

(2010) 10 DEL CK 0091
In the Delhi High Court
Case No : L.P.A. No. 535 of 2008

University of Delhi and Others

APPELLANT

Vs

Harpal Singh Sangwan

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Banking Regulation Act, 1949 — Section 45
Canara Bank Officer Employees (Conduct) Regulations, 1976 — Regulation 6(18), 6(21)
Constitution of India, 1950 — Article 226
Industries (Development and Regulation) Act, 1951 — Section 18AA, 18AA(1), 18F

Citation : (2010) 10 DEL CK 0091

Hon'ble Judges : Dipak Misra, C.J.; Manmohan, J

Bench : Division Bench

Advocate : M.J.S. Rupal, for the Appellant; K. Venkatraman, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, C.J.—In this intra-Court appeal, the appellant-University (hereafter referred to as "the appellant") has called in question the legal acceptability of the order dated 15th July, 2008 passed by the learned Single Judge in WP(C) No. 6512/2007.

2. The facts which have been uncontained are that the respondent-writ petitioner (hereinafter referred to as "the respondent") was a student of M.A. (Russian) in the Department of Slavonic and Finno Ugrain Studies in the appellant University in 2005-07. He appeared in the final year examination in the said course and at that stage he also appeared in the entrance examination for the Post Graduate course in "Hindi Journalism" for the academic session 2007-08. His result of the MA (Russian) final year examination was declared on 2nd August, 2007. As set forth, the result of the entrance examination for Post Graduate course in Hindi Journalism was published in the first week of August, 2007 and the name of the respondent was initially displayed in the list of successful candidates but the same was substituted by another list which did not reflect his name. At this

stage, the respondent received a communication dated 30th July, 2007 whereby the University, in exercise of powers vested under Ordinance XV-B, directed that the respondent be not admitted in any course in the University of Delhi for a period of next five years. Because of the said notification, he was denied the admission to Post Graduate Course in Hindi Journalism. Being dissatisfied with the said communication and action of the University, the respondent invoked the jurisdiction of this Court under Article 226 of the Constitution of India for issue of a writ of certiorari for quashment of the said notification dated 30th July, 2007 issued by the University and further to command the University to extend the benefit of admission in any course and further to consider his candidature for the Post Graduate Course in Hindi Journalism.

3. During the pendency of the writ petition, the University issued a notification on 26th November, 2007 stating that the competent authority had decided to grant post-decisional hearing to the respondent and accordingly constituted a committee consisting of Prof. V.K. Bhasin, Department of Zoology, as the Chairperson and Dr. M. Rahman, Acting Proctor as the Member to look into the complaints against the respondent. The committee was required to submit a report to the Vice- Chancellor within ten days from the date of issue of the notification. The Chairperson of the enquiry committee issued a notice dated 26/28-11-2007 giving an opportunity to the respondent to appear before the committee for hearing on 3rd December, 2007 with regard to his grievance relating to the imposition of punishment under Ordinance XV-B along with the relevant records. He was also afforded an opportunity to present his case before the committee by filing a written statement. The respondent, in pursuance of the said notice, appeared before the committee and the committee put to the respondent four complaints which had formed the basis of the action taken against him. Thereafter, the committee, as asked for by the respondent, supplied the documents and the respondent filed his reply. After the enquiry was over, the Vice-Chancellor, on the basis of the enquiry report, arrived at the conclusion that the response of the respondent was unsatisfactory and unacceptable and there was no justification to alter the decision. The said order was passed by the Vice-Chancellor on 8/9-5-2008. The said order passed by the Vice-Chancellor along with the representation of the respondent were made available before the learned Single Judge by filing affidavit.

4. It was contended before the learned Single Judge that the earlier notification / communication dated 30th July, 2007 is patently illegal as the principles of natural justice were not followed and further the order was an unreasoned one; that taking recourse to post-decisional hearing was not an adequate substitute; that the whole exercise of post-decisional hearing was an eye wash and was also to cover up the laches in the initial order; that the University has failed to establish any of the allegations leveled against the writ petitioner for taking action under Ordinance XV-B which deals with maintenance of discipline among the students of the University; that the enquiry made by the enquiry committee in the course of post-decisional hearing was totally in violation of the norms

inasmuch as the respondent was not informed about the charges leveled against him; and that the order passed by the Vice-Chancellor placing reliance on the enquiry report was absolutely vulnerable.

