

(2009) 10 DEL CK 0097

In the Delhi High Court

Case No : Writ Petition (Civil) No. 10196 of 2009

Pranshu S. Raghuvansh

APPELLANT

Vs

Indraprastha Institute of Information Technology

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 136, 226, 311(2)
Indraprastha Institute of Information Technology Delhi Act, 2007 — Section 10, 13, 15, 19, 19(1)

Citation : (2009) 10 DEL CK 0097

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Navin Chawla Vikram Singh Bhanu Pant and Shubhra Sharma, for the Appellant; Raghu Nayyar and V.K. Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought quashing of memorandum dated 10th July, 2009 expelling the petitioner from the respondent institute, on the ground that the same is passed without following the statutes of the Institute and without following the principles of natural justice and seeking a direction to allow petitioner to attend the next session starting in the last week of July 2009 and also permit the petitioner to reappear in the theory and practical examinations which was already held from 29th April, 2009, till 4th May, 2009. The petitioner has also sought exemplary cost of Rs. 5.00 lakhs in favor of the petitioner and against the respondent.

2. The brief facts to comprehend the controversies are that the petitioner took admission for B.Tech. Course (Information Technology) in the month of August, 2008. The plea of the petitioner is that he is actively involved in the various co-curricular activities and his academic performance is also considerably good.

3. The petitioner assertion is that on 23rd April, 2009, he went to the Institute

around 10.30 PM along with his two fellow college students, namely, Ishaan and Shashank, to play pool which is open 24 hours a day for the faculty and also for the students. One of the students also signed the relevant register in the presence of the guard. The allegation of the petitioner is that while he was playing pool, he saw Ishaan in the room of one of the visiting faculty of the respondent, whereas Shashank was standing near the window of the room and they were doing something in the laptop lying in that room. According to the petitioner, when he saw the conduct of the students, he went to the guard of the institute and informed him about it, who was, however, indifferent to it. The petitioner also alleged that he tried to persuade the two students not to do whatsoever they were doing and to move out from the room of the faculty. The other students, however, did not accede to the request of the petitioner.

4. The petitioner asserted that around 11.15 PM Ishaan and Shashank, other two students returned to the hostel. At the time of their return he had seen them carrying some print outs. On 25th April, 2009, the petitioner was summoned by the Director of the respondent and he was asked to give his statement in writing of the events happened on 23rd April, 2009. The parents of the petitioner were also called and they were asked to withdraw the petitioner from the course otherwise he would be expelled on the ground of academic dishonesty as the petitioner was contributory to the incident of entering teachers room, tampering with the records/data and obtaining question paper of the examination.

5. The petitioner thereafter was served with an email dated 27th April, 2009 at about 4.29 PM directing him to be present before the Senate meeting on 28th April, 2009. According to the petitioner he was coerced on 28th April, 2009 in either opting for withdrawal or suffer expulsion. The written statement of the petitioner was, however, taken on record and without providing any reasonable hearing he was asked to leave the conference room and at about 8.15 PM, he was called to accept the expulsion order which was accepted by the petitioner under protest. However, the petitioner was not even given permission to write anything in the said order. The petitioner was not allowed to appear in the examination from 29th April, 2009 onwards.

6. That aggrieved by the expulsion order petitioner filed a writ petition being W.P(C) No. 8680/2009 titled Pranshu S. Raghuvansh v. Indraprastha Institute of Information Technology in which an Hon'ble Single Judge by order dated 1st May, 2009 declined to stay the order of expulsion dated 28th April, 2009. Aggrieved by the order dated 1st May, 2009 declining to stay the expulsion order, a LPA No. 207/2009 was filed where it was agreed by the petitioner that the Senate of the respondent institute would give show cause notice to the petitioner and thereafter on hearing the petitioner and considering his representation a reasoned order would be passed. The LPA was disposed of by order dated 12th May, 2009 in view of the mutual understating arrived at between the petitioner and the respondent.

7. The petitioner was thereafter, served a show cause notice dated 22nd May,

2009 and the documents were supplied to him only after they were demanded by the petitioner, but he was not supplied all the relevant documents. A brief reply to show cause notice was filed by the petitioner on 23rd June, 2009 and thereafter petitioner appeared before the Senate on 1st July, 2009. The petitioner was thereafter served with a memorandum dated 10th July, 2009 either opt for withdrawal from the institute or suffer expulsion. The petitioner declined to opt for withdrawal by his email dated 11th July, 2009 thereafter the order of his expulsion became effective which has been challenged by the petitioner in the present writ petition seeking quashing of memorandum dated 10th July, 2009 and allow the petitioner to attend the next session starting in last week of July, 2009 and allow the petitioner to reappear in the theory and practical examination which had been held from 29th April, 2009.

8. The plea of the petitioner is that despite having a conclusive finding by the Senate that the petitioner was not involved in the act of tampering of records, he has been expelled from the course. The action of the respondent is alleged to be in denial of the principle of natural justice as the petitioner was not allowed to cross-examine the witnesses. The petitioner asserted that despite the allegation that he had tried to copy the question paper, no material was produced in support of this plea. The decision of the Senate is also challenged on the ground that it is only an academic body and does not have the power to punish the students as per the scheme of the Act. According to petitioner he could only be fined according to Clause 21(2) of the Statute. The petitioners also contended that he was admittedly inside the Institute premises on that fateful day but he had not been inside the faculty members room. It is also contended that since the guard was present, it was guard's duty to prevent him from entering the Institute as he is being paid to do the same. Reliance of the Senate on the second statement of Shashank stating that he had informed the petitioner and Ishaan, is also challenged and also the conclusion that the petitioner knew about the plan.

9. According to the petitioner if it has been held by the Senate that he was not involved in tampering of academic record, then how could he obtain the question paper. The petitioner has also pointed out some contradictions in the statements of different persons and the fact that the statement of the guard was recorded after the Senate had already expelled him on 28th April, 2009. The petitioner has also challenged the order of his expulsion on the ground that the Division Bench had directed to consider the matter a fresh, however, the whole matter has been decided on the basis of old documents and the statements. According to the petitioner new statements should have been recorded. The Change of the constitution of the Senate, as one of the members of the Senate of 28th April, 2009 was not the Senate member of the meeting held on 1st July, 2009, this plea has also been taken by the petitioner

10. The learned Counsel for the petitioner has relied on Rana Pratap Singh Vs. Deputy Registrar (Academic) Banaras Hindu University, Varanasi and Others, to

contend that "academic" and "discipline" are not synonymous and the Senate has power only pertaining to academic matters and not pertaining to disciplinary matters. Reliance has also been placed on Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, ; Khem Chand Vs. The Union of India (UOI)and Others, ; K. Sathyashankara Shetty Vs. Mangalore University, Mangalore and another, ; Cantonment Executive Officer and Another Vs. Vijay D. Wani and Others, and Narayana Rao K.V. and Another Vs. State of Andhra Pradesh and Another, to contend that the principles of natural justice have not been followed and reasonable opportunity has not been given to the petitioner, as he was not given right to cross examine and some members of the Senate disqualified themselves from taking any action as they had conducted the investigations. Reliance has also been placed on Marathwada University Vs. Seshrao Balwant Rao Chavan, to contend that the Director could not delegate his power to Senate as it is higher in authority and Ashish Suman and Others Vs. National Law School of India University and Others, to assert that by exercising judicial restraint Courts do not have to close their eyes if injustice is done under the guise of maintaining the discipline. Reliance was also placed on Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, to contend that the respondent is trying to add on words/reasoning in the expulsion order dated 1st July, 2009 which is not at all permissible in law.

