

**(1981) 02 CAL CK 0026**  
**In the Calcutta High Court**  
**Case No : C.R. No. 10492 (W) of 1980**

Gadadhar Pan

APPELLANT

Vs

University of Calcutta

RESPONDENT

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**Date of Decision :** 19-02-1981

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** AIR 1981 Cal 216

**Hon'ble Judges :** B.C. Ray, J

**Bench :** Single Bench

**Advocate :** B.P. Banerjee and A.K. Lahiri, for the Appellant; S. Mukherjee and Dilip Kr. Banerjee for Respondents Nos. 1, 3 and 5, for the Respondent

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## Judgement

B.C. Ray, J.—This Rule was obtained against the show cause notice issued on 10-9-80 by the Secretary, Council for Post Graduate Studies in Medicine, Calcutta University, directing the petitioner to show cause why his studentship in the M. D. (Pediatrics) Course will not be cancelled forthwith without any further intimation to him whatsoever on the ground that the petitioner suppressed in his application form the statement that he was in the employment of the Director of Health Services, West Bengal, at the time he applied for admission to the said course.

2. The petitioner passed M.B.B.S. Examination in 1975 and he was admitted to the Diploma in Child Health Course in 1978 after being selected through competitive examination and being successful, obtained Diploma in Child Health. The petitioner thereafter was appointed as Research Assistant (Pediatrics Gastro-Entrology) for one year in Calcutta Hospital in April 1979. On 12-2-80 he was appointed as Medical Officer, General Duty, on a purely temporary basis and he was posted at Sabang Primary Health Centre, District Midnapore. It is stated that the petitioner was thus posted on deputation at Uttar Machagram Primary Health Centre, District Midnapore. In April 1980 the petitioner submitted an application for admission to M. D. (Pediatrics) course of the University of Calcutta for the

session commencing in 1980 and undoubtedly in the competitive examination he stood first on merit amongst the candidates participated in the said competitive examination having obtained highest marks in the written test. The petitioner tendered his resignation from the service under the Government of West Bengal on and from 4-8-80 and the Joint Secretaries Post Graduate Admission Board in Medicine, Calcutta University, intimated the petitioner on 6-8-80 about his selection for the admission to the M. D. (Pediatrics) course for the session commencing in 1980. The petitioner deposited a sum of Rs. 500 as tuition fees for the whole course on 20-8-80 and he was thus admitted to the M. D. (Pediatrics) course. It has been stated that on coming to know that a representation has been made against him by some interested parties, he made a representation to the respondents through his advocate which has been made a part of the petition as annexure B to the petition stating, inter alia, that he resigned from the service long before he was admitted in the said Post-Graduate Medicine Course and as such he has not violated any provisions of the terms and conditions laid down while inviting applications for admission in the said course. It has also been stated specifically in paragraph 5 of the said representation that a number of candidates although employed in the government service were allowed and are still prosecuting the M. D. course of studies and though the University issued show cause notice upon them, ultimately did not take any action against those candidates and specific names were mentioned therein of those candidates. It has also been stated in paragraph 6 of the said representation that six candidates who were actually in service while prosecuting studies were brought to the notice of the University and in fact a proceeding was initiated, but ultimately the same was dropped. This representation, it appears, was made to the Joint Secretary of the Admission Board for Post-Graduate Courses on 2-9-80. A copy of the representation was also sent to the Vice-Chancellor of the Calcutta University. But it has been stated nothing was done in this direction by the University authorities and a reply was sent on 13-9-80 to the petitioner's Advocate by the Registrar, Calcutta University, to the following effect:--

"We shall communicate to you after having necessary information in the matter of alleged points as raised by you in your said letter."

Thereafter just three days before the issuance of this letter the impugned notice dated 10-9-80 was issued to the petitioner asking him to show cause why his admission will not be cancelled without any further reference to him for his suppression of not stating in the application form that he was in the service of the State Government. It has been stated on oath in paragraph 28 that 10 candidates, specifically named therein, were admitted to the M.D./M.S. course in the session 1980-81. They are all employees under the Government of West Bengal (W.B. H.S./E.S.I.O.) and they have been employees of the Government of West Bengal at the time of submission of their application for admission to the said course and were also employees under the Government of West Bengal at the time of admission to the said course and are still in service and have been

prosecuting studies in M.D./M.S. course while continuing as employees under the Government of West Bengal. It has also been stated in paragraph 29 of the writ petition that Dr. Smt. Malati Ghosh who had been admitted to the M.D. (Psychiatry) course in 1979-80 session has been serving under the Government of West Bengal long before she was admitted to the said course. She did not state in her application for admission to the said course that she had been serving under the Government of West Bengal. Later the University of Calcutta (Council of Post-Graduate Studies) came to know that Dr. Smt. Malati Ghosh had been admitted to the said course although she was an employee under the Government of West Bengal and show cause notice was issued upon her as to why her admission to the said course should not be cancelled for the suppression of the fact that she was an employee under the Government of West Bengal. Subsequently, the authorities did not proceed with the matter at the request of respondent No. 4 and revoked the order cancelling her admission to the said course. It has also been stated that the said candidate Dr. Smt. Malati Ghosh has also been drawing salary as a clinical tutor in the department of Psychiatry, Medical College Hospital, Calcutta. It has also been stated that Dr. Smt. Tilotomma Mukherjee, Dr. Sagata Sanna, Dr. Mukul Chakraborti, Dr. Subhas Hazra, Dr. Am-bar Chakraborty, Dr. Nirmal Basak were admitted to the said M.D./M.S. course while they were in service under the Government of West Bengal and they prosecuted the said studies while in service under the Government of West Bengal. But the authorities allowed the said persons to continue and complete the said course and took no action except issuing the show cause notice calling upon them to show cause why their admission should not be cancelled. On successful completion of their course the University authorities conferred upon them the degree of M.D./M.S. It has further been stated that in the session 1979-81 about 9 candidates who were selected in the M.D./M.S. course though employed under the Government of W. Bengal used to receive salaries as employees of the Government of West Bengal while prosecuting their studies in the said course. The University authorities and respondent No. 4 were fully aware of the said fact. It has been stated that the petitioner's Advocate also intimated those facts to the University of Calcutta and the Director of Health Services by a letter dated 8-9-80 with a copy to the Vice-Chancellor, but nothing was done and those candidates were allowed to continue their course while remaining in service under the Government of West Bengal. It has been stated by the petitioner that he is no longer in service and in fact he has resigned from the service before being selected and taking admission in the said M.D. course. It has, therefore, been submitted that the impugned notice annexure E is wholly illegal, bad and without jurisdiction and arbitrary and the same has been issued mala fide and it should be liable to be quashed and set aside.

