

(1979) 12 CAL CK 0004
In the Calcutta High Court

Arun Bikash Chaudhuri

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-12-1979

Acts Referred:

Bengal General Clauses Act, 1899 — Section 3
Calcutta University Act, 1979 — Section 2(k), 9(6)
Constitution of India, 1950 — Article 226

Citation : 84 CWN 514

Hon'ble Judges : D.K. Sen, J

Bench : Single Bench

Advocate : A.P. Chatterjee and Raghunath Roy, for the Appellant; N.K. Roy and R.N. Sanyal for the University of Calcutta, S.M. Sanyal for Union of India, T.K. Sengupta for the added Respondents, for the Respondent

Judgement

D.K. Sen, J.—The facts relevant to these proceedings are as follows :

Arun Bikash Chowdhury, the petitioner in this case, applied for admission to the Matriculation examination under the University of Calcutta held in the year 1938 and in his application form stated that his age at the relevant time was 16 years and 11 months. The petitioner sat for the said examination and was successful. Matriculation Certificate No. 11151 dated the 9th June 1938 was issued to the petitioner by the then Controller of Examinations, University of Calcutta. It was certified that on the 1st March 1938 the petitioner's age was 16 years and 11 months.

In 1949 the petitioner joined the Indian Police Service. His career in the service was also successful. In 1966 he was promoted to the post of Deputy Inspector General of Police in the Special Police Establishment of the Government of India and in 1974 he was promoted to the post of a Special Inspector General of Police in the said Establishment.

2. On the 4th December 1971, a Notification No. GS 1935 was issued by the Under Secretary to 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 :

16A. 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.

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 such 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 a reasonable opportunity of being heard make an order determining the date of birth of such member.

(6) Notwithstanding anything contained in this 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 as 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.

3. Pursuant to the aforesaid the Deputy Secretary to the Government of India referred the matter to the Chief Secretary to the Government of West Bengal requesting that declarations in respect of dates of birth of all officers under the Indian Police Service of the West Bengal cadre should be obtained and forwarded to the Ministry of Home Affairs, Government of India.

4. This was followed by a communication dated the 13th May 1972 from the Assistant Secretary to the Government of West Bengal to the Inspector General of Police, West Bengal with a similar request that declarations in respect of the dates of the birth of all officers of the Indian Police Service West Bengal cadre be obtained from the officers concerned. A copy of this communication was forwarded to the petitioner.

5. It is the petitioner's case that sometime in 1972 he came across his original horoscope among old papers of his father. The petitioner discovered from the

horoscope prepared by one Chandra Kanta Aciharya of village Papudia P.S. Boal Khali, Chittagong that his date of birth was noted as the 17th Agrahayan 1329 Bengali Sambat the corresponding English date being the 3rd December 1922.

6. The petitioner thereupon instituted enquiries at Chittagong through the Ministry of External Affairs, Government of India and the Indian High Commission at Bangladesh. It was ascertained on such enquiry that the records of registration of births in the local police station under Chittagong had been destroyed. It was also ascertained that the said Chandra Kanta Acharya was no longer alive but his son Sukumar Acharya was available at Chittagong and that he would be able to identify the hand-writing of his father in the horoscope.

7. On the basis of the aforesaid the petitioner gave a declaration of his date of birth as required through the Inspector-General of Police, West Bengal Calcutta. He declared that his date of birth was 3rd December 1922 and in support thereof undertook to produce his original horoscope if required.

8. On the 14th August 1975, the Under-Secretary to the Government of India acting for and on behalf of the President of India issued a Memorandum to the petitioner stating, inter alia, that on a consideration of his declaration and the evidence in support thereof it was proposed to determine the petitioner's date of birth as the 1st April 1921 on, inter alia, the following grounds :

(a) The declaration was required to be given within three months from the commencement of the Rules i.e. the 18th December 1971. The petitioner gave his declaration on the 19th December 1972 and not within time.

(b) The person who prepared the horoscope, namely, Chandra Kanta Acharya was dead.

(c) The horoscope was not conclusive and of doubtful utility.

(d) The Matriculation Certificate recording the date of birth of the petitioner as 1st April 1921 was more reliable.

The petitioner was given an opportunity to make a representation in respect of the proposed decision within a time prescribed.

