

(2021) 04 DEL CK 0109

In the Delhi High Court

Case No : Civil Writ Petition No. 4031 Of 2020, Civil Miscellaneous Application
No. 14450 Of 2020

Prof Adya Prasad Pandey

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 09-04-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 52, 53, 53(1), 54, 74, 74(1), 77, 77(1),
77(3), 162, 163, 166(3), 226, 356
Manipur University Act, 2005 — Section 9(3), 13

Citation : (2021) 04 DEL CK 0109

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Vinay Kumar Garg, Prakash Gautam, Puneet Singh Bindra, Neeraj
Kumar Sharma, Pankaj Singh, Parv Kumar Garg, Simran, P. Kulshrestha, Rajesh
Gogna, Akshya, Karan Chhibber, Vedansh Anand

Final Decision : Dismissed

Judgement

Jyoti Singh, J

1. Present petition has been filed challenging the order dated 21.02.2020 whereby Petitioner has been dismissed from the post of Vice-Chancellor, Manipur University. A direction is also sought in the nature of mandamus to the Respondents to restore the appointment of the Petitioner to the said post to enable him to complete his remaining tenure, with consequential benefits, as well as for quashing the advertisement dated 16.03.2020, published for fresh appointment of Vice-Chancellor of the said University.

2. The narrative of facts in brief and necessary for adjudication of the present petition is that the Petitioner with Masters and Ph.D. Degrees in Economics and Masters in Business Administration, while working as Professor and Head, Department of Economics, Banaras Hindu University, was appointed as Vice-Chancellor of the Manipur University (hereinafter referred to as 'University'), on

25.10.2016, by the President of India, in his capacity as the Visitor of the University, for a period of 5 years. As per the Petitioner, he had several accomplishments and laurels to his credit and by his efforts and hard work had taken the University to the next level, both in terms of development and reputation, the details of which have been enumerated in the petition.

3. Petitioner avers that the Campus of the University was constantly under threat and interference by anti-social elements, including militants and some of the erstwhile Vice-Chancellors were compelled to resign from their jobs, as they did not fulfill the illegal demands of the militants. In fact an erstwhile Vice-Chancellor was abducted and kept captive for a few days. Agitations, strikes, lockdowns etc. initiated and instigated by certain persons associated with Manipur University Students' Union (hereinafter referred to as the 'MUSU'), Manipur University Teachers' Association (hereinafter referred to as the 'MUTA') and Manipur University Staff Association (hereinafter referred to as the 'MUSA') were a norm and routine in the Campus. Petitioner made strident efforts to streamline the functioning of the University, more particularly the Tender processes, which was disliked by the Unions and the anti-social elements, who had vested interest in the functioning of the University.

4. It is averred that the trigger to the dismissal order of the Petitioner was a police complaint, made by the Petitioner on 14.02.2018, as a consequence of extortion letter received by the Petitioner from a militant group demanding a sum of Rs. 5 Crores, leading to registration of FIR on 01.03.2018. This naturally infuriated the militant groups as also the Students' and the Teachers' Unions leading to agitations in the Campus. Administrative buildings were locked and a large part of the sports office was burnt to ground. This also led to false complaints being filed against the Petitioner alleging administrative and financial irregularities and to assuage the agitators, Respondent No.2 constituted a Two-Member Fact Finding Committee to enquire into the allegations. Constitution of the Committee was objected to by the agitators on the ground of lack of members from the North-East region, resulting in re-constitution of the Committee, by addition of former Acting Chief Justice of the Meghalaya High Court, as Chairperson, albeit, without the approval of the Visitor. Despite this, the agitators were not satisfied and a Memorandum of Agreement (hereinafter referred to as "MOA") was signed on 16.08.2018 between the agitating groups and the Government of India in the presence of the Chief Minister Manipur, senior officials from the Government including the Chief Secretary, Government of Manipur and Commissioner (Higher and Technical Education), Government of Manipur and certain terms were drawn up with the mutual consent of all the stakeholders.

5. Keeping with the terms of the MOA, Respondent No. 2 issued another Notification dated 17.08.2018 constituting an Inquiry Committee with two members only, comprising of former Acting Chief Justice, Meghalaya High Court, as Chairperson and Professor M.K. Choudhary, Former Vice-Chancellor, Tezpur

University as Member. Petitioner avers that at the time of the Notification, Prof. Shyamkesho Singh was the Registrar of the University and was to act as a Nodal Officer, however, Prof. W. Vishwanath Singh, the then Vice-Chancellor in-Charge appointed Prof. Dorendrajit Singh as Registrar-in-Charge for 30 days, vide Notification dated 23.08.2018. Although the very next day, Respondent No. 2 conveyed the decision of the Ministry disapproving the appointment of Prof. Dorendrajit Singh, the latter continued to act as a Registrar and framed charges under the heading "Terms of Reference of Inquiry".

6. Petitioner assailed the MOA dated 16.08.2018 and Notification dated 17.08.2018 before the Manipur High Court vide Writ Petition (C) No. 825/2018 and also sought interim stay, which was declined vide order dated 07.09.2018. Later, two more writ petitions were filed as PILs which were clubbed with W.P.(C) 825/2018. Petitioner preferred SLP(C) No. 24707/2018 against the order dated 07.09.2018. However, vide order dated 25.09.2018, Supreme Court disposed of the SLP with a request to the High Court to hear the matter on 01.10.2018. The High Court heard the petitions and disposed them of vide a common judgement dated 22.05.2019 and according to the Petitioner, primarily considered only the question relating to the competence of the Visitor to issue the Notification dated 17.08.2018 for constitution of the Inquiry Committee and no other issue pertaining to the inquiry was either raised or considered, while in the Public Interest Litigations, extensive directions were passed.

7. Petitioner avers that on 06.09.2018, in the meantime, the Inquiry Committee had commenced the proceedings and appointed Shri Birendra Kumar Singh as a Secretary-cum-Assessor and treated the "Terms of Reference", containing 18 allegations, as a Charge sheet. Though the "Term of Reference" cannot be termed or treated as a Charge sheet, even so, the said "Term of Reference" was not even served upon the Petitioner at any stage. The documents submitted by the Nodal Officer were without any authority of law and without verifying the authenticity or source and no other document was called for by the Inquiry Committee. Vide order dated 17.09.2018, Petitioner was placed under suspension, with immediate effect, till completion of the Inquiry Proceedings.

8. Petitioner avers that he was never served with any notice, Charge sheet, documents etc. by any direct/indirect mode and without giving a chance to the Petitioner to defend his case, the Committee on 27.05.2019 submitted the Inquiry Report dated 03.03.2019 to Respondent No. 1, holding the Petitioner guilty of all the 18 charges. Respondent No. 2 thereafter issued a Show Cause Notice dated 24.09.2019 to the Petitioner requiring him to show cause why he should not be removed from the post of Vice-Chancellor for his misconduct, dereliction of duty, abuse of power and lack of commitment. Copy of the Report was supplied along with the said notice.

9. Petitioner submitted his reply dated 11.10.2019, inter alia, objecting to the constitution of the Committee, violation of principles of natural justice, procedures of inquiry, preparation and issuance of charge sheet by incompetent

Authority, non-supply of Statement of Witnesses and no evidence or material to substantiate the charges, amongst other objections. An allegation was also made with respect to the impartiality of the Chairman of the Committee on the ground that the Chairman was a close relative of the complainants.

10. Vide order dated 21.02.2020, Respondents imposed the penalty of dismissal of the Petitioner from the post of Vice-Chancellor with immediate effect. Petitioner sent a representation dated 24.04.2020 against the inquiry proceedings and the penalty, however, the same elicited no response from the Respondents.

11. Respondents subsequently issued an Advertisement dated 16.03.2020 for fresh appointment of the Vice-Chancellor, the last date of submission of applications being 16.04.2020, which was lastly extended upto 20.06.2020, followed by constitution of a Three-Member Search Committee for selection of the new Vice-Chancellor. This triggered the filing of the present petition by the Petitioner. During the pendency of the petition, Respondents had fairly and candidly taken a stand that while the selection process was complete, they would not issue offer of appointment to the successful candidate till the decision in the present petition so that the petition is not rendered infructuous.

12. Mr. Vinay Garg, Learned Senior Counsel for the Petitioner has raised manifold issues to assail the order of dismissal as well as the Advertisement for fresh selection. It is contended that it is a settled position in law that before a Disciplinary Authority, in the present case the Visitor, decides to proceed in a Departmental Inquiry, a Show Cause Notice must be given to the person against whom the action is proposed, disclosing allegations and affording an opportunity to submit an explanation. In the present case, no such procedure was adopted. It is only once the explanation is received and the allegations are prima facie made out from the material on record that a Charge Memo can be drawn up. This is to be followed by appointment of an Inquiring Authority, if the Disciplinary Authority does not itself inquire into the charges. In the present case, without any charges being drawn up, Inquiry Committee was constituted and even thereafter no charge sheet was drawn up by or with the approval of the Disciplinary Authority. In fact, record reveals that the Committee treated the "Terms of Reference" drawn up by Prof. Dorendrajit Singh as a Charge Sheet and proceeded with the inquiry, contrary to law.

13. It is next contended that Prof. Dorendrajit was neither the competent nor the authorised person to draw a Charge Sheet against the Vice-Chancellor and the "Terms of Reference" have no validity in the eyes of law. Although vide letter dated 24.08.2018, Respondent No. 2 conveyed the decision of the Ministry disapproving the appointment of Prof. Dorendrajit as the Registrar and directed the Vice-Chancellor in-Charge to re-appoint Prof. Shyamkesho, yet de hors the said direction, Prof. Dorendrajit continued to act as the Registrar only with the oblique motive of being the Nodal Officer of the Inquiry Committee and drew up the undated and illegal "Terms of Reference".

14. It is argued that no notice or intimation was ever issued by the Disciplinary Authority to the Petitioner informing him of the allegations or of the constitution of the Committee and therefore the Inquiry is vitiated for violation of principles of natural justice. Even otherwise, the constitution of the Committee is vitiated by apparent conflict of interest as the Committee was a mere marionette in the hands of the agitating groups and the students/staff Unions. Further, the Chairman of the Committee is a close relative of a Professor who was the leader of the agitators and spokesman of Manipur University Teachers' Association, and one of the Professors in the Department of Linguistics is the younger sister of the wife of the Chairperson. Constitution of the Committee is therefore vitiated under Article 14 of the Constitution of India being in apparent conflict of interest and bias is apparent by the very constitution.

15. It is next contended that the Inquiry Committee, even before serving notice to the Petitioner, vide order dated 06.09.2018, had issued an order inviting all persons/witnesses to submit their statements in the form of sworn affidavits with their list of documents. The record of the Inquiry reveals that various organisations had submitted the affidavits and the documents, much before the notice was issued to the Petitioner and thus evidence was collected behind the back of the Petitioner, which is contrary to law and natural justice. Vide order dated 16.09.2018, the Committee for the first time issued notice to the Petitioner requiring him to file written statement of defence and documents, by 24.09.2018 and interestingly besides the Petitioner, also permitted the Department, to file list of witnesses, if any. The contention is that even this notice was never served upon the Petitioner and there is no record to show that even an attempt was made to send the copies of the charges, documents, list of witnesses etc. to the Petitioner. In fact, the record shows that all such documents were served only along with the Show Cause Notice dated 24.09.2019, post the Inquiry Report.

16. It is contended that the illegality in the proceedings were to the extent that even though vide order dated 16.09.2018, Petitioner was permitted to file written statement and/or documents in support of his case till 24.09.2018, the Committee on 17.09.2018, passed another order requiring the Petitioner to appear before it on 3 consecutive dates between 26.09.2018 and 28.09.2018, on which dates, the statements of witnesses were to be recorded and the Petitioner was directed to cross-examine them. It is urged that the Petitioner had no knowledge as to who the witnesses were and what statements/affidavits/documents, if any, were filed by them, and interestingly even this order was never served on the Petitioner. It is recorded in the Report that about 107 documents were exhibited against the Petitioner yet it is a matter of record that no opportunity was granted to refute them or even apprise the Petitioner of the contents of the documentary evidence and the entire evidence was led in his absence.

17. A notice pursuant to the order dated 16.09.2018 was pasted at the official residence of the Petitioner at Imphal on 17.09.2018, knowing well that the

Petitioner was on leave as per the terms of the MOA dated 16.08.2018 and this fact was within the knowledge of the Respondents. The factum of the Petitioner being unserved was acknowledged by the Respondents in the affidavit dated 17.09.2018 filed before the Committee and is recorded in para 25 of the Report, where it is clearly brought out that the affixation of the Notice was not on the door of the official residence of the Petitioner but on the wall of the residence of the neighbour. The entire proceedings are thus in violation of the principles of natural justice and behind the back of the Petitioner and are liable to be set aside.

18. The Inquiry Committee, it is contended, had travelled beyond the "Terms of Reference" and gave findings on allegations which were not even the subject matter of the charges against the Petitioner. The Committee was constituted by MHRD to enquire into 18 points of allegations, however, the findings are on allegations which do not form a part of the "Terms of Reference". The Committee summed up its findings and a reading reveals that it has transcended the very grounds of its constitution. As an illustration, Learned Senior Counsel draws the attention of the Court to the allegations in the Show Cause Notice viz. "Causing great harm to academic environment" and "bringing University to disrepute" and submits that these appeared for the first time in the Show Cause Notice. Reliance is placed on the judgment of the Supreme Court in *Narinder Mohan Arya v. United India Assurance Co. Ltd.*, (2006) 4 SCC 713 for the proposition that the inquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal.

