
(2007) 06 AHC CK 0051
In the Allahabad High Court

Prof. Ramesh Chandra, Vice Chancellor Bundelkhand
University

APPELLANT

Vs

State of Uttar Pradesh and Sri Sovoran Singh Yadav, Ex.
Commissioner, Jhansi Region (Enquiry Officer)

RESPONDENT

Date of Decision : 11-06-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 356
Criminal Procedure Code, 1973 (CrPC) — Section 345, 346
Customs Act, 1962 — Section 45
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (2007) 4 AWC 3181 : (2008) 2 UPLBEC 117

Hon'ble Judges : Rajes Kumar, J; B.S. Chauhan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—The petitioner seeks the quashing of the order dated 16th July, 2005 At passed by the Chancellor of the Bundelkhand University, Jhansi as well as the enquiry report dated 2nd June, 2005 submitted by the Commissioner, Jhansi Division, Jhansi.

2. The petitioner was at the relevant time functioning as the Vice-Chancellor, of the Bundelkhand University, Jhansi (hereinafter referred to as the "University") which was established under the provisions of U.P. State Universities Act, 1973 (hereinafter referred to as the "Act"). This was his second tenure of three years and was in continuity of his earlier tenure from 1999 to 2002 and was to come to an end on 31 July, 2005 but the Chancellor of the University by the order dated 16th July, 2005 purporting to exercise his powers u/s 12(12) of the Act removed the petitioner. The said removal order was preceded by issuance of a show cause notice dated 24th June, 2005 issued by the Chancellor of the University whereby the petitioner was required to submit his explanation as to why he should not be removed from the office of the Vice-Chancellor under, Section 12(12) of the Act on the basis of the enquiry report which was enclosed, with the said notice. This

enquiry report dated 2nd June, 2005 had been submitted by the Commissioner, Jhansi pursuant to the directions issued by the V State Government u/s 8(1) of the Act.

3. Sri R. Venkataramani, learned Senior Counsel for the petitioner duly assisted by Sri Shailendra, Shri G.K. Singh and Ms. Neela Gokhale submitted that the order for removal of the Vice-Chancellor could be passed by the Chancellor of the University u/s 12(12) of the Act only after complying with the requirements set forth in the sub-section but in complete defiance of the aforesaid provisions and in violation of the principles of natural justice, the Chancellor of the University passed the impugned order for removal of the Vice-Chancellor. Elaborating his submissions, he contended that the Chancellor could pass an order u/s 12(12) of the Act only after making such enquiry as he deemed proper, if in his opinion the Vice-Chancellor wilfully omitted or refused to carry out the provisions of the Act or abused the powers vested in him or if it otherwise appeared to him that the continuance of the Vice-Chancellor in " office was detrimental to the interest of the University. In the present case merely a copy of the enquiry report submitted by the Commissioner, Jhansi to the State Government u/s 8(1) of the Act was forwarded to the g petitioner enabling him to submit his explanation within 15 days as to why he should not be removed from office. He, therefore, submitted that the impugned order is liable to be set aside as it was passed in breach of the provisions of Section 12(12) of the Act and in the breach of principle of natural justice. He further submitted that earlier also complaints were made against the petitioner during his earlier tenure from 1999 to 2002 as Vice-Chancellor of the University; which were inquired into and rejected as were found to be false and baseless. However, subsequently similar complaints were again entertained in the year 2004 regarding the issues which had already been inquired into and it is on the basis of these complaints order impugned has been passed. He, therefore, submitted that it was not permissible for the Chancellor to rely upon the said report submitted by the Commissioner, Jhansi on stale allegations and take action against the petitioner for his removal in hot haste on 16th July, 2005 as his term was, in any case, going to expire on 31st July, 2005. The Chancellor passed the impugned order for malice against the petitioner. The Chancellor wrote letters to the Prime Minister and other Ministers against the petitioner during the pendency of enquiry on 12.05.2005 and again on 20.07.2005 (Annex. 2 to the supplementary affidavit) after removal. In the subsequent letter in the last part, i.e. para 6, the Chancellor informed the Prime Minister and Hon''ble Law Minister. That petitioner was a Dalit and had been very active in cultivating Dalit leaders in Delhi which was unwarranted and uncalled for on his part. Petitioner submitted the resignation on 16.07.2005, which was not accepted for the reason that the Chancellor was determined to remove the petitioner. The allegations/charges, which stood proved, even if for the sake of argument, are accepted, did not warrant removal of the petitioner. The order impugned is liable to be quashed.

4. Sri Neeraj Tripathi, learned Counsel appearing for the Chancellor of the

University, however, submitted that there is no particular procedure provided u/s 12(12) of the Act for removal, of the Vice-Chancellor of the University and wide discretion has been given to the Chancellor of the University to pass an order after making such enquiry as he deemed proper and, therefore, no infirmity can be attached to the order if the Chancellor of the University thought it proper to merely enclose a copy of the enquiry report submitted by the Commissioner, Jhansi u/s 8(1) of the Act and call for an explanation from the petitioner within 15 days. His contention, therefore, is that is proper opportunity of hearing was given to the petitioner and no prejudice was caused to him on account of failure to hold a regular enquiry after issuance of a charge sheet. He further submitted that it was permissible to the Chancellor of the University to take cognizance of the complaints relating to his previous tenure as Vice-Chancellor of the University. Complaints received by the Chancellor directly had also been forwarded to the Inquiry Officer appointed by the State Government u/s 8(1) of the Act. Thus, no fault can be found with the impugned order.

5. We have carefully considered the submissions advanced by the learned Counsel for the parties.

6. "However, before we proceed to consider the rival contentions advanced by the learned Counsel for the parties, we consider it necessary to take a quick glance of the relevant provisions of the Act. Chapter IV of the Act deals with the "Officers" of the University. The Vice-Chancellor is an Officer of the University u/s 9 of the Act and Section 12 of the Act which deals with the Vice-Chancellor provides that he shall be a whole time salaried Officer of the University and shall be appointed by the Chancellor and shall hold office for a term of three years from the date he enters in the office. The emoluments and other conditions of service of the Vice-Chancellor are determined by the State Government. Section 12(12) of the Act which deals with the removal of the Vice-Chancellor was inserted by the U.P. Act No. 20 of 1994 w.e.f. 15th July, 1994 and is as follows:

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

7. The powers and duties of the Vice-Chancellor are enumerated in Section 13, of the Act which inter alia provides that the Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University; shall give effect to the decisions of the University; shall be responsible for the maintenance of discipline in the University; shall be responsible for holding and conducting the University examinations properly and at due time and for ensuring that the results of such examinations are published expeditiously and that the academic session of the University starts and ends on proper dates. He shall also be an Ex Officio Member and Chairman of the Executive Council, Academic Council and the

Finance Committee.

