

(1997) 05 CAL CK 0012

In the Calcutta High Court

Case No : U.P. No"s. 3576 and 3583 of 1993

Dr. Pawan Kumar Agarwal and etc.

APPELLANT

Vs

The University of Calcutta and Others

RESPONDENT

Date of Decision : 23-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1998 Cal 105

Hon'ble Judges : Shyamal Kumar Sen, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shyamal Kumar Sen, J.—The aforementioned writ petitions were taken up together by consent of parties since common questions are involved. The writ petitioners have challenged the order of cancellation of admission to M.D. Course in the respective subjects in which they were admitted which was issued on 23-8-1993. The fact of such cancellation of admission was communicated by letter issued by the Secretary faculty council of P.G. Studies and medicine, nursing etc. dated 23-8-1993 which is contained in Annexure "C" to the writ petitions. The writ petitioner Dr. Pawan Kumar Agarwal received the said letter of cancellation on 26-8-1993 and Dr. Adit Dey received it on 11th Sept. 1993. By letters dated 29-8-1993 and 12-9-1993 the petitioners duly protested against the said order of cancellation and demanded justice. However their representations remained unanswered.

2. In September, 1993 the writ petitioners filed the writ petitions. An interim order was passed by me on 23rd Sept. 1993 directing stay of operation of the order of cancellation till the disposal of the writ petitions. The University authorities did not make any attempt to vacate the stay or to prefer an appeal. The petitioners continued their studies, completed the course and appeared at the final M.D. examination in their respective subjects in May, 1996. But so far as the petitioners are concerned their results were withheld by the respondent

University. Applications for contempt were filed before me whereupon order was passed by me directing the authorities to appear before me and bring the results of the petitioners in a sealed envelope. The University authorities however failed to comply with the said order.

3. On or about 1st April, 1996 the Division Bench disposed of the appeal with the observation that the writ petitions should be disposed of expeditiously.

4. The main contention of the learned advocate for the University is that the petitioners are beneficiaries of fraud practiced by Buddhadev Hajra Chowdhury, a clerk in the department of Basic Medicine who, it is alleged by one of the petitioners, Sujay Gupta, had demanded a sum of Rs. 15,000/- from him for procuring admission of Sujay Gupta to General Surgery Course. On 30th July, September, 1993 a letter was received from Sujay Gupta. The said letter has been annexed to his writ petition being C.O. No. 18869 (W) 1993 and marked as Annexure-"B".

5. In the letter dated 30-9-1993 the petitioner Sujay Gupta had alleged that he was competent in securing his admission to the General Surgery Course and he was not interested in seeking admission through back-door or through bribing. He wanted to know whether his admission was obtained by any illegal means.

6. On the basis of the said letter it has been alleged by the University that the Vice Chancellor had directed an enquiry to be made about the allegation and to take further action, if necessary. On the basis of the above, the Secretary of the Basic Medicine scrutinised the papers and noticed that various manipulations and overwriting in papers appears on the Register as well as in the application forms of some of the candidates. The matter was thereafter brought to the notice of the Vice-Chancellor who directed cancellation of the admission of a number of students including a.l the writ petitioners herein. A copy of the note which contains the direction of the Vice-Chancellor and other details, have been disclosed and also made Annexure- "C" to the written notes of arguments submitted on behalf of the University.

7. Further in accordance with the directions of the Vice-Chancellor, an Enquiry Committee was constituted who went into the matter in great details, issued notices to the candidates whose admissions were cancelled. The details of such notices and other relevant particulars will appear from the report, a copy of which has been given to the Court as also to all the other parties.

8. Besides, the writ petitioner there were 6 others examinees whose admissions have also been cancelled. Names of such persons are set out below :--

Name Roll No. Admitted in

1. Debasis Chakraborty 021170 MS (ORTH)

2. Samiran Das Gupta 021172 MD (O & D)

3. Sutapa Roy 020541 D. C. H.

4. Gautam Patra 021419 MD (PATH)

5. Indranil Roy 020234 MD (PATH)

6. Smt. Sipra Choudhury 023148 MD (PATH)

9. It appears that as many as two persons did not file any writ application and have accepted their cancellation. It also appears from the report that out of nine to whom notices were issued, Pawan Kumar Agarwal and Adit Dey did not appear before the Enquiry Committee.

10. It is the contention of the learned Advocates for the petitioners that the cancellation of admissions were made without giving any opportunity to the concerned examinees before such cancellation was made.

11. It is the contention of the learned advocate for the University that such contention is bereft of any force inasmuch as by reason of the manipulations and overwritings, an emergent situation had arisen and the matter required immediate action to be taken. In support of his contention Mr. Mitter has relied upon the following decisions :--

(i) Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another,

(ii) AIR 1971 963 (SC)

(iii) Sankar Das Paul v. State of West Bengal reported in (1989) 2 CHN 353.

12. Mr. Hirak Miller, learned advocate for the University has further submitted that an immediate action was needed as a detailed enquiry would have taken a very long time and same would prejudice the cases of the writ petitioners. In any event, there are cases where post decisional hearing have already been accepted as sufficient. In this case such opportunity was given when the Committee which went into the matter had issued notices requesting such party to appear and to make statements and submissions. In support of his contention he has relied upon the judgment and decision in the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others,

13. Mr. Mitter has further submitted that right of hearing is not a sine qua non in every matter in which a decision affects the right of party which is required to be taken. The question of issuance of a notice is entirely dependent on circumstances of a particular case. In support of his contention he has relied upon the judgment and decision in the case of K.L. Tripathi Vs. State Bank of India and Others,

14. It has further been submitted on behalf of the University that manipulations were made by Buddhadev Hajra Chowdhury. It has also been contended that Buddhadev Hazra Chowdhury does not and cannot have any authority in securing admission of one or the other candidates. He must have done at the behest of others. It should be logical to assume that Buddhadev Hazra Chowdhury must have done the manipulations mentioned aforesaid at the instance of the person

who actually gained advantage through such manipulations.

15. It has been submitted that each of the writ petitioners gained admission through such manipulations and as such are direct beneficiaries of such wrongful and illegal acts. In support of his contention he has relied upon the judgment and decision in the case of *Morley v. Loughnan* reported in (1893) 1 Ch 736. In the aforesaid decision it was held that if any fraud has been committed then no one can retain advantage of any such fraud under any circumstances. It has further been held that regardless of the fact they were instrumental in procuring the fraud, the beneficiaries were even totally ignorant of the fraud, yet the Court had ordered refund of the money which was earlier received by them through another person who committed the fraud.

16. It has also been contended by Mr. Mitter that it is quite true in the report of the committee, nothing has been said about the students or their involvement in manipulation, yet nefarious role that was played by Buddhadev Hajra Chowdhury, has been very clearly established. In view of the aforesaid, none of the cases is of any assistance to the writ petitioners.

