

Reserved

Case:- Misc.Bench No.-4282 of 2012

Petitioner:-Smt. Nishat Sultana Zaidi

Respondent:- Dr.Ram Manohar Lohia National Law University Lko.And Ors.

Petitioner Counsel:- J.J.Munir, Hemant Kumar

Respondent Counsel:- Y.Swaroop

Hon'ble Uma Nath Singh,J.

Hon'ble Shabihul Hasnain,J.

(Per Uma Nath Singh, J.)

By way of this writ petition, the petitioner-mother has prayed for issuance of (i) a writ, order or direction in the nature of certiorari for quashment of impugned charge-sheet dated 27.10.2009 (Annexure-1), inquiry report dated 12.03.2011 (Annexure-5), and the show cause notice dated 15.06.2010 issued by respondent no. 1 (Annexure-6); (ii) a writ, order or direction in the nature of mandamus directing respondent no.3 to pay her an interim/ad-hoc compensation of rupees ten lakhs (Rs. 10,00,000), and (iii) any other writ, order or direction as this Court may deem fit and proper.

Brief facts of the case leading to filing of this writ petition are that late Sahil Zaidi, then a student of B.A. LL.B. (Hon.) 3rd year 5th semester was placed under suspension pending an inquiry into an alleged incident of fight and assault between two groups of students said to have occurred on 11.10.2009. That incident was followed by another incident of exchange of abuses on 12.10.2009 inside the hostel premises of the respondent university. Late Sahil Zaidi was called upon to answer a charge sheet dated 27.10.2009 with three charges drawn against him and some other students. In order to hold Inquiry, an Inquiry Committee comprising two members, namely a retired judge of the Allahabad High Court and a retired administrative officer was

constituted and entrusted with the enquiry in question. It is alleged that the only act for which petitioner's late son was purportedly charge sheeted was the act of doing a good Samaritan to save his friends namely Pallav Singh, Ankit Prakash, Anjul singh and Anurag Singh from the brutal assaults caused by another group of students on 11.10.2009 at 9.00 pm which consisted of one Ajay Singh, Praveen Yadav, Rahul Singh and Krishan Kant. It is also pointed out that again on the following day, i.e. 12.10.2009, at about 1.00 pm, the aggressors of earlier incident namely Shashank Singh, Praveen Yadav, Vishal Mishra, Ajay Singh and Krishan Kant came downstairs from their rooms located on a lower floor to assault petitioner's late son and his friends Anjul Singh, Kanishik, Pankaj and Anurag whom petitioner's late son had tried to save from assault on the previous night. However, the main aggressor of that incident namely Shashank Singh was taken away by the caretaker of the boys hostel of petitioner's late son and thus he and his friends were saved. In this background, petitioner's late son filed a detailed written statement of defence to three charges framed against him. It is also averred that petitioner's late son was charge sheeted concerning a fight between two groups of students by the respondent University without any complicity on his part. Petitioner's deceased son, thus, suffered a false implication in the disciplinary matter conducted not in a bonafide exercise of powers by the University authorities but in a colourable exercise of such powers alleged to be emanating from some kind of malice and ill will harboured by the University authorities against petitioner's late son. It is submitted that the University authorities had taken offence for his forthright and outspoken dealing with his teachers, although within the precincts of discipline. It is also mentioned that the University authorities developed hatred towards petitioner's late son for no fault on his part, even though the deceased had brought lots of laurels to the University in various

sports events. He had earned for the University a number of trophies and medals in sports like Tennis, Swimming, Football, Volleyball and racing. Instead of appreciating his performance, for the reasons best known to the University authorities, they totally disliked him. It is also submitted that the personal animosity harboured by respondent no.3, the Vice Chancellor against petitioner's late son was so deep that he went on to deliberately insult petitioner's husband then a sitting Judge of the Allahabad High court by requiring him to attend his office along with petitioner for trivial matters through telephonic calls. Even later on also, during the course of enquiry, petitioner's husband was summoned in person by the Vice Chancellor through a Deputy Registrar by sending a communication with language as "after seeking prior appointment in order to put his point of view relating to disciplinary proceedings". The said communication was sent to petitioner's husband through Deputy Registrar of the University only to humiliate him, and moreover in complete breach of protocol and respect expected of and required to be shown to a High Court Judge. Even then, petitioner's husband showed utmost courtesy to the Vice Chancellor. There is also an averment in the petition that on more than one occasion petitioner's husband was told by the Vice Chancellor that all Judges of the Supreme Court and High Courts are his personal friends whom he referred to by names bereft of even the prefix of Mr. Justice. However, petitioner's husband would return without expressing any indignation much-less taking action for transgressions committed on his face, even when, he was a sitting Judge.

It is also alleged that for the incident in question the respondent-institution instituted inquiry proceedings with a retired High Court Judge and a retired bureaucrat in the moot court hall as if petitioner's son and other students were being tried upon some criminal charges in a regular criminal

trial. During the proceedings, the students and other persons were examined and cross examined. The witnesses who were setup for the establishment and against deceased Sahil Zaidi were Nitin Kumar, Anand Prakash, Praveen Kumar Yadav, Krishan Kant, Vishal Mishra and Ajay Singh. However, when they were cross examined by petitioner's late son Sahil Zaidi, each of them denied the complicity of petitioner's son in any incident of violence for which he was wrongfully charged at the instance of respondent no.3. Thus none of the witnesses appearing for the establishment could prove any of the complaints made against petitioner's late son which had been made the basis for drawing charges against him. Besides, in the cross examination, none of the witnesses supported any of the allegations. Thus, on the conclusion of enquiry, it was found to be a case of no evidence against petitioner's late son Sahil Zaidi on all three counts (charges). Petitioner's deceased son at the conclusion of hearing before the Inquiry Committee also submitted a written argument in support of his case. The Inquiry Committee finally in its report dated 12.03.2010 held that Charge No.1 relating to the incident dated 11.10.2009 is not proved against late Sahil Zaidi and his four companions namely Pallav Singh, Anjul Singh, Ankit Prakash and Kanishk who were found to be aggrieved while the rival group of students was held to be the aggressor. The second charge relating to the incident dated 12.10.2009 was held to be proved against petitioner's late son along with six other students namely Vishal Mishra, Shanhak Singh, Pankaj Kumar, Anurag Singh, Ankit Prakash and Anjul Singh. The 3rd charge since only related to shortage of attendance did not fall within the purview of enquiry by the Committee in the eye of law. Thus the Inquiry committee found it to be beyond the terms reference.