19. It is contended that the Committee was biased and was in collusion with the members of the various complainant groups such as MUSU, MUSA and MUTA. The sealed documents of the University were opened and marked by the Committee in presence of the members of the complainant groups and in the absence of the Petitioner. These members have signed the documents and played a pivotal role in adjudication by the Committee.

20. It is contended that on receipt of the Inquiry Report, the Disciplinary Authority formed an opinion for imposition of penalty against the Petitioner, without even supplying him a copy of the Report or obtaining his explanation thereto. The Show Cause Notice reflects a premeditated mind to impose a penalty and even the order of dismissal reveals that the explanation rendered subsequent to the Show Cause Notice has not even been considered by the Authority. Reliance is placed on the judgement in *Oryx Fisheries Pvt. Ltd. v. Union of India*, (2010) 13 SCC 427 for the proposition that a reply to the Show Cause Notice must be given due weightage and cannot be an empty formality. It is trite that the decision making Authority must independently consider the entire material available before it, including the explanation of the delinquent officer, and apply its mind before taking a decision. The impugned dismissal order indicates that the Visitor merely referred to the pointwise reply to the Show Cause Notice given by the Petitioner, but has given no reasons to disagree with

the explanation given by the Petitioner. The Visitor has mechanically reiterated the findings of the Committee and imposed the extreme penalty of dismissal. Reliance is placed on the judgement in Commissioner of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16 for the proposition that the decision making Authority must take its own independent decision and not act as a transmitting agent of the Government.

21. Per contra Mr. Rajesh Gogna learned Central Government Standing Counsel, appearing for the Respondents, defended the action of the Respondents by arguing that the Petitioner took charge as Vice-Chancellor of the Manipur University on 26.10.2016 and within 18 months, several irregularities in the administration came to light, highlighted by both the Students' Union, MUSU and the Teachers' Association, MUTA. The allegations were serious in nature and as enumerated in the counter affidavit, inter alia, included taking long leaves and mostly staying outstation, adversely affecting the day-to-day functioning of the University, not devoting time for convening Meetings, Convocations, Executive Council's Meetings, Finance Committee Meetings and participating in other important meetings as a Vice-Chancellor, keeping crucial posts vacant, lack of leadership qualities resulting in environment of agitation across the Campus and locking down of buildings, etc.

22. It is submitted that when these issues were highlighted, the Ministry assessed the situation through the senior officers, and a Fact Finding Committee comprising of officers from the MHRD and UGC was constituted to enquire into the allegations. After objections to the constitution of the Committee and the "Terms of Reference" from the stakeholders, negotiations were held and finally an MOA was signed on 16.08.2018 with certain terms which, according to Mr. Gogna, are as follows:

"a) Petitioner will be on leave during the period of enquiry (1 Month) and until follow up action taken on the enquiry report by the competent authority, preferably within a period of 15 days,

b) That vide Respondent order dated 17.08.2018 an independent enquiry committee consisting of Shri T. Nandakumar Singh, former acting Chief Justice of the High Court of Meghalaya and Prof M.K. Choudhary, former Vice Chancellor of Tezpur University was constituted. to enquire into allegations against the Petitioner, relating to administrative and financial irregularities in the management of affairs of the Manipur University. The Committee was requested to submit its report within one month from the date of its constitution."

23. After the Petitioner came back to Imphal, post the execution of the MOA, he took actions which further deteriorated the academic atmosphere of the University and led to serious law and order crisis, which included students and police clashes, shutting down of colleges, burning effigies, rallies, demonstrations, etc. With the approval of the Visitor, Petitioner was placed under suspension w.e.f. 17.09.2018 till completion of the inquiry. Finally, the Inquiry

Committee gave its report holding that most of the charges were substantiated and proved and based on the said Report, a Show Cause Notice was issued to the Petitioner, seeking explanation as to why he may not be removed from the office, for irregular financial and administrative activities including misconduct, dereliction of duty etc. which caused great harm to the academic environment. After considering the reply to the Show Cause Notice, the Visitor rightly passed the order of dismissal on 21.02.2020.

24. Replying to the grounds raised by the Petitioner, to assail the Inquiry proceedings and the dismissal order, Mr. Gogna submits that the UGC Regulations relating to appointment of Vice-Chancellor requires a person of highest level of competence, integrity and morals to be appointed as Vice-Chancellor and the actions of the Petitioner are unbecoming of a person holding the position of a Vice-Chancellor. It is submitted that no Report was received by the Ministry of any threat by militants to the Petitioner and a small unfortunate incident has been exaggerated beyond proportion by the Petitioner. Similarly, the University informed the Ministry that there was no record of any extortion or demand of Rs. 5 Crores by the militants, as alleged by the Petitioner. In fact, various complaints were received from MUSU and MUTA alleging administrative and financial irregularities in the management of affairs of the University including protests from the Students' Association against the actions and anarchic attitude of the Petitioner.

25. Mr. Gogna argues that the various organizations such as MUSA, MUSU and MUTA were dissatisfied even after reconstitution of the Fact Finding Committee and did not withdraw the strike and demanded removal of the Petitioner. In order to find an amicable resolution, a senior officer of the Ministry visited Imphal and several joint meetings were held between the representatives of the organizations and the Government officials. To resolve the impasse an MOA was signed with the approval of the Ministry and thereafter the Inquiry Committee was constituted with Former Acting Chief Justice of Meghalaya High Court and Former Vice-Chancellor of Tezpur University to look into the allegations against the Petitioner.

26. In so far as the appointment of the Registrar is concerned, it is argued that the University on 23.08.2018 had informed the Ministry that the then Vice-Chancellor (In-Charge) appointed Prof. Dorendrajit Singh as Registrar (In-Charge). The Ministry vide its letter dated 24.08.2018 communicated that there was no need to replace the serving Registrar, Prof. Shyamkesho Singh and requested the Vice-Chancellor (In-Charge) to undo the changes. However, the University could not reinstate Prof. Shyamkesho Singh due to the volatile situation, as explained by the University.

27. Mr. Gogna defends the constitution of the Inquiry Committee by arguing that the same issue was raised by the Petitioner before the Manipur High Court in W.P. (C) 825/2018 and the Court had framed an issue in this regard which as pointed out by Mr. Gogna is as follows:-

"(b) Whether, having regard to the facts and circumstances of the present case, the MHRD, Government of India, other than the Visitor, is competent to enter into the memorandum of agreement dated 16-08-2018 with the agitating groups and to issue the order dated 17-08-2018 constituting the enquiry committee to inquire into the allegations made against the Vice-Chancellor, Prof. A.P.Pandey and in other words, whether the President of India as the Visitor of the Manipur University, has to exercise his powers and functions as provided under the provisions of the Act, 2005 with the aid and advice of the Council of Ministers ?"

28. The Court answered the issue in paras 12.1 to 12.16 in the judgment dated 22.05.2019 and dismissed the writ petition. It is noted out that in para 12.5 of the judgment, the Court has specifically recorded that the Petitioner gave up the objection to the impartiality of the Chairperson of the Committee being a close relative of one of the agitators. In view of the said observation by the Manipur High Court it is not even open to the Petitioner to challenge the validity of the constitution of the Inquiry Committee on the ground of impartiality of the Chairperson. Relevant paras of the judgment are as follows:

"[12.1] The validity and correctness of the memorandum of agreement dated 16-08-2018; the order dated 17-08-2018 issued by the respondent No.1; the order dated 03-09-2018 issued by the respondent No.2 and the order dated 21-08-2018 issued by the respondent No.3 are under challenge in this writ petition being WP(C) No.825 of 2018. The main grounds on which the said writ petition has been filed, are that the memorandum of agreement was signed amongst the Union of India, State Government, MUSU, MUTA and MUSA without the Manipur University being made a party thereto; that without any leave being applied for by the petitioner, it was granted by the Registrar i/c with the approval of the Chancellor, although the Visitor is the only competent authority to grant leave; that the MHRD is not competent to issue the said order dated 17-08-2018, as it is the Visitor alone which is empowered under the provisions of the Act, 2005 to cause enquiry and that all the executive actions of the Government of India shall be expressed to be taken in the name of the President. In support of his contention, Shri A. Mohendro, the learned counsel appearing for the petitioner has relied upon the decisions rendered by the Hon'ble Supreme Court in S.R. Bomai Vs. Union of India & ors., (1994) 3 SCC 1 and Raju Ram Pal Vs. Hon'ble Speaker, Lok Sabha & ors., ((1985) 3 SCC 398. In addition thereto, he has relied upon various decisions rendered by various High Courts in the country namely the Judgment and Order dated 19-12-2017 passed by Punjab & Haryana in Dr. Arvind Singh Tejwat Vs. Central University of Haryana; Judgment and Order dated 08-02-2012 passed by High Court of Kerala in Dr. Abdur Rasheed KM Vs. Government of India & ors.; Judgment and order dated 05-01-2015 passed by Madras High Court in Emil Mathew Vs. Union of India and Judgment and Order dated 23-03-1963 passed by Punjab & Haryana in S. Dutt Vs. Visitor of the University of Delhi & ors. His submissions have been refuted by the Assistant Solicitor General appearing for the Union of India. It has been contended by Shri S. Suresh, the learned ASG on behalf of the Union of

India that it is within the purview of the MHRD which is the administrative Ministry of the central universities to put forth facts before the appointing authority; that as Section 9(3) does not contemplate any enquiry against the Vice-Chancellor, an independent enquiry committee was constituted; that the MHRD is answerable to the Parliament in respect of the activities of the central universities with the annual reports and audited annual accounts being laid before it; that although there is no specific provision for constitution of a fact finding committee under the Act, 2005, the MHRD has the power and competence to do so in terms of the scheme of the Constitution of India; that as it is a mere constitution of a fact finding committee, the action based on the report thereof shall be taken by the competent authority i.e., the President of India who is the Visitor, in accordance with law; that in exercise of power conferred by Article 77(3), the President of India has framed the rule called "the Government of India (Allocation of Business) Rules, 1961 (hereinafter referred to as "the Rules of Business, 1961") where under the distribution of subjects amongst the departments has been specified and that the transaction of business as regards the central universities fall within the purview of the MHRD. The learned counsel appearing for the other respondents have adopted his submissions and therefore, their submissions are not referred to herein.

12.2 xxx xxx xxx

[12.3] It may be noted that the President of India and the Visitor are one and the same person and in other words, the President of India is given the additional charge of the Visitor of the Manipur University. Our country is considered to be the largest democratic country in the world and the constitutional scheme envisages for a parliamentary form of Government. Article 52 of the Constitution provides that there shall be a President of India to be elected by the members of the Electoral College in terms of Article 54 of the Constitution. Article 53 provides that the executive power of the Union shall be vested in the President which shall be exercised by him either directly or through officers subordinated to him in accordance with the constitution. Article 74 provides that there shall be a Council of Minister with the Prime Minister at the head to aid and advice the President who shall, in the exercise of his function, act in accordance with it. In other words, it is the constitutional mandate that the President of India shall act only on the aid and advice of the Council of Ministers. In *Samsher Singh Vs. State of Punjab & anr.*, (1974) 2 SCC 831, the question was whether the decision in *Sardari Lal's* case correctly lays down the law that where the president or the Governor is to be satisfied, it is his personal satisfaction. The Hon^{ble} Supreme Court held:

"88. For the foregoing reasons we hold that the President as well as the Governor acts on the aid and advice of the Council of Ministers in executive action and is not required by the Constitution to act personally without the aid and advice of the Council of Ministers or against the aid and advice of the Council of Ministers. Where the Governor has any discretion the Governor acts on his

own judgment. The Governor exercises his discretion in harmony with his Council of Ministers. The appointment as well as removal of the members of the Subordinate Judicial Service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution. Appointments and removals of persons are made by the President and the Governor as the constitutional head of the Executive on the aid and advice of the Council of Ministers. That is why any action by any servant of the Union or the State in regard to appointment or dismissal is brought against the Union or the State and not against the President or the Governor."

