

(1983) 09 CAL CK 0026
In the Calcutta High Court
Case No : Case No. Nil
In Re: Santanu Dan

Date of Decision : 01-09-1983

Acts Referred:

Calcutta University Act, 1966 — Section 53
Calcutta University Regulations, 1951 — Regulation 4
Constitution of India, 1950 — Article 14, 19

Citation : AIR 1984 Cal 178

Hon'ble Judges : G.N. Ray, J

Bench : Single Bench

Advocate : Md. Yusuf Ali and Ila Chatterjee, Nigam Chakraborty and Sanjib Misra, Sudhendu Mukherjee, Tapan Mukherjee, Goutam Som and H. Barua, for the Appellant;

Judgement

G.N. Ray, J.—This writ petition is heard as a contested application upon notice to the respondents and the learned counsel have appeared for the Calcutta University and also for the Secretary, Council for Undergraduate Studies, Calcutta University. The learned counsel has also appeared for the respondent No. 1, namely the State of West Bengal and the Director of Health Services and Secretary (Ex-Officio) to the Government of West Bengal, Department of Health and Family Welfare. It appears that the petitioner was admitted to the 4i years" M. B. B. S. Course under the Calcutta University in Calcutta National Medical College against Shri S. N. De's donor-seat and the studied the First Professional M. B. B. S. Course as a student of the said College from the Sessions 1.979-80. It appears that the petitioner appeared at the First Professional M. B. B. S. Examination 1980 held in June 1981 but he was unsuccessful in the said examination. The petitioner thereafter appeared at the supplementary First Professional Examination 1980 held in September 1981 but he was also unsuccessful in the said supplementary examination. The petitioner contends that the petitioner's father who himself is a Doctor had been suffering from heart disease and the petitioner had to sit for the examination under heavy mental anxiety due to his father's illness and lack of hostel accommodation at Calcutta. The petitioner thereafter deposited fees and the application form for the First

Professional M. B."B. S. Examination in 1981 held in May/June 1982 but he could not appear at the said examination due to his own illness. It is the case of the petitioner that the petitioner had been suffering from Pleural Effusion since May, 1982 and he was also advised complete rest for three months. In support of such contention the petitioner has annexed Medical Certificate dated August 16, 1982 which is Annex. "D" to the writ petition. The supplementary First Professional Examination 1981 was scheduled to be held from 16th August, 1982. The petitioner could not submit his application form for appearing in the said supplementary examination as he was unwell and was still under bed rest. Thereafter, the petitioner submitted an application to the State Government for permission to read in the Burdwan Medical College. On August 17, 1982 the petitioner applied to the Secretary, Council for Undergraduate Studies, University of Calcutta through the Principal, Calcutta National Medical College to continue his studies in the First Professional M. B. B. S. Sessions 1982-83. The petitioner solicited the approval of the said authority for the said purpose. In the said letter the petitioner had communicated the facts of his father's illness and also his illness for which he could not appear in the last two examinations. A copy of such application dated August 17, 1982 has also been annexed to the writ petition being Annexure "D". The Secretary, Council for Undergraduate Studies, Calcutta University by letter dated August 26, 1982, informed the Principal, Calcutta National Medical College that the permission sought for by the petitioner in his application dated August 17, 1982 had not been granted and as the petitioner had exhausted the prescribed number of chances provided under the existing regulation he was to leave the medical course of studies. A copy of the said letter was thereafter forwarded to the petitioner by the Principal of the College by his Memo, dated Sept 3. 1982 which has been annexed to the writ petition being Annexure "E". On Sept. 6, 1982 the petitioner submitted a representation to the Vice-Chancellor, University of Calcutta. The petitioner had contended, inter alia in the said representation to the Vice-Chancellor, University of Calcutta that the stand taken by the Secretary, Council for Undergraduate Studies that the petitioner would have to leave the medical course for having failed to pass the First M. B. B. S. Examination within four consecutive chances was unjust and contrary to the regulations relating to the First Professional M. B. B. S. Examination. The petitioner had contended in the said representation that four chances did not mean four consecutive chances and the said fact would be apparent from the amendment to the regulation notified by the Calcutta University dated March 3, 1982 whereby the concept of four consecutive chances had been specifically introduced in Section 4 of the Regulation relating to the First Professional M. B. B. S. Examination. The petitioner had also contended in the representation that in the case of the petitioner, the regulation which was in force as originally enacted at the time of entry in the First Professional M. B. B. S. Course should be referred to and subsequent amendment being only prospective could not be made applicable in the case of the petitioner. A copy of such representation to the Vice-chancellor has been annexed to the writ petition being marked as Annexure "F". The petitioner had also contended that he could