9. By a communication in writing dated the 10th September 1975, the petitioner submitted his representation against the proposed decision. He stated, inter alia, that the communication from the Inspector-General of Police, West Bengal calling for a declaration in respect of his date of birth was received only on the 7th June 1972 and, therefore, he could not submit the declaration in time for the reasons beyond his control. He also stated that further time elapsed by reason of the enquiries instituted by him in Bangladesh. He reiterated that his date of birth should be determined after taking note of the horoscope which was in original and an authentic document and submitted that, if necessary, an affidavit might be obtained from Sukumar Acharya, the son of Chandra Kanta Acharya. He also asked for an opportunity of being heard before a final order in the matter was

passed.

10. The scene of activities thereafter shifted to the University of Calcutta. On the 24th October 1975 the petitioner made an application to the then Vice-Chancellor of the University stating that the Matriculation Certificate issued by the University recording his date of birth as 1st April 1921 was incorrect inasmuch as the correct date according to his horoscope was the 3rd December 1922. He enclosed a photostat copy of the horoscope and an affidavit sworn by his father-in-law on the 4th November 1975. It was stated in this affidavit, inter alia, that at the time when the petitioner's marriage was fixed in 1947 the petitioner's father in law had occasion to consider the petitioner's horoscope and that he had ascertained that the petitioner's correct date of birth was the 3rd December 1922. He requested that the records of the University relating to his date of birth should be corrected.

11. On the 19th December 1975, the then Vice-Chancellor endorsed this application as follows :--

Immediately, Syndicate.

The said application was thereafter listed as item No. 1 in the agenda before the Syndicate. Before the said application could be considered by the Syndicate it was taken up again by the Vice-Chancellor and he passed an order on the 28th August 1976, stating, inter alia, 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 the 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. Chaudhuri's contention be accepted and the correction of his age be made by the University. The Controller's office to take necessary action.

On the same day the Assistant Controller of Examinations addressed a letter to the petitioner stating, inter alia, as follows :

I am directed by the Vice-Chancellor to inform you that the Vice-Chancellor has been pleased to accept the contention of your application regarding correction of your age in your Matriculation certificate.

You are, therefore, requested to send your original Matriculation certificate immediately in a closed cover addressed to Sri G.C. Banerjee, Deputy Controller, of Examinations, Calcutta University, Calcutta by name for necessary correction of your age thereon.

The petitioner acknowledged this letter by his reply dated the 30th August 1976 and enclosed his original Matriculation Certificate for necessary correction.

12. At this stage the Assistant Controller of Examinations sent a note dated the

7th September 1976, to the Deputy controller of Examination as follows :--

Unless the existing rules are made null and void by the Syndicate, correction of Sri Chaudhuri's age in his Matriculation Certificate cannot be made by me notwithstanding the directive given to me.

The Deputy Controller of Examinations submitted this note to the Vice-Chancellor.

The Vice-Chancellor himself took steps in the matter and he personally purported to correct the Matriculation Certificate of the petitioner in his own handwriting altering the age of the petitioner from 16 years

12. months to 15 years 3 months. He initialled the correction and put his seal of office in the document.

13. Thereafter, on the 22nd September 1976, the petitioner addressed a letter to the Joint Secretary Ministry of Home Affairs, Government of India, stating, inter alia, that his contentions regarding his age had been accepted by the University and that his age on record in the original Certificate had been corrected by the Vice-Chancellor. The petitioner enclosed a photostat copy of the corrected certificate with his letter and requested that his date of birth be determined accordingly. On the 26th November 1976, the Under-Secretary, Ministry of Home Affairs, wrote to the Controller of Examinations, University of Calcutta for information as to the circumstances under which the date of birth of the petitioner in his Matriculation Certificate was altered after a long period of 38 years. By his letter dated the 28th December 1976, the Controller of Examinations requested that the Certificate should be sent to him for verification. On requesting the petitioner sent the original Certificate to the Department by post on the 21st February 1977.

14. Thereafter correspondence in the matter went on amongst the petitioner, the Government of India and the University of Calcutta. The petitioner wanted back his original Certificate while the Government of India wanted to know from the University the facts relating to the correction of the said Certificate. Ultimately, on the 31st May 1978 the Registrar of the University informed the petitioner, inter alia, as follows : -

I am directed by the Vice Chancellor to reply to your letter dt. 22.4.78. Your case relating to correction of your age was placed before the Calcutta University Council on 13.4.78 (Item No. 6 of the Council dt 6.4.78) and the Council after due consideration of all relevant facts resolved as follows :--

Resolved--That the Council regrets that the prayer of Shri Arun Bikash Chaudhuri for correcting his age in the records of the University cannot be granted, under the usual rules of the University.