Regarding recommendations relating to punishment as submitted by the Inquiry Committee, petitioner's late son vide para 55 B(i) of the report was

recommended for award of punishment of 'warning'. Based on inquiry report dated 12.03.2010 a notice dated 15.06.2010 was caused to be sent by respondent no.3 through a Deputy Registrar to petitioner's husband at his Court's address in Delhi where he is presently holding the office of President, Delhi State Consumer Disputes Redressal Commission. It was mentioned that petitioner's late son was found guilty of indiscipline regarding the incident dated 12.10.2009 and that the decision for necessary further disciplinary action is under consideration before the Competent Authority. It was also mentioned in the notice that in regard to the said disciplinary action, the Deputy Registrar had been directed to inform petitioner's husband that he may meet Vice Chancellor, respondent no.3 in his office latest by 26.06.2010 by prior appointment and put across his point of view, if any. An event sheet highlighting the events of the alleged conduct of petitioner's late son was also enclosed with the notice dated 15.06.2010 sent to petitioner's son. However, a copy of the inquiry report was not enclosed. In response to the aforesaid notice dated 15.06.2010, petitioner's husband sent a memo dated 20.06.2010 to the Deputy Registrar concerned from his residential address showing utmost courtesy in writing whereby he requested for a copy of the inquiry report dated 12.10.2009, statements of witnesses recorded by the Inquiry Committee, and two other essential documents. Since the show cause notice dated 15.06.2010 was to be answered by late Sahil Zaidi, petitioner's deceased son, he submitted a representation dated 12.07.2010 against the findings of Inquiry Committee in response to the aforesaid notice dated 15.06.2010 sent to petitioner's husband.

It appears that despite receipt of the aforesaid representation against the findings of Inquiry Committee, no final decision was taken by the Executive Council. The matter was kept pending and alive probably at the instance of respondent no.3 so that he could harass and humiliate petitioner's late son and

her husband. It is also averred in the petition that in furtherance of his designs, respondent no.3 again got a letter issued to petitioner's husband dated 15.07.2010 through Deputy Registrar of the respondent-University showing persistent breach of protocol by saying that he had been directed by the Vice Chancellor to request those parents who had yet not met the Vice Chancellor to meet him by 21.07.2010. The letter dated 15.07.2010 and the earlier show cause notice dated 15.06.2010 sent to petitioner's husband are a glaring manifestation of 3rd respondent's misplaced sense of superiority in requiring a High Court Judge or retired High Court Judge to be in attendance before him. The motive to compel petitioner's husband to attend his office went so far with 3rd respondent that in the letter dated 15.07.2010 it was said that petitioner's husband may not send his son to the University till further communication was received in this regard. The aforesaid unauthorized direction was given at the instance of respondent no.3 to compel petitioner's husband to personally attend and appear before 3rd respondent, seemingly to get some sort of gratification of ego. Petitioner's late son was not under suspension and by that time the inquiry proceedings had already concluded. Moreover, he had been wrongly held guilty on one of the three charges and was recommended for a punishment of warning only, by the Inquiry Committee. The representation preferred by petitioner's late son against the findings of guilt on only one charge was pending and has not been disposed of till date by the Executive Committee. Yet petitioner's son was not allowed to attend classes unless he submitted an undertaking, pre-emptive and confessional in nature before 3rd respondent. A similar undertaking on prescribed form was required also from petitioner's husband. Petitioner's late son submitted an undertaking as prescribed by 3rd respondent in order to pursue his study through a memo dated 20.09.2010 which he sent by fax to 3rd respondent's office. Thereafter, petitioner's late son

was permitted to deposit his fee and was allowed to join the classes of 4th year during the academic session 2010-11 by Deputy Registrar of the University. It was obvious that with recommendations for punishment of warning by the Inquiry Committee and no suspension order being in force, petitioner's late son could not be deprived of his studies. Deputy Registrar, thus, rightly accepted the deposit of fee from him and allowed him to join his classes of 4th year during the academic session 2010-11. However, despite that for the reasons best known to respondent no.3, he caused a show cause notice being issued to Deputy Registrar dated 07.10.2010 through the Registrar requiring him to show cause as to how he admitted petitioner's late son in 4th year and accepted his fee against the orders of respondent no.3 and the show cause notice was also issued to indicate as to why not disciplinary proceedings be drawn against him on the ground of service misconduct. Deputy Registrar in his reply dated 13.10.2010 to show cause notice dated 07.10.2010 inter alia also set out the facts vide para-2 as to the manner in which petitioner's husband was also pressurized to give a confessional undertaking on affidavit which he refused to do although petitioner's late son submitted undertaking as ordered, before he was permitted to join his classes. In this background, petitioner's husband had also requested for grant of a migration certificate to his son over telephone so that he could get his son admitted to Aligarh Muslim University for further studies. In the reply given by Deputy Registrar, it was communicated that the migration was declined by respondent no.3 only on the ground that the request should have come in writing from petitioner's late son and not otherwise.

Despite all formalities having been completed as required by the University, the disciplinary proceedings still remained pending like hanging of sword of Damocles over the head of petitioner's late son of impressionable age, although as many as five meetings of Executive Council were held

between 2.8.2010 to 12.9.2011. The representation dated 12.07.2010 submitted by petitioner's late son against the findings of Inquiry Committee also remained pending and undisposed of till date. A summary of the proceedings of meetings of the Executive Council held between 2.8.2010 and 23.09.2011 relating to disciplinary matter pending against petitioner's late son is given below :-

Date of EC meeting	Details
02/08/2010	Case was put up in the Executive Council Meeting against the admission given in fourth year by Dy.Registrar to Sahil Zaidi without obtaining his father's affidavit. EC deferred the matter.
30/10/2010	Matter was presented again. Deferred again.
25/03/2011	Matter was presented again. Deferred again.
27/06/2011	Matter was presented again. Deferred again.
23/09/2011	Matter was not included in agenda and as such no decision on the issue till date.

