

(1982) 06 CAL CK 0027
In the Calcutta High Court

Dr. Sivani Sarkar and Anr

APPELLANT

Vs

University of Calcutta and Ors

RESPONDENT

Date of Decision : 24-06-1982

Acts Referred:

Citation : (1982) 06 CAL CK 0027

Hon'ble Judges : Bankim Chandra Ray, J

Bench : Single Bench

Advocate : A.K. Panja and N.K. Manna, for the Appellant; Arun Prokash Chatterjee (Senior Standing Counsel), S. Mukherjee and T. K. Mukherjee, for the Respondent

Judgement

Mr. Justice Bankim Chandra Ray

1. This application is at the instance of the two petitioners who appeared at the M. D. Examination in Anaesthesiology held in July, 1981 by the University of Calcutta, challenging the results that have been published by the University declaring them as unsuccessful on the ground, inter alia, that the answer-scripts submitted by them in respect of the theoretical papers have not been properly assessed and marks have not been properly awarded but also on the ground that excess favour was shown by the examiners in the matter of awarding marks in practical and oral examinations.

2. These two petitioners after passing M.B.B.S. examination of the Calcutta University carried on studies in Anaesthesiology and petitioner No.1 obtained a Diploma in Anaesthesiology in 1970 from the Royal College of Surgeons of England besides obtaining a Diploma in Public Health from the University of Wales, England in 1971. The petitioner No.2 also obtained a certificate in Anaesthesia in 1979 from the University of Calcutta. After obtaining the aforesaid Diplomas in Anaesthesia by both the petitioners they were employed and they appeared at the M. D. Examination in Anaesthesiology held by the University of Calcutta in July, 1981. In the M. D. Examination in Anaesthesiology the marks in total were 800. They are divided in two categories - theoretical and practical,

plus viva voce. For the theoretical papers numbering 4, 400 marks were allotted and for practical and viva voce, 400 marks were also allotted. The pass marks in theoretical papers as regards 2nd to 4th papers are 40 in each paper while the pass marks in 1st paper is 50. But a candidate in order to get himself passed has to secure in total in 3 papers, i.e., 2nd to 4th papers, 150 marks and in practical out of 200 marks pass marks is 100 which is divided into long-case and short-case. In the long-case the total mark is 100 and for the short-case, it is 100. Viva voce is divided into two parts - instruments carrying a total mark of 100 and charts and medical carrying 100 marks. It has been stated that in the said M. D. Examination there are two internal examiners viz., Prof. Amal Kumar Bose and Prof. Dinomoni Banerjee and there are two external examiners, viz., Dr. Dabe, Professor of Ourangabad Medical College and Dr. Martin Issac, Professor of Kasturbai Gandhi Medical College, Karnataka. It has been stated further that one of the candidates, viz., Subhas Chandra Patra was in the good book of Dr. Amal Kumar Bose, Professor and Head of Department of Medicine, Department of Anaesthesiology, because Dr. Patra used to supply cases to Dr. Bose. It has also been stated that the venue of the practical and oral Examinations which was originally fixed in S.S.K.M. Hospital was suddenly changed to the Calcutta Medical College and Hospital without prior notice or information. It has also been stated that in the oral and practical Examinations extra favours or advantages were given to Dr. Subhas Chandra Patra, Dr. Bhabesh Banerjee and Dr. Radheshyam Paria, who were the favourite candidates of Dr. Amal Kumar Bose and Dr. Swaraj Banerjee and that some outsiders were also present in the place of examination and they were helping those candidates. It has been stated that extra favour was shown to those candidates and the answer-scripts submitted by these two petitioners were not properly examined and assessed by the examiners. Apprehending this the petitioners made written representations to the Vice-Chancellor of the Calcutta University but without any effect. Thereafter the results were published. Copies of the mark-sheets have been annexed as Annexures E and F to the petition. It has been submitted that the answer-scripts submitted by these two petitioners have not been properly assessed and proper marks have not been awarded and the petitioners could not succeed in the said M. D. Examination. On these statements and allegations the instant writ application has been made before this Court on 11.12.81, whereupon this Court directed the petitioners to serve copies of the application on the respondents. An interim order was made directing the respondents to preserve the records in connection with this M. D. Examination until further orders of this Court. Respondents were also directed to produce those records at the time of hearing of this matter.

