
(2008) 04 CAL CK 0078

In the Calcutta High Court

Case No : Writ Petition No. 21719 (W) of 2007

Subhamoy Singha Roy

APPELLANT

Vs

Jadavpur University and Others

RESPONDENT

Date of Decision : 25-04-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 19, 21
Jadavpur University First Regulations — Regulation 25

Citation : (2009) 2 CALLT 420 : (2008) 2 CALLT 473 : (2008) 2 CALLT 468 :
(2008) 3 CHN 507

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Arunava Ghosh and Agniswar Dutta Gupta, for the Appellant;
Chameli Mazumdar and D. Roy and Kishore Dutta, for Respondent No. 8, Ashoke Banerjee, for Respondent Nos. 9 and 10, A. Sundar Roy and Silpi Chattopadhyay for Respondent No. 11, for the Respondent

Judgement

Sanjib Banerjee, J.—Passion and prejudice are two charlatans that lie in stealthy wait to waylay any quasi-judicial adjudication, however noble the purpose of the exercise. To the two original limbs of natural justice of audi alteram partem (nobody shall be condemned unheard) and nemo debet esse judex in propria sua causa (nobody shall be judge of his own cause), has been added a third: the duty to assign reasons. A quasi-judicial order is founded on reason, not instinct. An order made on impression is erroneous in form and substance.

2. The petitioner in the present proceedings under Article 226 of the Constitution of India challenges a decision made on the recommendation of an enquiry commission set up by the University to look into the charges of alleged malpractice involving two theses submitted for PhD degrees under the faculty of science of the University. The full report has been disclosed in the University's affidavit. The one-man enquiry commission has begun the report by recording the receipt of three documents along with the letter of appointment: a copy of a resolution of the executive council of the University dated August 17, 2006;

copies of the two theses; and, a copy of a preliminary report of an enquiry conducted by the Dean of the faculty of science of the University.

3. In the first effective paragraph of the report, immediately after the letter of appointment and the three above documents are cited, the commission comments:

After going through the contents of the two theses (details in Annexure "I") and the report submitted by Prof. Subrata K. Paul, it became clear to me that I have been entrusted by the University to conduct a formal enquiry into perhaps one of the most daring acts of plagiarism ever committed in the academic world.

4. Three short paragraphs of the final report thereafter refer to the preliminary enquiry after which the commission observes:

After going through the two theses carefully, I agree completely with the observations made above. I just want to add here that the contents of the Chapters 1 to 12 including sections and sub-sections do not "appear to be identical" but they are identical from first word to last word with associated spelling and grammatical mistakes, so much so, that going through anyone of the two theses, one can confidently predict about the contents (word by word, line by line, paragraph by paragraph) of any page (1-328) in other thesis excepting the headers.

5. In the following paragraph, the commission has referred to the acknowledgement section in either thesis, before slipping back to the preliminary enquiry report and the following impression in a single-sentence paragraph:

In fact, the nature of plagiarism in this case is so blatant that one cannot think of any other possibility.

6. The commission thereafter records the names of the dramatis personae and of the quintet of the guides and the would-be doctorates having been summoned before it "to clarify some of the issues." It appears that the five were called once each over three days, but at different times. The commission considered it unnecessary to dwell on their oral statements as each of them had tendered written submissions. The commission then records a question that it says haunted it, "how it could happen in a centre of excellence like Jadavpur University?" The discussion that follows on the written submissions is prefaced by an expression of dismay and a wish:

Such a blatant violation of all ethical norms was almost going to be unnoticed. I hope that this is the first time such an incident has occurred in J.U.

7. The indignation of an academician at the prospect of plagiarism is understandable and the anguish at an imposter being anointed with a doctoral degree for his original contribution to knowledge is equally explicable. The motive is beyond question. But it is the impact of the action that would define the nature of the procedure that is to be adopted. If there is a civil consequence

of an order, particularly one that visits the petitioner with the harsh consequence of his provisional degree being withdrawn and he being debarred from any future registration for any course in the University, even in the absence of any prescribed procedure the compliance with the principles of natural justice would be implicit and indispensable.

8. The University accepted the following ultimate finding of the commission which appears to travel slightly beyond its brief:

After going through all the documents, I am constrained to observe that plagiarism in its worst form has been committed in this case, tarnishing not only the image of the University but also putting the entire scientific community into shame.

Such an act should not go unpunished. However, the exact nature of the disciplinary action to be taken in respect of each one of them should be decided by the appropriate body of the University.

9. Such appropriate body, the executive council, received the report and resolved on May 16, 2007 that apart from the punishment to be inflicted on the discredited authors of the theses, the three supervisors be debarred from acting as supervisor of any PhD candidate under the University in future. One of the supervisors was reported to his employer Calcutta University and the two other in-house supervisors were referred to the disciplinary authority of the Jadavpur University.

10. The other doctoral candidate is the respondent No. 11 in the present proceedings and the three guides are the eighth, ninth and tenth respondents. The supporting respondents betray distinctly more vigour than the petitioner in urging that there has been injustice occasioned to them. They labour not only to suggest that the entire process adopted by the University be annulled, but also insist that the basis as disclosed should be scotched. The petitioner does not place his case as high as his guides and other supporters do. The petitioner is agreeable to subject himself to a fresh round of proceedings before the University if his substantial rights are protected by the University adopting adequate safeguards.

11. The guides and the other apparent supporters of the petitioner have instituted independent proceedings pending elsewhere in this Court before the appropriate bench.

12. The petitioner challenges the substance of the procedure adopted by the University on six counts. He says that no charge-sheet was issued to him for him to be specifically made aware of what he was required to answer. He complains that witnesses whose statements have been held against him were neither examined in his presence nor were the statements or other documents relied upon by the commission made available to him. He alleges that the witnesses were not allowed to be cross-examined by him. He is aggrieved by his not being

afforded a chance to bring his witnesses in support of his justification. He claims that no copy of the final report of the commission was made available to him and his first sight of it was upon receipt of the University's affidavit. He charges that the Commission's report is inconclusive and has no reasons to offer as proof of his having indulged in plagiarism.

13. The petitioner cleared his Secondary Examinations in 1992, his Higher Secondary Examinations in 1994 and obtained a Bachelor's degree with physics honours from Calcutta University in 1991. He was conferred the Master's degree in physics by Vidyasagar University in 2001 and claims to have started working shortly thereafter on his doctoral thesis "on some electronic and optical properties of non-linear optical and opto-electronic materials" under the respondent No. 8 in the Department of Instrumentation and Electronics Engineering at the Salt Lake Campus of the Jadavpur University. The respondent No. 9 was taken on board by the petitioner as a joint supervisor. He applied for registration to the PhD course on September 3, 2003 and by December was accorded necessary permission that was to remain valid for five years.

14. The petitioner claims to have carried out extensive research work under the joint supervision of the respondent Nos. 8 and 9 and says his papers have been published in scientific journals of international repute. In May, 2005 the petitioner submitted his thesis well ahead of time and by a letter of September 7, 2005 the University accepted such early submission. The University required the petitioner to orally defend his thesis before an external expert in April, 2006 and in May, 2006 the University approved the PhD degree being granted to the petitioner, subject to ratification by its executive council. A provisional certificate was issued by the University.

15. The petitioner says that it was in end-July, 2006 that he came across a newspaper article that the executive council of the University had directed that all PhD work done or being carried out under the supervision or guidance of the respondent Nos. 8, 9 and 10 be immediately stopped. The newspaper report claimed that such decision followed the submission of a thesis by another aspiring doctorate which was found to be similar to an earlier thesis submitted with the University. The newspaper report added that an enquiry committee headed by the Dean of the faculty of science of the University had been constituted to look into the matter.

16. The petitioner states that prior to October 26, 2006, he received no communication from the University in respect of the matter reported in the newspaper. He received a notice of October 26, 2006 from the secretary of the Professor Subimal Sen Enquiry Commission (the Commission), informing him that a one-man commission headed by the vice-chairman of the West Bengal State Council of Higher Education had been formed to conduct an enquiry into the alleged malpractices involving the two theses which appeared to be identical.

17. The petitioner was required to appear before the Commission and bring

copies of his publications and other relevant material. Upon the date for his appearance before the Commission having been deferred, he was granted an audience on November 17, 2006.