It appears from the resolution of Executive Council passed in the meeting of 25.03.2010 that the Deputy Registrar who was alleged with, to have wrongly admitted petitioner's late son in, to the academic session 2010-11 submitted his explanation which might be considered in the next meeting of Executive Council. A few resolutions of Executive Council recorded on 25.03.2011 and 27.06.2011 would show that the Executive Council had sufficient time to take up the disciplinary matter against the Deputy Registrar on the question as to why he had admitted petitioner's late son without a confessional undertaking given by his father but the Council had no time to dispose of the disciplinary case pending against petitioner's late son which still remains pending with recommendation of warning. It is also a submission that the minutes of Executive Council dated 25.03.2011 and 27.06.2011 would

show that the Executive Council of respondent-University functioned in lackadaisical manner under the Chairmanship of respondent no.3 and deliberately did not dispose of the long pending disciplinary proceedings against petitioner's late son. It is also the averment that petitioner's late son died on 29.11.2011 but disciplinary proceedings drawn against him remained pending before the respondent authority with the aforesaid recommendation for punishment of warning as recommended by the Inquiry Committee. The respondent university in failing to dispose of disciplinary proceedings against petitioner's late son until he reached final year from 3rd year have acted with gross arbitrariness by abusing the process of disciplinary jurisdiction of the University under the statutes just to harass petitioner's late son in violation of Articles 14 and 21 of the Constitution. Thus, petitioner-mother of deceased son Sahil Zaidi has prayed for, to seek quashment of entire disciplinary proceedings inter alia on the grounds of inordinate delay itself so as to wash off the stigma that would mar her late son's good name and reputation. The impugned charge sheet dated 27.10.2009, the impugned inquiry report dated 12.03.2010 and the impugned show cause notice dated 15.06.2010, are all manifestly illegal and vitiated inasmuch as on the facts apparent on the face of record, there is no evidence whatsoever in support of the solitary charge held proved against petitioner's late son by the Inquiry Committee through the impugned inquiry report. The impugned inquiry report insofar as it holds petitioner's late son guilty of charge no.2 carries a finding that is based on no evidence and is perverse and that the action of Executive Council of respondent-University in failing to take decision in the matter of disciplinary case of petitioner's late son from 12.07.2010 to 29.11.2011, when he died, indicates arbitrariness, whim and caprice on the part of respondent-University. Thus, the entire disciplinary proceedings stand vitiated and become liable to

be quashed in their entirety. It is also alleged that the aforesaid conduct of University Authorities towards petitioner's late son and her husband only suggests that her late son was victim of personal animosity, ill will and malice harboured by respondent no.3 towards her late son. As such, the entire disciplinary proceedings based on impugned charge sheet dated 25.10.2009 are an instance of colorable exercise of power by respondent no.3 and are liable to be quashed. It is rather a glaring instance of abuse of public office and thus respondent no.3 be held personally liable for abuse of his office and on that count be made to pay monetary adhoc compensation in the sum of Rs.10/- Lacs to petitioner for falsely proceeding against her son by way of disciplinary proceedings.

Shri J.J.Munir, learned counsel appearing for petitioner submitted that petitioner's late son was exonerated of 1st charge whereas in respect of 2nd charge of exchanging abuses, the witnesses appearing for establishment have faltered and the 3rd charge being related to shortage of attendance did not fall within the ambit of reference for inquiry by the Committee. The first charge against petitioner's deceased son late Sahil Zaidi was that on 11.10.2009 at about 21:30 hrs in Boys' hostel he with Pallav Singh, Ankit Prakash, Anjul Singh and Anurag Singh, students of B.A.LL.B (Hons.) of 5th Semester and Praveen Yadav of 3rd Semester caused injuries to the complainant side; hurled abuses, and threatened them. Thus, he was charged for committing indiscipline within the meaning of Regulation 1(a)(b)(c)(d)(e)(g)(h) and (i) under Chapter V of the Academic Regulations of Dr.Ram Manohar Lohiya National Law University Regulations. The said Regulation is reproduced as:

"1. ACT OF INDISCIPLINE:

No student of the University shall indulge in an Act of indiscipline which includes:

- a. *misconduct;*
- b. *an act violating the rule of discipline;*
- c. *an act punishable under any law for the time being in force;*
- d. *an act violating the provisions of the University Act, Regulations or rules framed from time to time;*
- e. *an act in breach of any undertaking;*
- f. *.....*
- g. *an act involving physical violence or use of abusive language or destruction of University property;*
- h. *participation in any activity which disturbs the peace in the University or administrative or academic atmosphere of the University;*
- i. *an act which brings the University into disrepute;”*

However, in cross examination by petitioner’s late son Sahil Zaidi, Shri Nitin Singh, the author of FIR in respect of the aforesaid incident relating to 1st charge admitted that he did not see him assaulting anyone. CW-4 Anand Prakash in cross examination also stated that he did not see anyone doing ‘Satau katta’ (putting a country made pistol). In reply to the question put by late Sahil Zaidi, this witness also admitted that he (Sahil Zaidi) did not assault him. To the question as to whether anyone assaulted him, he stated that juniors were being threatened and late Zaidi only tried to save them. In response to further question put by late Sahil Zaidi, this witness also admitted that he (Sahil Zaidi) did not beat him. CW-5, Praveen Kumar Yadav, also admitted that late Sahil Zaidi did not put Katta but this was done by his associates. This later part of statement of CW-5 was found to be contradicted by CW-4, Anand Prakash. CW-6, Krishna Kant also stated that he did not see anyone with Katta. CW-7, Vishal Mishra too admitted that he did not see late Sahil Zaidi assaulting anyone. CW-8, Ajay Singh also made similar statement and CW-9, Rahul Singh has also made substantially a similar statement, and in addition,

he stated that he sustained serious injury in his left leg and Praveen Kumar Yadav was almost un-conscious due to excessive bleeding. Thus the Inquiry Committee concluded in its report that (i) Ajay Singh (ii) Vishal Mishra (iii) Anand Prakash (iv) Krishna Kant (v) Praveen Kumar Yadav and (vi) Rahul Kumar Singh were the aggressor and Pallav Singh, Anjul Singh, Sahil Zaidi, Ankit Prakash, Anurag Singh and Kanishik were aggrieved. Thus in respect of 1st charge petitioner's son late Sahil Zaidi was held not guilty.

