# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 2nd NOVEMBER, 2016

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**S.B. : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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## WP(C) No.33 of 2015

**Petitioners** :

1. Malvika Foundation,
B-II/66, M.C.I.E.,
Delhi-Mathura Road,
New Delhi – 110 044,
through its Trustee Shri Suresh Sachdev

2. Eastern Institute of Integrated Learning
in Management University,
8th Mile, Budang, Malabassey,
West Sikkim – 737 121,
through Shri Suresh Sachdev,
Trustee of Sponsoring Body of Petitioner No.2.

**versus**

**Respondents** :

1. Human Resource Development Department,
Government of Sikkim,
Tashiling Secretariat,
Gangtok.

2. State of Sikkim
through Chief Secretary,
Government of Sikkim,
Gangtok.

Writ Petition under Article 226
of the Constitution of India

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**Appearance**

Mr. Shakeel Ahmed, Ms. Chitra Sharma, Mr. Yogesh Kumar Sharma and Mr. S. P. Bhutia, Advocates for the Petitioners.

Mr. Karma Thinlay Namgyal, Senior Government Advocate with Mr. S. K. Chettri and Mrs. Pollin Rai, Assistant Government Advocates for State-Respondents.

Mr. Bhusan Nepal, Legal Retainer for Respondent No.1.

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# J U D G M E N T

**Meenakshi Madan Rai, J.**

***1.*** In this Writ Petition, the Petitioners seek a Mandamus cancelling and setting aside the Notice dated 30-04-2015 bearing Ref. No.55/DIR(HE)/HRDD and letter Ref. No.73/DIR(HE)/HRDD dated 08-05-2015 [Annexure P1 (Colly)] and any other ancillary proceedings which may have been initiated by the Respondents pursuant to the dissolution of the Petitioner No.2, and to direct the Respondents to hand over control of Petitioner No.2 to the Petitioner No.1.

***2.*** The facts averred are that, the Petitioner is a registered Charitable Trust and is the Sponsoring Body of the Petitioner No.2, a Private University set up through the Eastern Institute for Integrated Learning in Management University, Sikkim Act, 2006 (in short “the Act of 2006”), vide a Notification dated 26-05-2006 (Annexure P3), with the object, *inter alia*, of imparting education in regular and Distance Mode. The Petitioner No.2 (for brevity “EIILMU”) commenced Courses in B.Tech, Bachelor of Science, Bachelor of Commerce, Bachelor of Business Administration, bachelor of Computer Application, Master of Science and Master of Business Administration and functioned as a full-

fledged University from Jorethang, South Sikkim. Its main Campus was at Malbassey, Budang, Soreng, West Sikkim, duly inspected and approved by the UGC in July, 2008. Various Authorities of the EIILMU were also constituted as per Section 21 (Board of Management) and Section 22 (Academic Council) of the said Act, while the Respondents were represented through its nominees in the Board of Governors of the Petitioner No.2.

***3.*** On 01-09-2012, a *suo motu* FIR bearing No.51/2012 was registered against the Officials of the Petitioner No.2 and others under Section 406/420/467/ 120B/34 of the Indian Penal Code, 1860 (in short "IPC") by the Sikkim Police at Jorethang P.S. on grounds that the Petitioner had violated the UGC and Distant Education Council (DEC) norms as well as provisions of its own Act. Charge-Sheet in this matter was filed and is pending before the Court of the Learned Chief Judicial Magistrate, South and West, at Namchi. A second FIR No.92 of 2013, on the same allegations, was registered at the Sadar Police Station against the Officials of the Petitioner No.2 which was later quashed by the Orders of this Court dated 04-06-2013 in Crl. Misc. Case No.12 of 2013. Meanwhile, the Sikkim Police also referred the matter to the Enforcement Directorate for further investigation and on 19-02-2014, an ECIR Case was