17. It is the contention of Mr. Mittar that writ Court should not interfere with the decision of the University or College regarding admission to such institutions. There is no question of showing mercy to students. In support of his contention he has relied upon the following decisions:--

(i) *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*,

(ii) *U.P. Junior Doctors' Action Committee and Others Vs. Dr. B. Sheetal Nandwani and Others*,

(iii) *Guru Nanak Dev University Vs. Parminder Kr. Bansal and another*,

(iv) *State of Maharashtra Vs. Manubhai Pragaji Vashi and others*,

(v) *Prem Parkash Kaluniya Vs. The Punjab University and Others*,

(vi) *M.D. University, Rohtak Vs. Rumika Yadav and others*,

18. Mr. Mitter has further submitted that it is quite true as argued by the petitioners that the report did not indict any of the students, but that, according to him, was only the proper thing to do on the basis of the terms of reference, the same did not authorise them to go into the question of involvement of the students at all. He has further submitted that the matter has been referred to the Police Authorities and it is expected that the Police Authorities would take proper action. He has further pointed out that according to ordinary experience apart from the students who are beneficiaries of the manipulations no one can be beneficiary of such manipulations, and as such the students who could get admission due to manipulations would not at all be interested in such acts of irregularities or manipulations.

19. Mr. Mitter has further argued that there are enough circumstantial evidence against the students regarding their complicity in the acts of manipulation of Buddhadev Hajra Chowdhury. Mr. Mitter has also contended that the Writ Court being a Court of equity if there is any evidence that fraud or illegal acts have been committed, Writ Court should never lend its assistance to such writ petitioners.

20. Since the writ petitioners and the respondent University have relied upon the findings of the Enquiry Committee formed by the University, it is necessary to consider the findings and recommendations of the said Enquiry Committee so far as each of the writ petitioner is concerned. Observations made inter alia by the Enquiry Committee with regard to writ petitioner Adit Dey appearing at page 16 of the said report, may be considered in this connection. The said observation is noted hereinbelow :

"In the usual course Sri Dey was to be placed first in the waiting list for MS (Orth) and fifth in the waiting list for MS (GS). The selection of the petitioner was irregular inasmuch as the names of Bhaskarjyoti Pal and of Somprakash Basu should have figured above the petitioner's in the wait list for MS (GS). It is also observed that Sri Adit Dey should have been selected in MS (Orth) course --but had irregularly not been given admission into the said course because of the tampering of records by one Buddhadev Hajra Chowdhury.

21. It may be noted in this connection that the Enquiry Committee did not find any material to show that the petitioner himself was responsible for the alleged tampering in any manner whatsoever. On the contrary the Committee observed that:--

(a) Neither the Dean nor the Secretary could explain satisfactorily how such things (i.e. the alleged tampering by Mr. Hajra Chowdhury) could escape their attention.

(b) That certain lapses on the part of the Dean contributed to the chaos in the admission process.

(c) The facts and circumstances of the case, show that the Dean has to accept moral responsibility for the irregularities in admission into the post-graduate medical courses, 1993 in so far as he showed negligence in his duties and committed some serious mistakes while discharging his duties as the Chairman of the Admission Committee, thereby landing the University in a situation where its credibility has to be under question.

(d) The Committee further recommended that subject to clearance by the High Court, Sri Adit Dey be offered a seat in MS (Orth) course and that disciplinary action be instituted against the said Buddhdev Hajra Chowdhury and the Secretary.

22. It may be noted that the report dated 29th July, 1994 was accepted by the Syndicate of the University on 2nd August, 1994 and the Syndicate ordered that

disciplinary action be instituted against Mr. Hajra Chowdhury and the Secretary (who was forthwith suspended).

23. It appears from the Report that it is clear that no blame can be laid on the petitioner for any alleged irregularities that may have occurred during the admission process. There is nothing on record to show that the petitioner committed any fraud or was a beneficiary of fraud. On the contrary, it appears from the said report that the petitioner was deprived as a result of tampering from pursuing MS (Orth) which was the subject of his first preference. The petitioner had already obtained a diploma in Orthopaedics in 1991 and a MS degree in the subject would have strengthened the petitioner's qualifications substantially.

24. Judgment and decision in the case of *Morley v. Loughnan* reported in (1893) (i) Ch D 736 does not apply to the facts of the instant case. The case of undue influence can only be established by evidence which is not open in the instant cases. In the said case the person who, alleged undue influence established the same by instituting a suit. In the instant cases the records do not prima facie show that undue influence has been exercised by the petitioners over the University. The report of Enquiry Committee upon which reliance has been placed by Mr. Mitter also does not go to show that undue influence has been exercised by the petitioners. The Court cannot proceed on the basis of mere assumption that since the petitioners are the beneficiaries, the petitioners must have exercised undue influence over Buddhadev Hajra Chowdhury.

25. Even if there had been no tampering, the petitioner (Dr. Adit Dey) would have easily secured admission in MS (Orth) Course which was his first choice on the basis of his position in the list and should have completed his studies smoothly. There is nothing on record to show that the petitioner was offered a seat in the MS (Orth) Course which he declined.

26. It also appears that the petitioner was eligible for selection in MS (GS) course. It has not been shown on behalf of the University authorities that the persons whose names appeared before the petitioner in MS (GS) waiting list had been deprived. On the contrary, the petitioner has relied on the chart annexed with supplementary affidavit affirmed in 17th January, 1997.

27. It does not appear from the records that the students whose names appeared before the petitioner Dr. Adit Dey were in any way deprived. On the contrary the petitioner Adit Dey would have been admitted in the MS (Orth) if the tampering had not been there and no reason has been disclosed how the petitioner, Adit Dey, could have been involved by the said tampering or how the petitioner is involved in the said tampering?

28. It may be noted that there were two vacancies in the MS (GS) course after the publication of the second Merit List. It seems to be suggested by the respondents that these two vacancies should have been filled in by one Somprakash Basu and by one Bhaskarajyoti Pal whereas it appears from the

records that the latter candidate had been selected in the MS (G & O) course in the first list published in April 1993 and therefore the question of his name figuring in the wait list for MS (GS) does not arise. This fact, it seems, had been suppressed from the Enquiry Committee. Moreover, the fact that the name of Bhaskarjyoti Pal being excluded from the wait list was not on record at the time the Vice-Chancellor issued the impugned order as it was admittedly discovered subsequently during the Enquiry.

29. For the purpose of considering the order of the Vice-Chancellor cancelling the admission in its proper perspective it is necessary to consider the facts involved in this proceeding. It is on record that the Vice-Chancellor of the University directed that an enquiry be made into the alleged tampering of the admission documents on the very same day that he issued the impugned order cancelling the admission of the petitioner.