3. An affidavit-in-opposition has been filed on behalf of the Respondent No. 8, Dr. Amal Kumar Bose. In paragraph 7 it has been stated that he was appointed as the Head of the Department of Anaesthesiology and joined the post on 28.8.74. It has been further stated that FFARSS (Eng) is neither a degree nor it is conferred by the London University. He passed DARCP & S (Eng) Examination in

two parts. FFARSC (Eng) was introduced in 1954. The Royal College of Surgeons decided that all those candidates who passed DARCP & S (Eng) in two arts would be selected as FFARSS (Eng) automatically. Therefore, he was selected as Fellow from 8.4.54. The Diploma obtained by him as FFARCS (Eng) was a recognized qualification at the time of his appointment as a Professor. The said Diploma was recognized by the Indian Medical Council even at the time when he became a Professor before 1975. It has been stated in paragraph 10 that he did not make use of his post in any manner or exerted his influence in any way upon any co-examiners or upon any person to get success of Dr. Subhas Patra or any candidate as alleged. It has also been stated that the venue for the practical/viva voce examinations were fixed at the Medical College, Calcutta from the very beginning and it was never shifted to any other place with or without notice as alleged. It has been further stated in paragraph 14 that he had not examined the thesis paper of Dr. B. C. Patra and he denied that Dr. Patra had got any favoritism or advantage from him as alleged or at all.

4. An affidavit-in-opposition has also been filed n behalf of the Calcutta University and sworn by Pratip Kumar Mukherjee, the Registrar, on 18.2.82. It has been stated in paragraph 4 that the venue of holding viva voce and practical/clinical examinations of M. D. (Anaesthesiology) in June, 1981, was fixed at the Calcutta Medical College and Hospital by the Controller of Examinations. It has also been stated in paragraph 5 that there was no change of venue as alleged or at all. In paragraph 7, it has been averred that it appears from the proceedings of the meeting of the Board of Examiners that the Head Examiner, Dr. Amal Kumar Bose and the co-examiner, Dr. D. Banerjee made the following recommendations in connection with the statement of results : -

Considered the results. It appears that there has been misinterpretation of rules due to ambiguity in the rules sent along with appointment-letters of the examiners. We recommend that the result of the Examination governed by the old rule as quoted below and the result declared already agreed and signed by the four examiners.

It has also been stated that these recommendations were placed before Pro-Vice-Chancellor (A) on the self same date, i.e. 23.9.81. The Pro-Vice-Chancellor (A) submitted a note to the Vice-Chancellor on the self same date stating as follows: -

The recommendations violate regulation and unacceptable. To avoid hardship due to wrong application of rule, scripts of Roll Nos.2 and 3 in Papers II, III and IV may be reviewed jointly by the internal examiners.:

In pursuance of the said decision, internal examiners jointly made review of the Papers II, III and IV and Roll Nos. 2 and 3 and submitted their revised marks on 3.11.81 jointly signed by them.

5. Another affidavit-in-opposition sworn by Dr. Dinomoni Banerjee, one of the internal examiners has been filed on 17.2.82. It has been stated in paragraph 8

that the venue was fixed at the Calcutta Medical College and Hospital and it was duly intimated by notice made and issued by the Controller of Examinations to all concerned. It has also been stated that the Post-Graduate Examination in Medical Science were held at the Calcutta Medical College and Hospital. A supplementary affidavit has been affirmed on behalf of Dr. Satyananda Pramanik Respondent No.27. This affidavit was sworn on 23.4.82. It has been stated in paragraph 2 that he was appointed as the Professor and Head of the Department of Anaesthesiology, Calcutta Medical College and Hospital in the year 1967 and thereafter in May, 1980 and that he was transferred to the R. G. Kar Medical College and Hospital, Calcutta and had retired from the said post on 31.1.81. It has been further stated in paragraph 6 that before the oral and practical examinations a packet containing blank answer books, additional sheet and graph papers for M. D. (Anaesthesiology) were sent to the Head Examiner by the University of Calcutta a day or two prior to the examination. It has been stated that the students have to write in those answer books as supplied to them and the said answer books are examined by the examiners, both external and internal and have to award marks according to the quality of the answers written by the examinees, and after the examinations of the answer books, those were sent to the University for preservation.

6. These are all the affidavits which are relevant for the purpose of considering the matters in issue in this particular application.

7. Mr. Panja and Mr. Manna appearing on behalf of the petitioners have submitted before this Court three points. It has been firstly, submitted that the answer-scripts of these two petitioners have not been properly examined and assessed by the examiners and as such these answer-scripts are required to be reviewed. It has been next submitted that the marks that have been assessed in respect of viva voce and practical examinations were not properly assessed but the marks were given in a lump without any proper assessment and consideration of the merits of the answers that were given by the examiners and as such the result that have been published as per the viva voce and practical examinations are concerned, are liable to be quashed, cancelled and set aside and/or to be reviewed. It has been lastly, submitted by Mr. Manna that it appears from the marks sheets which have been annexed to the petition that petitioner No.1 at least has secured high marks in theoretical papers and as such appropriate direction should be given by this Court to the University to permit her to appear only in the practical examination going to be held some time in the end of July or beginning of August, 1982 if ultimately it is held that the award of marks so far as practical and viva voce examinations are concerned, cannot be reviewed.