8. Section 8 of the Act deals with Visitation and the relevant provisions are as follows:

Visitation.- (1) The State Government shall have the right to cause an inspection to be made by such person or persons as it may direct, of the University or any constituent college or any Institute maintained by the University, including its building, libraries, laboratories, workshops and equipment and also of the examinations, teaching and other work conducted or done by the University or such colleges or Institute or to cause an inquiry to be made in the like manner in respect of any matter connected with the administration and finances of the University or such college or such Institute.

(2) Where the State Government decides to cause an inspection or inquiry to be made under sub-section (1), it shall inform the University of the same through the Registrar, and any person nominated by the Executive Council may be present at such inspection or inquiry as representative of the University and he shall have the right to be heard as such:

Provided that no legal practitioner shall appear, plead or act on behalf of the University at such inspection or inquiry.

(3) The person or persons appointed to inspect or inquire under Sub-section (1) shall have all the powers of a Civil Court, while trying a suit under the Code of Civil Procedure, 1908, for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and compelling production of documents and material objects and shall be deemed to be a Civil Court within the meaning of Sections 345 and 346 of the Code of Criminal Procedure, 1973 to be judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.

(4) The State Government shall address the Vice-Chancellor with reference to the result of such inspection or inquiry, and the Vice-Chancellor shall communicate to the Executive Council the views of the State Government with such advice as the State Government may offer upon the action to be taken thereon.

(5) The Vice-Chancellor shall then within such time as the State Government may fix, submit to it a report of the action taken or proposed to be taken by the Executive Council.

(6) If the University authorities do not within a reasonable, time take action to the satisfaction of the State Government, the Government may, after considering any explanation which the University authorities may furnish, issue such directions as it may think fit, and the University authorities shall be bound to comply with such directions.

(7) The State Government shall send to the Chancellor a copy of every report of an inspection or inquiry caused to be made under Sub-section (1) and of every

communication received from the Vice-Chancellor under Sub-section (5) and of every direction issued Sub-section (6) and also of every report or information received in" respect of compliance or non-compliance with such direction.

(8) Without prejudice to the provision of Sub-section (6) if the Chancellor on consideration of any document or material referred to in Sub-section (7) of this section include any report of an inquiry held before the commencement of this Act, is of opinion that the Executive Council has failed to carry out its functions or has abused its powers, he may, after giving it an opportunity of submitting a written explanation, order that in Supersession of the said Executive Council, an ad hoc Executive Council, consisting of the Vice-Chancellor and such other persons not exceeding ten in number as the Chancellor may appoint in that behalf including any member of the superseded Executive Council, shall for such period not exceeding two years as the Chancellor may from time to time specify and subject to the: provisions of Sub-section (11), exercise and perform all the powers and functions of the Executive Council under this Act.

9. The records of the writ petition indicate that u/s 8(1) of the Act, the State Government had caused an enquiry to be made against the University in respect of certain complaints that had been received and for that purpose had appointed the Commissioner, Jhansi as the Enquiry Officer. The said Commissioner submitted his enquiry report to the State Government on 2nd June, 2005 which was thereafter forwarded by the State Government to the Chancellor of the University on 21st June, 2005 and then the show-cause notice dated 24th June, 2005 was issued by the Chancellor of the University enclosing a copy of the enquiry report. The Vice-Chancellor was required to submit his explanation within 15 days as to why an order for his removal may not be passed.

10. A perusal of Section 8 of the Act shows that the State Government has the right to cause an inspection to be made, by such person or persons as it may direct, of the University, the examination, teaching and other work conducted or done by the University or cause an enquiry to be made in the like manner in respect of any matter connected with the administration and finances of the University. When such an enquiry is made, the State Government shall inform the University through the Registrar and any person nominated by the Executive Council can remain present at such enquiry as a representative of the University and he shall also have the right to be heard. The State Government has to address the Vice-Chancellor with the reference to the result of such an enquiry and the Vice-Chancellor is required to communicate to the Executive Council the views of the State Government with such advice as the State Government may offer upon action to be taken thereon. The Vice-Chancellor thereafter has to submit a report about the action taken by the Executive Council but in case such action is not taken within a reasonable time, the State Government can issue directions and the University is bound to comply with such directions. The State Government has also to send a copy of such report to the Chancellor along with .the records and the Chancellor may, without prejudice to the provisions of

the power of the State Government to issue directions u/s 8(6), after -giving an opportunity to the Executive Council supersede the Executive Council and appoint an ad hoc Executive Council.

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

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

(Emphasis added).

12. Section 8(1) and Section 12(12) of the Act, therefore, operate in entirely different fields as while the former deals with the power of the State Government to cause an enquiry to be conducted against the University in respect of matters connected with the administration and finances of the University, Section 12(12) of the Act specifically deals with the power of the Chancellor to remove the Vice-Chancellor of the University. In the present case, what initially originated an enquiry u/s 8(1) of the Act in respect of matters connected with the administration and finances of the University culminated in an order for removal of the Vice-Chancellor u/s 12(12) of the Act by the Chancellor. It is in the back drop of the aforesaid facts that the contentions of the learned Counsel for the parties have to be examined.