Resolved further--That as there is no evidence of correcting the age of Sri Arun Bikash Chaudhuri by the former Vice-Chancellor Dr. S.N. Sen u/s 9(6) of the C.U. Act 1966 in the records of the University and as the matter of correcting the age

of a person does not, in any way, call for taking action u/s 9(6) of the said Act the Council refuses to accept the correction made by the former Vice-Chancellor in the original matriculation certificate of Sri Arun Bikash Chaudhuri.

15. An order dated the 25th July 1978 was thereafter passed by the Government of India, inter alia, stating that in the facts and circumstances and in particular in view of the restoration of the earlier recorded date of birth of the petitioner in his matriculation certificate by the University the Government had come to the conclusion that the petitioner had failed to prove conclusively that his date of birth was the 3rd of December 1922, and as such his date of birth should be determined to be the 1st of April 1921, Therefore, in ex. of powers conferred by rule 16A of All India Services (Death-cum-Retirement Benefits) Rules, the Central Government had determined the date of birth of the petitioner to be the 1st April, 1921.

16. In the present proceedings the petitioner has sought to impugn the said resolution of the Council of the Calcutta University dated the 13th April 1978 as also the said order of the Government of India dated the 25th July 1978, declaring the date of birth of the petitioner to be the 1st April 1921. The petitioner alleges, inter alia, that the said impugned resolution of the Council is in violation of section 9(6) of the Calcutta University Act, 1966 and that the correction made by the Vice-Chancellor in the petitioner's original Certificate was legal, regular and within jurisdiction having been made in exercise of his emergency powers under the said section. The petitioner contends further that the respondents violated the principles of natural justice in passing the said resolution on the 13th April 1971 without giving the petitioner any opportunity of making representations. The petitioner also contends that the provisions of the Calcutta University Act 1966, do not empower the Council to reverse the action taken by the Vice-Chancellor and that the earlier decision of the Vice-Chancellor is binding on the University.

17. The Rule nisi herein was issued on the 19th September 1975, calling upon the respondents, namely, the Union of India; the University of Calcutta; the Vice-Chancellor, University of Calcutta and Dr. S.N. Sen, former Vice-Chancellor of the University to show cause why appropriate writs should not be issued directing them to recall, rescind, withdraw and/or to Forbear from giving effect to the letter issued by the Registrar dated the 31st May 1978 containing the impugned resolution of the Council dated the 13th April 1978 commanding them to refrain from proceeding thereunder and for setting aside and/or cancelling the said letter, the said resolution as also the order dated the 25th July 1978 of the Government of India.

18. This application is opposed. An affidavit of one Nripendra Nath Bose, Acting Registrar of the Calcutta University, affirmed on the 5th April 1979 has been filed in opposition to the petition. It is, inter alia, stated in this affidavit that ordinarily, the age of a candidate sitting for the Matriculation Examination which is recorded in the Matriculation Certificate is determined on the basis of the entries in the

Admission Register of the School from which the candidate concerned sits for the examination. In the instant case, the petitioner's age in his Matriculation Certificate was obtained from his own application for admission to the said examination. It is stated further that under the existing rules, applications for alteration of entries regarding age are not entertained unless made within two years from the date of the candidate's admission to the Examination. It is also stated that the petitioner while applying for correction of his recorded age, did not follow the required procedure. He did not apply in the proper form with fees through the Head of the Institution from which he sat for the Examination nor did he produce any certificate from the School Authorities that there was a mistake in the entry in respect of his age in the School records and that such mistake was clerical. It is contended that the purported correction in the Certificate made by the then Vice-Chancellor was erroneous and irregular and that the University Council had no power to reserve such decision to a Vice-Chancellor if it was ascertained that the Vice-Chancellor did not exercise his powers properly or acted without jurisdiction. It is also contended that the Vice-Chancellor could not invoke his emergency powers under section 9(6) of the Calcutta University Act, 1966 in the facts and circumstances and that, in any event there was no evidence that the Vice-Chancellor in fact did exercise such powers.