8. Mr. Chatterjee, learned Senior Standing Counsel, has produced before this Court in accordance with the direction of this Court the theoretical answer-papers as well as the papers that were supplied by the University to the candidates at the time of practical and viva voce examinations. On a consideration of these papers it appears that in the papers that were supplied to the different

candidates at the time of practical and viva voce there are records of the candidates regarding long and short cases and other notes but it appears that these notes have not been examined nor marks have been awarded on these notes in respect of any of the papers submitted by the candidates. Mr. Chatterjee submitted, on instructions, that those papers are supplied to the candidates only to take down notes in respect of cases but those are not considered at the time of putting questions and considering the answers given to these questions by the candidates concerned and the marks are awarded on consideration and assessment of these notes recorded by the different candidates. It has been further submitted by Mr. Chatterjee that since there is no record for practical and viva voce examinations nor there is any system of putting any written questions, the question of review or reconsideration of the answer-scripts cannot and does not arise. It has also been submitted by Mr. Chatterjee that so far the theoretical papers submitted by different candidates are concerned, they were duly considered and assessed by the examiners - both internal and external - and there is no infirmity in the same. It has been further submitted by Mr. Chatterjee that the next examination in M. D. (Anaesthesiology) is going to be held some time by the end of July or beginning of August, 1982 and the University is prepared to consider the cases of these two petitioners sympathetically if they appear at the said examination, particularly petitioner No.1. He further submits that the University will also see that Dr. Amal Kumar Bose does not remain in the Board of the Examiners and examine the papers of the examinees in the ensuing examination.

9. The first question required to be considered by this Court is whether there has been a proper assessment of the answer-scripts submitted by the candidates or for that, the examinees including these two petitioners. The answer-scripts have been produced before this Court and, of course, from these answer-scripts it is not possible to ascertain which particular answer-script has not been properly assessed, still then, it is difficult for this Court to say that the answer-scripts were not considered and assessed by the examiners, specially as regards petitioner No.1. Petitioner No.1 has secured very good marks in the theoretical papers and duly passed in theoretical papers. Petitioner No.2 has secured marks much below the pass marks in theoretical, practical and viva voce examinations and it will be of no avail if his answer-scripts are sent for review. Therefore, in these circumstances it is deemed fit and proper not to direct review of the answer-scripts by the authorities so far as the theoretical papers are concerned.

10. Before leaving this point I cannot but make an observation for future guidance of the authorities concerned. It is evident from paragraphs 7 to 10 of the supplementary affidavit-in-opposition sworn by the Registrar of the University on behalf of Respondent Nos.1 to 4, 6 and 7 that the University after being of the opinion that the relevant rules laying down the pass marks in theoretical papers have been misinterpreted by the internal examiners, they were asked to review the marks of the candidates bearing Roll Nos.2 and 3 who admittedly became unsuccessful in theoretical papers having not secured the

minimum number of marks. After such review they were declared to have passed. This pick and chose policy adopted by authorities concerned is wholly arbitrary and unjust. It is not fit and proper when once the University has come to a decision that there has been misinterpretation of certain rules and according to that misinterpretation there has been a misapplication of those rules, then certainly the misapplication or misinterpretation of the rules in question is not confined to these two particular cases but it also applies to all the cases of the candidates who appeared at the said M. D. Examination. Therefore, for the sake of fairness and justice this thing should not have been done on the part of the Calcutta University. It is the sacred duty and responsibility of the University Authorities while they decided upon evaluating or reviewing the answer-scripts of the two candidates, they must review the answer-scripts of all the candidates, if they are of opinion that there has been a misinterpretation and/or misapplication of the rules. The University Authorities' attention is drawn to this respect of the matter and it is expected that this thing should not recur in future causing room for future discontent and also controversy in the minds of the students particularly those who are appearing at the highest examinations of the University.

11. As regards the second contention that the marks in regard to practical and viva voce have been awarded in a lump and there has been no proper basis for such awarding of marks and as such it is wholly illegal and arbitrary and so liable to be quashed. It appears from the papers that were supplied to the different candidates appearing at the said M. D. Examination for taking down notes in regard to cases that none of these notes contained in those papers had been assessed, scrutinized or any marks were awarded on those notes. The submission on behalf of the University is that those papers were supplied by the University to the candidates in order to enable them to take down notes before the viva voce is commenced and as such those are not assessed nor any marks were awarded on the same. This submission appears to be correct. Barring the affidavit of the Respondent No.27, Dr. Satyananda Pramanik, that those notes are assessed and marks are given there is nothing before this Court from which a firm conclusion can be arrived at by this Court that these notes recorded by the different candidates and submitted by them are meant for examination by the examiners holding viva voce and for assessment by them and awarding of marks. Therefore, this contention, in my opinion, cannot be accepted. In this connection the attention of the Court has been drawn to a decision of (1) Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, . In that case, certain guidelines were laid down by the Government for admission of candidates to the first year MBBS Course which are to be followed by the Selection Committee in the matter of selecting candidates. These are as follows: -