18. The petitioner complains that no charge-sheet was issued to apprise him of what he was accused to be guilty of for him to proffer a plausible explanation. The averments in that regard are specifically made at paragraphs 18, 19, 36 and 38 of the petition. The petitioner refers to paragraphs 12, 13, 20 and 21 of the University's affidavit where the University does not claim that any charges were framed. On the contrary, the University asserts (at paragraph 12), "that when (the) purpose of constituting One-Man Enquiry Commission was intimated to the writ petitioner...issuing charge sheet on the said ground does not arise." The University, however, says that there was substantial compliance on this aspect as the petitioner was made aware of the charges against him and the petitioner, in his representations, expressed no doubt as to his understanding of what he had been charged with.

19. At paragraph 40 of the petition, the petitioner avers that he was neither supplied any documents nor informed of the witnesses whose statements had been used against him. There is no denial of such averment at paragraph 21 of the University's affidavit. At paragraph 23 of the petition he claims that neither the respondent No. 11 nor any other witness had been examined in his presence. At paragraph 15 of the University's affidavit, such allegation is glossed over. At paragraph 41 of the petition the same charge is repeated and at paragraph 22 of the University's affidavit it is again ignored. At paragraph 24 of the petition the petitioner questions the University not giving him an opportunity to cross-examine the co-accused or the other witnesses examined by the Commission. At paragraph 14 of the University's affidavit such charge is skirted. At paragraph 42 of the petition, the petitioner repeats his grievance of not being allowed to cross-examine the University's witnesses, to which there is no response at paragraph 22 of the University's affidavit. There is no dispute on pleadings or otherwise that no charge-sheet was issued; that the statements of witnesses and copies of documents used against the petitioner were not furnished to him; and, that neither was he extended any invitation to examine any witness nor were the witnesses examined by the Commission subjected to the petitioner's cross-examination.

20. The University admits that no copy of the final enquiry report was served on the petitioner and it was disclosed only in its affidavit. The University says that the Commission's report details all reasons for the findings recorded therein and the final report is neither inconclusive nor vague on any aspect.

21. The petitioner refers to the five obligatory requirements of a fair procedure in matters of such nature as enumerated in the judgment reported at *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, and says that there has been violation on each count with the added aggravation of the Commission's report ultimately throwing no light on whether the petitioner was guilty of plagiarism if

such was the charge that the body was commissioned to probe. Paragraph 4 of the Sur Enamel case sets down the mandatory requirements of an enquiry:

4. In support of the appeal against this order Mr. Sen Gupta has urged that it was not open to the Industrial Tribunal to go behind the finding arrived at by the domestic tribunal. He contended that the Tribunal was wrong in thinking that the Rules of natural justice were not followed. It appears that a joint enquiry was held against Manik and one Birinchi. Nobody was examined at this enquiry to prove the charges. Only Manik and Birinchi were examined. They were confronted with the reports of the supervisor and other persons made behind their backs and were simply asked why these persons would be making the reports against them falsely. It is not clear whether what they said was recorded. According to the enquiring authority they were "unable to explain as to why these persons would be making the reports against them falsely". In our opinion, it would be a misuse of the words to say that this amounted to holding of proper enquiry. It has been laid down by this Court in a series of decisions that if an industrial employee's services are terminated after a proper Domestic enquiry held in accordance with the Rules of natural justice and the conclusions reached at the enquiry are not perverse the Industrial Tribunal is not entitled to consider the propriety or the correctness of the said conclusions. In a number of cases which have come to this Court in recent months, we find that some employers have misunderstood the decisions of this Court to mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by them from challenge. This attitude is wholly misconceived. An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined - ordinarily in the presence of the employee - in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report. In the present case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross-examination but it would appear that they were not even present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity to cross-examine them, it would have been difficult to say in these circumstances that that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined is clear that there was no enquiry worth the name and the Tribunal was justified in entirely ignoring the conclusion reached by the Domestic Tribunal.

22. A judgment reported at S.L. Kapoor Vs. Jagmohan and Others, is cited by the petitioner for the proposition that a delinquent must be informed of the charges

and made aware of the consequences of such charges being established against him. In that case, some persons were appointed on the New Delhi Municipal Committee to hold office for a year but before the expiry of the term the Lt Governor superseded the Committee and appointed a solitary person to discharge the duties of the Committee. The preamble to the order of supersession recited that the Committee was incompetent to perform and made persistent default in the performance of its duties and had otherwise abused its powers resulting in Municipal funds being wasted. In the challenge to the order of supersession before the Delhi High Court, it was urged that the order was in violation of the principles of natural justice and in total disregard of all norms of fairplay. It was suggested that no opportunity had been afforded to the Committee to explain its conduct. The High Court upheld the claim of the petitioners that it was necessary to hear the Committee before the order of supersession could be made, but held that the Committee had been made aware of the allegations and had been afforded a chance to state its version. The High Court concluded that the undisputed facts spoke for themselves and no purpose would have been served by giving any formal notice before the order of supersession.

23. On such facts, the Supreme Court disagreed with the Delhi High Court and concluded at paragraph 16 of the report as follows:

16. Thus on a consideration of the entire material placed before us we do not have any doubt that the New Delhi Municipal Committee was never put on notice of any action proposed to be taken u/s 238 of the Punjab Municipal Act and no opportunity was given to the Municipal Committee to explain any fact or circumstance on the basis that action was proposed. If there was any correspondence between the New Delhi Municipal Committee and any other authority about the subject-matter of any of the allegations, if information was given and gathered it was for entirely different purposes. In our view, the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a "double opportunity" that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met. We disagree with the finding of the High Court that the Committee had the opportunity to meet the allegations contained in the order of supersession.

24. The petitioner next places the judgment reported at Vasant D. Bhavsar Vs. Bar Council of India and Others, to urge that speaking orders need be passed in such matters and the conclusion should follow an analysis of the material available before the adjudicating body so that a link between the facts and the

findings is evident. Paragraphs 3 and 4 of the report lay down the principle that it would not do to merely state the conclusions without indicating how the material on record justifies such conclusions:

3. We do not find any discussion of the evidence in the impugned order of the said Disciplinary Committee. It is not enough to state that the evidence on record proved beyond the shadow of a doubt that the complainant had consulted the appellant and, when the appellant did not take any interest in her case, she lost it before the Prant Officer for want of documents which were in the appellant's custody, being filed in support of her case and that she intended to challenge the order before the High Court and, therefore, she approached the appellant for the return of those documents again and was confronted with the demand for payment of Rs. 3,000/- whereupon she initiated the disciplinary proceedings against the appellant. We find, having perused the evidence, that it was admitted by the complainant in cross-examination that the vakalatnama that the appellant had given her "was not presented before the Circle Officer. It was also not produced by me either before the Tehsildar or the Prant Officer". In fact, the original vakalatnama was produced by the complainant from her possession and placed on the record. If the vakalatnama of the appellant had not been filed before these authorities, it is difficult to see how the appellant could have been held to be guilty of dereliction of duty for not appearing before them on behalf of the complainant. There is no documentary proof whatever that fees were paid by the complainant to the appellant. Even as to the documents which were supposed to have been handed over to the appellant for being produced before the authorities aforementioned, there is no receipt. In any case, it is difficult to see why the documents would have been handed over by the complainant to him for being produced before the authorities when his vakalatnama was not filed by the complainant before them. Our reading of the evidence leads to grave doubt about the veracity of the complainant and the benefit of doubt must go to the appellant.

4. We think that we should impress upon the Disciplinary Committees of the Bar Councils that their orders in disciplinary matters should be speaking orders; they must set out the reasons for which they are passed. Where the orders are based upon evidence, as is usually the case with complaints against advocates, there must be some analysis of the evidence and the conclusion must be based on such analysis. It is not enough to state the conclusions without indicating the material on the record upon which such conclusions are based.