registered under Sections 420/467 and 120B of the IPC against the Officials of the Petitioner No.2 and others. Consequently, the Enforcement Directorate attached the moneys of the Petitioner No.2 in its various Bank Accounts leading to acute financial crisis, inability to pay the salary of its staff or to meet its daily expenses and a chaotic situation emanated where its staff and faculty were threatened, followed by mass resignations, disruption of academic activities and violence within the Campus, resulting in physical assault of the guards and a few outstation employees. The students boycotted the end semester Examinations despite pleas by the Vice Chancellor and the Registrar of the Petitioner No.2. Resultantly, the Petitioners were constrained to request the Respondents to take over the EIILMU, by filing Writ Petition, viz., WP(C) No.01 of 2015 before this Court, which was subsequently withdrawn, the Petitioners having decided to make an attempt to revive the Petitioner No.2. The Respondents were informed of this vide letter dated 10-03-2015 and advertisements were placed in local newspapers for appointment of Registrar and Vice Chancellor. Despite knowledge of the intention and the efforts of the Petitioner No.2, the Respondents in utter disregard of the statutory provisions of the Act of 2006 and in complete violation of Section 47(2) and (3) approved the dissolution of the Petitioner No.2 on 28-04-2015

communicated to the Petitioners vide letter dated 08-05-2015. The official website of the Respondent No.1 revealed the public Notice dated 30-04-2015.

***4.*** The Petitioners' case is that the Respondents No.1 and 2 have unilaterally without notice to the Petitioners approved the proposal for dissolution of the Petitioner No.2, vide Notice dated 30-04-2015 bearing Ref. No.55/DIR(DE)/ HRDD and for the first time, vide letter dated 08-05-2015 of the Respondent No.1, informed the Petitioners of the Cabinet's decision and approval for dissolving the Petitioner No.2 under Section 47 of the Act of 2006 without Notice to the Vice Chancellor and Board of Governors of the Petitioner No.2. Hence, the aforesaid prayers.

***5.*** Countering the contentions of the Petitioners, the Respondents averred that the EIILMU has been under controversy since 2012 when the Sikkim Police registered an FIR against the Sponsoring Body of the EIILMU on account of sale of fake Degrees and Certificates. Secondly, the Enforcement Directorate had issued a provisional attachment order on the property and Bank Accounts of the EIILMU under Section 5 of the Prevention of Money Laundering Act while the UGC had also issued directions to the EIILMU to immediately close down its Distance Education Centres which were opened without the approval of the Statutory

Bodies. The activities of the EIILMU came to a standstill after the suspension of the examination by the Management of EIILMU on 24-12-2014, the reason being the absence of Management Authorities including the Vice Chancellor, Registrar, Deputy Controller of Examination, Faculty, etc. A visit to the Campus of the Petitioner No.2 by the Director, Technical Education and interaction with the students revealed that they had been left in the lurch by the Management without any information. A Report was filed by the said Officer on 29-09-2014 indicating the shortcomings, but no clarification was forthcoming from the Petitioner No.2. Following this, on 05-01-2015, a meeting was held in the Chamber of the Minister, HRDD along with Principal Secretary, HRDD, concerned Officers of the Department and students' representatives of the EIILMU, but the EIILMU went unrepresented. Nevertheless, the Principal Secretary, HRDD telephonically contacted and informed the Acting Vice Chancellor (henceforth for brevity "AVC") Mr. R. P. Sharma of the students' grievances to which an assurance was given that examinations would be conducted immediately and Faculty deputed to manage the affairs. Despite the assurance, a letter dated 08-01-2015 was received on 16-01-2015 from the Petitioner No.1 requesting the Government of Sikkim to take over the EIILMU. The Director of Higher Education on 12-01-2015 requested the