13. The report submitted by the Commissioner, Jhansi to the State Government pursuant to the enquiry set up by the State Government u/s 8(1) of the Act does make a mention of some irregularities committed by the Vice-Chancellor of the University and, therefore, it is necessary to examine the said report in so far as it deals with the Vice-Chancellor. The first irregularity mentioned in the said report is about the CPMT 2002 examination held by the University. It mentions that complaints had been received from Sri Ranjit Singh Joodev, M.L.C. and Sri Pradeep Jain Aditya, M.L.A. that previously 250 to 300 candidates would get selected from Bundelkhand Region but in the year 2002 Examination only 3 candidates were selected from Bundelkhand Region and that the records of the said examination were weeded out in the year 2003 without there being any directions and the name of the Computer Agency which was given the charge of holding the Examination was also not disclosed. The Inquiry Officer, therefore, held the Vice-Chancellor as indirectly responsible for the lapses/carelessness committed by the staff of the Computer Agency in the evaluation of the answer-sheets. The second irregularity said to have been committed by the Vice-Chancellor is again on the basis of the complaint submitted by Sri Ranjit Singh Joodev, M.L.C. and Sri Pradeep Jain Aditya, M.L.A. that the Vice-Chancellor had appointed 20 persons who were related to him or "were his friends while the third irregularity that had been found on the basis of the complaint made by Sri Pradeep Jain Aditya, M.L.A. is regarding the appointment of Ms. Charu Rewal and

Ms. Ritu Jain on a fixed salary basis without observing transparency while selecting them. The other irregularities relate to the expenditure incurred in the furnishing of the residence of the Vice-Chancellor, the expenditure incurred in the constructions made in the University and regarding the award of Ph.D. Degree to Sri K.K. Panda.

14. Learned Senior Counsel for the petitioner submitted that proper explanations had been given by the petitioner in respect of the said irregularities pointed out by the Commissioner, Jhansi in his report to the State Government but these had not been considered by the Chancellor and if proper enquiry had been held, the petitioner would have demonstrated that he was not responsible for the same. In this connection, he pointed out that 19 thousand students had appeared at the CPMT Examination 2002 and the 11 mistakes that had been detected were explained by the Computer Agency that had conducted the examination that the answer-sheets of these candidates were mutated due to excessive use of gums and adhesives as a result of which the Computer could not scan the answer-sheets and the candidates were awarded zero marks. He submitted that if proper opportunity had been given to the petitioner, he would have pointed out the aforesaid facts and even earlier in May, August, 2002 similar complaints were received which had been disposed of by the State Government as being baseless. Regarding appointments made on fixed salary basis, learned Senior Counsel submitted that all the appointments had been made in accordance with the provisions of Section 31 of the Act during his first tenure from 1999 to 2002 and Ashish Chandra possessed the requisite eligibility requirement for appointment. He, therefore, submitted that this could not have, been made a ground for his removal in the second tenure more particularly when the same complaints had also been examined earlier and were found to be baseless by the State Government. Regarding the appointment of Dr. Charu Rewal and Dr. Ritu Jain learned Senior Counsel submitted that they were Visiting/Guest Faculty and as per the University Grants Commission they could be limited to give lectures being specialist in the field and were paid on hourly basis. "Regarding the expenditure of Rs. 1,01,580/- incurred between 1999-2003 in the furnishing of the residence of the Vice-Chancellor, learned Senior Counsel submitted that the report of the Inquiry Officer does not point out any particular irregularity or non-compliance of any procedural part and even the Vice-Chancellor was not given any opportunity to meet these charges by the Inquiry Officer and nor any document in this-regard was supplied to him. In respect of the expenditure incurred on the constructions which were made in the University, learned Senior Counsel pointed out that the Vice-Chancellor had not been called upon by the Inquiry Officer to submit his explanation and purely on imaginary basis it has been concluded by the Inquiry Officer that the Vice-Chancellor was responsible for not protecting the University property. In respect of the award of Ph.D. Degree to Sri K.K. Panda learned Senior Counsel submitted that this complaint was made to the Chancellor in the year 1999 which was disposed of by the Chancellor as baseless by the letter dated 24th August, 2000 but the same complaint was again inquired into.

15. Learned Senior Counsel for the petitioner had taken us through the findings recorded by the Inquiry Officer and the explanation given by the petitioner only to emphasise that the absence of a regular inquiry by the Chancellor had caused great prejudice to him inasmuch as even the Commissioner, Jhansi had not held a regular inquiry against the Vice-Chancellor and if proper opportunity had been given to the petitioner, petitioner could have placed the correct factual position. He further submitted that the inquiry report submitted by the Commissioner, Jhansi could have at best persuaded the Chancellor to form an opinion that the Vice-Chancellor had wilfully omitted or refused to carry out the provisions of the Act or abused the power vested in him but after having formed such an opinion it was imperative for the Chancellor to have caused a proper enquiry in the matter.

16. The submission of the learned Counsel for the Chancellor is that by sending the notice to the petitioner to submit his explanation on the aforesaid report of Inquiry Officer, the Chancellor had made sufficient compliance of the provisions of Section 12(12) of the Act and he was justified in passing the impugned order after considering the reply submitted by the petitioner to the said notice,

17. As seen above, the power to remove the Vice-Chancellor is to be found in Section 12(12) of the Act but the said power cannot be exercised arbitrarily. It can be exercised only for the purposes set out in the sub-sections and only after holding a proper enquiry in a manner consistent with the principles of natural justice. This is the basic concept of the rule of law. Section 12(12) of the Act empowers the Chancellor to cause such an enquiry as he deems proper. The contention of the learned Senior Counsel for the petitioner is that even though discretion vests with the Chancellor regarding the manner in which such an enquiry has to be made against the Vice-Chancellor but such a discretion is not an absolute discretion and has to be in conformity with law.

18. In a case where a result of a decision taken by the Government the other party is likely to be adversely affected, the Government has to exercise its powers bona fide and not arbitrarily. The discretion of the Government cannot be absolute and unjusticiable *Vide Amarnath Ashram Trust Society v. Governor Of U.P.* AIR 1998 SC 477.

19. Each action of such authorities must pass the test of reasonableness and whenever action taken is found to be lacking bona fide and made in colourable exercise of the power, the Court should not hesitate to strike down such unfair and unjust proceedings. *Vide Hansraj H. Jain Vs. State of Maharashtra and Others,*

20. In fact, the order of the State or State instrumentality would stand vitiated if it lacks bona fides as it would only be a case of colourable exercise of power. In *State of Punjab and Another Vs. Gurdial Singh and Others*, the Hon'ble Apex Court has dealt with the issue of legal malice which is, just different from the concept of personal bias. The Court observed as under:

When the custodian of power is influenced in its exercise by considerations

outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion.... If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impels the action mala fides or fraud on power vitiates the...official act.

21. In Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, and Dwarka Das and Others Vs. State of Haryana, , the Supreme Court observed that "discretion when conferred upon the executive authorities, must be confined within definite limits. The rule of law from this point of view means that decision should be made by the application by known-principles and rules and in general, such decision should be predictable and the citizen should know where he is.

