

(1980) 12 CAL CK 0013
In the Calcutta High Court
Case No : F.M.A.T. No. 117 of 1980

A.B. Chaudhuri

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-12-1980

Acts Referred:

Calcutta University (Temporary and Supersession) Act, 1978 — Section 4
Calcutta University Act, 1966 — Section 20(3), 9(6)

Citation : AIR 1981 Cal 225

Hon'ble Judges : Prodyot Kumar Banerjee, J; Monoj Kumar Mukherjee, J

Bench : Division Bench

Advocate : A.P. Chatterjee, Dipak Banerjee and R.N. Ray, for the Appellant; S.M. Roy, N.K. Roy and R. Sanyal, for the Respondent

Final Decision : Allowed

Judgement

Monoj Kumar Mukherjee, J.—This appeal under Clause 15 of the Letters Patent is directed against the judgment passed by a single Judge of this Court disposing of a rule earlier obtained by Sri Arun Bikash Chaudhuri, the appellant herein, on a writ application. The facts and circumstances leading to this appeal may briefly, be stated as follows:

The appellant sat for the Matriculation examination of the University of Calcutta, the respondent No. 2 herein, in the year 1938 and in his application form stated that his age at the relevant time was 16 years and 11 months. On being successful Matriculation Certificate No. 11151 dated June 9, 1938 was issued to him by the University authority. It was certified therein that on March 1, 1938 his age was 16 years and 11 months. In 1949 the appellant joined the Indian Police Service and was attached to the West Bengal Cadre; and in 1974 he was promoted to the post of Special Inspector General of Police in the Special Police Establishment of the Government of India.

2-3. On December 4, 1971 a notification was issued by the Government of India whereby the All India Services (Death-cum-Retirement Benefits) Rules, 1958 was

amended. By the said amendment, the following rules were introduced:--

"16-A. Determination of date of birth. (1) For the purpose of the determination of the date of superannuation of a member of the service, such date shall be calculated with reference to the date of his birth as accepted, or determined, by the Central Government under this Rule". "Sub-clause 4--

(a) Every member of the Service holding office immediately before the commencement of the All India Services (Death-cum-Retirement Benefit) Amendment Rules, 1971, shall within three months from such commencement make a declaration as to the date of his birth;

(b) On receipt of a declaration made under Clause (a) the Central Government shall, after making such inquiry as it may deem fit with regard to the declaration and after considering such evidence, if any, as may be adduced in support of the said declaration, make an order, within four months from the date of such declaration determining the date of birth of such member.

5. In the case of a member of the Service referred to in Sub-rule (3) or Sub-rule (4), as the case may be, who fails to make a declaration in respect of the date of his birth as required by such sub-rule, the Central Government shall after taking into account such evidence as may be available to it, and after giving such member of reasonable opportunity of being heard make an order determining the date of birth of such member,

6. Notwithstanding anything contained in the rule no date of birth other than the date of birth declared by a member of the Service, shall be accepted or determined, in relation to such member except after giving such member a reasonable opportunity of showing cause against the proposed action.

7. Every date of birth accepted, or determined, under this rule shall, subject to Rule 16B, be final."

4. In terms of the aforesaid amended Rules a Deputy Secretary to the Government of India sent a letter to the Chief Secretary, Government of West Bengal, requesting that declaration in respect of dates of birth of all officers under the Indian Police Service of the West Bengal Cadre may be obtained and forwarded to the Ministry of Home Affairs, Government of India. Following that request, the Asstt. Secretary to the Government of West Bengal by a communication dated May 13, 1972, requested the Inspector General of Police, West Bengal to obtain necessary declarations from the officers concerned and a copy of this communication was also forwarded to the appellant.

5. According to the appellant, sometime in 1972 he came across his original horoscope and discovered therefrom that his date of birth was noted as 11th day of Agraayan 1329 B. S. corresponding to December 3, 1922. After being satisfied about the genuineness of the horoscope, the appellant gave a declaration, of his date of birth as required under the aforesaid rules through the Inspector General of Police, West Bengal. On August 14, 1975 the Government of

India, through one of its Under Secretaries issued a memorandum to the appellant stating that on a consideration of his declaration and the evidence produced in support thereof it was proposed to determine the appellant's date of birth as April 1, 1921 on the basis of the original Matriculation certificate, and not December 3, 1922 as contended by the appellant. In making that tentative determination the Government of India observed that the person who prepared the horoscope was dead and the horoscope was of doubtful utility. Availing the opportunity that was given to make a representation in respect of the proposed determination, the appellant by a communication dated September 10, 1975 represented and reiterated that his date of birth should be determined after taking note of and in accordance with the horoscope which was an original and authentic document. He also sought for an opportunity of being heard before a final order in the matter was passed.

