IN THE HIGH COURT OF SIKKIM : GANGTOK

CIVIL EXTRA-ORDINARY JURISDICTION

DATED : 25th May, 2018

D.B. : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.

W.A. No. 01 of 2016

1. Malvika Foundation
B-II/66, M.C.I.E.,
Delhi – Mathura Road
New Delhi – 110044
Through its Trustee Sh. Suresh Sachdev

2. Eastern Institute for Integrated
Learning in Management University
8th Mile, Budang, Malabassey,
West Sikkim – 737 121
Through Sh. Suresh Sachdev,
Trustee of sponsoring body
of Appellant No.2

... **Appellants.**

versus

1. Human Resource Development Department
Govt. of Sikkim
Tashiling Secretariat
Gangtok.

2. State of Sikkim
Through Chief Secretary
Govt. of Sikkim
Gangtok, Sikkim.

... **Respondents.**

Writ Appeal under Article 226 of the Constitution of India

Appearance

Ms. Chitra Sharma, Mr. Shakeel Ahmed, Mr. Yogesh Kumar Sharma and Ms. Zola Megi, Advocates for the Appellants.

Mr. Karma Thinlay, Senior Government Advocate with Mr. Thinlay Dorjee Bhutia, Government Advocate, Mr. Santosh Kr. Chettri, Ms. Pollin Rai, Assistant Government Advocates and Mr. Bhusan Nepal, Advocate (Legal Retainer, HRDD) for the Respondents.

J U D G M E N T

Satish K. Agnihotri, CJ

Impugning the Judgment and Order dated 02.11.2016 rendered in WP(C) No.33 of 2015 by the learned Single Judge, the instant Appeal is filed by the Writ Petitioners (Appellants herein).

2. Learned Single Judge, on examination, came to the conclusion that the notice was issued to the Writ Petitioners/ Appellants herein, on 29.01.2015 and also no prejudice whatsoever was caused to the Writ Petitioners and as such, the Writ Petition was dismissed.

3. The provenance of the *lis* is that the Appellant No.2-University came into existence under the provisions of the Eastern Institute for Integrated Learning in Management University, Sikkim Act 2006 (hereinafter referred to as EIILM University Act, 2006). The Appellant No. 2-University, after incorporation, commenced functioning as full-fledged University located at Jorethang, South Sikkim as notified on 26.05.2006 by the Human Resource Development Department (HRDD), Government of Sikkim. The University Grant Commission (UGC) approved the academic and other

infrastructure of the Appellant No. 2, on inspection, vide letter dated 22.07.2008.

4. It is averred in the pleadings that a *suo motu* FIR was lodged against officials of the Appellant No. 2-University on the allegation of violation of the UGC and other statutory norms, on 01.09.2012, under provisions of Sections 406/420/467/120B/34 of the Indian Penal Code, 1860 (in short, IPC) by Sikkim Police at P.S. Jorethang. The charge-sheet filed thereon is pending consideration in the file of the Court of Chief Judicial Magistrate, South and West, at Namchi. A second FIR, being FIR No.92 of 2013, was also registered on the same grounds at Sadar Police Station against the officials of the Appellant No.2, which was subsequently quashed on 04.06.2013 in Crl. Misc. Case No.12 of 2013 by the High Court. The matter was referred to the Enforcement Directorate also for further investigation and the case was registered under Sections 420/467/120B of the IPC against the officials of the Second Appellant and others.

5. It has come on record that the bank accounts of the Appellant No.2-University were attached in the process of investigation. Under this prevailing confusion, it is stated that a chaotic situation was created, followed by mass resignations

and disruption of academic activities. It is further averred that facing acute financial crisis, the Petitioners/Appellants herein made a representation to the Directorate of Higher Education, HRDD, Government of Sikkim on 08.01.2015, seeking indulgence of the HRDD by taking over the University and making it functional. It appears that several communications were sent thereafter to the University as final reminder on 12.01.2015, calling upon the Appellant No.2-University to conduct the examination in time. Subsequently, the Appellant No. 2-University was served a notice under heading, "Request for Conduct of Examination" on 29.01.2015, wherein it was stated 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. The Appellant No.2-University was called upon to safeguard the students' interest and restore discipline in the University, failing which, the Appellant No.2-University was informed that the State Government would take necessary action as per Section 47(2) of the EIILM University Act, 2006. Responding to the said communication, Mr. R. P. Sharma, Acting Vice Chancellor of the University sent an e-mail to the Director, Higher Education on 31.01.2015, stating that keeping in mind the interest of the

students, the University is agreeable for appointment of an independent person or any person other than Mr. P. C. Rai to get the examinations conducted.