30. It therefore, appears that prior to the cancellation of admission of the petitioners there were no proper investigation and that the petitioners were not admittedly given any opportunity of hearing. There was also no prima facie finding against the petitioners that they were involved in the tampering in any manner whatsoever at the time cancellation order was passed. In the preamble to the said report of the Enquiry Committee it appears that the Vice-Chancellor cancelled the admissions on the basis of a note given by the Secretary. The said note however did not give any substantial evidence to show nor did it show that the petitioners were involved in tampering nor did the said note contain any mention of the petitioner's (Dr. Adit Dey) eligibility for selection into the Orthopaedics course. It appears that the Vice-Chancellor acted mechanically on the said note without verifying the validity of the statements made therein and depended solely on the recommendations of the Dean and the Secretary, although it appears from facts on record that the Dean cannot avoid the responsibility. The petitioner, Adit Dey, has specifically denied having received any notice from the Enquiry Committee to come and appear before them although representation was made on behalf of the petitioner, Adit Dey demanding justice by letter dated 12th Sept. 1993. In any view of the matter however the said report on which so much reliance has been placed does not in any way indict the petitioner, Adit Dey nor mentioned that the petitioner was involved in the process of tampering or had anything to do with the same. On the question of fraud on which submissions had been made on behalf of the University, it appears that the respondents have failed to plead any particulars of any alleged fraud practised against the University. No material or evidence has been disclosed showing that the petitioner has any nexus whatsoever with the persons suspected of tampering with the documents relating to admission. On the contrary it appears from the record produced by the University during the hearing that due to fault and/or negligence of the respondents the petitioner Dr. Adit Dey has in fact been deprived of pursuing the subject of his first choice (being Orthopaedics) and made to enrol for the MS (Gen. Surg.) which was his second option.

31. It is well settled that "fraud like any other charge of criminal offence made in civil or criminal proceedings must be established beyond reasonable doubt. A finding as to fraud cannot be based on suspicion and conjecture." In this connection, the following decisions have been relied upon by learned advocate for the petitioners may be taken note of

(i) Svenska Handelsbanken Vs. M/s. Indian Charge Chrome and others,

(ii) A.L.N. Narayanan Chettyar v. Official Assignee, High Court, Rangoon reported in 1941 PC 93.

32. The respondents have failed to make out or to prove that the petitioners were beneficiaries of fraud since as to appears that the petitioners would have easily secured their admission even if there had been no tampering.

33. It is significant to note that the respondents have sought to rely on the affidavit of the Dean and the Secretary although the said Dean had to resign after the publication of the Enquiry Committee report and the Secretary too had been suspended by the University and disciplinary action had been instituted against him as per the recommendations of the Enquiry Committee.

34. It was suggested on behalf of the University that the petitioners were given opportunity for a post decisional hearing but the same was not availed of, since the notice was served to appear before the said Committee appointed for the purpose of considering the irregularities. Moreover, the said Enquiry Committee was constituted for the purpose of investigating the irregularities relating to admission and there was no scope for the Enquiry Committee to consider the question of cancellation of the petitioners' admission. Terms of reference did not provide any scope of the Committee to go into the question of validity of cancellation of admission. The Enquiry Committee was formed not for the purpose of adjudicating whether or not the petitioners were eligible for admission, but it was for the internal purposes of the University. In any event, however, no notice was issued to the petitioners by the Enquiry Committee as alleged. No evidence has been produced on behalf of the University to show that notices were issued to the petitioners by the Enquiry Committee.

35. It appears from perusal of records that there is no scope of attributing or linking the petitioners with the tampering of records relating to admission of the petitioners.

36. It is well settled by several decisions of the Supreme Court that if a student is selected due to irregularity not attributable to the concerned student, the student should not be made to suffer and he should be allowed to continue and complete his studies. In support of his contention the learned advocate for the petitioner Dr. Adit Dey, has relied upon the judgment and decision in the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, . In the aforesaid decision the appellant was a teacher in the Government High School, Dumarkha in the District of Jind (Haryana). The University of Kurukshetra was running law

classes or three years course and had extended the facility to persons who ere in service to attend the evening classes and complete the three years" course in that manner. The appellant decided to take the benefit of the facility given by the Kurukshetra University and joined the LL.B. Part I classes some time in the year 1971. According to the Faculty of Law the appellant was given the option to clear certain subjects in which he may have failed at one of the examinations before completing the three-years course. The students were to appear in six papers each year. In April, 1972 the appellant appeared in the annual examination of Part I but failed in three subjects, namely, Legal Theory, Comparative Law and Constitutional Law of India. Subsequently he was promoted to Part II which he joined in the year 1972. Under the University Statute the appellant was to appear in Part II Examination in April 1973. On April 26, 1973 the appellant applied for his Roll Number to the University in order to reappear in the subjects in which he had failed and to clear them but he was refused permission according to the appellant, without any reason. The annual examination for Part II was to be held on May 19, 1975 and the appellant approached the University for granting him provisional permission to appear subject to his getting the permission from his employer to attend the law Faculty. In between it appears that the appellant had been prosecuted for offences under Sections 376, 366 and 363, I.P.C. and was suspended during the period when the case was going on against him. The appellant was, however, acquitted and was reinstated by his employer on August 22, 1972. It would thus appear that on 8th May, 1973 as also on April 25, 1973 when he had applied for his Roll Number to clear the subjects, the stigma of criminal case had been completely removed.

37. It appears that on the basis of this undertaking he was allowed to appear at the Part II Examination on 19th May, 1973. On 20th June, 1973 the appellant wrote to the University authorities that the condition on which he was to get the permission was not at all necessary and that his result may now be announced. On 26th June, 1973 the respondent informed the appellant that since his percentage was short in Part I his candidature stood cancelled. Thereafter there were series of correspondence between the appellant and the University authorities but the appellant was refused admission to LL.B. Part III Class. The appellant then filed an appeal to the Vice-Chancellor of the University on 26th Sept. 1973 which was also rejected on 3rd Nov. 1973. Thereafter the appellant approached the High Court of Punjab and Haryana for a writ of certiorari to quash the order of the respondent cancelling the candidature of the appellant but the High Court after issuing notice to the other side and perusing the application form rejected the petition in limine. Hence the appeal was filed by special leave to the Supreme Court.

38. In the aforesaid decision the Supreme Court took into consideration the contention of the respondent University of the students concerned, the appellant to file requisite permission or to abide by any other order passed by the University authorities. However, the Supreme Court was of the view that the letter issued by the appellant containing the undertaking was written because of

his anxiety to appear in Part II examination and the letter was written in *terrorem* and in complete ignorance of his legal rights. The Supreme Court held that such an undertaking cannot be binding upon the appellant. The Supreme Court accordingly held *inter alia* as follows *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*,

"It is well settled that any admission made in ignorance of legal rights or under duress cannot bind the maker of the admission. In these circumstances we are clearly of the opinion that the letter written by the appellant does not put him out of Court. If only the University authorities, would have exercised proper diligence and care by scrutinising the admission form when it was sent by the Head of the Department to the University as far back as Dec. 1971 they could have detected the defects or infirmities from which the form suffered according to the University Statute. The Head of the Department of Law was also guilty of dereliction of duty in not scrutinising the admission form of the appellant before he forwarded the same to the University."

39. With regard to the other contention of the University that the appellant did not get the requisite permission from his superior officers, and as such he could not be allowed to appear in the examination and also (*sic*) was considered by the Supreme Court without any merit. Accordingly the Supreme Court held that the impugned order suffers from errors of law obtained on the face of the record and the High Court should not have dismissed the case of the petitioner. The appeal was accordingly allowed and the respondent University was directed to declare the result of LL.B. Part II Examination in which the appellant had appeared on May 19, 1973 and also to give him an opportunity to appear in the three subjects in which he had failed in LL. B. Part I Examination, at the next examination which may be held by the University.

