
(1968) 08 CAL CK 0011
In the Calcutta High Court

Ashoke Kumar Goenka and Others

APPELLANT

Vs

West Bengal Board of Secondary Education and Others

RESPONDENT

Date of Decision : 09-08-1968

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 73 CWN 112

Hon'ble Judges : A.K. Saha, J

Bench : Single Bench

Advocate : Ranadeb Chaudhuri, S. C. Bose and B.P. Banerjee, for the Appellant; G.P. Kar, S.K. Roy, Harasit Chakraborty and Rupen Bose, for the Respondent

Final Decision : Allowed

Judgement

A.K. Saha, J.—The Rule was issued at the instance of some students of Shibnath High School, Khardha, for quashing certain decision refusing permission to them to appear at the annual High Secondary Examination and also for a direction upon the Board of Secondary Education to allow the Petitioners to appear at such examination.

The facts in a short compass are set out below.

The Petitioners, majority of whom are described as minors, are all students of the abovementioned School which is a Government aided Higher Secondary School. They were candidates for Higher Secondary Examination, 1968, (hereinafter referred to as the Examination) which was to be held by the Respondent No. 1 on and from 28.3.68. Under order of West Bengal Board of Secondary Education (hereinafter referred to as the Board) Headmaster of each of the school under the Board was directed to send up their respective candidates for the Examination without holding any test. Accordingly, the headmaster of this school sent up 120 regular candidates including the Petitioners for appearing at the Examination. The Petitioners were supplied by

the Headmaster with the prescribed forms issued by the Board. The Petitioners filled up these forms and deposited the requisite fees but they were told between 16th and 18th March that their respective admission cards were not then sent by the Respondent No. 1 to the Headmaster who asked them again to see him on 25.3.68. On this date, the Petitioners came to know from the Notice Board of the School and also from enquiries in the office of the School that the Respondent No. 1 could not be satisfied about the eligibility of the Petitioners to appear at the examination as it was alleged that in some cases names of certain candidates were not found in the Register or in the promotion register while in some others there was no indication of payment of tuition fees and the forms were not duly filled up. the Board, however, gave notice to the Headmaster to explain and although the Headmaster gave such explanation, the Board did not grant any permission to the Petitioners.

2. On the very same date, that is, on the 25th March, 1968, some of the Petitioners and their guardians themselves met the Deputy Secretary of the Board who pleaded his inability to do anything and some of the guardians met the Respondent No. 4 but without any effect. On the same date at about 3 P.M. one Gobinda Prasad Goenka and Sudhansu Kumar Roy Choudhury as representatives of the Petitioners called at the office of the Board and met the President requesting him to re-consider the decision. The President, however, equally pleaded his inability to re-consider the matter and told them that unless there was any direction or order from this Court allowing these Petitioners to sit at the examination, he had nothing to do in the matter. That is how the Petitioners felt aggrieved and came up to this Court and obtained the present rule. An interim order was also given directing the Respondents to allow the Petitioners to sit for the Higher Secondary Examination inter alia by issuing admit cards but the publication of results was stayed till the disposal of the Rule.

3. Upon these facts several grounds were taken but Mr. Ranadeb Chaudhuri, learned Counsel for the Petitioners at the hearing raised only two points. First is that orders or directions refusing to grant permission to these Petitioners to sit at the examination was wholly unauthorized, illegal and without jurisdiction as they were not made by the Board but by the Examination Committee. Second is that even assuming that the Examination Committee had any such power, such orders or directions were still bad in law as they were made without giving any opportunity to the Petitioners to make representation or of any hearing.