As regards 2nd charge, it is alleged that on 12.10.2009 between 1.00 p.m. and 1.30 p.m. late Sahil Zaidi along with Pankaj Kumar, Anurag Singh, Anjul Singh, Anas Tanvir and Ankit Prakash was involved in a brawl with Shashank Singh and Vishal Singh and on the arrival of hostel Warden, the Chief Proctor, the Chief Security officer and hostel Supervisors along with the Police, they were made to keep cool. Thus, thereby again he along with the aforesaid students was charged for committing an act of indiscipline within the meaning of Regulation 1(a)(b)(c)(d)(e)(g)(h) and (i) under Chapter V of the aforesaid Regulations.

According to Sri Munir, it appears from the inquiry report that two groups of students were engaged only in some heated arguments and on the arrival of authorities, the situation was saved. In the report, no overt act was attributed to anyone. It seems that 2nd incident involved only the exchange of un-parliamentary language. According to the report, Pallav, late Sahil Zaidi, Anurag, Anjul, Kanishik and Ankit Prakash were abusing and the other group of students consisting of Vishal Mishra and Shashank Singh were mere spectators. However, on the evidence on record, the Committee found the students of both groups namely Vishal Mishra, Shashank Singh of group one, Pankaj Kumar, Anurag, late Sahil Zaidi, Ankit Prakash and Anjul Singh of group two, equally guilty of exchange of abuses. Besides, Nitin Kumar Singh

was held guilty of negligence in signing a paper on the basis of which F.I.R.dated 12.10.2009 was lodged.

On the other hand, Shri Yashovardhan Swaroop, learned counsel appearing for respondents while replying to the submissions of learned counsel for petitioner vehemently denied the allegations made against the respondents and tried to defend their official acts. Shri Swaroop submitted that the University authorities constituted an Inquiry Committee to hold enquiry into the alleged incidents dated 11.10.2009 and 12.10.2009 and proceeded against the students only on receiving the reports of authorities concerned. Shri Swaroop also submitted that filing of this writ petition after 26 months, which is only an after thought, suffers from delay and laches. It is also a submission that during his life time late Sahil Zaidi, petitioner's son, never challenged the charge sheet, the disciplinary proceedings and the show cause notice but after his death, petitioner-mother, who has no locus-standi, has filed this writ petition for the quashment of aforesaid documents. The Inquiry Committee took a compassionate view and on the basis of report of another Committee constituted to give recommendations in respect of awarding punishment to guilty students while taking a compassionate view only recommended for awarding of punishment of warning to petitioner's late son and the matter stood closed at that stage itself. Shri Swaroop also denied the allegations that respondent no.3, the Vice Chancellor, was prejudiced against petitioner's deceased son and was bent upon spoiling his career. It is also denied in his contention that the Vice Chancellor wanted to humiliate petitioner's husband which would amount to act in derogation of the status of an Hon'ble High Court Judge. The letter addressed to petitioner's husband was only in his capacity as the father of deceased student late Sahil Zaidi. It is also a submission that the Executive Council had directed the Vice Chancellor to

invite the parents and guardians of students involved in the incidents in question. The Executive Council having considered the academic future of students and further in order to maintain discipline did not recommend any penal action. However, it required the students to submit undertaking on a prescribed form and carry on their academics. Petitioner's late son participated in the disciplinary proceedings initiated against all 12 students. Shri Swaroop, thus, denied the allegation of colourable exercise of powers. He also submitted that the allegation that the Vice Chancellor wanted to insult the husband of petitioner, is absolutely unfounded. The Inquiry Committee was constituted and comprised of a former Judge of High Court and a retired Civil Servant just in order to bring the element of transparency and fairness. There was a complete adherence to the principles of natural justice. All the documents required by petitioner's husband were supplied to him. The format of undertaking had been drafted by the Executive Council. The format of undertaking annexed with the writ petition is different from the one prescribed by the Executive Council. The Deputy Registrar in gross violation of the directions of Executive Council had accepted the admission of petitioner's late son. However, petitioner's late son was given admission in next academic session without any undertaking. It is also his submission that petitioner has no locus standi to espouse the cause of Deputy Registrar and there is no explanation as to how petitioner was in receipt of documents related to internal matters of the University. The disciplinary proceedings against petitioner's late son did not remain pending after he was given admission in 2010. The Vice Chancellor is exempted from being sued for damages under Section 48 of the Dr. Ram Manohar Lohia National Law University Uttar Pradesh, Act 2005 (For short 'the University Act of 2005').

In counter affidavit filed on behalf of respondent no. 3, the Vice

Chancellor of University, it is averred that looking to the serious nature of the fight and the contents of the reports recommending stringent penal action against the students, who were found guilty, there was no option but to take action. It is also mentioned that all the students named in the cross FIRs were placed under suspension and a two member enquiry committee was constituted. It is submitted that the writ petition has been filed with a delay of 26 months. Late Sahil Zaidi had not challenged the charge sheet during his life time and it has been denied that the disciplinary proceedings against the deceased son of petitioner was initiated by the University at the instance of respondent no. 3. It is also stated that the State Government had recommended action against the guilty students. The Executive Council had directed the vice Chancellor to invite the parents/guardians of the students and also constituted a Committee under the Chairmanship of Vice Chancellor consisting of an Special Secretary, Department of Law and the Registrar of University as members. The said Committee was authorized to take decision in the matter of punishment and the Committee forwarded its decision/recommendation to Executive Council in its meeting dated 2.8.2010. The Executive Council with the view of maintaining discipline in the campus took a compassionate outlook and keeping in mind the academic future of students did not recommend any penal action. However, the Executive Council required the students to submit undertaking on a prescribed form and carry on with their academics thereafter. Petitioner's late son also participated in the disciplinary proceedings initiated against all 12 students. Respondent no.3 has denied the allegations that the disciplinary proceedings were initiated at his instance and on the contrary has stated that he always encouraged and appreciated the efforts and achievements of late Sahil Zaidi in sports and other extra curricular activities. He has also denied the allegation of colourable

exercise of power. Respondent no.3 has submitted that there was never any complaint regarding any ill will or prejudice attributable to him during the life time of late Sahil Zaidi by himself or by his parents. He has also denied the allegation of discrimination among the students. There is also denial of the allegations by respondent no.3 that he intentionally insulted the husband of petitioner. On the other hand, he has asserted that they used to visit each other socially since 2006. The respondent has clarified that he could never dare to insult or speak anything, which would be in derogation to the status of an Hon'ble Judge. It is also an averment that the communication addressed by the Deputy Registrar of University was made to all the parents of the students who were found involved in the acts of indiscipline and held guilty by the enquiry committee.