25. The celebrated case of S.N. Mukherjee Vs. Union of India, is referred to for its recognition of the indispensability of reasons to be provided particularly in an original order as reasons form a facet of natural justice. It is the same case where even as the Supreme Court emphasised fairness in any process of decision-making, it held that the principles of natural justice were not of universal application and could be excluded by express provision in that regard. But the decision is placed for it laying down the principle that the recording of

reasons was imperative in any quasi-judicial order, not only to facilitate its review or revision by a superior forum, but also to inform those affected by the order. Paragraphs 36 and 39 of the report have been placed:

36. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

39. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fairplay in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the

Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

26. Another renowned judgment, *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, is referred to for the limited purpose of urging that an order based on certain grounds must be judged by the reasons contained therein and cannot be supplemented by additional material whether by affidavit or otherwise. Paragraph 8 of the report is placed:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

27. The last authority cited on behalf of the petitioner is the judgment of Managing Director, ECIL, Hyderabad, *Vs. Karunakar, etc. etc.*, where the effect of the Forty-second Amendment to the Constitution in the context of a delinquent's right to represent against enquiry findings was discussed. The petitioner, however, relies on paragraph 26 of the report in support of his contention that he had a right to have access to the documents and material that weighed with the Commission and should have been permitted a chance to make his submissions on such documents and other material:

26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary

authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

28. The judgment went on to say that upon an enquiry being conducted and before the disciplining authority takes into consideration the findings of the enquiry with the object of taking action against the person charged, the delinquent is required to be afforded an opportunity to prove his innocence. It is only the further right - that of the disciplinary authority being required to seek the delinquent's views on the proposed penalty - which is no longer available after the Forty-second Amendment.

29. The petitioner asserts that, at the highest, the report of the Commission can be accepted as the preliminary, fact-finding enquiry upon which the petitioner's response ought to have been invited before the disciplinary authority (here, the executive council of the University) could proceed to pronounce judgment or inflict the punishment that it has. The petitioner says that the Commission was no disciplinary authority as it merely recommended that steps should be taken but did not spell out the civil consequences.

30. The respondent No. 11 has sought to buttress the petitioner's submissions

saying that the two sail on the same boat and have either to stand or fall together. An order passed by this Court at the initial stage of the proceedings is placed on behalf of the respondent No. 11. On March 5, 2008 when this matter was first called on, the University sought two weeks' time to use an affidavit. The respondent No. 11 sought leave and filed a supporting affidavit on such day. In the order of March 5, 2008, it was provided, inter alia, as follows:

The substance of the affidavit filed by the respondent No. 11 may be dealt with by the University in its affidavit-in-opposition. The respondent No. 9, who was originally the common guide, has filed a short affidavit which the University may deal with in its opposition.

Since the matter involves the careers of two prospective scientists and since the decision taken by the University is to debar them from applying for the Doctorate degree, it is expected that all the parties will adhere to the time given.

31. It was wishful thinking. The University's affidavit was not filed within two weeks, or even after three weeks. On March 28, 2008 the University sought a further adjournment of two weeks to file its affidavit. The University was allowed time till April 12, 2008 and the petitioner was permitted two days' time to use a reply.

32. The respondent No. 11 submits that the University has chosen not to deal with his affidavit despite the opportunity afforded by Court and the Court should proceed on the basis that the University has nothing to say on the contents of the affidavit filed by the respondent No. 11. The respondent No. 11 refers to a judgment reported at Smt. Naseem Bano Vs. State of U.P. and others, and relies on the last sentence of paragraph 9 of the report to suggest that averments not controverted should be taken to have been admitted:

9. ...Since no dispute was raised on behalf of respondents 1 to 4 in their reply to the averments made by the appellant in the writ petition that 40 per cent of the total number of posts had not been filled by promotion, inasmuch as the said averments had not been controverted, the High Court should have proceeded on the basis that the said averments had been admitted by respondents.

33. In anticipation that the University may accost both aspiring scientists with the argument that neither had raised the points urged now and should thus be seen to have waived any grievance as to the procedure, the respondent No. 11 says that the principles of natural justice form part of the fundamental rights available to every citizen of this country and there can be no estoppel against statute or a constitutional provision. A judgment reported at A.C. Jose Vs. Sivan Pillai and Others, is cited for the principle which appears from paragraph 38 of the report:

38. Lastly, it was argued by the counsel for the respondents that the appellant would be estopped from challenging the mechanical process because he did not oppose the introduction of this process although he was present in the meeting

personally or through his agent. This argument is wholly untenable because when we are considering a constitutional or statutory provision there can be no estoppel against a statute and whether or not the appellant agreed or participated in the meeting which was held before introduction of the voting machines, if such a process is not permissible or authorised by law he cannot be estopped from challenging the same.

34. The Bombay pavement-dwellers' case *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, is relied upon for the several principles laid down by the Supreme Court therein. Paragraph 28 of the report recognises that there can be no estoppel against the Constitution which is the paramount law; paragraph 29 of the report speaks of there being no waiver of a right guaranteed under Article 14 of the Constitution; and, paragraph 47 reiterates the need for institutional checks to uphold the dignity of a citizen for justice must not only be done but must manifestly be seen to be done:

28. It is not possible to accept the contention that the petitioners are estopped from setting up their fundamental rights as a defence to the demolition of the huts put up by them on pavements or parts of public roads. There can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. The doctrine of estoppel is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. If a person makes a representation to another, on the faith of which the latter acts to his prejudice, the former cannot resile from the representation made by him. He must make it good. This principle can have no application to representations made regarding the assertion or enforcement of fundamental rights. For example, the concession made by a person that he does not possess and would not exercise his right to free speech and expression or the right to move freely throughout the territory of India cannot deprive him of those constitutional rights, any more than a concession that a person has no right of personal liberty can justify his detention contrary to the terms of Article 22 of the Constitution. Fundamental rights are undoubtedly conferred by the Constitution upon individuals which have to be asserted and enforced by them, if those rights are violated. But, the high purpose which the Constitution seeks to achieve by conferment of fundamental rights is not only to benefit individuals but to secure the larger interests of the community. The Preamble of the Constitution says that India is a democratic Republic. It is in order to fulfil the promise of the Preamble that fundamental rights are conferred by the Constitution, some on citizens like those guaranteed by Articles 15, 16, 19, 21 and 29 and, some on citizens and non-citizens alike, like those guaranteed by Articles 14, 21, 22 and 25 of the Constitution. No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any

subsequent proceeding. Such a concession, if enforced, would defeat the purpose of the Constitution. Were the argument of estoppel valid, an all-powerful State could easily tempt an individual to forego his precious personal freedoms on promise of transitory, immediate benefits. Therefore, notwithstanding the fact that the petitioners had conceded in the Bombay High Court that they have no fundamental right to construct hutments on pavements and that they will not object to their demolition after October 15, 1981, they are entitled to assert that any such action on the part of public authorities will be in violation of their fundamental rights. How far the argument regarding the existence and scope of the right claimed by the petitioners is well-founded is another matter. But, the argument has to be examined despite the concession.

29. The plea of estoppel is closely connected with the plea of waiver, the object of both being to ensure bona fides in day-to-day transactions. In *Bashesar Nath v. CIT* a Constitution Bench of this Court considered the question whether the fundamental rights conferred by the Constitution can be waived. Two members of the Bench (Das, C.J. and Kapoor, J.) held that there can be no waiver of the fundamental right founded on Article 14 of the Constitution. Two others (N.H. Bhagwati and Subba Rao, JJ.) held that not only could there be no waiver of the right conferred by Article 14, but there could be no waiver of any other fundamental right guaranteed by Part III of the Constitution. The Constitution makes no distinction, according to the learned Judges, between fundamental rights enacted for the benefit of an individual and those enacted in public interest or on grounds of public policy.

47. The proposition that notice need not be given of a proposed action because, there can possibly be no answer to it, is contrary to the wellrecognised understanding of the real import of the rule of hearing. That proposition overlooks that justice must not only be done but must manifestly be seen to be done and confuses one for the other. The appearance of injustice is the denial of justice. It is the dialogue with the person likely to be affected by the proposed action which meets the requirement that justice must also be seen to be done. Procedural safeguards have their historical origins in the notion that conditions of personal freedom can be preserved only when there is some institutional check on arbitrary action on the part of public authorities. The right to be heard has two facets, intrinsic and instrumental. The intrinsic value of that right consists in the opportunity which it gives to individuals or groups, against whom decisions taken by public authorities operate, to participate in the processes by which those decisions are made, an opportunity that expresses their dignity as persons.

