IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 12, 2017

\+ W.P.(C) 7826/2016, CM No. 32348/2016
UMAR KHALID

..... Petitioner(s)

Through: Mr. Akhil Sibal, Mr. Jawahar Raja, Mr. Sourav Roy, Ms. Jahnavi Mitra and Mr. Chinmay Kanojia, Advs.

versus

JAWAHARLAL NEHRU UNIVERSITY THR
ITS REGISTRAR

..... Respondent

Through: Ms. Ginny J. Rautray, Ms. Kanchan Kaur Dhodhi and Ms. Anushka Ashok, Advs.

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed with the following prayers:-

"In the facts and circumstances set out above, it is most respectfully prayed that this Hon'ble Court be pleased to:

a) issue a writ of certiorari or any other appropriate writ, order or direction calling for the records, quash and set aside respondent's

i) Office Order No. 198/CP/2016 dated 22.8.2016;

ii) Appellate Committee proceedings dated Nil, based on which Office Order No. 198/CP/2016 dated 22.8.2016 came to be passed;

iii) Office Order No. 144/CP/2016 dated 25.4.2016;

iv) Report of the High Level Enquiry Committee constituted by the respondent vide Notifn. No. Reg./Misc/16 dated 11.02.2016;

v) all other proceedings consequential to and arising out of the report of the High Level Enquiry Committee constituted by the respondent vide Notifn. No. Reg./Misc/16 dated 11.02.2016;

b) award the petitioner the costs of these proceedings;

d) Pass such further order or orders as this Hon'ble Court may deem fit."

2. The petitioner has filed the present petition seeking quashing of the respondent's orders dated August 22, 2016 and April 25, 2016, and quashing of the report of the High Level Enquiry Committee constituted by the Respondent vide Notification dated February 11, 2016. Vide the order dated April 25, 2016, the petitioner had been found to be in breach of University Regulations, and had been imposed the penalty of rustication for one semester, with fine of Rs.20,000/-, which penalty was upheld by the Appellate Authority

with a direction to give an undertaking.

3. The facts as pleaded by the petitioner in the writ petition are:-

a. A poetry reading event was held on the campus of the Respondent University on February 09, 2016, which attracted severe media frenzy and led to widespread public animosity towards some students of the University, including the Petitioner, resulting in acts of violence in the Patiala House Court Complex against some students and even renowned Senior Counsel appointed by the Supreme Court.

b. The petitioner, fearing for his safety, went into hiding on February 11, 2016.

c. On the same day i.e February 11, 2016, the Respondent University set up a proctorial enquiry committee to look into the incident and later withdrew the said proctorial enquiry committee and set up a 'High Level Enquiry Committee'. The HLEC was required to enquire into the event, identify any lapses which may have occurred, and

recommend any actions to be initiated by the University.

d. Petitioner found out that he was being sought by the police and therefore surrendered to them on the night intervening 23rd and 24th February, 2016, under protection of orders passed by this Court on a petition filed by him being W.P.(Crl.) 609/2016 seeking such protection.

e. Although the HLEC was aware that the petitioner was in hiding (as were several other of the respondent's students), they rushed proceedings through.

f. Petitioner and respondent are not at issue that throughout HLEC's proceedings, the petitioner was either in hiding or in police / judicial custody.

g. Final Report ('the HLEC Report') was forwarded to the Vice Chancellor. The report itself is undated but Respondent placed on record (through Additional Affidavit dated 07 January 2017) a

covering letter that indicated that the HLEC sent its report to the Vice Chancellor of the respondent University under cover of letter dated March 11, 2016.

h. Thereafter, a 'Show Cause Notice' dated March 14, 2016 issued by the Chief Proctor was sought to be served on the petitioner on March 15, 2016, while he was lodged in Tihar Jail.

i. The Show Cause Notice declared the Petitioner to 'have been found guilty' for violating the JNU Students' Discipline and Conduct Rules ('the JNU Rules of Discipline'), and called upon him explain by March 16, 2016 'why action should not be initiated against him'. This Show Cause Notice did not enclose a copy of the HLEC Report.

j) Show Cause Notice was followed by a letter dated March 16, 2016 issued by the Chief Proctor, extending the Petitioner's time to respond to the Show Cause Notice till March 18, 2016 and

enclosing a copy of the HLEC Report.

k) Being in Tihar Jail, the petitioner viewed the said communications, purportedly holding him 'guilty' without even notice of ongoing proceedings, with suspicion, and declined to receive them.

l) However, the petitioner, through his lawyer, requested the University to supply him with the necessary details / information / documents pertaining to the enquiry, on March 18, 2016. This communication from petitioner's lawyer was admittedly received by the Respondent. Respondent however did not acknowledge the communication, let alone respond to it.

m) The petitioner was released from Tihar Jail on bail, late in the evening of March 18, 2016. Petitioner's release was admittedly known to the Respondent, but petitioner was not informed of any proceedings pending against him.

n) However, the Chief Proctor, with the approval of

the Vice Chancellor issued an order dated April 25, 2016 finding the Petitioner Guilty of violating the JNU Rules of Discipline and imposed a punishment of rustication and fine on the petitioner.

o) Even after this order, the Petitioner vide letter dated May 03, 2016 wrote to the Chief Proctor, indicating the lapses of natural justice on account of lack of notice and denial of reasonable opportunity to present his case, sought a recall of the Order dated April 25, 2016, and again requested copies of the relevant materials.

p) When this letter also met with no response from the University, the petitioner was compelled to approach this Court in W.P.(C) 442/2016.

q) In those proceedings, this Court permitted the petitioner to appeal the orders of the guilt and punishment impugned before it, to the relevant university authority – the Vice Chancellor. This

Court further directed that the orders passed in that appeal would not be given effect to until of two weeks after it was passed. It is averred, this court was persuaded to pass such directions after noting that an "an appeal is continuation of the main proceedings" and that the "petitioners cannot be condemned unheard".

r) Petitioner filed an appeal on June 03, 2016 to the Vice Chancellor of the Respondent, highlighting the various deficiencies of the proceedings before the HLEC and the Chief Proctor, along with applications seeking the material information / documents.

s) Although the petitioner had already lodged his appeal on June 03, 2016, the Chief Proctor wrote to the petitioner on June 13, 2016 that "you are requested to appeal to the Vice Chancellor, Appellate Authority of the University, and depose on June 16, 2016 at 11.15 AM."

t) Petitioner on June 16, 2016 wrote to the Chief Proctor that he had already lodged his appeal on 3 June, 2016, and that he had pointed out in his appeal, that he was disabled from an effective appeal since he did not have access to relevant information and material. Petitioner therefore, once again requested the Chief Proctor to provide him with all the relevant information / material he had sought many times earlier, including in his appeal of 3 June, 2016 before proceeding further in the matter.

u) Petitioner attended appeal hearing at the Vice Chancellor's Office on 16 June 2016.

v) During the hearing, the Petitioner pointed out – yet again – his inability to defend himself without access to the relevant materials. In response, Appellate Committee handed the petitioner a voluminous set of files to read and asked the petitioner to respondent 'by writing his appeal'.

This, the petitioner was expected to do in the 15 minutes slot allotted to each student called for hearing on 16 June, 2016. (16 students had been allotted time for hearing on that date. The hearings were scheduled to begin at 11 AM, with 15 minutes slot allotted to each student. Petitioner was the second in the list of students whose hearings were scheduled for 16 June 2016.).

w) At the appeal hearing, the Petitioner once again wrote out his appeal highlighting the various deficiencies of the proceedings before the HLEC and the Chief Proctor, and once again asking for all material information / documents.

x) The Petitioner thus wrote a letter dated June 17, 2016 indicating denial of reasonable opportunity to make his case, in terms of the principles of natural justice, as well as the specific requirements of the JNU Rules of Discipline, and once again requesting access to materials considered by the

authorities at various stages. This letter also met with no response, and the Impugned Order was passed, in total violation of the prescribed rules and Fundamental Principles of Natural Justice, and completely ignoring the representations made by the Petitioner through his multiple communications, as well as during the hearing.