Certain observations were made therein by the Hon^{ble} Supreme Court, which are relevant for the present case, to the effect that the executive power of the Union is vested in the President of India under Article 53 (1). The expression "Union" and "State" occur in Article 53 (1) and 154 (1) respectively to bring about the federal principles embodied in the Constitution. Any action taken in the exercise of executive power of the Union vested in the president under Article 53(1) is taken by the Government of India in the name of the President as will appear in Article 77 (1). Our constitution embodies generally the parliamentary form of Government under which the President is the constitutional or formal head of the Union and he exercises his powers and functions conferred upon him by or under the Constitution on the aid and advice of his Council of Ministers. The executive power is generally described as the residue which does not fall within the legislative or judicial power. In all cases where the President or the Governor exercises his functions conferred on him by or under the Constitution with the aid and advice of his Council of Ministers, he does so by making rules for convenient transaction of the business of the Government of India or the Government of the State respectively or by allocation among his Ministers of the said business under Article 77(3) and 166(3) respectively. Wherever the Constitution requires the satisfaction of the President or the Governor, as the case may be, the satisfaction required by the Constitution is not the personal satisfaction of the President or the Governor but is the satisfaction of the President or the Governor in the constitutional sense under the cabinet system of the Government. It is the satisfaction of the Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The Rules of Business and the allocation amongst the Ministers under the Rules of Business all indicate that the decision of any Minister or Officer under the Rules of Business is the decision of the President or the Governor. The provisions of Article 74 in the case of President and Article 163 in the case of the Governor that there shall be a Council of Ministers to aid and advice the President or the Governor, as the case may be, are the sources of the Rules of Business. These provisions are for the discharge of the executive powers and functions of the Government in the name of the President or the Governor. Where functions entrusted to a Minister are performed by an official employed in the Minister's department, there is in law no delegation because constitutionally the act or the decision of the official is that of

the Minister. The official is merely the machinery for the discharge of the functions entrusted to a Minister. In *R.K. Jain Vs. Union of India*, (1993) 4 SCC 119, the scope of Article 74(2) was considered by the Hon^{ble} Supreme Court wherein it was held that the President exercises his executive power through the Council of Ministers as per the rules of business for convenient transaction of the Government business under Article 77(3). The Government of India (Transaction of Business) Rules, 1961 provides the procedure in that behalf. It was also held that the cabinet known as the Council of Ministers headed by the Prime Minister is the driving and steering body responsible for the governance of the country. They enjoy the confidence of parliament and remain in office so long as they maintain the confidence of the majority. They are answerable to the parliament and accountable to the people. They bear collective responsibility. Their executive functions comprise both the determination of the policy as well as carrying its execution, the initiation of legislation, the maintenance of order, the promotion of social and economic welfare and the decisions of foreign policy. In short, the carrying on or supervision of the general administration of the affairs of the Union which include political activities and carrying on all trading activities, etc. and they bear collective responsibility to the Constitution. In *S.R. Bommai & ors. Vs. Union of India & ors.*, (1994) 3 SCC 1, the satisfaction reached by the President in issuing the presidential proclamation and dissolving the Legislative Assemblies under Article 356 of the Constitution of India was the subject matter in issue and while deciding the issue relating to the satisfaction of the President thereof, the Hon^{ble} Supreme Court considered the powers and functions of the President as provided under the provisions of the Constitution. According to Hon^{ble} Mr. Justice P.B. Sawant, the principles of federalism and democracy are embedded in our constitution. States are constitutionally recognized units and not mere convenient administrative divisions. Both the Union and the States have sprung from the provisions of the Constitution. The federal principle, social pluralism and pluralist democracy form the basic structure of our Constitution. In the words of Hon^{ble} Mr. Justice K. Ramaswamy, in regard to distribution of executive power, the Constitution made demarcation between the Union and the States. Article 73 (1) read with proviso and Article 162 read with proviso bring out this demarcation. In the cabinet system of the Government, the Council of Ministers with the Prime Minister as the head, would aid and advise the President to exercise the functions under the Constitution except where the power was expressly given to the President to his individual discretion. Hon^{ble} Mr. Justice B.P. Jeevan Reddy, has observed that Article 74(1) deals with the acts of the President done "in exercise of his functions" whereas Article 77 speaks of the executive action of the Government of India which is taken in the name of the President of India. Insofar as the executive action of the Government of India is concerned, it has to be taken by the Minister/ Official to whom the said business is allocated by the Rules of Business made under clause (3) of Article 77 for the more convenient transaction of the business of the Government of India. All orders issued and the instruments executed relatable to the executive action of the Government of India, have to be authenticated in the manner and by the

office empowered in that behalf. The President does not really come into the picture so far as Article 77 is concerned. All the business of the Government of India is transacted by the Ministers or the officials empowered in that behalf, of course, in the name of the President. Orders are issued, instruments are executed and other acts done by various Ministers and officials, none of which may reach the President or may be placed before him for his consideration. There is no occasion in such cases for any aid and advice being tendered to the President by the Council of Ministers. Though expressed in the name of the President, they are the acts of the Government of India. They are distinct from the acts of the President "in the exercise of his functions" contemplated by Article 74. Of course, even while acting in exercise of his functions, the President has to act in accordance with the aid and advice tendered by the Council of Ministers with the Prime Minister at its head. He is thus rendered a constitutional- or a titular head. It has further been observed by him as under:

"317. The President is clothed with several powers and functions by the Constitution. It is not necessary to detail them to expect to say that Article 356 is one of them. When Article 74 (1) speaks of the President acting "in the exercise of his functions", it refers to those powers and functions. Besides the Constitution, several other enactments too confer and may hereinafter confer, certain powers and functions upon the President. They too will be covered by article 74(1). To wit, the President shall exercise those powers and discharge those functions on the aid and advice of the Council of Ministers with the Prime Minister at its head. "

[12.4] The allied question that arises for consideration in the present case, is to whether the President of India, while exercising its powers as the Visitor, shall act in accordance with the aid and advice of the Council of Ministers. The Act, 2005 is silent on the issue. It is nowhere mentioned specifically in the Act, 2005 and the Statutes made there under that the President of India while exercising its power as the Visitor, is not required to act on the aid and advice of the Council of Ministers and that it can act on its own wisdom. It is not in dispute that the President of India is conferred certain power under the provisions of the Act, 2005 to act as the Visitor but the manner in which the power of the Visitor ought to be exercised, is not prescribed in the Act, 2005 and the Statutes made thereunder. At this juncture, the use of the term "right" and not the term "power" under sub-Section (3) of Section 9 of the Act, 2005, is significant. There is a gulf of difference between the right and the power. The question of enforcement of a right arises, only when a corresponding duty is not performed by an authority. For example, in order to appoint a Vice- Chancellor of the Manipur University, a committee consisting of three members, is to be constituted, out of whom one member shall be nominated by the Visitor. Will the Visitor being the President of India nominate a person from amongst the names suggested by the MHRD or will he roam around and find out a person for nomination of a member of the committee. There is no procedure prescribed in the Act, 2005 which is to be followed by the Visitor while nominating a member

of the committee. It may be true that it is the discretionary power of the Visitor but any exercise of discretionary power without following a principle or a settled norm may amount to arbitrary act. The conjoint reading of the constitutional provisions and the provisions of the Act, 2005 makes it clear that the Visitor being the President of India shall act on the aid and advice of the Council of Ministers. The underlined rational or logic of reading as aforesaid, is that the Constitution of India is supreme and its mandate is to be honored and respected by all. No one can infringe or violate any of the provisions of the Constitution of India. The Act, 2005 is a law enacted by the Parliament which cannot prevail upon or override the Constitution of India. In this regard, the contention of Shri S. Suresh, the learned ASG appearing for the Union of India appears to be correct. According to him, although the President of India has to act as the Visitor under the provisions of the Act, 2005, the Rules of Business, 1961 have been framed whereunder the MHRD has been identified as the Department to deal with the affairs of the central universities. It is well known that the files relating to affairs of the central universities including the administration and academic performances thereof are maintained and processed by the MHRD. The correspondence is also only between the central universities and the MHRD as regards the smooth functioning of the central universities. Finance is also taken care of by the MHRD to the extent that all the central universities are fully funded by the Union of India. In other words, the MHRD is in charge of the day-to-day affairs of the central universities and in particular, the Manipur University. This is true for the reason that our Constitution envisages federal structure and unitary in nature. The Government is divided into Union and the States, as a result of which the executive powers are shared by them in the manner as prescribed in the Constitution of India. The Union of India is empowered to make laws in respect of the subjects enumerated in List-I known as the Union list. In terms of the Rules of Business, 1961, the subjects have been allocated to different Departments including the MHRD which is the concerned department for the present case.

[12.5] As has been stated hereinabove, the President of India is the Visitor of the Manipur University under the provisions of the Act, 2005. The President of India and the Visitor of the Manipur University are one and the same person. The only difference between the two, is that in respect of the Manipur University, the President of India has to act as the Visitor. But the procedure for exercising power as the Visitor is not laid down in the Act, 2005 and the Statutes made thereunder. There is no material on record to show that a secretariat has been set up in the office of the Visitor where the files are to be maintained in respect of the powers and functions to be exercised by the President of India in his different capacities like the Visitor of the Manipur University. It is not known to this Court as to how the Visitor of the Manipur University will take a decision in the event of any representation or a complaint being placed before him without the detailed facts thereof because the relevant files are in the MHRD. This would clearly demonstrate that the Visitor is not supposed to entertain any

representation or a complaint except for a limited procedure as prescribed under Section 13 of the Act, 2005 and to take a decision thereof without the same being routed through the MHRD. Here lies the crucial role to be played by the MHRD as prescribed under the Rules of Business, 1961. In this regard, the observation of the Supreme Court in S.R. Bommai case that beside the Constitution, several other enactments too confer certain powers upon the President which too will be covered by Article 74 (1) and shall be exercised by him with the aid and advice of the Council of Ministers, is relevant and is applicable. The Act, 2005 is one of such enactments, although the term "the Visitor" has been used therein in place of the term "the President". But it is nowhere mentioned in the Act, 2005 that the President while exercising his power as the Visitor, shall act without the aid and advice of the Council of Ministers and in particular, the MHRD which is the concerned department under the Rules of Business, 1961. Assuming for the sake of argument that the Visitor shall take his own independent decision, the materials on the basis of which the decision is to be taken by him, will have to be placed before him by the MHRD. In the present case, the order dated 17-08-2018 was issued by the MHRD constituting a fact finding committee, probably, without the file being placed before the Visitor. In fact, it is merely and only a constitution of a committee which does not affect any of the petitioner's fundamental or legal rights. In his objection to the constitution of the committee, one of the grounds is that the Chairman of the committee is closely related to one of the agitators/spokespersons but during the course of hearing, that ground has been given up except questioning the constitution of the committee on the other grounds. The counsel appearing for the petitioner fairly submitted that the petitioner was ready to face an enquiry looking into the allegations made against him. But surprisingly, the constitution of the committee is being challenged by him on the technical grounds. There is nothing wrong in the constitution of the committee because its purpose is to find out the truth relating to the allegations made against the petitioner and not to action against him which will have to be done by the appointing authority in accordance with law. It cannot be said to be illegal and at the most, it can be said to be irregular which can be rectified by a post-facto decision being taken by the Visitor. In this regard, the stand of the Union of India as well as the MUSA may be noted and it has been submitted by their counsel that the file was placed before the Visitor at the relevant time for consideration and on perusal thereof, the Visitor approved the proposal and accordingly, the order dated 17-09-2018 was issued by the Deputy Secretary to the Government of India, in the name of the President of India as the Visitor of the Manipur University, suspending the petitioner till the completion of the enquiry with the action being taken thereon. According to them, it would be deemed to have been granted post-facto approval by the Visitor. It was in fact a conscious decision of the Visitor and that too, after his being duly apprised of the constitution of the committee by the MHRD."

Emphasis supplied

29. It is urged that it is not open to the Petitioner to contend that he had no notice of the Inquiry proceedings and agitate the issue of service of the notice thereby alleging violations of principle of natural justice, inasmuch as, Petitioner had complete knowledge of the notice dated 17.09.2018 asking him to appear before the Committee. This fact is recorded in the Report itself and in fact vide letter dated 22.09.2018, Petitioner expressed his inability to appear before the Committee. If an employee has knowledge of the proceedings of the Inquiry and consciously chooses not to appear, he cannot later argue that principles of natural justice have been violated, by holding the Inquiry, behind his back. Mr. Gogna argues that in fact in a situation where the delinquent employee categorically takes a stand that he or she would not participate in the Inquiry, it is open to the Inquiry Officer to proceed ex-parte and no illegality can be found with such an action.

30. Responding to the issue raised by the Petitioner that no charge sheet was issued prior to the initiation of the Inquiry proceedings, Mr. Gogna submits that a similar contention was raised by the Petitioner in the case of Dr. Chandra Krishnamurthy v. The Joint Secretary, Union of India in W.P. (C) 29531-29352/2015 who was Vice-Chancellor of the Pondicherry University, before the Madras High Court. MHRD, who was Respondent No. 1 in the said petition had responded to the issue of non-issuance of charge sheet by explaining that a Fact Finding Committee had gone into the allegations and given its Report, which formed the basis of the Show Cause Notice and the procedure was fair and opportunity was given to the Petitioner to explain his stand. It is submitted that the Court agreed with the Respondents that there was nothing wrong in the procedure adopted. Disciplinary Authority had satisfied itself on the basis of the Reports of two Fact Finding Committees and there was no necessity to appoint an Inquiry Officer only after framing formal charges.

31. It is further argued that there is no violation of principles of natural justice in the present case. Petitioner was well aware of the constitution of the Inquiry Committee and had challenged the Notification of its constitution before the High Court of Manipur and the Supreme Court and being aware that the Inquiry was proceeding chose not to participate in the same and at this stage cannot seek the benefit of his own wrong. Despite his absence in the Inquiry, a Show Cause Notice was served upon the Petitioner, giving him sufficient opportunity to reply to the same and explain his defence. Along with the Show Cause Notice, a copy of the Inquiry Report was also served on the Petitioner and as the Show Cause Notice would indicate, it contained a detailed narration of the findings of the Committee against each of the allegations leveled against the Petitioner, to enable him to respond effectively.