4. Before I take up these points for consideration I will dispose of two preliminary points raised by Mr. G. P. Kar, learned Counsel for the Respondent No. 1. In the first place the contended that there was no demand for justice in this case. Therefore, the present Writ petition was not maintainable. In support of this contention Mr. Kar referred to Rule 19 of the Rules framed by this Court for instituting petitions in the Constitutional Writ Jurisdiction of this Court and submitted that it was obligatory upon the Petitioners to demand justice in writing and to annex a copy thereof to the petition. Unless there was compliance with

this Rule, the Writ petition could not be entertained. I fail to see how this could be so. What is contained in Rule 19 is that in case of a demand for justice given in writing a copy therefore must be annexed to the petition. Here, what has been stated in the petition is that the Petitioners and their guardians and their representatives made oral demand for justice before the President and the Deputy Secretary of the Board. In such a case question will be whether such an oral demand would be sufficient. But even assuming that there was no compliance with Rule 19, can it be said that the Writ petition is bound to be thrown out at sight? In my view the answer must be in the negative. In exercising writ jurisdiction this Court is not bound by any limitation. By framing these rules this Court has imposed upon itself certain limitation for regulating its own procedure which will normally follow but this does not mean that under no circumstances the Court can detract from these rules. These Rules are only self imposed limitations and they can by no means override Court's paramount power of exercising its discretion conferred upon it under the Constitution in the facts and circumstances of a given case. That being so, the present Writ petition could not be thrown out for non-compliance with the said Rule 19 of the Rules of this Court.

5. Mr. Chaudhuri, however, sought to repel the above contention of Mr. Kar on a submission that absence of formal demand for justice is not always a bar. At any rate, an oral demand as has been made in the present case, is sufficient. According to him, in this case the examination was going to be held on 28th March 1968, and the Petitioner came to know about their fate only a few days back and they in their utmost anxiety to get into the examination had been to the School several times and then to the Office of the Board and then met both the Deputy Secretary as also the President up to 26th March, 1968. So if in spite of these oral representation made before the Authorities they have to make again a formal demand to the Respondent for justice, then the present writ petition would have been totally infructuous. In such events, Mr. Chaudhuri submitted, the Petitioners could not be precluded from prosecuting their writ petition simply because there was no formal demand for justice. In support of this contention Mr. Chaudhuri relied on a Bench decision of this Court reported in *Ashraf Ali Khan and Others Vs. State of West Bengal and Others*, , where it was held inter alia that there could be no objection to the maintainability of a writ petition simply because no formal demand had been made. I find that there is great substance in what Mr. Chaudhuri contends. It is well settled that where a demand for justice would be useless or would render a writ petition itself infructuous, absence of such demand cannot be a bar to a relief by issue of a writ in the nature of *Mandamus*. This view also finds support in a decision of this Court of D. N. Sinha, J. (as His Lordship then was) reported in (2) *Narendra Nath Chakravarty Vs. Corporation of Calcutta and Others*, . While dealing with the identical question upon a writ petition praying for a *Mandamus* directing the Corporation of Calcutta not to give effect to the agenda in a notice of a resolution to be moved by the Councillors, His Lordship observed (at page 112, para 24 of

the report) inter alia as follows:

The next preliminary objection taken is that the Petitioner No. 2, who is certainly a Councillor of the Corporation, did not submit a demand for justice before making this application. That he did not do so is admitted. It is however argued that under the facts and circumstances of this case, it would have been useless for the Petitioner No. 2 to send in a demand for justice. In spite of several objections made on the floor of the House, the motions tabled were allowed and discussions were allowed on the motions, although the meeting was an ordinary meeting of the Corporation and not specially convened for such a purpose. The Mayor has already allowed the motion to be tabled, on the erroneous ground that it was permissible by "convention". No notice has been taken of the demand for justice made by the Petitioner No. 1. A formal notice of demand by the Petitioner No. 2 would have been, under the circumstances, entirely futile. The principle is well established that where a demand for justice would be useless, the absence of it is not deemed to be fatal. In my opinion, this preliminary objection is not fatal to this application, because a demand of justice would, under the circumstances of this case, have been entirely futile. The plea of estoppel cannot also be entertained because there can be no estoppel on a point of law.

6. That the absence of formal demand cannot always be deemed to be fatal is also the view of the Supreme Court in the case of (3) Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . While dealing with the identical question Bose, J., who delivered the judgment of the Court observed inter alia (at page 22, para. 35 of the report) as follows:

In any event, an evasion or shelving of a demand for justice is sufficient to operate as a denial within the meaning of Section 46. In England the refusal need not be in so many words. All that is necessary is to show that the party complained of has distinctly determined not to do what is demanded (see 9 Halsbury's Laws of England, Hailsham edition, p. 772). And in the United States of America a demand is not required "where it is manifest it would be but an idle ceremony" (see Ferris on Extraordinary Legal Remedies, p. 281). The law in India is not different except that there must be a demand and a denial in substance though neither need be made in so many words. The requirements of Section 46 were therefore fulfilled.