3. An A.O. has been affirmed by Sri Pratip Kumar Mukherjee, Registrar, Calcutta University, on 5-1-81. In the said affidavit it has been stated that the petitioner did not give the necessary particulars as required to be given in the application form, particularly item No. 20 has not been filled up and item No. 23 clearly

specifies that in case of suppression or distortion of facts as declared by a candidate and non-submission of the documents, the application for admission will be liable to be cancelled outright. Paragraph 15 merely says that the deponent does not admit any of the allegations made in paragraph 28 of the petition and in paragraph 17 of the said A.O. there has been a mere denial of the specific facts averred in paragraphs 29, 30, 31, 32, 33 and 34 of the application. Therefore, practically this affidavit is totally silent on the specific statements and allegations raised in paragraphs 28, 29, 30 of the petition that candidates who are in the employ of the West Bengal Health Service though in spite of their not stating this fact, were admitted and they were permitted to prosecute their studies while they were drawing their emoluments as employees under the Government of West Bengal. There is also no reply to the specific allegation that though in some cases the University authorities started proceedings, but subsequently at the request of respondent No. 4, that is, the Director of Health Services, Government of West Bengal, the proceedings were dropped and as a result the candidates who did not comply with the terms and conditions laid down by the University Council for admission to the M.D./M.S. course, were permitted to continue their studies and at the same time were allowed to have their pay from the Government and in spite of attention of the authorities concerned being drawn to the same, nothing was done.

4. This state of affairs goes against the bona fide of the show cause notice issued against the petitioner that is annexure E to the writ petition and annexure C to the A.O. More so, when a meritorious student like the petitioner who stood first in order of merit having secured the highest marks in written test amongst all the candidates and was given admission in the M. D. (Pediatrics) course. Thereafter the show cause notice was issued on the allegations of some persons in spite of the fact that he has already resigned from the service. Moreover it is also a curious fact that though a specific representation was made on behalf of the petitioner by his Advocate raising more serious allegations of breach of the said terms and conditions by a number of candidates and the University authorities in some cases though started proceedings, subsequently modified the same and did not proceed with the same and in some cases did not think fit to proceed with the same. Whereas in the instant case the petitioner who stood first in order of merit, resigned his service sufficiently before being selected, not to speak of getting admission and who did not take any advantage of the weightage of marks and the benefit specifically provided for in the admission register for admission to the M.D./M.S. course for employees under the Government of West Bengal. This Court fails to understand how it can be said that the petitioner has made suppression or distortion of facts in this background, and a meritorious student like the petitioner will be arbitrarily and illegally deprived of prosecuting his studies though he was admitted already in the said course. If merit is the criterion for admission to higher studies, just as, post-graduate studies in Medicine and Surgery, it is inconceivable that a student who stood first in order of merit will be prevented on a flimsy ground from having the full display of his

merit and from prosecuting higher studies in Medicine (Pediatrics). It is rather curious that the Director of Health Services at whose instance the impugned show cause notice was issued, is not coming forward before this Court. Therefore, it is crystal clear that the specific statements of illegalities and irregularities in the matter of admitting students in the M.D./M.S. course, as has been specifically alleged and stated on oath before this Court in paragraphs 28, 29 and 30 of the writ petition, remain uncontroverted in toto. Therefore, in my opinion, in such circumstances fair play and justice demand that this show cause notice which is wholly arbitrary, illegal and unjust, should be quashed and set aside. This Court fails to understand that there should be several norms or several yardsticks for admitting students and they should be applied by the selection authorities according to their whims, sweet will and pleasure to suit cases concerning discrimination and leniency. The notice is on the face of it is illegal and bad. In my opinion, this show cause notice, therefore, cannot be sustained any longer.

5. My attention was drawn to paragraph 4 of the supplementary affidavit sworn on behalf of the University. It has been stated by the University that no communication from the Government of West Bengal regarding the candidates about whom allegations have been made in the writ petition, were received by the University though the matter was referred to the Government as early as on 10-8-79, 5-8-80 and 8-8-80.

6. In the result, the Rule is made absolute. The impugned notice is quashed and set aside. Let a writ of certiorari be issued commanding the respondents to cancel, quash and set aside the notice, annexure E to the petition, issued by the Secretary, Council for Post-Graduate Studies in Medicine, Calcutta University, on 10-9-80. Let a writ of Mandamus do also issue directing the respondents not to interfere in any manner whatsoever with the petitioner's prosecuting his studies in the M. D. (Pediatrics) course.