40. There is no reason, in my view, not to apply to the decision in the facts of this case and to direct the University to declare the result.

41. Judgment and decision in the case of *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, relied upon by Mr. Mitter learned advocate for the University does not assist him in any way. In the aforesaid decision the Moderator's mark-sheets were tampered with to the advantage of certain students. Enquiry was held pursuant to show cause notice issued to the students furnishing relevant material particulars pertaining to alleged tampering. Assistance of lawyers however was denied. It was found that the question asked at the enquiry was of such nature that no outside assistance was needed to answer the same. It was also found that the procedure adopted at the enquiry was fair and just and as such it was held that enquiry was not vitiated on ground of denial of lawyers or parents/ guardians of the students as assistance where the examinees were minors. The Supreme Court in the circumstances of the case held in paragraph 17 of the judgment at page 735 (para 18, at pp 897-898 of AIR SCW) of the said report as follows:--

"The students involved at the examination of "Secondary Education are by and large minors but that by itself would not be a factor to hold that the students were unfairly treated at an inquiry conducted during the domestic inquiry, Assistance of an advocate to the delinquent at a domestic enquiry is not a part of the principles of natural justice. It depends on the nature of the inquiry and the peculiar circumstances and facts of a particular case. The regulations and the rules of enquiry specifically excluded the assistance of an advocate at the inquiry. Therefore, the omission to provide the assistance of a counsel at the inquiry is not violative of the principles of natural justice. The show cause notice furnished wealth of material particulars on which the tampering was alleged to be founded and gave the opportunity to each student to submit the explanation and also to adduce evidence, oral or documentary at the inquiry. Each student submitted the explanation denying the allegation. At the inquiry the questionnaire in the pro forma was given to each student. It is undoubted that the allegation of fabrication was stated to have been done at the behest of either the student/ parents or guardians and the parents or guardians were not permitted to participate in the inquiry. Inspection of documents was given. Their answer sheets and marks secured were perused by the students and were asked to testify whether the answer books belongs to him or her and to identify the marks awarded by the examiner to each answer to the question and the total marks awarded. They were also asked to verify and state whether the moderator's mark sheets were tampered with, in the concerned subject or subjects as the case may be. The student could easily identify and in fact identified his or her answer books and verified the marks awarded and answered positively, that the marks were fabricated in the moderator's mark sheets. The questionnaire was also given to indicate their educational background in the previous school, years and also the marks they expected at the final examinations. The need of the assistance of the parents/guardians was thus absolutely nil. Further question in the pro forma was to ascertain from the students, due to tampering, whether or not the marks were increased to his or her advantage. It could be answered by a mere look at the marks. No outside assistance is needed. All the students have admitted that the answer books belong to them. They also admitted the marks initially awarded by the examiner if added or subtracted, if any, by the moderators. They also admitted that the fabrication in the moderators' mark sheets in the subject or subjects and the marks were increased to their advantage. They also denied their complicity or parents or guardians. It is not the case of the respondents that they were coerced to answer the questions in particular manner. It is obvious from the record that they had prior consultations with their counsel. Thus it could be seen that the procedure adopted at the inquiry is fair and just and it is not vitiated by any procedural irregularity nor is violative of the principles of natural justice. The absence of opportunity to the parents or guardians, in this background does not vitiate the legality or validity of the inquiry conducted or decision of the Committee."

42. The principles laid down by the Supreme Court as already noted does not

help the respondents University in any way. In the instant case, the petitioners' examination were cancelled without affording any opportunity of hearing to them. As already noted the Enquiry Committee constituted in the matter for the purpose of ascertaining the irregularities, if any, in the admission and not with a view to give opportunity of hearing for the purpose of considering the petitioner's involvement in the tampering. In the instant case no show cause notice to the students were issued as was done in the case of Maharashtra State Board of S. & H.S. Education v. K.S. Gandhi (air 1991 SCW 879) (supra).

43. It is well settled that fraud must be established beyond all reasonable doubt and cannot be based on suspicion and conjecture. In this connection judgment and decision in the case of AIR 1941 93 (Privy Council) may be taken note of. In the aforesaid decision it was held by the Privy Council that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt. A finding as to fraud cannot be based on suspicion and conjecture.

44. In the instant case there is nothing on record in the finding of the Enquiry Committee constituted by the Vice -Chancellor to show that the petitioners were in any way connected with the tampering of admission records. Under such circumstances it would not be proper to make a finding that the petitioners were involved in the fraud in the writ petitions filed by the petitioners. It is on record that no case of fraud has been established as yet and as such it is not open to make a finding of fraud against the petitioners in the instant writ petitions by the petitioners. In this connection judgment and decision in the case of Svenska Handelsbanken Vs. M/s. Indian Charge Chrome and others, may be taken note of. In the aforesaid decision the Supreme Court followed the principles laid down by the Privy Council in the case of AIR 1941 93 (Privy Council) and held that "the High Court was not right in working on mere suspicion of fraud or merely going by the allegations in the plaint without prima facie case of fraud being spelt out from the material on record.."

45. It appears on the basis of the facts that the petitioner Dr. Adit Dey, should not suffer the consequences of tampering even without the tampering he could have obtained a seat in MS (Orth).

46. The petitioner Dr. Pawan Kumar Agarwal also applied for admission to the Post Graduate Medical Course of the respondent University in the prescribed form indicating therein MD (General Medicine), M.D. (Obstetrics and Gynaecology) and Diploma in Gynaecology and Obstetrics as the subjects of his choice in order of preference. He has stated specifically in paragraphs 12, 33 and 34 of the affidavit-in-reply affirmed by him on 4th October, 1993 to the affidavit in opposition filed by University that the choice of subjects originally written, in the first page of the prescribed application form were changed by making corrections therein under the petitioner's signature, finally indicating the choice of subjects above referred to before submitting the same in the relevant office in the respondent University. Subsequently admit card was issued to the petitioner on

the basis of such altered choice by allotting Roll No. 020702, a Roll Number applicable to a candidate with M.D. (General Medicine) as his first choice and the petitioner was allowed to appear at the entrance test on the basis of such altered choice of subjects and such admit card was issued without raising any objection at any material point of time.

46A. The petitioner was granted admission to the DGO course on the basis of the first select list published in April 1993 in which he was shown to have secured admission to the said course on 20th April 1993 and joined the course commencing in May, 1993.

47. A second list was published subsequently, in respect of several subjects, wherein the petitioner did not find his name at any place. Thereafter, by a notice dated the 27th July, 1993 the petitioner was offered admission to MD (General Medicine) course against a vacancy arising therein and was directed to take admission by 28th July, 1993 at the Institute of Post Graduate Medical Education and Research, Calcutta (hereinafter referred to as IPGMER) or else the selection was threatened to be cancelled.

48. The petitioner Dr. Pawan Kumar Agarwal immediately resigned from the DGO course and secured fresh admission to the MD (General Medicine) course on 28th July, 1993. Although the selection was provisional, the admission granted became final and irrevocable after the petitioner joining the said course at the IPGMER and continuing his classes as a regular students."