11. The petition is contested by the respondent who filed the affidavit of Dr. A.R. Subramaniam, Registrar of the respondent. The respondent pleaded that IIIT Delhi Act, 2007 (Delhi Act 5 of 2008 also referred to as the Act) was promulgated to establish and incorporate a non affiliating and teaching institute of Delhi to facilitate and promote studies, research, incubation and extension work in information technology and its application domains, and also to achieve excellence in these and connected fields. According to the respondent, the Act provides to regulate, enforce and for taking necessary measures for the student discipline. It is also asserted that after obtaining prior approval of the Chancellor, the Statutes were made which were notified by resolution dated 17th July, 2008.

12. According to the respondent after giving a show cause notice in compliance with the order dated 12th May, 2009 and giving a reasonable hearing to the petitioner, the Senate passed the order dated 1st July, 2009 directing the petitioner either to withdraw from the institute or to face expulsion which decision was communicated to the petitioner by the Director by memorandum No. III-D/Aca/Misc/Case/001/2009/626 dated 10th July, 2009 which is impugned by the petitioner.

13. The respondent contended that the Senate took into consideration of the statement of the petitioner and the others. After show cause notice was given to the petitioner, he was also supplied statement of Mr. Ishaan, Mr. Shashank and his statement, statement of Mr. Honey, background note prepared based on various interactions, report of security agency along with the statement of guard

and copy of the relevant entry register, minutes of the Academic Dishonesty and Discipline Violations Committee and the minutes of the emergency meeting of the Senate.

14. The petitioner's statement which was given on 25th April, 2009 was considered which is as under:

...We entered the IIIT premises around 10.30 PM. After that I was in the pool room. Ishaan and Shashank entered the room opening the window using the AC window. Shashank found the paper he brought it to the chairs copied it and Ishaan still was in the room searching Astrid Ma'am's laptop, then Shashank copied the paper and Ishaan closed the room and we came back. And I was near the window when Ishaan started printing. When Ishaan was using the laptop he tried to print some scores, but the printer was out of paper and he gave the cancel command and shutdown the laptop. I never entered the room, and was not involved in tampering the marks.

15. The respondent in their counter affidavit also referred to the statement of Shashank which is as under:

...Ishaan, me and some other classmates went to IIT lab around 3.00 PM for checking our e-mail. Then Ishaan went to Astrid Ma'am's room for asking some doubts and might saw some papers lying over there. Then we went back to the hostel. Then he told me and Pranshu that we can access TOC exam paper as he has some mutual understanding with the security guard of night shift. It was seemed to be quite unbelievable for me although for a moment, in some corner, greed also came in our minds too and we accepted but in a light way what he was saying. Then after having dinner at around 10.30 PM, we (Ishaan, me and Pranshu) went to IIIT in spirit of evening walk and playing pool and then as he (Ishaan) had some setting with the security guard, he allowed us in and do whatever we wanted. Ishaan made some entries in admin block and Pranshu and me were walking ahead. Then when me and Pranshu were in the corridor, all of a sudden Ishaan went inside Astrid Ma'am's room and took the paper's solutions (2/3 solutions) and gave it to me to copy. I was quite astonished and shivering with anxiety and was not in a position to think anything. I copied the stuff while sitting on the chairs in front of the classroom. Pranshu was also there with me at that time. Then Pranshu followed Ishaan to the window of the room and Ishaan altered some of his marks (as told to me by Ishaan) and when they returned, they brought some printed stuff along with. Ishaan gave that to me to hold. After some time he took it back for me."

16. The statement given by the petitioner on 28th April, 2009 when he appeared before the Senate is as under:

...The day before TOC paper i.e. on 23rd April, 2009 I came to the hostel for preparation. By evening I had covered most of the topics. Ishaan came to me and asked whether I was prepared for the paper. I told him that I had prepared for 60-70%. Then Ishaan suggested that we should go to IIIT to play pool or

counter strike. When we (Ishaan, Shashank and me) entered IIIT (around 10.30 pm), the guard stopped Ishaan for entry. I went forward to the pool room to set the balls, from the pool room window I noticed Ishaan opening and entering the window of Astrid Madam's room. Shashank was standing at the window. I was surprised and puzzled at this action. Ishaan gave some paper to Shashank and Shashank took the paper to the chairs in front of the classes. Seeing this I left the pool room and when I reached there I found that it was the next day's TOC paper, I was simply shocked to see this. After some time I said I heard something on the roof and excused myself from the place. I went to the roof and started thinking about what was happening. Then I came back and told them that it was nothing. When I returned I saw that Ishaan was still in the room doing something in Astrid madam's laptop. I asked Ishaan through the door what he was doing but he couldn't hear me, so I went to the window to ask him what he was doing, then I saw that he was printing out something (some kind of table), then he hastily shutdown the computer and came out of the room with printout. When Shashank copied the paper he returned it to Ishaan who put it back into the room. Then I insisted them to leave the place and after that we returned back to hostel. On the way back to the hostel I realized that they have come to IIITD with some ulterior motive and I was also made a part of something serious unknowingly, only way out of this was to report the matter to the authorities, which I never had the guts to do. I decided not see the questions or their answers and do my best on my own. If the questions were known to me I would have attempted all the questions of the paper. It may be confirmed from my answer sheet. As far as changing of marks I didn't even know about it and it came to my knowledge during the investigation on 25th April. As I never entered the room, I was neither a party to paper incidence nor marks changing. It may be confirmed from the records. I have been a good student and I don't need to do such type of things. In first semester theory examination I had secured 159 marks (out of 290) and was placed at 5th Position. This can be checked from records, for ready reference I am attaching the list mailed to me. I would like to summarise my submission as follows:

1. I was not aware of the intentions and I went there only to play pool.
2. I never entered in the room and was only confined to the public area, entry to which is allowed.
3. I was not involved in leakage and copying of question paper and its answer.
4. I have not altered my scores in any record i.e have not tampered with the records.
5. I had no prior knowledge of questions or their answers. In light of my above submissions I humbly request you to kindly consider my case judiciously on the basis of facts stated by me. I have not done any dishonesty either academic or otherwise. Therefore, charges framed against me, if any, may be withdrawn and I must be allowed to sit in written and practical examination.

17. The respondent also relied on another statement given by Shashank which is as under:

¶I (Shashank), Ishaan and Pranshu came after having dinner to IIIT at around 10.30 PM. Ishaan had some setting with guard. Then we entered IIIT and the security guard knew what we came for and he allowed us to continue what we were doing. Then Ishaan went into Astrid's Ma'am's room and took the paper and gave it to me and I took it and went to the chairs and copied the stuff. After then Pranshu also went to the window of Astrid Ma'am's room and when they came, they were carrying some printed matter. Then we put the paper at place and we went back to hostel. The records were changed before (earlier before 23rd's night) by Ishaan.

18. The respondent also relied on the separate statements given by Ishaan and Shashank where the name of the petitioner was mentioned as their accomplice and aider in the whole episode. According to the respondent the role of the petitioner is evident which he played very efficiently as he went up to the roof to see if there was someone around and came back and informed others that there was nothing meaning thereby that everything was safe. The respondent also emphasized that the petitioner could not play the pool alone if other two had gone to the room of Astrid Ma'am's room. The respondent contended that the Senate has the power to take disciplinary action against the petitioner in the matter concerning the examination and the Senate was constituted according to the draft of the constitution of 8th Board of Governors meeting, approved in the 9th Board of Governors with some modifications, copies of which are filed by the respondent. The respondent also contended that though the petitioner has been absolved of the charge of altering the academic record, however, he has been held guilty of illegally entering into Ms. Astrid's room and staying in the hostel without permission.