4. The respondent University has filed a short affidavit in response to the writ petition. The stand of the University in these proceedings shall be noted while referring to the submissions made by Ms. Ginny Routray, the learned counsel for the University.

SUBMISSONS:-

5. It is the submission of Mr. Akhil Sibal, learned Senior Counsel for the petitioner that petitioner was not served with the notice of the HLEC proceedings, and that those proceedings were concluded behind his back, while he, initially, was in hiding for fear of mob frenzy, and later, while he was in police and judicial custody. He stated, the HLEC could not have given findings of guilt or recommended punishment to be imposed, since its terms of reference extended only

to recommending *"actions to be initiated by the University as per its statutes and guidelines"* HLEC's Terms of Reference therefore indicated a preliminary, fact-finding enquiry, and not a disciplinary enquiry. However, examination of the HLEC report indicates that the HLEC acted beyond its terms of reference and found the petitioner guilty. In support his contention, he would refer to the following judgments:

(i) Nirmala J. Jhala v. State of Gujarat (2013) 4 SCC 301;

(ii) Nandita Narain v. Delhi University, 2015 SCC Online Delhi 6498.

6. He stated, it is clear from the stand of the respondent in counter affidavit and documents placed on record, they have not conducted separate disciplinary enquiry – either in terms of the JNU Rules of Discipline and Conduct, or on any other terms – after the HLEC submitted its report, and in fact relied solely on the HLEC Report. He would draw my attention to the show cause notice dated March 14, 2016 issued by the respondent, that the petitioner has '*been found guilty'*; impugned order dated April 25, 2016, imposes punishment on the basis of the Petitioner having been found *"guilty"* by the HLEC;

Appellate Committee's note on the hearing dated June 16, 2016 also notes that the Petitioner *'was punished'* by the HLEC; in its Counter affidavit before this Court, the respondent stated that the Petitioner *"was punished"* by the HLEC.

7. It is his submission, the Impugned Orders are vitiated for being premised on the HLEC Report, which is admittedly an outcome of a fact finding committee's proceedings which were conducted behind the back of the Petitioner, and could not have rendered findings of guilt and recommend punishment. Mr. Sibal stated, the respondent's power to enforce discipline among students flows from Section 5 (10) of the Jawaharlal Nehru University Act, 1966. ('the JNU Act') and from clause 32 of the statutes of the University that form the second schedule to the JNU Act. Clause 32 (5) of the statutes mandates the framing of detail rules of discipline and proper conduct. The University framed, and Vice Chancellor approved the JNU Rules of Discipline to comply with Statute 32 of the JNU Act.

8. According to him, Rule 5 (1) of those rules stipulates:

> *"No punishment shall ordinarily be imposed on a student unless he / she is found guilty of the offence for which he / she has been charged by a proctorial any other in other inquiry after*

following the normal procedure and providing due opportunity to the student charged for the offence to defend himself'.

The rule therefore, has three important elements:

- the student must be charged by the authority conducting the enquiry – where the enquiry into the misconduct/indiscipline is being conducted by a proctorial board, the charge must be by the proctorial board, and when the enquiry into the misconduct / indiscipline is being conducted by some other enquiry committee, the charge must be framed by that enquiry committee.
- normal procedure must be followed;
- the student must be given due opportunity to defend himself against the charge.

9. The respondent's action against the Petitioner is in violation of Rule 15 (1) of the 'Rules of Discipline and Proper Conduct' since he was not 'charged' by a proctorial or other inquiry, 'normal procedure' was not followed, and he was not given 'due opportunity' to defend himself. He qualifies his submission that, the petitioner was not charged by Proctoral or other enquiry by stating during the course of arguments, the Respondent initially claimed that the HLEC was the disciplinary enquiry committee and had issued notice to the petitioner by email, mail and in person, before finding the petitioner guilty. When petitioner pointed out that HLEC could not have found the petitioner guilty since its terms of reference

did not include examining the guilt or innocence of the petitioner, and that the HLEC had not complied with the rules stipulated by JNU statutes, and had not complied with the minimum principles of natural justice, respondents contended that the HLEC had not determined the guilt of the petitioner and that the HLEC was merely a preliminary fact-finding enquiry. Thus, it is Respondent's own case that the HLEC was merely a fact finding enquiry. Thus, it is the Respondent's own case that the HLEC was merely a fact finding body. Despite this, the HLEC has entered findings on the Petitioner's guilt and recommended punishments to be imposed on the petitioner. It is submitted that the said findings are totally unsustainable, inasmuch as the HLEC, quite apart from being legally incompetent to enter such findings, did not follow the mandatory procedure of Rule 5 (1) of the JNU Rules of Discipline. With regard to the proceedings before the HLEC, he stated, the Respondent has produced notices allegedly addressed to the Petitioner and has sought to contend that the Petitioner chose not to participate in the HLEC's proceedings despite the same. However, the respondent has failed to adduce a proof of service of these notices on the Petitioner, and more particularly, the record itself indicates these notices were not served on the Petitioner. He qualifies his submission by stating; (1) The notice dated February 12, 2016 remained undelivered as per the noting; (2) The notices dated February 16, 2016 and February 18, 2016 are not accompanied by any proof of service; (3) The

notices dated February 16, 2016 and February 18, 2016, have been addressed to 'khas-uman@hotmail.com' and 'syed52_ssb@jnu.ac.in' which are not email ids used by the Petitioner. On the contrary the email ids used by the Petitioner are 'khals_umar@hotmail.com' and 'umarkhals@gmail.com', on which the Petitioner has received 117 mails from the Respondent; (4) The document sought to be put forth as proof of service in Counter is merely an internal register of the Respondent, without any proof dispatch. He reiterates that parties are not on issue that the Petitioner was in hiding for fear for his life throughout the period of issuance of these notices.

10. Mr. Sibal alternatively submits, even assuming that these notices were served on the Petitioner, it is apparent that they contain no charges and cannot even be described as 'show cause notices' inasmuch as they do not specify the allegation/action in respect of which the Petitioner is being called upon to show cause. The notices produced by the Respondent simply refer *"an incident"* on February 09, 2016 and direct the Petitioner to appear at a particular date and time *'to explain your position in this regard'* and to *'bring any evidence, which you wish to submit in support of your defence'*, without setting out any allegation / charge or indicating any action proposed to be taken. As such, the notices do not meet the basic legal requirements of a show cause notice, let alone a notice of charges. According to him, the stand of the respondent that petitioner had been charged by show-cause notice dated 14th

March, 2016 that was sought to be served on the petitioner while he was in judicial custody at Tihar Jail. However, the 'show cause notice' is not a 'notice of charge' in terms of Rule 5 (1) because-

(1) Rule 5 (1) mandates that the charge has to be famed by a proctorial or any other enquiry. In the instant case, the 'show cause notice'' is not issued by the HLEC, which was the only enquiry set up by the Respondent. Admittedly, the HLEC had already concluded its proceedings and forwarded its report to the Vice Chancellor on 11.03.2016.

(2) It does not state that the petitioner is being charged; it stated that the petitioner has "been found guilty" by the HLEC.

(3) The notice merely asked the petitioner to show cause as to why "***disciplinary action should not be initiated***" against him. As such, the only consequence which could follow from the notice was the initiation of a disciplinary enquiry against the petitioner. If the petitioner had responded to the show cause notice and the Respondent had found the

> petitioner's response satisfactory, proceedings against the Petitioner would then have been dropped. On the other hand, if the petitioner did not respond to show cause notice or if the Petitioner's response to the show cause notice was found satisfactory, the next step in terms of rule 5 (1) could only have been to institute a "proctorial or other enquiry". It was then for the "proctorial or other enquiry" to frame charges against the petitioner. The show cause notice therefore, did not, as it could not have done, frame any charges against the petitioner in terms of rule 5(1).