49. Suddenly on 26th August, 1993 the petitioner received a letter dated the 23rd August, 1993 issued by the respondent No. 3 from which it appeared that his admission to the MD (General Medicine) course had been cancelled without assigning any reason. In the said letter it was mentioned that the admission granted to the petitioner was provisional admission to the MD (General Medicine) course since a specific date was mentioned within which the petitioner had to take admission.

The contentions of the petitioner may be classified as under:--

(a) The alterations made in the application submitted in prescribed form in the petitioner's choice of subjects in order of preference, as aforesaid, has been accepted and acted upon.

(b) The further contention of the petitioner that the contention of the University as appears from the affidavit in opposition affirmed by Dr. Diptendra Bagchi in Sept. 1993 about the petitioner not having exercised his option for MD (General Medicine) course either as first choice or at all. It has also been contended on behalf of the petitioner that paragraphs 9 and 10 of Part II of the General Information containing the ground for cancellation of the admission do not apply to the case of petitioner and as such the cancellation made is without any valid reason.

(c) It is the further case of the petitioner that the petitioner having obtained 84

marks in the written test was selected as No. 2 candidate in order of merit for admission to the DGO course and the application form bears an endorsement to the effect by the Dean, Faculty of Medicine and the said fact also appears in the hand-writing of the said Dean in the remarks column of the computerised tabulation sheet against the petitioner's Roll No. (020702) against serial No. 145 (xerox copies of the said application form bearing such endorsements and the said tabular statement are Annexures XI and X to the supplementary affidavit-in-opposition of the Registrar of the respondent University).

(d) It has further been submitted on behalf of the petitioner that the petitioner ought to have been wait-listed also for MD (O & G) course in the third position, but in fact the petitioner was not initially wait-listed at all while another candidate, Samiran Dasgupta (R. No. 021172) securing 83.5 marks, was wait-listed in the third position.

(e) In the Admission Register the said candidate Roll No. (021172) is shown as having secured 84.0 mark and retained as the third waitlisted candidate and the petitioner (Roll No. 020702) has been shown as having secured 83.5 marks and shown as having been wait-listed in the fourth position.

(g) The said Samran Dasgupta was thus successful in getting admission to the MD (O & G) course against subsequent vacancy when the petitioner was offered a seat in the MD (Gen. Medicine) course.

50. It has been submitted on behalf of the petitioner that list was prepared (which however was not produced) shows that between the last selected candidate for the MD (Gen. Medicine) course and the petitioner there were 56 candidates. No records have been produced to show that the said 56 candidates have been offered admission in some other courses of their choice.

51. It may be noted that the petitioner was not allotted a position in the wait list for M.D. (O & G) by the Dean in the Tabulation Sheet in spite of the fact that the petitioner indicated preference for the said course and obtained 84.0 marks and that Shri Samiran Dasgupta was marked as W.L. 3 in the Tabulation Sheet and allotted the third position in the wait list for the MD (O & G) course, in spite of his having secured less mark (83.5).

52. The Enquiry Committee specifically commented that while entering the remarks "DGO 2" in the admission form, the Dean should have noted that Pawan Kumar Agarwal had indicated three preferences in the admission form. The Dean failed to account for the aforesaid anomaly and his observations have been recorded by the Committee as follows:

"Omission of 020702 is wrong. I do not know or I cannot explain how this name did not occur as WL 3 in the MD (Gynae and Obs). The name of 021172 was below that of 020702."

53. The committee further observed that had correct entries been made against the marks of Pawan Kumar Agarwal in the Tabulation Sheet by the Dean, his

name would have figured in the second list for admission to MD (Obs and Gynae) course.

54. It has further been recorded by the Committee in paragraph 4.10 of his report as follows :--

"It has been observed that certain lapses on the part of the Dean contributed to the chaos in the admission process. The irregular admission of Samiran Dasgupta in MD (Obs. and Gynae) course can be traced to a lapse on the part of the Dean in allotting seats strictly according to merit in that course. This cost Pawan Kumar Agarwal his rightful claim for admission in MD (Obs. and Gynae) course."

While some of the cases were reported by the Secretary and the Dean to the Vice-Chancellor recommending cancellation of their admission on 23-8-93 the other cases were shielded until those were detected by the Enquiry Committee. As a matter of fact one particular case of irregular admission, even though detected prior to the submission of the above note to the Vice-Chancellor, was not brought to the Vice-Chancellor's notice, for which the Dean and the Secretary had no explanation before the Enquiry Committee, as will appear from paragraph 4.12 of the said report:--

"A revised and corrected waiting list prepared by the Secretary in August, 1993 indicates that the irregular admission of Sm. Sutapa Roy in DCH course was detected by the Dean and the Secretary before submission of the note to the Vice-Chancellor on 23-8-93 recommending cancellation of admission of four students namely, Pawan Kumar Agarwal, Adit Dey, Sujay Gupta and Debashis Chakraborty. Both the Dean and the Secretary failed to explain why the irregularity in admission of Sutapa Roy was not brought to the notice of the Vice-Chancellor on 23-8-93 although the same was detected prior to that date."

55. The aforesaid observation read with the observations made in paragraphs 3(d), (xv), (xvii), 4.9, 4.10, 4.12, 4.14 and Sub-paragraphs 1, 2, 3 and 5 of paragraph 5 (Recommendations) of the report leaves no scope of doubt that if the petitioner's admission to MD (Gen. Medicine) was irregular and was caused by fraudulent means adopted by any employee of the University, it was not an isolated act but part of a greater conspiracy to shield the thoroughly illegal and mala fide act not only of the said particular employee of the University but all other officers of the University concerned in the process of granting such admission to the said student by depriving the petitioner of his legitimate claim for admission to the MD (O and G) Course.

56. It thus appears that the Committee did not make any finding as to the involvement of the petitioner Pawan Kumar Agarwal in any irregularity and/or illegal act in relation to his admission to the MD (Gen. Medicine) Course. It may be noted that the petitioner was deprived of his legitimate admission to MD (O and G) Course. The note dated 23rd August, 1993 on the basis of which Vice-Chancellor passed the order was produced, the contents of the said note appear to be as follows :

"The following students have already been admitted to the course mentioned against their names.

1. Dr. Sujay Gupta MD (Gen. Surgery)
2. Dr. Pawan Kumar Agarwal, M.D. (General Medicine)
3. Dr. Adit Dey, M. S. (General Surgery)
4. Dr. Debashis Chakraborty, M. S. (Orthopaedics)

On scrutiny it has been found that their names have been included in the items of selected candidates after tampering of official records.

Dated 23rd August, 1993

Sd/- Illegible

Secretary, Faculty Councils for P. G. Studies in Medicine, Nursing etc."

The said notes also appeared to contain three marginal endorsements, all dated 23 August, 1993 as hereunder:

Dean, Medicine to give his observations.

Sd/- R.N. Basu, V. C. dt. 23-8-93

The admission of the students may be cancelled immediately.