22. The scope of discretionary power of an authority has been dealt with by the Supreme Court in Bangalore Medical Trust Vs. B.S. Muddappa and others, and it has been observed:

....Discretion is an effective tool in administration. But wrong notions about it results in ill-conceived consequences. In law it provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authorities to abuse the law or use it unfairly....

(Emphasis supplied).

23. In Suman Gupta and Others Vs. State of Jammu & Kashmir and Others, , the Supreme Court also considered the scope of discretionary powers and observed:

....We think it beyond dispute that the exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason - relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting its valid exercise than its governance by these twin tests. A stream of case law radiating from the now well known decision in this Court in Maneka Gandhi v. Union of India has laid down in clear terms that Article 14 of the Constitution is violated by powers and procedures which in themselves result in unfairness and arbitrariness. It must be remembered that our entire constitutional system is founded in the rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason....

(Emphasis supplied)

24. In *Union of India v. Kuldeep Singh* AIR 2004 SC 827, the Supreme Court again observed:

When anything is left to any person, judge or Magistrate to be done according to his discretion, the law intends it must be done with sound discretion, and according to law. (See Tomlin's Law Dictionary.) In its ordinary meaning, the word "discretion" signifies unrestrained exercise of choice or will; freedom to act according to one's own judgment; unrestrained exercise of will; the liberty or power of acting without control other than one's own judgment. But, when applied to public functionaries, it means a power or right conferred upon them by law, of acting officially in certain circumstances according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. Discretion is to discern between right and wrong; and therefore, whoever hath power to act at discretion, is bound by the rule of reason and law. (See Tomlin's Law Dictionary.)

Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, the discernment which enables a person to judge critically of what is correct and proper united with caution; nice soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colourable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself (per Lord Halsbury, L.C., in *Sharp v. Wakefield*. Also see *S.G. Jaisinghani v. Union of India*).

The word "discretion" standing single and unsupported by circumstances signifies exercise of own judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore, where the legislature concedes discretion it also imposes a heavy responsibility.

(Emphasis supplied)

25. It has, therefore, to be examined in the light of the aforesaid limitations placed by the Hon'ble Supreme Court upon an authority while exercising discretion as to whether the Chancellor was justified in restricting the scope of the enquiry merely to the issuance of a notice with a copy of the report of the Commissioner, Jhansi but before doing that it would be useful to reproduce what the Supreme Court said in *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors.* AIR 2001 SC 24 while examining the legality of an order of dismissal that had been passed against the General Manager (Tourism) by the

Managing, Director. In this context, while considering the doctrine of principles or natural justice, the Supreme Court observed:

It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact, turned out to be an integral part of administrative jurisprudence of this country. The judicial process itself embraces a fair and reasonable opportunity to defend though, however, we may hasten to add that the, same is dependant upon the facts and circumstances of each individual case.... It is on this context, the observations of this Court in the case of Sayeedur Rehman Vs. The State of Bihar and Others, seem to be rather apposite. This Court observed (para 7).

The omission of express requirement of fair hearing in the rules or other source of power...is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties.

Incidentally, Hidayatullah, C.J., in Channabasappa Basappa Happali Vs. The State of Mysore, recorded the need of compliance of certain requirements in a departmental enquiry as at an enquiry, facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence. On this state of law simple question arises in the contextual facts, has this been complied with? The answer however on the factual score is an emphatic "no".

The sixty-five page Report has been sent to the Managing Director of the Nigam against the petitioner recording therein that the charges against him stand proved what is the basis? Was the Inquiry Officer justified in coming to such a conclusion on the basis of the charge-sheet only? The answer cannot possibly be in the affirmative. If the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records-unfortunately there is not a whisper in the rather longish report in that regard. Where is the Presenting Officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish Report. But if one does not have it-Can it be termed to be in consonance with the concept of justice or the same tantamounts to a total miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend out concurrence therewith. The whole issue has been dealt with in such a way that it cannot but be termed to be totally devoid of any justifiable reason and in this context a decision of the King's Bench Division in the case of Denby (William) and Sons Limited v. Minister of Health (1936) 1 KB 337 may be considered Swift, J. while dealing with the administrative duties of the Minister has the following to state:

I do not think that it is right to say that the Minister of Health or any other officer

of the State who has to administer an Act of Parliament is a judicial officer. He is an administrative officer, carrying out the duties of an administrative office, and administering the provisions of particular Acts of Parliament. From time to time, in the course of administrative duties, he has to perform acts which requires him to interfere with the rights and property of individuals, and in doing that the courts have said that he must act fairly and reasonably; not capriciously, but in accordance with the ordinary dictates of justice. The performance of those duties entails the exercise of the Minister's discretion, and I think what was said by Lord Halsbury in *Sharp v. Wakefield* (1891) AC 173, 179 is important to consider with reference to the exercise of such discretion. He there said: "Discretion" means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion : *Rooke's case* (1598) 5 Co Rep 99b 100a; according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.

(Emphasis supplied)

26. The Supreme Court, therefore, found no fault with the judgment of the High Court which had quashed the dismissal - order as it was passed in contravention of the principles of natural justice.

27. When the Statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. It has been hitherto uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all, Other methods or mode of performance are impliedly and necessarily forbidden. Vide *Taylor v. Taylor* (1876) 1 Ch.D.426 ; AIR 1936 253 (Privy Council) *Deep Chand Vs. The State of Rajasthan*, *Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others*, *State of Uttar Pradesh Vs. Singhara Singh and Others*, ; *Nika Ram Vs. State of Himachal Pradesh*, *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, *Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others*, *State of Bihar and Another Vs. J.A.C. Saldanha and Others*, , *A.K. Roy and Another Vs. State of Punjab and Others*, *State of Mizoram Vs. Biakchhawna*, *J.N. Ganatra Vs. Morvi Municipality*, *Morvi, Babu Verghese and Others Vs. Bar Council of Kerala and Others*, and *Chandra Kishore Jha v. Mahavir Prasad* (1998) 8 SCC 266.