7. In the instant case, it cannot be said that there was no demand for justice. There was such a demand but it was made orally and not in writing. This is also specifically stated in paragraph 23 of the writ petition, which was not denied by the Respondents in their affidavit in opposition. That being so, it cannot be said that there was no demand for justice at all in this case. If it is once established that there was a demand for justice in fact, it did not matter if such a demand was made orally or in writing because there is neither any form nor any prescribed manner to show that such demand must necessarily be in writing. The matter as has been observed by the Supreme Court in one of substance and not of form.

8. There is yet another aspect of the matter. It is the specific case of the Petitioners that they were not given any opportunity to make representation or of any hearing before such a decision refusing to grant permission to them to appear at the said examination. If that be so, then the Respondents must necessarily be supposed to act quasi-judicially and in taking such a decision if it can be shown that the Respondents acted without jurisdiction or in excess of jurisdiction or there is an error apparent on the face of the record or they failed to comply with the rules and principles of natural justice, then in that event such decision is liable to be corrected by issue of a writ in the nature of certiorari in which case the demand for justice is not necessary at all. Whether or not such a writ will lie in the matter can only be decided on entering into the merits of the matters in controversy. So, considering this aspect also it cannot be said that the present writ petition is not maintainable just because according to the Respondents no demand in writing for justice was made.

9. In support of the second point Mr. Kar submitted that the Petitioners obtained and filled up the forms for admission into the Higher Secondary Examination on suppression of material facts. On scrutiny of documents and records of the School the Respondents were satisfied that they were not qualified to sit at the examination according to the rules. Since they had no qualification to appear at the examination, it was argued that the Petitioners could not have any legal right to move this Court under Article 226 of the Constitution for quashing any decision taken by the Respondents against them. I am afraid, this argument is totally misconceived. Whether or not the Petitioners have any legal right to move the petition under Article 226 is to be decided not on the ultimate decision that may be taken either by refusing or granting relief to the Petitioners but on the basis as to whether interest will be affected by such a decision. In the instant case indisputably the Petitioners are the students of the School and they submitted the form supplied to them for appearing at the examination but their admissions were refused by the Board. So in face of these facts I cannot see how the Petitioners cannot have any legal right to challenge the decision refusing such admission to them. In such a case if the Petitioners who are themselves the intending candidates cannot apply to this Court, I do not know who else can. It is an elementary rule that the cause of action depends upon pleadings and not on the defence taken nor by the proof of it. Here the Petitioners have given sufficient particulars to establish that they have a legal right to challenge the decision taken against them by the Respondents in the present writ petition. the two tests indicated by the Supreme Court in (4) The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, , are firstly, that the Petitioner must have personal or individual right and secondly, that such right of the Petitioner was infringed by the acts and/or decisions of the Respondents complained of. In the instant case, I have no doubt that the above two tests laid down by the Supreme Court are fully satisfied. I, therefore, find no substance in the second point raised on behalf of the Respondents.

10. This brings me now to the two points raised by Mr. Chaudhuri in support of

the writ petition. In elaborating the first point Mr. Chaudhuri referred to and relied on Section 27 Sub-section (2), Clauses (g) and (j) of the West Bengal Secondary Education Act, 1963 (hereinafter referred to as the Act) and contended that it is only the Board who could grant permission to candidates to appear at the examination or to refuse or withdraw such permission. His argument is that in the instant case, the examination Committee passed a resolution refusing to grant admission to the Petitioners which it has no power to do under the Act (copy of the resolution marked as annexure "N", Item 4 of the supplementary affidavit in opposition of Respondent Nos. 1 to 4). It was contended that u/s 21, Sub-section (3), Clause (e) the Examination Committee inter alia has power to disqualify candidates for presenting themselves at the examination for reasons mentioned therein. According to Mr. Chaudhuri the powers contained in Clause (e) can only be exercised from post admission period, that is, after the candidates have actually presented themselves at the examination. The Examination Committee on the basis of this clause cannot usurp the powers conferred upon the Board u/s 27, Sub-section (2), Clause (j) of the Act. In this case, therefore, the resolution refusing admission to these Petitioners to sit at the examination having been passed not by the Board but by the Examination Committee the entire resolution is invalid and of no effect.

