

(1984) 09 CAL CK 0007
In the Calcutta High Court
In Re. Anjan Bhattacharya

Date of Decision : 25-09-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 89 CWN 218

Hon'ble Judges : M.G. Mukherji, J

Bench : Single Bench

Advocate : Susanta Chatterjee and Bula Chatterjee, for the Appellant; M.P. Banerjee and Sranik Singhvi, for the Respondent

Final Decision : Allowed

Judgement

M.G. Mukherji, J.—The petitioner Anjan Bhattacharya is the applicant under article 226 of the Constitution of India praying inter alia for a writ in the nature of mandamus asking the Viswa Bharati University and its Vice-Chancellor, Registrar, Controller of Examinaiton and Deputy Registrar (Examination) to declare that he had passed the Pre-Degree Second Semester (Mid Term) Examination of 1982 and also for a further writ in the nature of mandamus commanding the said respondents to declare and/or disclose the results of the said examination before the arrival of the result of review and that for a writ in the nature of certiorari by setting aside the order or decision of the Vice-Chancellor or Academic Council in respect of the case of the petitioner relating to his result in the said examination and in the nature of prohibition restraining the respondents from withholding his results so far as to declare that he had passed the said Second Semester (Mid Term) Pre-Degree Examination 1982.

2. The case of the petitioner inter alia is that he appeared in the Second Semester Examination (Uttar Siksha Sadan) in May, 1980 after clearing of all the subjects in the Pre-Degree First Semester Examination in 1979. His examination was cancelled for resorting to unfair practice and he was suspended for one year. He appeared in 1982 again and failed to secure the qualifying marks in English, Bengali, Social Studies and Geography theory. He alleged that he was in the bad books of the teacher of Geography who victimised him out of personal vendetta.

His father who was a Research Officer of the same University in its Agro Economic Research Centre, deposited the requisite fees for the review of the three subject viz. English, Bengali and social Studies but not in respect of the subject Geography on the understanding that when a candidate passed in all the subject he would automatically get a grace marks of three in the subject he was unsuccessful according to the provision of the 1980 rules printed at page 830 of the Annual Report of Viswa Bharati. The said rule inter alia contained the provision to the effect that grace marks up to a total of 3 marks per semester was to be awarded to an individual student in a Pre-degree course/courses where necessary. On review the petitioner was given to understand only in the month of August 1982 that he had passed in those three subjects sought to be reviewed and he was given mark-sheet in December, 1982. The said mark-sheet revealed that he was declared unsuccessful on the ground that he failed in one subject viz. Geography theory and it was written in the mark-sheet inter alia to the effect that he was to repeat Geography theory. This was penned through and in its place it was written that he had lost three chances. The Viswa Bharati University thus meant to debar the petitioner from appearing in any further examination so far as the said examination is concerned for having lost three chances. The petitioner quoted the relevant rules for 1980 which contained inter alia the provision that, "Student failing to secure the qualifying marks in not more than two courses in any semester examination for failing to appear at any semester examination in not more than two courses would be permitted to repeat the examination twice again in the next regular semester examination in such course or courses". The petitioner on the basis of his mark-sheet made an enquiry if he had a further one chance for appearing in the said examination and also submitted an application to Upacharyya (Vice-Chancellor) through the Principal on 10.1.83. The petitioner was not given any opportunity of being heard on this application and his application was also not forwarded to Academic Council. It was not known to him whether the said application had ever been considered by the Academic Council in the light of the correct rules but it was reported to him that he having lost all the three chances, no further opportunity was to be given to him to appear in the said examination and there was no scope to place his grievances before the authorities concerned. His further contention is to the effect that when the University decided to suspend his examination by way of a penal measure so as to debar him from appearing in the said examination in 1981, since he could not avail of the said chance, it could not be deemed to be a chance at all. Even if his appearing in the said examination in May, 1980 was taken as one chance, he would have two more chances and as a natural corollary therefrom, he contended that he had his second chance in 1982 and he was yet to avail of the 3rd chance. His further grievance was that he was entitled to the benefit of the provisions contained in the rules regarding award of the grace marks which entitled him to pass even in May, 1982 but his result in three subjects having already been reviewed and he having found to have passed in all the subjects except Geography theoretical, where he secure 9/1/2, i.e. 10 and required only 2 marks in order to make him pass. His representation dated