5. The learned Single Judge first dwelled upon the issue whether a post-decisional hearing could be an adequate substitute to save the impugned action of the appellants from the vice of arbitrariness. He referred to the decision in *Swadeshi Cotton Mills Vs. Union of India (UOI)*, *K.I. Shephard and Others Vs. Union of India (UOI) and Others*, *H.L. Trehan and Others Vs. Union of India (UOI) and Others*, and *Shri Shekhar Ghosh Vs. Union of India (UOI) and Another*, . After placing reliance on the said authorities, the learned Single Judge came to hold that post-decisional hearing cannot be a substitute for a pre-decisional hearing; that where a pre-decisional hearing is not excluded by the statute only in cases of exceptional urgency, where it is not possible to give a pre-decisional hearing on account of the emergent situation the pre-decisional hearing may be dispensed with provided a full review or appeal on merits against the decision is available. The learned Single Judge has further held that the principle that minimum compliance of the rules of natural justice should be observed as far as possible.

6. After so holding, the learned Single Judge referred to two complaints made against the writ petitioner in the year 2005 and the other two which were made in the year 2007. He took note of Ordinance XV-B to arrive at the conclusion that the same does not exclude the compliance of the principles of natural justice and further it does not lay down any condition with regard to the time period within which action could have been taken by the Vice-Chancellor against the writ petitioner and, hence, there was no urgency to issue the impugned notification. The learned Single Judge further held that in exercise of power under Ordinance XV-B, the Vice-Chancellor, at any time of the academic session, can pass an order and there was no necessity that it should be passed before the student takes admission in any other course in the University. It was further opined by the learned Single Judge that the impugned notification was issued to block the move of the respondent to take the admission in the Post Graduate Certificate Course in Hindi Journalism for the academic session 2007-08 and, therefore, post-decisional hearing stated to have been granted to him was not a legally sustainable substitute. It is worth noting that the plea of the University that the post-decisional hearing sub-served the cause of justice was not accepted. The decisions in *Narender Singh Vs. University of Delhi and Others*, *Ajit Kumar Nag v. General Manager (PJ)*, *Ajit Kumar Nag Vs. General Manager (P.J.)*, *Indian Oil Corporation Ltd., Haldia and Others*, *Satyavir Singh and Others Vs. Union of India (UOI) and Others*, and *M.C. Mehta v. Union of India (1997) 6 SCC 237* were distinguished on facts.

7. After dealing with the aforesaid facet, the learned Single Judge adverted to the complaint made and came to hold that the complainants who had made the complaints against him were not called upon to give their statements before the

enquiry committee. The security staff, who were allegedly prevented by the respondent from performing their duties or threatened by him, were not called. The complaint made by Mr. Ravinder Kumar, P.S. in the office of the Director, South Delhi Campus, on 17th April, 2007 was not addressed to by the committee and hence, could not have been treated to have been proved. Thereafter, the learned Single Judge addressed himself with regard to the complaint made against the respondent by Prof. S.K. Vij on 1st May, 2007 who had alleged that on 20th April, 2007 when a meeting of the Departmental Council was being held, the respondent barged into the meeting to make certain demands /claims and he was requested to wait for some time as the meeting was in progress. Later, he was invited to make his representation. At that stage, he behaved in a manner unbecoming of a student. As found by the learned Single Judge, the enquiry committee in its report records that during the course of the enquiry, the respondent / writ petitioner had admitted that he entered into the room of Dr. S.K. Vij, Head of the Department, without his permission when the Head of the Department was presiding over a meeting of the committee and from the same, the enquiry committee concluded that the respondent failed to maintain proper discipline as he had forcibly entered into the room of the HOD when a statutory meeting was going on and misbehaved with the HOD. The learned Single Judge repelled the stand of the University that the complaints made against the respondent were proved. The entire enquiry was an eye-wash and if such a course of action is allowed, the University would victimize any student or ex-student by collecting such complaints and proceeding against him to debar him from studying in the University. Thereafter, as is perceptible, the learned Single Judge dealt with the order dated 8/9-5-2008 and came to hold that the Vice-Chancellor did not apply his mind to the enquiry report but accepted the same mechanically. He has not indicated on what basis and on what material he had come to arrive at the conclusion that the allegations were proved. It is worth noting that the writ petitioner had also made the Vice-Chancellor a party Respondent No. 2 in his personal capacity and pleaded that he had taken certain issues which annoyed the Vice-Chancellor. As the Vice-Chancellor had not chosen to file affidavit, the learned Single Judge thought it appropriate not to dwell upon the same and kept it open allowing liberty to the writ petitioner to raise the same at any subsequent stage.