19. The respondent further asserted that the Senate also considered the suspension of the petitioner only for one year, however, since most of the Senate members felt that one year expulsion was not appropriate, therefore, the decision to expel him was taken. However, taking into consideration his future career prospects, the petitioner was given an option to withdraw from the course of the institute which offer was, however, declined by him and consequently the petitioner has been expelled. The contention of the respondent is that a fair process was followed and reasonable opportunity was given to the petitioner and there are no grounds for interference by the Court in exercise of its powers under Article 226 of the Constitution of India against the punishment imposed on the petitioner for the extreme act of indiscipline.

20. The learned Counsel for the respondent has relied on *Ashish Bhateja v. Indian Institute of Technology and Ors.* Civil Writ Petition and *Nazer Zohir El Yazgi v. Union of India and Anr.* in Civil Writ Petition No. 2120/1993 and 2411/1993 decided on 2nd September 1993 *Narender Singh Vs. University of Delhi and Others*, ; *Mansoor Azam v. Zamia Millia Islamia and Ors.* Civil Writ

Petition No. 3569/2000 decided on 3rd March, 2001 and Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, to contend that the decision of the Senate is neither in denial of principle of natural justice nor the decision is liable to be interfered with in the facts and circumstances of the case. The learned Counsel also relied on The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others, to contend that all the considerations which govern the Criminal Trials in ordinary course of law cannot be imported into the enquiries conducted by the disciplinary bodies of the educational institutions. Reliance has also been placed on Controller of Examinations and Others Vs. G.S. Sunder and Another, . The learned Counsel for the respondent has also relied on order dated 4th November, 2008 in CA No. 34 of 2008 Director (Studies) and ors. v. Vaibhav Singh Chauhan in support of respondent's pleas and contentions.

21. The counsel for parties were heard on various dates in support of their respective pleas and contentions. The writ petition, counter affidavit, rejoinder affidavit and additional affidavit and documents filed by the parties have been considered. The Counsel for petitioner has laid down a lot of emphasis on the plea that the Senate of the Institute does not have the power to take disciplinary measures, as it is merely an academic body whose powers and responsibilities are enumerated in the Section 19 of the act and Clause 14 of the Statute. According to the petitioner the powers detailed in the Act and the Statutes, does not give power to the Senate to take disciplinary measures and actions. Senate, according to petitioner is merely an academic body in accordance with Section 2(a) and 19(1) of IIIT Act, 2007, hereinafter referred to as Act

22. Section 2(a) of the Act defines Senate to mean an academic body of the Institute. Section 19(1) of the Act contemplates this body to be Principal Academic body concerning maintenance of standards of institution, education and examination within the Institute. Section 19 of the Act is as under:

19. The Senate:- 1) The Senate shall be the principal academic body of the Institute and shall, subject to the provisions of this Act, the statutes and the Ordinances, have the control and regulation of, and be responsible for a) Interacting with the Board of Governors through the Director for formation of academic policies and to realise the strategic plan of the Institute b) maintenance of standards of instruction, education and examination within the Institute and c) exercise of such other powers and perform such other duties as may be conferred or imposed upon it by the Statute 2) the constitution of the Senate and the terms of office of its members shall be as prescribed. 3) the Senate shall have the right to advise the Board of Governors on all academic matters.

23. The institute has the power to regulate and enforce discipline among the students and to take such disciplinary measures as may be deemed necessary. The institute has to functions through its Authorities which are The General Council, The Board of Governors and the Senate and such other authorities as

may be declared by the statutes. From Section 15 of the Act it is apparent that the General Council is the policy making authority and is not concerned with day to day functioning of the institute. The Board of Governors is also concerned with General Superintendence, direction and control of the affairs of the Institute and exercise all the powers of the institute not otherwise provided by the Act, the statutes and the ordinances and also has the power to review the work of the Senate.

24. Under the Act, the Senate is the principal academic body of the institute and has the power to maintain standards of instructions, education and examination within the Institute. Under the statute Clause 14 the Senate has the powers to frame regulations regarding academic functioning of the institute including discipline. Clause 14 of the Statute is as under:

The Senate 14(1) Subject to the relevant provisions of the Act, the Statutes and the Ordinances, the Senate shall, in addition to all other powers vested in it by the Act or under the Statutes, have the following powers, namely:

- a) To consider matters of general academic interest either on its own initiate or on a reference from the Director or Deans of the Institute and shall take appropriate action thereon; and
- b) To frame such regulations as are consistent with the Statutes and the Ordinances regarding the academic functioning of the Institute, including discipline, admissions, fees and other academic requirements
- c) The above regulations framed by the Senate will take effect after approval of the Board of Governors.

25. Though the Institute is not the Senate, as the Senate is one of the authorities of the Institute and the institute has to act through one of its bodies but under the Act, Section 19, the Senate has the responsibility for examination, therefore, the senate has the power in respect of different facets of the examination and the matters pertaining thereto. The plea of the petitioner that the Senate does not have any power for any matter pertaining to the examination is, therefore, not acceptable. The power of the Senate under Statute is in addition to the power given under the Act. The senate has the powers to frame regulations including discipline under Clause 14(1)(b). However, it appears that the regulations have not been framed yet. On account of not framing of regulations, the power given to the Senate under the Act and the Statute is not negated.

26. The Director is one of the officers of the Institute and u/s 10 of the Act, detailing the powers and functions of the director, he has to implement the decisions of all the authorities of the Institute including the Senate. Under Clause 21 of the statute, the director has been given powers for maintenance of discipline amongst students of the Institute. Clause 21 of the statute is as under:

Maintenance of discipline amongst the students of the Institute. 21. The powers

regarding discipline and disciplinary action in regard to the students of the Institute shall vest in the Director who may delegate all or any of his powers, to such authority as she/he may deem fit. 2) without prejudice to the generality of her/his powers relating to the maintenance of discipline and taking such action as she/he may deem appropriate for the maintenance of discipline, the Director may, in exercise of his powers, by order, direct that students be not admitted to a course or courses of study in the Institute or an institution for a stated period or be punished with a fine for an amount to be specified in the order, or that the result of the student or students concerned in the examination or examinations, in which he has or they have appeared, to be withheld.

27. Since Section 19 of the Act confers power for maintenance of standards of instruction, education and examination, it will not be logical to infer that the Senate does not have power for enforcing discipline in the institute and pertaining to examination. u/s 10 of the Act no specific power has been given regarding the examination and various facets of examination to the director except that the Director being the Principal Academic and Chief Executive Officer of the institute who has to exercise, supervise and control over the affairs of the institute and to give effect to the decisions of the authorities of the institute.

28. The learned Counsel for the petitioner had submitted a brief written submission contending inter-alia that the words "academic" and "discipline" are synonymous and relied on *Rana Pratap Singh Vs. Deputy Registrar (Academic) Banaras Hindu University, Varanasi and Others*, However, during the arguments it was contended that there is a typographical mistake in the written submission, as according to the plea of the petitioner "academic" and "discipline" are not synonymous. The precedent relied on by the petitioner does not lay down that "academic" and "discipline" are not synonymous rather it held that if the standing committee was not empowered to take disciplinary action against the students and the power was only with the academic council and as there was no provision for complaining against the decision of the standing committee which had rusticated or expelled the students, the writ petition shall be maintainable. The Banaras Hindu University had Court, the Executive Council, the Academic Council and the Standing Committee. The Court of the University was the supreme governing body and had all the powers of the University not otherwise provided by the Act or the statutes. The Academic Council had the charge of organization of instruction in the University and the Colleges, the courses of study and the examination and discipline of students and the conferment of ordinary and honorary degrees whereas the power of the standing committee were as vested in it by the Statutes. In these circumstances it was held that the Act had not conferred any power on the standing committee. The power of the standing committee were to perform all such duties and to do all such acts which were necessary for carrying out the decisions and directions of the academic Council and to perform all such functions as may be delegated to it by the Academic Council under the Act. Apparently the facts of the case relied on by the petitioner are very different. In the present case the act does not confer any