11. Mr. G. P. Kar, learned Counsel for the Respondents, sought to repel this contention on an argument that the Board is functioning through its Committee and one of such Committee is the Examination Committee which under the provisions of Section 21(3) (e) is empowered even to grant or refuse admission to the examination although it is the Board who has the supreme power to regulate the Secondary Education in all spheres. The Examination Committee under the Act is empowered to deal generally with the students in all stages including granting or refusing admission to the Petitioners to sit at the examination. In order to ascertain the correctness of this contention it is necessary to look over at several sections and Sub-sections referred to above. Section 18, it appears, provides for constitution of several Committees and one of such Committee is the Examination Committee as contained in Clause (c) thereof. Sections 19 and 20 deal with the constitution of Recommendation Committee and Syllabus Committee. Section 21(1) lays down as to how and with whom the Examination Committee would be constituted. Sub-section (2) provides that the President shall be the Chairman of the Examination Committee and the Secretary of the Board, the Vice-Chairman. Sub-section (3) provides for certain type of duties to be performed by the Examination Committee set out below:

(3) It shall be the duty of the Examination Committee to -

(a) arrange for the holding of examinations instituted by the Board including the fixing of centres for such examinations;

(b) appoint Paper-setters and Moderators for such examinations;

(c) appoint Examiners, Tabulators, Supervisors and Invigilators for such examinations;

(d) consider, approve and publish the results of such examinations; and

(e) disqualify candidates for presenting themselves at examinations for any reason considered to be adequate or for being declared as having passed any such examination on the ground of misconduct.

Section 27, Sub-section (2), Clauses (g) and (j) provide as follows:

Section 27(2): "Subject to any general or special orders of the State Government, the provisions of this Act and any rules made thereunder, the Board shall have generally the power to direct, supervise and control secondary education, and in particular the power.

(g) to make regulations regarding the conditions to be fulfilled by candidates presenting themselves for examinations instituted by the Board,

(j) to grant permission to candidates to appear at examinations instituted by the Board and to refuse or withdraw such permission if it thinks fit in accordance with such regulations as may be made in this behalf.

12. On a comparison of the language of Clause (e) of Sub-section (3) of Section 21 and Clause (j) of Sub-section (2) of Section 27 it appears that specific power is conferred upon the Board to grant permission to candidates to appear at the examination instituted by the Board and/or to refuse or withdraw permission if it thinks fit in accordance with such regulation as may be made in this behalf. It will be noticed also that under Clause (j) of Section 27(2) the Board has been empowered to make regulations regarding the conditions to be fulfilled by the candidates presenting themselves for examination instituted by the Board. So the distinction between the provisions of Clause (g) and Clause (j) of Section 27(2) is obvious. In the process of examination instituted by the Board, two stages are indicated. At the first stage, the candidates are required to obtain permission from the Board to appear at the examination which may be granted or refused or withdrawn by the Board as the case may be. At the second stage if the above permission is granted, the candidates may present themselves for such examination. This presentation for examination by the candidates in the relevant context has no other meaning than to actually appear at the examination. This appearance at the examination also may be subject to certain conditions which may be regulated by regulations of the Board. Now turning to Clause (e) of Section 21(3) of the Act it will be seen that the powers or duties have been conferred on the Examination Committee to deal with the candidates at the second stage, that is, the candidates presenting themselves for examination, inter alia for the purpose of disqualifying them for any adequate reason or on the ground of misconduct under different circumstances. This becomes all the more clear as the words "presenting themselves at the examination" in Clause (g) of Section 27(2) also occurs in Clause (e) of Section