8. After deliberating on the aforesaid issue, the learned Single Judge opined that the impugned notification / communication dated 30th July, 2007 and all proceedings subsequent thereto including the order dated 8/9-5-2008 whereby the Vice-Chancellor had decided not to recall or review the aforesaid notification / communication deserved to be quashed and, accordingly, quashed the same. After quashing the same, he directed the appellant-University to consider the entrance test result of the respondent for the examination 2007-08 for the current academic year (as he had already qualified in the said entrance test) and to hold an interview for admission to Hindi Journalism P.G. Certificate Course for the academic year 2008-09. Eventually, the writ petition was allowed

with imposition of costs of Rs. 30,000/-.

9. We have heard Mr. Rupal, learned Counsel for the appellants, and Mr. K. Venkataraman, learned Counsel for the respondent.

10. Questioning the correctness of the order passed by the learned Single Judge, it is contended by Mr. Rupal that the learned Single Judge has fallen into error by coming to hold that the doctrine of post- decisional hearing could not have been invoked in the case at hand. It is urged by him that the view expressed by the learned Single Judge that pre-decisional hearing was imperative in the case at hand inasmuch as post-decisional hearing only results in giving the stamp of approval to the decision taken earlier and does not serve any fruitful purpose is incorrect. It is contended by him that the learned Single Judge has fallaciously opined that the power had been conferred on the Vice-Chancellor to take action at any point of time and, hence, there was no hurry to issue the impugned notification without appreciating the factual matrix in the proper perspective. It is canvassed by Mr. Rupal that the learned Single Judge has completely misguided himself by expressing the view that the enquiry was a mere eye wash and nothing had been proven against the respondent despite ample material brought on record.

11. Mr. K. Venkatraman, learned Counsel appearing for the respondent, submitted that the conclusion arrived at by the learned Single Judge that in the case at hand post-decisional hearing did not sub-serve the cause of justice cannot be flawed inasmuch as the University authorities were bent upon to stick to their decision rendered earlier. That apart, submits the learned Counsel for the respondent, there was no warrant or justification not to take recourse to the principles of natural justice as some delay would not have brought in a situation beyond control but on the contrary would have ensued in an appropriate decision in law. The learned Counsel submitted that the analysis of the evidence and the materials brought on record by the learned Single Judge is absolutely faultless and does not warrant any interference in the intra court appeal which is basically an appeal of rectification.

12. It is not in dispute that the notification dated 30.7.2007 was issued without affording an opportunity of hearing. It is also not in dispute that the University issued a notification on 26.11.2007 which reflects the decision of the competent authority of the University that it had decided to grant post-decisional hearing to the petitioner and had accordingly constituted a committee. The learned Single Judge has referred to the complaints made against the respondent and thereafter proceeded to deal with the submission whether in the case of the present nature the post-decisional hearing can be an adequate substitute. He has referred to Clauses 3(a) and 4 of Ordinance XV-B and relied on the decisions which we have referred to hereinbefore. Before we advert to the nature of the complaint made against the respondent, the power conferred on the Vice-Chancellor and the obtaining scenario, we think it apposite to refer to certain citations relating to the basic concept inhered in post-decisional hearing.