power for maintenance of standards of instructions, education and examination on the Director and the power under the Act to the Director is to give effect to the decision of the authorities of the institute including the Senate which has the power for examination within the institute. Under Clause 7(3) of the Statute the Director has been given powers for maintenance of discipline in the institute which may be delegated to such officer as the director may deem appropriate. Under Clause 21 of the statute the Director has been permitted not to admit a student to a course or courses of study in the institute for a stated period and to punish a student with fine or to withheld the result of examination of a candidate. The Senate under Clause 14(b) of the statute has the power regarding academic functioning of the institute including discipline. The allegation against the petitioner is that he made an illegal entry into the room of Ms. Astrid and the question paper for the examination was obtained and thereafter the academic records were altered in the hard copy folder as well as in the electronic file in the laptop of the said lecturer. The allegations against the petitioner are pertaining to discipline and the examination and in the totality of facts and circumstances. In the circumstances, it cannot be inferred that the Senate did not have the power to take action against the petitioner. The respondent had to frame the regulations consistent with the statute and ordinance for the enforcement of discipline by the Senate which have not been framed. The regulations would have canalized the power to take disciplinary action, however, absence of regulations does not negate the power of the senate.

29. The disciplinary action has been taken by the respondent in absence of the regulations of the Senate. Can the action be termed as without any power by the Senate in the facts and circumstances? The answer will be no, as the power to take disciplinary action by the Senate is conferred by the Act and Statute and not by the Regulations. If the disciplinary action is taken by the Senate following the principles of natural justice and the punishment awarded can be justified and the punishment awarded to different delinquent students is also similar, the absence of the regulations will not be fatal to the disciplinary action against the delinquent student, the petitioner, especially in the present facts and circumstances.

30. The Senate pursuant to the incident of 23rd April, 2009 had taken a decision to expel the petitioner and other two students namely Ishaan and Shashank by order dated 28th April, 2009. Against the said order a writ petition W.P(C) No. 8680/2009 titled Pranshu S. Raghuvansh v. Indraprastha Institute of Information Technology was filed where a Single Judge by its order dated 1st May, 2009 had declined to grant any interim order staying the operation of the expulsion order dated 28th April, 2009. Against the said order a Letters Patent Appeal No. 207/2009 titled Pranshu S. Raghuvansh v. Indraprastha Institute of Information Technology was filed. During the hearing of the Letters Patent Appeal the petitioner had agreed for the action to be taken by the Senate in compliance with the principles of natural justice. Therefore, it was agreed that the Senate will give a show cause notice to the petitioner and after hearing the petitioner and

considering his representation, a reasoned order shall be passed. In these circumstances the petitioner cannot be permitted to now contend that the Senate does not have the power to take disciplinary action against the petitioner on the ground that the Senate does not have the power under the Act and the Statute and the power is with the Director only who also does not have the power to expel the student and, therefore, the order of expulsion against the petitioner is not sustainable. In absence of regulations it was agreed that the action will be taken in compliance with the principles of natural justice.

31. The learned Counsel for the petitioner has relied on AIR 1943 231 (Oudh) to contend that the plea of the petitioner that the Senate does not have the power is not barred by constructive res judicata in view of earlier writ petition filed by the petitioner. In *Debi Dayal* (supra) relied on by the petitioner, one Ganesh Singh had executed a mortgage in favor of Mata Din for Rs. 600/- which had a stipulation for foreclosure. The mortgaged property was put to sale in a simple money decree which was purchased by Annu Singh in a Court auction. A plea was raised that on the demand, revenue payable was less than Rs. 250/- and on account of this and on the basis of demand, no decree for foreclosure could be passed. An application for review was filed and before the decision on the review application, objections were filed stipulating that the debt of the plaintiff must be deemed to have been discharged which was objected by the plaintiff on the ground of principles of constructive res judicata on the ground that the plea in defense was open to the defendants at the time when they filed their reply and they had not raised. In these circumstances, it was contended that it was no longer open to them to raise it later on. It was held that the facts were not sufficient to create a bar of constructive res judicata. Reliance was placed on a decision of a bench of Judicial Commissioner of Oudh, *Raja Ewaj Ali Khan v. Bakar Khan* 1 O.C 22 where it was held that explanation 2 of Section 13 corresponding to explanation 4 of Section 11 of the Code of Civil Procedure, apply only to a case in which the party against whom it was sought to apply was unsuccessful in the previous suit and it could not be applied against a person who was in the previous suit had been successful. Apparently the ratio is not applicable in the present facts and circumstances as it is not on account of not taking this particular plea but the petitioner categorically agreed for a notice by the Senate and after consideration of the notice and hearing, an appropriate order has been passed by the Senate. Since the petitioner had agreed to have a show cause notice from the Senate, the petitioner cannot be allowed to contend that the Senate does not have power to punish the petitioner. In any case it has been held that the Senate has the power to take disciplinary action against the petitioner. The Division Bench in Letters Patent Appeal filed by the petitioner had recorded as under:

4. During the course of hearing, both the parties fairly agreed to the disposal of the petition with the direction that the Senate of the respondent Institute would give show- cause notice to the appellant and thereafter, after hearing the appellant and considering his representation pass a reasoned order in the matter.

Accordingly, we direct the respondent Institute to give a show-cause notice to the appellant setting out the charges against him within one week from today. It would be open to the appellant to file his reply within one week thereafter. The matter would thereafter be considered by the Senate and after giving a hearing to the appellant, the Senate will pass a reasoned speaking order within a period of two weeks thereafter. In view of the same, the expulsion order passed against the appellant is set aside. However, it is clarified that the setting aside of the expulsion order is not an expression on the merit of the matter. The respondent Institute is entitled to take a decision in the matter in accordance with law. 5. With these observations, the Writ Petition (Civil) No. 8680 of 2009 and the present appeal, both stand disposed of. All pending applications stand disposed of as well.

32. The learned Counsel for the petitioner has also relied on 2003 (10) Scale Smt. V. Rajeshwari v. T.C. Saravanabava to contend that since the respondent has not taken the plea of writ petition being barred by the principles of res judicata or constructive res judicata, the respondent cannot be allowed to take such a plea. It was held that the rule of res judicata does not strike at the root of the jurisdiction of the Court trying the subsequent suit. It is a rule of estoppels by judgment based on the public policy that there should be finality to litigation and no one should be vexed twice for the same cause and, therefore, the plea of res judicata is founded on proof of certain facts and then by applying the law to the facts so found. Therefore, the foundation for the plea must be laid in the pleadings and then an issue must be framed and tried and a plea not properly raised in the pleadings or in issues at the stage of trial, the same cannot be permitted to be raised for the first time at the stage of appeal. Consideration of the pleas raised by the respondent in the affidavit it is apparent that reliance has been placed on the order of the Division Bench in LPA No. 207/2009 and the order passed thereon. If an order has been passed by a Division Bench on the consent of the parties, the petitioner cannot be permitted now to turn back and say that the Senate did not have any power on the basis of plea now raised. In case of complete lack of power in a body, the consent and the agreement may not be relevant, however, in the present case the Senate has the power to take action in the disciplinary matters and the matters pertaining to the examination under the Act.

33. In the circumstances for the foregoing reasons, it cannot be held that the Senate did not have the power to take disciplinary action against the petitioner and this plea of the petitioner is, therefore, rejected and on this ground the action of the respondent against the petitioner cannot be faulted.