28. The aforesaid settled legal proposition is based on a legal maxim "*Expressio unius est exclusio alterius*", meaning thereby that if a statute provides for a thing to be done in a particular, then it has to be done in that manner and in no other manner and following other course is not permissible his maxim has consistently been followed, as is evident from the cases preferred to above. A similar view has been reiterated in *Haresh Dayaram Thakur Vs. State of Maharashtra and Others*, *Delhi Administration Vs. Gurdip Singh Uban and Others*, *Dhanajaya Reddy v. State of Karnataka etc. etc.* (2001) 4 SCC 9 *Commissioner of Income*

Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, ; Prabha Shankar Dubey v. State of Madhya Pradesh AIR 2004 SC 486 ; Ram Phal Kundu Vs. Kamal Sharma,

29. In Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, , the Supreme Court observed that where Government activity involves public element, the "citizen has a right to Gain equal treatment", and when "the State acts to the prejudice of a person, it has to be supported by legality." Functioning of "democratic form of Government demands Vequallty and absence of arbitrariness and discrimination."

30. Similarly, in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , the Apex Court observed that every action of the executive Government must be informed by reasons and should be free from arbitrariness. That is the very essence of rule of law and its bare minimum requirement.

31. Thus, the decision taken in an arbitrary manner contradicts the principle of legitimate expectation and the plea of legitimate expectation relates to procedural fairness in decision making and forms a part of the rule of non-arbitrariness as denial of administrative fairness is Constitutional anethama. Vide E.P. Royappa Vs. State of Tamil Nadu and Another, ; Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; Ghaziabad Development Authority and State of U.P. Vs. Delhi Auto and General Finance Pvt. Ltd. and Maha Maya General Finance Co. Ltd. and another, ; and Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, .

32. The rule of law inhibits arbitrary action and such action is liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an Impression of bias, favouritism and nepotism. Vide Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation,

33. Procedural fairness is an implied mandatory requirement to protect Arbitrary action where Statute confers wide power coupled with wide discretion on the authority. If procedure adopted by an authority offends the fundamental fairness or established ethos or shocks the conscience, the order stands vitiated. The decision making process remains bad. Vide Dr Rash Lal Yadav Vs. State of Bihar and Others, ; and Tata Cellular v. Union of India (1994) 6 SCC 651.

34. In the State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others, , the Constitution Bench of the Apex Court observed as under:

Official arbitrariness is more subversive of doctrine of equality than the statutory discrimination. In spite of statutory discrimination, one knows where he stands but; the wand of official arbitrariness can be waved in all directions indiscriminately.

35. Similarly, in S.G. Jaisinghani Vs. Union of India (UOI) and Others, , the Constitution Bench of the Apex Court observed as under:

In the context it is important to emphasize that absence of arbitrary power is the first essence of the rule of law, upon which our whole Constitutional System is based. In a system governed by rule of law, discretion, when conferred upon Executive Authorities, must be confined within the clearly defined limits. Rule of law, from this point of view, means that the decision should be made by the application of known principle and rules and hence generally such decision should be predictable and the citizen should know where he is, if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is an antithesis to the decision taken in accordance with the rule of law.

36. The factual position that emerges in the present case is that the report of the Commissioner, Jhansi formed the sole basis for taking action against the Vice-Chancellor. The enquiry that had been conducted by the Commissioner u/s 8(1) of the Act was regarding the general affairs of the University and it was not directed against the Vice-Chancellor of the University. The Commissioner did not examine any witness in the presence of the Vice-Chancellor; nor was the Vice-Chancellor given any opportunity to cross-examine them. Even date, time or place was not fixed for the enquiry and neither any Presenting Officer had been appointed.

37. The Chancellor of the University had also not issued any charge sheet to the petitioner and nor any Presenting Officer had been appointed. In fact, no proceedings whatsoever had been taken except issuance of a show cause notice enclosing a copy of the report submitted by the Commissioner Jhansi. This was an enquiry on the basis of which action could have been taken u/s 8(4), 8(5), 8(7) or 8(8) of the Act but instead of taking any such recourse, the Chancellor purported to exercise his power u/s 12(12) of the Act and proceeded to remove the Vice-Chancellor.

38. It cannot be doubted that the office of the Vice-Chancellor of the University is of great importance, responsibility and authority. He is the principal executive and academic officer of the University. His appointment is made by the Chancellor from amongst the persons whose names are submitted to him by the Committee constituted of one person to be elected by the Executive Council, one person who is or has been a Judge of the High Court of Judicature at Allahabad nominated by the Chief Justice and one person to be nominated by the Chancellor. The term of office of the Vice-Chancellor is three years from the date he enters upon his office.

39. In *Marathwada University Vs. Seshrao Balwant Rao Chavan*, the Supreme Court made observations regarding the position and powers of the Vice-Chancellor of the University and in this context after referring to the report of the University Education Commission commented that the Vice-Chancellor is the conscious keeper of the University and constitutional ruler. He is entrusted with the responsibility of overall administration of academic as well as non-academic affairs and for these purposes he has both the express and implied powers. It is, therefore, implicit that removal of the Vice-Chancellor from such an office is a

very serious matter and it not only curtails the statutory term of the holder of the office but also casts a stigma on the holder as allegations rendering him untrustworthy of the office are found to be proved. It, therefore, becomes all the more necessary that great care should be taken in holding the enquiry for removal of the Vice-Chancellor of the University and the principles of natural justice should be strictly complied with.

40. Having examined the matter in its entirety, we are of the considered opinion that in view of the nature of charges that had been levelled against the petitioner and in view of the peculiar position the holder of the office of Vice-Chancellor occupies and in view of the facts and circumstances of the case, the contention advanced by Sri Neeraj Tripathi that the Chancellor was justified in restricting the scope of enquiry in his discretionary powers to the issuance of the notice alone cannot be accepted. The Supreme Court has repeatedly observed that even in a situation where an authority is vested with a discretionary power, such power can be exercised by adopting that mode which best serves the interest and even if the Statute is silent as to how the discretion should be exercised, then too the authority cannot act whimsically or arbitrarily and its action should be guided by reasonableness and fairness because the legislature never intend that its authorities could abuse the laws or use it unfairly. Any action which results in unfairness and arbitrariness results in violation of Article 14 of the Constitution. It has also been emphasised that an authority cannot assume to itself an absolute power to adopt any procedure and the discretion must always be exercised according to law. It was, therefore, obligatory for the Chancellor to have held a proper enquiry in accordance with the principles of natural justice and mere giving of show cause notice requiring the petitioner to submit an explanation does not serve the purpose. The order of removal of the Vice-Chancellor is, therefore, liable to be set aside only on this ground.