13. In *K.I. Shephard* (supra), the Apex Court was considering the exclusion of employees of certain banks under the amalgamation scheme framed u/s 45 of Banking Regulation Act (10 of 1949) without affording an opportunity of hearing. The question that arose in the said case was whether non-compliance of the principles of natural justice vitiated the decision and whether post-decisional hearing would sub-serve the cause of justice. Their Lordships, after referring to the authorities in *Perre Brothers v. Citrus Organisation Committee* (1975) 10 SASR 555, *In Re: K (H) (an infant)* (1967) 1 All ER 226, *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, and *Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another*, came to hold as follows:

13. Natural justice has various facets and acting fairly is one of them. RBI which monitored the three amalgamations was required to act fairly in the facts of the case. The situation necessitated a participatory enquiry in regard to the excluded employees. Since the decision to exclude them from service under the transferee banks is grounded upon a set of facts the correctness whereof they deny, if an opportunity to know the allegations and to have their say had been afforded, they could have no grievance on this score. The action deprives them of their livelihood and brings adverse civil consequences and could obviously not be taken on the ipse dixit of RBI officers without verification of facts. It is quite possible that a manoeuvring officer of the banking company adversely disposed of towards a particular employee of such bank could make a report against such employee and have him excluded from further service under the transferee bank. The possibility of exclusion on the basis of some mistake such as to identity cannot also be ruled out. There is all the more apprehension of this type as the process has to be completed quickly and very often the records of a large number of employees have to be scrutinized. We are of the view that rules of natural justice apply to administrative action and in the instant cases the decision to exclude a section of the employees without complying with requirement of natural justice was bad.

After so holding, their Lordships repelled the submission as regards the time period during which the operation was required to be conducted. In this regard, the Apex Court opined thus:

15. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilization and the content thereof is often considered as a proper measure of the level of civilization and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of the case there is any

justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalized so that a hearing commensurate to the situation is afforded before a section of the employees is thrown out of employment.

After so stating, their Lordships proceeded to hold thus:

16. We may now point out that the learned single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose

We have referred to the aforesaid decision in extenso as the learned Single Judge has placed heavy reliance on the same. The various factors that weighed with the Apex Court are to be taken note of. They are deprivation of livelihood of employees, possibility of a manoeuvring officer of the banking company adversely disposed of towards a particular employee to exclude an employee, some mistake as regards the identity of an employee, the non-exclusion of the principles of natural justice by the time frame postulated under the scheme and the lack of justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity as a condition precedent before action is taken. At a later stage, when we analyze the factual matrix of the case at hand, we would address ourselves whether the said decision would be applicable or not.

14. In *Swadeshi Cotton Mills* (supra), the issue that emerged for consideration was whether prior hearing was necessary to be given to the persons affected before an order u/s 18AA of Industries (Development and Regulation) Act, 1951 was passed. The majority, after scanning the anatomy of Section 18AA while analyzing the said question, held as follows:

42. "The necessity for speed", writes Paul Jackson: "may justify immediate action, it will, however, normally allow for a hearing at a later stage." The possibility of such a hearing - and the adequacy of any later remedy should the initial action prove to have been unjustified-are considerations to be borne in

mind when deciding whether the need for urgent action excludes a right to rely on natural justice. Moreover, however, the need to act swiftly may modify or limit what natural justice requires, it must not be thought "that because rough, swift or imperfect justice only is available that there ought to be no justice": *Pratt v. Wanganui Education Board*.

43. Prof. de Smith, the renowned author of *JUDICIAL REVIEW* (3rd Edn.) has at page 170, expressed his views on this aspect of the subject, thus: "Can the absence of a hearing before a decision is made be adequately compensated for by a hearing *ex post facto*" A prior hearing may be better than a subsequent hearing, but a subsequent hearing is better than no hearing at all; and in some cases the courts have held that statutory provision for an administrative appeal or even full judicial review on the merits are sufficient to negative the existence of any implied duty to hear before the original decision is made. The approach may be acceptable where the original decision does not cause serious detriment to the person affected, or where there is also a paramount need for prompt action, or where it is impracticable to afford antecedent hearings."