34. The petitioner has also challenged his expulsion on the ground that the Senate which took the decision was not constituted in accordance with the Act and there has been no notification/ordinance pertaining to the same. The objection is also taken about the methodology of constitution on the ground that there is no prescribed procedure under the Statute. Section 19 of the Act

contemplates "Senate" to be a principal academic body having control and regulation of or responsible for maintenance of standards of instructions, education and examination within the institute. Clause 14 of the statute contemplates framing of regulations by the Senate which are effective after approval by the Board of Governors. The respondent has produced a copy of the agenda note of 8th Board of Governors meeting held on 10th January, 2009. The said minutes of the meeting at item No. 8.6.2 deals with the academic senate constitution. An initial academic senate was proposed to be constituted comprising of Director all academic functionaries like Deans and Centre Heads up to 15 faculty members of IIIT Delhi including visiting faculty; up to 4 academicians from institutes like IITs; four members from the industry two student representatives as special invitees for meetings where student's inputs are desirable and the Registrar as non-voting secretary of the Senate. The composition proposed in the 8th meeting of Board of Governors on 10th January, 2009 is as under:

Initial Academic Senate of IIIT Delhi IIIT Delhi act and statutes have provision of a Senate, which is the key body for academic matters of IIITD. As per the Statutes, Senate is responsible for general matters of academic interest, and for framing regulations regarding academic functioning. As IIITD did not have any faculty, it requested IIIT Hyderabad to have its Academic Council temporarily look into IIITD matters also. It is now proposed to constitute an initial senate of IIIT Delhi. This proposal is for composition of this initial senate. It is proposed that the initial senate consist of the following members:

The Director-Chairman of the senate All academic functionaries like Deans and Centre Heads Up to 15 faculty members of IIIT Delhi, including visiting faculty. Till the number of faculty members who are not Deans or Heads is less than 15, all will be members of the senate. After this, after serving two years on the senate, a faculty member will be replaced by the one who has not been in the senate for longest. Up to 4 academicians from Institutes like IITs/IIITs Up to 4 members from the industry Two student representatives as special invitees for meetings where student's inputs are desirable The registrar as non-voting secretary of the senate. The external members will have a term of two years and may be re-appointed. Initially these members will be selected by the Director and approved by Chairman, BOG. Latter, the senate itself will appoint these external members. Student representatives will be selected by the students-method for selecting student representatives will be decided by the Senate. The senate can also co-opt other members for limited term, or for some issues. The quorum for passing resolutions in the senate will be more than or equal to one-third of the voting members. This proposed composition of the initial senate will be in effect for 5 years, after which the composition itself may be redefined.

35. Another minute of the Board of Governors of the 9th Meeting on 6th March, 2009 is also produced by the respondent. The said minutes of the 9th meeting of Board of Governors refers to the minutes of 8th Board of Governors meeting held

on 10th January, 2009. However, though this meeting is of 6th March, 2009 but the date on the minutes is given as 2nd February, 2008. The learned Counsel for the respondent has contended that the date 2nd February, 2008 is a typographical mistake because the 9th meeting of Board of Governors was held on 6th March, 2009. Whether the 9th meeting of the Board of Governor had taken place on 2nd February, 2008 or 6th March, 2009 may not be material as the minutes refer to the approval of minutes of 8th meeting of Board of Governor held on 10th January, 2009. Since the 8th Meeting had taken place on 10th January, 2009, the 9th meeting could not take place on 2nd February, 2008 which is a typographical error in the facts and circumstances and could take place only after 10th January, 2009 and therefore, the correct date of meeting of BOG is 6th March, 2009 and not 2nd February, 2008.

36. In the 9th meeting of BOG the academic Senate constitution was approved with certain modifications to the effect that the number of faculty members from IIIT was limited to 10 in place of 15 and the number of persons from the industry was increased to 6 in place of 4. The tenure of the Senate was also agreed to be reduced from 5 years to 3 years. On the basis of the acceptance of the proposal for the constitution, its current constitution was given in the 9th meeting of BOG which is as follows:

Constitution of Academic Senate of IIIT Delhi Senate has been constituted as per the constitution approved by BOG. Currently, it consists of:

IIITD Members 1. P. Jalote (Chairman)

2. V. Bansal

3. A. Kiehn

4. V. Goyal Members from other Academic Institutes

5. K.K. Biswas, IIT D

6. P.K. Kalra, IITD

7. R. Moona, IITK

8. Kamal Karlapalem, IIIT Hyderabad Members from other industry

9. P. Goyal, Adobe

10. C. Anantram, TCS

11. Maneesh Gupta, IBM IRL More members will be inducted from Industry soon nominations have been requested from Cadence, Mentor Graphics etc.

37. From the minutes of the Board of Governors of the 8th meeting and 9th meeting it is apparent that the power of the Senate to co-opt other members for limited term on some issues was not declined as the modifications were only in respect of reducing the number of faculty members from 15 to 10 and increasing

from industry from 4 to 6 and modifying the tenure from 5 years to 3 years.

38. The learned Counsel for the petitioner Mr. Nigam had very emphatically submitted about the members of the Senate held on 1st July, 2009 expelling the petitioner comprising of Dr. Mayank Vats, Faculty, IIIT Delhi, Dr. Richa, Faculty, IIIT Delhi and the members who were present through audio conferencing, who could not be members of the Senate. The plea of the learned Counsel for the petitioner appears to be founded on not considering the approved proposal for the constitution of the Senate which was approved in the 9th meeting of Board of Governors giving only the names of some of the Senate members. The proposal for the Senate was for 15 faculty members from IIIT Delhi which was reduced to 10 members, while approving the Senate constitution. Along with the 9th Board of Governors minutes the constitution given shows only 4 members of IIIT Delhi therefore, it is apparent that Dr. Mayank and Dr. Richa who are also from the faculty of IIIT Delhi could be the members of the Senate and their participation in the Senate will not be contrary to the approval of the Senate constitution. Similarly the draft proposal of the constitution of the Senate contemplated co-opting other members for limited term or for some issues. While approving the draft proposal co-opting other members for limited term for or some specific issues, was not declined as the 9th meeting of Board of Governors only made three modifications in the proposed draft which was limiting the number of IIIT Delhi faculty to 10 from 15 and increasing the number of people from industry from 4 to 6 and revising the tenure from 5 to 3 years. In the circumstances having members though audio conferencing comprising of Professor Kamal Karlapalem, IIIT Hyderabad; Professor Rajat Moona, IIT Kanpur and Professor Prem Kalra, IIT Delhi cannot be termed contrary to the approval granted by the Board of Governors in the 9th meeting of the constitution of the Senate. Therefore, the plea of the petitioner that the Senate held on 1st July, 2009 was not according to the approved constitution, cannot be accepted and the plea is rejected. The plea of the petitioner that instead of passing a valid notification for the appointment of Senate members, invitations were sent to the people to be part of the Senate and this is contrary to the constitution of the Senate is also without any basis, as the Senate had the power to co-opt other members for limited term or for some issues. In the circumstances, the allegation that the Senate had no permanent well formulated structure cannot be accepted as the constitution of the Senate permitted co-opting of other members for limited term or for some issues. Such a constitution cannot be termed to be in violation of the provisions of the Act contemplating Senate as one of the bodies of the respondent. The plea that the persons who were not the members were also given voting rights also cannot be accepted as the said proposal in the minutes of the 8th meeting of Board of Governors was approved in the 9th meeting of the Board of Governors including having two student representatives as special invitees for meeting where student's inputs are desirable. In the circumstances, the constitution of the Senate approved by the Board of Governors cannot be faulted on the ground that the students who were the members of the Senate

had the voting rights. In the circumstances the plea of the petitioner that the Senate is a friendship club of few people who had at one point or another in their lifetime came in contact with the Director of Institute either in IIT Kanpur or IIT, Delhi and the process of constitution of Senate is extraneous to the scheme of the Act is not acceptable and is rejected. As the composition of the Senate of the respondent, as has been contended by the petitioner, appears to be in contrast with such bodies of other similar engineering colleges, cannot be a ground to reject the same since the constitution of Senate was approved by the Board of Governors.