10.1.83 was followed up by another representation dated 13.6.83 which was reproduced in annexure "E" to the application. The Academic Council met on June 17, 1983 but no decision was arrived thereat. His results on review having been upheld, he was asked to appear in Mid-Term Examination for Second Semester for all the four subjects and though the results were published in respect of the said examination on 13.12.82 but his results were withheld. Instead the mark-sheet he secured on review on the three subjects was disclosed to him in the mark-sheet sent to him on 13.12.82. Thus he was deprived of the results in the Second Semester Examination. His contention is that by depriving him of a due publication of his results, the respondents are resorting to an arbitrary action by taking the stand that he had already exhausted three chances. Though the results on review are normally published within one year or before the Mid Term Examinations, but in his case the results on review were initially withheld with an ulterior motive till the Mid Term Examination were held and the petitioner was asked to appear in the Mid Term Examination in respect of all the four subjects which he complied with but he was deprived of due publication of the results thereof. The petitioner's further grievance was that he ought to be declared having passed the said examination since the results not having been published, he would be deemed to have passed. The results in the Second Semester (Mid Term) Examination which took place before the publication of the results on review were deliberately suppressed and not disclosed to him in an arbitrary and malafide manner by resorting to a peculiar stand that the petitioner already had lost three chances and was not entitled to appear in the said examination at all despite the fact that he was actually allowed to appear therein.

3. The Viswa Bharati University contested this writ application by filing an affidavit-in-opposition. The preliminary point taken by the University was that the petitioner applied for Migration Certificate on 25.3.83 and actually received the said certificate on 29.8.83. The Migration Certificate having already been issued to him there was to all intents and purposes, a waiver of his alleged right, if any, to claim the declaration he sought for, since he was not to be treated as a student of the University any more. He was thus not entitled to claim his legal right by virtue of a prayer for review of his results and/or due publication thereof. The further contention raised by Viswa Bharati University was to the effect that by virtue of the Migration Certificate having been issued to him on 29th August, 1983, he was not longer a student of the Viswa Bharati University. An attempt was made to tarnish the image of the petitioner inasmuch as he was found in 1980 to have resorted to unfair practice in the examination as a result whereof not only his examination was cancelled but he was deprived from appearing at the Pre-degree Second Semester (Mid Term) Examination in 1981. The allegation of notice in so far as the teacher of Geography is concerned, was denied as unfounded and hatched up for the purposes of this case. It was denied by the University that there was existence of any such rule which provided inter alia that a candidate having passed in all the subjects would automatically get a

grace of 3 marks in the subject in which he was found unsuccessful. There was no such rule by which a candidate was given the legal right to claim grace marks. Granting grace marks would be a matter entirely within the discretion of the Examination Committee and could not be claimed as a matter of right as was sought to be done by the petitioner. It was brought to notice of the Court by the learned advocate for the respondents that whatever might have been the prevailing rules operating in 1980 about awarding of grace marks up to the total of 3 marks per semester, the new rules which were operative in so far as the petitioner's case for the Second Semester Examination 1982 was "a grace mark of 2% of total marks in paper or papers subject to minimum of one and maximum of 3, provided that this award helps the student to pass in that part of the examination". It was also pointed out that the petitioner cleared the 3rd Semester Examination as a repeater candidate in 1981 and he passed the 4th Semester Examination as a regular candidate in the self-same year. He appeared in the Pre-deGREE Semester Examination (repeater) in 1982 as an ex-student candidate and failed in 3 subjects viz. English, Bengali and Geography theory. So he lost his 2nd chance. The result was published on 24.7.82. In 1982 he applied for review in English, Bengali and Social Studies and the review results were ready on 15.10.82 but the puja holidays intervened from 19.10.82 to 18.11.82 and as such results could not be published. He again appeared in the Pre-deGREE Second Semester (Mid Term) Examination as an ex-student candidate and this time his results were better than that of the review results. Mid Term results were published on 13.12.82 and he was declared to have failed in Geography and thus he lost his 3rd and last chance leaving no other chance for him to avail of. It was stressed out by Mr. Banerjee, the learned advocate for the Viswa Bharati University that since award of grace marks was an absolute unfettered discretion of the Examination Committee, the petitioner had no legal right to claim grace marks as of right and as such he had no case at all to seek his remedy by way of a writ. The new rules came into effect on and from 1.1.82 and since no one had a vested right in the rules, the petitioner having appeared in the examination for 1982, he was to be guided by the rules which were held prevalent on and from 1.1.82 and not the old rules which prevailed in 1980 when he appeared for the first time in the said examination.

4. A very peculiar point is taken by the Viswa Bharati University to this effect that the representation of the petitioner along with his earlier representation having been placed before the Academic Council by resolution no. 25, dated 17.6.83, Academic Council was pleased to decide that the proposal of the petitioner was not accepted. It was not given out as to whether the Examination Committee for the said examination in the year 1982 actually exercised its discretion or not to award grace marks to the petitioner or to refrain from awarding the said grace marks. The apart, the University boldly admitted that the petitioner's marks in the repeater examination after review were not published because the petitioner had already appeared in the Mid Term Examination before the marks after review were available. This was really a very

peculiar stand since the petitioner having been allowed to sit for the said examination could not be denied the results thereof on the plea that his chance already expired and he was no more eligible to appear at the said examination.