44. In short, the general principle - as distinguished from an absolute rule of uniform application - seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fairplay "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

After stating the said principles, their Lordships opined thus:

77. The second reason - which is more or less a facet of the first - for holding that the mere use of the word "immediate" in the phrase "immediate action is necessary", does not necessarily and absolutely exclude the prior application of the *audi alteram partem* rule, is that immediacy or urgency requiring swift action is a situational fact having a direct nexus with the likelihood of adverse effect on fall in production. And, such likelihood and the urgency of action to prevent it,

may vary greatly in degree. The words "likely to affect" production" used in Section 18AA(1)(a) are flexible enough to comprehend a wide spectrum of situations ranging from the one where the likelihood of the happening of the apprehended event is imminent to that where it may be reasonably anticipated to happen sometime in the near future. Cases of extreme urgency where action u/s 18AA(1)(a) to prevent fall in production and consequent injury to public interest, brooks absolutely no delay, would be rare. In most cases, where the urgency is not so extreme, it is practicable to adjust and strike a balance between the competing claims of hurry and hearing.

78. The audi alteram partem rule, as already pointed out, is a very flexible, malleable and adaptable concept of natural justice. To adjust and harmonise the need for speed and obligation to act fairly, it can be modified and the measure of its application cut short in reasonable proportion to the exigencies of the situation. Thus, in the ultimate analysis, the question (as to what extent and in what measure), this rule of fair hearing will apply at the pre-decisional stage will depend upon the degree of urgency, if any, evident from the facts and circumstances of the particular case.

Their Lordships further came to hold as follows:

94. In the facts and circumstances of the instant case, there has been a non-compliance with such implied requirement of the audi alteram partem rule of natural justice at the pre-decisional stage. The impugned order therefore, could be struck down as invalid on that score alone. But we refrain from doing so, because the learned Solicitor-General in all fairness, has both orally and in his written submissions dated August 28, 1979, committed himself to the position that u/s 18F, the Central Government in exercise of its curial functions, is bound to give the affected owner of the undertaking taken over, a "full and effective hearing on all aspects touching the validity and/or correctness of the order and/or action/of take-over", within a reasonable time after the take-over. The learned Solicitor-General has assured the Court that such a hearing will be afforded to the appellant-Company if it approaches the Central Government for cancellation of the impugned order. It is pointed out that this was the conceded position in the High Court that the aggrieved owner of the undertaking had a right to such a hearing.

(Emphasis added)

15. In *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, , the Apex Court was dealing with certain circulars issued by the Deputy Chief Controller of Imports and Exports directing licensing authorities to keep in "abeyance" for a period of six months from the respective dates of the circulars any application received from any of the 192 concerns for the grant of import licence or customs clearance permits and allotment of imported goods through agencies like the State Trading Corporation of India Ltd., the Minerals and Metals Trading Corporation of India Ltd. or any other similar agency. Be it noted, the

said circulars were issued as it was discovered that beef tallow had been allowed to be imported even by "non-actual users" under letters of authority given by licensees who had obtained import licences against the entitlement based on the value of their exports. The question that arose for consideration was whether the issue of circular disclosed total non-application of mind and further when the orders of abeyance were compartmentalized as secret orders, would secrecy militate against natural justice. A further question was also posed whether an order of such immensity could be made without due investigation and without giving a reasonable opportunity to the affected party. Though in the said case, their Lordships were dealing with the application of the principle of natural justice, yet they adverted to the concept of pre-decisional hearing and post-decisional hearing and stated thus:

15. Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties. It may be that the opportunity to be heard may not be pre-decisional; it may necessarily have to be post-decisional where the danger to be averted or the act to be prevented is imminent or where the action to be taken can brook no delay. If an area is devastated by flood, one cannot wait to issue show-cause notices for requisitioning vehicles to evacuate population. If there is an outbreak of an epidemic, we presume one does not have to issue show-cause notices to requisition beds in hospitals, public or private. In such situations, it may be enough to issue post-decisional notices providing for an opportunity. It may not even be necessary in some situations to issue such notices, but it would be sufficient but obligatory to consider any representation that may be made by the aggrieved person and that would satisfy the requirements of procedural fairness and natural justice. There can be no tape-measure of the extent of natural justice. It may and indeed it must vary from statute to statute, situation to situation and case to case.

