulted into wide adverse publicity against petitioner No. 2. The daily newspaper's of 14th and 15th August, 1991 were full of this news. Secondly, even the status of being a member of a !Governing Body of a college after the Body has been constituted, gives rise to expectation to enjoy the status for the full term and such an expectation will require minimum observance of principles of natural justice. Again we may refer here to Certain portions from the decisions in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and S.L. Kapoor Vs. Jagmohan and Others, .

In Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, it was observed :-

"It was argued, based on rulings relating to natural justice, that unless civil consequences ensued, hearing was not necessary. A civil right being adversely affected is a sine qua non for the invocation of the audi alteram partem rule. This submission was supported by observations in Ram Gopal Chaturvedi Vs. State of Madhya Pradesh, ; Union of India (UOI) Vs. Col. J.N. Sinha and Another, . Of course, we agree that if only spiritual censure is the penalty temporal laws may not take con- of such consequences since human law operates in the material field although its validity vicariously depends on its morality. But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? "Civil consequences undoubtedly cover infraction on of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything" that affects a citizen in his civil life inflicts a civil consequence."

25. S.L. Kapoor Vs. Jagmohan and Others, was a case of suppression of a duly constituted municipal committee. It was observed (at p. 142 of AIR):-

"A Committee as soon as it is constituted", at once, assumes a certain office and

status, is end-owed with certain rights and burdened with certain responsibilities, all of a nature commanding respectful regard from the public. To be stripped of the office and status, to be deprived of the rights, to be removed from the responsibilities, in an. unceremonious way as to suffer in public esteem; is certainly to visit the Committee- with civil, consequences. In our opinion the status and office and the rights and responsibilities to which we have referred and the expectation of the Committee to serve its full term% of office would certainly Create sufficient interest in the Municipal Committee and their loss, if superseded, would entail civil consequences so as to justify an insistence upon the observance of the principles of natural justice before an order of supersession is passed."

25A. Further it was also observed (at p. 247 of AIR):-

"In our view the principles of natural justice know of no exclusionary role dependent on whether it would have made any difference if natural justice had been observed. The nonobservance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary. to observe natural justice but because Courts do not issue futile writs."

26. We find ourselves unable to agree with the counsel for the respondents that the principles of natural justice were not required to be followed in the facts and circumstances of the case.

27. Counsel for respondents has drawn our attention to Babulal Parate Vs. State of Maharashtra and Others, . This was a case regarding imposition of S. 144 of the Code of Criminal Procedure in an area. Obviously neither it was, possible nor practicable to give a hearing before passing the order. Therefore this authority has no relevance.

28. Then the counsel cited Joseph Kuruvilla Vellukunnel Vs. The Reserve Bank of India and Others, . We fail to understand how this case is attracted in the facts of the present case. This was a case in which S. 38(1) and 3(b)(iii) of the Banking Companies Act, 1949 were challenged on the ground that these provisions make the Reserve Bank the sole Judge; to decide, whether the affairs of a banking company are being so conducted as to be prejudicial to the interests of the depositors, and the Court has no option but to pass an order winding up the banking company when the application is made by the Reserve Bank. One of the points on which the challenge was based was that the whole procedure was a denial of the principles of natural justice, chiefly by denying an access to Courts.

29. It was held "in leaving this decision to the Reserve Bank the law cannot be said to offend the principles of natural justice and to become so unreasonable

viewed in the light of Art. 19 as to become void."

30. Counsel for the respondents has also urged that the Vice-Chancellor of the University being a high functionary, has been bestowed with such emergency powers in the exercise whereof there should be no judicial interference. This argument is sought to be supported on the basis of a judgment of the Supreme Court in Marathwada University Vs. Seshrao Balwant Rao Chavan, . In the said case it has been observed by the Supreme Court that if the Vice-Chancellor believes that a statutory calls for immediate action, he can take such action as he thinks necessary though in the normal course he is not competent to take that action. We are afraid, this authority does not help the respondents particularly in view of the fact noticed by us earlier that the Vice Chancellor has not shown anything to suggest that he believed that a situation" calling for immediate action had arisen.