32. Learned counsel for the Respondent refutes the contention of the Petitioner that the Inquiry Committee by rendering its findings travelled beyond the Terms of Reference and submits that the Committee was constituted to enquire into 18 allegations against the Petitioner and a bare perusal of the Report would negate

the stand of the Petitioner. The Report of the Committee is on record and it is evident that the Inquiry Committee has limited its findings to the allegations in the Terms of Reference and has not overstepped the jurisdiction.

33. I have heard the learned Senior Counsel for the Petitioner and counsel for the Respondents and examined their rival contentions.

34. From the pleadings and arguments of the counsels for the parties, the facts that emerge are that the Petitioner assumed charge as Vice-Chancellor, Manipur University on 26.10.2016 and the appointment was a tenure appointment for a period of five years. Several complaints were received from the University community and the public, alleging that the Petitioner was incompetent, irresponsible, habitually absented for long periods from the University, failed to conduct regular meetings, contravened various provisions of the Manipur University Act and General Financial Rules, including transferring of a huge corpus to Lucknow based firms etc. Since the Petitioner assumed charge, the University witnessed serious crises of mis-management in academic and administrative fields, leading to agitations, lockouts, sealing of buildings and a general sense of loss of confidence, both in the teacher and student community.

35. MHRD, Government of India, on receiving complaints/ representations from several quarters, constituted a Fact Finding Committee comprising of two members to enquire into the 18 points of allegations against the Petitioner, vide order dated 12.07.2018 and directed the Committee to submit its Report within one month. The Committee was given the liberty to visit the University and its various Offices as also inspect requisite documents and record statements of the stake holders. However, the constitution of the Committee did not find favour with the agitating University Committee on various grounds and MHRD was requested to re-visit the constitution. Finally, on the basis of an MOA entered into between the stake holders on one side and the Officials of the MHRD and in the presence of the Hon'ble Chief Minister and the Chief Secretary, Government of Manipur and Commissioner (Higher and Technical Education), an order was passed on 17.08.2018 constituting a two member Judicial Inquiry Committee, comprising of Shri T. Nandkumar Singh, Former Acting Chief Justice of the High Court of Meghalaya as the Chairperson and Prof. M.K. Choudhary, Former Vice-Chancellor of Tezpur University as a Member to enquire into the 18 allegations against the Petitioner. The Committee after examining the documents and the witnesses gave a Report on the basis of which a Show Cause Notice was issued to the Petitioner. The Petitioner admittedly did not participate in the Inquiry proceedings but did reply to the Show Cause Notice. However, his reply was not found satisfactory and his services were dispensed with by dismissing him vide the impugned order dated 21.02.2020.

36. The principle plank of the argument of the Petitioner is that there is violation of the principles of natural justice in conducting the inquiry and passing the impugned dismissal order. To summarize, the said argument is premised on (a) no Show Cause Notice prior to constitution of Inquiry Committee (b) explanation

of the Petitioner not sought before deciding to conduct an Inquiry (c) Charge sheet/Statement of Imputation, list of witnesses/documents etc. not drawn up before constituting the Committee and neither were these drawn up after the Committee was constituted (d) the Committee enquired into the Terms of Reference, drawn up by Prof. Dorendrajit Singh, who had no authority to act as a Nodal Officer (e) Terms of Reference not supplied to the Petitioner (f) no opportunity given to the Petitioner to submit written statement of defence before issuing notice to the witnesses to submit their statements (g) witnesses examined behind the back of the Petitioner (h) no notice was served on the Petitioner to appear before the Inquiry Committee.

37. In order to deal with the issue of alleged violation of principles of natural justice, it would be imperative to examine the sequence of events prior to the start of the Inquiry proceedings and the proceedings at the initial stages. The Report of the Inquiry Committee elaborately contains the procedure followed by the Committee, both for issuing notices to the Petitioner and the witnesses.

38. What emerges from a reading of the said Report is that the first seating of the Committee was held on 06.09.2018 and an order was passed issuing notices to all persons acquainted with the subject matter of the Inquiry for submission of their statements in the form of sworn affidavits with the list of documents, if any, on or before 16.09.2018. The said notice was published in four local daily Newspapers, two in English and two in local vernacular language, for three consecutive dates and it was also stated that the Terms of Reference of the inquiry may be downloaded from the website of the University. In response to the said notice different Associations filed their written statements in the form of affidavits, supported by documents, on 16.09.2018, while some sought extension of time, which was granted. On 16.09.2018 notice was issued to the Petitioner for filing his written statement and it was made clear in the order that examination of the witnesses shall be in the presence of the Petitioner, who shall also be given an opportunity to cross-examine, if he so desired. On 17.09.2018 another order was passed requiring the Petitioner to appear before the Committee on three consecutive dates, commencing on 26.09.2018 to 28.09.2018, when the statement of witnesses were to be recorded. The Proctor of the University was directed to furnish a copy of the order to the Petitioner within 48 hours and submit a Report. Additionally, it was also directed that the orders dated 16.09.2018 and 17.09.2018 be published in widely circulated local Dailies and the copy be also sent by Special Messenger. The Proctor accordingly submitted a Report dated 17.09.2018 to the effect that when they visited the Official Residence of the Petitioner, they were informed by the security staff that the Petitioner was not home and refused to receive the notice. On their refusal, the Proctor in the presence of other staff of the University, affixed the notice on a conspicuous place i.e. on the wall of the adjoining quarter, which is very near to the gate of the Petitioner's quarter. The Inquiry Report further reveals that the Petitioner had knowledge of the pendency of the inquiry and the requirement to file the written statement etc. as he wrote a letter dated 22.09.2018 to the

Chairperson of the Committee questioning the Authority of the MHRD to constitute the Committee as also the legality of the MOA. It was stated in the letter that Petitioner had filed a writ petition challenging the order of the MHRD constituting the Committee and had also approached the Supreme Court challenging the order declining interim relief. It was categorically stated in the letter that since he had no knowledge of the Terms of Reference of the Committee, he was unable to render assistance. The said letter is significant to decide the controversy in question and is extracted hereinunder:-

"To

The Chairperson,

Dated-22-09-2018

Two Member Enquiry Committee, Imphal, Manipur.

Sir/s

Subject- Unverified Reports regarding reply sought from the undersigned.

1. This is in reference to the aforesaid subject. Some sources within the University have brought to my notice unverified reports regarding the members of the so called enquiry Committee seeking a written statement from me, regarding the enquiry being conducted by them at the behest of the Ministry of Human Resources and Development, New Delhi.

2. At the outset, I consider it my bounden duty to bring to the notice of the committee members that I have not received any notice nor request to participate, in the task being discharged by the committee. However, mindful of my position as Vice Chancellor of the University, I am writing these presents to you as an act of courtesy and precaution to enable you to understand my position in this regard. First and foremost, In case, any such written statement is being called from me, I am required to know the nature of the enquiry being conducted by the committee and the terms of reference. I am rendered help less in providing any assistance to the committee without having any knowledge as to the terms of reference which I may be required to answer and in which regard, I am expected to provide assistance.

3. Secondly, as the committee may be well aware, the Manipur University is an autonomous body corporate and has been established by the Manipur Universities Act, 2005. As per the statute, the visitation powers are vested in the Visitor of the University and the MHRD has no jurisdiction over the affairs of the University in this regard. Similarly, the enquiry, in pursuance of a tripartite agreement between some illegal and unrecognized associations on one hand and the MHRD on the other, is completely illegal and neither binding on the University nor the Vice Chancellor. Hence, I have already approached the High Court of Manipur, at Imphal by filing a Writ Petition (challenging (SIC}) constitution of the committee itself. The Hon'ble High Court was pleased to admit the writ petition,

however in the absence of grant immediate interim relief in the said petition, I have already approached the Hon'ble Supreme Court of India by filing a special leave petition. The said is likely to be heard on the 24th September, 2018.

4. In view of the aforesaid, I wish to convey to you that as I have no knowledge of the terms of reference of the committees mandate and most importantly in view of the fact that the constitution of the committee itself is illegal and a subject matter of legal proceedings, I am unable to render any assistance to the committee, that too if solicited by the committee, as per the unverified information suggested to me. I further wish to convey my warm personal regards to the esteemed committee members, in my personal capacity as well as that of Vice Chancellor of the University and as such the Head of the Institution.

Yours Sincerely,

Sd/-

Prof. Adya Prasad

Pandey"

39. Thus, it is clear from the aforesaid that Petitioner was very much in the loop of the pending proceedings as well as knew the dates of examination of the witnesses. It is also an admitted position between the parties that the Petitioner had approached the Manipur High Court, by a writ petition, wherein he specifically challenged the MOA dated 16.08.2018, as also the order dated 17.08.2018 passed by MHRD constituting the Inquiry Committee and when the Division Bench declined to pass an interim order staying the order dated 17.08.2018, the Petitioner filed SLP bearing No. 24707/2018 before the Supreme Court, but was unsuccessful in getting an interim order.

40. The Committee thereafter passed a reasoned order after receiving the letter dated 22.09.2018 by the Petitioner and the order is as under:-

".....

At the last , it is our considered opinion that the Central Government (MHRD) who is the creator of the Manipur University Act, 2005 has the power and authority to issue the said orders for constituting the 2 Member Enquiry Committee. It should be kept in mind that under the present democratic form of government, there is a collective responsibility. We hope and trust that our considered opinion could easily be understood by anybody who can read properly the Constitution of India written in English.

It is the absurd statement of Prof. A.P. Pandey that he has not received any letter or request to participate in the present proceeding of the Independent 2 Member Enquiry Committee. He cannot also state that he has no knowledge of the terms of reference of the present enquiry. The order of the present Independent Two Member Enquiry Committee dated 06.09.2018 was published on 8th, 9th and 10th September, 2018 inviting written statements in 4 (four) leading local dailies. It is

clearly stated in the aforesaid notice that the terms of reference can be downloaded from the Manipur University's official website i.e. www.manipuruniv.ac.in.

Over and above, the terms of reference of the present Independent Two Member Enquiry Committee were also published in the leading local dailies dated 14.09.2018. It appears that Prof. A.P. Pandey has lost sight of these admitted facts while alleging that he has no knowledge of the terms of reference.

Independent Two Member Enquiry Committee also passed a specific order dated 17.09.2018 that Prof. A.P. Pandey has to appear in person before this committee on the next day of sitting i.e. 3 consecutive days commencing from 26.09.2018 to 28.09.2018 inasmuch as the statements of witnesses are to be recorded and for the ends of justice the Committee proposed to examine the witnesses in his presence. The Proctor was directed to furnish a copy of the order dated 17.09.2018 to Prof. A.P. Pandey within 48 hours and give the report to the Committee. Pursuant to the order dated 17.09.2018, the Proctor herself accompanied with the Assistant Proctor, Shri Sanatomba Singh and two Manipur University's staff visited the official quarters of Prof. A.P. Pandey situated at Sanjenthong, Imphal East on 17.09.2018 for furnishing copies of the orders dated 16.09.2018 and 17.09.2018 of the Independent Two Member Enquiry Committee. But neither Prof. A.P. Pandey nor his inmates of his official quarters accepted the notice issued to him. Having no alternative, the Proctor submitted a report in the form of an affidavit dated 17.09.2018 stating that the Proctor along with the Assistant Proctor and three official staff of the Manipur University namely (1) Chand Bahadur Gurung, (2) S. Deepak Singh MTS and (3) Nepram Chinglenkhomba Singh went to the quarter of A.P. Pandey for delivering the official letters i.e. the said notice. As Prof. A.P. Pandey and his security personnel refused to receive the said notice and sign on the Peon Book, the Proctor and staff of the Manipur University affixed the said notice on the conspicuous place i.e. on the wall of the adjoining quarters which is very near to the gate of Prof. A.P. Pandey's quarters. Under the provision of the Code of Civil Procedure, 1908 it can safely be declared that notice has been duly served on Prof. A.P. Pandey. This being the situation, the statement of Prof. A.P. Pandey that he has not received any notice or request to participate in the proceeding of Independent Two Member Enquiry Committee and that he has no knowledge of the terms of reference is false and legally not tenable."

41. Even subsequent thereto, the Committee made an effort by directing the Ministry, vide order dated 20.10.2018, to take all possible forceful steps to ensure the appearance of the Petitioner before the Committee. The Administrator of the University conveyed the said order to the concerned Officials in the MHRD, however, despite knowledge of the on-going Inquiry proceedings, the Petitioner did not join the proceedings of the Inquiry Committee. The writ petition filed before the Manipur High Court being W.P.(C) 825/2018 was dismissed on 22.05.2019 and it is relevant to note that the Petitioner had categorically given

up the challenge to the constitution of the Committee on the ground of impartiality earlier raised by him on account of the fact that the Chairman was related to one of the agitators. Petitioner had categorically stated before the Court that he was ready to face the inquiry. However, Petitioner continued to abstain from the proceedings, before the Inquiry Committee for reasons best known to him.