39. This has not been disputed that a show cause notice was issued to the petitioner pursuant to the order dated 12th May, 2009 which was passed with the consent of the parties, on the petitioner agreeing that a show cause notice be given by the Senate and after hearing the petitioner and considering the representation made by him, a reasoned order be passed. After the show cause notice the petitioner became fully aware of what charges were made against him. The show cause notice categorically stated that petitioner with Mr. Ishaan and Mr. Shashank was involved together to commit a very severe act of academic indiscipline and dishonesty by entering into the respondent campus at around 10.30 PM on April, 23, 2009. Out of the three students one signed a false name and other two did not sign at all. It was also stated that two of the three students entered the room of the faculty member and altered the academic records in the file maintained by the faculty member and also altered the electronic records maintained in the personal computer of the said faculty member and print out of some files were taken from the laptop of the faculty member and in the circumstances the petitioner also helped in covering the serious violation of indiscipline by hiding the information from the concerned authorities and also by complementing the security guard for facilitating the above acts and not identifying the members of the group in front of the institute authorities. In the show cause notice given pursuant to the consent order passed by the Division Bench and the directions given by the Court, it was also specifically brought to the notice of the petitioner that he had been involved along with Mr. Ishaan in another serious act of academic indiscipline and dishonesty in January, 2009 pertaining to impersonation in the examination, which he had admitted in writing and for his act of indiscipline he had been issued a warning. Pursuant to the show cause notice given by the petitioner a reply dated 23rd June, 2009 was given. The petitioner contended that he has not been supplied all the documents. The petitioner sought a copy of the statement given by Ishaan and Shashank on 25th April, 2009 (2 pages). While giving reply to the show cause notice the petitioner had contended that he is giving a short reply. The petitioner's plea was that on the basis of the reply no inference could be drawn unless the fact finding exercise is done and the petitioner is allowed to cross examine which is an inherent and in separate power of the whole exercise. According to the petitioner a single incident had been split into numerous charges with the intention that if one or two charges fail, action be taken against

him for the other. It was contended that the provision of expulsion does not exist in the acts of the statute of the institute. Regarding entering the campus, petitioner admitted his presence on 23rd April, 2009, however, he stated that he had gone for joint preparation for the next date exam and his preparation was complete by 9.45 PM. Petitioner asserted that by the time he reached the main gate it was 10 PM and he was not allowed by the guard to go out of the campus and, therefore, he had no other option but to return to the hostel. Regarding staying with other students he stated in reply to the show cause notice that no warnings had been given by the warden earlier and there is no prescribed procedure to take the prior permission from anybody before entering the hostel. In the circumstances, the assertion of the petitioner is that no culpability can be fastened on him and, therefore, the charge of petitioner entering the campus is not approved. Regarding charge No. 2 that the petitioner tampered, altered academic records with other two students the petitioner asserted that the charge is based on hearsay which is not admissible in the eyes of law. He contended that he was not part of the group which committed indiscipline and dishonest acts and he could not be accused of the part of the group as there was no common intention. The petitioner also sought an opportunity to cross-examine the persons whose statements were relied by the respondent and he vehemently denied the charge against him. The petitioner's grievance is also that he was expelled on 28th April, 2009, however, guards and security agency's statements were recorded on 2nd May, 2009 which was received by the institute on 4th May, 2009. According to him his consistent stand is that he had gone to play pool which has been disbelieved. Even according to the petitioner the charge No. 1 has been dropped that is an illegal entry was made into the faculty, Ms. Astrid's room and the question paper for examination was obtained. However, charge Nos. 2 and 3, cannot by no stretch of imagination be sustained simultaneously as offence in hiding and covering that particular offence is not possible.

40. This is apparent and cannot be denied that pursuant to the order of the Division Bench, a show cause notice was given to the petitioner. The reply given by the petitioner was considered. The Senate also noted that the joint statement of Ishaan and Shashank was not sent to the petitioner, as they had given separate statements later after admitting that they had not explained the complete picture earlier. It was also noted that the documents were available with the petitioner from earlier proceedings. During the course of hearing before the Senate the petitioner was allowed to participate and join and he also made a written statement. Mr. Shashank was also invited to the hearing but he did not add anything more than whatsoever was stated by him earlier. Mr. Ishaan, however, did not appear before the senate despite a show cause notice given to him also.

41. The Senate took into consideration that the petitioner was not a resident of the hostel but he was present in the hostel on the night of the incident. In the first statement given by the petitioner, he did not mention that he had gone to the campus to play pool. The reason to be present in the hostel on the night of

incident was given later on by the petitioner, which according to Senate, was an afterthought to escape the consequences of his act. The Senate has also considered that the other two candidates were known to the petitioner rather the petitioner was involved in the case of impersonation with one of the other candidates for which he was earlier given warning. In the circumstances the Senate has not believed the version of the petitioner that he was an innocent bystander. The Senate has also reasoned that had the petitioner been an innocent bystander he would have immediately reported such an incident, however, petitioner did not do anything. The Senate also noticed that the petitioner had stated that he had informed the guard. However the guard in his statement did not mention anything about the petitioner informing him about the incident. The petitioner did not make any attempt to disclose about the incident even after it was announced in the class that a break-in in the room of the lecturer had been discovered. The plea of the petitioner that he was an innocent bystander has not been believed. The Senate also relied on no coercion or threat to the petitioner from Ishaan. The involvement of Ishaan cannot be denied. The petitioner had been involved with the same candidate earlier also and he had admitted that he had gone to the examination to help Ishaan. In the circumstances reliance was placed on the fact that the petitioners and other candidate were not strangers but known very well to each other. Reliance has also been placed on the statement of the guard that the petitioner and three others had complimented him for not identifying him earlier. The inference drawn in the circumstances are probable and cannot be termed illegal or arbitrary. The plea of the petitioner that the statement of the guard was recorded on 2nd May, 2009 and cannot be considered cannot be accepted. The Senate has taken decision on 1st July, 2009 and whatsoever was available by that day has been taken into consideration. The plea of the petitioner that pursuant to the order of the Division Bench, the Senate has to collect fresh evidence and ignore the statement already recorded, cannot be accepted. The Division Bench has directed the Senate of the respondent to reconsider the matter.

42. The petitioner has contended about his brilliance. The same has been considered and also explained by the respondent. However, the gravity of offense against the petitioner has not been diluted on account of serious acts of indiscipline pertaining to examination. The Senate noted that though the petitioner claims that his rank was fifth in the course of Discreet Maths, however, it was twentieth and in the first semester 16 other students had a higher SGPA than the petitioner. The performance of the petitioner was also not good in winter semester. The Senate noted that in the summer term the petitioner claimed himself of having ranked first which is not true as the students in the summer term were those who had failed the subject earlier. In the circumstances, it has been inferred that the petitioner cannot be termed as exceptionally brilliant. The inferences of the Senate in the facts and circumstances cannot be faulted and even differed.

43. After considering all the relevant facts it was deduced that there was no

direct evidence of petitioner involved directly in tampering the examination record though one of the other candidate had stated that he was involved in tampering of record also which was not relied as no direct evidence was available. The Senate had however, not absolve the petitioner of charge of illegal entry and obtaining the question paper of the examination. The petitioner has also been held guilty of staying in the Hostel without permission.

