

(1985) 10 AHC CK 0053

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9434 of 1981

Ashwani Kumar Srivastava

APPELLANT

Vs

Institution of Engineers (India), Calcutta and Another

RESPONDENT

Date of Decision : 18-10-1985

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 372

Citation : AIR 1986 All 251

Hon'ble Judges : K.C. Agrawal, J;A. Srivastava, J

Bench : Division Bench

Advocate : Ashok Khare, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agrawal, J.—This writ petition under Article 226 of the Constitution has been filed for quashing the order dt. 29-5-1981 and 12-9-1979 and further for mandamus directing the respondents to declare the petitioner's result of Summer Examination hold in 1979.

2. Institution of Engineers (India), 8, Gokhale Road, Calcutta was formed at Madras in the year 1919. This institution was initially incorporated under the Indian Companies Act. 1913. Thereafter in 1935 a Royal Charter of incorporation was granted by the then sovereign viz. His Majesty the King in Council.

3. The objects and purposes for which the Institution of Engineers (India) was constituted were to promote the general advancement of Engineering and Engineering Science and their application in India and to facilitate the exchange of information and ideas on those subjects amongst the members of and persons attached to the institution and otherwise, and for that purpose :

(a) To promote and advance the science, practice and business of Engineering in all its branches (hereinafter referred to, as "Engineering") in India.

(b) To establish, subsidise, promote, form and maintain local Associations of members belonging to the Institution and others engaged or interested in Engineering so as to assure to each individual member as far as may be possible equal opportunity to enjoy the rights and privileges of the Institution.

(c) To diffuse among its members information on all matters affecting Engineering and to encourage, assist and extend knowledge and information connected therewith by establishment and promotion of lectures, discussions or correspondence; by the holding of conferences by the publication of papers, periodicals or journals, books, circulars and maps or other literary undertaking, by encouraging research work, or by the formation of a library or libraries and collection of models, designs, drawings, and other articles of interest in connection with Engineering or otherwise howsoever.

(d) To promote the study of Engineering with a view to disseminate the information obtained for facilitating the scientific and economic development of Engineering in India.

(e) To establish, acquire, carry on, control or advise with regard to colleges, schools, or other educational establishments where students and apprentices may obtain a sound education and training in Engineering on such -terms as may be settled by the Institution.

4. The institution framed the Bye-laws. It provided for enrolment of members. Clause 15 provides :

"Every candidate for election as Member or for transfer from Graduate or Associate Member to Member shall satisfy the Council that he possesses the following qualifications :

(i) & (ii)

(iii) Examination : He shall have passed Sections A and B of the Institution Examination prescribed by the council or possess an educational qualification recognized by the council as exempting therefrom,

(ix)

5. Clause 16 deals with Associate Member. It is as under.

"Every candidate for election as an Associate Member or for transfer from Graduate or Student to Associate Member shall satisfy the Council that he possesses the following qualifications :

(i) & (ii)

(iii) Examination. He shall have passed Sections A and B of the Institution Examination prescribed by the Council or possess an educational qualification recognized by the council as exempting therefrom.

(iv) & (v)

6. Clause 36 deals with Examinations. It is as under : --

"The Council shall cause the Institution Examination in Sections A and B to be held for election as Members or Associate Members or Graduates and the Studentship Examination to be held for election as Students in the cases in which such examination is or may be required further the Council shall also cause to be held Section 3 of the Institution Examination for the purpose stated in Bye-Law 15(v)."

7. Under Clause 37, the Council is empowered to form rules for such examinations, define the times and places at which they shall be held.

8. Under Clause 38, the Council was entitled to cause an Examinations" committee to be appointed and will further define the powers and functions of the same.

9. Clause 46 deals with expulsion and disciplinary action. It is as under : --

(i) The Council shall have the right to expire from the Institution any member who shall have, in the opinion of the Council, willfully acted in contravention of the Charter or the Bye-Laws or the Regulations from time to time in force under the Bye-Laws, or who, in the opinion of the Council, shall have been guilty of such conduct as shall render him unfit to remain a member of the Institution, provided that :

(a) The meeting of the Council at which the resolution shall be passed shall be specially convened for the purpose, and the person concerned shall have been given clear thirty days" notice that his conduct is to be enquired into, and is given an opportunity of stating his case to the Council.

(b) The resolution shall be passed by a majority of two-thirds of those present.