Sd/- A. Choudhury, Dean dt. 23-8-93

On the basis of the letter of the Dr. Sujay Gupta, I have made a preliminary enquiry on the advice of Vice-Chancellor. It appears from the record that involvement of B. Hazra Chowdhury cannot be ruled out.

Sd/- A. Chowdhury, Dean, dated 23-8-93."

57. The above note dated 23-8-93 as well as the above endorsements of the same date nowhere bear out the contention that any enquiry committee was constituted on receipt of the complaint of Dr. Sujay Gupta, nor do the said note or the said endorsements contain even the word "fraud", farless any allegations or particulars of any fraud as forming the basis of the cancellation of the admission of the said candidates including the petitioner or any alleged decision relating thereto. The impugned order of cancellation having itself been issued on 23-8-93 and no other contemporaneous record having been produced by the respondents containing any purported finding as to fraud or any alleged particulars relating thereto, the allegations made in paragraph 4(1) of the said affidavit-in-opposition, verified as based on information derived from the records of the case, which the deponent believed to be true cannot have any basis whatsoever.

Paragraph 4(H) of the said affidavit-in-opposition of Dr. Bagchi also refers to a complaint dated 25th August, 1993 lodged before the Deputy Commissioner of

Police, Detective Department, Lalbazar, a copy whereof is Annexure "A" at page 24 of the said affidavit. The said complaint also refers to the letter of Dr. Sujoy Gupta and contains the allegation of suspected involvement of Mr. Hajra Chowdhury in tampering of various documents, original list of selected and waitlisted candidates and favouring the candidates, who were allegedly not otherwise eligible for admission, and including his higher officials to issue the letters offering admission to the candidates who were so allegedly not eligible for admission. The said complaint before the police was, therefore, directed against the said Mr. Hajra Chowdhury and not against the candidates about whose admission certain alleged particulars were purported to be furnished therein. So far as the petitioner Dr. Pawan Kumar Agarwal is concerned, it was alleged as follows in Sub-paragraph (b) of the third para of the said letter of complaint dated 25th August, 1993 :--

"One Mr. Pawan Kumar Agarwal having Roll No. 020702 was originally selected for Diploma in Obstetrics and Gynaecology (DGO) but by tampering the waiting list of the candidates his name was inserted as waiting list candidate No. 2 for M.D. General Medicine Course. It further transpired that some alterations have been made in his application form relating to his preference as to the course and on the basis of the above alterations we were induced to issue a letter offering his admission in the M.D. General Medicine Course and on the basis of which he had been admitted in the Institute of Post Graduate Medical Education and Research (SSKM Hospital)."

58. It thus appears that the allegations made by the then Secretary, Faculty Council of Medicine with reference to the alterations made in the application form by the petitioner Pawan Kumar Agarwal about the subject of his choice which were duly authenticated by him before submitting the same for being allowed, to sit at the Post Graduate admission test is uncalled for. The said allegations were made after the allegations as to the tampering of waiting list of the candidates and inserting the petitione name as waiting list candidate No. 2 for M. D. General Medicine course which apparently was internal affair of the University and was" deliberately a mischievous design on the part of the deponent although the said allegation was verified in the affidavit by the deponent as based on information derived from the records of the case which was believed to be true. The alterations in the course of his choice made by the petitioner in the application form with due authentication was accepted by the University, which fact is clearly borne out by the enquiry report of the four-member committee which has duly recorded in paragraph 3.14(d) at page 18 thereof as follows :--

"Shri Pawan Kumar Agarwal was allowed admission into M.D. General Medicine Course. Shri Agarwal obtained 84.0 marks in admission test. His preference as indicated in his admission form, were

1. M. D. General Medicine
2. M. D. Obstetrics and Gynaecology

3. D.G.O."

59. It is significant however although it is clear case of manipulation with regard to the candidature of Shri Samiran Dasgupta who was granted admission to M. D. (O and G) course, no action was taken to cancel the admission of the said Samiran Dasgupta to MD (O and G) course and to grant admission to the petitioner to the said course simultaneously with the cancellation of his admission to MD (General Medicine) Course. In fact the University authorities did not also follow the recommendation in that regard made by the four-member committee in spite of the report of the said Enquiry Committee having been accepted by the Syndicate on 2nd August, 1994.

60. It may also be noted that in case of cancellation of admission of Shri Samiran Dasgupta and three other students, the said Enquiry Committee recommended grant of personal hearing by the Vice-Chancellor and the Syndicate on the basis of such recommendation passed a resolution to that effect and left the matter relating to the cancellation of admission of those students to the Vice-Chancellor. In the case of petitioners however the cancellation took place prior to any personal hearing being granted.

61. It has been alleged in the main affidavit-in-opposition filed on behalf of the respondents Nos. 1, 2, 3 and 4 affirmed by Dr. Diptendra Bagchi that there are 56 candidates above the petitioner with M. D. (General Medicine) Course as their option. In this connection paragraph 4(O) of the said affidavit may be taken note of which provides as follows:--

"The writ petitioner features much lower in the merit list. There are about 56 candidates between him and the last admitted candidate in order of marks. In the circumstances, the writ petitioner's eligibility can under no circumstances be considered having regard to the fact that there are 56 deserving candidates above the petitioner who have not been admitted due to dearth of seats."

62. No records have been produced in spite of directions to show the existence of such 56 candidates above the petitioner with M. D. (General Medicine) course as their option. On the contrary in paragraph 30 of the said affidavit-in-opposition of Dr. Bagchi, verified as based on information derived from records of the case which he believed to be true, it has been stated as under:--

"I say that five candidates were awarded 97 marks each having the following Roll Numbers:

(i) 020366 (ii) 020386 (iii) 022344 (iv) 022449 and (v) 022695 and because of tie between the five candidates clause 8 of the Part I of General Information was followed and two candidates having Roll No. 022449 and 022605 were admitted in the first list and the names of the remaining three persons were kept in the waiting list. It will appear that Roll No. 022449 who obtained 97 marks were deleted and the Roll Number of the writ petitioner being 020702 was inserted by tampering the records who obtained only 84 marks. It is therefore quite clear

that the petitioner is not entitled to admission to M. D. General Medicine under any circumstances."

63. According to the aforesaid averment it appears that it is only one candidate i.e. Roll No. 022449 who obtained 97 marks was deleted and the petitioner's (Dr. Pawan Kr. Agarwal) Roll Number was inserted in that place. The said averment however does not appear to represent the correct state of affairs, because earlier in the same paragraph it has been alleged by Dr. Bagchi on the basis of selfsame records that two candidates having Roll No. 022449 and 022605 were admitted in the first list.

64. In this connection paragraph 45 of the petitioner's (Dr. Pawan Kumar Agarwal) affidavit affirmed on 4-10-93 being reply to the said affidavit in opposition may be considered which is as follows:--

"The particulars with regard to five Roll numbers given in the said paragraph are utterly confusing. If Roll No. 022449 along with 022605 was admitted in the first list, it is not understood how Roll No. 022449 could be deleted after admission and my Roll No. 020702 could be inserted by any alleged tampering. Neither the records, nor the process of preparation and maintenance of records, having been disclosed such vague and confusing allegations with an unsubstantiated story of tampering can hardly make out a case that I am not entitled to admission to M. D. (General Medicine) course and that too under any circumstances. All allegations contrary to the aforesaid are denied."