44. The question of punishment has also been considered by the Senate and the suggestion of one year suspension or expulsion did not find favor with most of the members of the Senate. It was held that if such a serious act of indiscipline is not giving a much stricter punishment than, then the institute will lose its ability to give an appropriate punishment to other 'less serious acts of academic indiscipline and in the circumstances the petitioner has been expelled. The petitioner was given an option to withdraw from the Institute considering his future career, however, the petitioner did not opt for the same. The Senate also considered the similar punishment awarded to other two candidates who however, opted to withdraw from the Institute. The members of the Senate also noticed that the petitioner did not show any regret or remorse and also noticed the dismay conveyed by the student members of the Senate that the petitioner is actually back in the institute after doing all that.

45. It is settled law that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India should ordinarily be reluctant to interfere with the matters relating to the internal working of educational institutions since the decisions taken by the academic bodies are in the nature of policy decisions. The decisions, however, can be interfered with in case it is unreasonable or arbitrary. It should also be kept in mind that the statutes and rules are made on the basis of experience of actual day to day working of the educational institution and consequently the Court should not exercise the power to interfere with the internal working of an educational institution imparting education unless the decision is ex facie unreasonable, arbitrary or in denial of the principles of natural justice.

46. Strict rules of evidence act and the standard of proof envisaged therein do not apply to such proceedings taken by the Academic Institutions/Universities against the candidate regarding the act of indiscipline and the matters pertaining to the examination. What is to be seen is that the material germane and relevant to the facts in issue had been placed and considered. What is also to be considered is that the inference have been drawn from the evidence and not based on the speculation and conjectures. The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw inferences that the facts are more probable. In Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, the Supreme Court had held that in administrative bodies and domestic tribunals the standard of proof required is preponderance of probabilities and not proof beyond reasonable doubt and the probative value is to be judged on the basis of

particular facts and circumstances. The Supreme Court had held on page 748 as under:

37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries.

47. This is also no more *res Integra* that all considerations which govern criminal trials in ordinary courts of law cannot be imported to the procedure adopted by the disciplinary bodies of academic institution. The academicians are not judges and it is not expected from them to write judgment and orders as are written by the Judges. However, the conclusions of academic bodies must be supported by evidence and the conclusions must be based on the probabilities. The enquiries held by such bodies should also be fair and adequate opportunities must be given to delinquent students in holding such enquiries. The Supreme Court in *The Board of High School & Intermediate Education U.P (supra)* and held that merely because an enquiry committee did not write an elaborate report does not mean that all the relevant factors and facts had not been considered to come to the conclusion. It was further held that it is necessary to bear in mind that educational institutions set up enquiry committees or other disciplinary bodies to deal with the problems indiscipline or use of unfair means in the examinations

and normally it is within their jurisdiction to decide all relevant questions. It was also held that direct evidence may not be available and in those circumstances the questions will have to be considered in the light of probabilities and circumstantial evidence. In these circumstances it was held in that the courts should be slow to interfere with decisions of domestic tribunal appointed by educational bodies.

48. The learned Counsel for the petitioner has taken this Court through various statements of the petitioner and other candidates. Emphasis has also been laid on the language of the show cause notice and various contradictions have been pointed out. However one must not lose sight of the fact that in academic matters pertaining to indiscipline or use of unfair means one cannot import fine principles of law and weigh the same in golden scales. The Supreme Court in *Controller of Examination v. G.S. Sunder* (supra) had held that interference by Court in the matters of academic indiscipline may lead to very unhappy results. It was held that the Court must be very slow in interfering with such matters as the authorities in charge of education know best how to deal with situations of indiscipline and other matters pertaining to education. In this case the roll number of two students were systematically interchanged with the result one of the candidate had passed while the other student had failed. Matter was enquired by the Syndicate sub-committee and the statements were made by the candidate admitting commission of malpractice which recommended debarment of the candidate for three years. In the writ petition filed by the candidate, the High Court had set aside the order of debarment on the ground that the admission made by the candidate before the syndicate sub-committee was unbelievable, charges to be vague and that the principles of natural justice were violated. The Supreme Court had set aside the order of the High Court and held that it was a systematic case of fraud committed by the candidate and there was no violation of principles of natural justice as the candidate knew the charges fully and admitted his guilt and there was no scope with interference with the decision of the University authorities. Similarly relying on *Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others*, *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, the Supreme Court in order dated 4th November, 2008 in CA No. 34 of 2008 *Director (Studies) and Ors. v. Vaibhav Singh Chauhan* had held that the High Court should not ordinarily interfere with the functioning and order of the educational authorities unless there is clear violation of some statutory rule or legal principle and no sympathy or leniency should be shown to candidates who resort to unfair means in the examination.

49. In *Shefali Pathak* case a Single Judge of this Court while dealing with the question about the eligibility of a candidate to pursue further studies had held that judicial review in academic matters has perforce a very limited ambit, since even some tenets of natural justice need not be meticulously observed. It was held that interference with a decision taken by an academic authority, after due consideration of the questions raised, would be a rarity and while exercising the

power under Article 226 of the Constitution, the High Court cannot ignore the rules framed by the Admission Committee; nor can it devise and enforce its own criterion pertaining to admission, as these decisions must be left to the concerned academic body.

50. The Senate which took the decision after due consideration of the material placed before it of a very large representation is not only the Director from the respondent but various other faculty members from the respondent were present including from industry and the student members. The Senate also had members from IIIT Hyderabad and from Indian Institute of Technology, Kanpur and Delhi and even from the other industry. Apparently no malafide has been alleged against the members of the Senate. It also cannot be disputed that natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all as had been held in *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, It was further held if fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. The Supreme Court had emphasized that unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The petitioner has very vociferously contended denial of the principle of natural justice on the ground that the assistance of a legal expert or even an elder like his uncle was denied to him. The petitioner was aware of the allegations made against him and the involvement of other students. The petitioner had given his statements on various occasions without any legal assistance or the assistance from an elder from his family. In all the cases it cannot be held that unless a delinquent has some assistance, the principle of natural justice shall be violated. In *Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi* (Supra) it was held that assistance of an advocate to the delinquent at a domestic enquiry is not a part of the principle of natural justice. It depends on the nature of the enquiry and the peculiar facts and circumstances of a case of a particular case. In the said case there was tampering with the marks. The delinquent candidates were given liberty to inspect the documents at the divisional board and they were also permitted to adduce documentary and oral evidence at the hearing. In these circumstances, it was held that need of the assistance of the parents/guardian was not necessary. The Supreme Court had also noticed that the delinquent candidates had prior consultations with the counsel and in the circumstances not allowing the lawyers was held not to be in violation of principle of natural justice and it was held that the procedure adopted at the enquiry was fair and just and was not vitiated by any procedural irregularity.