The respondent has also mentioned that the said communication addressed by the Deputy Registrar was only as per the direction of the Executive Council. The requirement to meet the Vice Chancellor was for the parents of students, who were found involved in the act of indiscipline and not to a sitting Judge of the Hon'ble High Court as alleged by petitioner-mother of the deceased. It is also a submission that the enquiry committee was constituted and comprised of a Former Judge of High Court and a Civil Servant in order to bring the element of fairness and impartiality. It is also a submission that a copy of charge sheet was served upon delinquent students to which they replied and after adducing and considering of evidence, the enquiry committee arrived at the conclusion. Further, there was complete adherence to the principles of natural justice during the course of enquiry. It is also a submission on behalf of respondent no. 3, the Vice Chancellor, that during the life time of late Sahil Zaidi, neither the charge sheet was challenged nor the disciplinary proceedings and it was only after his death on 29.11.2011 that

petitioner Mother has come before this Court seeking quashment of charge-sheet given to her son and 12 other students. No other student has challenged the said charge sheet nor have they made any accusation of bias, malice and colourable exercise of power. It is admitted in the reply that though the punishment of warning was suggested but the said punishment was not awarded by the University. It is asserted that neither the late son of petitioner nor any other student against whom the enquiry was conducted was given any punishment. It is reiterated that the communication addressed by the Deputy Registrar was to all the parents of students who were found involved in the act of indiscipline. It is also admitted that the husband of petitioner in response to communication addressed by the Deputy Registrar sent his reply asking for a copy of enquiry report, statement of witnesses, complaint of Shri Ajai Singh and copy of warning issued on 23.4.2010 and the said documents as demanded were supplied to the husband of petitioner. It is also reiterated in reply to para 25 of the writ petition that with the view to maintain discipline in the campus, the Executive Council took a compassionate view and asked the students to submit undertaking on a prescribed form and carry on with their academics thereafter.

It is also reiterated that the letter addressed by the Deputy Registrar dated 15.07.2010 was addressed to the parents of students and not to the former Judge of High Court. It is also submitted that the undertaking which was required to be submitted by the students and parents as drafted by the Executive Council is different from the one which had been sent and annexed with the writ petition and thus the son of petitioner had submitted a different undertaking. It is also submitted that the Deputy Registrar in gross violation of the directions of Executive Council accepted the admission of petitioner's late son. Nonetheless, it is admitted that petitioner's late son was given admission

in the next academic session without any undertaking. The respondent has taken objection to the stand of petitioner in espousing the case of Deputy Registrar for which she did not have any locus standi. The respondent has also questioned as to how the documents related to internal matters not connected with the subject matter of writ petition have come in her possession. There is a denial of the fact that any disciplinary proceeding against petitioner's late son remained pending after he was given admission in 2010. Thus, there was no malice or prejudice or illegality whatsoever. It has also been submitted that the petitioner has no locus standi, neither any right to sue in this matter. The respondent has taken plea that in terms of Section 48 of Dr. Ram Manohar National Law University, Uttar Pradesh Act, 2005, no suit, prosecution or other legal proceedings shall lie against and no damages shall be claimed from the Sansthan, the Director, the authorities or officers of the Sansthan or any other person in respect of anything which is done or purported to have been done in good faith in pursuance of this Act or any Regulations.

In the rejoinder affidavit submitted on behalf of petitioner, she has reiterated that her late son acted as a gentleman in the entire episode and only tried to save his friends Pallav Singh, Ankit Prakash, Anjul Singh and Anurag Singh, from a brutal assault made by the other group of students comprised of Ajay Singh, Praveen Singh, Rahul Singh and Krishan Kant. It appears that Pallav Singh lodged an FIR in respect of the incident with police on 11.10.2009 naming six students against whom offences punishable under Section 147, 323 and 506 IPC were registered. Thereafter, there was a cross FIR said to have been lodged by one Nitin Singh on 12.10.2009 against 4 students and some outsiders which also contained the name of petitioner's son as an accused. It is reiterated by the petitioner that the second FIR was a show managed and got lodged by a deceitful manoeuvring made by respondent no. 3

who was all out to castigate, humiliate and malign petitioner's late son and to tarnish the good name of petitioner's husband, then a sitting High Court Judge. The sole purpose of getting a cross FIR lodged was to bring on record the name of petitioner's son and her husband in order to spoil his reputation and lower the dignity of High Court Judge. Author of subsequent FIR, student Nitin Singh not only informed the police that he had never lodged the FIR but also informed respondent no. 3 that he went to police station at the asking of some senior students and was rather made to sign a letter by one student Ajay Singh. Nitin Singh, in fact, was not aware of the contents of the letter which led to lodgement of a cross FIR. Student Ajay Singh himself belonged to aggressor group of students as noticed in the report of the enquiry committee. Thus, the second FIR was disowned by the author, Nitin Singh. It is also submitted that the report of warden of Boys' hostel dated 12.10.2009, the report of the proctor of University dated 12.10.2009 and the report of the Chief Security Officer dated 13.10.2009 are all engineered documents probably written at the instance of and dictation of respondent no. 3, who was bent upon harassing, terrorizing and humiliating petitioner's late son Sahil Zaidi for his forthrightness and outspoken ways in his dealing with his teachers though well within the parameters of discipline. It appears that this type of nature of petitioner's son was taken as affront to the authority of Vice Chancellor. The communication from the Government dated 13.10.2009 had been sent as a general communication relating to the incident of a campus violence. The enquiry committee was constituted only on the basis of self serving report of security staff and the proctor of University. There was absolutely no justification to drag petitioner's son into the incident of altercation between two groups of students to which her late son was not a party. It is also mentioned that the Executive Council is not an independent body but works under the

Chairmanship of Vice Chancellor and the members are rather his guests and stay in the Council at the pleasure of Vice Chancellor. The Committee is as much an agency of the Vice Chancellor as of the Executive Council. However, the only punishment that was recommended against the deceased son of petitioner was the punishment of warning. There is no explanation as to why the recommendation of enquiry committee was not promptly disposed of after the representation of petitioner's son.