AVC to conduct the examinations immediately and on 28-01-2015 Mr. P. C. Rai, Dean of EIILMU was summoned to enquire about the situation. A meeting ensued between the Minister of HRDD and the Dean where the latter was instructed to immediately conduct the examination. On 29-01-2015 (Annexure R-5), a second e-mail was sent to AVC directing him to conduct the examination within 15 days of the receipt of mail from the Director and to authorise the Dean for this purpose. It was also communicated by the same letter that on failure/non-compliance, the State Government would take necessary action as per Section 47(2) of the Act of 2006. On 31-01-2015 (Annexure R-6), the AVC through e-mail authorised the Department to conduct the examination. On 09-02-2015, AVC was requested by the Department to provide the Reports as per Sections 44(3) and 45(4) of the Act of 2006, to which no response was received. On 14-02-2015, the Director, Higher Education, visited the Campus and met with 190 students in the presence of the Panchayat and Officers of the HRDD and Dean of the EIILMU and found that the Management had suspended the examinations and had failed to make necessary arrangements for them despite realising all tuition and hostel fees. The Department assured reimbursement of the students' fees and to safeguard their interest. Examinations were thus conducted by the Department from

20-03-2015 to 24-03-2015 and the results declared. As per the authorisation of the AVC, the Department relocated regular students of the Budang Campus, within and outside the State. Meanwhile classes were conducted at Chisopani to complete the Semester ending on 30th June. On a Report of the Fact Finding Committee and in view of the mis-management and mal-administration, the State Cabinet decided to initiate dissolution of EIILMU under Section 47 of the Act of 2006, in the interim Management was looked after by the Government.

***6.*** In its Rejoinder, the Petitioners, *inter alia*, denied that there was any FIR pending against the Petitioner No.1 and that both the Petitioners have not been named as Accused in the FIR No.51 of 2012. They denied knowledge of the inspection by the Director, Higher Education of the EIILMU and also deny that the students were left in the lurch and reiterate that as the Enforcement Directorate had attached their Bank Accounts, a financial crisis ensued leading to delay in the examinations as the Petitioner No.2 was trying to arrange funds for normalising the activities of the University. The request to the Government for taking over the EIILMU was made bearing the best interest of the students, but the Petitioners denied awareness about any meetings as stated by the Respondents. They also denied

receipt of any letter dated 09-02-2015 (Annexure R-7) and that a bare perusal of the address would indicate its vagueness making its service in Kolkata impossible. Besides the above, the averments as laid out in the Writ Petition were reiterated.

***7.*** The arguments canvassed by Learned Counsel for the Petitioners was that it is a settled principle of Law that no one should be condemned unheard, hence, the act of passing the impugned Notice is arbitrary, illegal, biased and the Petitioners had no opportunity of rebutting the findings of the Respondents which is contrary to the principle of *audi alteram partem*. That, although Section 47 of the Act of 2006 mandates that reasonable opportunity to Show Cause shall be given to the Petitioner No.1 in the event of a decision to wind up the Petitioner No.2 by the Respondents, no such Notice or Show Cause was served upon the Petitioners or the Officers and the Authorities of the Petitioners. That, in view of the non-compliance of Section 47 of the Act of 2006, it is prayed that as the aforesaid letters issued to the Petitioners do not fulfil the conditions of Section 47 of the Act of 2006 as required apart from which the Petitioners now seek to run the EIILMU, hence, the Notice be quashed and the Sponsor be allowed to be heard. To buttress his submissions, reliance was placed on ***Olga***

***Tellis and Others*** vs. ***Bombay Municipal Corporation and Others***[1], ***S. L. Kapoor*** vs. ***Jagmohan and Others***[2], ***Mohammad Jafar*** vs. ***Union of India***[3] and ***C. B. Gautam*** vs. ***Union of India and Others***[4].

***8.*** *Per contra*, Learned Counsel for the Respondents while reiterating the averments made in the opposing Affidavit urged that vide letter dated 08-01-2015 the Petitioners had filed a representation before the Respondents in which they had requested the Respondents to take over the EIILMU to make it functional. The grounds for making such a prayer were put forth in detail in the said letter and it was categorically pleaded that the University had made all attempts and tried its level best through the AVC to hold the End Semester Examinations in the month of December, 2014, but failed. Apart from which, the EIILMU was facing financial constraints which had led to suspension of teaching activities at the Campus and the students had launched an agitation. Thus, as the Petitioners themselves had requested the Respondents to take over the EIILMU due to the difficulties explained in the letter, there was in fact no necessity of issuing any Notice. That, as evident from a perusal of the letters, the impugned Notice was issued in the month of April, 2015, subsequent to the letter of request, sent by the Petitioners in the month of January, 2015. It