19. An affidavit of one A. Joyraman, the Under Secretary to the Government of India affirmed on the 16th February 1979 has also been filed in opposition to the petition. It is, inter alia, stated in this affidavit that the petitioner was due to retire on the 31st March 1979 according to his date of birth as originally recorded in his Matriculation Certificate and that such date had not been altered by the Government. When the petitioner was recruited to the Indian Police Service his date of birth was entered in the service records in accordance with his Matriculation Certificate and as a general rule such date accepted at the time of appointment would not be altered subsequently except where it would be established that a bonafide clerical mistake had been committed in accepting such date. It is contended that the petitioner could not establish to the satisfaction of the Government that he was, in fact, born on the 3rd December 1922 and that the Government did not accept the petitioner's claim.

20. An affidavit affirmed by the ex-Vice Chancellor, the respondent No. 4 on the 26th June 1979 has been filed in support of the petition. It is stated by the respondent No. 4 that the petitioner's application for correction of his date of birth as made on "the 24th October 1975 was referred to the Syndicate of the University in December 1975 and was placed in the agenda in August 1976. Due to pressure of work the item could not be taken up for consideration. The respondent No. 4 was of the opinion that there was little chance of the matter coming up before the Syndicate in near future. In view of the urgency of the matter the respondent No. 4 in good faith exercised his powers u/s 9(6) of the Calcutta University Act, 1966, as a Vice Chancellor. He was satisfied on consideration the old horoscope of the petitioner and other relevant records that in the special circumstances of the case the correction of the matriculation

certificate of the petitioner was required to be done.

21. The Acting Registrar of the University of Calcutta has affirmed supplementary affidavits on the 3rd September 1979 and the 27th August 1979 annexing the proceedings of the Calcutta University Council held on the 6th April 1978 and dealing with the allegations in the affidavit of the respondent No. 4. The petitioner has also affirmed an affidavit on the 3rd July 1979 in reply to the affidavit of Acting Registrar, Kamakshya Kumar Dastidar, the brother-in-law of the petitioner has affirmed an affidavit on the 5th July 1979 on behalf of the petitioner dealing with the affidavit of the Under Secretary to the Government of India.

22. The learned Senior Standing Counsel appeared on behalf of the petitioner at the hearing. He contended that the Vice-Chancellor had duly exercised his emergency powers u/s 9(6) of the Calcutta University Act, 1966. As the Principal Executive of the University it was entirely within the jurisdiction of the Vice Chancellor to invoke his power under the said section and he did exercise such power in allowing the application of the petitioner for correction of the date of his birth and in correcting the same in the certificate issued to the petitioner.

He submitted further that it was immaterial that in the impugned order it was not recorded that emergency powers were being exercised u/s 9(6). It was not necessary to record or to refer to source of powers as the same would be presumed in support of the action.

Learned Standing Counsel submitted that the alleged rules relied on by the Council on the basis of which the decision and action taken by the Vice-Chancellor was sought to be reversed had no force of law. They were neither Regulations nor Statutes nor Rules promulgated by the University in exercise of its statutory powers and could not stand in the way of the petitioner. The records belonged to the University a statutory body and such a body had the power to correct its own records.

He submitted further that the conduct of the Council in reversing the decision of the Vice-Chancellor was improper and in any event before the said decision was reversed the petitioner should have been given an opportunity to make representation. It was lastly submitted that the decision of the Government of India determining the age of the petitioner made on the basis of an illegal decision of the University was also erroneous and if the petitioner was successful in establishing his case against the University it was incumbent on the Government of India to reverse and/or revise the said decision.

23. In support of his contentions the learned Senior Standing Counsel cited the following decisions which are considered hereafter in their chronological order :--

(a) T. Cajee Vs. U. Jormanik Siem and Another, . In this case the question before the Supreme Court was whether in the absence of any statutory rules framed under the Assam Autonomous Districts (Constitutional District Council) Rules

1951, a person appointed in an office by the Governor which was confirmed by the District Council could be dismissed by the Executive Committee of the Council under the terms and conditions of his appointment. The Supreme Court held that the dismissal was valid and observed as follows :--

Where executive power is concerned only with the personnel of the administration it is not necessary -- even though it may be desirable -- that there must be laws, rules or regulations governing the appointment of those who would carry on the administration under the control of the District Council if the administration was to be carried on, as it must, that the Governor in the first instance and the District Councils after they came into existence, would have power by virtue of the administration being vested in them to appoint officers and others to carry on the administration. Further once the power of appointment falls within the power of administration of the district the power of removal of officers and others so appointed would necessarily follow as a corollary. The Constitution could not have intended that all administration in the autonomous districts should come to a stop till the Governor made regulations under paragraph 19(1) (b) or till the District Council passed laws under para 3(1) (g). Doubtless when regulations are made under para 19(1) (b) or laws are passed under para 3(1) with respect to the appointment or removal of the personnel of the administration, the administrative authorities would be bound to follow the regulations so made or the laws so passed. But from this it does not follow that till the regulations were made or the laws were passed, there could be no appointment or dismissal of the personnel of the administration. In our opinion, the authorities concerned would at all relevant times have the power to appoint or remove administrative personnel under the general power of administration vested in them by the Sixth Schedule.