21(3) of the Act and the Examination Committee is empowered to deal with the candidates from the stage of actually appearing at the examination. So the powers conferred upon the Board under Clause (j) of Section 27(2) and the powers conferred under Clause (e) of Section 21(3) upon the Examination Committee are not the same or similar powers nor in my sense they are overlapping. On a fair reading of these provisions it cannot be said that it is open to the Examination Committee as well to grant or refuse permission to the candidates to appear at the examination instituted by the Board by virtue of the powers or duties conferred under Clause (e) of Section 21(3) of the Act. They are quite different powers involving different types of duties conferred upon the Examination Committee and the Board respectively. This apart, it will be interesting to note that according to the dictionary meaning of the word "presenting" in the present context means appear or attend (see Shorter Oxford English Dictionary, 3rd Edition, Vol. II), also "appear esp. as a candidate for examination etc.". (Concise Oxford Dictionary, 3rd Edition). In the relevant provision in both the clauses u/s 21(3)(e) and Section 27(2)(f) this word "presenting" has been used in the present participle and the will invariably mean the case of a candidate actually appearing at the examination.

So considering this aspect also I have no doubt that the Examination Committee is only concerned with the candidates actually appearing at the examination.

13. Then again, a specific power, there is no doubt, has been given to the Board under Clause (j) of Section 27(2) to grant permission to candidates to appear at the examination and/or to refuse or withdraw such permission. It is well settled that "where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all" and that other methods of performance are necessarily forbidden. This is the view taken by the Judicial Committee in (5) *Nazir Ahmed v. King Emperor*, reported in 63 Indian Appeals 372 - AIR 1936 PC 252. The Supreme Court also took the same view in (6) *State of Uttar Pradesh v. Singhara Singh*, reported in AIR 1964 SC 359. While dealing with the identical proposition *Sarkar, J.* (as His Lordship then was) observed inter alia (at page 361, paragraph 8 of the report) as follows:

The rule adopted in (7) *Taylor v. Taylor*, (1876) 1 Ch. D. 426, is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method on which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be

rendered nugatory. The section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him.

14. That being the position in law, in the instant case, I have no doubt that the Examination Committee had no power to interfere and refuse to grant permission to the Petitioners by impugned resolution. It is true that the letter dated 26th March, 1968, was addressed by the Deputy Secretary of the Board to the Officer-in-Charge, Barrackpore Centre, in which it was stated that the candidates mentioned therein were disqualified by the Board in presenting themselves at the Higher Secondary Examination, 1968 and thus the Officer-in-Charge was directed not to allow them to appear at the examination in that centre. This letter again in my view is totally misconceived. For the reasons already given the intending candidates could not be disqualified before they actually appeared at the examination. If by this letter it was meant that the Board refused to grant permission to the Petitioners to appear at the examination, no such order or decision of the Board refusing to grant permission was placed before me excepting the resolution of the Examination Committee which was annexed by the Respondents to their supplementary affidavit. So it can be taken that this letter was written by the Deputy Secretary on his own initiative without understanding the effect of implication thereof. It is therefore clear that it was not the Board but the Examination Committee which by resolution actually refused to grant permission to these Petitioners to sit for the Higher Secondary Examination and in so doing it has transgressed the limits of its power conferred by the Act. So considering all these, the impugned resolution of the Examination Committee or all actions taken by refusing to grant permission to these Petitioners to appear at the examination must be struck down as invalid.

The view I have taken is sufficient to dispose of this Rule. Even then, I will deal with the other point raised by Mr. Chaudhuri.

15. In support of this point Mr. Chaudhuri contended that even assuming that the Examination Committee had power to refuse admission to the Petitioners to sit at the examination, then also this resolution was totally invalid as it was passed in violation of principles of natural justice. According to him the authority was bound to give these Petitioners an opportunity to make proper representation against proposed refusal and to give a hearing to them before they were condemned. It was contended that although there was no specific provision in the Act or no rule or regulation to give an opportunity to the Petitioners before refusing to grant admission, the powers or duties involved in such cases indicate that the Authorities are bound to act quasi-judicially. Here the Petitioners who are the intending candidates are allowed to submit forms filled up by them and deposit fees for appearing at the examination. So if there is any lacuna in filling up form or comply with other requisites, the students concerned should be given opportunity to fill up such lacuna or at any rate explain the real position before

they are refused to appear. It is true that the Headmaster of the School gave certificates about their eligibility but when the permission has been refused it is the interests of the students that have been affected and not of the Headmaster. There is nothing in the Act to show that the Headmaster was competent to represent the students before the Board. It was, therefore, argued that the principles or "*audi alterem partem*" must be observed and the concerned students, namely, the present Petitioners should have been given reassemble opportunity to make representation and of hearing before the permission to appear at the examination was refused to them.