42. The question that thus arises is whether having consciously abstained from the Inquiry proceedings, the Petitioner can challenge the proceedings of the Committee and its Report, alleging violation of principles of natural justice. In my view, the answer to the question can only be in the negative. The proceedings of the Inquiry Committee as detailed aforesaid indicate not only that efforts were made to serve the notices of the Inquiry proceedings on the Petitioner but also the said notices were published in the daily newspaper, both in English and local vernacular language. Several Associations and individuals learnt of the proceedings from the publications and filed their written statements along with list of documents and came forward to give evidence. It was not the stand of the Petitioner during hearing of this petition that he had no knowledge of the publications in the newspapers. In any case, even if it is assumed for the sake of arguments in favour of the Petitioner, that the notices published in the newspapers were not within his knowledge, the Petitioner cannot deny the fact that he otherwise had knowledge that the Inquiry Committee had been constituted and the Committee had initiated its proceedings. This is fortified from two clear facts on record. Firstly, the order constituting the Inquiry Committee was received by the Petitioner and was in fact challenged before the Manipur High Court in W.P. (C) 825/2018 and secondly, once the proceedings started, the Petitioner had categorically vide letter dated 22.09.2018 informed the Committee that he would be unable to render assistance in the absence of the Terms of Reference, as also that he had challenged the constitution of the Committee before the Manipur High Court. Thus, it is not open for the Petitioner to even contend that no notice of the inquiry was issued to him. The purpose of issuing notice is only to intimate the delinquent Officer of the proceedings being initiated against him and admittedly the Petitioner had knowledge of the constitution of the Committee and the proceedings initiated by it. Once the writ petition filed before the Manipur High Court was dismissed, it was incumbent upon the Petitioner to have joined the inquiry proceedings. He could have, if he was aggrieved, by alleged non-compliance of the procedures or principles of natural justice during the inquiry proceedings, participated and sought for the Terms of Reference, documents, list of witnesses, affidavits filed by the witnesses, etc. In case of non-supply at that stage the Petitioner had the option to either challenge the violations of principles of natural justice or participate under protest. On the contrary, Petitioner chose to stay away from the proceedings and took a calculated risk of the Inquiry Committee proceeding in his absence. Having chosen to tread on this path, showing indifference, Petitioner cannot, in my view, lay a challenge to the proceedings at this stage alleging that no notice was

served on him.

43. In so far as the argument that Terms of Reference were not made available to the Petitioner and hence he had no knowledge of the allegations, is concerned, the argument only deserves rejection. First and foremost, in the Notices published in the newspapers, it was clearly mentioned that the Terms of Reference could be downloaded from the Website of Manipur University and the web address to do so was also mentioned therein, along with the link to download the same. Thus, there was no stopping the Petitioner from downloading the Terms of Reference. Secondly, Terms of Reference were formulated prior to the constitution of the Inquiry Committee and while the Petitioner took the trouble of challenging the Notification constituting the Inquiry Committee before the Manipur High Court, he laid no challenge to the non-supply of the Terms of Reference. It was open to the Petitioner at that stage to raise a grievance that the Terms of Reference were not supplied, but he chose not to do so. The argument of the Petitioner that the Terms of Reference cannot be the basis of an Inquiry, as no charge sheet was drawn up also deserves to be rejected on this ground itself, that no challenge was raised before the Manipur High Court with regard to non-drawing up of a charge sheet, in the conventional sense or even thereafter. It was open to the Petitioner to challenge that Terms of Reference was not a Charge sheet when the inquiry started or even during the proceedings. He could have participated in the inquiry under protest, but the Petitioner did neither of the two.

44. Even otherwise, in my view, this contention is without merit. The purpose of issuing a charge-sheet is to enable the Charged Officer to know the charges / allegations leveled against him in order to defend himself during the inquiry as also to find out if the charges disclose a misconduct in terms of the service conditions and/or duties/obligations cast on the Charged Officer. In the case of *A.L. Kalra vs. Project & Equipment Corporation of India Ltd.* (1984) 3 SCC 316, the law as set out by the Supreme Court, which still holds the field, is that an employee, before an inquiry is initiated must know the allegations of misconduct and the intent and purport of a charge-sheet is to enable him to know the charges and defend them. Issuance of charge-sheet is not a penalty but a procedural step in the course of a Domestic Inquiry. Charge-sheet, if as held by the Supreme Court, is in the nature of a notice to a party. In the case of *State Bank of Bikaner & Jaipur and Ors. Vs. Prabhu Dayal Grover*, (1995) 6 SCC 279, one of the issues that arose for consideration before the Supreme Court was if a letter served by the Bank containing allegations against the Delinquent Officer and forming the basis of the charge-sheet could be termed as a charge-sheet. Relevant part of the letter is as follows :-

"...You demanded and accepted a bribe of Rs 300 from Shri Maniram for issuing a demand draft of Rs 48,000 on account of the loan amount sanctioned in favour of Shri Maniram and his father Shri Ram Rakh Bishnoi for purchasing a tractor."

45. After quoting the letter in extenso, the Supreme Court observed that from a

perusal of the letter, it was evident that it may be said that the letter communicating the accusations does not answer the description of a formal Charge-sheet, but the contents specifically disclosed the charges leveled against the Officer i.e. of accepting a bribe of a certain amount in a particular year. It was observed that it could not be said that the Charged Officer was not fully apprised of the accusations leveled against him to enable him to effectively reply thereto. The Court also observed that at no point of time, during the Departmental proceedings did the officer raise any objection regarding non-furnishing of the statement of allegations much less that he was prejudiced thereby. Relevant paras of the judgment are as follows :-

"8. Regulation 68(2)(iii) provides that where it is proposed to hold an enquiry the disciplinary authority shall frame definite and distinctive charges on the basis of the allegations against the officer and the articles of charge, together with a statement of the allegations on which they are based, shall be communicated in writing to the officer. Needless to say, the above Regulation seeks to fulfil one of the basic postulates of the rules of natural justice that a fair, adequate and reasonable opportunity of being heard should be given to the person arraigned which, obviously, would not be possible unless he is specifically told of the accusations levelled against him. Judged in that light, we are unable to hold, in the facts of the instant case, that Grover was not so told. Of course, it may be said that the letter communicating the accusation made against Grover which we have reproduced above does not answer the description of a "formal charge-sheet" but then the contents thereof specifically disclose the charge levelled against him, namely, that of accepting a bribe of Rs 300 from Shri Maniram in the year 1978 for issuing a demand draft in favour of him and his father. It may also be said that the exact date of acceptance of bribe was not disclosed therein but then along with the letter was enclosed a copy of the complaint received from Maniram which not only discloses that date but also satisfied the requirement of a "statement of allegations" envisaged in Regulation 68 in that all the details regarding the demand and acceptance of the bribe have been stated. It cannot, therefore, be said that Grover was not fully apprised of the accusation levelled against him to enable him to effectively reply thereto. In other words, the provisions of the Regulation have been substantially complied with, though not formally. This conclusion of ours is strengthened by Grover's reply to the charge-sheet which clearly indicates that he fully understood the charge levelled against him. It reads as under:

"The Managing Director,
State Bank of Bikaner & Jaipur,
Head Office,
Jaipur.
Dear Sir,

(THROUGH PROPER CHANNEL)

Disciplinary Action:

With reference to your Letter No. VI/36/C/1050 of the 3rd instant, the allegation made in the charge-sheet is false and is denied. Had there been any truth or substance in the allegation, the CBI, the highest investigating agency in the country by whom the matter had been investigated, would have registered a suitable case against me. There is, therefore, no justification in conducting departmental enquiry against me. I request you to kindly drop the disciplinary action against me to meet the ends of natural justice.

Yours faithfully,

sd/- 14.4.1980

(P.D. GROVER)

Officer, Grade II"

9. While on this point, it need also be stated that at no point of time during the departmental proceeding or before the appellate authority did Grover raise any objection regarding non-furnishing of the statement of allegations much less that he was prejudiced thereby."

46. A similar issue had come up before the Madras High Court in Dr. Chandra Krishnamurthy (supra) wherein the Petitioner who was appointed as Vice Chancellor of the Pondicherry University challenged a Show Cause Notice served on him as to why he should not be dismissed from the post of Vice-Chancellor. One of the contentions raised was that no Charge Memo was issued and there was no Inquiry Officer appointed, except for a Fact-Finding Committee, prior to issuance of the Show Cause Notice. The Court after examining the proceedings held as under :-

"18. Learned Senior counsel appearing for the petitioner contended that there is a serious violation of principles of natural justice in the manner in which the show cause notice was issued, The argument made in this regard cannot be accepted, since what is challenged is only a show cause notice. When the power to dismiss is available to the 1st respondent, then there is no necessity to conduct a separate enquiry, especially when a statute does not prescribe such a methodology. Perhaps, keeping in view the status and importance of the post, it was thought fit not to treat the Vice Chancellor like an ordinary Officer of University. This Court cannot legislate and create a procedure. There is no difficulty in holding that even in the absence of any provision for affording an opportunity, the Court can read the same into a statute but it cannot be extended warranting mandatory enquiry, especially when an opportunity of being heard having been given.

19. Two fact finding Committees have been appointed to come to a prima facie conclusion of which one was constituted by the 1st respondent itself and another

at the instance of the 1st respondent. Admittedly, the 1st respondent is a Nodal Ministry and the Controlling Authority for all the Universities including the Pondicherry University. It is a fair procedure adopted by the 1st respondent before issuing a show cause notice. It cannot be termed as an enquiry as in the manner sought to be construed by the petitioner. The University Grants Commission was asked to get involved as it was in possession of certain records qua the petitioner. In other words, it is a competent authority to go into those factual aspects, as furnished by the petitioner. Thus, there is absolutely nothing wrong in the procedure adopted. It is not as if the 1st respondent has acted based upon an anonymous complaint, but on the contrary, satisfied itself about the prima facie case on going through the reports of the two Committees. Charges No.1 to 4 are with reference to the qualification of the petitioner, as projected by herself while getting the appointment. If the qualification is not available, then the very basis of appointment itself would go, making herself ineligible for being considered. The Fact Finding Committees verified the allegations made against the petitioner qua her qualification and filed the reports. If the 1st respondent is the authority to take appropriate action against the petitioner, then the power is certainly available to issue show cause notice as against the appointment of Enquiry Officer after framing charges. Even assuming the contention of the petitioner is accepted, there is no necessity to appoint Enquiry Officer in all cases. Therefore, even the Disciplinary Authority himself can take up the said role. Furthermore, charges 1 to 4 are based upon records of the petitioner. There is no question of examining or cross-examining all the persons, who gave statements before the Fact Finding Committees. The reports of the Fact Finding Committees are nothing but mere materials for the 1st respondent to form a prima facie view. In other words, the proceedings culminated into the impugned show cause notice is purely a matter between the 1st respondent and the petitioner. Thus, looking from any angle, this Court does not find violation of principles of natural justice."

47. Examining the issue on the anvil of the aforesaid judgments, in my view, the argument of the Petitioner that Terms of Reference cannot be the basis of the inquiry, in the absence of a conventional Charge-sheet, cannot be sustained. I have also carefully perused the Terms of Reference, which contained 18 allegations against the Petitioner and a bare perusal of the same leads me to conclude that the terms clearly, unequivocally and unambiguously conveyed the allegations leveled against the Petitioner to enable him to effectively defend him. As held by the Supreme Court, the purpose of a charge-sheet is two-fold, viz. to communicate to the Delinquent Officer the nature of allegations and to enable him to effectively defend the allegations as also to contest if the allegations amount to a misconduct in terms of the Service Rules and keeping in background the nature of duties, obligations that are required to be undertaken with respect to the post occupied by the officer. The Terms of Reference fulfill all the required parameters of a Charge-sheet, albeit, it may not be termed as 'charge-sheet' or 'Charge Memo' in the conventional sense. Supreme Court in Krishna Chandra

Tandon vs. the Union of India, (1974) 4 SCC 374, observed that there is no magic in the word 'charge-sheet'. The Terms of Reference meet the dual purpose of communicating the allegations and enabled the Petitioner to effectively defend himself.

48. In so far as it is alleged that list of witnesses/documents etc. were not supplied and the witnesses were examined behind the back of the Petitioner, it would suffice to state that the Petitioner himself took a conscious call to stay away from the Inquiry proceedings, despite best efforts of the Inquiry Committee and the MHRD, requiring him to participate in the Inquiry proceedings. It was the Petitioner's conduct which left no option with the Inquiry Committee, but to proceed in his absence and give a Report, in the ex-parte proceedings. Once the Petitioner did not appear before the Inquiry Committee, did not file any written statement, led no evidence, either deposing in his favour or cross-examining the witnesses, who appeared in the Inquiry, no fault can be found with the Inquiry Committee proceeding in his absence.

49. Principles of natural justice cannot be put in a straitjacket formula. Their application would depend on the facts and circumstances of each case. Once the charged Officer takes a conscious stand not to participate in an Inquiry, he is deemed to have waived and is estopped from questioning non-compliance or violation of principles of natural justice. Supreme Court in the case of Chairman-cum-Managing Director, Coal India Limited & Ors. v. Ananta Saha & Ors., (2011) 5 SCC 142 has clearly held that where the delinquent has failed to appear in spite of notice in the Inquiry, the course of action adopted by the Inquiry Officer to proceed ex-parte is justified. To the same effect, is the decision of the Supreme Court in State of Uttar Pradesh & Ors. v. Saroj Kumar Sinha (2010) 2 SCC 772, wherein it was held as under:-

"27. A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear that the enquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge."