(b) *Hukumchand Mills Ltd. Vs. The State of Madhya Bharat and Another*, . This decision was cited for the following observation of the Supreme Court :

It is well settled that merely a wrong reference to the power under which certain actions are taken by Government would not perse vitiate the actions done if they can be justified under some other power under which the Government could lawfully do these acts.

(c) *Commissioner for the Port of Calcutta vs. Baleswar Sinha* reported in 71 C.W.N. 786 This judgment of a Division Bench of this Court was cited to show that the decision of the Supreme Court in the case of *T. Cajee* (supra) was followed and applied in the facts before the Division Bench.

24. Mr. Nirmalendu Roy, learned Advocate for the University, reiterated the contentions in the affidavits filed on behalf of the University. He also drew my attention to the relevant provisions relating to the correction and/or alteration of the age of the students of the University as originally recorded, In proceedings held on the 6th September 1933 the School Committee of the University approved a draft circular containing rules regarding correction of entries of age of

students as follows :--

(1) Applications for alteration in the entries of age of persons who appeared at or passed the Entrance or the Matriculation Examination of this University will not be entertained.

(2) The entry of age of a student of any class as recorded in the Admission Register of the school must not be altered without the previous permission of the University, and for this purpose, an application for alteration in the entry of age of a student, other than a student of the Matriculation Class, is required to be submitted to the University at any time of a school session through the Head Master of the school concerned along with the undermentioned fee, documents and particulars :--

(i) An affidavit sworn before a Magistrate and such other documentary evidence as may be available, such as a certified extract from Birth Register, Horoscope (in original), Guardian's Note Book containing date of birth, etc. The submission of an affidavit is essential in all cases.

(ii) A fee of Rs. 10 (A fresh fee of Rs. 10 in the case of an application for reconsideration of previous orders).

(Note--If the fee is remitted by Money Order, the Postal receipt (in original) must be submitted along with the application).

(iii) An undertaking from the applicant that he is prepared to appear before the Age Committee, if called upon to do so, at his own expense.

The following particulars should also be furnished in a statement from which may be had on application from the office of the undersigned :--

(a) The date of birth of the student (in English Calendar year and month); (b) his age calculated up to the 1st March of the year in which the application is submitted-according to (i) the guardian's affidavit and (ii) the school register (c) a report as to how the mistake had first arisen and why the matter was not reported to the University at an earlier date; (d) the Head Master's certificate to the effect that he has investigated the case and is prepared to certify it as a bona-fide one : the name of the school and that of the class in which he is now.

(3) In the case of students of the Matriculation Class, a statement showing their age according to the admission register of the school should be prepared as soon as they are promoted from Class IX to Class X in January and forwarded to the father or guardian of each student with a request to verify the statement and inform the Head Master within a fortnight whether the age of the student is correctly recorded. If, however, the father or the guardian of any such student produces documentary evidence to show that the entry of the student's age according to the admission register of the school is wrong, he may, if he so desires, apply to the University through the Head Master of the school concerned along with the fee and documents mentioned in para (2) on or before the 15th

March. If any such application is forwarded to the University after that date, under exceptional circumstances, a satisfactory explanation as to the cause of delay should also be submitted with an extra fee of Rs. 5 in addition to the usual fee of Rs. 10.

(4) The age entered in the application of a candidate for admission to the Matriculation Examination must correspond with the entry of his age in the Admission Register of the School. In case where an application for correction of age-entry of any candidate sent up for the Matriculation Examination is pending before the University the fact of his having submitted such application together with the number and date of the last letter received from the University on the subject and a statement of his age according to (i) the Admission Register and (ii) the Affidavit submitted to the University must be clearly mentioned in the form of his application for admission to the Matriculation Examination.