6. On 09.02.2015, the Trustee, Malvika Foundation was called upon to submit details regarding functioning of the Appellant No.2-University. On not receiving the satisfactory response to the notice dated 29.01.2015 and further on examination of details of requisition by the HRDD on 09.02.2015, after waiting for a reasonable period of almost three months, the Cabinet took a decision on 28.04.2015 to dissolve the Appellant No.2-Univerity, which resulted into passing of the formal order on 08.05.2015. Calling in question the legality and validity of the said Cabinet decision as well as the consequential order dated 08.05.2015, the Writ Petition was filed on 04.06.2015.

7. The sole ground of challenge in the Writ Petition as well as in the Appeal is that the order dated 08.05.2015 of the Human Resource Development Department, Government of Sikkim, dissolving the Appellant No. 2-University, is not in accord with the due procedure prescribed under Section 47 of the EIILM University Act, 2006.

8. The facts as projected by the Appellants are not in dispute, except that communication dated 09.02.2015 does not bear proper address for which there is no pleading and as such, we proceed to examine the applicability of the safeguards prescribed under Section 47 of the EIILM University Act, 2006, before taking decision to wind up the University.

9. Mr. Karma Thinlay, learned Senior Government Advocate appearing for the Respondents, in response, would contend that the Appellants were noticed on several occasions about the maladministration and ill-functioning of the University. The University was unable to conduct the examination, there was indiscipline, the interest of the students was in jeopardy and, as such, they were served a notice on 29.01.2015 to hold the examination immediately within fifteen days. In failure, it was also stated that necessary action would be taken under provisions of Section 47(2) of the EIILM University Act, 2006. Moreover, the Appellants have also not shown any prejudice caused to them. The State authorities have, on passing the order dated 08.05.2015, admitted the students in other institutions. Prior to this, the Appellants have also made a request to take over the institution expressing its difficulty to make the University functional on 08.01.2015. Taking all the facts into

consideration, the Cabinet took the decision to dissolve the University, which resulted into passing of the order dated 08.05.2015 and there is no prejudice as the Appellants had sufficient notice. The Appellants have failed to improve the administration and conduct examination in time as advised by the State Government, which necessitated dissolution of the University in the interest of students' education.

10. The question that arises for our considerations is as to whether the notice dated 29.01.2015 was the show-cause notice as contemplated under proviso to sub-section 3 of Section 47 of the EIILM University Act, 2006? If not, whether non-issuance of notice can be a ground to set aside the impugned order when no prejudice whatsoever was pleaded to have been caused to the Appellants/ Writ Petitioners.

11. To appreciate the lis in its proper perspective, it is apposite to extract relevant provisions of the EIILM University Act, 2006 –

> **"**47. (1) If the Sponsor proposes dissolution of the University in accordance with the law governing its constitution or incorporation, 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.
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> (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 issue directions to the management system of University. If the directions 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.
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> (3) The manner of winding up of the University would be such as may be prescribed by the State Government in this behalf:
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> Provided that no such action will be initiated without affording a reasonable opportunity to show cause to the Sponsor.
> ……."

12. On studied examination, it is manifest that Section 47 of the EIILM University Act, 2006 contemplates dissolution of the University. Sub-Section (2) provides for identification of mismanagement, maladministration, in-discipline, failure in the accomplishment of the objects of University and economic hardships in the management systems of University. This provision further contemplates issuance of directions to the management of the University prescribing the timeline to rectify the deficiencies before taking a decision for winding up the University. Proviso to Sub-Section (3) prescribes that no such action be initiated without affording a reasonable opportunity to show cause to the Sponsor. Indisputably, in the case on hand, the First Respondent is a Sponsor of the Appellant No.2-University.