50. I may also refer to a passage from a judgment of the Co-ordinate Bench of this Court in Pradeep Singh Ahluwalia v. Secretary, Ministry of Tourism & Ors. in W.P. (C) 12871/2009 where the Court rejected the contention of the Petitioner that publication of the notice was not enough compliance enabling the Inquiry Officer to proceed ex-parte. The Court observed that a curious employee would be keen to know the charges, rather than avoiding to receive them. Once the

Petitioner therein was aware of the proceedings, he could have made efforts to receive the charge sheet and appear before the Inquiry Officer, which was not deliberately done by him. It was also observed that even a paper publication was sufficient compliance with principles of natural justice and Court relied on a judgment of the Supreme Court in Board of Directors, H.P.T.C & Ors. v. K.C. Rahi (2008) 11 SCC 502, wherein Supreme Court was considering a case of an employee who was charge sheeted and notice in that regard was sent to him by publication in the newspaper. The employee did not participate and the Inquiry was proceeded ex-parte. The stand of the employee was that the order of termination was in violation of the principles of natural justice. The Central Administrative Tribunal dismissed the Original Application on the ground that the employee was well aware of the pending proceedings and intentionally avoided service of notice and did not participate. The High Court, in a writ petition, decided in favour of the employee by holding that proper service was not effected on him. In the appeal before it, Supreme Court held that once the employee had knowledge of initiation of the Departmental Inquiry and chose not to participate at his own risk, he could not claim violation of principles of natural justice.

51. In the case of State Bank of India and Ors. vs. Narendra Kumar Pandey, (2013) 2 SCC 740, Supreme Court was dealing with an appeal arising out of an order of the High Court, whereby the High Court had allowed the writ petition of the Charged Officer and had quashed an ex-parte inquiry and the reasoning of the High Court is discernible from para 9 of the judgment, which is as follows.

"9. The charged officer without availing of the remedy of a statutory appeal approached the High Court under Article 226 of the Constitution of India. The High Court, however, took the view that the presenting officer had failed to discharge his obligation of making available the list of all the documents and witnesses to the charged officer. The Court held that Rule 68(2)(ix) contemplates that the inquiry officer must ensure supply of list of documents and witnesses to be relied on by the Bank in support of its charges. The Court took the view that the presenting officer did not place anything on record to show when the list was made available to the charged officer. Further, it was also noticed that the Bank had failed to examine any witnesses in respect of the charges and, therefore, the findings recorded by the inquiring authority could not be sustained. The Court, therefore, allowed the writ petition and quashed the impugned order dated 11-3-1999 with liberty to hold a fresh inquiry. There was a further direction to the Bank to pay arrears of subsistence allowance treating the period of his absence as deemed suspension."

52. The High Court order was assailed by the Bank by raising certain contentions, which are captured in paras 10 and 11 of the judgment and are as follows :-

"10. Shri Harin P. Raval, learned Additional Solicitor General appearing for the Bank, submitted that the High Court has committed an error in interfering with

the order of dismissal especially when the charged officer had an alternative remedy of appeal under Rule 69 of the Service Rules. The learned counsel also submitted that the list of bank documents for inspection had been enclosed by the presenting officer vide letter dated 21-5-1997 to the charged officer which the charged officer had refused to accept. Further, it was also pointed out that vide letter dated 30-5-1997, the presenting officer had enclosed the list of bank documents and requested the charged officer to inspect the same at the relevant branch which also the charged officer refused to accept. The learned counsel also pointed out that the Bank had given sufficient opportunities to inspect those documents in the Bank's office, the said fact was taken note of by the inquiring authority.

11. The learned counsel also pointed out that where a bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceeding of defending himself against the charges of misconduct, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself of the charges levelled against him. The learned counsel also pointed out that in a disciplinary proceeding, the standard of proof required is preponderance of probability and not proof beyond reasonable doubt. The High Court under Article 226 of the Constitution of India was not justified in setting aside that order especially when the charged officer could have appealed to the appellate authority under Rule 69 of the Service Rules."

53. After considering the rival contentions of the parties, the Supreme Court held as under :-

"22. We are of the view that the High Court also committed an error in holding that since no witness was examined in support of the charges, it was a case of no evidence. In an ex parte inquiry, in our view, if the charges are borne out from the documents kept in the normal course of business, no oral evidence is necessary to prove those charges. When the charged officer does not attend the inquiry, then he cannot contend that the inquiring authority should not have relied upon the documents which were not made available or disclosed to him. Of course, even in an ex parte inquiry, some evidence is necessary to establish the charges, especially when the charged officer denies the charges, uncontroverted documentary evidence in such situation is sufficient to prove the charges."

54. Reliance was placed on the judgment of the Supreme Court in Bank of India vs. Apurba Kumar Saha (1994) 2 SCC 615, relevant para of which is as follows :-

"4. ... A bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceeding of defending himself against the charges of misconduct involving his integrity and honesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself of the charges levelled against him and the disciplinary proceeding conducted against him by the bank employer had resulted in violation of principles of natural justice of fair hearing."

55. Reliance was also placed on the judgment in Lakshmi Devi Sugar Mills Ltd. vs. Ram Swarup AIR 1957 SC 82, where the Supreme Court held that where a workman intentionally refuses to participate in the inquiry, he cannot complain that the dismissal is against the principles of natural justice. Once the inquiry proceeds ex-parte, it is not necessary for the Enquiring Authority to again ask the Charged Officer to state his defence orally or in writing. Finally, in State Bank of India (supra), the Court observed that, "We cannot appreciate the conduct of the Charged Officer in the instant case, who did not appear before the Enquiring Authority and offered any explanation to the charges levelled against him but approach the High Court stating that principles of natural justice have been violated." The Supreme Court also observed that the High Court, in their view, under Article 226 of the Constitution of India was not justified in interfering with the order of dismissal.

56. I am also fortified in my view by a judgment of the Co-ordinate Bench of this Court in D.K. Gupta vs. Punjab National Bank in W.P.(C) 3698/1998 decided on 06.08.2013, wherein while dealing with one of the contentions of the Petitioner that the Petitioner was not supplied with the documents alongwith the chargesheet, the Court observed that the Petitioner did not appear for repeated hearings before the Inquiry officer and was set ex-parte and once the Petitioner led no evidence, including deposing in his own favour and did not stand the test of cross-examination, there was no reason why the evidence led by the Management should not be believed. Petitioner having been given the desired opportunities, but having failed to appear in the proceedings, was not in any manner prejudiced and nor were the principles of natural justice violated.

57. In so far as the argument that the Inquiry Officer went beyond the Terms of Reference in rendering the finding is concerned, the same is not tenable on a bare perusal of the record. The Terms of Reference indicate that 18 allegations were levelled against the Petitioner. The Inquiry Officer has rendered findings only qua the 18 allegations mentioned in the Terms of Reference. In fact, perusal of the Show Cause Notice, which is appended to the writ petition, would itself bear out the fact that the Committee has not exceeded the Terms of Reference. Relevant part of the Show Cause Notice is extracted hereinunder :-

S.

No.

Allegations

Findings of the Committee

i

That, the present Vice Chancellor (VC) of Manipur University unlike other previous VCs, has a bizarre habit of remaining away from the University unusually for long periods of time nearly two or three weeks every time. Most of his visits outside the State are largely unofficial tours, reasons not stated at all.

He never informs his office the date of his arrival for those regular unofficial tours. This has office discredited and disgraced the office he holds.

Prof, A.P. Pandey, Vice Chancellor, Manipur University visited his hometown on a number of occasions and TA/DA for his wife were also paid by the Manipur University. Most of his absences from the Manipur University were for visiting Delhi and other places including his hometown, Banaras. Except in some cases, Prof. A.P Pandey did not mention the particulars of his official visits. During the period from 26.10.2016 to 30.05.2018, having a total period of 583 days of which there were 452 working days (583 minus 131 days, being Sundays, Second Saturdays and holidays), Prof. A.P Pandey was absent from the Manipur University as well as the State of Manipur for about 189 days. His absences of 189 days could not be justified from the records available in Manipur University and the total expenditure of Rs. 27,61,181/- (Rupees twenty seven lakh sixty one thousand one hundred and eighty one) for payment of TA/DA of Prof.

A.P. Pandey and his wife is not justified and not acceptable. Therefore, the finding of the Committee on this allegation is

against Prof. A.P Pandey, Vice Chancellor, Manipur University.

ii

That, he intentionally violates the University Act, MU Act, 2005 section 22, which makes mandatory for a "Court Meeting" to assess current financial years performance and which further prepared annual objectives for the succeeding year. In the absence of any such meeting the University has failed to assess as well as to set objectives for the succeeding annual period. It is highly important to highlight here that the failure to conduct the "Court Meeting", the VC of Manipur University has forfeited the noble idea of check and balance behind the very conduct of the meeting and gives him large avenue for manipulating the programs and huge sanctioned amounts to meet his selfish and ulterior motives.

There was no Annual Court Meeting in clear violation of Section 22 of the Manipur University Act, 2005 and Statute 10 of the Statutes of Manipur University during the relevant period i.e. 26.10.2016 to 30.05.2018 (while Prof. A.P Pandey was the Vice Chancellor of Manipur University). In the absence of Court Meeting in a year there shall definitely be adverse consequences. Under Statute 3 (3) of the Statutes of Manipur University, it shall be the duty of the Vice Chancellor to see that Manipur University Act, the Statutes, the Ordinances and Regulations are duly followed and these are stuck to. Accordingly, it is a failure on the part of Prof. A.P. Pandey for not holding the Annual Court Meeting. It is a well settled law that higher authority should be conscious of his duties and obligations. Therefore, the finding of the Committee on this allegation is against Prof. A.P. Pandey, Vice Chancellor, Manipur University.

iii

That, the present VC of Manipur University has utterly failed to perform his duties as no convocation is held since the last convocation of the University(14thConvocation)

which was held on

29.04.2014. When the matter was put forward, he refused to entertain the same.

There was no Convocation of the Manipur University during the relevant period i.e. 26.10.2016 to 30.05.2018 (while Prof. A.P. Pandey was the Vice Chancellor of Manipur University) but in the name of preparation for holding 15th Convocation a sum of Rs, 9,02,400/-(Rupees nine lakh two thousand and four hundred) had been spent for making Gold Medals and also another sum of Rs. 3,39,000/- (Rupees three lakhs and thirty nine thousand) for Supply of Manipuri Traditional Dresses in connection with the 15th Convocation without following any procedures prescribed. Therefore, the finding of the Committee on this allegation is against Prof. A.P.

Pandey, Vice Chancellor, Manipur University.

iv

That, the mandatory conditions to conduct Executive Council (EC) meeting (3 times in a year) and Finance Committee meeting (3 times in a year) according to the University rules has been deliberately overlooked. This prevents the office of the VC of Manipur University from scrutiny and gives the office the chance to abuse and excessively misuse its power and position.

Under the Ordinance H-2 (On the conduct of meetings of the Executive Council) of the Manipur University, Executive Council shall ordinarily meet once in three months and at such time as may be desired by the Vice Chancellor. There was no Executive Council meeting for the financial year 2016-2017 (1st April, 2016 to 31st March 2017). There were only two Executive Council meetings for the financial year 2017-2018 (1st April, 2017 to 31st

March 2018) on 24.5.2017 and 28.2.2018 and also there were only two Executive Council meetings for the financial year, 2018-2019 (1st April, 2018 to 31.03.2019) on

30.04.2018 and 14.06.2018 (the

year was not complete). Now, it is the clear finding that there were no three times' Executive Council

meetings for the financial year, 2017-2018 and for the financial

year, 2018-2019 and no Executive Council meeting for the financial year 2016-2017. There were only 2 (two) meetings of the Finance Committee for the financial year, 2017-2018 (1st April, 2017 to 31st March 2018) i.e. first meeting was held on 24.7.2017 (during Prof.

A.P. Pandey's period) and second meeting was held on 03.02.2018 (during Prof. A.P. Pandey's period) and there was no meeting of the Finance Committee for the Financial Year, 2018-2019 (1st April, 2018 to 31st March, 2019) as on 03.11.2018. Therefore, the mandatory requirement for holding meeting of finance committee thrice in a year under the Statute 18 (5) of the Statutes of Manipur University was violated. Such lapses give the office of the Vice Chancellor a chance to abuse and misuse his power and position. Prof. A.P. Pandey and two other Professors,

(i) Prof. Arun Kumar (Earth Science) and (ii) Prof. Shyamkesho (Life Science) spent a huge amount of money in life terms of crore arbitrarily at their at their sweet wills in connection with the 105th Indian Science Congress without following any procedure prescribed. Such a huge expenditure of a huge amount of money by the 3 (three) persons namely, (i) Prof. A.P. Pandey, Vice Chancellor and (ii)

Arun Kumar, Kumar (Earth

Science) and (ii) Prof. Shyamkesho (Life Science) is required to be looked into and necessary follow up action should be taken up. Therefore, the finding of the Committee on this allegation is

against Prof. A.P. Pandey, Vice Chancellor, Manipur University.

v

That, a large amount of unaccounted money is being donated to several politically motivated organizations with the ulterior motive, whereby, misusing his office with the purpose and reason known best to him.

Prof. A.P. Pandey, Vice Chancellor, Manipur University sanctioned a sum of Rs. 2 lakh in favour of ABVP without following any due procedure and in violation of the Article 14 and 19 of the Constitution of India. But the Committee did not come across any donation of any good amount to any organization by Prof. Prof. A.P. Pandey, Vice Chancellor, Manipur

University.

vi

That, in contravention to the Rules and Regulation of the Manipur University a huge amount of Rs. 5 crore is transferred to a Lucknow based firm for installation of several smart classes. It is informed to us by the officials of the University, on condition of remaining anonymity, that the firm based in Lucknow is closely related with the present VC of Manipur University. Therefore, it can reasonably conclude that the office of VC of Manipur University

has been misappropriated

for notorious and illegal monetary gains.