Whatever its outcome, such a hearing represents a valued human interaction in which the affected person experiences at least the satisfaction of participating in the decision that vitally concerns her, and perhaps the separate satisfaction of receiving an explanation of why the decision is being made in a certain way. Both the right to be heard from, and the right to be told why, are analytically distinct from the right to secure a different outcome; these rights to interchange express

the elementary idea that to be a person, rather than a thing, is at least to be consulted about what is done with one. Justice Frankfurter captured part of this sense of procedural justice when he wrote that the "validity and moral authority of a conclusion largely depend on the mode by which it was reached.... No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done". At stake here is not just the much-acclaimed appearance of justice but, from a perspective that treats process as intrinsically significant, the very essence of justice.

The instrumental facet of the right of hearing consists in the means which it affords of assuring that the public rules of conduct, which result in benefits and prejudices alike, are in fact accurately and consistently followed.

It ensures that a challenged action accurately reflects the substantive rules applicable to such action; its point is less to assure participation than to use participation to assure accuracy.

35. The respondent No. 11 exhorts that the participation of the delinquent in the enquiry does not exonerate the authority when the procedure is assailed, if the authority fails to demonstrate that the process was just; for it is the fairness of the process that is under scrutiny. A judgment reported at *Sawai Singh Vs. State of Rajasthan*, is referred to and paragraphs 16 and 17 of the report are placed where the Supreme Court observed that despite a departmental enquiry not being a criminal trial, rules of fairplay embodied in the principles of natural justice have to be adhered to:

16. It has been observed by this Court in *Surath Chandra Chakrabarty v. State of W.B.* that charges involving consequences of termination of service must be specific, though a departmental enquiry is not like a criminal trial as was noted by this Court in the case of *State of A.P. v. S. Sree Rama Rao* and as such there is no such rule that an offence is not established unless it is proved beyond doubt. But in a departmental enquiry entailing consequences like loss of job which nowadays means loss of livelihood, there must be fairplay in action; in respect of an order involving adverse or penal consequences against an employee, there must be investigations to the charges consistent with the requirement of the situation in accordance with the principles of natural justice insofar as these are applicable in a particular situation.

17. The application of those principles of natural justice must always be in conformity with the scheme of the Act and the subject-matter of the case. It is not possible to lay down any rigid rules as to which principle of natural justice is to be applied. There is no such thing as technical natural justice. The requirements of natural justice depend upon the facts and circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so on. Concept of fairplay in action which is

the basis of natural justice must depend upon the particular lis between the parties. (See K.L. Tripathi v. State Bank of India) Rules and practices are constantly developing to ensure fairness in the making of decisions which affect people in their daily lives and livelihood. Without such fairness democratic governments cannot exist. Beyond all rules and procedures that is the sine qua non.

36. As to what procedural safeguards should be in place when penal consequences may visit a person upon an enquiry or proceedings, the respondent No. 11 refers to the judgment reported at A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., , Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another, In the first of the cases, the Supreme Court discussed the scope and ambit of Article 14 and expressed the view that Article 14 would strike at arbitrariness in executive or administrative action because any action that is arbitrary must necessarily involve the negation of equality. Paragraph 4 of the Rasiklal case is placed where the discussion is on the effect of the employer charging an employee on a particular count of misconduct but choosing to punish him for per se misconduct on a count not enumerated:

4. The High Court while dismissing the petition held that even if the allegation of misconduct does not constitute misconduct amongst those enumerated in the relevant service regulations yet the employer can attribute what would otherwise per se be a misconduct though not enumerated and punish him for the same. This proposition appears to us to be startling because even though either under the Certified Standing Orders or service regulations, it is necessary for the employer to prescribe what would be the misconduct so that the workman/employee knows the pitfalls he should guard against. If after undergoing the elaborate exercise of enumerating misconduct, it is left to the unbridled discretion of the employer to dub any conduct as misconduct, the workman will be on tenterhooks and he will be punished by ex post facto determination by the employer. It is a well-settled canon of penal jurisprudence - removal or dismissal from service on account of the misconduct constitutes penalty in law - that the workman sought to be charged for misconduct must have adequate advance notice of what action or what conduct would constitute misconduct. The legal proposition as stated by the High Court would have necessitated in-depth examination, but for a recent decision of this Court in Glaxo Laboratories v. Presiding Officer, Labour Court, Meerut in which this Court specifically repelled an identical contention advanced by Mr. Shanti Bhushan, learned Counsel who appeared for the employer in that case....

37. A Special Bench judgment of this Court reported at 1999 (1) CHN 521 (Arun Kumar Hati v. State of West Bengal and Ors.) is next placed by the respondent No. 11 as to the implicit rules of procedure which ought to run concurrently with the express rules. Paragraph 34 of the report captures the essence of the judgment:

34. The implicit rules of procedure which complement the express procedure

follow from the phrase in Rule 28(8) of the Management Rules which requires the Managing Committee to offer the delinquent "reasonable facilities for defending himself." In other words, the procedure adopted must conform to the principles of natural justice but ultimately "the test is one of prejudice i.e. whether the person has received a fair hearing considering all things.

38. The respondent No. 11 cites a judgment reported at (1990) 2 SCR 84 (Neelima Misra v. Harinder Kaur Paintal) for the distinction between quasi-judicial and administrative functions. It is a distinction that is fast vanishing as more recent judicial pronouncements would show, but that is of no consequence in the present case as there can be no doubt that the function that the University was required to discharge in the present case was quasi-judicial. Paragraphs 19 and 22 of the report are apposite, though the gap between the two heads of function has been considerably bridged over the nearly two decades since the judgment:

19. We find it difficult to accept the reasoning underlying the aforesaid view. Before we consider the correctness of the proposition laid down by the High Court we must, at the expense of some space, analyse the distinctions between quasi-judicial and administrative functions. An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no such obligation, the decision is called "purely administrative" and there is no third category. This is what was meant by Lord Reid in *Ridge v. Baldwin*:

In cases of the kind with which I have been dealing the Board of Works...was dealing with a single isolated case. It was not deciding, like a judge in a law suit, what were the rights of the persons before it. But it was deciding how he should be treated - something analogous to a judge's duty in imposing a penalty....

So it was easy to say that such a body is performing a quasi-judicial task in considering and deciding such a matter and to require it to observe the essentials of all proceedings of a judicial character the principles of natural justice. Sometimes the functions of a minister or department may also be of that character and then the rules of natural justice can apply in much the same way....

22. An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin maxim *audi alteram partem*. It means that the decision maker should afford to any party to a dispute an opportunity to present his case. A large number of authorities are on this point and we will not travel over the field of authorities. What is now not in dispute is that the person concerned must be informed of the case against him and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken. (*Ridge v. Baldwin*; *State of Orissa v. Binapani Dei.*).

39. Two further decisions have been placed by the respondent No. 11 as to the procedure being required to be manifestly fair, particularly when the consequence is far-reaching for the person charged. The judgment reported at

Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others, is placed for the principle that fairness is a fundamental attribute of good administration. The judgment reported at Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, is cited for the checks that it mandates in a quasi-judicial matter where the reputation and professional honour of a person is at stake. Paragraphs 19 and 20 of the M.S. Nally Bharat Engineering case may be referred to where natural justice has been seen simply as the duty to act fairly:

19. It may be noted that the terms "fairness of procedure", "fairplay in action", "duty to act fairly" are perhaps used as alternatives to "natural justice" without drawing any distinction. But Prof. Paul Jackson points out that "Such phrases may sometimes be used to refer not to the obligation to observe the principles of natural justice but, on the contrary, to refer to a standard of behaviour which, increasingly, the courts require to be followed even in circumstances where the duty to observe natural justice is inapplicable" ("Natural Justice" by Paul Jackson, 2nd edn., p. 11).

20. We share the view expressed by Professor Jackson. Fairness, in our opinion, is a fundamental principle of good administration. It is a rule to ensure the vast power in the modern State is not abused but properly exercised. The State power is used for proper and not for improper purposes. The authority is not misguided by extraneous or irrelevant considerations. Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. To use the time hallowed phrase "that justice should not only be done but be seen to be done" is the essence of fairness equally applicable to administrative authorities. Fairness is thus a prime test for proper and good administration. It has no set form or procedure. It depends upon the facts of each case. As Lord Pearson said in *Pearlberg v. Varty* (at p. 547), fairness does not necessarily require a plurality of hearings or representations and counter-representations. Indeed, it cannot have too much elaboration of procedure since wheels of administration must move quickly.