11. It is the submission of Mr. Sibal far from being a 'charge' or 'notice of charge' under rule 5 (1), notice dated March 14, 2016 is not even a valid 'notice to show cause', because such a notice must indicate the penalty / action proposed to be taken. In the instant case, the only action specified in the show cause notice was initiation of disciplinary action and not imposition of punishment. The only action which could have followed notice dated March 14, 2016, therefore, is initiation of disciplinary action and not imposition of punishment. He stated, additionally, the Show Cause Notice of March 14, 2016 vitiated all proceedings that followed upon the show cause notice since, in stating that the petitioner 'has been found guilty', it is

indicated the predetermined mind of the Disciplinary Authority. Mr. Sibal would rely on the judgment of the Supreme Court in ***Oryx Fisheries v. Union of India, (2010) 13 SCC 427***, to contend the Supreme Court held that proceedings following up on show cause that indicated the predetermined mind of the disciplinary authority were unfair and stood vitiated, and further, that such unfairness could not be cured in appeal. He also relied on ***Tilakchand Magatram v. Kamala Prasad Shukla, 1995 Supp, (1) SCC 21***, to contend the Supreme Court has held that a defect in the initial stages of disciplinary proceedings, which goes to the root of the matter, cannot be cured at an appellate stage.

12. One of the submission of Mr. Sibal is, in fact, that despite the petitioner repeatedly asking what procedure would be followed, the Respondent did not inform him. Petitioner wrote to the respondent asking what procedure would be followed in the enquiry to be conducted against him on 18th March, 2016 and June 2016. Respondent did not reply. He also stated, the respondent's action is bad for the following reasons:-

> (a) Petitioner was not informed who the complainant was
> (b) The complainant's statement was not recorded in Petitioner's presence.
> (c) Petitioner was not called to record his statement.
> (d) List of witnesses were not called from the complainant or from the petitioner so that they could be called to record their depositions.
> (e) Petitioner was not told what evidence was being received against him.

(f) Petitioner was not informed of what material evidence – audio recordings, video recordings, paper documentation etc. were available, who was producing that material evidence, and how its veracity was being established.
(g) No comprehensive report was prepared, no specific charge was framed against petitioner, no show cause notice was issued to Petitioner in respect of any specific charge.
(h) Petitioner was not given opportunity to cross examine the complainant or any of the witnesses.

13. It is the submission of Mr. Sibal, the 'Revised Rules and Procedures of the Gender Sensitisation Committee against Sexual Harassment' to be followed by the committee examining allegations of sexual harassment, provide for have not been adhered to.

(1) within two days of the institution of enquiry proceedings the committee is mandated to prepare summons with details of the complaint such as location, date and time on which the incident is alleged to have occurred and hand over the same to the complainant as well as to the defendant along with a copy of the rules and procedures applicable to the sexual harassment committee.
(2) The enquiry committee will make available to the defendant a copy of the original complaint lodged by the complainant.
(3) The complainant and the defendant will submit lists of witnesses.
(4) The defendant, the complainant and the witnesses will be intimated at least 72 hours in advance, in writing, of the date, time and venue of the enquiry proceedings.
(5) The complainant and the defendant would have the right to cross-examine all witnesses.

(6) All proceedings of the enquiry committee will be recorded in writing and the proceedings of the committee along with the statements of witnesses will be endorsed by the persons concerned in token of authenticity.
(7) Any documents sought to be tendered in evidence will be supplied to the adverse party.

14. He stated, the 'Standard Operating Procedure' claimed to have been followed by Respondent is not "Standard" and is not "normal procedure".

a) In fact there is no such Standard Operating Procedure

i. Respondent filed what its claimed was the Standard Operating Procedure as Annexure N. Annexure N however is not one but two documents, one titled, 'Norms and Procedure to be followed by the Enquiry Committee' and another titled 'Norms and Procedure to be followed during the enquiry'.

ii. A bare perusal of both these documents indicates that this procedure was specifically devised for this particular enquiry into 'the event that has occurred'; this cannot be said to be "normal procedure".

15. Mr. Sibal also stated, the 'Standard Operating Procedure" does not contemplate due opportunity

> i. A bare perusal of the contents of the 'Standard Operating Procedure' reveals a total departure from norms of fairness followed in disciplinary enquiries. It contemplates no show cause notice, no framing of charges, no opportunity to raise a defence, no right of cross-examination, and does not respect any of the fundamentals of the principles of natural justice. Consequently, "due opportunity to the student charged for the offence to defend himself" as required by Rule 5(1) was neither contemplated, nor granted by the HLEC.
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> ii. This Court in Amritashav Kamal v. JNU; 2007 (99) DRJ 528 has noted – while considering the actions of the Respondent in these proceedings – that it must comply with prescribed rules, and with the fundamentals of the natural justice while conducting disciplinary enquiries against students. On that occasion, this Court had compared the Respondent's refusal to grant its students a fair hearing in compliance with prescribed procedures to the 'writ of a monarch.'

16. He stated, at the very least, 'due opportunity' to defend in disciplinary proceedings includes, being informed clearly of the charges levelled; witnesses being examined in the presence of the person charged; person charged being given a fair opportunity to cross-examine witnesses and challenge the credibility of evidence and material tendered; person charged being given a fair opportunity to examine witnesses in defence, and findings being recorded, with reasons in support of the findings. Charges were not framed against the petitioner, evidence was led behind his back, and when the Petitioner asked for copies of the evidence so he could decide how to

challenge it, he was refused. And the petitioner was not allowed to lead defence evidence. Clearly, the petitioner was denied 'due opportunity'. He would refer to the following judgments:-

(i) ***LIC v. R.K. Mahajan, 2015 SCC Online Del. 13616***, in the context of a provision to provide a reasonable opportunity to show cause, that natural justice necessarily requires supply of materials relied upon by the University.

(ii) ***Ayaaubkhan Noorkhan Pathan v. State of Maharashtra (2013) 4 SCC 465***, noting that the right of cross-examination is an essential part of the principles of natural justice, and must be adhered to in disciplinary enquiries.

(iii) ***State of UP v. Shatrughan Lal (1998) 6 SCC 651***, noting that a disciplinary authority must supply the materials being relied upon to the accused, or at the very least grant an inspection of the said materials to the person being proceed against, sufficiently, in advance, in order to secure compliance with natural justice and provide a reasonable opportunity to show cause.

(iv) ***Committee of Management, Kisan Degree College v. Shambhu Saran Pandey and Ors. (1995) 1 SCC 404***, noting the right of a person facing disciplinary proceedings to be supplied / permitted to inspect the materials being considered by the disciplinary authority, sufficiently in advance of enquiry proceedings.

17. On the appellate proceedings, it is his submission that the Appellate Committee's recommendation, and Officer Order of 22 August 2016, are in violation of the Principles of Natural Justice because the Appellate Committee asked the petitioner to defend

himself without first providing the petitioner with all the material on the basis of which he was being proceeded against. He stated, the petitioner repeatedly asked for all documents on the basis of which disciplinary proceedings were being taken against him as well as details pertaining to the rules of which violation was alleged:

i) Letter dated 18th March, 2016.
ii) Letter dated 3rd May, 2016.
iii) W.P.(C) 4142/2016
iv) Appeal to the Vice Chancellor: Memorandum of Appeal along with enclosed applications dated 2nd June, 2016
v) Letter dated 16th June, 2016
vi) Letter dated 17th June, 2016 received by the Respondent on 20th June, 2016.

None of these communications were even considered let alone responded to:

18. He stated, this Court would not appreciate/re-appreciate the evidence but only consider whether the rules and principles of natural justice have been followed, in exercise of judicial review. He qualifies his submission by stating, the petitioner has challenged Respondent's decision-making process on the grounds that the process violated applicable statutes and rules and basic principles of natural justice applicable to the disciplinary proceedings. The petitioner has contended that he was denied due opportunity to defend himself, inter alia because, he was denied access to the materials forming the basis of the findings against him. This is particularly crucial because the petitioner placed on record vide his letter of June 17, 2016, that from a

quick scan of some of the documents shown to him on June 16, 2016 he noticed that "they purported to be a record of some statements, which statements were replete with falsehoods, and even worse, partial truths that were even more misleading than the outright falsehoods". If the respondent had followed statutes, rules, and the principles of natural justice, and had given the petitioner all the relevant material, and had taken evidence in his presence instead of behind his back, the petitioner could have cross-examined / questioned / tested the veracity of the evidence / material against him and could have offered material in his defence. As such, having denied the petitioner due opportunity to contest the merits of the allegations against him by violating statues, rules and the principles of natural justice, it is not now open to the respondent to invite this Court under Article 226 to appreciate / re-appreciate evidence. In this regard, he made a reference to the decision in ***Union of India v. P. Gunasekaran (2015) 2 SCC 610***, wherein according to him, the Supreme Court has noted the limits of the jurisdiction of a writ court, holding that a writ court's power of interference is limited to the flaws in the decision making process, and that writ court cannot assume the status of an appellate court and reopen the merits / evidence. It is thus submitted that the Respondent cannot now be permitted to place fresh materials, for the first time, before this Court while defending against writ proceedings.