In clear violation of the Ordinance B-11 of the Manipur University for procurement of the goods of Manipur University and procedure prescribed under GFR Rules 2005 of the Government of India as amended from time to time, Prof,

A.P. Pandey, Vice Chancellor, Manipur University initiated directly to allocate the work of installation of Smart Classes to M/s ITI Limited Lucknow. The Bills were paid in the name of Completion Certificate of work, which is not actually the Completion Certificate of the work

without finalizing the warranty issue. The materials supplied and

installed by the M/s. ITI Limited, Lucknow are not genuine and the rate quoted by the M/s ITI Limited, Lucknow is excessive. There was an excess payment of bills more than the actual work for different items executed and implemented by the M/s ITI Limited, Lucknow for 20 Smart classes. For example, rate quoted by the M/s ITI Limited, Lucknow for wall paneling is very much in excess in comparison with the rate quoted by the local Company/supplier. The actual area of the wall paneling executed by the M/s ITI Limited, Lucknow for the Smart Classes was only 500.4 Sq. Meters whereas the bill for 840.32 Sq. Meters was paid to the M/s ITI Limited, Lucknow. Therefore, there was an excess payment of Rs.45,91,265.44/-. Therefore, the finding of the Committee on this allegation is against Prof. A.P. Pandey, Vice Chancellor, Manipur

University.

vii

That, in contravention of the Rules and Regulations of the Manipur University the present VC of Manipur University made a deal with another Lucknow based firm for supply of examination answer sheets at the rate of Rs. 24 per sheet which was previously supplied by a

local firm at the rate of Rs. 5 per sheet. This succinctly

shows that the office of the VC of Manipur University has been awfully abused for personal ulterior motive, i.e. to gain huge monetary profit, and thereby allowing to

expend disproportionately from the exchequer profit.

Prof. A.P. Pandey utterly failed to see that Manipur University Act, the Statutes, the Ordinances of the Manipur University and Resolution were duly adhered to in spending a huge amount of money in terms of lakhs in purchasing the examination answer sheets/book and also that the new answer book supplied by M/s Image Infocom Pvt. Ltd.

Lucknow is defective and not feasible. Therefore, the finding of

the Committee on this allegation is against Prof. A.P. Pandey, Vice Chancellor, Manipur University.

viii

That, the VC of Manipur University has failed to implement and start the much awaited courses of L.L.M., M.A. Fine Arts and M. Ed. scheduled to get started in 2017 academic session.

Prof. A.P. Pandey failed to start the LLM, MA Fine Arts and M. Ed courses scheduled to get started in 2017 Academic Session. Therefore, the finding of the Committee on this allegation is against Prof. A.P. Pandey, Vice Chancellor, Manipur University.

ix

That, the VC of Manipur University indulges in corruption as huge amounts are collected in the recruitment for several posts recruited by way of contract basis. These posts are filled in contravention to University Rules as they are conducted without notification.

Prof. A.P. Pandey appointed 9 (nine) contract employees without following any constitutional schemes for appointment and also in violation of the provision of Employment Exchange (Compulsory Notification of Vacancies) Act (31 of 1959) and the procedure prescribed for appointment under the Manipur University Act and the Statutes of the Manipur University. However, no materials are available for substantiating the allegations against Prof. A.P. Pandey that he indulged in large scale of corruption as he collected a huge amount of money from the candidates in connection with the recruitment of several posts by way of contract basis.

x

That, the VC of Manipur

University has transgressed the very sanctity of the Institution when the chamber of the VC when several unknown women, contractors, businessmen and officials of the University have been partying in the said chamber in the night reportedly with indulgence of immoral conducts which tantamount the demeaning of the office of the VC.

There is no material for substantiating this allegation against Prof. A.P. Pandey, Vice Chancellor, Manipur University.

xi

That, the VC of Manipur University has deliberately filled the Statutory posts like that of the Registrar, the Controller of Examinations, Librarian and Curator under 'in charge mode' to possess the ultimate monopolistic power to control the University without any checks.

Prof. A.P. Pandey failed to take up prompt steps for filling up the statutory posts of the Registrar, the Controller of Examinations, the Librarian and the Museum Curator except the advertisement dated 05.08.2017 and after such

advertisement there was no follow up action for selection of the candidates applied for the said posts. There were no materials to show that Prof. A.P. Pandey was conscious of this duties and obligations to act promptly and reasonably for filling up the statutory posts of the Registrar, the Controller of Examinations, the Librarian and the Museum Curator. Therefore, the finding of the Committee on this allegation is against Prof. A.P. Pandey, Vice Chancellor, Manipur University.

xii

That, the VC of Manipur University has utterly failed in his capacity as an responsible administrator as thousands of student have to face the brunt during the issuance of original certificates by taking 30-45 days' while the same/ process was completed within a period of 2-3 days before his tenure-ship.

Prof. A.P. Pandey did not perform his duties of signing the original

certificate promptly within the stipulated timeframe for signing the original certificates. Therefore, the finding of the Committee on this allegation is against Prof. A.P. Pandey, Vice Chancellor, Manipur University.

xiii

That, the mismanagement and ill conduct of the VC of Manipur University has led to the destruction of academic calendar of the University as the competent authority in connivance with the VC has failed to conduct semester examination in time and declaration of results of the same in time.

Academic calendar was not strictly followed and considerable time was taken for declaration of the results. It is really miserable to see that there were blatant lapses in some of the departments in maintain the academic calendar. The particulars of the said departments would be very clear from the foregoing paras dealing with the terms of reference no. (xiii). There is no reason as to why Prof. A.P. Pandey was sitting idle when there was a failure to conduct Semester examination in time and declaration of the results on time. Therefore, the finding of the Committee on this allegation is against Prof. A.P. Pandey, Vice

Chancellor, Manipur University.

xiv

That, the VC of Manipur University has failed to ensure the completion of the "The one year courses in Center for Myanmar Studies and Human Rights" within the stipulated time as the completion of the said courses takes two years time against the previous precedent where it took only one year.

One year Courses in the Centres of Myanmar Studies and Human Rights were not completed within one year after Prof. A.P. Pandey took the charge of Vice Chancellor, Manipur University on 26.10.2016. Therefore, the finding of the Committee on this allegation is

against Prof. A.P. Pandey, Vice
Chancellor, Manipur University.

xv

That, the VC of Manipur University allowed the students being harassed and threatened psychologically as they are frisked with utter disrespect by his scrutiny guards while entering his chamber.

We took extreme care for following the principle of natural justice by giving ample opportunities to Prof.

A.P Pandey to submit his say but for reason best known to him, he blatantly declined to give his reply to the serious allegations against him. Direct statements of the witnesses supporting this allegations the terms of reference no. (xv) were not controverted by Prof. A.P Pandey himself and his Security Staffs. Under the law, direct statement of victims on a point will be accepted if their statements are not contravened/shaken by the adverse party. Therefore, the finding of the Committee on this allegation is against Prof. A.P Pandey, Vice Chancellor, Manipur University.

xiv

Arbitrary and illegal donation of Rs.2 lacs from Manipur University funds to student group, ABVP.

Same as given at S. No. (v) above.

xvii

Wilful failure to make permanent appointment to key posts such as Registrar, COE, Librarian and Museum Curator, which aids him in taking arbitrary decisions concerning these posts.

Same as given at S. No. (xi) above.

xviii

Taking frequent leaves without informing the University about his return date, and spending around Rs. 8 crore in travelling expenses so far during his tenure.

Same as given at S. No. (i) above.

58. Much was argued by learned Senior Counsel to support this contention by citing certain illustrations, such as the contents of para 4 of the Show Cause Notice. Reading of para 4 reveals that all that is stated in para 4 is that a Show Cause Notice was being issued to explain why the Petitioner be not removed from the post of Vice-Chancellor and in this context there is reference to an alleged misconduct, dereliction of duties, abuse of power and lack of commitment, causing harm to the academic environment and bringing the

University into disrepute. In my view, these are not the findings of the Inquiry Officer but are being mentioned as consequences of the delinquencies of the Petitioner, on which categorical findings have been given by the Inquiry Officer, proving the charges against him. It would be not only incorrect but unfair for the Petitioner to contend that contents of para 4 are findings in excess of the Terms of Reference. Naturally, if a person holding the pivotal post of a Vice-Chancellor commits irregularities (which are proved in an inquiry), the consequential effect is harm to the academic environment and disrepute to the University and this is all that is stated in the Show Cause Notice, as a conclusion drawn. Petitioner is adopting a hair-splitting approach in reading the contents of the notice.

59. Learned Senior Counsel assailed the very issuance of the Terms of Reference by Prof. Dorendrajit Singh, challenging his competency and jurisdiction to issue the same. Learned counsel for the Respondent has explained that the University had instantly conveyed the decision of the Ministry disapproving the appointment of Prof. Dorendrajit Singh as Registrar and to reappoint Prof. Shyamkesho Singh, however, the situation was extremely volatile in the University and the necessary action could not be taken. This cannot, however, take away the fact that at that stage the Petitioner chose to accept the position and did not challenge it in any court of law. In fact, by his conduct of not participating in the Inquiry, it is not open for him to even raise this contention in the present proceedings, particularly when this objection was open to him, when he filed a writ petition before the Manipur High Court and he chose not to do so.

60. I am conscious of the fact that in law, even if the Inquiring Authority proceeded against the Petitioner ex-parte, it did not absolve the Respondents from proving the charges by leading evidence. In order to satisfy that the charges have been proved on the basis of evidence produced before the Committee, this Court has delved into the Inquiry Report and the evidence that came forth before the Committee.

61. It is noticed that the Inquiry Committee has elaborately considered the charges leveled as also the material placed before it in the form of documentary evidence as well as the affidavits of the witnesses. Committee examined as many as 16 witnesses and a plethora of documents, such as 11 documents by the Registrar, 31 sets of documents from MUTA, 16 sets of documents from MUSA, amongst others. As a point of illustration, I may note hereinafter some portions of the evidence/findings of the Committee with respect to some of the 'Terms of Reference' only with a view to bring on record that there was sufficient evidence/material before the Inquiry Committee for arriving at the 'findings' against the Petitioner :-

(a) Terms (i) and (xviii)

- Mr. S. Jibon Singh, was examined as witness No. 10 on 05.11.2018. He exhibited 68 documents in support of his statement that Prof. A.P. Pandey was out of station for a period of more than 180 days.

- Statement dated 15.09.2018 in the form of an Affidavit of Dr. Irom Tomba Singh, President MUTA was on similar lines. He was examined as witness No. 14 on 06.11.2018 and he additionally deposed that Petitioner had attended his office for about 272 days only, out of 452 working days.

- Mr. S. Jugol Singh, PA to Vice Chancellor, Manipur University on 13.11.2018, in presence of the Nodal Officer and also the Secretary of the Committee, stated that two persons in the staff appointed by Prof. A.P. Pandey prepared tour programmes for him, which were beyond his knowledge and their services have also been terminated for the misconduct.

- Shri Soram Jibankumar Singh, President, MUSA filed his statement on 15.09.2018 in the form of an Affidavit and reiterated that Prof. A.P. Pandey was out of station for a period of more than 180 days.

Finding of the Committee is as under:

"145. Prof. A.P. Pandey, Vice Chancellor, Manipur University visited his home town on a number of occasions and TA/DA for his wife were also paid by the Manipur University. Most of his absences from the Manipur University were for visiting Delhi and other places including his hometown, Banaras. Except in some cases, Prof. A.P. Pandey did not mention the particulars of his official visits. During the period from 26.10.2016 to 30.05.2018, having a total period of 583 days of which there were 452 working days (583 minus 131 days, being Sundays, Second Saturdays and holidays), Prof. A.P. Pandey was absent from the Manipur University as well as the State of Manipur for about 189 days. His absences of 189 days could not be justified from the records available in Manipur University and the total expenditure of Rs. 27,61,181/- (Rupees twenty seven lakhs sixty one thousand one hundred and eighty one) for payment of TA/DA of Prof. A.P. Pandey and his wife is not justified and not acceptable. Therefore, the finding on the terms of reference nos. (i) and (xviii) is against Prof. A.P. Pandey, Vice Chancellor, Manipur University."

(b) Term (iii)

- Shri Soram Jibankumar Singh, President MUSA and Shri Irom Tomba Singh, President MUTA filed their statements dated 15.09.2018 in the form of affidavits, stating that when the matter for Convocation was put up by MUTA and MUSA, Prof. A.P. Pandey refused to entertain the same.

Finding of the Committee qua this Term of Reference is as below:

"147. There was no Convocation of the Manipur University during the relevant period i.e. 26.10.2016 to 30.05.2018 (while Prof. AP. Pandey was the Vice Chancellor of Manipur University) but in the name of preparation for holding 15th Convocation a sum of Rs. 9,02,400/- (Rupees nine lakhs two thousand and four hundred) had been spent for making Gold Medals and also another sum of Rs. 3,39,000/- (Rupees three lakhs and thirty nine thousand) for supply of Manipuri Traditional Dresses in connection with the 15th Convocation without following

any procedures prescribed. The finding on the terms of reference No. (iii) is against Prof. A.P. Pandey, Vice Chancellor, Manipur University."