51. The petitioner has also challenged the decision of the Senate dated 1st July, 2009 pursuant to which the memorandum was issued to the petitioner on 10th July, 2009 on the ground that some of the members of the Senate were also the members of the investigation committee and thus there was bias writ large in

their case. In *Ashish Bhateja (Supra)* the plea taken was that the disciplinary authority and the punishing authority should have been different. The grievance was also raised regarding denial of right of cross examination and it was held by the Court that the matter pertaining to ragging when the incident required an immediate action, in such circumstances, it was held that right of cross examination is not a part of rule of natural justice in every case and even the plea that the disciplinary authority and punishing authority should have been different was repelled. It was held that so long as the Court is satisfied with the opportunity which was afforded to the examinee was adequate and sufficient, it should not interfere with any orders which may be made by the University authorities. Considering the first statement of the petitioner admitting that he was near the window when Ishaan started printing and various other statements thereafter of petitioner and others, this Court is satisfied that the reasonable opportunity had been afforded to the petitioner and it will not be appropriate to interfere with the decision which has been taken by the Senate. The petitioner was not a stranger to Ishaan and Shashank as he was involved in an earlier incident of impersonation wherein he was given a warning. In the circumstances the subsequent stand sought to be projected that petitioner was an innocent bystander oblivious of going on by Ishaan and Shashank was not accepted by the Senate and this Court also cannot fault the approach and the inferences of the Senate. The petitioner was given an option to withdraw from the course which has been declined though it was given to him considering his future career and in the circumstances petitioner alone is to be blamed. In *Narender Singh (Supra)* this Court had held that in such circumstances a candidate is alone to be blamed. Though one may have sympathy for a young person whose educational career is being lost, such sympathy, however, cannot be allowed to influence the Court to impose on a college student whose presence in the campus is perceived by the college authorities as potential threat to discipline and peaceful functioning of the college especially when such perception is justifiably based on the past conduct of the student. It was held that between sympathy and concern for an individual and the larger interests of an institution and its students as a whole, the Court can only choose the latter. Regarding the alleged right of the petitioner to cross examine in *Ram Chander v. Allahabad University* it was held that in a case where the head of educational institution takes disciplinary proceedings, it is not necessary that he must give an opportunity to the student to cross examine the witnesses who may be examined by him in order to satisfy himself that an occasion had arisen for taking disciplinary action against him. The emphasis was that a distinction has to be made between a total violation of principles of natural justice and a violation of a facet of such rule. Therefore, the violation of the principle of natural justice is to be seen where there is no opportunity vis-a-vis where there is no adequate opportunity. The case of the petitioner is not of no opportunity. When the petitioner was not given any opportunity as no show cause notice was given and only his statement was heard in the Senate meeting on 28th April, 2009 and he was expelled, this Court had set aside the order and on the petitioner agreeing, show cause notice has been given to him, his

statement has been considered and considering all the statements, a fair and adequate opportunity has been given. In view of the adequate opportunity given to the petitioner subsequent to the order dated 12th May, 2009 passed by the Division Bench of this Court, it is not appropriate to set aside the expulsion order passed against the petitioner on the grounds now raised by the petitioner. The decision of the Senate of the respondent is not such which will shock the conscience of this Court entailing quashing of the same.

52. In *Khem Chand (Supra)* relied on by the petitioner it was held that in a case of a Sub Inspector under the Delhi Audit Fund that before dismissal of any employee reasonable opportunity of hearing must be given to him. In this case two sittings were held before the enquiry officer and thereafter the delinquent employee had requested for entrustment of enquiry to some other gazetted officer which was declined. The Supreme Court had held that an employee is not only entitled for an opportunity but such an opportunity must be a reasonable one and the reasonable opportunity envisaged by the provision under Article 136 and 311(2) of the Constitution includes:

a) an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally c) an opportunity to make his representation as to why the presupposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant.

53. In *Cantonment Executive officer (Supra)* relied on by the petitioner it was held that the persons who had conducted enquiry were also members of the Cantonment Board and such members would be interested to see that the report is accepted and participation of such members will reflect bias. In *K.V. Narayana Rao (Supra)* a Division Bench of Andhra Pradesh High Court had held that though the proceedings before the Administrative Tribunals need not be according to the procedure familiar to law Courts, however, the tribunal must conform to principle of natural justice and cannot act contrary to canons of fair play. It was further held that bias of the enquiry authority, is, therefore, fatal to its decision and the decision is not different where only one of those Constituting the Tribunal is shown to have prejudged the issue.

54. The case relied on by the petitioner is of *Cantonment Executive officer* and before the Administrative Tribunal. The Courts have laid down different yardsticks and parameters in case of Academic bodies and institutions. Some of the precedents have held that there will not be bias if academic fact finding committee members also participate in the large bodies of decision making process. In *M.A.A. Abu Ghunima Nazer Zohir El Yazgi (supra)*, relied on by the

respondent, candidates in two writ petitions were engineering students who were involved in a fight between two groups of Palestinian students and on the recommendations of the disciplinary authority, the termination of registration was ordered for Mr. Maher Ayash Abad Abu Ghunima and Anr candidate was also barred from entering into the institute campus. In order to ascertain the incident the Dean of students had constituted a committee of three Professors of the IIT to investigate into the incident and to make a recommendation and the committee named both the candidates being directly involved in the fight along with a third student. Explanation had been sought from the candidates as to their involvement and there after, the matter was put up before IIT Disciplinary committee. The students were heard and on the recommendation of the Disciplinary Authority, the penalty was awarded. The Disciplinary Authority consisted of 16 Professors including those who had investigated, however, the IIT Disciplinary Committee minutes were signed by three Professors only. On behalf of candidates, a plea was taken that no proper opportunity had been given to the petitioners to represent their case and principles of natural justice had been violated. The contention of the candidates was, however, repelled.

55. In Board of High School and Intermediate Education, U.P. Allahabad (Supra) relied on by the petitioner, it was held that though there is nothing express one way or the other in the act or the regulations casting a duty on the committee to act judicially, however, considering the serious effects of the decision of the committee on the examinee concerned, a duty is cast to act judicially and, therefore, the committee must comply with the principle of natural justice which requires that the other party, namely the examinee, must be heard. The contention on behalf of the University that the committee has to deal with the large number of cases and if it acts judicially or quasi judicially it will be impossible to carry out its task was rejected. In Satyashankara Shetty (Supra) a candidate was accused of collecting the signatures of some students forcibly against their will by humiliating them on a memorandum to change the election rules contemplating that for the election of office bearers of the student council, the candidates must pass all subjects of the previous classes. The candidate in this case was not furnished with the copy of the charge sheet, name of the members of the enquiry committee, list of witnesses, list of documents and his request to adjourn the enquiry and to give him a reasonable time so that he could prepare himself effectively was also declined and the enquiry committee had proceeded to record the statement of one witness and accused candidate was asked to cross examine who sought adjournment which was declined. In these circumstances, it was held that a reasonable opportunity to cross examine was not given, as the candidate had refused to cross examine for obvious reason and in these circumstances, the findings of the enquiry committee were not accepted. The ratio of the cases relied on by the petitioner are clearly distinguishable.

56. It is well settled that a little difference in facts or additional facts may make a lot of difference in the presidential value of a decision. The ratio of any decision

must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the presidential value of a decision. In *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, the Supreme had observed:

It is well settled that a little difference in facts or additional facts may make a lot of difference in the presidential value of a decision. In *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, the Supreme Court had held as under:

There is always a peril in treating the words of judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases. In *Rafiq v. State* 1980 SCC (CrI) 946 it was observed as under:

The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases.

57. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R. Vairamani and Anr.* AIR 2004 SC 778 had also held that a decision cannot be relied on without considering the factual situation. In the same judgment the Supreme Court also observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

58. In the totality of facts and circumstances it will not be appropriate for this Court to interfere with the decision of the respondent to expel the petitioner on his failure to exercise the option to withdraw from the course on account of his act of academic indiscipline. The other two candidates namely Ishaan and Shashank were also given an opportunity to withdraw from the programme by order dated 28th April, 2009 failing which they were also liable for expulsion.

59. For the foregoing reasons the petitioner is not entitled for quashing of memorandum dated 10th July, 2009 passed against him expelling him from the

respondent nor he is entitled for quashing of decision of Senate dated 1st July, 2009. The petitioner, consequently, is also not entitled to attend any session of the respondent nor he can be allowed to appear in the examination. The petitioner is also not entitled for an amount of Rs. 5,00,000/- claimed by him in the facts and circumstances. The writ petition is, therefore, dismissed. All the pending applications are also disposed of. Parties are, however, left to bear their own cost.