1. (1985) 3 SCC 545 3. 1994 Supp (2) SCC 1
2. (1980) 4 SCC 379 4. (1993) 1 SCC 78

was further contended that the UGC had also constituted a Fact Finding Body to look into the complaints and allegations made against the Petitioners with regard to the numerous Programmes run through Distance Mode, opening of unauthorised Study Centre(s), etc. The Committee observed that though the EIILMU was not authorised to even open Study Centres on franchise mode within Sikkim, it was done so in India and abroad, thus violating not only its jurisdiction in opening its Study Centres, but also the mode in which it had been done. Recommendations were consequently made by the Committee of which, one was dissolution of EIILMU in accordance with the relevant Section of the Act of 2006. Thus, in view of all of the above, no Notice under Section 47 of the Act of 2006 was required. To buttress his submissions, reliance was placed on ***S. L. Kapoor***[2] *(supra)* and ***Aligarh Muslim University and Others*** vs. ***Mansoor Ali Khan***[5].

***9.*** In response, the Petitioners apart from denying the statements of the Respondents argued that there has to be compliance of the mandatory provisions and issuance of Notice cannot be circumvented by any means. Moreover, the Report of the UGC was not received by the Petitioners. Hence, the Petition be allowed.

5. (2000) 7 SCC 529

***10.*** Careful and anxious consideration has been given to the submissions made at the Bar, the documents which Learned Counsel have walked this Court through during the hearing have also been carefully perused and considered, so also the Judgments relied on.

***11.*** The question germane to the matter is whether the letter dated 29-01-2015 (Annexure R-5) issued by the Respondent No.1 can be treated as a Notice under Section 47 of the Act of 2006 or whether the Notice bearing Ref. No.55/DIR(HE)/HRDD, dated 30-04-2015 (Annexure P-1), was issued by the Respondents without affording the Petitioners an opportunity of being heard.

***12.*** To appreciate the matter in its correct perspective, it would be expedient to refer to the relevant provision, i.e., Section 47 of the Act of 2006, which is extracted hereinbelow and provides as follows;

> "**Dissolution of University** **47.** (1) If the Sponsor proposes dissolution of the University in accordance with the law governing its constitution or corporation, it shall give at least 12 (twelve) months notice in writing to the State government and it shall ensure that no new admissions to the University are accepted during the notice period.
>
> (2) On identification of mismanagement, mal-administration, in-discipline, failure in the accomplishment of the objects of

> University and economic hardships in the management systems of University, the State Government would issued directions to the management system of University. If the direction are not followed within such time as may be prescribed, the right to take decision for winding up of the University would vest in the State Government.
>
> (3) The manner of winding up of the University would be such as may be prescribed by the State Government in this behalf:
>
> Provided that no such action will be initiated without affording a reasonable opportunity to show cause to the Sponsor.
>
> (4) On receipt of the notice referred to in sub-section (1), the State Government shall in consultation with the AICTE and UGC make such arrangements for administration of the University from the proposed date of dissolution of the University by the Sponsor and until the last batch of students in regular courses of studies of the University complete their courses of studies in such manner as may be prescribed by the Statutes.**"**

***13.*** What emerges on a bare reading of the provision is that, Section 47(1) of the Act of 2006 pertains to steps to be taken by the Sponsor if it is decides to dissolve the EIILMU. Section 47(2) and (3) pertains to steps to be taken by the State Government in the event of the contingencies detailed in the said Section. The proviso to Section 47(3) requires that no such action shall be initiated without affording the Sponsor a reasonable opportunity of showing cause. Section 47(4) provides, *inter alia*, for arrangements to be made by the State Government, i.e., the Respondents, in consultation of the All India Council for Technical

Education (AICTE) and UGC for administration of the University from the proposed date of dissolution of the University by the Sponsor to enable the last batch of students to complete their studies.