(5) In order to prevent clerical errors in transcribing the age of candidates from the admission register to the application forms for admission to the Matriculation Examination, the Heads of recognised schools should carefully verify the entries in the application with the statements of age of such students correctly calculated up to the 1st day of the month in which the Matriculation Examination is held. If, however, any error occurs in spite of all possible precautions, the fact should be reported to the University within a month of the last date fixed for depositing fees for the Matriculation Examination, together with the under-mentioned fee and documents in original :-

- (a) A fee of Rs. 5, (if the fee is remitted by money order, the postal receipt, in original, must be submitted along with the application);
- (b) A copy of the admission register of the school showing the first admission of the student in the school, certified by the District Inspector of Schools under his official seal;
- (c) The transfer certificate of the student if he was admitted into the school on transfer from" any other school;
- (d) A statement of age according to the application form for admission to the Matriculation Examination;
- (e) A statement of age according to the admission register of the school;
- (f) An explanation as to why the age of the student was not verified before entering it in the application form for admission ro the Matriculation Examination.

This Circular supersedes all other Circulars issued on the subject previously.

At its meeting held on the 9th September 1938, the Syndicate of the University confirmed the said proceedings of the School Committee.

25. In a subsequent proceeding of the Syndicate held on the 4th March 1949 it was considered and decided by the Syndicate as follows :--

68. The Offg. Registrar enquired whether (1) one uniform rate--Rs. 15 should be imposed for all classes of (i) age correction, (ii) reconsideration of any previous orders for age correction or (iii) correction of the clerical error in the entry of the age and (2) if this was approved whether the change should be given effect to from 1st June, 1949.

Note--According to this Office circular No. 8 326-Age, date the 9th September 1938, the following fees are being enhanced for age correction; --

(1) Rs. 10 for students of all classes of a recognised High School,

(2) Rs. 10 for reconsideration of an application for age correction.

(3) Rs. 15 for students of Class X applying after 15 March.

(4) Rs. 5 for correction of a clerical error.

Resolved--That the enquires be answered in the affirmative and that the change be given effect to from 1st June, 1949.

26. On the 7th June 1952, the Syndicate approved another draft Circular to be issued to the Principals of all Colleges. The relevant minutes read as follows;--

68. The Registrar placed before the Syndicate a draft Circular for approval in connection with applications for alteration in the entries of age of persons who appeared at or passed the Matriculation Examination of this University.

Resolved--That the following Circular be approved and issued to Principals of Colleges :--

From

The Registrar, Calcutta University

To

The Principals of Affiliated Colleges

Sir,

In modification of this office Circular No. S. 403 Age, dated the 4th March 1949, I am directed, by the Hon'ble the Vice-Chancellor and Syndicate, to state below for your information the rules regarding correction of entries of age of persons who appeared at or passed the Matriculation Examination of this University, and to request you to be so good as to give the matter wide publicity--

(1) Applications for alteration in the entries of age of persons who appeared at or passed the Entrance or the Matriculation Examination of this University are not entertained.

(2) Applications for correction of clerical errors on the part of the Heads of the Institutions in the entries of age of persons who appeared at or passed the Matriculation Examination of this University will be considered if submitted within

two years from the date of their admission to the Matriculation Examination. Applications will not be considered after the lapse of two years from the date of the Matriculation Examination, unless a satisfactory explanation as to why the matter was not reported to the University so long is submitted in each case. No application for reconsideration will be entertained.

(3) The undermentioned documents and fee should be submitted along with each application.

(a) An application should be submitted through the Head of the Institution from which the candidate was sent up for the Matriculation Examination of this University. In forwarding the application, the Head of the Institution will certify that the mistake in the entry of the candidate's age is purely a clerical mistake on the part of the school office.

(b) The original Admission Register of the school or on extract from the Admission Register of the school, showing the First Admission of the student in the school attested by the District Inspector of Schools under his official seal should be submitted.

(c) The original Transfer Certificate of the student, if he was admitted into the school on transfer from other school.

(d) The Matriculation Certificate or Admit Card in original.

(e) A statement showing the candidate's age according to (i) Matriculation Certificate and (ii) Admission Register of the school.

(f) An explanation as to why the age of the student was not verified at the time of sending him up for the Matriculation Examination.

(g) A fee of Rs. 50.

27. Mr. Roy submitted that the basic rules for correction of age of the students of the University have remained the same or similar from 1938 and, in any event, have been followed from 1938. Even if the said rules cannot be said to have statutory force, by reason of their continuity for a long time they must be held to be a part of the practice and procedure of the University.