6. After making the representation as aforesaid the appellant made an application to the then Vice-Chancellor on October 24, 1975 stating that the Matriculation certificate issued by the University recording his date of birth as April 1, 1921 was incorrect inasmuch as the correct date according to his horoscope was December 3, 1922 and requesting him that the records of the University relating to his date of birth may be corrected. In support of his contention he enclosed a photostat copy of the horoscope and an affidavit sworn by his father-in-law with his application. On that application Dr. S. N. Sen, the then Vice-Chancellor and the respondent No. 4 herein, made an endorsement on December 19, 1975 as follows:--

"Immediately, Syndicate." Pursuant to the said endorsement the application was listed in the agenda of the Syndicate meeting but before it could be considered by the Syndicate it was taken up again by Dr. S. N. Sen and he passed an order on August 28, 1976, which reads as follows:--

"Sri A. B. Chaudhuri from New Delhi has submitted an application for age correction as officially recorded in his Matriculation certificate and has submitted a number of documents in support of his contention. His case is very urgent as the reply of the University should be sent by end of this month. As the Syndicate has a very tight agenda, the matter cannot be decided within August, 1976. I hereby order that Sri A. B. Choudhuri's contention be accepted and the correction of his age be made by the University. The Controller's office to take necessary action." In terms of the said direction the Assistant Controller of Examination of the University addressed a letter to the appellant on the same day requesting him to send the original Matriculation certificate for necessary correction of his age thereon. The appellant acknowledged the letter by his reply dated August 30, 1976 and enclosed the original Matriculation certificate for necessary correction.

7. The Assistant Controller also sent a note on September 7, 1976 to the Deputy Controller of Examination pointing out that under the existing rules correction of the appellant's age in his Matriculation certificate could not be made by the Vice-

Chancellor and submitted the said note to the Deputy Controller of Examination who forwarded the same to the Vice-Chancellor. On receiving the note the Vice-Chancellor himself took steps in the matter, and personally corrected the Matriculation certificate of the appellant in his own handwriting altering the age of the appellant from 16 years 11 months, as appearing thereon, to 15 years 3 months, initialled the correction and put his seal of office.

8. Armed with the said corrected Matriculation certificate, the appellant addressed a letter on September 22, 1976 to the Joint Secretary, Ministry of Home Affairs, Government of India stating that having regard to the fact that his contention regarding his age had been accepted by the University his date of birth be determined with reference to the corrected Matriculation certificate and in support of his statement he enclosed a photostat copy of the corrected certificate.

9. On receipt of the said letter, the Ministry of Home Affairs wrote a letter to the University authorities to find out the circumstances under which the date of birth of the appellant in his Matriculation certificate was altered after a lapse of 38 years. Some correspondences thereafter took place amongst the appellant, the University of Calcutta and the Government of India and ultimately on May 31, 1978 the appellant was informed that his case relating to correction of age was placed before the Calcutta University Council on April 13, 1978 and after due consideration the Council resolved that the Vice-Chancellor could not invoke his powers u/s 9 (6) of the Calcutta University Act, 1966, hereinafter referred to as the Act, to correct the age of person and the correction made by Dr. S. N. Sen, in the certificate of the appellant was not acceptable to it (Council).

10. The Government of India, in its turn, passed an order on July 25, 1978 stating that in the facts and circumstances of the case and, in particular, in view of the restoration of the earlier recorded date of birth of the appellant in his Matriculation certificate, it had come to the conclusion that the appellant had failed to prove conclusively that his date of birth was December 3, 1922 and as such his date of birth should be determined to be April 1, 1921 and the determination was made accordingly.

11. Assailing the resolution dated April 13, 1978 of the University Council and the order of the Government of India dated July 25, 1978 the appellant filed an application under Article 226 of the Constitution of India and obtained a Rule.

12. On a consideration of the materials placed before him, the learned single Judge, who ultimately heard the Rule, held that Dr. S. N. Sen, the then Vice-Chancellor, was not justified in taking recourse to the provisions of Sub-section (6) of Section 9 of the Act, which entitled the Vice-Chancellor to act on behalf of the University in any matter which, in his opinion, was either urgent or of an emergent nature, as there was no urgency or emergency in correcting the age appearing on a Matriculation certificate on a prayer made after 30 years; that the Vice-Chancellor did not follow up the steps prescribed in that sub-section as he

did not submit a report of his such action to the appropriate authority or body; and that in making the necessary corrections the Vice-Chancellor did not at all consider and adhere to the rules or regulations or the practice and procedure relating to correction of age of students. The learned Judge accordingly held that the resolution of the Calcutta University Council dated April 13, 1978 to the effect that there was no evidence of correction of the age of the appellant by the former Vice-Chancellor in the records of the University and the refusal of the Council to accept the correction made by the former Vice-Chancellor in the original Matriculation Certificate of the appellant could not be said to be erroneous or illegal.