It appears that the disciplinary proceeding was kept alive like a bond for maintenance of good behaviour required from a person under Sections 107/116 and 110 Cr.P.C. Now telling that the disciplinary proceeding was finally disposed of is just a statement made in order to save the image of University. Petitioner's son was a disciplined student and the charge sheet issued against him was vitiated by malafides. Looking to the conduct of Vice Chancellor, the deceased son lived under the impression that he is a ruthless man and would ruin his career by getting him failed in his subjects. Though the Vice Chancellor has stated that he has appreciated the tomes of trophies brought by petitioner's late son for University in sports like tennis, football, volleyball and races, but there is nothing on record to show that he had ever appreciated him. Rather, petitioner's late son lived his short life under the fear of malevolent designs of Vice Chancellor.

Petitioner's husband while being a sitting High Court Judge was insulted by the Vice Chancellor by requiring him to attend his office through telephonic calls over trivial matter. The petitioner's husband soon after retirement occupies the office of President, Delhi State Consumer Disputes Redressal Commission and he could not have been called to meet the Vice Chancellor in this manner while being a sitting Judge or a former Judge of High Court, now occupying the post of President of State Consumer Redressal

Commission. Respondent no. 3 has always lived under impression that the Judges of High Court and the Supreme Court are his personal friends and, therefore, he can get away with any type of misconduct. It is also alleged that the charge sheet issued to petitioner's son was only a colourable exercise of power. Enquiry against his own students under the directions of Vice Chancellor was conducted in the moot court hall as if a regular trial in a criminal case was being held. The Vice Chancellor, though a teacher in name, is a man possessed of ruthless heart and is not thus fit to hold the office of Vice Chancellor. Since the disciplinary enquiry and subsequent punishment of warning not only caused lots of stress and spoiled the reputation of petitioner's son but also her husband and the family. Therefore, even after the death of her son, mother has locus to maintain a writ petition and here she has only acted as a flag bearer of the good name of her late son. There is no reason to keep the Sword of Damocles hanging over petitioner's deceased son even after submission of representation against the punishment of warning. The letter dated 15.07.2010 issued to petitioner's husband smacks of arrogance and deliberate disrespect. There was no reason to ask petitioner's husband by letter dated 15.07.2010 to attend the office of Vice Chancellor by way of coercive direction that petitioner's husband may not send his ward (late Sahil Zaidi) to the University till further communication. In fact, the University had no authority under the statutes or otherwise to prevent a student to attend the University until an order of suspension or rustication or expulsion or one debarring him from campus as specified in statutory rules is passed in accordance with law, therefore, the letter was ex facie an instance of insult and breach of protocol committed by respondent no. 3 vis-à-vis petitioner's husband. It is also submitted that the undertaking in the proforma offered by the Executive Council is not only confessional in nature but unheard of in

terms. Petitioner's husband had spoken to respondent no. 3 at the relevant time that he would not permit his son to submit undertaking in the form prescribed by the Executive Council which on its face was confessional in nature. It was none of the authorities or jurisdiction of Executive Council to coerce students to confess the acts and omissions not only alleged in the past and present but also for future. The proforma was not acceptable and therefore, the undertaking form submitted through memo dated 20.09.2010 by her late son was not accepted by respondent no. 3. University has no authority to ask a student to furnish confessional undertaking if he has been subjected to disciplinary proceeding. On the contrary, only a recommendation of warning had been made by the disciplinary committee. Moreover, when a representation was received, the pending proceedings should have been immediately disposed of and it could not have remained pending sine die. There could not have been a confessional statement admitting the past, present and future breaches of discipline and promising not to indulge in such acts even though such breaches were not found established against petitioner's son. The Deputy Registrar who permitted the petitioner's son to continue with study was well within his rights to permit the petitioner's son to join class of 4th year as the only punishment that had been recommended was the punishment of warning and there was no order of suspension in force against petitioner's son. The petitioner has not espoused the cause of Deputy Registrar but has just highlighted the malice and ill will harboured by Vice Chancellor against petitioner's son. The Deputy Registrar of University also admitted the fact that petitioner's husband was being pressurized and harassed by respondent no. 3 to furnish an undertaking despite the fact that he had requested for migration certificate being issued for his late son so that he could get him admitted in Aligarh Muslim University for further studies. Strangely enough it was also declined

only on a ground that the request should have been made by petitioner's late son. Petitioner also stated that the documents in her possession said to have been objected by the Vice Chancellor had come in her possession through her late son Sahil Zaidi. Moreover, such documents are neither privileged nor classified documents which can not be disclosed. The recommendation of enquiry committee has not yet been disposed of either by accepting or rejecting the recommendation and thus it has remained undisposed of.

In view of all the aforesaid, the petitioner has unimpeachable locus standi to maintain the instant writ petition as she has every right to seek removal of the stigma cast upon the good name of her son. Her agony and anguish as mother of deceased-son whom she claims to have been murdered brutally requires no question on her locus standi. She has conveyed her grief as a mother through the following lines from poet Byron in "Prisoner of Chion":-

"A drowsy stifled, unimpassioned grief which finds no natural outlet or relief in word or sigh or tear"

Besides, the protection and defence sought under Section 48 of the University Act, 2005 is available to authorities of University only in respect of an act done or taken in good faith in pursuance of the Act, whereas the act herein was motivated and malafide and there is no bar to institute legal proceedings against the University under the general law of land before ordinary courts of law. Besides, the proceedings under Article 226 of the Constitution is an extraordinary jurisdiction which can not be questioned by taking shelter under Section 48 of the University Act.