31. The Supreme Court has struck a note of caution while dealing with powers and position of! high, functionaries in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, :

"Nobody will deny that the Election Commission in our democratic scheme is a central figure and a high functionary. Discretion vested in him, will ordinarily be used wisely not rashly, although to echo Lord Camden, wide discretion is fraught with tyrannical potential even in high personages, absent legal norms and institutional checks, and relaxation of legal canalization on generous "VIP" assumptions may boomerang. Natural justice is one such check on exercise of power."

32. To justify the action of the Vice-Chancellor, the respondents have referred to certain correspondence that ensued between petitioner No. 2 and the Vice-Chancellor after the said letter was written to him, copies whereof have been placed on record. However, since the entire correspondence is after the impugned action, it has no relevance.

33. The point regarding post decisional hearing and the offer of the counsel for the respondents during the course of hearing that the Vice-Chancellor may be asked to give a post decisional hearing to petitioner No. 2 will not, to our mind, meet the ends of justice so far as the facts of present case are concerned. The damage to the reputation of petitioner No. 2 has already been done. Letter of the Vice-Chancellor having been released to the Press has already gained wide publicity in national newspapers. Petitioner No. 2 has been condemned and we have already held that principles of natural justice are attracted in the facts and circumstances of the case". A post decisional hearing in such circumstances cannot meet the ends of justice. We may also note here the view of the Supreme Court expressed in a recent judgment reported in H.L. Trehan and Others Vs. Union of India (UOI) and Others, that opportunity of hearing after the impugned action does not subserve the rules of natural justice.

34. It takes us to the second limb of the writ petition, i.e. the action of the Vice-

in nominating seven additional members to the Governing Body of the college as University nominees vide communication dated 14th August, 1991 purportedly on the basis of authorisation given to him by the Executive Council vide its resolution dated 13th August, 1991 in pursuance of Statute 30 (I) (D) of the University. Statute 30(I)(D) is reproduced as under:-

"30(D). The Executive Council may, if it is satisfied, after such inquiry as it may think fit to make, that:

(a) the affairs of such College or Institution are being managed in a manner prejudicial to the interest of the University or of such College or Institution or of the teachers or students thereof; or

(b) teaching is being conducted in such College or Institution in a manner prejudicial in the University or any other activity of the University or to the public interest,

appoint to the regularly constituted Governing Body of such College or Institution such number of additional members, not being more than one-half of the total number of members of the Governing Body, and for such period as it may think fit but not exceeding three years on an e occasion:"

35. We have already noticed that the Governing Body of the college for the year 1991-92 was approved by the Vice-Chancellor vide letter dated 3 rd July, 199 1. It consists of fifteen members, out of which ten art Trust nominees, two are University representatives, two teachers" representatives, and one is the Principal who is an ex officio member. One of the Trust nominees was removed by the Vice-Chancellor vide his letter dated 13th August 1991. This left nine Trust nominees. The addition of seven members to the Governing Body through the impugned communication dated 14th August, 1991 clearly outnumbers the Trust nominees because the seven new University nominees plus two original University nominees and two teachers" representatives (who are already after the Trust nominees) makes a total of eleven members in the Governing Body on the one side as against nine Trust nominees and the Principal of the college on the other side. The move is, Therefore, clearly intended to outnumber the Trust nominees. While justifying the action it is almost conceded in the affidavit filed on behalf of the University that the starting point is the memorandum dated 21st February, 1991 by the DRCTA. It is stated that the Vice-Chancellor decided to have the matter fully examined which was "initially done himself and after the complete inquiry was conducted by a Committee comprising of members drawn by the Executive Council". In order to meet the requirements of principles -of natural justice it has been stated that all the allegations against the college administration were conveyed to the Member Secretary of the Governing Body as if this was sufficient compliance of the principles of natural justice.

36. It is further stated that the decision complained of was taken by the Executive Council. Statute 30(I)(D) empowers the Executive Council to take the action after being satisfied and on the basis of such inquiry as it may think fit. It

has been stated in the counter affidavit that an inquiry was held through certain members of the Executive "Council and the relevant resolution of the Executive Council dated 13th August, 1991 has been quoted to show its satisfaction about the action suggested therein. Therefore, the action possibly cannot be faulted on account of non-compliance of the Statute. However, the impugned action has to be tested on the anvil of principles of natural justice.