41. The contention of Sri Neeraj Tripathi, learned Counsel for the Chancellor that even in such situation, the order should not be set aside as the petitioner has not been able to substantiate that prejudice had been caused to him for not observing the principles of natural justice cannot also be accepted. In the first instance, as seen above, prejudice had been caused to the petitioner in the absence of a regular enquiry but even otherwise, the Supreme Court in *State Bank of Patiala and others Vs. S.K. Sharma*, had observed that if the complaint made is regarding the mandatory facet of the principles of natural justice, then proof of prejudice is not required.

42. A Constitution Bench of the Hon''ble Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, while considering the issue held that observing the principles of natural justice is necessary as it may adversely affect the civil rights of a person. While deciding the said case, reliance was placed by the Hon''ble Supreme Court on its earlier judgments in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, ; and *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, wherein the Court held that the

procedural rights require to be statutorily regulated for the reason that sometimes procedural protections are too precious to be negotiated or whittled down.

43. In *Dr. Binapani Dei (supra)*, the Hon''ble Apex Court held as under:

It is one of the fundamental rules of our constitutional set up that every citizen is protected against the exercise of arbitrary authority by the State or its officers. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity.

44. In *Dr. Bool Chand Vs. The Chancellor, Kurukshetra University*, the Hon''ble Supreme Court examined a similar case wherein there was no procedure prescribed for removal of the Vice Chancellor under the Act applicable therein. After examining the statutory provisions applicable therein, the Court came to the following conclusion:

The power to appoint a Vice Chancellor has its source in the University Act; investment of that power carries with it the power to determine the employment; but the power is coupled with duty. The power may not be exercised arbitrarily, it can, be only exercised for good cause, i.e. in the interest of the University and only when it is found after due enquiry held in manner consistent with the rules of natural justice that the holder of the office is unfit to continue as Vice Chancellor.

(Emphasis added).

45. In *S.L. Kapoor Vs. Jagmohan and Others*, the Court held that observance of principles of natural justice may not be necessary where on the admitted facts only one conclusion is possible and under the law only one penalty is permissible and in this situation, the Court may not issue writ to compel the observance of principles of natural justice not because it approves the non-observance of natural justice but because the Courts do not issue futile writs. The Court further held as under:

But it will be a pernicious principle to apply any other situation where conclusions are controversial however slightly, and penalties are discretionary.

46. A similar view has been reiterated by the Hon''ble Supreme Court in *State of Uttar Pradesh Vs. Om Prakash Gupta*, The Hon''ble Apex Court observed that Courts have to examine whether the non-observance of any statutory provision or principle of natural justice have resulted in deflecting the course of justice.

47. In the present case, if a proper charge sheet had been given to the petitioner, he could have satisfied the authority that second enquiry on the same allegations or charges was not permissible. Second enquiry in such a situation is permissible if the earlier enquiry was not held in accordance with law or some important witness could not be examined or where the procedure adopted by the

authority concerned was contrary to the relevant Rules or the enquiry had been conducted in such a manner that it affected the rights of the parties. For directing a fresh enquiry on the same allegations/charges, authority is required to record reasons otherwise it may become a tool for harassment of the delinquent in the hands of authority and in that case it may tantamount to a mala fide or colourable exercise of power. Vide K.R. Deb Vs. The Collector of Central Excise, Shillong, ; State of Assam and Another Vs. J.N. Roy Biswas, State of Punjab v. Kashmir Singh 1997 SCC 88 ; Union of India and Others Vs. P. Thayagarajan, and (2003) 3 LLJ 557 SC Union of India v. K.D. Pandey and Anr.

48. The irregularities said to have been attributed to the Vice-Chancellor were not only stale but related to his previous tenure from 1999 to 2002 in respect of Which enquiries had been held and charges were found to be baseless as is evident from the letters dated 24.08.2000 and 30.09.2002 (Annex.2 collectively) written by the Secretary to the Chancellor to petitioner and the Hon''ble Minister of Higher Education to the Secretary of Higher Education.

49. No explanation could be furnished by Shri Tripathi, learned Counsel, for the Chancellor as under what circumstances and for what purpose the Chancellor had been writing to the Hon''ble Prime Minister and the Hon''ble Law Minister that petitioner was a Dalit and was cultivating Dalit leaders.

50. The contention that the impugned order was liable to be set aside inasmuch as the Chancellor had proceeded in hot haste after receiving the report from the State Government on 2nd June, 2005 as he issued the notice to the Vice-Chancellor on 24th June, 2005 and passed the impugned order on 16th July, 2005 when his term was going to end on 31st July, 2005 if, also worth acceptance. Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law for the reasons that in such a fact situation mala fide can be presumed. Vide Dr, S.P. Kapoor v. State of Himachal Pradesh AIR 1981 SC 2181 ; Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others, ; and Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia and Ors. AIR 2004 SC 1159.

51. The Inquiry Officer appointed by the State Government u/s 8(1) of the Act submitted the report recording the following findings of fact:

(1) There had been some errors in evaluation of the answer sheets while conducting the examination of CPMT by the University. A large number of writ petitions had been filed in this Court and various directions had been issued. Some alteration in the select list had been made but such errors were not deliberately done. However, the petitioner was indirectly responsible for the errors occurred while evaluating the answer sheets due carelessness on the part of the staff of the computing agency.

(2) So far as the appointments of close relatives and friends without qualifications were concerned, it had been held that when there was any shortage of teachers, short term appointments were made on fixed salary and

they were removed immediately after regular appointments were made in the years 1999 and 2000. The University did not observe complete transparency while making short term appointments on fixed salary and hence the Vice Chancellor and the Registrar of the University were responsible.

(3) Appointments of Ms. Cham Rawal, Ms. Ritu Jain and Capt. Bhupendrajeet Singh in the year 1999 and 2000 on fixed salary for a short term were made giving them preference.

(4) Agenda of urgent meeting conducted on 20th June, 2003 on 48 hours" notice was not given to Hon"ble Mr. Justice Kamleshwar Nath.

(5) The expenditure made at the residence of the Vice Chancellor in the year 1999 onwards, the due financial procedure was not followed.

(6) So far as the work relating to construction of cafeteria, development of parks fixing the statue of Pandit Jawaharlal Mehru and fountain in Circular Park without inviting tenders, Shri T.D. Verma was found directly responsible and for the payment thereof, the Finance Officer of the University was found responsible.