avail himself of only two chances to clear the said examination under difficult circumstances and as such, two more chances were still available to him under the original regulation and his failure to appear at the First Professional M. B. B. S. Examination held in May/June, 1982 or in August 1982 could not operate as any embargo in the matter of his prosecuting studies of M.B.B.S. Course. The petitioner had also requested to consider his case sympathetically in accordance with law and review the decision communicated by the letter of the Secretary, undergraduate Council. As the petitioner did not receive any further communication from the University of Calcutta the petitioner submitted further representation dated Feb. 28, 1983, to the Vice-Chancellor of the Calcutta University, the Secretary to the Government of West Bengal, Department of Health and Family Welfare and Director of Health Services and Secretary, Ex-Officio to the Govt. of West Bengal enclosing the copy of his earlier representation dated September 6, 1982. It appears that in the subsequent representation the petitioner had also pointed out that if the University of Calcutta was not inclined to allow the petitioner to prosecute his studies in M.B.B.S. Course, the petitioner should be allowed to avail himself of such opportunity of studying the M.B.B.S. Course in the Burdwan Medical College under the Burdwan University where such restrictions do not appear. The petitioner contends that thereafter the petitioner demanded justice from the said authorities by a letter dated April 11, 1983 and after the said letter was despatched, the petitioner received a letter dated April 6, 1983, from the Secretary, Council for Undergraduate Studies, University of Calcutta. In the said letter the petitioner's representation dated Feb. 28, 1983 addressed to the Vice-Chancellor was referred to and it was stated that his application for permission to continue M. B. B. S. Examination could not be granted as the petitioner had exhausted four consecutive chances. In the said letter it was also stated that three cases" had recently been decided by this Court wherein the said rule of four consecutive chances had been upheld. It was also stated that as there was a specific rule, the Vice-Chancellor was unable to decide anything beyond or against the relevant rule which was in operation. It appears that the petitioner by letter dated April 29, 1983 addressed to the Secretary, Council for Undergraduate Studies drew the attention of the said Secretary to the fact that the petitioner's representation that the rule relating to four consecutive chances was not applicable to the case of the petitioner had not been considered. The petitioner had also stated that Secretary had also not indicated as to whether or not the cases decided by this Court, were similar to the case of the petitioner. The petitioner had also contended that there was no specific rule which could stand in the way in considering the case of the petitioner in accordance with law. As the petitioner's case was not considered any further by the University authorities, the instant writ petition was moved by the petitioner. It may be noted in this connection that the petitioner had also made a representation to the State Govt. for giving permission to the petitioner to take a transfer from the National Medical College to the Burdwan Medical College so that the petitioner could continue his studies in the M. B. B. S. Course at Burdwan. It was

contended by the petitioner that as the petitioner's father had been ailing for quite sometime and being a heart patient he required the petitioner's presence in Burdwan. The permission should be granted to the petitioner to take transfer from the National Medical College to the Burdwan Medical College. The petitioner contends that under the rules of the Burdwan University there is no bar in petitioner's continuing the studies in the M. B. B. S. Course for the reason that the petitioner could not pass the First Professional M. B. B. S. Examination within four consecutive chances. It appears that in the affidavit-in-opposition filed on behalf of the State of West Bengal it has been stated that transfer of medical students is made as per Clause (9) of G. O. No. Medl/ 1884/2M-169/77 dated March 13, 1978. The said clause 9 is as follows :

"9. Since selection and allotment of candidates for admission to the different Medical and Dental Colleges in West Bengal is made on the basis of merit, the principle that they shall remain in the respective Medical and Dental Colleges till they pass out. should be adhered to and no intercollegiate transfer should be allowed except in the following cases :

(1) evacuee students, who originally belonged to the State of West Bengal or to erstwhile undivided Bengal, and have migrated to West Bengal from Medical Colleges in East Pakistan (erstwhile), Burma and Sri Lanka on or after 1-1-64. 1-6-63 and 1-11-64 respectively and

(2) sons and daughters of employees of Central, State or U. T. Govt.(s) or of employees of statutory or corporate undertakings of the Central, State or U. T. Govt.(s) posted, on transfer, in West Bengal.