37. In this connection it is argued on behalf of the respondents that, no rights as such of the members of the Governing Body are being affected as they are not being removed from membership. The University is only having a wider representation in order to have "better knowledge" of the affairs of the college (as put across by the counsel for the respondents). As if two representatives were not enough to supply to the University the knowledge about affairs of "the college. To us" it appears that this argument has been advanced in an effort to somehow support the action. It loses sight of the reality. In the Press as elsewhere the action was projected as take over of the management of the College by the University. In fact this is the effect of the action. This view finds support, from another reason. Why nominate seven members? Why not two or three ? Obviously the intention is to outnumber the Trust nominees.

38. A reference to Statute 30(I)(D) will show that before an action is taken under the same, there has to be finding of guilt on the part of the Governing Body of the college. That there actually has been such a finding, has been admitted in the counter affidavit at page 153 of the paper book. Question again arises as to whether before such a finding could be recorded, the matter should have been put to the Governing Body and its Explanation called for. Not only this, was the proposed action put to the Governing Body by the University ? Admittedly no show cause notice containing the allegations against the Governing Body and informing it of the proposed action was ever given before the action was taken. The mere fact that the allegations against it were conveyed to the Governing Body (as stated in the counter affidavit on behalf of the University) is not enough. The Supreme Court had occasion to deal with these matters in S.L. Kapoor Vs. Jagmohan and Others, . In the said it was held that merely because the material which possibly the party against which action was proposed would supply, was already before the authority taking the action, was not enough to dispense with the requirement of show cause notice. Further it was held in the said case that the action must be proposed in the show cause notice. The relevant passage from the said judgment reads as under S.L. Kapoor Vs. Jagmohan and Others, :-

"The demands of natural justice are not met even if the very person proceeded against has furnished the information in which the action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need to be a "double opportunity" that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded, against must from that he is being required to

meet the, allegations which might lead to a certain action being taken against him. If that is made known the requirements are met. We disagree with the finding of the High Court that the Committee had the opportunity to meet the allegations contained in the order of supersession."

39. The impugned action in the, present case does not meet either of these require- action casts a stigma on the Governing Body. It visits civil consequences on the members. Therefore, principles of natural justice have got to be complied with.

40. It is interesting to note that this very Governing Body had been approved by the Vice-Chancellor on 3rd July, 1991 when the allegations against it were already pending vide the DRCTA memo dated 21-2-1991 and were under investigation by the Executive Council as has been stated in the counter affidavit. The question arises what happened so suddenly as to call for such a drastic action. The only events brought on, record in between are those of non-compliance of the wishes of the Vice-Chancellor by the Governing Body of the college regarding review of the case of Ms. Vijayan, a teacher of the college who had resigned from the college and whose resignation had been accepted by the college. The said teacher never withdrew her resignation and never, expressed her dissatisfaction about the action of Governing Body of the college in accepting her resignation. Still one wonders why, the Vice-Chancellor was insistent upon the said decision being reviewed by the Governing Body. The other incident of course was about the disappearance of Miss. Chaudhry, a student of the college. Though a hosteller, at the relevant time she was residing in the Tripura House as per her father's request. The matter was under investigation by the C.B.I. and except giving whatever assistance was required by the investigating agencies, the college or its Governing Body could do precious little in the matter.

41. Under the circumstances we are unable to persuade ourselves to uphold the action of the respondents in proceeding against the college under Statute 30(I) (D) and nominating seven Additional members to the Governing Body of the college as University representatives. The action is liable to be struck down. The letter dated 14th August, 1991 to this effect is hereby quashed. Thus both the actions of the respondents impugned in the present writ petition are set aside. The letter dated 13th August, 1991 qua petitioner No. 2 and the letter dated 14th August, 1991 nominating seven additional members to the college Governing Body are quashed.

42. There will be no order as to costs.

Petition allowed.