1. Sports or National Cadet Corps activities;
2. Extra-Curricular Special services;
3. General Physical Condition and endurance ;

4. General ability, and

5. Aptitude.

A challenge was thrown by some of the candidates who became unsuccessful that the 75 marks which were earmarked for the various heads mentioned therein were not specified under which head how much mark is allotted and as a result it gives enough handle for the members of the Selection Committee to act arbitrarily by giving the entire 75 marks to a candidate he is upto their liking. It was, therefore, contended that this was something arbitrary and it should be quashed. The Supreme Court observed as follows : -

We may note that the Committee had not divided the interview marks under various heads nor were the marks given on itemized basis. The marks list produced before us shows that the marks were given in a lump. This is clearly illegal.

This observation, in my opinion, is not applicable to the instant case in view of the fact that there is a proper itemization of marks in respect of viva voce comprising of practical and also viva voce.

12. It is evident from paragraph 10 of the writ petition that for the practical, 200 marks have been allotted and for viva voce, 200 marks have been allotted and the pass marks in each of these items is 100 marks. It appears from the mark-sheets that were supplied to the petitioners and also from the copy of the tabulation sheet, which were produced before this Court that the two petitioners' marks were separately awarded on practical as well as on viva voce. Therefore, the charge of not itemizing marks, of course, strikes this Court and which also requires serious consideration of the authorities concerned in order to ensure fairness and impartiality in the matter of holding examinations is that out of total 800 marks, 400 marks have been earmarked for practical and viva voce. In other words, 50 per cent of the marks have been earmarked for practical and viva voce. It is when questioned to the learned Standing Counsel appearing on behalf of the University as to the basis whereon these marks were awarded to the different candidates and in case any allegation is made of any arbitrary assessment of marks and/or favouritism what is the yardstick to measure the same. The plain and simple answer of the learned Standing Counsel is that there cannot be any review nor there can be any scrutiny, not to speak of any judicial scrutiny because there is nothing to show before the Court on which basis the marks were assessed and given to the different examinees. This, in my opinion, gives a great handle for arbitrariness and also for assessment of marks to candidates who for very many reasons may not be to the liking or may have found more favour with some of the examiners. If such an allegation is made it cannot be said at the outset that such an allegation is baseless and does not stand judicial scrutiny. It is well-established that the rule of law is the soul of our constitutional system and as such the authorities, whether executive, quasi-judicial or administrative, are to act in a manner which is fair, reasonable and

opposed to arbitrariness and unreasonableness. Considered from this standpoint the University of Authorities should consider and evolve a method whereby if any challenge is thrown against the assessment of marks in respect of the viva voce and practical examinations there must be something which may be produced before the Court to satisfy that there is a reasonable, fair and equitable basis for assessment of those marks to the different examinees. It is however for the University Authorities to lay down the manner and the mode in which the tests or examinations are to be held in respect of M. D. Examination in various subjects. I do not intend to carry this matter any further. The third contention urged on behalf of the petitioners that petitioner No.1 should be allowed to appear only in the practical and viva voce examinations since she has already secured satisfactory marks in the theoretical papers cannot be accepted for the sake of principle because to pass an examination like M. D. comprising of both theoretical and practical papers an examinee has to pass both in theoretical papers as well as in practical papers. Normally a candidate who secures very high marks in theoretical papers but is very unfortunate to become unsuccessful by not securing two or three marks or even one mark required for passing the examination is not allowed to be declared passed the said examination with honours or with first class even if he or she has secured first class marks in honours subject. Therefore, this Court though fully aware of the hardship of the petitioner No.1 yet considering the broader aspect does not desire to make an order which will create a very bad precedent. It is just and fair, in these circumstances, to observe that if the petitioner appears in the ensuing examination likely to be held by the end of July or beginning of August, 1982 the University Authority should see that the Examination Board should not consist of Dr. Amal Bose as one of its members and after the examination is over as the learned Standing Counsel on behalf of the Calcutta University has stated before this Court the University Authorities will consider the answer-scripts as well as the practical and viva voce examinations wherein these two petitioners will appear fairly and sympathetically.

13. For the reasons aforesaid I am not inclined to interfere in this matter. The application is therefore disposed of.

14. Let a copy of my observation in the ordering portion of this order be given to the learned Advocates on both sides for communicating the same to the University.

All the answer-scripts and other papers relating to the candidates and also the copy of the tabulation list signed by the authorities concerned which have been produced before this Court be returned to the learned Advocate for the University.