19. He also stated, even before this Court, the Respondent has not placed all the material on the basis of which the HLEC or the Appellate Committee determined his guilt. According to him, the

preamble to the HLEC report stated that it took the depositions of 7 university officials to establish the sequence of events. The body of the HLEC report is entirely reconstructed from 'deposition' taken by the HLEC and the HLEC refers to "depositions file", "other depositions file", and "security Deposition file". The Appellate Committee's order of 22nd August, 2016 also stated:-

- "it went through the **depositions** by security staff of JNU, **depositions** of students, perusal of video clips.."
- and refers to the **"written deposition** of the of the Chief Security Officer to the HEC dated 01.03.2016.
- and also refers to depositions of the security staff when its states ".. the same can be evidenced from the **depositions of the security staff** who went to inform…", ".. has been withdrawn as per the **deposition of Mr. O.P. Yadav (Operations Manager, G4S) and Mr. V.P. Yadav (Security Supervisor, G4S)**
- Even the letter of the appellate committee of 06 September 2016 states that the documents included "written statements of security staff, students".

20. He stated, the abovementioned 'depositions' have not been placed even before this Court. It is his submission, in any event, it is not open to the Respondent, at this stage, to introduce reasons for its orders by way of pleadings and submissions made before this Court, which are not contained in the orders themselves. He refers to the judgment of the Supreme Court in ***M.S. Gill v. Chief Election Commissioner, (1978) 1 SCC 405*** wherein it has held that the validity of an order must be judged by the reasons mentioned therein and

cannot be improved by subsequent affidavits. It is also his plea that Appellate Committee's recommendation, and Officer Order of 22 August 2016, do not even advert to, let alone deal with, any of the grounds of challenge taken by the petitioner, as according to him:-

a) Petitioner's appeal raised eight grounds of challenged, serially A-H. Appellate Committee's recommendation does not even refer to a single ground of challenge raised by the petitioner, let alone decide or reject any of the grounds.
b) In fact, Petitioner's appeal of 3rd June, 2016 appears to have entirely escaped respondent's notice, and the Appellate Committee's recommendation and the respondent's decision to accept that recommendation, have been made entirely in ignorance of the petitioner's appeal. This is evident from the fact that although petitioner had appealed on 03 June, 2016, respondent's notice informing the petitioner of appeal hearing was, in relevant part, worded thus: "you are requested to appeal to the Vice Chancellor, Appellate authority of the University, and depose on 16th June, 2016 at 11:15 AM" (notice of appeal hearing is dated 13th June, 2016). Therefore, although the petitioner had already appealed on 03 June, 2016 as late as 16th June, 2016, respondent was still communicating with the petitioner as if the petitioner had not lodged his appeal. Moreover, despite the filing of the Petitioner's appeal, the Appellate Committee at hearing dated 16.06.2016 directed the petitioner to 'write' his appeal during the hearing
c) Not applying mind to relevant ground of appeal is a grave failure to exercise jurisdiction on the part of the Appellate Committee that vitiates its recommendation and the respondent's decision taken on the basis of that recommendation.
d) Most importantly, the petitioner was first punished by order of the Vice Chancellor dated 25 April, 2016. The rules framed under the JNU stated provided that the appellate authority against orders of punishment was the Vice

Chancellor and since it was the Vice Chancellor himself who had passed the first order of punishment, Petitioner challenged that order before this Court in W.P.(C) 4142/2016. This Court passed the following order in writ petitions filed by other students who had also been punished by the Vice Chancellor for the same incident:

> *"……. an appeal is continuation of the main proceedings and no date of hearing is fixed in the present appeals, this Court is of the opinion that the petitioners cannot be condemned unheard……"*

e) Petitioner therefore also applied for similar orders in his petition, and this Court allowed the petitioner's application, and, after granting the petitioner the same reliefs granted to other students vide its order of 13 May, 2016 allowed the petitioner a week's time to lodge formal appeal against the Office order punishing him. In these circumstances, respondents failure to deal with Petitioner's grounds of appeal is also a violation of this Court's orders dated 13 May 2016 and 27 May 2016 in W.P.(C)4142/2016.

He seeks the reliefs as prayed in the petition.

21. On the other hand, Ms. Ginny Routry, learned counsel for the respondent apart from drawing my attention to the short affidavit/additional affidavit would submit, the petitioner was given ample opportunities to appear and depose before the Enquiry Committee along with the liberty to carry materials and evidences in his defense both at the stage of Enquiry, Show Cause Notice and Appeal. However, he failed to respond to the 3 notices dated February 12, 2016, February 16, 2016 and February 18, 2016 and further,

refused to accept and respond to the Show cause Notice dated March 14, 2016. Since the Petitioner failed to come forward and make his statement / depose before said forum, he himself failed to avail the opportunity given to him and thus, there was no violation of Principles of Natural Justice and fair play. She stated that at the stage of appeal the decision is to be taken only from record before the deciding Appellate Authority. Rules under the Statute 32 (5) state that the punished student has the right to appeal against the punishment and Vice-Chancellor is the empowered authority to deal with Appeals. The Petitioner chose not to avail opportunities given to him, both at the stage of enquiry, by admittedly going underground and evading law, and at the stage of Show Cause Notice by willfully not responding to the same, hence the writ petition on this ground alone is not maintainable.

22. According to her, the petitioner is a student studying in JNU and resident of Hostel in JNU. The respondent is Jawaharlal Nehru University (JNU) established and incorporated by an Act of Parliament in the year 1966.

23. That at 12 pm on February 09, 2016, the Respondent got to know that some students were planning to host an "anti-national event" in the evening at Sabarmati Dhaba. A meeting was called in the Vice Chancellor's Office, wherein it was discovered that permission was sought from the Additional Dean of Students by the petitioner on the false pretext of holding a poetry reading competition at Sabarmati Dhaba. Despite the alleged "permission" immediately

being withdrawn by the DOS, the Petitioner carried on with the event which led to an enormous law and order situation.

24. On February 11, 2016 forthwith a High Level Enquiry Committee (HLEC) was constituted by the Vice-Chancellor to enquire into the incident that took place on February 09, 2016 in the Respondent's campus. By virtue of Section 5 (10) of the JNU Act read with Statute 32 (1) of the Statutes of the University-

> *"The Vice Chancellor has been vested with all the powers relating to discipline and disciplinary action in relation to students."*

25. A 3 member Committee later expanded to 5 by the Vice-Chancellor mainly consisted of University Professors and since it was an internal enquiry of JNU, no third party was allowed to be present during hearing. Further, no one was allowed to be represented by a third party. The terms of reference for the Committee was:

(i) To enquire into the incident and ascertain sequence of events.

(ii) Identify any lapses that may have taken place, and

(iii) On the basis of **the findings**, recommend **actions** to be initiated by the University **as per its statutes and guidelines.**

26. Subsequently, on February 12, 2016 Office Order No. 115/CP/2016 was passed. It is her submission based on the report submitted by the Chief Security Officer, video clipping of the events and other related documents, the High Level Enquiry Committee,

constituted by the Vice Chancellor, JNU, was of the opinion that ***prima facie evidence of the occurrence*** of the following offences exists:-

(i) Misrepresentation of the proposed event as a cultural evening although objective was to hold a political meeting.

(ii) Forcefully holding the event even where the permission to hold it was withdrawn by the DOS.