13. The learned single Judge however held that the decision of the Council, to take up the original application of the appellant for correction of age in the records of the University and rejecting the same, violated the principles of natural justice and fair play. According to the learned Judge when the University authorities were proposing to reverse or override the order of the Vice-Chancellor, which rightly or wrongly created some right in favour of the appellant, it was incumbent on the part of the University authorities to give an opportunity to the appellant to make a representation before such reversal of the decision.

14. On the above findings, the learned Judge issued a writ in the nature of Mandamus directing the University not to give any or any further effect to the resolution dated 13-4-78, which was communicated to the appellant by its letter dated May 31, 1978 and whereby the order of the Vice-Chancellor was reversed, and directed the University authorities to give a further opportunity to the appellant to make a representation in support of his application for making necessary changes in his Matriculation certificate; and observed that the University authorities would be at liberty to dispose of the application in accordance with law after hearing the representation, if any, of the appellant. The learned Judge further directed that after the University authorities intimated their decision to the appellant he would be at liberty to make a fresh representation in respect of his age to the Government of India and if such a representation was made the Government of India would consider and dispose of such representation in accordance with law. Against the said judgment the present appeal has been preferred by the appellant, the petitioner in the Rule.

15. In view of the partial success in the Rule, Mr. Arun Prokash Chatterjee the learned Standing Counsel appearing for the appellant, raised only two points in support of the appeal. He firstly contended that as in correcting the age of the appellant the Vice-Chancellor exercised his prerogative u/s 9 (6) of the Act, being of the view that the matter was of an urgent nature this Court cannot question his such subjective satisfaction, more particularly when no case of mala fides had been made out against the Vice-Chancellor. He next contended that even if it was assumed that the order of the Vice-Chancellor was illegal, the Calcutta University Council could not review the same, in absence of any

statutory powers entitling the Council to review any order of the Vice-Chancellor.

16. Mr. Roy, the learned counsel appearing for the University, on the other hand contended that the order of the Vice-Chancellor was in utter disregard of the statutory provisions and as such the appellant could not take advantage of the same. As regards the second submission of Mr. Chatterjee, Mr. Roy's reply was that u/s 20 (3) of the Act, the Council had the legal right to review the order of the Vice-Chancellor. Mr. Sanyal, the learned counsel appearing for the Union of India, the respondent No. 1, submitted that the determination of the age of the appellant under the rules of the Government of India was independent of the dispute between the appellant and the University of Calcutta. Even if the Court found that the order of the Vice-Chancellor was a valid order, the Central Government was not bound by the same and it can make its own determination as to the age of the appellant on the basis of the materials placed before or made available to it, in accordance with the statutory rules.

17. As regards the second contention of Mr. Chatterjee, namely, whether the Calcutta University Council has the power to review the order of the Vice-Chancellor, law is now well settled that the power to review is not an inherent power and it must be conferred by law either expressly or by necessary implication. It has therefore to be seen whether Section 20 (3) of the Act entitles the Calcutta University Council to review the order of the Vice-Chancellor, as contended by Mr. Roy. But before we take up the above provision for consideration it will be necessary to look into the scheme of the Act and the developments that took place after the said enactment.

18. Under the scheme the University of Calcutta functions through different authorities enumerated in Section 18. In the hierarchy of authorities, the Senate comes first, then the Syndicate, then the Academic Council and so on. The powers of each of such authorities have been detailed in the Act. Besides the authorities established under the Act, authorities may also be established under statutes to be made under the Act. Section 9 of the Act enumerates the powers and the duties of the Vice-Chancellor and Sub-section (6) thereof, which is relevant for our present purposes, reads as follows:--

"The Vice-Chancellor may take on behalf of the University such action as he may deem expedient in any matter which, in his opinion, is either urgent or of an emergent nature, and such action shall at the earliest opportunity be reported to the appropriate authority or body".

Section 20 (3) of the Act runs thus:--

"The Senate shall have the power to review the action of the Syndicate, save where the Syndicate has acted in accordance with powers conferred on it by or under this Act. Provided that if any question arises as to whether the Syndicate has acted in accordance with powers conferred on it by or under this Act, the question shall be decided by a reference to the Chancellor whose decisions shall be final."