Subject to availability of seats in West Bengal Medical/Dental Colleges and also subject to permission by the concerned University in West Bengal and the Medical Council of India."

It has been stated further that the petitioner does not come under the above provisions and the petitioner was not admitted on the basis of merit. In the affidavit-in-opposition it has been stated that the application of the petitioner praying for transfer to Burdwan Medical College was considered by the Department of Health and Family Welfare, Govt. of West Bengal, but after considering the said application, the Principal of the Calcutta Medical College was informed that transfer was not possible.

2. Mr. Chakraborty, the learned counsel appearing for the petitioner has contended that it is apparent from the affidavit-in-opposition filed on behalf of the State Govt. that the petitioner's case for transfer was not considered in the proper perspective and on erroneous consideration of a Govt. order referred to in the affidavit-in-opposition, the petitioner's prayer for transfer to Burdwan Medical College had been rejected. Mr. Chakraborty contended that the said Govt. order is entirely for a different purpose and the same does not govern the case of the petitioner. He has submitted that there is no bar under law to give such permission to a student to take transfer from a Medical College in Calcutta

to a Medical College in Burdwan and such permission had also been granted in a number of cases. Mr. Chakraborty has contended that the petitioner has sought for transfer on the ground of his health and also on the ground of ill-health of his father. It was the duty of the State Government to consider such representation on merit and to take a decision but on consideration of a Govt. order which had no bearing on the case of the petitioner the petitioner's representation had been rejected by the State Government. He, therefore, submits that the State Govt. should be directed by this Court to consider the representation of the petitioner on merits and to take a decision without any further delay. So far as the decision of the Calcutta University is concerned, Mr. Chakraborty has contended that the regulation governing the studies in M. B. B. S. Course which was in force at the time of the petitioner's admission to the M. B. B. S. Course must govern the case of the petitioner and any amendment of such regulation must be held to be prospective and the same cannot have any manner of application to the facts and circumstances of the petitioner's case. Mr. Chakraborty has stated that it will appear from the regulation of the Calcutta University governing the First professional M. B. B. S. Course that there shall be two examinations a year including supplementary examination. The students will get four chances including the supplementary examination to pass the examination, failing which they are to leave medical course. Candidates will be allowed to appear at the supplementary/next Annual Examination on payment of the same fee and being sent up to the satisfaction of the Principal. The supplementary examination will be held after four weeks from the date of publication of the result. For each of the failed candidates taking advantage of chances, a register/dossier shall be maintained by the colleges and the Scrutiny Section of the Controller's Officer. Mr. Chakraborty has contended that the very provision in the said regulation that for each of the failed candidates taking advantage of chances, a register/dossier shall be maintained by the colleges and the Scrutiny Section of the Controller's Office means that a candidate should be allowed four chances to sit for the examination. If for any reason the candidate is prevented from sitting in the examination or cannot appear in the said examination such failure to appear in the examination cannot be taken into consideration for the purpose of counting chances. Mr. Chakraborty has contended that if a candidate does not appear in the examination then there is no occasion to maintain any register or dossier in respect of such examination. He submits that it is therefore evident that chances must mean actual chances taken by appearing in an examination. He has contended that the said position has since been sought to be amended by the University subsequently and it has been stated that chances occurring in Section 4 should be replaced by "four consecutive chances". He therefore submits that the said amendment also makes it clear that under the previous regulation four chances did not mean four consecutive chances but actually four chances availed by a candidate in appearing in an examination. He, therefore, submits that the regulation before amendment should not be considered as a bar to petitioner's appearing in the First M. B. B. S. Examination for two other chances and/or continuing his M. B. B. S. studies. He therefore submits that the decision of the

University authorities to debar, the petitioner from prosecuting his M. B. B. S. Course and/or from appearing in the First M.B.B.S. Examination any further, is illegal and should be quashed. Mr. Chakraborty has also contended that even if it is assumed for argument's sake that a candidate is to get four chances to pass the First. Professional M. B. B. S. Examination, and such four chances do not mean the actual chances availed of by a candidate by appearing in the examination, it must be, held that such regulation is very harsh and has imposed unreasonable restriction on a student studying M. B. B. S. Course under the Calcutta University. Mr. Chakraborty has contended that in other Medical Colleges under other Universities there is no such restriction and even today if the petitioner is allowed to continue his M.B.B.S. Course under the Burdwan University, the petitioner can do so and the regulations of the Burdwan University do not impose any restriction that unless a candidate passes within four chances in the First M. B. B. S. Course, such candidate will have, to leave his studies. Mr. Chakraborty has contended that a University is entitled to frame Rules and Regulations governing the academic studies of the students but such Rules and Regulations must not be absolutely unreasonable so as to infringe the fundamental rights guaranteed under Article. 19 of the Constitution. He has also contended that an unreasonable Rule is negation of a rule of law and as such it is also violative of Article 14 of the Constitution.