16. Mr. Kar, the learned Counsel for the Respondents wanted to repel this contention on an argument that in refusing permission to the students the authorities acted merely administratively. There is neither any provision nor any rules by which a duty is cast upon them nor there is any circumstances which demanded that such authorities were under a duty to act quasi-judicially. Even assuming, it contended, that the decision refusing to grant permission must be made on an objective basis, then also in the instant case, the Board gave opportunity to the Headmaster to submit his explanation in respect of each of the case of these Petitioners and also secure information and necessary materials and on a scrutiny of relevant documents and papers of the School came to the conclusion that these students under the rules could not be admitted to appear at the examination. The Headmaster who submitted explanation did not ask for any personal hearing before the Board and unless a party asked for personal hearing, it was not obligatory on the part of the authorities to grant him a hearing in the matter. In support of this contention Mr. Kar relied on a passage, sub-para. 5 of the paragraph 26, page 709 of the reporting a Bench decision of this Court reported in (8) *Sovachand Mulchand Vs. The Collector of Central Excise and Land Customs and Others*, , to show that when a party does not ask for any opportunity of hearing, there is no harm in not following this. I fail to see how this case can be of any assistance to the Respondents. In this case in an adjudication proceeding the Collector of Central Excise and the Land Customs gave a notice to the Petitioners that he exported certain consignment of aluminium in violation of the provisions of the Sea Customs Act and directed him to submit his explanation. Accordingly, the Petitioner submitted his explanation but did not ask for personal hearing. Thus in the peculiar facts of that case, it was observed that when a party did not ask for an opportunity for granting a personal hearing, there could be no injustice in not following that course. On merits, however, it was held that although the Petitioner did not ask for a personal hearing, the connected papers which were relied on for arriving at the conclusion made by the Collector were never disclosed to the Appellant-Petitioner and he was not given a fair opportunity to meet the charges and, therefore, the order of adjudication was bad. In the present case, the facts are totally different. Here, some students were refused admission to appear at the examination only on scrutiny of the certain documents and papers of the School and on perusal of explanation given by Headmaster. In that background, the question whether

personal hearing should have been given to the Petitioners does not arise at all as no opportunity was ever given to the students but it was the Headmaster who was asked to submit an explanation. Therefore, patently in this case, the first principle of natural justice, namely, that the party whose interest is affected must be given an opportunity, was not complied with.

17. It was then argued that the Board has to deal with two lacs of students each year on the eve of secondary examination in the whole of the State and thus it is not possible to give opportunity to each and every defaulting student either to submit explanation or of any hearing before permission to appear at the examination is refused. So in order to cope with such a situation the Board is bound to operate more or less mechanically to see if the students concerned are bona fide candidates or otherwise eligible to appear at the examination. This really seems to me to be a strange argument. It cannot be denied that the Board has to deal with the majority of boys of tender age and immature and yet in adept in the ways of the world. The decision of the Board, it cannot be gainsaid, denying admission will have a serious effect on the whole of their future career. So if these forms were not duly filled up or material informations were wanting, it is the duty of the Board to give these students opportunity to fill up the gaps and supply material information at least by way of submitting an explanation even if it is assumed that no personal hearing was required. It is true that there are students who go out of their way and try deceitful means to obtain entry into the examination to somehow secure a certificate only by going through the formalities of examination possibly inspired by the old maxim "end justifies the means." But these cases must be carefully weeded out. Because such cases exist or the Board is simply overpowered by the sheer vastness of number of the students appearing at the examination, it can by no means justify its mere mechanical operation or purely an administrative approach in refusing permission to the students. If the Board cannot effectively deal with the case of each and every student from one office, then it can establish regional offices so that the cases of ineligible candidates may be carefully examined and excluded by giving each and every one of them opportunity to make representation before his admission into the examination is refused.