(iii) Creating a law and order situation on campus both at Sabarmati Hostel and Ganga Dhaba.

(iv) Shouting unconstitutional slogans, and making derogatory remarks about the nation.

27. According to Ms Routray, prima facie considering the ***seriousness of the offences***, and in order to enable a fair enquiry into the incident, the Enquiry Committee had recommended that the Petitioner along with certain other students be academically suspended from JNU with immediate effect during pendency of the enquiry. However, they were allowed to stay in their respective hostels as guests during the period of enquiry. According to Ms. Routray, the petitioner was given ample opportunities to appear and depose before the committee along with the liberty to carry materials and evidences in his defence. That the Committee issued their **First Notice** on February 12, 2016 and subsequently **Second** and **Third Notice** on February 16, 2016 and February 18, 2016 respectively to the Petitioner, directing him to appear before the committee and explain

his position about the incident that took place on February 09, 2016 near Sabarmati and Ganga Hostel. The notices clearly mentioned that in the event the Petitioner fails to present before the Committee on the said date, it will be presumed that he has nothing to say in the matter, despite this the Petitioner failed to appear before the committee. The above mentioned notices were dispatched via the Central Dispatch of the University which is an independent department within the University. She submitted that the notices were served at all his known addresses including his Hostel room and email-id. Further, as per the Hostel Manual of the University concerning Norms governing Hostel Life Chapter 2, Clause 2.5.3, states that – *"A resident who wishes to stay out late or remain absent overnight shall inform the warden concerned in the prescribed form."* However, there was no intimation on behalf of the petitioner that he would not be available in the hostel, therefore, it is presumed that the notices were served. She relied on the judgment of the Supreme Court in the matter of ***Ajeet Seeds Limited V. K. Gopala Krishnaiah, (2014) 12 SCC 685***, wherein according to her, it was held:

> *"Section 114 of the Evidence Act, 1872, enables the Court to presume that in the common course of natural events, the communication sent by post would have been delivered to the address of the addressee. ..... Unless or until the contrary is proved by the addressee, the service of notice is deemed to have been affected at the time at which the letter would have been delivered in the ordinary course of business."*

28. She also relied upon the following judgments in support of her submissions:-

1. ***Chief Commissioner of Income Tax (Administration), Bangalore V. V.K. Gururaj and Ors. (1996)7 SCC 275;***

2. ***State of Punjab v. Bakhshish Singh, (1997) 6 SCC 381.***

According to her, despite notices being served, the petitioner failed to appear before the Enquiry Committee. Further, the petitioner himself in his appeal to the Appeals Committee dated June 17, 2016 **admits to being in hiding.** However, the same was not intimated to the Respondents or the concerned Hostel warden, and also the Petitioner never came forward to give his statement regarding the incident on February 09, 2016 let alone as much as deny his involvement in the same. The petitioner only came forward to appeal his punishment when he was directed by this Court to do so vide order dated May 27, 2016. She stated, Kanhaiya Kumar was arrested on February 12, 2016 and keeping in view that Kanhaiya Kumar was released on bail on March 02, 2016; he was given another opportunity to join the enquiry. However, the Petitioner's defence of not joining the enquiry was that he was in hiding. Hence, admittedly, he was evading law and therefore and cannot be permitted to claim indulgence of this Court.

29. Ms. Routray had submitted that the HLEC followed Standard Operating Procedures devised by the HLEC specifically for the said enquiry during the course of enquiry. The HLEC spent considerable time in examining all the evidences pertaining to the event which included taking written depositions of eye witnesses and security

officials, posters, SMS withdrawing consent to hold Anti-National event form for seeking permission, examining the video clips submitted by JNU Security Officer and scrutinizing various documents / posters related to this incident. The video submitted to the Committee by the CSO was duly authenticated by a Government approved agency: Truth Labs, Bangalore. Subsequent to enquiry procedure, the HLEC recommended that the petitioner be charged under Category II of (Rules of Discipline and Proper Conduct of Students of JNU) of the statutes of the University and be rusticated for 1 Semester and imposed a fine of Rs.20,000/- . The HLEC submitted its report along with recommendations to the Vice Chancellor on March 11, 2016.

30. She justified the recommendation for disciplinary action, which was based on the findings of the HLEC. The HLEC recommended charges as well as punishment as per the Statues and guidelines of JNU. The Chief Proctor, after perusing the report of the HLEC, issued a Show Cause Notice on March 14, 2016 and along with an extension dated February 16, 2016 along with a copy of HLEC report to the Petitioner. The Show Cause Notice stated the grounds under Clause 3 of Category II as –

> *(vi) Furnishing false certificates or false information in any manner to the University.*
>
> *(ix) Arousing communal, caste or regional feeling or crating disharmony amongst students.*

(xi) Causing or colluding in the unauthorized entry of any person into the campus or in the unauthorized occupation of any portion of the University premises including halls of residences, by any person.

(xxv) Any other act which may be considered by the VC or any other competent to be an act of violation of discipline and conduct.

31. The Show Cause Notice further asked the Petitioner to explain why disciplinary action should not be initiated against him for indulging in the above mentioned acts. The petitioner was asked to submit his reply to the Chief Proctor's Office latest by March 16, 2016, 17:00 hrs later extended till March 18, 2016 failing which it would be presumed that the Petitioner has nothing to say in his defence and the office would precede further in the matter. Furthermore, she had stated that the notice to the Petitioner was served in Tihar Jail, New Delhi which he categorically denied and refused to receive and also refused to give anything in writing in this regard. Even after the Petitioner was released on bail on March 18, 2016 he never responded to the Show Cause Notice. She referred to the judgment of the Supreme Court in the matter of ***K.L. Tripathi v. State Bank of India & Ors. (1984) 1 SCC 43,*** wherein the Supreme Court held as under:

> *"The concept of fair play in action, which is basis of natural justice, must depend upon the particular lis between the parties. Where there is no lis regarding the facts, no real prejudice would be caused to a party by absence of any formal opportunity of cross*

examination and that per se would not invalidate or vitiate the decision arrived at fairly. The party who does not want to controvert the veracity of the evidence from record or testimony gathered behind back cannot expect to succeed in any subsequent demand that there was no opportunity to cross examination specially when it was not asked for and there was no dispute about the veracity of the statements."

32. She also relied on the following judgments:-

1. ***Suresh Koshy George v. University of Kerala, AIR 1969 SC 198;***
2. ***State Bank of Patiala v. S.K. Sharma, 1996 SCC (3) 36;***
3. ***Ram Chander Roy V. Allahabad University, AIR 1956 AII 40;***
4. ***V. Ramana v. APSRTC and Ors 2005 (7) SCC 338;***
5. ***M.V. Bijlani Vs. UOI & Ors. (2006) 5 SCC 88.***

Ms. Routray would also submit that instead of replying to the Show Cause Notice on his own account, a communication dated March 18, 2016 was received by the Chief Proctor's Office from a person claiming to be the Petitioner's Counsel. The same was not given credence to for the following reasons as firstly, the students were well aware that it was an internal enquiry and thus, no third party representation was permitted. Secondly, the petitioner himself having refused acceptance of the notices as recorded by the Superintendent of Central Jail, no credence could otherwise be given to this fact as the Petitioner never requested / informed that he would be represented by

a Counsel at that stage or any time thereafter, more so when the Petitioner himself had refused acceptance of notice as confirmed by the Superintendent, Central Jail.