3. The learned counsel appearing for the State has, however, submitted that the petitioner's case was considered but the Government was not inclined to give him permission to study his M. B. B. S. Course in the Burdwan Medical College. It has been stated by the learned counsel for the State that on the basis of selection, different candidates are given permission to study M. B. B. S. Course under different colleges under different Universities. The petitioner was admitted in the instant case in the National Medical College not on the basis of his merit position in the selection test but against a reserved quota of a donor's seat. He has submitted that as a matter of right, a candidate cannot ask for permission to study in a different medical college and in each medical college, the number of students is controlled in such a way so that students can study in the said medical college properly.

4. After considering the respective submissions of the learned counsel appearing for the parties, it appears to me that a candidate cannot claim permission to read in another medical college as a matter of right and the State Government can in appropriate cases give such permission. There is however no legal bar in granting such permission to a candidate to take transfer from one college to another college even if such transfer means a transfer to a different University. It also appeals to me that such permission has been granted at times. From the affidavit-in-opposition it appears that the petitioner's case has not been properly considered by the State Government on merits and it appears that the petitioner's case was considered on the basis of a Government order referred to hereinbefore which has no bearing on the facts of the petitioner's case. In the instant case, the petitioner has asked for transfer on the ground of his health and

other difficulties and also on the ground of his father's health. It does not appear that the consideration of the State Government has been made on the basis of the facts disclosed in the representation of the petitioner. It, therefore, appears to me that the State Government should make a consideration on the petitioner's representation afresh after taking into consideration of the facts and circumstances set out in his representation. It is, however, made clear that this Court has not expressed any opinion on the representation of the petitioner and the State Government will be quite free to take any decision which may appear to it just and proper. Such consideration, however, should be made by the Government as early as practicable preferably within one month from to-day.

5. So far as the decision of the University of Calcutta communicated to the petitioner is concerned, it appears to me that the Regulation of the Calcutta University for the First Professional M. B. B. S. Examination which was in force when, the petitioner was admitted in M. B. B. S. Course, clearly indicates that a student will get four chances including the supplementary examinations to pass the examination failing which he will have to leave medical course. A candidate will be allowed to appear at the supplementary/next annual examination on payment of the same fee and being sent up to the satisfaction of the Principal. In my view, the said provision makes it quite clear that a student will get four chances to pass and such chance does not mean a chance actually availed of by the candidate by appearing in an examination. Chance, in my view, means a chance to appear and/or to pass an examination. The statement at the bottom of the said Rule 4 to the effect that for each of the failed candidates taking advantage of the chance a Register/Dossier shall be maintained does not mean that a chance will be counted only if the candidate actually avails himself of the chance to appear in the examination. In my view, the said expression only means that if a candidate actually avails himself of a chance but becomes unsuccessful then a Register/Dossier shall be maintained for such failed candidates who had taken the advantage of appearing in an examination. In the aforesaid circumstances, the Rule for the First Professional M.B.B.S. Course clearly lays down that a student will get four chances including the supplementary examination to pass the First Professional M. B. B. S. Course failing which he will have to leave the medical course. In such circumstances, the question of application of the amended Rule prospectively does not arise because even under the old Rule a candidate was required to pass within four chances and as aforesaid a chance will mean a chance to sit for in an examination and to pass and not the chance actually availed of in an examination.