5. In paragraph 19, 20 and 21 of the affidavit-in-opposition the respondents have sought to explain the reasons as to why the petitioner was denied the opportunity of having the results in the last examination that he appeared in, in the circumstances that his chance had already expired and he was not eligible to appear there at but the University having accepted fees and having allowed the petitioner to sit for the said examination, it did not appear to me to be a convincing argument that he had lost all his chances just because his chance for 1981 was taken away by way of a penal measure for having resorted to unfair practice in 1981. The learned advocate for the University despite his best arguments could not convince me that the Examination Committee which was the sole authority to decide on the issues as to whether the discretion was at all to be exercised as regards awarding of grace marks according to new rules had at all exercised such discretion. In that view, I deem it just and proper, there not having been any document available in this regard, that the matter should go back to the said Examination Committee for the particular year for consideration as to whether the grace marks are at all to be awarded to the petitioner in order to help the said student to pass that part of the Second Semester Examination of the Pre-decree Examination. That apart I think in the facts and circumstances of the present case the fees for the last examination held in 1982 having been accepted from the petitioner and the petitioner having been allowed to appear in the said Mid Term Examination, while his application for review was kept pending, the results of the last examination could not be denied to him because the University could not be allowed to take advantage of its own wrong even if the University wrongly or erroneously allowed him to appear at the said examination on the plea that his 3rd term was already over. The University has not only a moral but also a legal duty to publish results thereof and in case the petitioner is found to be successful in the said examination, he would be entitled in law to take advantage of the said results so that he may pass out the said examination.

6. As regards University's contention that with the issuance of the Migration Certificate there has already been a severance of the petitioner's status as a student vis-a-vis the Viswabharti University and the petitioner would be deemed to have left the University for good and was to be regarded as no longer a student of the said University, I do not agree. The Migration Certificate itself is on the following terms: - "With reference to the application of Sriman Anjan Bhattacharyya of Uttar Siksha Sadan Regd. No. D.D. 47 of 1978-79 he is informed that this University has no objection to his continuing his studies at any University". This certificate was issued by the Registrar (Karma Sachiva) on 29.8.83. But the petitioner applied on 6.8.83, showing his registration no. D.D. 47 for 1979 for admission in the Sangit Bhavan, Viswa Bharati, Shantiniketan and he did not actually leave the Viswa Bharati University. So even if the

Migration Certificate was granted to him by way of granting University's permission that it had "no objection to his continuing his study elsewhere", the fact of severance of the petitioner's studentship in the University would have been complete by way of a follow up action on the part of the petitioner if he would have actually taken admission in some other University, but that not having been done in the present case, I do not agree that with the issuance only of the Migration Certificate, the petitioner lost all his rights as regards the consideration of his case for awarding of grace marks to him in Pre-degree Second Semester Examination (repeater) 1982 or for a declaration of his results in Pre-degree Second Semester (Mid Term) Examination. On the other hand, he succeeds.

7. In the result, I dispose of this application by directing the respondents to declare his examination results in Pre-degree Second Semester (Mid Term) Examination as an ex-student candidate and in case he be found successful therein, to allow him the advantage of passing the said examination, the matter should be left to the discretion of the Examination Committee for the Pre-degree Second Semester Examination (repeater) 1982 which is directed to consider within a period of three months from this date as to whether grace marks according to the existing rules of the University in 1982 are at all to be awarded to the petitioner in so far as Geography theoretical paper is concerned. I make it clear that in so far as the decision of the Examination Committee for the said year to apply is mind over exercise of its discretion to award grace marks or not, the same is completely in the domain of the Examination Committee. The court is only to be satisfied as to whether there has been a due application of mind as regards exercising the choice or otherwise of the Examination Committee in its discretion to give the said grace marks. If there is a provision for awarding of grace marks by the Examination Committee in its discretion, the court cannot sit on judgment over the exercise of the said discretion or not, but what I want to declare in this regard that there not having been any material placed before the court on the challenge having been made by the petitioner concerned that the Examination Committee had not at all actually made up its mind and decided whether or not to award grace marks, it would be left open for the court to decide on the relevant facts when the said challenge has not been replied to effectively, that the said discretion had not at all been exercised by the Examination Committee. On being convinced from the records of the case Mr. Banerjee had no other alternative but to admit the said fact that there was no document available for him to place before the Court in this regard that Examination Committee has actually exercised its discretion. I, therefore, direct the Examination Committee to decide the matter as to whether or not, it would exercise its discretion to award the grace marks to the petitioner. If all the personnel of the Examination Committee are not available today, only such of them who would be available now, comprising a majority, conforming to the quorum, would meet the requirement for the purpose of meeting of the Examination Committee, but in any case Examination Committee is to take its

decision in this regard as early as possible, since justice delayed is justice denied.

8. The writ application thus succeeds to the extent indicated above and is disposed of accordingly. Let a writ in the nature of mandamus in the light of my decision and directions given out hereinbefore be issued.

There will be no order as to costs.