After referring to the decisions rendered in *Queen v. Randolph et al.* 56 DLR (2d) 283, *Commissioner of Police v. Tanos* 98 CLR 383, *Lewis v. Heffer* (1978) 3 All ER 354 (CA) and *Furnell v. Whangarei High Schools Board* 1973 AC 660, their Lordships observed thus:

20. We have referred to these four cases only to illustrate how ex parte interim orders may be made pending a final adjudication. We, however, take care to say that we do not mean to suggest that natural justice is not attracted when orders of suspension or like orders of an interim nature are made. Some orders of that nature, intended to prevent further mischief of one kind, may themselves be productive of greater mischief of another kind. An interim order of stay or suspension which has the effect of preventing a person, however, temporarily, say, from pursuing his profession or line of business, may have substantial, serious and even disastrous consequences to him and may expose him to grave risk and hazard. Therefore, we say that there must be observed some modicum of residual, core natural justice, sufficient to enable the effected person to make an adequate representation. (These considerations may not, however, apply to

cases of liquor licensing which involve the grant of a privilege and are not a matter of right: See *Chingleput Bottlers Vs. Majestic Bottling Company*, That may be and in some cases, it can only be after an initial ex parte interim order is made.

16. In *Union of India and Another Vs. Tulsiram Patel and Others*, while dealing with the issue relating to the railway employees going on a strike and the dispensation of enquiry by the railways, the Apex Court has expressed thus:

172. In the context of an all-India strike where a very large number of railway servants had struck work, the railway services paralysed, loyal workers and superior officers assaulted and intimidated, the country held to ransom, the economy of the country and public interest and public good prejudicially affected, prompt and immediate action was called for to bring the situation to normal. In these circumstances, it cannot be said that an inquiry was reasonably practicable.

17. In *Jayantilal Ratanchand Shah, Devkumar Gopaldas Aggarwal and others Vs. Reserve Bank of India and others*, , the Constitution Bench, while dealing with the constitutional validity of the High Denomination Bank Notes (Demonetisation) Act, 1978 and the legality of certain orders passed thereunder, has held thus:

16. In impugning the order of the Currency Officer of the Bank it was submitted on behalf of the petitioner that no opportunity of being heard was given to the Society so as to enable it to explain the reasons for delay in submitting the declaration form. Even if we proceed on the assumption that such an opportunity of personal hearing was imperative to comply with the rules of natural justice the petitioner cannot raise any grievance on that score for the appellate authority gave them such an opportunity before dismissing their appeal. This apart, as noticed earlier, the appellate authority has given detailed reasons for its inability to accept the explanation of the Society for not filing the declaration in time

(Underlining is ours)

18. In *Canara Bank and Others Vs. Shri Debasis Das and Others*, the Apex Court was dealing with the scope and ambit of Regulations 6(18) and 6(21) of the *Canara Bank Officer Employees (Conduct) Regulations, 1976*. In the said case, their Lordships posed the question whether the principles of natural justice have been avoided and if so, to what extent and whether any prejudice has been caused and eventually held as follows:

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which

involves civil consequences must be consistent with the rules of natural justice. Expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

Thereafter, their Lordships referred to the decisions in Charan Lal Sahu Vs. Union of India, , Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and Union Bank of India Vs. Vishwa Mohan, and came to hold that though in all cases, the post-decisional hearing cannot be a substitute for pre-decisional hearing, yet it would depend upon facts of the case.

19. In Canara Bank Vs. V.K. Awasthy, , it was observed that when an employee fails to show that there has been prejudice due to lack of pre-decisional hearing and adequate post-decisional hearing has been granted, it cannot be said that there is violation of the principles of natural justice. Thus, what has been stated by the Lordships is that in certain circumstances post-decisional hearing would be adequate.