***14.*** The documents on record would reveal that vide e-mail dated 07-01-2015 (Annexure R-2) issued by Shri Gyan Upadhyaya, HRDD, to AVC of the EIILMU, a request was made to him to take immediate action for conducting the remaining examinations and that the Director, Higher Education may be contacted for assistance. In turn, the said AVC had issued a letter through e-mail dated 06-01-2015 (Annexure R-2) to the Dean directing him to hold the examinations as per schedule on the assurance of the Principal Secretary that the administration would make arrangements for law and order in the Campus. This letter was followed by letter dated 08-01-2015 (Annexure R-3) written by the AVC requesting the Respondents to take over the EIILMU. On the heels of this communication was an e-mail dated 12-01-2015 from the Director, Higher Education to the AVC requesting him to take steps to safeguard the interest of the students and exhibit some responsible behaviour. This communication was followed by letter dated 29-01-2015 (Annexure R-5) wherein the Respondent No.1 informed the AVC that it had been brought to the notice of

the Respondents that the University was not able to function smoothly due to problems of internal management resulting in suspension of the examination and disorderly situation in the University. That, the activities of the University has been affected due to mal-administration, mis-management, indiscipline, failure in accomplishment of the objects of the University and economic hardships in the management of the University. Therefore, in order to safeguard the students' interest and restore discipline in the University, the Petitioner/AVC was directed to conduct the examinations immediately within fifteen days of the receipt of this letter and on failure to comply, the State Government would take necessary action as per Section 47(2) of the Act of 2006.

***15.*** In the context of the above correspondence and the facts and circumstances, we may now examine as to what "*audi alteram partem*" means. Natural Justice has two main limbs (i) the right to a fair hearing, also known as the *audi alteram partem* rule, viz., that no one should be condemned unheard and (ii) the rule against bias and *nemo judex in causa sua*, i.e., no one may be a judge in this own cause. In other words, these two concepts tantamount to fairness and impartiality and are pillars supporting natural justice. The principles of natural justice are not embodied rules and, therefore, it is not practicable to precisely define

the parameters of natural justice. In ***Maneka Gandhi*** vs. ***Union of India and Another***[6] it was held that "*The rules of natural justice are not embodied rules. What particular rules of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case."* This succinctly lays down that there can be no variable standard for reasonableness except that the Court's conscience must be satisfied that the person against whom an action is proposed has had a fair chance of convincing the authority who proposes to take action against him. The decision of the Court will depend upon the peculiar facts and circumstances of each case.

***16.*** That having been said, the word 'Notice' is necessarily to be understood, which originates from the latin word "*Notifia*" meaning "a being known" or "a knowing", therefore, something is made known by a Notice of what a man was or might be ignorant of before. The importance of notice in adjudicatory proceedings has been

6. (1978) 1 SCC 248

underlined by the Supreme Court in the decision relied on by the Petitioners, i.e., ***Olga Tellis***[1] *(supra)*. The Bombay pavement dwellers challenged the procedures prescribed by Section 314 of the Municipal Corporation Act, 1888, as unreasonable vis-à-vis Article 21 of the Constitution of India insofar as the provision not only did not require giving of notice to the dwellers before demolition of their huts on the pavements but it expressly provided that the Corporation may cause encroachment to be removed "without notice". The Supreme Court upholding the validity of the provision ruled that it was merely an enabling provision. In Paragraph 45 of the said Judgment, it was held as follows;

> **"45.** It must further be presumed that, while vesting in the Commissioner the power to act without notice, the Legislature intended that the power should be exercised sparingly and in cases of urgency which brook no delay. In all other cases, no departure from the audi alteram partem rule ('Hear the other side') could be presumed to have been intended. Section 314 is so designed as to exclude the principles of natural justice by way of exception and not as a general rule. **There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place the apprehended danger and so on. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence."**

***17.*** Hence, in view of the above, it follows that a notice is for the purposes of making something known to a person who might be ignorant of it before and which could produce diverse effects. The notice is to be adequate as regards the details of the case against the concerned person. Therefore, any proceedings initiated against a person without adequate notice to him infringes the concepts of natural justice rendering it invalid.