33. On the Petitioner's failure to reply to the Show Cause Notice, the Respondent subsequently on April 25, 2016, after more than a month, passed an office order wherein it was stated that –

> *With reference to the 9 February 2016 incident of JNU Campus, the High Level Enquiry Committee (HLEC) has found Mr. Syed Umar Khalid (Registration Number-26954, Enrolment NO.11/61/MS/037, Year of Admission: 2011, M. Phil/Ph.D Student, Centre for Historical Studies, School of Social Sciences and a r/o. Room No. 268, Tapti Hostel) guilty on the following counts.*
>
> *The University 'Rules and discipline and proper conduct of students of JNU', Clause-3 – 'Categories of misconduct and indiscipline', Category-II, Sub-Category (vi) prohibits 'Furnishing false certificates or false information in any manner of the University'.*
>
> ***As per the HLEC recommendation**, Mr. Syed Umar Khalid has been found guilty of*
>
> *a) giving requisition form and undertaking form as well in the false pretext to hold a "Poetry Reading-A Country without a Post Office" at*

Sabarmati Dhaba on 9 February 2016 from 5.00 pm to 7.30 pm.

b) *not following the University procedure for holding the event.*

c) *misinforming the university security about the permission of event having been granted.*

The University ***'rules and discipline and proper conduct of Students of JNU'****, Clause-3 'Categories of misconduct and indiscipline', Category-II, Sub-Category (xi) prohibits 'Arousing communal, caste or regional feeling or creating disharmony among students.'*

As per the HLEC recommendation*, Mr. Syed Umar Khalid had been found guilty of*

a) *lending his name in the poster titled "Against the Brahmical collective conscience! against the judicial keeling of Afzal Guru and Mazbool Bhatt ..... "in the name of Cultural Evening thus arousing communal and caste feelings.*

The University ***'Rules and discipline and proper conduct of students of JNU', Clause 3*** *– 'Categories of misconduct and indiscipline', Category-II, sub-Category (ix) prohibits 'Causing or colluding in the unauthorized entry of any person into the campus or in the unauthorized occupation of any portion of the University premises, including Halls of residences by any person'.*

As per the HLEC recommendation, Mr. Syed Umar Khalid has been found guilty of

(a) addressing to the group of students in a wrongfully organized event and was found engaged in sloganeering.

(b) being the part of the procession from Sabarmati ground to the Ganga Dhaba during which objectionable slogans were shouted.

(c) Putting up objectionable posters and setting up a pubic addressing system at Sabarmati ground.

These charges on the part of Mr. Syed Umar Khalid are very serious in nature, unbecoming of a student of JNU and calls for stringent disciplinary action against him.

The Vice-Chancellor, in exercise of his powers vested in him under Statute 32 (5) of the Statutes of the University, has ordered that Mr. Syed Umar Khalid be rusticated for the following semester (Monsoon Semester 2016-17) and has also imposed a fine of Rs.20,000 (Rupees twenty thousand only). He is directed to deposit the fine by 13 May 2016 and show the proof thereof to his office, failing which the Hostel facility will be withdrawn with immediate effect and further registration will not be allowed.

His name shall stand removed from the rolls of the University forthwith.

34. It is noted, the petitioner in regard to the aforesaid Office Order and on this Court's direction vide order dated May 27, 2016, filed an appeal dated June 03, 2016 before the Vice-Chancellor wherein the Petitioner raised points on views taken by the High Level Committee and challenged the setting up of the High Level Enquiry Committee (HLEC) without giving any defense with respect to the events that unfolded on February 09, 2016. It must be duly noted that Notice dated June 13, 2017 with reference to the Report / recommendations of the HLEC regarding February 09, 2016 incident on JNU campus stated that the Petitioner *was requested to appeal to the Vice-Chancellor, Appellate Authority of the University and depose on 16 June 2016 at 11 a.m. at the Vice-Chancellor's Office*. The hearing with respect to the appeal took place on June 16, 2016. The Respondent again granted time to some of the students to appear before the committee on July 04, 2016 who had failed to appear on June 16, 2016. The petitioner in his ***Appeal under Statute 32 of the second schedule to the Jawaharlal Nehru University Act of 1966*** stated-

> *I had not received any of the documents based on which you had levied punishment on me. In fact, I have still not been given any of those documents. I have, however, accessed some portion of the report of the High Level Enquiry Committee ("HLEC"), on which Office Order 144/CP/2016 claims to been based.*

35. Ms. Routray had submitted, each and every appellant had spent nearly three hours with all the documents and examined them in the presence of the one member of the Appellate Committee. The Petitioner further stated that the *said Office Order No. 144/CP/2016 and the decision to punish me is based on no enquiry and no material and that the Office Order is further contrary to Rule 5 (1) of the Rules of Discipline and Proper Conduct's stipulation of providing me with a due opportunity to defend myself.* The Petitioner was served with one notice after the other including a Show Cause Notice which he failed to acknowledge. She relied upon the judgment of the Gujarat High Court in ***State of Gujarat v. Pagi Bhurabhai Rumalbhai AIR 1969 Guj 260,*** in support of her contention.

36. She had submitted, the Respondent finally issued the Office Order NO. 201/CP/2016 dated August 22, 2016 wherein it was stated that the petitioner refused to answer questions and did not make any specific appeal to absolve himself from the charges made by the High Level Enquiry Committee. The petitioner was asked the following questions:-

> *Were you present at Sabarmati Dhaba to attend the event on 9th February, 2017?*

The Petitioner said that "he will not speak anything until and unless he is provided with a photocopy of all documents requested by him in his earlier representation to the University Authorities". According to Ms. Routray, the petitioner was provided with complete set of files

(security depositions, copies of relevant vides, copies of statements given by witnesses, copies of all correspondences, copies of report of HLEC, all other documentary proof) used by HLEC to arrive at the punishment with respect to the petitioner.

37. She stated, the Petitioner was asked further questions but he refused to cooperate

The Questions are as under-

1. *Did you organize the event after the objections were raised and permissions were denied by the administration?*
2. *Why did not provide a false pretext of poetry reading for the event whereas the event was totally different from what was suggested in the requisite form?*
3. *Why did you misinform the security that permission has been granted?*
4. *Are you aware that lending you name to an event, which speaks of caste and communal identities may cause problems on the campus?*
5. *Your addressing the group of students, shouting slogans, putting up the posters and setting up the public address system was also an act of indiscipline. Give your comments.*

Thus, the Petitioner was rusticated for 1 Semester and a fine of Rs.20,000/- was imposed on the Petitioner.

38. It was also stated by Ms. Routray that till date the petitioner has not volunteered to convey as to whether he was present during the event of February 09, 2016 let alone admit or deny his involvement in the same. If the Petitioner had given his statement on the event, it may

have given rise to certain issues as a result of which a further enquiry would have been initiated. However, the Petitioner never made any statement to controvert the findings of HLEC, show cause and Order dated April 25, 2016 despite being released on bail on March 18, 2016. Even at the stage of filing of Rejoinder the Petitioner has not denied even one of the documents which have been relied upon by the Disciplinary Authority while issuing Office Order dated April 25, 2016 nor has he stated how prejudice has been caused to him. The documents are as under-

1. His signature on the Booking Requisition Form.
2. Statements given in the said Requisite Form.
3. The Posters bearing his name.
4. Duly authenticated videos.
5. Deposition by Security Staff officials.
6. Deposition of eye witness.

39. She stated, the University's autonomy means its right of self-government and particularly, it's right to carry on its legitimate activities without interference from any outside authority. That the Appellant against whom charges were framed was given adequate opportunities to defend himself, and the committee followed the rules of natural justice while holding the enquiry. She stated, it is a settled law that matters falling within the jurisdiction of educational authorities should normally be left to their decision and this Court would not interfere unless it thinks it must do so in the interest of justice. She seeks dismissal of the petition.

40. Having heard the learned counsel for the parties and perused the written arguments submitted by the counsels, it is noted that the subject matter of this petition is, the orders passed by the Competent Authority whereby a penalty of rustication for one semester with fine of Rs.20,000/- was imposed on the petitioner, which order was upheld by the Appellate Authority with a direction to file an undertaking. The enquiry relates to the events held on February 09, 2016 at the University Campus. The grounds of challenge by the petitioner are that the same was held without any notice to him as, at the relevant time the petitioner was hiding and lodged in Tihar jail, which aspect was known to the Authorities. In other words, for compelling reasons, he could not attend the enquiry. That apart, despite asking to furnish documents on the basis of which he has been held guilty, the same have been denied; he could not respond to the charges alleged against him and the show cause notice. That apart, it is his case that he was not given proper hearing before the Appellate Authority; inspection of documents was a formality inasmuch as only fifteen minutes were given to him for the same. The petitioner has also raised certain grounds on the interpretations and the scope of the Enquiry Proceedings under the Statutes of the University.