(ii) Upon a resolution of expulsion being passed, the name of the person concerned shall be removed from the Roll and he shall cease to have any connection with the institution. Neither of the Council collectively nor any member of the Council individually shall be made liable for anything done under this Bye-Law. Every candidate applying for election to the Institution shall be deemed in so applying to agree and accept as final any decision of the Council under this Bye-law.

(iii)....."

10. In the instant case, the petitioner had passed the Intermediate Certificate Examination conducted by the U. P. Board of High School and Intermediate Education. He also obtained a Diploma in Civil Engineering. After obtaining Diploma in Civil Engineering, the petitioner was employed as Junior Engineer in the Jal Nigam.

11. For further promotions in the Jal Nigam to the post of Assistant Engineer, the requisite qualification necessary is either to be Bachelor of Engineering and

Associate Member of Institution of Engineers. Respondent No. 1, which is an Institution of Engineers conducts Examinations for granting certificate of Associate Member of Institution of Engineers. The essential qualification for being eligible to appear in the Examination for obtaining certificate of Associate Member is that the candidates should have a Diploma in Civil Engineering. For being entitled to appear in the aforesaid examination conducted by the Institution, it is essential that the candidates are enrolled as students in the aforesaid Institution. The petitioner was enrolled as a student of the Institution on 17-11-1977. He, thereafter, filled up the prescribed form for the Section "A" Examination of Associate Member of the Institution of Engineers and was issued admit card for the summer examination of 1979. He appeared in that summer examination. Petitioner's result was withheld when it was declared in August 1979. He was informed by the Controller of Examination by the letter dt. Sept. 12, 1979 that his result had been withheld. The petitioner, thereafter, received the show cause notice dt. Mar. 16, 1981 informing him that the answer books pertaining to "Applied Mechanics & Strength of Materials", "Applied Thermodynamics" and Elements of Electrical Engineering & Electronics" had been found tampered. On this ground, the petitioner was alleged to be guilty of using unfair means. He was, as stated above, to appear to submit a statement of his case in writing to the Calcutta office by April 15, 1981. The petitioner submitted a reply to the aforesaid charge of having used unfair means by the letter dt. April 10, 1981. He contended that he had not adopted any malpractice in the three papers, a mention of which was made in the show cause notice. The petitioner was required to appear before the Sub-Committee on 15th April, 1981. The petitioner did not avail the opportunity of appearing before the Sub-Committee. The Sub-Committee enquired into the charges against the petitioner and after being satisfied that he was guilty of the charges levelled, passed the order which was communicated to the petitioner through the letter dt. 20th May, 1981. What was communicated to the petitioner is written below.

"Dear Sir,

With reference to my registered letter with acknowledgment due No. SS/S. 159664 dt. 16th March, 1981. I am directed to inform you that at a meeting of the Council specially convened for this purpose and held at Trivandrum on 4th May, 1981 it was resolved that you be expelled from the Institution under the provisions of Bye-Law 46. You have, therefore ceased to be a student of this institution as from 4th May, 1981.

I am, therefore, by this letter communicating to you the Council's decision in the matter.

Please return the Studentship certificate issued to you in accordance with Bye-law 46(III).

Yours faithfully, (D. K. Ghosh)

Officiating Secretary & Director General."

12. Through this petition, the petitioner has challenged that since he was not a member and was only a student under Bye-law No. 46, no action could be taken against him. He further claimed that since no effective opportunity had been given, the opportunity given to him was illusory and, as such, the order of expulsion passed against him was liable to be quashed.

13. On behalf of the Institution of Engineers, respondent 1 a counter-affidavit has been filed denying the allegations on which the Writs have been claimed by the petitioner against the said respondent No. 1. It was alleged that:

(1) respondent 1 was not a creation of any statute nor was it controlled by the Government of any State or the Union and was accordingly a private association.

(ii) that the inset pages had been changed and replaced and joined with the cover;

(iii) it was found that the Institution of Engineers' symbol pin-holes did not coincide, punch holes at the top left hand corners did not coincide and the staple pins were irregularly planted.

14. On the basis of these allegations, respondent 1 alleged that the Sub-Committees in its meeting held on 16th Aug., 1979 passed the following resolution.--

(i) that the results of the above candidates for the Summer 1979 examinations be withheld;

(ii) that the President be authorised to enquire into the matter and recommend suitable actions against the candidates and offending staff;

(iii) that the Allahabad Centre of examination be closed with immediate effect and be considered for reopening after being recommended by the Examinations Committee.