(c) Term (vi)

- Dr. Irom Tomba Singh, President, MUTA was examined as witness No. 14. He stated that the University, under the influence of Prof. A.P. Pandey, did not undertake Notice Inviting Tender through E-Tender for the supply of necessary items and materials including smart class boards, accessories and also for installation charges amounting to Rs. 5 Crores. In violation of the tender process, a Lucknow-based firm 'M/s ITI Limited supplied the materials and was given the task of installing smart classes. He also stated that actual area covered by the Wall Paneling for smart classes in all the class rooms have been overestimated. It is pertinent to note that all requisites of a Smart Class Room had not been fulfilled.

- Mr. Soram Jibankumar Singh, President, MUSA was examined as witness No. 10. He exhibited 13 documents, relating to meetings of the University Purchase Committee, work orders/bills with M/s ITI Limited, etc.

- Mr. RK. Joteen Singh, Deputy Registrar (Purchase Officer), Manipur University was examined as witness No. 16. He stated that NIT is required for purchase works and construction exceeding an amount of Rs. 1 Lakh. He pointed out that no Notice Inviting Tender was issued with regard to the work and installation carried out for Smart Class Rooms even though the amount spent for installation of Smart Classrooms and supply of materials for the Smart Classes was well beyond this. The proposal came directly from Prof. A.P. Pandey.

- On 15.11.2018, the Inquiry Committee passed an order for conducting physical verification of the works executed by M/s ITI Limited, Lucknow, for setting up 20 Smart Classes and the material supplied. The Physical Verification Committee was comprised of (i) One or Two Members of the Independent Two Member Enquiry Committee, (ii) Two representatives of MUSA, (iii) Two representatives of MUSU, (iv) Two representatives of MUTA, (v) University Engineer, (vi) Expert member (whose name was to be submitted by the University Community), (vii) Secretary of the Committee, (viii) Nodal officer of the Committee and (ix) Administrator, Manipur University or his Nominee. One Prof. Kh. Manglem, HOD, Computer Science, National Institute of Technology (NIT), Imphal was appointed as the Expert Member of the Committee. The Physical Verification Committee conducted the verification on 13.12.2018, 14.12.2018, 15.12.2018 and 18.12.2018 and after recording measurements and other details submitted a detailed report in a tabular form.

Taking into account, the Report and other evidence, the Inquiry Committee rendered the following finding:

"150. in clear violation of the Ordinance B-11 of the Manipur University for procurement of the goods of Manipur University and procedure prescribed under

GFR Rules, 2005 of the Government of India as amended from time to time, Prof. A.P. Pandey, Vice Chancellor, Manipur University initiated directly to allocate the work of installation of Smart Classes to M/s ITI Limited, Lucknow. The bills were paid in the name of Completion Certificate of work, which is not actually the Completion Certificate of the work without finalising the warranty issue. The materials supplied and installed by the M/s ITI Limited, Lucknow are not genuine and the rate quoted by the M/s ITI Limited, Lucknow is excessive. There was an excess payment of bills more than the actual work for different items executed and implemented by the M/s ITI Limited, Lucknow for 20 Smart Classes. For example, rate quoted by the M/s ITI Limited, Lucknow for wall panelling is very much in excess in comparison with the rate quoted by the local company/supplier. The actual area of the wall panelling executed by the M/s ITI Limited, Lucknow for the Smart Classes was only 500.4 Sq. meters whereas the bill for 840.32 Sq. meters was paid to the M/s ITI Limited, Lucknow. Therefore, there was an excess payment of Rs. 45,91,265.44/-. Accordingly, the finding on the terms of reference no. (vi) is against Prof. A.P. Pandey, Vice Chancellor, Manipur University."

(d) Term (vii)

- Prof. Irom Tomba Singh, President, MUTA and Mr. Soram Jibankumar Singh, President, MUSA filed their statements in the form of affidavits stating that Prof. A.P. Pandey arbitrarily issued the supply order of new answer scripts without complying with the related provisions of law and norms in favour of M/s Image Infocom (P) Ltd., Lucknow. President, MUSA, witness No. 40 exhibited 8 documents relating to supply orders, bills, etc. for marksheets.

Finding of the Committee are as below:

"151. Prof. A. P. Pandey utterly failed to see that Manipur University Act, the Statutes, the Ordinance of the Manipur University and Resolution were duly adhered to in spending a huge amount of money in terms of lakhs mentioned in the foregoing paras in purchasing the examination answer sheets/book and also that the new answer book supplied by M/s Image Infocom Pvt. Ltd., Lucknow (at SI. No. 58A of the list of documents) is defective and not feasible. Accordingly, the finding on the terms of reference no. (vii) is against Prof. A.P. Pandey, Vice Chancellor, Manipur University."

(e) Term (viii)

- Dr. I. Tomba Singh, witness No. 14, President, MUTA and Dr. Amar Yumnam, witness No. 9 stated that Manipur University had taken a decision to introduce courses of LL.M., M.A.(Fine Arts) and M.Ed. from the Academic Session of 2017. This matter was completely ignored by Prof. A.P. Pandey

- Mr. Jarnail Singh, Administrator, Manipur University, witness 15 stated that while guest lecturers were appointed for LL.M. and B.A. Fine Arts, the M.Ed. program could not be initiated due to withdrawal of permission

Finding of the Committee is as under:

"152. Prof. A. P. Pandey failed to start the LL.M., MA Fine Arts and M.Ed Courses scheduled to get started in 2017 Academic Session. Accordingly, the finding on the terms of reference no. (viii) is against Prof. ALP. Pandey, Vice Chancellor, Manipur University."

(f) Term (ix) was 'not proved'.

(g) Term (x) was 'not proved'. The Committee observed that no serious attempt was made by the University or other stakeholders to substantiate the allegation.

Finding of the Committee is as under:

"154. There is no materials for substantiating the terms of reference no. (x) against Prof. A.P. Pandey, Vice Chancellor, Manipur University."

(h) Terms (xi) and (xvii)

- Statement of Mr. Jarnail Singh, Administrator, Manipur University was recorded as witness No. 15. He highlighted the failure on the part of Prof. A.P. Pandey to take prompt steps for filling up statutory posts of Registrar, Controller of Examinations, Librarian and Museum Curator except for the advertisement dated 05.08.2017.

Finding of the Committee is as under:

"155. Prof. A. P. Pandey failed to take up prompt steps for filling up the statutory posts of the Registrar, the Controller of Examinations, the Librarian and the Museum Curator except the advertisement dated 05.08.2017 and after such advertisement there was no follow up action for selection of the candidates applied for the said posts. There were no materials to show that Prof. A.P. Pandey was conscious of this duties and obligations to act promptly and reasonably for filling up the statutory posts of the Registrar, the Controller of Examinations, the Librarian and the Museum Curator. Accordingly, the findings on the terms of reference no. (xi) and (xvii) are against Prof. A.P. Pandey, Vice Chancellor, Manipur University."

(i) Term (xiii)

- Prof. Irom Tomba Singh, President, MUTA and Mr. Soram Jibankumar Singh, President, MUSA filed their statements in the form of duly sworn affidavits that Prof. A.P. Pandey failed to conduct semester examinations and declare results on time.

- Mr. Angom Narayan Singh, Controller of Examinations (i/c), Manipur University and Prof. N. Ibotombi Singh, Former Controller of Examinations (now engaged as OSD, Manipur University) appeared in person before the Committee along with a report mentioning the dates of semester Examinations, result sheets and academic calendars.

Finding of the Committee are:

"157. Academic calendar was not strictly followed and considerable time was taken for declaration of the results. It is really miserable to see that there were blatant lapses in some of the departments in maintaining the academic calendar. The particulars of the said departments would be very clear from the foregoing paras dealing with the terms of reference no. (xiii). There is no reason as to why, Prof. A.P. Pandey was sitting idle when there was a failure to conduct Semester examination in time and declaration of the results on time. Therefore, the finding on the terms of reference no. (xiii) is against Prof. A.P. Pandey, Vice Chancellor, Manipur University."

(j) Term (xiv)

- Shri Soram Jibankumar Singh, President (MUSA), witness No. 10, Prof. Irom Tomba Singh, President (MUTA), witness No. 14 and Mr. Mayanglambam Dayaman Singh, President (MUSU), witness No. 2 recorded their statements in the form of duly sworn affidavits that during Prof. A.P. Pandey's tenure, there was an inordinate delay in the completion of one year course in the Centres for Myanmar Studies and Human Rights.

- Witness No. 15, Mr. Jarnail Singh, the Administrator, Manipur University stated that one year diploma course in Burmese/Myanmar language and One year P.G. Diploma Course in Human Rights & Duties Education for the academic session 2018-19 respectively had been taken up only after he took the charge as Administrator of the Manipur University on 12.10.2018.

Finding of the Committee is as under:

"158. One year Courses in the Centres of Myanmar Studies and Human Rights were not completed within one year after Prof. A.P. Pandey took the charge of Vice Chancellor, Manipur University on 26.10.2016. Therefore, the finding on the terms of reference no. (xiv) is against Prof. A.P. Pandey, Vice Chancellor, Manipur University."

(k) Term (xv)

- Mr. Mayanglambam Dayaman, witness No. 2 stated that Prof. A.P. Pandey used to harass the students psychologically by subjecting them to frisking by his security personnel before meeting him as if the students were the members of the underground organisations. He mentions specific instances that took place on 06.02.2018 and 16.02.2018

- Witness No.6, Mr. Irengbam Naocha Singh stated before the Committee that Prof. A.P. Pandey treated the students' community in a discriminatory way as if they were members of insurgent groups of Manipur and the students were subjected to frisking and also asked to keep their bags outside the office chamber of the Vice Chancellor

Finding of the Committee is as follows:

"159. We took extreme care for following the principle of natural justice by giving ample opportunities to Prof. AP. Pandey to submit his say but for reason best known to him, he blatantly declined to give his reply to the serious allegations against him. Direct statements of the witnesses 'supporting this . allegation i.e. terms of reference no. (xv) were not controverted. by Prof. A. P. Pandey himself and his Security Staffs. Under the law, direct: statements of witnesses/victims on a point will be accepted if their statements are not controverted/shaken by the adverse party. The Committee has no alternative except the finding that the terms of reference no. (xv) is against Prof. A.P. Pandey, Vice Chancellor, Manipur University."

62. As seen from the record, the Inquiry Committee has examined each and every allegation levelled, looked into the evidence, both oral and documentary, and then concluded that most of charges were 'proved'. Wherever the Committee felt that there was no substantial evidence, it held the charges as 'not proved'. It is a settled law that in Departmental Inquiries, charges are only required to be proved on the principle of preponderance of probabilities and not beyond reasonable doubt, as in a criminal trial. In this context, I may refer to the judgments of the Supreme Court in *Union of India vs. Sardar Bahadur* (1972) 4 SCC 618 and *R.S. Saini v. State of Punjab*; (1999) 8 SCC 90 and *State Bank of India* (supra). Perusal of the record makes it evident that there was sufficient material before the Inquiry Committee both in the form of affidavits of the witnesses as well as documentary evidence for the Committee to conclude that the charges were proved against those Terms of Reference where it so concluded. Applying the principle of preponderance of probabilities, this is not a case where it can be pleaded that there was 'no evidence' before the Committee substantiating the charges leveled against the Petitioner. Sufficiency of evidence is not an arena in which this Court can enter into while exercising the power of judicial review under Article 226 of the Constitution of India. Appreciating evidence and coming to a finding after analyzing the same is the domain of the Inquiry Officer and cannot be interfered in by this Court.

63. As far as the argument of the Petitioner that the Disciplinary Authority has mechanically passed the dismissal order, without dealing with each and every point given by the Petitioner, in reply to the Show Cause Notice, is concerned, in my view, the said argument cannot be sustained. Perusal of the impugned order of dismissal dated 21.02.2020 shows that the Disciplinary Authority has carefully gone into the allegations made against the Petitioner as well as the pointwise reply given by the Petitioner to the Show Cause Notice. Disciplinary Authority has noted in its order, after examining the reply to the Show Cause Notice as well as the evidence led before the Inquiry Committee, that the allegations were substantiated. This included the conduct of the Petitioner with respect to the financial irregularities, violating the General Financial Rules as well as remaining away from the campus of the University for prolonged periods, adversely affecting the academic and administrative activities in the University. Disciplinary Authority had the benefit of the evidence as well as the analysis and findings of

the Inquiry Committee and the stand of the Petitioner in defence. The Authority has applied its mind to the defence raised and looked into the evidence, which becomes evident from a reading of the order. Having examined the matter in its entirety, the Authority was of the view that the misconduct of the Petitioner deserved penalty of dismissal. A holistic reading of the order does not support the argument of the Petitioner that the order was passed mechanically.

64. For all the aforesaid reasons, I find no merit in the writ petition and the same is accordingly dismissed along with pending application. During the pendency of the petition, Respondents had given an assurance that they will not make fresh appointment of the Vice-Chancellor of the Manipur University pursuant to an advertisement issued by them on 16.03.2020. Since the writ petition has been dismissed, Respondents are absolved of their assurance and are at liberty to take steps to make fresh appointment to the post of Vice-Chancellor of the Manipur University.