In this back-ground petitioner-mother of deceased son has tried to demonstrate that the impugned charge sheet and disciplinary proceedings initiated against her late son through the impugned charge sheet dated

27.10.2009 were an outcome of personal ill will and malice harboured by the Vice Chancellor against her late son Sahil Zaidi.

We have carefully considered the rival submissions and perused the records.

Deceased Sahil Zaidi, petitioner's late son, got embroiled in altercations between two groups of boarders in the hostel. He intervened in the incident in order to save his hostel room mate Ankit Prakash son of an Additional District Judge. The Boy who suffered assaults lodged FIR against some students of the rival group soon after the occurrence in the night of 11.10.2009. As a reprisal a cross- FIR was lodged against late Sahil Zaidi and his group by one Nitin Singh on next day at police station Ashiyana. But the author of cross FIR, Nitin Singh, soon thereafter, realized his mistake that it was wrongly lodged. Thus he tendered a written apology to the Vice Chancellor and before two members of the Inquiry Committee which the Vice Chancellor had constituted to hold domestic inquiry against the students involved in the incidents. However, a compromise was arrived at, in the police station itself, between the rival groups shortly after the FIR and the Vice Chancellor was also informed accordingly. But it appears that the Vice Chancellor and other University authorities did not accept the compromise and prolonged the controversy by referring the matter to the specially constituted Inquiry Committee. Thus the dispute which had ended in a compromise in the police station continued to remain alive for the aforesaid reason. In the process, it appears that the students of both groups were evicted from the hostel and placed under suspension for a period of six months during the pendency of inquiry. However, later, except Late Sahil Zaidi, petitioner's son, others were permitted to return to the hostel. We do not find any justification for denying hostel accommodation to deceased Sahil Zaidi who was also similarly situated. Under the circumstances, the deceased

was forced to stay outside and remain exposed to all kinds of disturbance to his study and danger to his life in the background of the alleged incidents of violence between rival groups of students. It also appears that instead of encouraging an amicable settlement in order to restore peaceful academic atmosphere in the University Campus, the University authorities committed a serious mistake by taking recourse to disciplinary proceedings, said to have been conducted in a manner and the nature of a criminal trial which aggravated the situation further and more than bringing in, any solution to the problem. Today, when there is a lot of emphasis on settlement of disputes outside the Courts between parties, inter alia, through alternate dispute resolution fora and the Law Campuses are providing space for setting up Legal Aid Cells and also for organizing Seminars and Conferences on such subjects on regular basis, it was not proper on the part of University authorities to proceed in a manner totally bereft of the objects of the awakening campaigns for settlement of disputes outside the Courts through ADR fora. Interestingly, the Vice Chancellor of this National Law University who generally gives long and ideal speeches even on subjects like the one in hand, forgot to imbibe and translate all his speeches, teachings and preachings into action while handling a small episode of this kind which could have been solved by his simple intervention.

It is evident from the narration of facts that petitioner's late son Sahil Zaidi was exonerated from the first charge relating to altercation between two groups of students in the night of 11.10.2009 at 21.00 hrs. All the witnesses who appeared for the University administration during the course of cross examination by deceased Sahil Zaidi admitted that he did not assault any student and only acted as a good Samaritan in order to save his friend who was the target of attack by the rival group.

Now coming to the Second charge that related to the exchange of abuses

between the quarrelling groups of students on 12.10.2009 at 13.00 hrs, the Disciplinary Committee only recommended the punishment of issuance of warning, though it is also noticeable that all six witnesses examined by the University administration have unanimously stated that deceased Sahil Zaidi did not utter any abuses. Besides, the report of Deepankar Tewari, Care-taker also indicated that the students of other group, including one Shashank Singh, went upstairs to second floor where deceased Sahil Zaidi was staying and where incident of exchange of abuses took place. Thus, the students of second floor could not have been held guilty of aggression and indiscipline and rather the liability for committing indiscipline should have been shifted on to those students who had climbed the stairs to 2nd floor of the hostel. However, it appears that this aspect of the case escaped the notice of the Inquiry Committee and thus, the findings recorded by the Committee can be said to suffer from the defect of being lopsided. In this background the show cause notice issued to the deceased as to why not he be visited with the punishment of warning was replied to by a representation with pleadings for exoneration from the second charge also, which remained pending for about 1½ years and even on the date of death of petitioner's late son. Thus the findings of the Disciplinary Committee holding late Sahil Zaidi guilty of second charge and recommending the punishment of issuance of warning are absolutely unsustainable in the absence of evidence and materials to support, much less to say being founded upon any valid, objective and relevant grounds.

As regards the third charge, since it only related to the shortage of attendance, it did not fall within the purview of reference of enquiry.

In this factual background if the Deputy Registrar of University admitted petitioner's late son in 4th year he did not commit the breach of any rule so as to warrant a disciplinary proceeding. There was, thus, absolutely no

justification to say that the admission of petitioner's late son in 4th year was illegal and therefore the authorities holding it otherwise seemed to be subservient to some preconceived notion. We may also observe that under such negative academic atmosphere as it appears to be pervading the University Campus, it may not be possible for the students to utilize their academic potentials at the maximum and pursue their study with full devotion.

In the instant case, it is noteworthy that at the time of admission of deceased son of petitioner in 4th year he was not an expelled, rusticated or suspended student and if other similarly situated students were allowed to return to study and hostel accommodation, then there was no valid reason to deny the deceased the same facilities to pursue his study peacefully.

Besides his representation against recommendation for punishment of warning remained pending for over 1½ years and even on the date of his death it remained undisposed of. In this background even if we accept the averments made in the counter affidavits submitted on behalf of respondents that no disciplinary proceeding was pending against petitioner's late son on the date of death, it was obligatory upon the University authorities to inform this fact well in time before the deceased was driven to meet a fatal end. Though we do not want to express any opinion as to whether it is a case of suicide or homicide as the matter is still under investigation by CBI under the directions of this Court yet the fact remains that the deceased was forced to stay exposed to all types of disturbances after denial of admission in the hostel and keeping the issue of admission to 4th year in controversy. Moreover, there was also no reason to ask for an undertaking from the deceased as well as his father, a High Court Judge, on a format which upon being given could mean to confess the guilt of which the deceased could even not have been accused of on account of dearth of materials. Moreover it appears from Chapter V (A)(2) that issuance of warning

to a student is the mildest of actions the University can take against the students against which also the representation submitted by petitioner's late son was never disposed and remained pending even on the date of his death.