15. It was asserted in the counter-affidavit that though enquiries/investigations were made by the Sub-Committee appointed by the Examination Committee, the matter was placed before the Council of respondent 1 at the 510th Special meeting held at Trivandrum on May 4, 1981. The Council after enquiry into the conduct of the students including the petitioner unanimously resolved that all these students be expelled from respondent No. 1 under the provision of Bye-law 46.

16. Counsel appearing for the respondents raised a preliminary objection to the maintainability of the writ petition on the ground that as respondent 1, was a Corporation incorporated in Royal Charter, was a private association as against which no writ could be issued under Article 226 of the Constitution. Hence, the writ petition is liable to be rejected on that ground.

17. The Institution of Engineers was a body incorporated under the Royal Charter, 1935 containing a grant by the Crown of the United Kingdom in the form

of Letters Patent under the King's Sign Manual dt. Sept 9, 1935.

18. What is to be decided is whether the issuance of Charter was an act of Royal Prerogative.

19. In Introduction to British Constitutional Law, Fifth Edition, D.C.M. Yardley at page 48 Chapter III dealt with. The Royal Prerogative. Having held it difficult to find a satisfactory division of the existing prerogatives of the Crown, D.C.M. Yardley gave the following classification :

(a) Prerogatives which affect the person of the Monarch or the status of the Crown.

(b) Prerogatives which are of wider implication.

(i) Legislative,

(ii) Executive,

(iii) Judicial.

20. While dealing with Executive, it was observed : --

"Executive.-- Many of these Prerogatives are mere relics of past days, but the more important include the following. The Monarch is technically head of all the armed forces. The Monarch appoints and dismisses Ministers, civil servants and officers and members of the armed forces. The Monarch creates peers and confers honours. The Monarch may create corporations by Royal Charter. In cases of national emergency the Crown is responsible for defence of the realm, and is the only judge of the existence of danger from external enemies."

21. The purpose of quoting the above paragraph is to show that incorporation by a Royal Charter was the executive and not the legislative function of the King.

22. Palmer in Company Law Twenty First Edition at page 825 dealt with the difference in character between a chartered company and a company formed by or under an Act. It was said at page 825 that:

"The Crown, in the exercise of the royal prerogative, has power to create a corporation by the grant of a charter to persons assenting to be incorporated. This prerogative is founded on the common law.....

23. The statement of law in this regard further given is : --

"There is a difference of fundamental character between a chartered company and a company formed by or under an Act of Parliament."

24. The next question is as to what is the effect of the Constitution of India on the Royal Charter under which a company was incorporated. It cannot be doubted that in view of the Constitution the United Kingdom would not exercise any Prerogative power in our country. Prerogatives which were issued from the Crown incorporating a company has lost its efficacy and liability. Being an

executive power, it could not be considered to be law in force within the meaning of Article 372 of the Constitution of India. In *Natendra N. Chowdhury and Another Vs. The Institute of Engineers India and Others*, it was held :

"In view of the Constitution of India the Crown in the United Kingdom would not exercise any prerogative power in our country. Nor would the Crown recall the charter for it might amount to repeal a law in force in India. The Crown has now no constitutional function to perform in relation to India. The function relating to approval of bye-laws is done by a Committee of Her Majesty's Privy Council under the prerogative, and hence the defendant institution cannot approach the Privy Council in exercise of prerogative powers. It could not also be said that by virtue of Clause 22 of Adaptation of Laws Order read with Article 372 of the Constitution the Crown could exercise under Clause 13 of the Charter any authority. The Constitution of our country was supreme and the Royal Prerogative did not operate in this country".

25. In order to support his contention that the act of issuing Royal Charter incorporating a company was a legislative act, hence, the (sic) within the meaning of Section 372 of the Constitution, counsel relied upon Wade and Phillips Constitution Law 5th Edition page 352. We are unable to find anything in the passage relied upon to show that the Prerogative issuing Royal Charter incorporating a company was a legislative function of the Crown. It may be true that in some other colonies, the Royal Charter is still in force but that is not conclusive or determinative of the nature of power of the Crown when a Royal Charter incorporating a company is granted. In our view, the Royal Charter, in the instant case, granted by the Crown was in exercise of the executive function and as such it could not be hit by Article 372 of the Constitution.