65. The first and second list of candidates selected for admission to different post-graduate medical courses were not disclosed by the University authorities. What has been disclosed is a computerised tabulation sheet stated to have been prepared by the Dean, Faculty of Medicine (Annexure X to the supplementary affidavit of the Registrar) and un-authenticated copies of alleged pages of admission register (Annexure X-2 to the said supplementary affidavit) wherein the list of wait-listed candidates for General Medicine shown in X-2 at page 22 of the said supplementary affidavit shows a clumsy state of affairs. It has been alleged that the petitioner's Roll No. 020702 has been put in the third position of the revised waiting list by crossing the earlier entry of Roll No. 022344 alleged to have been marked originally as waiting list No. 3. No such crossing, however, appears from the legible xerox copy of the said document at page 22 of the supplementary affidavit. Be that as it may, it is not known as to who prepared the waiting list and who made the correction therein and who made the alleged insertion of the petitioner's Roll Number therein in the alleged manner. The computerised tabulation sheet (Annexure X to the said supplementary affidavit) nowhere shows any wait-listing of candidates as having been made by the Dean in respect of M. D. (General Medicine) Course, although entries exist therein showing the selection of candidates to different courses from serial No. 1 to serial No. 236. Roll No. 022344 at serial number 30 of the said document has been shown as selected for D.C.H. In the left hand side of the sheet there is some endorsement against serial No. 30 (Roll No. 022344) by sort of an arrow

mark showing his selection for M. D. Course in some subject other than General Medicine, which may be G and O or Paediatric Medicine. Attention was drawn to this endorsement in the presence of the learned Counsel of the respondents, from whom no clarification was forthcoming, nor was the same dealt with on behalf of the respondents at the time of reply.

66. Undisputedly Roll Numbers 022449 and 022605 against the serial numbers 31 and 33 respectively have been shown to have been selected as candidates Nos. 13 and 14 respectively for the M.D. (General Medicine) course. Their earlier selection is also borne out by the report of the Four member enquiry committee as well as in paragraph 30 of Dr. Bagchi's affidavit-in-opposition dealt with hereinabove.

67. In the said next page of the said document (Annexure X to the supplementary-affidavit-in-opposition) Roll Number 013212 at serial number 67 securing 91.5 marks has been shown to have been selected as the 15th candidate for admission to the M.D. (General Medicine) course. The Roll Number beginning with 01 suggests that the said candidate belonged to the WBHS category and the said selection at the 15th position may be relatable to the waiting list of the WBHS candidates. Barring the above there does not appear from the last column of the tabulation sheet who was in the zone of consideration for admission to the M.D. (General Medicine) course in the general category before the petitioner (Roll No. 020702), being serial No. 145 of the said computerised tabulation sheet. This fact was also pointed out in course of submissions made before this Court and the respondents were called upon to produce the list of so called 56 candidates above the petitioner to show that they had opted also for General Medicine and had not been admitted to any other post graduate medical course. Neither was this contention dealt with in reply nor was any such document produced by the University authorities.

68. Sub paragraph (viii) of the said enquiry report inter alia stated as follows:--

"A revised and corrected waiting list prepared by the Secretary on 19-9-93 shows that Pawan Kumar Agarwal who secured 84.0 marks in the admission test occupies the fifty-sixth position in the waiting list for admission to the M.D. (General Medicine) course. It is quite clear that Pawan Kumar Agarwal was nowhere near the zone of consideration for admission to the M.D. (General Medicine) course and that his admission to the course was procured through fraudulent means".

69. It may be significant to note that the aforesaid list was neither annexed to the affidavit affirmed by Dr. Bagchi nor annexed to the affidavit filed by the Registrar on behalf of the University. The said list was also not produced in Court in spite of observation made by me from time to time and direction to the effect that all records should be produced.

70. It also appears from Sub-paragraph (vii) of the report of the Enquiry Committee that only one candidate i.e. Roll No. 022344 has been deprived of his

rightful claim because of the alleged tampering, whereby the petitioner's Roll No. (020702) was allegedly inserted in the former's place by erasing his Roll Number. In paragraph 30 of the affidavit of Dr. Bagchi being affidavit in opposition it has been alleged that Roll No. 022449 was deleted and the petitioner's Roll Number was inserted by allegedly tampering the records.

71. The question therefore arises whether the 56 candidates in the list as on 19-9-96 which had been prepared, were above the petitioner Pawan Kumar Agarwal as alleged? The allegation that the petitioner has deprived a candidate only being Roll No. 022449 does not arise. The list of the said 56 candidates has not been produced as already recorded.

72. Considering the xerox copy of page 26 of the Register at page 22 of the supplementary affidavit-in-opposition filed on behalf of the University by the Registrar it appears that while preparing the residuary waiting list at the left side of the bottom of the page only three Roll Nos. i.e. 020366, 020386 and 020702 were enlisted, the last one being that of the petitioner Dr. Pawan Kumar Agarwal. It, however appears from the uncanceled entries in the last column of the page, 020386 has been shown as admitted in M.D. (General Medicine) and having resigned from M.D. (Tropical Medicine) and 020386 has been shown as having been admitted against All India quota. No arguments were advanced in respect of Roll Nos. 020540, 020635 or 022435 (Roll Nos. 01353 and 013350 being obviously WBHS candidates whose Roll Nos. begin with the digits 01), nor has the said Enquiry Committee recorded any observation in respect of them, although the waiting list extracted at the top of page 20 of the report contain those Roll Nos. also. It is, therefore, not necessary to go into those cases and possibly they might have been admitted in other post-graduate medical courses of their choice.

73. The controversy, if any, centres round only one candidate i.e. Roll No. 022344 at serial No. 30 of the computerised tabulation sheet, whose Roll No. is alleged to have been erased and the petitioner's Roll No. 020702 is alleged to have been inserted at his place in the third position of the waiting list. As stated hereinbefore, there is some endorsement on the left hand side of the computerised tabulation sheet against the said serial No. 30 by arrow or some sort of indication mark showing some other post graduate medical degree course, while he had already been selected for DCH course, as will appear from the last column of the sheet against the entries related to Roll No. 022344. It is nobody's case that the said candidate was desirous of switching over to M.D. (General Medicine) course or that such admission was offered to him. Neither the said candidate or for that matter none of the alleged 56 candidates have been shown to have made any grievance before the University authorities for depriving them of their admission to the M.D. (General Medicine) course either before the filing of or at any time during the pendency of the present writ application, nor did any one of them come up before this Court to ventilate his grievance and to seek redress. Such a state of affairs would not have prevailed if anybody's

rightful claim had been tampered with by granting admission to the petitioner Dr. Pawan Kumar Agarwal to the M.D. (General Medicine) course.