20. In Ajit Kumar Nag (supra), while dealing with the concept of applicability of natural justice, the Apex Court has held thus:

The principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straitjacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. While interpreting legal provisions, a court of law cannot be unmindful of the hard realities of life. The approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than "precedential". In certain circumstances, application of the principles of natural justice can be modified and even excluded. Both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct in the taking of prompt action, such a right can be excluded. It can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion. The maxim audi alteram partem cannot be invoked if import of such maxim would have the effect of paralysing the administrative process or where the need for promptitude or the urgency so demands. The principles of natural justice have no application when the authority is of the opinion that it would be inexpedient to hold an enquiry and it would be against the interest of security of the Corporation to continue in employment the offender workman when serious acts were likely to affect the foundation of the institution.

(Emphasis supplied)

21. In Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, , a two-Judge Bench of the Apex Court after referring to the decisions in R.S. Dass Ors. Vs. Union of India (UOI) and Others, and B. Karunakar (supra) has ruled

thus:

36. The recent trend, however, is of "prejudice". Even in those cases where procedural requirements have not been complied with, the action has not been ipso facto illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant.

Thereafter, their Lordships referred to the decision in P.D. Agrawal Vs. State Bank of India and Others, and opined as under:

42. Recently, in P.D. Agrawal (supra) this Court restated the principles of natural justice and indicated that they are flexible and in the recent times, they had undergone a "sea change". If there is no prejudice to the employee, an action cannot be set aside merely on the ground that no hearing was afforded before taking a decision by the authority.

22. In City Montessori School Vs. State of Uttar Pradesh and Others, the Apex Court has stated thus:

28. It is now a well-settled principle of law that it cannot be put in a straitjacket formula. The Court despite opining that the principle of natural justice was required to be followed may, however, decline grant of a relief, inter alia, on the premise that the same would lead to a useless formality or that the person concerned in fact did not suffer any prejudice

23. From the aforesaid pronouncement of law, the principles that are culled out are that non-compliance of the principles of natural justice vitiates the decision; that it is a common experience that once a decision has been taken there is a tendency to uphold it; that unless the statute or a rule excludes the application of natural justice the same should be adhered to; that a person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing; that the doctrine of audi alteram partem is not founded on a straitjacket formula and it can be modified in the exigencies of situation; that the doctrine of post-decisional hearing can be invoked if a danger or a different situation is required to be avoided; that a higher forum in certain circumstances can afford adequate opportunity of hearing though in all cases post-decisional hearing cannot be substituted for pre-decisional hearing; that hard realities of life are to be borne in mind, it would be depend upon the facts of the case; that the factum of prejudice has been caused is a factor to be taken note of; and that sometimes the court may not interfere and direct for a post-decisional hearing.

24. In the case at hand, the respondent is aged about 55 years and has been making adroit efforts to remain in the college campus. Numerous complaints were received against him as the factual matrix would show and which has also been accepted by the learned Single Judge that Professor S.K. Vij. had lodged a complaint stating that on 20.4.2007 when a meeting of the Departmental Council was being held, the respondent barged into the meeting room to make certain demands / claims. The learned Single Judge had taken note of the fact that the

respondent had admitted that he entered into the room of Professor Vij, the Head of the Department without his permission when he was presiding over a meeting of the Committee. The learned Single Judge has discarded the enquiry report as no grievance was made by Professor Vij that the respondent had entered into his room when the meeting was on inasmuch as the Professor Vij only requested the respondent to wait for some time as the meeting was in progress. Learned Single Judge has held that the mere presence of the respondent in the said statutory meeting could not be regarded as the conclusive proof of the fact that the writ petitioner had misbehaved with the Professor.

25. It is worth noting that the learned Single Judge has held that the post-decisional hearing is not a substitute for the pre-decisional hearing and in the case at hand the said doctrine could not have been invoked inasmuch as there was no urgency as the Vice-Chancellor has the power to pass an order at any time of the academic session and there was no requirement to pass an order in respect of a student before he took admission in a course in the University. That apart the learned Single Judge has opined that there is no exclusion of principles of natural justice and the theory of futile exercise could not have been taken recourse to. As has been stated earlier, after so holding he has proceeded to examine the validity of the post-decisional hearing which has been afforded to the respondent by the University.