28. Mr. Roy next drew my attention to the relevant statutory provisions. Section 2(k) of the Calcutta University Act 1951 provided as follows :--

2.(k) "Statutes", "Ordinances" and "Regulations" mean respectively, the statutes Ordinances and Regulations of the University made under this Act and they shall be deemed to be rules within the meaning of clause (36) of section 3 of the Bengal General Clauses Act, 1899;

Under the said Act miscellaneous Statutes, Ordinances and Regulations were promulgated and provide, inter alia, as follows :--

1. The regulations made under the Indian Universities Act 1904

relating to the following matters stand repealed :--

Any Regulation that might be made under the Indian Universities Act of 1904 relating to any matter other than those mentioned in (1) and (2) will continue in force until altered, repealed or amended in the manner prescribed in the Calcutta University Act, 1951.

3. Save as otherwise provided in the Act, the First Statutes, the First Ordinances, and the First Regulations and subject thereto, the practice and procedure in force in the University shall continue in force until altered, repealed or amended.

10. In any case not expressly provided for in the Act, Statutes, Ordinances and Regulations the Syndicate shall give such directions as may be necessary in the special circumstances of the case.

In Chapter XI of the Statutes passed under the Calcutta University Act 1966 the item No. 163 provides as follows :--

163. The practice and procedure of the University established under the Calcutta University Act, 1951, which were in force immediately before the appointed day, shall, in so far as they are not repugnant to the provisions of the Act, these statutes, the Ordinances continue to be in force in respect of the University, until altered, repealed or amended.

29. Mr. Roy next cited an unreported decision of A.N. Roy, J., as he then was, in Civil Rule No. 1791 of 1960. In this case the matriculation certificate dated 25th June 1924 recorded the age of the student as on the 1st March 1924. In June 1959 the said student requested the Registrar of the University to correct his age in the records of the University. The Headmaster of the school concerned was also called upon to correct such age in the school records. The Headmaster contended that the age of the applicant could not be corrected without the approval, consent and permission of the University and the Registrar refused to correct the recorded age. On an application under Article 226 of the Constitution it was held that the applicant had no legal right to have his recorded age corrected nor had the University any legal obligation to correct such age. The minutes of the Syndicate of 1952 was considered and it was held that such rules at the highest might confer a power on the University to correct a student's age at its discretion. Once such discretion was exercised, there was no further legal duty or obligation of the authorities.

30. Mr. Roy next cited another decision of this Court in Kazi Khurshid Bakht Vs. Asst. Controller and Controller of Examinations, Calcutta University, . The facts of this case and the principles laid down in the decision are not of much relevance in the instant case and it is not necessary to consider the same in any detail.

31. Learned Advocate, Mr. S.N. Sanyal, appearing for the Government of India contended that whatever might be the decision of the University, the Government was not bound to accept the same, particularly when the University was seeking to correct its own official records after a long period of 38 years. He

submitted that in any event, the decision taken by the Central Government in the circumstances did not call for any interference.

32. On careful consideration of the facts and circumstances of the instant case, the relevant statutory provisions and the respective submissions of the parties, it appears to me that neither the order passed by the Vice-Chancellor on the 28th August 1976 directing that the contentions of the petitioner be accepted and that consequent correction of his age be recorded by the Controller's Office nor the subsequent action of the Vice Chancellor in personally correcting the original matriculation certificate of the petitioner can be upheld. No doubt section 9(6) of the Calcutta University Act, 1966, empowers the Vice Chancellor to take action as he may deem expedient in any matter which, in his opinion, is either urgent or of an emergent nature. But if any such action is challenged as not having been done under the powers conferred by the section, the Court has to be satisfied that the conditions precedent for exercise of powers under the said section do exist and are established objectively. In the instant case, the petitioner was seeking to correct his recorded age after a lapse of 38 years. It cannot be said that the matter was ex-facie of any particular urgency or of an emergent nature. In any event, there was no urgency, or emergency so far as the University was concerned, and the Vice Chancellor in my view, came to an erroneous conclusion that there was urgency or emergency within the meaning of the said section.

33. The Vice Chancellor also did not follow up the steps prescribed in the said section and did not submit a report to the appropriate authority or body as prescribed.

34. The action of the Vice-Chancellor in making a correction in the original certificate of the petitioner personally appears to be equally irregular and hasty. There is no record as to why after having directed the Controller's office to accept the petitioner's application he took up the matter himself again. There was no report to the University of this action nor was there any direction to note this correction in the records of the University.