(7) In respect of awarding Ph.D. Degree to Shri K.K. Panda on 05.11.1999, it was held that he had been awarded Ph.D. Degree based on his past experience of 26 years and his publications.

52. In respect of the aforesaid charges, a show cause notice was given to the petitioner and he submitted his reply to each and every accusation/charge/ finding and also raised certain preliminary objections and the learned Chancellor, in the impugned order, has dealt with the same as under:

(1) The preliminary objection that while conducting the enquiry, the Inquiry Officer appointed u/s 8(1) of the Act did not follow the procedure prescribed u/s 8(2) to 8(7) was irrelevant as no particular procedure had been prescribed for conducting the enquiry u/s 12(12). Therefore, the petitioner was not entitled to get any relief on this count.

(2) The issue that the petitioner was not asked to participate in the enquiry conducted by the Inquiry Officer appointed u/s 8(1) and hence he could not be asked to submit the comment on the said enquiry report, was without any force because it was merely a technical objection.

(3) In respect of test conducted for the CPMT, the petitioner was held responsible accepting the finding recorded by the Inquiry Officer.

(4) Petitioner was guilty of appointing his close relatives and his submission that he was not involved in their selections was rejected for the reason that he was responsible for executing the statutory provisions of the Act and no evidence had been led by the petitioner to the effect that none of his close relatives had been appointed. Mere denial of allegations in this respect was not enough.

(5) Granting relaxation at the time of selection to Shri Ashish Chandra, who did

not possess the requisite five years" experience, was not found to be justified prima facie. During the enquiry, no evidence could be led as under what circumstances such a relaxation was found to be necessary, though the said appointee was otherwise eligible and under such circumstances, there was possibility of accusation of favouritism and it cannot be believed to such relaxation had been granted without the knowledge of the petitioner and, therefore, he was responsible for such relaxations.

(6) Hon"ble Mr. Justice Kamleshwar Nath was not served the copy of the agenda of the urgent meeting held on 20.06.2003 which was unjustified and the Vice Chancellor was responsible for the reasons that he had to supervise and execute the mandatory provisions of the Act.

(7) The appointments of Km. Charu Rawal and Km. Ritu Jain in 1999 and 2000 for a short term and on fixed salary of Rs. 5000/- though they stood removed subsequent to the regular selection, was unjustified and not in the interest of the University and, thus, the Vice Chancellor was responsible for the same.

(8) The file relating to the appointment of Capt. Bhupendrajeet Singh on fixed salary was not made available to the Inquiry Officer. It, therefore, created a doubt that the University authorities were not acting transparently. In such a way, the petitioner was responsible as he was not acting in the interest of the University.

(9) The expenditure on the renovation of the residence of the Vice Chancellor was considered not to be justified/proper it cannot be presumed that such an expenditure was made without the knowledge and consent of the Vice Chancellor and, thus, he was responsible.

(10) Some constructions had been made without inviting tenders by the Engineer Shri T.D. Verma and payment had been made by the Finance Officer. The Vice Chancellor was held responsible as he could not separate himself from such irregularities and he failed to perform his duties in accordance with the statutory provisions.

(11) Awarding Ph.D. Degree to Shri K.K. Panda was not appropriate in spite of the fact that on this issue earlier an enquiry had been conducted, as such an issue could be reopened and review of the earlier order passed by the Chancellor was permissible.

53. In view of the above, the order impugned has been passed and the petitioner stood removed from the post of the Vice Chancellor.

54. The aforesaid findings of fact recorded by the inquiry Officer as well as learned Chancellor reveal that no charge sheet had ever been issued to the petitioner nor any Inquiry Officer had been appointed u/s 12(12) of the Act nor the petitioner was permitted to participate in the enquiry conducted by the Inquiry Officer appointed u/s 8(1) of the Act. On many issues, enquiry had been conducted earlier and the allegations had been found to be baseless.

55. The requirement u/s 12(12) of the Act are three fold, i.e. (1) that the Vice Chancellor wilfully omits or refuses to carry out the provisions of the Act, (2) abuses the powers vested in him or otherwise appears to the Chancellor that the continuance of the Vice Chancellor is detrimental to the interest of the University.

56. Word "wilful " or "wilfully" has been defined giving a meaning as intentionally or purposely as distinguished from accidentally or negligently and does not require any actual impropriety and it must have an evil intent. It should not be involuntarily but should have been done knowingly, purposely without any justifiable excuse and must be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. A deliberate conduct of a person means that he knows what he is doing and intends to do the same. The word includes only Intentional, deliberate and conscious acts, however, excludes casual bona fide genuine inability to comply with the terms of an order or provision. Vide *Om Prakash Gupta Vs. State of U.P.*, *S. Harnam Singh Vs. The State (Delhi Admn.)*, *S. Sundaram Pillai, etc. v. V.R. Pattabiraman* AIR 1935 SC 2185 ; *Rakapalli Raja Rama Gopala Rao Vs. Naragani Govinda Sehararao and Another*, *Kapildeo Prasad Sah and Others Vs. State of Bihar and Others*, ; and *Chordia Automobiles v. S. Moosa* AIR 2000 SC 1880.

57. In *State of Orissa and Others Vs. Md. Illiyas*, the Apex Court, while considering the meaning of the said expression, observed as under:

The expression "wilful" excludes casual, accidental, bonafide or unintentional acts or genuine inability. It is to be noted that a wilful act does not encompass accidental, involuntary or negligent. It must be intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing therefrom The expression "wilful" means an act done with a bad purpose, with an evil motive.

58. In *Ashok Paper Kamgar Union and Ors. v. Dharam Godha and Ors.* the Apex Court, while considering the meaning of the said expression, observed as under the Apex Court observed as under:

"Wilful" means an act or omission which is done voluntarily and intentionally and with a specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose.

59. The expression "abuse of power" has to be considered in the context and setting in which it has been used and cannot mean the use of a power which may appear to be simply unreasonable or inappropriate. It implies a wilful abuse for an intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable but it would not be an abuse of power. Abuse of power must be in respect of such an incident which would render the office holder unworthy of holding the said post and it must entail adverse civil

consequences, therefore, the word requires to be construed narrowly. It becomes duty of the authority holding an enquiry on such charge to apply its mind and also to consider the explanation furnished by the person proceeded against in this respect. Vide Tarlochan Dev Sharma Vs. State of Punjab and Others,

60. In M. Narayanan Nambiar Vs. State of Kerala, the Constitution Bench of the Hon'ble Supreme Court interpreted the expression "abuse" to mean as misuse, i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means.