19. When the University was functioning through the different authorities established under the Act, the West Bengal Legislature enacted the "Calcutta University (Temporary Supersession) Act, 1978" which came into force on 12th day of January, 1978. With effect from the date of coming into force of this Act, hereinafter referred to as the 1978 Act, all the powers and duties assigned to all the authorities referred to in the Act came to be exercised by a Council known as the Calcutta University Council constituted u/s 4 (c) of the 1978 Act. u/s 4 (d) the Council so constituted was to carry on the functions of all the authorities established under the Act and all other authorities established under the Statutes, Ordinances, Regulations or Rules made thereunder. In other words with the coming into force of the 1978 Act the functions of the different authorities under the Act vested in one integrated authority, namely, the Council. The other relevant provision of the 1978 Act is Sub-section (f) of Section 4 which reads as follows:--

"All the provisions of the Act, Statutes, Ordinances, Regulations or Rules made thereunder shall, if in conflict with the provisions of this Act stand modified; Provided that nothing in this clause shall affect the power of the Chancellor or the Vice-Chancellor under the Act, Statutes, Ordinances, Regulations or Rules there under"

20. That necessarily means than the powers of the Vice-Chancellor u/s 9 of the Act, including Sub-section (6) thereof, remain unaffected while the provisions of the Act so far as they were inconsistent with the provisions of the 1978 Act stood modified. Since by the 1978 Act, the Senate and the Syndicate ceased to operate as two separate authorities, and in fact ceased to exist both being replaced by the Council Sub-section (3) of Section 20 can have no manner of application so long as the 1978 Act is in force. We are not unmindful that this interpretation of ours may create difficulties in the administration of the University as the Council will have no authority or re-view in respect of any action of the Vice-Chancellor but as the law now stands no other interpretation is possible. It must therefore be held that the Council has no power to review the order of the Vice-Chancellor passed u/s 9 (6) of the Act. In view of our above finding, it need not be decided whether the order of the Vice-Chancellor is legal or valid. Even if the order is bad, still then the Council cannot review the order to revise the same. In this writ application the appellant has founded his case treating the order of the Vice-Chancellor as a valid order and only challenging the competence of the Council to review the same. The question whether the order of the Vice-Chancellor is good or not does not therefore fall for decision in this appeal, in that context. The resolution passed by the Calcutta University Council on 13-4-78 and the letter dated May 31, 1978 issued to the appellant by the Registrar of University cannot stand nor the University can deliberate upon the order of the Vice-Chancellor Dr. S. N. Sen, correcting the age of the appellant.

21. The next question that falls for determination is how far the above finding of ours affects the determination of the age of the appellant by the Government of

India. It is undoubtedly true that the determination of age by the Central Government is independent of the determination made by the University. But as it appears, the Government of India while making the determination under Rule 16A of the All India Services (D.C. R.B.) Rules, 1958 took into consideration the decision of the University in reversing the correction made by the Vice-chancellor as would be evident from the following paragraph of the order dated July 25, 1978:--

"And whereas the Calcutta University after due consideration of all the aspects of the case, took a decision that the correction made by the former Vice-Chancellor in the Original Matriculation Certificate of Sri A. B. Chowdhury was not according to the Rules of the University and as such the prayer of Sri Chowdhury for correcting his age in the record of the University should not be granted and accordingly restored the date of birth in the Matriculation Certificate to 1-4-1921 and the Central Government considered the matter in the light of the above fact....."

There cannot be any manner of doubt therefore that the Government of India in determining the age of the appellant took into consideration, amongst others, the fact that the Calcutta University reversed the decision of the Vice-Chancellor and since it cannot be predicated to what extent the above fact influenced the determination of the age of the appellant, the above order dated July 25, 1978 is also liable to be set aside. In view of our finding that the reversal of the decision of the Vice-Chancellor was not in accordance with law, the Government of India will have to arrive at a fresh determination of the age of the appellant without taking into consideration the decision of the University Council.

22. In the result the appeal succeeds and the same is allowed. The impugned judgment is hereby set aside; and instead of the direction appearing therein we direct as follows:--

"(a) The resolution passed by the Council of the Calcutta University dated April 13, 1978 (Item No. 6 of the Council dated 6-4-78) is hereby quashed and the University of Calcutta is directed to withdraw and forbear from giving effect to the letter dated May 31, 1978 containing the resolution passed by the Council dated April 13, 1978.

(b) The order dated July 25, 1978, passed by the Under Secretary, Government of India (annexure Q to the writ application of the appellant) is set aside and the Government of India is directed to make a fresh determination of the appellant's age in accordance with law, without taking into consideration and in any way being influenced by the resolution of the Council dated April 13, 1978.

(c) Before making such determination under Rule 16A of the A. I. S. (DCRB) Rules, 1958 the Govt. of India will permit the appellant to make a representation in respect of his age and the Government of India will consider the representation if so made and thereafter will determine his age in accordance with law."

23. Let appropriate writs issue accordingly. There will be no order as to costs.

P.K. Banerjee, J.

I agree.