40. Paragraph 18 of the Institute of Chartered Accountants case speaks of the professional reputation of a person and his standing and dignity among his peers and clientele. It is necessary, the Supreme Court emphasised, and there is manifest need to ensure that there is no breach of fundamental procedure in the original proceedings for no measure compensation can undo a blemish once attached to a professional's conduct.

18. But perhaps another way of looking at the matter lies in examining the consequences of the initial order as soon as it is passed. There are cases where an order may cause serious injury as soon as it is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal. For instance, as in the present case, where a member of a highly respected and publicly trusted profession is found guilty of misconduct and suffers penalty, the damage to his professional reputation can be immediate and far-reaching. "Not all the King's horses and all the King's men" can ever salvage the situation

completely, notwithstanding the widest scope provided to an appeal. To many a man, his professional reputation is his most valuable possession. It affects his standing and dignity among his fellow members in the profession, and guarantees the esteem of his clientele. It is often the carefully garnered fruit of a long period of scrupulous, conscientious and diligent industry. It is the portrait of his professional honour. In a world said to be notorious for its blase attitude towards the noble values of an earlier generation, a man's professional reputation is still his most sensitive pride. In such a case, after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mesne profits for the period of deprivation. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding.

41. Divers provisions from Chapter II of the Jadavpur University First Regulations have been placed by the respondent No. 11, stressing on the checks that the University ought to have been aware of and applied before it proceeded to grant provisional certificates to the candidates. The respondent No. 11 says that if the University failed to abide by its rules as to the examination of the thesis, it cannot wake up to inflict such harsh punishment on the candidates when the University stood indicted by its conduct.

42. The professors who had supervised the two doctoral candidates in course of the preparation of their dissertations have also chipped in. The executive council resolution of the University that closed the doors of the University on the doctoral candidates was followed by resolutions affecting the guides. Whatever the senior scientists may have expressed before the Commission, they sing in unison with the petitioner and the eleventh respondent and decry the procedure adopted by the University in course of condemning all five.

43. Notwithstanding their independent writ petitions having been filed, the respondent Nos. 9 and 10 urge that if a benefit can be conferred on the petitioner on the Court's appreciation of an arbitrary procedure having been adopted by the University, the same benefit can be extended to the respondents who are victims of the condemned procedure. They rely on a judgment reported at K.I. Shephard and Others Vs. Union of India (UOI) and Others, in support of such contention. In the K.I. Shephard case similarly placed employees had been extended the benefit of an order made in favour of the petitioner, as would appear from paragraph 19 of the judgment:

19. The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded

employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners. Ordinarily the successful parties should have been entitled to costs but in view of the fact that they are going back to employment, we do not propose to make orders of costs against their employers. We hope and trust that the transferee banks would look at the matter with an open mind and would keep themselves alive to the human problem involved in it.

44. The respondent Nos. 9 and 10 say that in exercise of its jurisdiction under Article 226 of the Constitution, the High Court can itself make an order that it feels that the public authority should have made. For such principle, they place the judgment reported at Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, and rely on paragraph 20 thereof:

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

45. The other supervisor, the respondent No. 8, submits that if the principal charge of plagiarism against the candidates goes, the professors have per force to be exonerated. The argument is that the charges against the candidates have first to be cemented before any charge against the guides can be conceived of.

46. The University seeks to justify its motive. The University, it says, has a reputation way beyond the shores that it needs to zealously protect. The University asserts that when it received two like dissertations, both had to be rejected as neither could claim original contribution to knowledge which is the

essence of a doctoral thesis and is recognised as such under Regulation 25(i) of Chapter II of its Regulations. The University places the entirety of the Commission's report to say that every canon of fairplay was observed in course of the enquiry and the conclusion is based on sound reasoning and warrants no interference in exercise of the extraordinary powers under Article 226 of the Constitution.

47. The University insists that ample opportunity was afforded to the petitioner and his cohorts. There was substantial compliance, it says, with the principles of natural justice and that there was no document entitled "charge-sheet" setting out the heads of charges, is no ground to presume that either candidate or any of his guides had not been made aware of what he was charged with or had any doubt in that regard. The University argues that the petitioner unmistakably understood that he was charged of copying, no less, and the same would be evident from the letter issued by the petitioner that appears at page 83 of the petition. Each of the five placed in the dock knew, upon it being made known to him, that there were two nearly identical dissertations that had been contemporaneously received and which appeared to be similarly worded over 328 pages, asserts the University. It says that the fact that there may have been technical aberrations in trifling procedural matters should not detain the Court or enthuse it to empathise with such wrongdoers.

48. The University iterates the principles that are required to be followed in exercise of the writ jurisdiction; that there should be no reappraisal of evidence or any nit-picking to find footy little faults in the manner that the University went about in discharge of its solemn obligation to uphold academic integrity and inculcate discipline among its students and its faculty.

49. The University urges that notwithstanding the craft in the petitioner's presentation of his case, the Court has to see whether a prudent person could be persuaded to arrive at a different conclusion on the given facts. If the facts speak for themselves, that a judge-made hyper-technical rule of natural justice fell by the wayside in the expedience and immediacy of the University's endeavour to keep its house in order, should dissuade the Court to bring to naught the entire exercise otherwise fairly conducted.

50. The first decision that the University refers to is one reported at *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, This was a case of mass copying at a particular centre during the secondary school examinations. The examinees came to learn only from a Board communiqué published in newspapers that the results of the particular centre had been cancelled and the examinees were required to take a supplemental examination. The examinees challenged the order on grounds that included that there was no complaint of use of unfair means, that no opportunity had been given to the examinees to present their case and that the date for the supplemental examination was too close. All such contentions were negated by the Supreme Court and the extent of operation of the principles of natural justice was

discussed at paragraphs 14 and 15 of the report, the following extracts whereof are relevant:

14. ...The universities are responsible for their standards and the conduct of examinations. The essence of the examinations is that the worth of every person is appraised without any assistance from an outside source. If at a centre the whole body of students receive assistance and are managed to secure success in the neighbourhood of 100% when others at other centres are successful only at an average of 50%, it is obvious that the University or the Board must do something in the matter. It cannot hold a detailed quasi-judicial inquiry with a right to its alumni to plead and lead evidence etc., before the results are withheld or the examinations cancelled. If there is sufficient material on which it can be demonstrated that the university was right in its conclusion that the examinations ought to be cancelled then academic standards require that the university's appreciation of the problem must be respected. It would not do for the Court to say that you should have examined all the candidates or even their representatives with a view to ascertaining whether they had received assistance or not. To do this would encourage indiscipline if not also perjury.

15. We are satisfied that no principle of natural justice was violated in this case. The Board through its Chairman and later itself reached the right conclusion that the examinations at this Centre had been vitiated by practising unfair means on a mass scale and the Board had every right to cancel the examination and order that a fresh examination be held....

51. Another case of copying, where the Supreme Court repeated that the principles of natural justice had limited operation, is next cited by the University.

52. The material facts in the case reported at Prem Parkash Kaluniya Vs. The Punjab University and Others, were that the petitioning candidate had appeared in the Part I examinations of the Bachelor's course. The results were published but the petitioner's results were withheld. The petitioner was called by the University to appear before its Registrar and answer a questionnaire. A further hearing was given to him following which he was debarred from sitting in any examination for two years. The student's challenge of the order was dismissed in limine by the High Court. He urged two principal grounds in the appeal before the Supreme Court: that no charges had been framed against him and that he had not been allowed to make any statement or cross-examine the other candidates or examiners. The Supreme Court repelled the argument with the following observation at paragraph 10 of the report:

10. We do not find that the appellant had any doubt about the allegation which he had to meet. So far as the opportunity of making a statement of his own is concerned, he was specifically asked in Question 8 contained in the Questionnaire if he had anything more to state in his defence and it appears that he gave no answer. There is nothing to show that he ever asked for any opportunity to cross-examine the other candidate or the examiners who had

made the reports including the subject-expert.