18. In a sense the Board has assumed the role of a teacher examining its students. So apart from the legal obligation a sacred duty is cast upon it to deal with the case of each and every student and give them opportunity to submit explanation or of hearing before they are told that are not eligible candidates for examination. These considerations are in my view all very relevant to test also the law on the point, to see whether the authority in taking such decision has to act judicially or quasi-judicially and to observe the rules and principles of natural justice. They are all the more necessary because there is no express provision in the Act requiring the authorities to act judicially or quasi-judicially in refusing or withdrawing permission. It is now well settled that such a duty can always be inferred from the surrounding circumstances and the rights of the parties affected, the nature of decision to be taken and its resultant effect on such rights

of the parties and the tenor or the intendment of the Act itself. See (9) *Regional (John M. Evoy) v. Dublin Corporation*, 1878 (2) LR IR 371; (10) *King v. London County Council*, (1931) 2 KB 215; (11) *In re. Bonwarilal Roy*, 48 CWN 766; (12) AIR 1950 SC 223 (*Province of Bombay v. Kushaldas*). Reliance written statement placed by the learned Counsel for the Petitioners on a Bench decision of this Court reported in (13) *Dipa Pal Vs. University of Calcutta*, and a decision of the Supreme Court reported in AIR 1962 SC 1111. In the above decision of the Supreme Court, it appears, while dealing with the identical question of the power and duties of the Examination Committee and the Board of Higher Secondary Examination for U.P. it was held that although there is not express provision under the Act or regulation casting a duty on the Committee to act judicially in exercising its powers under Rule 1(1) on consideration of the circumstances relevant in the matter the Committee is required to act quasi-judicially. Wanchoo, J. (as His Lordship then was) who delivered the judgment of the Court observed at page 1115 of the report as follows:

* * * * We are therefore of opinion that the committee when it exercises its powers under Rule 1(1) is acting quasi-judicially and the principles of natural justice which require that the other party, (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee. This view was taken by the Calcutta High Court in (13) *Dipa Pal Vs. University of Calcutta*, and (14) *B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others*, , in similar circumstances and is in our opinion, correct.

19. From the above decision of the Supreme Court, it will be noticed that the Authorities are required to act quasi-judicially both in the case of students who have been refused admission to appear at the examination or whose examination has been cancelled for adopting unfair means. There is yet another decision of the Supreme Court reported in AIR (1956) SC where it was held that although the enquiries made by the Enquiry Committee of the University canceling the examination result of the students cannot be equated with a criminal trial, there is no doubt that at any rate opportunities must be given to the students concerned to defend themselves and in holding such enquires the Committee must follow the rules and principles of natural justice. So applying the principles indicated above in the instant case, I have no doubt that although there is no express provision under the Act, a duty is cast upon the Board to act quasi-judicially in refusing admission to the intending candidates. It cannot take such decision only on a subjective process of its own. That being the position, a quasi-judicial approach to the whole question cannot be effectively made unless a reasonable opportunity is given to the intending candidates to defend themselves whose rights to appear at the examination would be affected.

20. In the instant case, opportunity was given to the Headmaster and not to the Petitioners but such course can by no means be treated as an opportunity given to the students and runs counter to the principle of natural justice.

Then again, it is not the Board but the Examination Committee which has taken a

decision but the duty being quasi-judicial, it is well settled that it cannot be delegated upon any other body in absence of specific provision under the Act.

21. Considering all these, I have no doubt that the impugned resolution of the Examination Committee refusing to grant permission to the Petitioners to appear at the Higher Secondary Examination suffer from serious infirmities and must be struck down as invalid.

The result is that the petition succeeds. The impugned resolution and all decisions, and all actions refusing permission to the Petitioners, to appear at the Higher Secondary Examination, 1968, are quashed. The Rule is made absolute.

22. Now, in view of the interim order already given by this Court on 27th March, 1968, allowing the Petitioners to appear at the examination I direct the Respondents to declare and publish their results of such examination. There would be no order as to costs.

Let a Writ both in the nature of Mandamus and Certiorari issue accordingly.