26. There is not any material difference between the expression "existing law" and "a law in force". The words "law in force" are wide enough and include not merely a legislative enactment but Regulations and Orders. The incorporation under a Royal Charter is neither a regulation nor an order. So it does not fall within the expression "existing law."

27. In an unreported decision of the Calcutta High Court given in *Radha Kanta Samanta v. Secretary, Ministry of Education Matter No, 803 of 1976*, decided on 7-3-1977, a similar controversy relating to the incorporation of the Institution of Engineers i.e. respondent 1, came up for consideration. The Calcutta High Court held that the Institution of Engineers was not a body created by any Act and as such was not an "authority" or was "other authority" within the meaning of Article 12 of the Constitution.

28. After having found that it was not an authority the Calcutta High Court went on to consider the nature of the Institute of Engineers (India). It held :-

"The fact that the institution has continued to exist after the independence of India is not relevant to the point at issue apart from the charter it was also incorporated under the Companies Act, in force at the relevant time and it cannot

claim to be of a status higher than a company or a registered society....."

29. The purpose of citing the above decision of the Calcutta High Court is to point out that the Institution of Engineers (India) in that case was also not treated as the creature of any Statute. We are in respectful agreement with the view taken therein.

30. Before us, the learned counsel has cited the decision in Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain, AIR 1976 SC 888. In this case, the question before the Supreme Court was about the status of the Executive Council of a Degree College. This decision of the Supreme Court does not help us in finding that the Institution of Engineers (India) was the body created in accordance with the provisions of the Statute. As we have already pointed out that it was incorporated by a Royal Charter and was not created by any Act. Since respondent 1 does not owe its existence to a statute being not a statutory body, no writ petition under Art 226 of the Constitution lies against it.

31. For what we have said above we uphold the preliminary objection.

32. Since we do not wish to confine ourselves to the preliminary point, we proceed to discuss the points raised on merits. After the examination was over, complaints were received by the Secretary about the malpractice committed by some of the examinees including the petitioner at the Institution Examination held in Summer, 1979 at Allahabad Centre. On receipt of these letters, the answer books of the candidates who appeared from Allahabad Centre were checked and it was found that inset pages of the answer books of 16 candidates including the petitioner had been changed and that all the answer books of the candidates bear definite marks that the inner pages had been replaced and joined with the cover. It was further found that the Institution of Engineers' Symbol pin-holes did not coincide, punch holes at the top left hand corners did not coincide and the staple pins were irregularly planted.

33. In the meeting held on Aug. 16, 1979, the Committee passed a resolution :

(i) that the results of the above candidates for the Summer 1979 examinations be withheld;

(ii) that the President be authorised to enquire into the matter and recommend suitable action against the candidates; and

(iii) that the Allahabad Centre of Examination be closed.

34. It was in pursuance of this resolution that the Controller of Examinations vide letter dt. 12-9-1979 informed the petitioner that his result had been withheld as directed by the Examination Committee.

35. Through the letter dt. Mar. 16, 1981, the petitioner was informed that the Council would hold a meeting on May 4, 1981 at 9 A.M. at Trivendrum in connection with the charge relating to malpractice adopted in the examination, the details of which were given at the foot of this letter. The petitioner was called

upon either to appear in person before the Council or to submit a statement of his case in writing. The charge mentioned in this letter was that :

"In the last Summer 1979 Examinations held at Allahabad Centre in which Shri Dinesh Chandra Pandey (S. 150646) appeared in Section B Examinations, the answer books pertaining to Theory of Structures" Construction and Foundation Engineering", Fluid Mechanics" "Surveying", "Quantity Survey and Valuation", and "Railways" submitted by Shri Dinesh Chandra Pandey had been found tampered. The Wire-stitched pins were removed from their original places and placed at different places, the "IE" symbol pin holes of the cover and inside pages did not coincide, punch holes at the top left hand corner of the cover and inside pages did not coincide, suggesting removal of the inside pages and replacing them later. Evidently Shri Dinesh Chandra Pandey had adopted unfair means and was thereby guilty of serious malpractices, misconduct, and major misdemeanour in the Institution's examinations rendering himself liable for expulsion from the Institution."