53. In the judgment reported at *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, the Supreme Court observed that there were exceptions to the rules of natural justice and the principles do not come in a straitjacket. The matter related to certain male students of a college who entered the neighbouring compound of a ladies' hostel and were seen walking without any clothes on them. Some of them tugged at a few ladies through the windows and others climbed the pipes to reach the terrace where some ladies were studying. The action taken against the male students was challenged, which the High Court rejected. It is the Supreme Court's affirmation of the High Court's order that the University cites at paragraph 12 of the report:

12. We think that under the circumstances of the case the requirements of natural justice were fulfilled. The learned Counsel for the respondents made available to us the report of the Committee just to show how meticulous the members of the Committee were to see that no injustice was done. We are informed that this report had also been made available to the learned Judges of the High Court who heard the case and it further appears that the counsel for the appellants before the High Court was also invited to have a look into the report, but he refused to do so. There was no question about the incident. The only question was of identity. The names had been specifically mentioned in the complaint and, not to leave anything to chance, the Committee obtained photographs of the four delinquents and mixed them up with 20 other photographs of students. The girls by and large identified these four students from the photographs. On the other hand, if as the appellants say, they were in their own Hostel at the time it would not have been difficult for them to produce necessary evidence apart from saying that they were innocent and they had not gone to the girls Hostel at all late at night. There was no evidence in that behalf. The Committee on a careful consideration of the material before them came to the conclusion that the three appellants and Upendra had taken part in the night raid on the girls Hostel. The report was confidentially sent to the Principal. The very reasons for which the girls were not examined in the presence of the appellants, prevailed on the authorities not to give a copy of the report to them. It would have been unwise to do so. Taking all the circumstances into account it is not possible to say that rules of natural justice had not been followed. In *Board of Education v. Rice* Lord Loreburn laid down that in disposing of a question, which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on everyone who decided anything. He did not think that the Board was bound to treat such a question as though it were a trial. The Board need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view. More recently in *Russell v. Duke of Norfolk* at p. 118 Tucker, L.J. observed "There are, in my view, no words which are of universal application to every kind

of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". More recently in *Byrne v. Kinematograph Renters Society Ltd.* Harman, J., observed "What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more".

54. The University places a judgment reported at *State Bank of Patiala and others Vs. S.K. Sharma*, to urge that if there is substantial compliance with the rules of fairplay, the Court would not interfere with a process merely because there was no strict compliance with the various steps recognised by judgments of court. It places paragraph 33 of the report, excerpts wherefrom are appropriate in the context of the university's argument:

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under - "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the

enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for....

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/ statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query....

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision." The University says that the ECIL case cited by the petitioner and paragraph 30(v) of the report would support its contention that merely because the enquiry officer's report is not furnished to the delinquent, the process would not necessarily be vitiated. The Supreme Court cautioned that the rules of natural justice cannot be reduced to a mechanical ritual and the effect of the order of punishment in the absence of the enquiry report being furnished has to be ascertained on the basis of facts.

55. Another judgment reported at State of U.P. Vs. Harendra Arora and Another, has been placed by the University in support of its contention that mere failure to provide the enquiry report or comply with every facet of the principles of natural justice would not, by itself, invalidate the enquiry. At paragraphs 15 to 21 of the report, the Supreme Court has referred to several authorities in support of such proposition.

56. The University relies on a judgment reported at Lalit Popli Vs. Canara Bank and Others, for the standard of proof that is necessary in disciplinary proceedings and the extent of jurisdiction under Article 226 of the Constitution in judicially reviewing the decision-making process. Paragraphs 16 and 17 of the report are relevant:

16. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See State of Rajasthan v. B.K. Meena.) In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.

57. The University says that even if no enquiry is held and disciplinary action is taken summarily, the delinquent's grievance may not be entertained on the grounds of violation of principles of natural justice. For such principle, the University relies on a judgment reported at Ajit Kumar Nag Vs. General Manager

(P.J.), Indian Oil Corporation Ltd., Haldia and Others, The writ petitioner and the appellant before the Supreme Court in such case was charged with beating up the resident medical officer of the refinery hospital at Haldia. He was summarily dismissed. His writ petition failed. The appeal therefrom was unsuccessful and he carried the matter to the Supreme Court. The Supreme Court rejected the appeal and an independent petition under Article 32 of the Constitution. It is true that at paragraph 44 of the report the Supreme Court has held that normally there is a rule that a person must have a fair trial and a fair appeal and he cannot be asked to be satisfied with an unfair trial. But the decision cannot be viewed without reference to the facts. The standing orders governing the terms of employment of the petitioner in that case permitted summary procedure and dismissal. As laid down in other authorities, the principles of natural justice, however desirable, are neither indispensable nor inflexible. The Ajit Kumar Nag case is also relied upon for the dictum that the standard of proof in disciplinary proceedings is as in a civil case and not as exalted as in criminal proceedings. For the same principle a judgment reported at Union of India (UOI) and Others Vs. A. Nagamalleswar Rao, is placed where the authority had proceeded against a person for fabricating the numbers in his marksheet to obtain appointment.

58. The University stresses on the bounds of authority of a court exercising powers under Article 226 of the Constitution by referring to the judgment reported at Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, where the Supreme Court observed at paragraph 15 of the report as follows:

15. In G.B.S. Omkar v. Shri Venkateswara University, P.A. Choudhary, J. in the context of finding the student guilty of malpractices held, that:

I regretfully note that standards of discipline and education presently obtaining in many Universities in our country leave a good lot to be desired. They are low and falling lower everyday. The fall-out of these low standards of University education on liberal professions is proving to be nearly catastrophic.... It is no wonder that some of our Universities have ceased to be centres of learning and have grown into battlefields for warring caste groups.

It was held that what the writ court Article 226 needs to consider is whether fair opportunity had been given to a petitioner and he had been treated squarely and whether the student had a fair deal with the University. Once the procedural formalities are complied with, in the absence of any allegation of mala fide, it must be presumed that the University had acted bona fide and honestly so long as there is the evidence justifying the inference arrived at without there being a serious procedural irregularity. The writ court would not interfere with an order of educational institution. Therefore, what the writ court needs to do is to find whether fair and reasonable opportunity has been given to the students in the given facts.

59. For similar effect, the University refers to a judgment reported at Sub-

Divisional Officer, Konch Vs. Maharaj Singh, where the Supreme Court disapproved the reappreciation of the entire evidence by the High Court, criticised the High Court for having gone into the question of burden of proof and onus of proof and held that the High Court had exceeded its jurisdiction. The judgment reported at Aligarh Muslim University and Others Vs. Mansoor Ali Khan, is next cited and paragraphs 23 and 24 of the report placed. The Supreme Court noticed the S.L. Kapoor and another previous decision to further the "useless formality" theory that has now come to be accepted as an exception to the court's application of the principles of natural justice. A judgment reported at Oriental Insurance Co. Ltd. Vs. S. Balakrishnan, is also placed to suggest that merely on the ground of the enquiry report not being furnished, the entire proceedings may not be invalidated.

60. The University last cites the judgment reported at Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Others Vs. K. Meerabai, to say that sympathy or generosity has no place in judicial review. In this case the Supreme Court upset the High Court's interference with the quantum of punishment inflicted on the delinquent. The following excerpt from paragraph 29 of the report is apposite:

29. ...The scope of judicial review is very limited. Sympathy or generosity as a factor is impermissible. In our view, loss of confidence is the primary factor and not the amount of money misappropriated. In the instant case, the respondent employee is found guilty of misappropriating the Corporation funds. There is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment awarded by the disciplinary and Appellate Authority.

61. Not every feature of the rules of natural justice needs to be rigidly complied with in every instance, nor will the writ court make such an exacting demand. What is imperative is that unless the rules of procedure permit a summary process, there has to be substantial compliance with the rules of fairplay that any form of justice would demand. In every case where the court has condoned a procedure at variance with the accepted norms when the rules of natural justice have been breached without any provision in that regard, the court has been satisfied that even if the principles of natural justice were complied with the result would have been the same.