To appreciate the events, on the 28th August 1976 the Vice-Chancellor directed the office of the Controller of Examination to make a correction of the age of the petitioner. The matter came back to the Vice-Chancellor with a note from the Assistant Controller on the 7th September 1976 stating that under the existing rules the petitioner's age could not be corrected in spite of the order of the Vice-Chancellor.

35. It appears that the Vice Chancellor did not at all consider the rules or regulations or the practice and procedure relating to correction of age of students followed by the University. There is no record the Vice Chancellor decided to waive such rules or regulations or practice and procedure in favour of the petitioner.

36. This brings me to the question as to how far was the University bound by the relevant rules or regulation or its practice and procedure in the matter of

correction of the recorded age of its students. As noted hereinbefore certain provisions in this connection were for the first time adopted by the Syndicate in 1938. At that time the University of Calcutta was governed by the Indian Universities Act, 1904 under which the Syndicate constituted the executive organ of the University. If the contention on behalf of the petitioner are accepted, such provisions approved or adopted by the Syndicate at best constituted administrative directions. But the same were followed consistently from 1938 with very little alteration upto 1951, when the University came to be reconstituted under the Calcutta University Act, 1951. Under the Miscellaneous Statutes, Ordinances and Regulations promulgated under the said Act of 1951, as already noted, the matters of practice and procedure in force earlier were directed to continue to be in force. At this stage and under such Miscellaneous Provisions what was a matter of administrative practice and procedure came to acquire a statutory force. The position remained unaltered under similar and corresponding provision in the Calcutta University Act, 1966.

37. In 1976 when the Vice Chancellor was seeking to exercise his emergency powers for correcting the age of the petitioner, the provisions laid down in 1938 and in 1952 in my view, had already acquired statutory force and the Vice Chancellor had no power under the said, section 9(6) or under any other statutory provision to give a go-by to the same. It was only the University in due exercise of its powers could repeal such provisions having statutory force. Till this was done none of the authorities of the University would be legally entitled to effect the correction of the recorded age of a student in the manner as was done in the instant case.

38. For the reasons above, the resolution of the Calcutta University Council on the 13th April 1978 to the effect that there was no evidence of correction of the age of the petitioner 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 petitioner cannot be held to be erroneous or illegal.

39. But the decision of the Council to take up the original application of the petitioner for correction of his age in the records of the University and rejecting the same, in my view, suffers from same infirmities.

40. Rightly or wrongly, the former Vice Chancellor had purported to exercise his emergency powers and had made a correction in the original certificate.

Prior thereto by a letter dated the 20th August 1976 the Assistant Controller of Examinations had informed the petitioner that the Vice-Chancellor had been pleased to accept his contentions regarding his correction of his age and the petitioner was called upon to send his original certificate to the Deputy Controller of Examinations. The matter ended with the original certificate being corrected by the Vice-Chancellor himself who had put his signature and seal on such correction and the corrected certificate was made over to the petitioner.

41. In such facts and circumstances, the principles of natural justice and fair play required that the petitioner should be informed that the University authorities were not accepting the action taken by the former Vice-Chancellor and were proposing to reverse or over-ride the same. The petitioner should have been given an opportunity to make his representation, if any, before the appropriate authority would reverse a decision made in favour of the petitioner, decide his application de novo and pass further orders. Here was a case where a matter apparently decided and disposed of in favour of the petitioner was being set aside and further decisions were being taken to the prejudice of the petitioner.

42. For the reasons as stated above I dispose of the Rule as follows :--

A writ in the nature of Mandamus will issue directing the University not to give any or any further effect to the resolution passed on the 31st May 1978 whereby the application of the petitioner for correction of his age in the records of the University was rejected. The University authorities are directed to give a further opportunity to the petitioner to make his representations in support of his application. The University Authorities will be at liberty to dispose of the application of the petitioner in accordance with law after hearing the representations of the petitioner, if any. In the event no representations is made by the petitioner within ten weeks from date the authorities are directed to dispose of the matter on the basis of the materials on record- The University authorities, in any event, will inform the petitioner of their decision in the matter,

After the disposal of the petitioner's application by the University Authorities as directed the petitioner will be at liberty to make representation in respect of his age to the Government of India if so advised. The authority concerned is directed to consider and dispose of such representation of the petitioner if any in accordance with law. After a final decision is reached by the University of Calcutta, the University authorities are directed to make corrections in the original Matriculation Certificate as may be necessary and return the same thereafter to the petitioner.

There will be no order as to costs.

There will be a stay of the operation of this order for four weeks.

Mandamus issued. appropriate direction given, no order as to costs.