41. The respondent has justified its action by contending that the Enquiry Proceedings were held by following the principles of natural justice and the Rules/Statutes. It is the petitioner, who failed to come forward and depose before the Committee. That apart, the respondent has also highlighted the seriousness of the charges for which the

petitioner was held guilty. That apart, the appellate proceedings were held after giving due opportunity to the petitioner to inspect the documents and after inspection of the documents and upon hearing and inability of the petitioner to answer the queries put by the Appellate Authority, the appellate order was passed.

42. There is no dispute that the petitioner had filed an Appeal dated June 03, 2016 pursuant to the directions given by this Court in an earlier writ petition filed by the petitioner. It is also a conceded fact that the Vice Chancellor-Appellate Authority had held its meeting on June 16, 2016. There is also no dispute that the petitioner was shown the record of the enquiry. The parties are at variance about the duration for which the record was shown. It is a conceded fact that a hearing was given to the petitioner on the same day, which resulted in the passing of the appellate order on August 22, 2016. It is the case of the petitioner that he wrote a letter dated June 17, 2016 indicating the denial of reasonable opportunity to put forth his case in terms of principles of natural justice and the requirements of the JNU Rules.

43. In his letter dated June 17, 2016, the petitioner has stated that on June 16, 2016 he was asked to go through five voluminous files and when he said he need at least three hours to go through the files, the same was refused and was told to go through the documents and make written representation, if he so wished. It is his case that he could able to scan some of the documents from which it is noted that the statements made in the enquiry were falsehood. He stated, he made a request for relevant documents to make his right to appeal meaningful

and not a formality. That apart, it was argued by Mr. Sibal that the petitioner, in his appeal had raised eight grounds of challenge, which have not been considered by the Appellate Authority. The Appellate order was passed on August 22, 2016.

44. Clause 12 of the Norms and Procedure followed during enquiry stipulates that every punished student has a right to appeal. In the case in hand, after this Court had passed the order on May 27, 2016 in the earlier writ petition filed by the petitioner being W.P.(C) No. 4142/2016, the respondent University issued a communication dated June 13, 2016 asking the petitioner to appeal to the Vice Chancellor and depose on June 16, 2016. The communication does not refer to the fact that the petitioner shall be given the relevant record/documents for inspection. Be that as it may, the learned counsel for the parties agree that the files/records/documents before the HLEC were given to the petitioner on June 16, 2016 to enable him to peruse the same and make submissions on the same day. Even assuming, three hours were granted to the petitioner to inspect the documents on June 16, 2016, some time need to have been granted to the petitioner to apply his mind on the evidence so noted by him during the inspection, which was against him and to make an effective appeal. Surely, for such purpose, he may have required reasonable time to prepare his case, which may include seeking legal advice. In fact, the petitioner vide his letter dated June 17, 2016 reiterated his earlier request to make available the documents to make appeal more meaningful. The procedure evolved by the Appellate Committee to

allow inspection of the documents/records and hearing him could not be in conformity with the principles of natural justice and the law laid down by the Supreme Court in the case of ***Associated Cement Company Ltd. v. Workmen and another (1964) 3 SCR 652,*** wherein the Supreme Court was considering an appeal arising out of an industrial dispute between the appellant and the respondent workman with regard to dismissal of five workmen employed by the appellant company. One of the issue was that before the enquiry was actually held on June 11, 1952, notice was not given to Malak Ram, one of the workmen telling him about the specific date of the enquiry. The Supreme Court held that failure to intimate to the workman concerned about the date of the enquiry may, by itself, not constitute an infirmity in the enquiry, but, on the other hand, it is necessary to bear in mind that it would be fair if the workman is told as to when the enquiry is going to be held so that he has an opportunity to prepare himself to make his defence at the said enquiry and to collect such evidence as he may wish to lead in support of his defence. The Supreme Court held, on the whole, it would not be right that the workman should be called on any day without previous intimation and the enquiry should begin straightaway. The Supreme Court held, such a course should ordinarily be avoided in holding domestic enquiries. In other words, the Supreme Court has held that an incumbent should be given sufficient opportunity/time to consider the evidence, which has come against him and to collect evidence in support of his defence. In the case in hand, no such time was given to the petitioner. That apart, if the material is being shown to the petitioner, on June 16, 2016, surely,

some time should have been given to the petitioner to enable him to supplement his appeal already filed by him on June 03, 2016. This would be in conformity with the concept of fair play in action, which is the basis of natural justice. That apart, even in these proceedings, the respondent has not filed, the complete record of the HLEC. In fact, in some of the connected petitions, a stand has been taken in the written submissions that only certain documents relied upon by HLEC were filed before this Court and the entire evidence, documents, notices and proceedings are maintained by the respondent in its official files. The same are available for any other scrutiny as and when the same is requisitioned before the Court. Even if some depositions were filed along with the written arguments in some connected cases, the same were in Hindi. They were also filed after the petitioner's counsel, in this writ petition, had advanced the arguments. Even otherwise, the HLEC report refers to deposition of some eye witnesses, which are in the deposition files. It is not clear, who these witnesses are, who are being referred to. All the evidence, documents, notices and proceedings being in the official files, there was no occasion for this Court/counsel for the petitioner to look into the same for a proper appreciation/justification of the impugned orders.

45. Further, the submission of Mr. Sibal, that the petitioner in his appeal has raised several grounds but the Appellate Authority has not dealt with those grounds is appealing. From the perusal of the order

dated June 03, 2016, it is seen that the petitioner has raised the following grounds:-

(a) The said Office Order No. 144/CP/2016 and decision to punish him is based on no enquiry and no material;

(b) The Office Order is contrary to the University Rules of Discipline and Proper Conduct since no normal procedure was followed before taking the decision to punish him as required under Rule 5(1);

(c) The Office Order is further contrary to Rule 5(1) of the Rules of Discipline and Proper Conduct stipulation of providing him with due opportunity to defend himself;

(d) The HLEC failed to give him any notice of its proceedings;

(e) the HLEC failed to give him any of the materials on the basis of which decision was taken to punish him and the Office Order No. 144/CP/2016 was passed;

(f) Scope and ambit of the enquiry was malafide on the part of the University.

46. Suffice to state, from the reading of the order dated August 22, 2016, it is seen that the Appellate Authority has not dealt with the said grounds. The Supreme Court in the case reported as ***(2013) 6 SCC 530 Chairman, Life Insurance Corporation of India and others v. A. Masilamani,*** in para 19 held as under:-

"19. The word "consider", is of great significance. The dictionary meaning of the same is, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that, there must be active application of mind. In other words, the term "consider" postulates consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority, should reflect intense application of mind with reference to the material available on record. The order of the authority itself, should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority, and proceed to affirm its order. (Vide: Indian Oil Corpn. Ltd. & Anr. v. Santosh Kumar, (2006) 11 SCC 147; and Bhikhubhai Vithlabhai Patel & Ors. v. State of Gujarat & Anr., AIR 2008 SC 1771).

In view of the aforesaid judgment of the Supreme Court, it is expected that the Appellate Authority should have disposed off the appeal by a reasoned and speaking order. This I say so, there is nothing in the Rule, relating to appeal which says otherwise i.e it is not necessary for the Appellate Authority to pass a reasoned order.

47. Insofar as the judgments relied upon by Ms. Routray are concerned, in ***K.L. Tripathi (supra),*** the issue, which fell for consideration was with regard to a challenge to the departmental enquiry by an employee on the ground that he was not provided opportunity to cross examine. The Supreme Court held that in the absence of any lis as to the facts, allegations having been not disputed by the delinquent officer, no prejudice has been caused.

48. The issue, which has been considered by me in the aforementioned paras is only with regard to, whether sufficient opportunity was given to the petitioner to inspect the documents at the appellate stage and then submit an appropriate appeal after the inspection, so as to make the appellate proceedings meaningful and purposeful. Hence, the judgment would have no relevance.