62. But if it appears that the authority discharging a quasi-judicial function enters upon the matter with an element of predisposition, the course of action it charts out and the reasons that it ultimately gives call for a more stringent examination. The writ court may be more searching in its exercise of assessing the decision-making process to discover whether the transgressions in the procedure can be linked to the quasi-judicial authority's endeavour to rush through the formalities to arrive at the inevitable conclusion. There may not be any ill motive or malice in the manner in which the authority goes about its

business, as in the present case, but a bonafide exercise may sometimes be tinged by a conditioning or a mental make-up that the authority may not be conscious of. Even before referring to the persons who had been examined before it, the Commission quotes a finding from the earlier preliminary enquiry and agrees with such finding:

Prof. Pal hinted in his report following possibilities: "(a) substantial portions of one thesis have been "copied" from the other and/or (b) both of them have extensively copied from a common source(s).

In fact, the nature of plagiarism in this case is so blatant that one cannot think of any other possibility.

63. It was as if the Commission closed its mind to any other possibility. Even if that is condoned, it is to be seen as to which of the two (or three) possibilities was ultimately accepted by the Commission and the reasons that it gave to arrive at its conclusion.

64. There are two principal attributes of a quasi-judicial order: the presentation of their cases by the parties to a dispute; and, if the dispute is a question of fact, the ascertainment of fact by means of evidence adduced by the parties and generally accompanied by arguments made on the evidence. Quite often it is the authority which sits in judgment that is the other party to the dispute or the fact-finding or decision-making body derives its powers from the authority which is a party to the dispute. In such cases, unless the law expressly or by necessary implication provides, the lesser party has to be guarded against being crushed by the might of the authority that he fights. It is thus that the *audi alteram partem* principle applies with added vigour to balance against the *nemo iudex factor* that is not always avoidable. If then one has to err it has to be on the side of the David, but the slightest material transgression by the Goliath may not be overlooked.

65. That there is transgression in the *modus operandi* adopted by the respondent authorities in this case is evident. But it is only the material departure from the accepted course of action that would invite censure or make the decision and the route taken thereto vulnerable to rectification. It is tempting to bite the petitioner's bait for the red herring that is the charge-sheet argument that he makes. There was indeed no charge-sheet. But the petitioner was in no quandary as to what it was that the Commission sought to probe. The ground stands condemned by the petitioner's written representation to the Commission and his assiduous endeavour to deflect the needle of suspicion from himself. He knew that he could stand only if he pulled the eleventh respondent down and he busied himself in ardently going about what he thought he had to do. It is apparent that he perceived that the Commission (or the University) thought that either he had attempted to palm off the other's work for his or the eleventh respondent had passed off the petitioner's work as his own. It is quite another matter that there were two other scenarios possible, to one of which the Commission did not seem

to be alive.

66. Viewed in isolation, the fact that the petitioner was not issued a charge-sheet is a grave charge, but it is the substance of an alleged irregularity that will reflect on its effect in the larger scheme of things. The purpose for issuing a charge sheet is to make the noticee aware of that which he is charged with for him to make out an adequate defence thereto. From the petitioner's letter of December 12, 2006 issued to the Commission there appears to be no doubt that he was under no dilemma as to the purpose of the exercise. He asserted that it was his thesis that had been copied from and that he was aware of it even before the word got around. In the last paragraph of an earlier letter of November 29, 2006, the petitioner claimed that his was the original work and he offered to be examined "for the truthfulness regarding (his) own contribution covering 13 chapters in the thesis." His statement implied that neither had he copied from another, nor did he benefit from any collaboration with the other candidate. He addressed the charge in right earnest and the three possible shades of the charge against him - that he copied from the respondent No. 11 or that he collaborated with the respondent No. 11 or that the two stole the material from a common source - were met in his replies.

67. It is the next aspect, whether he had adequate opportunity to defend himself against the charge, which is of greater significance. There is no rebuttal by the University to the petitioner's grievance that neither were documents or witness accounts made available to him nor was he permitted to cross-examine the witnesses or bring witnesses of his own. The documents and the statements of his supervisors were used against him by the Commission as will appear from this sentence at the eighth page of the 11-page report of the Commission:

Unfortunately for him (the petitioner), available records and the submissions made by his supervisors, do not support his claims.

68. The report gives an overview of the statements made by the witnesses and provides glimpses of what was actually said. The petitioner had no access to the statements, he was not afforded a chance to look the makers of the statements in the eye for them to repeat the statements on his face, he was not presented any opportunity to put his suggestions to the witnesses even if it is presumed that their oral testimony would have remained intact upon the petitioner's cross-examination. He could have, by his suggestions, brought out what he perceived to be the motive of the witnesses to condemn him and thus raised doubts for the Commission to discern with reasons. A party does not have to show that there was actual miscarriage of justice if he is able to demonstrate the likelihood of prejudice being occasioned to him by the faulty course of action, unless it is assessed that the end result would have remained unchanged.

69. What appears from the Commission's report is that there was substantial identity of the two works. What the Commission leaves unsaid is as to who was the culprit. The Commission missed an opportunity of all facets of the matter

being presented before it for it to ponder and deliberate upon them and reason out its conclusions by eliminating the improbable.

70. In a writ petition where disputed questions of fact cannot ordinarily be gone into by reason of the summary procedure adopted, it may not be open to the court to invite the parties to produce such material that they ought to have been invited to at the original stage. The writ court will generally not receive any evidence or new material or assess them. Even if the best of motives is imputed to the University and the Commission, the test is in the assessment as to whether there was a likelihood of miscarriage of justice; rather than requiring the aggrieved petitioner to establish actual prejudice. If it is the decision-making process rather than the decision that is called into question in the exercise of a jurisdiction for issuance of a high prerogative writ, the court will not busy itself in intricate matters arising out of evidence that could not be brought at the original stage. The writ court will ordinarily not usurp the decision-making authority of the administrative body. It will only ascertain if the rules of fairplay were in place and if it finds that they were not, it will provide for the parties to suffer the process a second time with the safeguards being put in place, unless it finds that the charge against the alleged delinquent is inarguably bad as in a demurrer.

71. Two thoughts occur and the University has been invited to address on such matters. It has first to be appreciated that the copying that is complained of is not in an examination atmosphere where two or more charged candidates have a possibility of collaborating. Equally, and since it is the admitted position that the petitioner and the eleventh respondent for the most part shared a common guide, it is of significance that either would have easier access to the other's work - one of the boons of advanced technology and the soft copies that it brings - than would two candidates in an examination hall. But even upon being aware of the different circumstances prevailing when a charge of copying is levelled in an examination atmosphere, it is indisputable that only one of four possibilities could arise in the present case: the petitioner may have lifted the material from the eleventh respondent's work; or the eleventh respondent may have copied the petitioner's; or the two could have collaborated and attempted to hoodwink the University by presenting apparently original theses; or the two may have stolen the material from a common source.

72. If plagiarism is the charge then the offence that it undoubtedly is, is not in one work being similar to the other. The misdemeanour is in the act of copying. The pages that the Commission has expended on the matter does not inform the petitioner as to whether the petitioner had copied the eleventh respondent's work or whether the two had teamed up and presented the same work under two names or whether they had downloaded or otherwise obtained the entire work from a third, external source. That the two works are similar, if not identical, comes through from the Commission's report. But if a person is penalised, it is fundamental that the nature of his guilt be disclosed to him.

73. The University was been queried on two possible scenarios. It can be

visualised that unbeknown to the petitioner, another hacks in to his file and reproduces the work. It is also not impossible to imagine that from the hardcopy of the dissertation deposited by the petitioner copies get made for the purpose of, or in course of, circulation to the right persons but one copy mysteriously finds its way to the waiting hands of another aspiring doctorate. It is inconceivable that the petitioner will be held guilty in either case. It is just as likely that the petitioner was careless with his dissertation, that he did not guard it as closely as he ought to have and another had access to it to use the material and pass it off as his own. If this was so, the petitioner ought to have been held responsible for his negligence and could have been punished therefor, but only upon a finding in that regard.

74. The reasons that the Commission gives betray that it was completely oblivious to such possibilities and it is this that highlights the other irregularities in the procedure adopted by it to raise a doubt as to whether the Commission was alive to the ramifications of the abridged process that it adopted. It is not the Commission's approach that the conduct could not go unpunished that is in question, but its attention to detail in affording the petitioner a right to counter all the material that was brought against him that is. As much as the reputation of the University as an institution of academic excellence was at stake, it was the petitioner's reputation and career on the line. For the one the other could not be sacrificed. It was as if the petitioner was a lamb to the slaughter, for slaughter was felt to be the crying call of the hour in the larger cause of the University's standing or in a message being percolated to other aspiring miscreants.