***18.*** Consequently, to address the issue at hand, it would be essential to bear in mind the provisions of Sections 47(2) and 47(3) and the proviso therein, of the Act of 2006, which is already extracted hereinabove and for brevity is not being reiterated and to consider the letter of the Director, Higher Education, Human Resource Development Department, dated 29-01-2015 (Annexure R-5), which reads as follows;

> "……
>
> **NO:** 3379/Dir.(HE)/HRDD **Date :** 29.01.2015
>
> To
>
> Mr. R P. Sharma,
> Acting Vice Chancellor,
> EIILM University,
> Malbassey, West Sikkim.
>
> Sub. - **REQUEST FOR CONDUCT OF EXAMINATION.**
>
> Sir,
>
> It has come to the notice of the State Government that EIILM University is not been able to function smoothly due to internal management problems thereby resulting in suspension of examination and disorderly at atmosphere in the University.

> Whereas, it has further been reported that activities of the University has been affected due to maladministration, mismanagement, indiscipline, failure in accomplishment of the objects of the University and economic hardships in the management of the University.
>
> Now, therefore, in order to safeguard the students' interest and restore discipline in the University, you are hereby directed to conduct the examinations immediately within 15 days of the receipt of this letter.
>
> In failure of non-compliance, the State Government would take necessary action as per Section 47(2) of EIILM Act, 2006.
>
> Thanking you,
>
> Yours faithfully
>
> Sd/-
>
> **JITENDRA SINGH RAJE (IAS)**
> DIRECTOR, HIGHER EDUCATION
> HUMAN RESOURCE DEVELOPMENT DEPARTMENT**"**

***19.*** The contents of the letter need no further elucidation, it is evident that an inchoate situation was persisting in the Petitioner No.2 Campus as detailed in Paragraph 2 of the letter *supra*. In view of the said situation, a direction was issued to the Petitioners to conduct the examinations on failure of which the Respondents would take necessary action as per Section 47(2)of the Act of 2006. No Notice could be more categorical and clear than the above. The argument canvassed by Learned Counsel for the Petitioner that the subject reflected therein, viz; "Sub. - REQUEST FOR CONDUCT OF EXAMINATION." does not reveal that it was infact a Notice as contemplated under Section 47 is to say the least preposterous and puerile and brooks no

consideration. The contents of the letter as common sense would tell us would have to be considered in its totality and the intention culled out from the contents and not be guided solely by the subject at the top of the letter.

***20.*** Although it was vehemently argued by Learned Counsel for the Petitioners that, this letter was not received by the Petitioners, but the e-mail dated 31-01-2015 (Annexure R-6) sent by the AVC to Shri Gyan Upadhyaya Director, Higher Education, would belie this stand. This e-mail is undoubtedly a response to the letter dated 29-01-2015 (Annexure R-5), the last paragraph is being reproduced for convenience;

> "……..
>
> However I have full faith in you and the HRDD Sir and keeping in mind the interest of the students I have no hesitation in saying that I am agreeable to your/HRDD appointing any independent person or any person other than Mr. P. C. Rai to get the examinations conducted. You may have the locks opened in due process of law under your supervision and security only. Mr. P. C. Rai is not authorised to take charge of anything in view of all the complaints received against him.
>
> ……."