13. In the case on hand, the Appellants were sent a communication on 12.01.2015, under caption "final reminder for conduct of examination", to conduct the examination immediately to protect interest of the students as they were facing a lot of confusion and apprehension about their future. On bare reading of the communication, it is manifest that the University was informed earlier by telephonic calls and e-mail communications to conduct the examinations. At this stage, it is apt to refer the representation dated 08.01.2015 made by the Appellant No.2-University to the Director, Higher Education, stating clearly that the University is not in a position to function properly due to financial crisis and also desertion by the staff. Thus, the Government was requested to take over the institution in the interest of the society, at large and in the interest of the students to make it functional. Eventually, a notice was issued on 29.01.2015. On careful consideration, it is evident that the notice indicates the reasons that there is maladministration, mismanagement, in-discipline, failure in accomplishment of the objects of the University and economic hardships in the management and as such, the University was called upon to conduct the examinations within fifteen days to safeguard the interest of the students. It is also clearly stated that in failure or non-compliance, the State Government would

take necessary action as per Section 47 of the EIILM University Act, 2006. This notice is in accord with to the requirements of Section 47 read with proviso, as it clearly indicates that in failure, the State Government would take action under Section 47(2) of the EIILM University Act, 2006, i.e. wind up the University.

14. Section 47 mandates identification of mismanagement, maladministration, in-discipline, failure in the accomplishment of the objects of the University and economic hardships in the management system of the University. Thereafter, direction is to be issued to the University to improve the situation before taking a decision to wind up the University. It is prescribed under proviso that no such action be initiated without affording a reasonable opportunity to show cause.

Notice is well-understood, it means communication to a person for the purpose of informing something. Show-cause, which is contemplated under proviso, means to show cause a person on stating reasons as to why a particular action may not be taken against him.

15. It is well established as a general rule that when a statute provides for exercise of power in a particular manner

then the power has to be exercised only in the said manner. The Supreme Court in ***Captain Sube Singh and others*** v. ***Lt. Governor of Delhi and others***[1] considered this aspect and held as under: -

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> **" 29.** In *CIT* v. *Anjum M.H. Ghaswala* (2002) 1 SCC 633 a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. (See also in this connection *Dhanajaya Reddy* v. *State of Karnataka* (2001) 4 SCC 9) The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67(1)(d) read with sub-clause *(i)* thereof.**"**

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16. On several occasions, the principle of natural justice was deliberated in many cases by the Supreme Court. The Supreme Court laid down broad features to observe principle of natural justice.

17. In ***S. L. Kapoor*** v. ***Jagmohan and others***[2]**,** relied on by Mr. Shakeel Ahmed, learned Counsel for the Appellants, the Supreme Court has examined the issue of failure to observe rules of natural justice and held as under:-

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> **" 17.** Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no

[1] **(2004) 6 SCC 440**
[2] **(1980) 4 SCC 379**

> difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because courts do not issue futile writs. But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary.**"**

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18. In ***Olga Tellis and others*** v. ***Bombay Municipal Corporation and others***[3], cited by Mr. Shakeel Ahmed, learned Counsel for the Appellants, the Supreme Court observed as under:-

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> **" 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. ……**"**

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19. Mr. Karma Thinlay, learned Senior Government Advocate for the Respondents, has referred and relied on observations of Supreme Court in ***Aligarh Muslim University***

[3] **(1985) 3 SCC 545**

and others v. ***Mansoor Ali Khan***[4], wherein it was held as under:-

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> **" 22.** In *M.C. Mehta* [(1999) 6 SCC 237] it was pointed out that at one time, it was held in *Ridge* v. *Baldwin* [1964 AC 40 : (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* [1964 AC 40 : (1963) 2 All ER 66 (HL)] and set aside the order of supersession 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.
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> **23.** Chinnappa Reddy, J. in S.L. Kapoor case [(1980) 4 SCC 379] laid down 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.
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> **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 : 1984 SCC (L&S) 62] 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 Edn., pp. 472-75), as follows: (SCC p. 58, para 31)
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> > "[I]t is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. … There must also 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

[4] **(2000) 7 SCC 529**

> 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."
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> 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 : 1996 SCC (L&S) 717] . 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]
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> **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 on 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 [(1999) 6 SCC 237] 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.**"**
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20. While considering scope and ambit of Regulations 6(18) and 6(21) of the Canara Bank Officer Employees' (Conduct) Regulations, 1976, the Supreme Court in ***Canara Bank and others*** v. ***Shri Debasis Das and others***[5] observed as under :-

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> **" 12.** Residual and crucial question that remains to be adjudicated is whether principles of natural justice have

[5] **AIR 2003 SC 2041**

been violated; and if so, to what extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice does not improve the situation, "useless formality theory" can be pressed into service.

13. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

14. The expressions "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. ……**"**

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21. In ***P.D. Agrawal*** v. ***State Bank of India and others***[6], the Supreme Court held as under:-

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" 30. The principles of natural justice cannot be put in a straitjacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change.

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[6] **(2006) 8 SCC 776**

> **39.** Decision of this Court in S. L. Kapoor v. Jagmohan [(1980) 4 SCC 379] whereupon Mr Rao placed strong reliance to contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, have undergone a sea change. In view of the decisions of this Court in State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] and Rajendra Singh v. State of M.P. [(1996) 5 SCC 460] the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of audi alteram partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula. (See Viveka Nand Sethi v. Chairman, J&K Bank Ltd.[(2005) 5 SCC 337 : 2005 SCC (L&S) 689] and State of U.P. v. Neeraj Awasthi [(2006) 1 SCC 667 : 2006 SCC (L&S) 190 : JT (2006) 1 SC 19] . See also Mohd. Sartaj v. State of U.P. [(2006) 2 SCC 315 : 2006 SCC (L&S) 295 : (2006) 1 Scale 265])**"**

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22. In ***A. S. Motors Private Limited*** v. ***Union of India and others***[7], the Supreme Court further examined the ambit of rules of natural justice and held as under:-

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> **" 8.** Rules of natural justice, it is by now fairly well settled, are not rigid, immutable or embodied rules that may be capable of being put in straitjacket nor have the same been so evolved as to apply universally to all kind of domestic tribunals and enquiries. What the courts in essence look for in every case where violation of the principles of natural justice is alleged is whether the affected party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably. The doctrine of audi alteram partem is thus aimed at striking at arbitrariness

[7] **(2013) 100 SCC 114**

> and want of fair play. Judicial pronouncements on the subject have, therefore, recognised that the demands of natural justice may be different in different situations depending upon not only the facts and circumstances of each case but also on the powers and composition of the tribunal and the rules and regulations under which it functions. A court examining a complaint based on violation of rules of natural justice is entitled to see whether the aggrieved party had indeed suffered any prejudice on account of such violation. To that extent there has been a shift from the earlier thought that even a technical infringement of the rules is sufficient to vitiate the action. Judicial pronouncements on the subject are legion. We may refer to only some of the decisions on the subject which should in our opinion suffice.**"**
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23. Mr. Shakeel Ahmed, learned Counsel for the Appellants, has referred to a Judgment dated 16.07.2015 rendered by learned Single Judge of the High Court of Meghalaya in ***CMJ Foundation and Ors.*** v. ***State of Meghalaya and Ors.*** [WP (C) No.177/2014], wherein the High Court, on examination, came to the conclusion that the State Government has not followed the provisions of CMJ University Act, 2009; the Meghalaya Private Universities (Regulation of Establishment and Maintenance of Standards) Act, 2012, strictly and directed to act fairly in the interest of justice following principles of natural justice, whereagainst a Special Leave Petition being SLP (C) No(s). 28831/2016 was filed by the State Government before the Supreme Court of India and the same was dismissed on 21.10.2016. The facts involved therein are not identical to the facts of the instant case.

24. A common thread running through the aforestated enunciation of law on principles of natural justice, propounds that Rules of Natural Justice are not codified cannons, which may be put in a straight jacket. While examining, it is required to be seen as to whether any prejudice is caused to the party concerned. The alleged prejudice is needed to be pleaded specifically. The requirement of natural justice is dependent on the facts and circumstances of the case. The useless formality theory be also examined in the facts of the case. In the case on hand, the appellants have not pleaded any prejudice either before the writ court or in the appeal. Moreover, the Appellant No.2-University had sufficient notice and also reasonable time after 29.01.2015 till a decision was taken by Cabinet on 28.04.2015, to rectify the deficiencies in the administration and also by conducting the examination. The Appellant No.2-University was clearly warned in the show-cause notice dated 29.01.2015 that in failure, the State Government may take a decision under Section 47(2) of the EIILM University Act, 2006, i.e. the dissolution or winding up of the University.

25. On anxious and careful examination of the facts and legal provisions, we are of the considered view that the impugned Judgment and Order rendered by learned Single Judge is just and proper, warranting no interference.

26. Accordingly, the Appeal is dismissed.

27. No order as to costs.

..... CJ.
(Satish K Agnihotri)

..... J.
(Bhaskar Raj Pradhan)

May 25, 2018

Approved for Reporting : Yes/~~No~~.
pm Internet : Yes/~~No~~.