74. It is abundantly clear from the facts already disclosed in this proceeding particularly with reference to the report of the Enquiry Committee appointed by the Vice-Chancellor that Shri Samiran Dasgupta, who secured lesser mark than the petitioner Dr. Pawan Kumar Agarwal was placed above the petitioner right from the stage of preparation of the list of candidates for admission to the DGO course and preparation of the waiting list of candidates for the M.D. (O & G) course in supersession of the petitioner's rightful claim and it is only thereafter that the petitioner Dr. Pawan Kumar Agarwal was granted admission to the M.D. (General Medicine) course. The fraud, tampering or manipulation, whatever the same may be called, which resulted in Shri Samiran Dasgupta, despite securing less marks than the petitioner, to rank above him in the O & G panel prepared by the Dean himself and leading to his eventual admission to the M.D. (O & G) course, conferred benefit on the said Shri Samiran Dasgupta and not the petitioner Dr. Pawan Kumar Agarwal.

75. In the circumstances, it would not be fair to describe the petitioner Dr. Pawan Kumar Agarwal as beneficiary of fraud practised in admission to M.D. (O & G) course. In fact as already noted the recommendation of the Enquiry Committee for transferring the petitioner to M.D. (O & G) course was not also given effect to which could have been implemented with the leave of the Court.

76. The main argument advanced on behalf of the University so far as the petitioner, Pawan Kuman Agarwal, is concerned may be summarised as follows :--

(a) The petitioner obtained such mark which was not in the zone of consideration for being admitted to M.D. (General Medicine) course 1993.

(b) Everything was fraudulent and fraud was practised and as such the University was entitled to cancel the admission.

(c) The mark-sheet being tampered with, the petitioner cannot get benefit of his own wrong.

(d) In any event, the petitioner was a beneficiary of the fraud practised.

(e) In the facts and circumstances of the case compliance with the principle of natural justice did not arise at all. In any event the petitioner was asked by the four-member Enquiry Committee to appear, but he did not appear. Therefore, the question of violation of principles of natural justice is irrelevant.

77. It has been alleged on behalf of the University that the petitioner was not in the zone of consideration. What was the zone of consideration for admission has not been disclosed. The petitioner admittedly secured 84.0 marks and it is evident from the general list annexed to the affidavit filed on behalf of the University on December, 1996 that there could be no claimants for admission to the M.D. (General Medicine) course at the material point of time and to the

knowledge of the respondents on one came forward and or ventilated his grievances that he has been deprived of admission to the said course due to the admission of the petitioner.

78. It has also been alleged on behalf of the petitioner, Dr. Pawan Kumar Agarwal, that there are candidates who got far less marks than the petitioner were admitted. It has been alleged that the admission of Sri Samiran Dasgupta to the M.D. (O & G) course was granted clandestinely to the prejudice of the petitioner, Pawan Kumar Agarwal even a candidate namely, Smt. Sipra Chowdhury who was awarded very poor marks was also admitted and her admission was ordered to be cancelled but she was allowed to appear at the examination and the result has been declared whereas the petitioner's result was withheld. There are at least four other candidates whose admissions were held to be irregular by the Enquiry Committee. Some of them were awarded less marks than the petitioner. There is nothing on record to show that the respondents have taken similar action against them.

79. In that view of the matter it appears that there is no basis for the contention that the petitioner Dr. Pawan Kumar Agarwal is not in the zone of consideration for being admitted to M. D. (General Medicine) course.

80. The case of Dr. Pawan Kumar Agarwal stands on a better footing since P.K. Agarwal the writ petitioner secured higher marks than the said Samiran Dasgupta. It is an admitted position that Samiran Dasgupta obtained 83.5 marks at the admission test and as already noted P. K. Agarwal got 84 marks.

81. In the case of P. K. Agarwal no opportunity was at all given to show cause against the order of cancellation. Order of cancellation was taken much earlier without giving any opportunity of hearing. Division Bench as already held in case of Samiran Dasgupta, there is violation of natural justice. Order of cancellation was set aside by the Division Bench, in my view, the same principle should be made applicable in the instant case also.

82. The writ petitioners who challenged the order of cancellation of their admission which were heard together, to them, no opportunity of hearing was at all given, although the said order prejudicially affected the petitioners. There is no reason to take a different view in the case of writ petitioners before me.

83. Considering the facts and circumstances of the case and also of the various decisions cited before me particularly of the latest unreported judgment of the division Bench in Samiran Dasgupta's case, I am of the view that the petitioners should succeed in the writ petitions.

84. The order of the cancellation of admission of the petitioners passed by the Vice-chancellor and communicated to the petitioners by letter dated 23rd August, 1993 contained in the letter of the Secretary, Faculty Council of P. G. Studies in Medicine, nursing etc. of the same date stands cancelled.

85. It may be noted in this connection that a note dated 23rd August, 1993 was

submitted to the Vice-Chancellor, Calcutta University for orders of the Secretary, Faculty Council for P. G. Studies for medicine, nursing etc. The said note is as follows:--

"The following students have already been admitted to the course mentioned against their names:

- 1) Dr. Sujoy Gupta M. S. (General Surgery)
- 2) Dr. Pawan Kumar Agarwal M.D. (General Medicine)
- 3) Dr. Adit Dey M. S. (General Surgery)
- 4) Dr. Debasis Chakraborty M. S. (Orthopaedics)

On scrutiny, it has been found that their names have been included in the lists of Selected Candidates after tampering of official records.

Necessary orders may kindly be issued in this regard.

Dated 23rd August, 1993.

Secretary, Faculty Council for P. G. Studies in Medicine Nursing etc."

It appears on the same note that the Vice-Chancellor has made his endorsement to the following effect :

"Dean, Medicine to give his observations. The admission of these students may be cancelled immediately."

Dean, 23-8-94.

86. The other endorsement made by the Dean also on the same date made his observations. On the basis of the said observations of the Dean, the Vice-Chancellor cancelled the admission on the same date as will appear from the following endorsement:

"On the basis of the letter of Dr. Sujoy Gupta, I have made a preliminary enquiry to the advice of Vice-Chancellor. It appears from the records that the involvement of Sri Buddhadev Hazra Chowdhury cannot be ruled out".

Dean, 23-8-1993.

87. It appears therefore that the Vice-Chancellor acted mechanically and without application of his mind and passed order which had the penal consequence affecting the career of the students. The Vice-Chancellor acted merely on the basis of the observations of the Dean and did not personally apply his mind which he should have after giving opportunity to the petitioners to explain their position. Facts on record as already noted clearly demonstrate that the Vice-Chancellor did not apply his mind in taking such decision of cancellation of admission and failed to consider all aspects of the matter.

88. Accordingly I am of the opinion that there is gross violation of natural justice

and absence of fairplay and fairness in action. The petitioners should not be made to suffer for the alleged irregularity in the internal administration of the University. The petitioners have already completed their studies and have appeared at the examinations. The order of cancellation of admission dated 23rd August, 1993 is accordingly set aside. The University is directed to publish the result of the petitioners forthwith.

89. The writ petitioners accordingly succeed in the writ petitions. There will be no order as to costs.

90. The learned Advocate for the University prays for stay of operation of this judgment and order which is refused.

91. All parties are to act on a xerox signed copy of the operative portion of this judgment on the usual undertaking.