49. Insofar as the judgment in the case of ***State of Gujarat v. Pagi Bhurabhai Rumalbhai (supra),*** is concerned, in the said case the Gujarat High Court held that the delinquent has no right to seek a personal hearing at the appellate stage. In the case in hand, the personal hearing having been agreed to and granted by the University, it cannot be contended by Ms. Routray that the personal hearing was not required.

50. In ***Ajeet Seeds Limited (supra),*** para 10 on which the reliance was placed, relates to a conclusion with regard to Section 114 of the Evidence Act, which enables the Court to presume that in common course of natural events, a communication made would have been delivered at the address of the addressee. A reference was made to Section 27 of the General Clauses Act, which gives rise to presumption that service of notice has been effected when it is sent to the correct address by registered post. The said judgment has no applicability on the limited issue being considered and decided by this Court.

51. In ***Hira Nath Mishra and others v. The Principal, Rajendra Medical College, Ranchi and another (1973) 1 SCC 805,*** the

Supreme Court was concerned with a case where the appellants, the male students of a Medical College lived in the College hostel. A confidential complaint was received by the Principal from thirty six girl students residing in the Girls Hostel of the College alleging that the appellants with some others at late night had entered into the compound of the Girls Hostel and walked without clothes on them. The Principal constituted an Enquiry Committee consisting three Members of the staff. The identification through photographs was carried out and the Girls by and large could identify the appellants from the photographs. The appellants were called before the Committee one after the other. They were explained the contents of the complaint. Due care was taken not to disclose the names of the Girls, who made the complaint. The appellants denied the charges and said they were in the Hostel at that time. The Supreme Court held as under:-

> *(i) The complaint made to the Principal related to an extremely serious matter as it involved not merely internal discipline but the safety of the girl students living in the Hostel under the guardianship of the college authorities. These authorities were in loco parentis to all the students-male and female who were living in the Hostels and the responsibility towards the young girl students was greater because their guardians had entrusted them to their care by putting them in the Hostels attached to the college. The*

authorities could not possibly dismiss the matter as of small consequence because if they did, they would have encouraged the male student rowdies to increase their questionable activities which would, not only, have brought a bad name to the college but would have compelled the parents of the girl students to withdraw them from the Hostel and, perhaps, even stop their further education. The Principal was, therefore, under an obligation to make a suitable enquiry and punish the miscreants.

(ii) The Police could not be called in because if an investigation was started the female students out of sheer fright and harm to their reputation would not have cooperated with the police. Nor was an enquiry, as before a regular tribunal, feasible because the girls would not have ventured to make their statements in the presence of the miscreants because if they did, they would have most certainly exposed themselves to retaliation and harassment thereafter. 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.

(iii) Therefore, the authorities had to devise a just and reasonable plan of enquiry which, on the one hand,

would not expose the individual girls to harassment by the male students and, on the other, secure reasonable opportunity to the accused to state their case. The course followed by the Principal was a wise one.

(iv) Under the circumstances of the case, the requirements of natural justice were fulfilled, because principles of natural justice are not inflexible and may differ in different circumstances."

From the above, it is noted that, keeping in view the nature of allegations against the male students; to protect the identity of the complainants, the girl students, the Supreme Court had upheld, the nature of enquiry conducted by the University as being in compliance with the principles of natural justice. The aforesaid judgment of the Supreme Court has no applicability in the facts of this case and also on the limited issue that is being decided by this Court.

52. Insofar as the judgment of the Supreme Court in the case of ***Suresh Koshy George (supra)*** is concerned, in para 7 on which reliance was placed by Ms. Routray, the Supreme Court was considering a submission that the Vice Chancellor had not made available to the appellant a copy of the report submitted by the Inquiry Officer before asking him to make a representation. The Supreme Court rejected the contention by holding that the enquiry was held after due notice to him and in his presence. He was allowed to cross examine the witnesses examined in the case and he was permitted to adduce evidence in rebuttal of the charge. The Supreme Court also

held, no Rule was brought to its notice, which stipulated the supply of report. The Supreme Court also observed that it was not the case of the appellant that he had asked for the copy of the report, which was denied to him. The judgment relied upon by Ms.Routray is distinguishable, inasmuch as the petitioner did not participate in the proceedings/the proceedings were held in his absence. Further, the Appellate Authority itself has offered to allow inspection of the documents/record of HLEC. The petitioner had asked for the documents/record/material in his appeal dated June 03, 2016. The Appellate Authority having allowed the inspection, reasonable time should have been given to the petitioner to supplement the appeal already filed by him on June 03, 2016. The judgment has no applicability, at least on the limited issue that is being decided by this Court.

53. Insofar as the judgment of the Allahabad High Court in the case of ***Ram Chander Roy (supra)*** wherein reliance was placed on paras 24 and 25, relates to the power of the Vice Chancellor to impose any punishment in maintaining the discipline of the University. There is no dispute on the said proposition of law. Insofar as the plea that the right of cross examination was denied is concerned, the High Court held that it was not convinced that in a case where Head of an Educational Institution takes disciplinary proceedings, it is necessary that he must give an opportunity to the student to cross examine the witnesses, who may be examined by him in order to satisfy himself that an occasion has arisen for taking disciplinary action against him.

In matter of discipline, the Head of Educational Institution does not act as a judicial or a quasi judicial Tribunal. The Disciplinary power vested in any Officer or the Head of an Institution is a power which is absolutely necessary for and ancillary to the exercise of administrative functions in that capacity. Suffice to state, 32(5) of the Statutes of the University lays down the procedure. In any case, as stated above, on a limited issue, which is being decided, this judgment would not have any applicability.

54. In ***State Bank of Patiala and Others v. S.K. Sharma (supra),*** Ms. Routray who relied upon para 35 to contend that no prejudice has resulted to the petitioner on account of non furnishing him the copy of the statements of witnesses as it cannot be said that he did not have a fair hearing is concerned, there is no dispute on the proposition, in view of the position of law noted above, but the limited time given by the Appellate Authority to the petitioner to inspect the documents/material/record and to give a hearing on the same day would not be in conformity with the principles of natural justice. Surely, the Authority empowered under the Statute is required to give a reasonable opportunity to make the very purpose of the power being exercised by such Authority meaningful.

55. Insofar as ***State Bank of Punjab and others v. Bakhshish Singh (supra)*** is concerned, there is no dispute that the Court cannot sit as an Appellate Authority over and above the conclusion of the Disciplinary Authority that a particular act was a gravest act of misconduct warranting dismissal. As stated above, on the limited

issue that is being decided by this Court, this judgment would have no relevance.

56. Insofar as ***Chief Commissioner of Income Tax (Administration), Bangalore v. V.K. Gururaj and others (supra)*** is concerned, the said judgment is on the proposition of deemed service, which in any case has no applicability for the reasons already stated.

57. Insofar as the judgment in the case of ***V. Ramana v. APSRTC and Ors (supra)*** is concerned, the same relates to the issue of judicial review with regard to punishment. The same has no applicability in view of limited issue that is being decided by this Court.

58. Insofar as the reliance placed by Ms. Routray on the judgment of ***M.V. Bijlani (supra)*** is concerned, in view of the limited issue that is being decided by this Court, this judgment would have no relevance.

59. In view of my above discussion, the writ petition is allowed to the extent that the Appellate Order dated August 22, 2016 is set aside and the matter is remanded back to the Appellate Authority with a direction to grant an opportunity of inspection to the petitioner, the record of the HLEC for two continuous days during office hours only by notifying the date and time to the petitioner for the same and upon such inspection, the petitioner shall have one week time to file a Supplementary Appeal, upon which the Appellate Authority shall give a hearing to the petitioner on a date and time fixed by the Appellate Authority, who thereafter shall, by considering the appeal(s) already

filed by the petitioner and the Supplementary Appeal, if any, pass a reasoned order as expeditiously as possible preferably within six weeks thereafter. Till such time, the order dated April 25, 2016 shall not be given effect to. It is also made clear in view of the undertaking given by the petitioner in W.P.(C) No. 4142/2016 the petitioner shall not indulge in any strike or dharna or agitation or coercive action in future in connection with the issue, till such time the proceedings between the parties attain finality. No costs.

CM No. 32348/2016 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

OCTOBER 12, 2017
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