36. The petitioner submitted a reply expressing his inability to reach Trivendrum. He, however, gave the explanation stating that he was innocent and had not committed any malpractice for which he could be expelled or debarred. The petitioner, thereafter, received a letter dt. 28-5-1981 intimating him that at a meeting of the Council held on 4th May, 1981, it was resolved that the petitioner be expelled from the Institution under the provisions of bye-law 46. As a consequence of this resolution, the petitioner ceased to be a student.

37. Sri Ashok Khare, counsel appealing* for the petitioner urged that the notice given to the petitioner since was not accompanied with the papers on the basis of which he was charge-sheeted, the entire proceedings taken against him from the stage of withholding his result to the expulsion were illegal. He urged that the petitioner in the absence of the papers and materials against him was unable to reply to the charge, and, as such, the principles of natural justice which were applicable to these proceedings were not complied with resulting into making the order expelling him as void. We have mentioned above the charge which was against him. It was not possible in the present case to have supplied the materials in respect of the charge which had been framed, against him. There is no fixed procedure required to be followed in each case with rigidity for providing an opportunity to the person who is required to explain the same.

38. In Union of India and Another Vs. Tulsiram Patel and Others, the Supreme Court has noted at page 419 : --

"The rules of natural justice are not statutory rules. They do not apply in the same manner to situations which are not alike. They are not cast in a rigid mould nor can they be put in a legal strait-jacket. They are flexible and can be adapted and modified by statutes and statutory rules and also by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed."

39. The principles of natural justice required that the petitioner was not expelled unheard and that the persons deciding his case should not have been biased against him. In the instant case, neither of the two things" has been established. The petitioner"s contention that he should have been supplied the materials on which the charge was framed is impracticable. Requirement of supplying materials will depend from fact to fact of each case. Where it is feasible and practicable, it may be necessary to call upon the authority concerned to meet the same. But, if in the light of the charge framed against the petitioner this point is considered, the only view possible would be that non-supply of the materials could not be a ground for holding that the proceedings were vitiated.

40. Moreover, the petitioner had been asked to appear before the Committee which was enquiring into the charge against him. He should have appeared before it, if he wanted to look into the evidence which was against him. The contention of the petitioner"s learned counsel, therefore, that the materials had since been undisclosed to him, cannot be accepted. The charge had been clearly and without any ambiguity, regarding which enquiry was being made had been intimated to him. The petitioner could and in fact had replied the same fully. The explanation was not found satisfactory and after consideration of the same, the charge was found established. On the facts of the present case, we are, therefore, satisfied:

- (i) that he should have known the case, he was required to meet, and
- (ii) that he must have an adequate opportunity, of meeting that case, been given.

41. Counsel urged that fairness required the Council to give the reasons for the orders passed against him and as the reasons were not given to him, the order was invalid. (See N.M. Desai Vs. The Testeels Ltd. and Another, and the The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, . Our"s is a case different than those which were the subject-matter of consideration by the Supreme Court. In a case of student who is found to be guilty of using unfair means, intimation of reasons could not be insisted upon. Whether giving of reasons is the requirement of principles of natural justice or not is not a controversy which is required to be decided in this case. If all the papers are read together, there would be no difficulty in finding that the explanation having not been found to be satisfactory the conclusion which necessarily followed was that the circumstances established the petitioner to be guilty of the charge. No one else excepting the petitioner could replace the papers.

42. In connection with what we have said, above, we further wish to point out that the Committee which had enquired into the matter and the Council which ultimately found the petitioner guilty had not been inimical in deposing of the same. They had no axe to grind. Neither was a mala fide imputed nor could be found in the circumstances of the present case. Consequently, his expulsion having been based on consideration of relevant facts could not be set aside.

43. For the argument that even before withholding the result, the petitioner ought to have been given an opportunity, what we may observe is that that was a step pending decision of the petitioner's case. Withholding of result was incidental to the main power of expulsion. Such a power is implied in the main power and for expulsion pending enquiry, no opportunity was required to be given, inasmuch as it was tentative and not final

44. Union of India and Another Vs. Tulsiram Patel and Others, was strongly relied upon by the petitioner's learned counsel for his submission that the principles of natural justice had not been complied with, as is laid down in this case. We are unable to agree with this, submission. The petitioner was given the charge-sheet, he was called upon to show cause and further been permitted to appear before the Council which was enquiring the same. Nothing more could be, in the circumstances, expected.

45. For what we have said above, we dismiss the writ petition with costs.