26. It is apposite to note that the present factual matrix has its own peculiarity. The writ petitioner, the respondent herein, was 55 years old and has been remaining in the college campus for few decades and creating a dent in the academic atmosphere and complaints had been made by the students, the professors, security guards, staff of the University hostels and sanitary staff. When so many complaints were made and more so by the Professor-cum-Head of the Department S.K. Vij who had categorically stated in the complaint that the respondent had barged into his room while he was holding a meeting as contemplated under the statute, the conduct of the writ petitioner really showed indiscipline. This complaint of the professor, the students, the staff when comes to the notice of the Vice-Chancellor especially keeping in view the proclivity and the propensity of the respondent to remain in the college campus despite the fact that he is 55 years of age on the guise of prosecuting studies in one course or other and regard being had to his past conduct, we are disposed to think the denial of admission to the Post Graduate Course in Hindi Journalism and to any course for a period of five years was a matter of an exigency. True it is, power is conferred on the Vice-Chancellor to take action during the academic session. It is also true that the provision also requires pre-decisional hearing but, a significant one, when the factual matrix is appreciated keeping in view the atmosphere of the educational institution, we are disposed to think non-compliance with the principles of natural justice by not giving an opportunity to the respondent prior to taking the decision cannot be faulted. The authorities which have been relied upon by the learned Single Judge, in our considered opinion, are distinguishable as they relate to appointments, right of livelihood and such other factors. In the

present case, it pertains to the discipline in an educational institution. Thus, the view expressed by the learned Single Judge in the obtaining factual matrix that there was no exigency or no prompt action was required and later on action could have been taken and, therefore, the pre-decisional hearing was warranted, is not acceptable and we are unable to concur with the same.

27. As far as the faults which have been found in the post-decisional hearing by the learned Single Judge, on a perusal of the reasonings ascribed by him and the material brought on record, we are not in a position, with all humility, to accept the same. Before the Enquiry Committee, the respondent has admitted that he had compromised a dispute with one Neeraj Dubey as the same did not concern him. As far as the complaint made by Professor S.K. Vij is concerned, it is an accepted fact that the respondent had admitted that he had entered into the room of the Head of the Department without his permission when the Head of the Department was presiding over a meeting of the committee. The learned Single Judge has taken note of the fact that the Professor Vij had requested the respondent to wait for some time as the meeting was in progress and later on he was invited to make a representation. The fact remains that while the Professor S.K. Vij, the Head of the Department was presiding over a meeting, the respondent, an aspirant candidate for taking admission to a course, barged into his office. The Professor had made a complaint and the said position to that extent had been admitted by the respondent. He had also admitted that the Professor requested him to wait for some time. These aspects are not to be lightly viewed. One can imagine the plight of the Professor when the respondent aged about 55 years entered into the meeting hall where a statutory meeting was continuing. It is inconceivable how a student could enter into the meeting hall knowing fully well that the Professor was busy in a meeting. Quite apart from that prior permission is required to be sought before one enters into the room of the Professor and the Head of the Department. Circumstances had so arisen that the Professor was compelled to make a request to the respondent to wait for some time. It is needless to emphasize such an act decisively demolishes discipline. The tolerance by the Professor only reflects the sense of fear and paints a picture of plight. Not for nothing it has been said that an educational institution dealing with students has to teach them discipline in poetry but is required to govern them in terse prose when they become totally indisciplined. Action is required to be taken to hammer home the message. Thus, the finding recorded by the learned Single Judge that the charges levelled against the respondent have not been proven are not correct inasmuch as, we are disposed to think, on the basis of a singular incident of this nature, the decision not to admit the respondent in any course for a period of five years is justified.

28. In view of the aforesaid premised reasons, the appeal is allowed. The order passed by the learned Single Judge is set aside. In the facts and circumstances of the case, there shall be no order as to costs.