6. Mr. Chakraborty has, however, contended that if the Rule of the Calcutta University really means that a candidate will only get four chances whether he appears or not, in such examination, then the Rule must be considered as an unconscionably unreasonable and harsh rule and such rule offends Articles 14 and 19 of the Constitution being unreasonably harsh and devoid of any reason whatsoever. He has submitted that if a candidate who may not be in a position to sit for the examination for unforeseen reasons beyond his control, because of his

serious and prolonged illness or being injured in an accident or for some other reasons beyond his control and by that process loses four chances to appear and pass the First Professional M. B. B. S. Course, he will be forced to leave his studies. Such Rule, Mr. Chakraborty contends, must be held to be unreasonable. He has contended that in the case of the petitioner, the Secretary, Council for Undergraduates Studies of the Calcutta University has specifically stated that the petitioner's representations to the Vice-Chancellor cannot be considered because the Rules stand in the way of allowing the petitioner to continue his First Professional M. B. B. S. Course. Mr. Chakraborty, therefore, contends that the University authorities are proceeding on the footing that the said Rule is inflexible and no relaxation is permissible. He, therefore, prays that the Rule should be declared as unconstitutional being unreasonably rigid.

7. In the affidavit-in-opposition filed on behalf of the University of Calcutta it has been stated that although under the Rule, a candidate is required to pass his M.B.B.S. Course within four chances available to him and he has to leave the studies of medical course if he fails to pass the First Professional M. B. B. S. Course within the said four chances, the Syndicate has a power to make relaxation in an appropriate case where because of some unforeseen difficulties, a candidate could not avail himself of four chances and/or could not pass the First Professional M. B. B. S. Course within four chances.

8. Mr. Mukherjee, the learned counsel appearing for the University of Calcutta has submitted that the Vice-Chancellor is the President of the Syndicate and the Syndicate has a power to relax any provision of the Rule in an appropriate case and as a matter of fact such power has also been exercised. He has submitted that very recently one of the students of the National Medical College could not pass the First Professional M. B. B. S. Course within four chances as he had been suffering from Pulmonary Tuberculosis and he made a representation to the Syndicate to relax the Rule in his case as a special consideration and the Law Officer of the University forwarded such application for consideration of the Syndicate. He, therefore, submits that it cannot be held that the Rule is inflexible and in any case no consideration is permissible. Hence, there will be no occasion for the Court to hold the said Rule as unreasonably harsh and as such violative of Articles 14 and 19 of the Constitution as contended by the petitioner. Mr. Mukherjee has further contended that every University has a power to regulate the academic course and the examination of the students studying under the said University and in such sphere, the University must have independence and the Court should not interfere with the Rules and Regulations framed by a University regulating the academic courses and examinations. He has contended that the Rule relating to four consecutive chances to be availed of by a candidate for passing the First Professional M. B. B. S. Course came up for consideration before this Court in some other earlier writ petitions made by some other students and till to-day this Court has uniformly held that such regulation is valid and no interference is called for. Mr. Mukherjee has, therefore, submitted that the said Rule should not be struck down by this Court on the score that the

Rule is unconscionably unreasonable and harsh offending Articles 14 and 19 of the Constitution.

9. After considering the submissions made by the learned counsel appearing for the parties it appears to me that a University must have the independence to frame the Rules and Regulations governing the academic courses to be followed by the students reading under the said University. Such Rules are not expected to be similar in all Universities but at the same time, the University cannot frame any Rule which is absolutely unreasonable and unconscionably harsh not followed usually by the other Universities. It, however, appears to me from the submissions made by the learned counsel appearing for the Calcutta University and also from the affidavit-in-opposition filed on behalf of the University, that the said Rule of four chances or four consecutive chances to pass the First Professional M. B. B. S. Course, is a general rule and is to be applied uniformly in all cases but the said rule is not inflexible and in an appropriate case, if it appears to the University authorities, that a candidate could not pass the said examination within four chances or could not avail of four chances to pass the First Professional M. B. B. S. Course for reasons beyond his control and has suffered an unmerited hardship, the Syndicate may take a decision by which the provisions of the said Rule may be relaxed. In the aforesaid circumstances, no interference is called for in this writ petition. But it appears to me that the petitioner's representation has not been considered by the Syndicate because the concerned authorities proceeded on the footing that in view of the (sic) Rule of passing the First Professional M. B. B. S. Course within four chances, the petitioner's representation cannot be considered. It may be noted that the petitioner has made out a case for consideration of his case on merits on the ground of his own illness and the illness of his father. It is, therefore, only desirable that the petitioner's representation should be considered by the Syndicate which I am told has power to make relaxation in an appropriate case. Let such consideration be made as early as practicable preferably within a month from the date of further representation to be made by the petitioner highlighting the difficulties for which the petitioner could not pass the First Professional M. B. B. S. Examination and/or could not avail himself of the chances to appear in such examination.

10. The writ petition is accordingly disposed of.