This, therefore, controverts the stand of the Petitioners that no communication was made to them with regard to the intent of the Respondent. The Notice is only to make a party aware of something it does not have to follow a certain format. It suffices if it conveys the intent to the other party. It is also apparent that the Petitioner was well-aware of the

prevailing situation in its Campus, therefore, elaborate details in the Notice were obviously not a requirement. In this context, it would be apposite to refer to the decision in ***Aligarh Muslim University***[5] *(supra)* wherein it was held that—

> **"21.** As pointed recently in *M.C. Mehta* v. *Union of India* [(1999) 6 SCC 237], there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example, where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in *Gadde Venkateswara Rao* v. *Govt. of A.P.* [AIR 1966 SC 828] it is not necessary to quash the order merely because of violation of principles of natural justice.
>
> **22.** In *M.C. Mehta* it was pointed out that at one time, it was held in *Ridge* v. *Baldwin* [(1963) 2 ALL ER 66 (HL)] that breach of principles of natural justice was in itself treated as prejudice and that no other "de facto" prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In *S.L. Kapoor* v. *Jagmohan* [(1980 4 SCC 379], Chinnappa Reddy, J. followed *Ridge* v. *Baldwin* and set aside the order of suppression of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.
>
> **23.** Chinnappa Reddy, J. in *S.L. Kapoor* case laid two exceptions (at SCC p.395) namely, if upon *admitted or indisputable* facts only one conclusion was possible, then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words, if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.
>
> **24.** The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In *K.L. Tripathi* v.

*State Bank of India* [(1984) 1 SCC 43], Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting *Wade's Administrative Law* (5th[h] Edn., pp.472-75) as follows: (SCC p.58 para 31)

> "[I]t is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extent. ... There must have been *some real prejudice* to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in *State Bank of Patiala* v. S.K. Sharma [(1996) 3 SCC 364]. In that case, the principle of 'prejudice' has been further elaborated. The same principle has been reiterated again in *Rajendra Singh* v. *State of M.P.* [(1996) 5 SCC 460].

**25.** The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in *M.C. Mehta* referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J, and Straughton L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, De. Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise, the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media rules. We do not think it necessary, in this case, to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

**26.** It will be sufficient, for the purpose of the case of Mr Mansoor Ali Khan, to show that his case will fall within the exceptions stated by Chinnappa Reddy, J. in *S.C. Kapoor* v. *Jagmohan*,

> namely, that on the admitted or indisputable facts, only one view is possible. In that event, no prejudice can be said to have been caused to Mr. Mansoor Ali Khan though notice has not been issued.**"**

***21.*** On the touchstone of the principles enunciated *supra*, from the communication between the parties, it emerges without doubt that in the first instance, it is the Petitioners who have requested the Respondents to take over the University, thereafter, it is evident that the Notice has been issued vide letter dated 29-01-2015 (Annexure R-5). It is apparent that the Petitioner did not deem it essential to respond to the intent of the communication despite receipt of the letter *(supra)*. The decision of ***Olga Tellis***[1] *(supra)* may also be usefully referred to wherein it is laid down that, *the ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence*. Thus, any steps taken without abiding by the principles of *audi alteram partem* have to be only in circumstances which warrant it. Here, it may be argued that vide letter dated 08-01-2015 the prayer was for the Petitioners to take up the EIILMU

instead of which they embarked on steps to close down the University, but the contents of the letter dated 29-01-2015 is categorical on the intention of the State Government which has been communicated to the AVC who despite a lapse of almost three months, failed to take steps and, therefore, cannot now be heard to cry foul. It is not as if the Petitioners were in the dark about the situation prevailing in their Campus due to mismanagement and the consequent unrest of the students, their letter dated 08-01-2015 stands sentinel to the above position, therefore, the question of prejudice to the Petitioners finds no place. It is no one's case that arrangements for completion of the semester was not made for the last batch of students in the regular Courses of studies of the University by the Respondents. In fact, it is admitted by the Petitioners that alternative arrangements were made for the students of the University and they were admitted to other colleges.

***22.*** Hence, considering the entirety of the facts and circumstances and the aforesaid discussions, I find that not only was Notice issued to the Petitioners vide letter dated 29-01-2015 (Annexure R-5), no prejudice whatsoever was also caused to them. Consequently, their prayers merit no consideration.

***23.*** In the result, the Writ Petition is dismissed.

***24.*** No order as to costs.

**( Meenakshi Madan Rai )**
**Judge**
**02-11-2016**

Approved for reporting : **Yes**

Internet : **Yes**

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