75. There is a sense of the baby being thrown out with the bath water. And if such is the sense that the process conveys, it cannot pass muster.

76. The University followed a peculiar procedure in which the petitioner may have been prejudiced. First there was a preliminary enquiry headed by the Dean of the faculty of science of the University which culminated in a report. This first report was made available to the Commission as is stated at the second paragraph of the Commission's report but does not appear to have been forwarded to the petitioner. If the Commission was the disciplining authority then by the principle in the ECIL case, the procedure adopted was clearly wrong. However, as it turned out, the disciplinary action was not taken by the Commission but by the executive council of the University. Again by the rule in the ECIL case, the enquiry report (which could be the Commission's report alone or the preliminary enquiry report and the Commission's report) should have been made available to the petitioner and his response sought thereon. This was not done.

77. The lapse could have been overlooked if, on the basis of the reasons in the report, a reasonable conclusion could be drawn that no purpose would have been served even if the accepted steps were taken. The writ court would then have to be convinced that the exercise would have been futile as no possible conclusion other than what the Commission's report has drawn could have been reached

and the petitioner would thereupon have to suffer the punishment that has been inflicted on him. It does not appear obvious from the Commission's report or the reasons found therein that there could have been the only one conclusion drawn - of the petitioner being found guilty - for the consequence by way of punishment to follow.

78. It is thus that the reasons need to be assessed. For most part, as the Commission's report says, the one thesis is a copy of the other. The first 328 pages of either thesis are not merely similar but are found to be identical. The acknowledgements at the conclusion of either thesis also appear to be similarly worded, complete with identical typographical mistakes and misplaced expressions of gratitude. The Commission's report is somewhat unclear in dealing with the business end of either thesis, the part after page 328 and up to the page preceding the acknowledgement section. It is such part which is the expression of the original thought in either thesis.

79. There are two aspects as to the reasons and the reasoning for the conclusion drawn in the report. Despite the general sweeping statements in the report, it does not clearly state that the final findings in the two theses after the first 328 pages are identical in substance. Even if the report is construed to convey such meaning -that the findings in the two works are identical - the Commission has made no effort to enquire whether it was the petitioner who was guilty of plagiarism. That is also the executive council's understanding of the Commission's report. For if the petitioner was guilty of passing off the eleventh respondent's work as his own, the eleventh respondent should not have met the same fate as the petitioner. It is in this that the report appears to be inconclusive and the course of action adopted can squarely be faulted therefor.

80. A party appearing before a quasi-judicial body is entitled to know, either expressly stated by the body or inferentially stated, what it is to which the body is addressing its mind. It was incumbent on the University to tell the petitioner that he stood condemned and was worthy of the punishment for his having been found, on the reasonable test of preponderance of probabilities, to be the plagiarist. The Commission's findings do not inform him so. It is in such failure that the other transgressions in procedure become material: of the petitioner not being told what punishment lay in store for him; of the petitioner not being allowed to examine his witnesses or cross-examine those on whose statements he stood indicted; of the records referred to by the Commission not being given to him; and, of the Commission's report not being furnished for the petitioner to have a chance to persuade the executive council that on the Commission's findings he could not be inflicted this heavy punishment.

81. The extent of reasons depends on the gravity of the matter. Reasons are the links between the material and the findings, the chain of inferences building up to the conclusion. It is the reasons which justify the conclusion, for the "what" of a judicial or a quasi-judicial order stands on the "why" of the reasons therein. Reasons also help the decision-making body in clearing its doubts in arriving at

the conclusion. In the absence of adequate reasons - the adequacy being a variable directly proportional to the seriousness of the subject matter - it may be said that the decision-making body either harboured no doubts, thus betraying a sense of bias or prejudice, or chose not to air the doubts to avoid the labour of sifting the wheat from the chaff.

82. In a democratic society justice must be rooted in confidence. Unless the rules of procedure provide otherwise, a point of view urged needs to be considered and, if deserving of rejection, repelled only by the force of reason. The acceptability of the process of judging, for it to enthuse participation and encourage adherence to the judgment, it is necessary to instill transparency. The sense of justice is not the private domain of the feudal few but the province of the community. It must be seen, experienced and coveted.

83. The experience that law reveals the repetitive attribute of history. As a rule is born to carve out an exception to a fundamental principle, law revels in the infancy of the exception, pushes its limits in its adolescence and settles down to a more staid, mature approach in its adulthood. And so it has been with the rule of natural justice. Its seemingly uncontrolled growth in its newfound life propelled it to expand its horizon to the twilight zone of expectations. In course of time and refinement, the rule of exception has increasingly deferred in obeisance to the principle - that of the administration's authority to administer - and exceptions have been introduced to the rule that was an exception to start with. In its present refined form it is no longer the unbridled and has been reined in.

84. The form of the rule now can be said to have the following broad features:

(i) The test is one of prejudice; whether a person has received a fair hearing considering all things.

(ii) The nature of the proceedings - the facts in a given case - determines the extent of the applicability of the rule.

(iii) It is the substance and not the form that is the paramount consideration in the application of the rule.

(iv) The ubiquity of the principles of natural justice is tempered in the recognition that, subject to provision expressly made or necessarily inferred, they may be dispensed with.

(v) A violation of the principles of natural justice would not vitiate the procedure if it were perceived that no other result would be possible. There is a sense of something amiss that the report conveys and the petitioner may yet be found to be a plagiarist afflicted by the copy-paste disease of the times. The Commission was headed by a person more technically equipped to appreciate the substance of the theses and the subject matters that they proclaimed to cover. To a layman it would seem that the unique contribution of a physicist could be in a single formula that he sets down upon his original thought on an entire body of work

available to all and sundry. To suggest that a doctoral thesis has to be original from its first line or up to its penultimate chapter may be too demanding if it is appreciated that it is in the new thought based on commonly accessible data that the originality may lie. Einstein's $e = mc^2$ was his conclusion based on a substantial body of scientific theory that was already in place. The data may be the same but the perception of the data by a scientist may be his original contribution. It is here that the report by an apparent expert is lacking in clarity.

85. If the punishment meted out to the petitioner is gauged, then he stands indicted of plagiarism, for it is difficult to conceive any harsher civil consequence. It is not expected that the author of a joint work claiming it to be his own receives the same punishment as one who has merely copied it from another. It is improbable that a person who has been negligent in guarding his exclusive work would be served the penalty that the petitioner has been. The report is inconclusive in the exact extent of finding against the petitioner. The similar retribution that the petitioner and the eleventh respondent have earned could only have been upon it being found that they had collaborated but had fraudulently claimed exclusivity. The report is blurred in its assessment of such facet.

86. The petition succeeds. The executive council resolution of May 16, 2007 is set aside to the extent it applies to the petitioner. But it will be open to the University to begin the process afresh or otherwise adopt a procedure to assess the matter by affording adequate opportunity to the petitioner to present and urge his defence. Nothing in this judgment should be read as having in any manner exonerated the petitioner of the charge of plagiarism or any of the shades of it.

87. Since the respondent No. 11 has filed his independent proceedings, it is not necessary to go into his contention that in the University not traversing the averments in the affidavit filed on his behalf in the present proceedings, the eleventh respondent has to be given the benefit that has been conferred on the petitioner. It will, however, be open to the eleventh respondent to rely on this order in his independent proceedings. The same courtesy cannot be extended to the eighth, ninth and tenth respondents for they ought to have discovered that some mischief was afoot before allowing the dissertations to progress to submission. The considerations that would apply in the case of the supervisors, particularly the common guide, would be entirely different as this petition has been assessed on the petitioner's case and the views expressed here have to be read thus. The observation that the order passed in favour of the petitioner cannot, in this context, be availed of by the supervisors should also not prejudice their independent petitions.

88. The order will remain stayed for a fortnight and the interim order subsisting will continue till the stay operates.

89. WP No. 21719 (W) of 2007 is disposed of without any order as to costs.

90. Urgent certified photostat copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.