61. The word "otherwise" has been defined in dictionaries to mean in a different manner, in another way, in other respect.

62. In Narayanan (supra), the Supreme Court held that the word "otherwise" has a wide connotation but some limitation will have to be put on that word for the reason that it takes colour from the preceding words appearing in the statutory provisions.

63. Similar view has been reiterated in Lilavati Bai Vs. The State of Bombay,

64. In George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore, the Hon'ble Supreme Court held that word "otherwise" should be construed as ejusdem generis and must be interpreted to mean some kind of legal obligation or some transaction enforceable at law.

65. In S.R. Bommai and others Vs. Union of India and others etc. etc., the Hon'ble Supreme Court considered the meaning of "otherwise" as existing in Article 356(1) of the Constitution of India which provides for exercise of emergency powers if the President of India is satisfied that a grave emergency exists threatening the security of India or any part thereof. The Court held that the expression "otherwise" means "in a different way" and is of a very wide import and cannot be restricted to material capable of being tested on principles relevant to admissibility of evidence in the Court of Law and it would also be difficult to predict as what should be the nature of such material.

66. In International Airports Authority of India and Others Vs. Grand Slam International and Others, the Hon'ble Supreme Court dealt with the word "otherwise" contained in Section 45 of the Customs Act and held that the term has to be given a meaning and to be understood in the context in which it has been used in the Statute and that would obviously depend on the functions of the authority under the Statute. Therefore, the context in which a particular phrase has been used by the legislature is of paramount importance.

67. In Kamlesh Kumar Sharma Vs. Yogesh Kumar Gupta and others, the Hon'ble Supreme Court interpreted the expression "otherwise" contained in the provisions of the U.P. Higher Education Services Commission Act, 1980 observing that the said expression takes colour from its preceding words and cannot have a wide and elaborate interpretation.

68. The removal order was passed on 16.07.2005; the petitioner tendered resignation on 16.07.2005 as his term was likely to expire on 31.07.2005. There is no finding of fact recorded either by the Inquiry Officer or by the learned Chancellor that the petitioner had wilfully omitted or refused to carry out the statutory provisions. There is no finding that he had abused the powers vested in him as in most of the cases, referred to hereinabove, he has been held indirectly responsible nor any reason has been given as how his continuance for a period of 13 more days could be detrimental to the interest of the University. Passing stigmatic order of removal and refusing to accept his resignation in such circumstances where a full-fledged enquiry could have been conducted giving a proper charge sheet to the petitioner, clearly leads to the conclusion that the order impugned cannot be justified.

69. After holding the domestic enquiry, imposition of punishment is a quasi judicial function. (Vide Constitution Bench judgments of the Hon'ble Apex Court in *Bachhittar Singh Vs. The State of Punjab*, ; and *Union of India (UOI) Vs. H.C. Goel*,

70. It is settled legal proposition that unless there is a specific provision for review, the power of review cannot be exercised in the interest justice or as an inherent power of an authority, meaning thereby in absence of a statutory provision, review is not permissible. Vide *Patel Chunibhai Dajibhai etc. Vs. Narayanrao Khanderao Jambekar and Another*, ; *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, and *Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others*,

71. In such circumstances, a quasi judicial order cannot be reviewed in absence of any statutory provision. Power of review does not exit under the Act. More so, the learned Chancellor has found the petitioner prima facie guilty. That cannot be made a ground in the absence of any specific finding. In respect of award of Ph.D. Degree to Shri K.K. Panda on 05.11.1999, earlier an enquiry had been conducted, and allegation was found to be baseless. It could not have been reopened. Criminal prosecution in this respect had also been launched but it failed.

72. Observation by the Chancellor that the petitioner did not lead any evidence in support of denial of the charge of giving employment to his close relatives is self-contradictory and supports the case of the petitioner, as he had not been given a chance to lead evidence on the issue. It could be possible for him only if a regular inquiry was conducted. At the most the inquiry conducted u/s 8(1) could be used as a preliminary inquiry. Admittedly, petitioner was not asked to participate in the said inquiry. Petitioner's preliminary objections that provisions of Section 8(1) to 8(7) were not complied with while conducting the inquiry, had been brushed aside by the Chancellor being merely "technical. Such a course was not permissible for the Chancellor. The Inquiry Officer recorded a categorical finding that error in evaluation of the answer? Sheets in CPMT 2000 was not deliberate at all. It was not permissible for the Disciplinary Authority to hold it to

be wilful omission or refusal to carry out the provision of the Act.

73. The allegations/charges on which the petitioner stood removed related to his first term and, thus, his removal is based on stale charges. More so, only 13 days were left to complete the second term. The Disciplinary Authority proceeded in hot haste. The manner in which the enquiry was required to be conducted in the facts and circumstances involved herein, had not been conducted. The conclusions arrived at by the Chancellor had been controversial, which could be recorded only after holding a full-fledged enquiry giving him the charge sheet and appointing an Inquiry Officer treating the enquiry report submitted by the Inquiry Officer appointed u/s 8(1) of the Act as a preliminary enquiry report.

74. Undoubtedly, no specific procedure is prescribed nor any particular kind of inquiry has been prescribed under Rule 12 (12) of the Act for removal of the Vice Chancellor. However, in view of the law referred to hereinabove, the nature of enquiry would depend upon the facts involved in a particular case. No straight jacket formula can be applied. In the present case, the order impugned is Astigmatic and is likely to cause serious prejudice and may have civil consequences for the future of the petitioner, thus, full fledged enquiry was required. There is nothing on record, particularly when there is no finding by the Inquiry Officer appointed u/s 8(1) of the Act, that petitioner had wilfully omitted or refused to carry out the provisions of the Act or abused his powers or his continuance was detrimental to the interest of the University, we fail to understand as how the learned Chancellor could reach such a conclusion. The enquiry stood vitiated as charge sheet was not issued, witnesses were not examined and even the Inquiry Officer/Presenting Officer was not appointed as was warranted in the facts and circumstances of the case. We are of the considered opinion that in the facts and circumstances of the case, principles of natural justice, to the extent it required to be observed had not been complied with.

75. In view of the above, the writ petition succeeds and is allowed to the extent indicated above. The order dated 16th July, 2005 passed by the Chancellor is quashed. No costs