Admittedly, the disciplinary action in question was taken against the deceased and other students at the instance of Vice Chancellor though vide para 3(d) of Chapter V(A) of the Regulations the Vice Chancellor, only in cases of indiscipline as stated in clause 2(a),(b),(c) or (d) thereof has powers to appoint a Committee to inquire into the Complaints but in the instant case, the act of indiscipline allegedly committed by petitioner's late son was not covered under any of the aforesaid clauses, for, he was recommended only for issuance of warning as contained in clause (f). Thus, there was no ground for constituting a disciplinary committee and drawing consequent proceedings pursuant thereto. In this view of the matter the entire exercise appears to suffer from a serious legal infirmity, which calls for our interference. In addition, our view is also fortified by the discussions as contained in the preceding paragraphs hereinabove. Consequently the charge sheet drawn against petitioner's late son evidently not being founded upon cogent and relevant materials also deserves to be quashed. It is noticeable that all the witnesses have, consistently and substantially, made statements that petitioner's late son did not assault any student nor did he abuse anyone in the second incident. His name was dragged into controversy only because of his leadership quality and for acting as a good Samaritan in order to protect his hostel room mate.

We are also not oblivious of the fact that the age group of early twenties, supposedly having impressionable mind, is a formative age when children also pass through some physiological and hormonal changes. This is the age group when they have a zest for learning and thus if the educational centres are serious, they can mould the characters of students by persuasion

irrespective of the fact that today the children are independent, sensitive and more informative (about their rights and duties) and least receptive to any type of unwarranted interference with their personal matters. That is why they have been admitted to voting right at the age of 18.

Needless to say that the University being an instrumentality of State is under obligation to act fairly and without ill will or malice, in fact, or in law. 'Legal malice' or 'malice' in law means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause and not necessarily an act done from ill feeling and in spite. It is a deliberate act in disregard to the rights of other. It is an act which is taken with an oblique and indirect object. It means exercise of statutory power for purposes foreign to those by which it is in law intended. It means conscious violation of law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others which intent is manifested by its injurious acts. This proposition of Law has been elucidated by Hon'ble the Apex Court in its judgment in the case of *Kala Bharti Advertising vs. Hemant Vishwanath Nari Chania (2010 (9) SCC 437)*. Having considered the background of this case in the light of this judgment, we hold that the act of University administration is ex facie discriminatory and is in the nature of malice in fact as well as in law.

We may also note that in the special facts and circumstances as aforesaid, if there was an oral or written request seeking migration of deceased son to Aligarh Muslim University by his father with whom the Vice Chancellor claimed to have been on socially visiting terms, there was absolutely no reason to deny it while insisting upon a written application being made by the student namely petitioner's late son when his representation against recommendation for punishment of warning was still kept pending.

As regards the objection to the locus of petitioner, mother of the deceased, to file this writ petition, the facts of the case are self explanatory and under such circumstances, if not parents, then who else could take the matter in Court by filing a writ petition in order to seek restoration and redemption of reputation and image of their deceased son, obviously a bright student; good sportsman, and above all, a good human being which has been tarnished beyond repairs due to allegations and disciplinary proceedings in question. Thus the objection of respondents appears to be too technical, and hence, it deserves to be rejected.

So far as the plea of protection under Section 48 of the University Act, 2005 is concerned, it would not be available to the respondents for committing deliberate acts of breach of any provision of ordinary law of the land and moreover it can not prevent the petitioner from seeking relief under extraordinary Writ Jurisdiction of this Court.

In regard to complaints of petitioner against the disrespect and discourtesy shown by University authorities to her husband, a former High Court Judge and now President of Delhi State Consumer Disputes Redressal Commission, we may only say that, looking to the nature of functions performed and duties discharged by the members of judiciary; the amount of public faith reposed in the judicial system; the fact that it is highly desirable for Judges in public interest to lead, as far as possible, an insulated life, and also the fact that they have to move in public with several constraints to meet their family obligations, the least one can expect of all public functionaries as also the litigant public is not to humiliate a Judge after he lay his office just in order to satisfy one's ego and settle the scores. Though respondent no.3 has denied such allegations but the tenor and tone of the language used in correspondence addressed from his office to petitioner's husband do not support his averments

in the counter affidavit.

The special constitutional status of Hon'ble Judges of Supreme Court and High Courts has been discussed in para-34 of a Constitution Bench judgment of Hon'ble the Apex Court reported in *1995 (4) SCC 611 (T.N.Seshan, Chief Election Commissioner of India Vs. Union of India)*, In the said judgement, the Hon'ble Apex Court has observed that the maintenance of status of Hon'ble Judges of Hon'ble the Supreme Court and the High Courts is highly desirable in the national interest. The Court also impressed upon the Government not to confer equivalence on other functionaries or interfere with the warrant of precedence, if it is likely to affect the position of Hon'ble Supreme Court and High Court Judges, however pressing the demand may be, without first seeking the views of Hon'ble the Chief Justice of India.

In the premises discussed hereinabove, we quash the impugned charge-sheet dated 27.10.2009 (Annexure-1), inquiry report dated 12.03.2011 (Annexure-5) and the show cause notice dated 15.06.2010 issued by respondent no.1 (Annexure-6) and allow the writ petition accordingly.

We have also given our anxious consideration to the prayer for awarding compensation to petitioner and we may say that since a Criminal Case connected with the unfortunate and unnatural death of petitioner's son under suspicious circumstances is still under investigation by the CBI to find out whether it is a case of suicide or homicide, awarding a compensation, interim or otherwise, at this stage, may cause prejudice to the case of either of the parties.

Order Date:-19.10.2012

(Shabihul Hasnain, J.) (Uma Nath Singh, J.)

Vijay/Irfan
A.Katiyar/Rizvi