

(2017) 03 CAL CK 0102
In the Calcutta High Court
Case No : 212 of 2009

Jadavpur University & Ors.

APPELLANT

Vs

Subhamoy Singha Roy & Ors.

RESPONDENT

Date of Decision : 30-03-2017

Acts Referred:

Constitution of India, Article 12 -
Application of Acts of Parliament and of the Legislature of the State of Assam to
autonomous districts and autonomous regions in the State of Assam
Code of Ci

Citation : (2017) 03 CAL CK 0102

Hon'ble Judges : Dipankar Datta, Sahidullah Munshi

Bench : DIVISION BENCH

Advocate : Joydeep Kar,?Bilwadal Bhattacharya,?Arkaprava Sen, Arunava
Ghosh,?Anindya Lahiri,?Pranati Das,?Raktim Chowdhury, Ashoke Kumar
Banerjee,?Pradipta Ganguly

Judgement

1. FMA 212 of 2009 and FMA 516 of 2009 are intra-court writ appeals directed against the judgment and order dated April 25, 2008 passed on W.P. 21719(W) of 2007 (Subhamoy Singha Roy v. Jadavpur University & ors.). It was disposed of with the following directions: " *** The petition succeeds. The executive council resolution of May 16, 2007 is set aside to the extent it applies to the petitioner. But it will be open to the University to begin the process afresh or otherwise adopt a procedure to assess the matter by affording adequate opportunity to the petitioner to present and urge his defence. Nothing in this judgment should be read as having in any manner exonerated the petitioner of the charge of plagiarism or any of the shades of it.

Since the respondent no. 11 has filed his independent proceedings, it is not necessary to go into his contention that in the University not traversing the averments in the affidavit filed on his behalf in the present proceedings, the eleventh respondent has to be given the benefit that has been conferred on the petitioner. It will, however, be open to the eleventh respondent to rely on this

order in his independent proceedings. The same courtesy cannot be extended to the eighth, ninth and tenth respondents for they ought to have discovered that some mischief was afoot before allowing the dissertations to progress to submission. The considerations that would apply in the case of the supervisors, particularly the common guide, would be entirely different as this petition has been assessed on the petitioner's case and the views expressed here have to be read thus. The observation that the order passed in favour of the petitioner cannot, in this context, be availed of by the supervisors should also not prejudice their independent petitions."

2. Reference to independent proceedings initiated by the respondent no. 11, as found in the aforesaid extract, is a writ petition, registered as W.P. 2403(W) of 2008, presented by a Samit Pahari (for short SP, hereafter). By an order of the coordinate Bench dated July 1, 2010, such writ petition was directed to be heard along with the two appeals.

3. We have heard the appeals and the writ petition at considerable length and propose to dispose of the same by this common judgment and order.

4. The basic facts leading to initiation of W.P. 21719(W) of 2007 by a Subhamoy Singha Roy (for short SSR, hereafter) and W.P. 2403(W) of 2008 by SP are not in dispute. A brief recital of the same would be apposite to comprehend the extent of claimed suffering of legal wrong by each of the two petitioners necessitating their approach to seek redress from this Court in exercise of its writ powers.

5. An application in prescribed form was submitted before Jadavpur University (for short JU, hereafter) by SP on August 28, 2003 for registration for the degree of Doctor of Philosophy (for short Ph.D, hereafter). SP was engaged as an information scientist in JU on the date he applied for such registration. A copy of the application for registration, which did not form part of the records of the writ proceedings initiated by SP, has since been placed before us. It appears therefrom that SP chose Professor Kamakhya Prasad Ghatak (for short KPG, hereafter), Department of Electronic Science, University of Calcutta (for short CU, hereafter) and Professor Ardhendu Ghoshal (for short AG, hereafter), Reader, Department of Instrumentation and Electronics Engineering, JU, as his 1st and 2nd supervisors respectively. SP's proposed title of the thesis read "ON SOME ELECTRONIC AND OPTICAL PROPERTIES OF NANO-STRUCTURED MATERIALS AND RELATED PHENOMENA".

6. Similar application in the prescribed form was also submitted by SSR before JU on September 18, 2005 for registration for the degree of Ph.D. In such application, SSR named Professor Subhankar Banerjee (for short SB, hereafter) and KPG as his 1st and 2nd supervisors respectively. The proposed title of his thesis read "ON SOME ELECTRONIC AND OPTICAL PROPERTIES OF NON-LINEAR OPTICAL AND OPTOELECTRONIC MATERIALS".

7. In due course of time, both SP and SSR were granted permission by JU to register their names on payment of requisite fees. The registrations were to

remain valid for five years from the date of registration i.e. the date of registration being the date on which registration fees were paid. Both SP and SSR claimed to have commenced research under their respective supervisors, thereafter.

8. SSR submitted his thesis on September 15, 2005. He appeared for a viva voce examination on April 28, 2006 and the approval of the Vice-Chancellor of JU having been ratified by the Executive Council thereof on June 5, 2006, it was resolved to confer on SSR the degree of Ph.D. in the annual convocation of JU scheduled to be held on December 24, 2006. In the annual convocation, SSR was conferred Ph.D.

9. SP too submitted his thesis, but a couple of months later; it was on November 17, 2005 to be precise. He appeared for a viva voce examination on April 19, 2006 and the Executive Council of JU resolved on June 5, 2006 to confer him Ph.D. in the annual convocation of JU scheduled to be held on December 24, 2006. Like SSR, SP was also conferred the degree in the annual convocation.

10. The joy, satisfaction and comfort that SSR and SP might have sensed on obtaining the Ph.D. degrees were, however, short lived. JU received an anonymous call to the effect that the theses submitted by SSR and SP were substantially identical. The Vice- Chancellor was immediately apprised of such development, whereupon he appointed Prof. Subrata Pal, Dean, Faculty of Science, JU (for short the Dean, hereafter) to enquire into the matter and submit a report as early as possible. Such decision of the ViceChancellor was communicated to the Dean by the Registrar of JU. The Dean submitted a report dated July 12, 2006 observing that substantial portions of the theses were identical and that it was not possible to determine which one of the two theses is an original contribution to knowledge bearing evidence of the candidate having carried out individual investigations in his chosen field. According to him, any of the following possibilities could not be ruled out:

- a. Substantial portions of one thesis have been copied from the other, and/or,
- b. Both of them have extensively copied from other common sources.

The Dean, accordingly, made the following recommendations:

"Recommendations

In the specific cases: An enquiry may be instituted in order to determine if there have been violation of rules and ethics and any malpractice(s) by any or all of the candidates and supervisors named above in the present cases as well as in past case(s) concerned with any or all of these supervisors. Appropriate action may be taken thereafter.

In the general case: In order to eliminate the maladies of the present Ph.D. programme of the University, which may be providing, if not encouragement, breeding ground for such malpractices (if proven), gross overhauling of the

programme, on the basis of sound academic and rational parameters, is an absolute imperative."

11. The report of the Dean was placed before the Executive Council, which by its resolution dated July 12, 2006 noted the same and considering that the allegation of plagiarism had been prima facie established, constituted an enquiry commission consisting of Professor Subimal Sen, Vice-Chairman, Higher Education Council, Govt. of West Bengal (hereafter the enquiry commission). The enquiry commission summoned SSR and SP separately on November 21, 2006 and recorded their versions. The versions of AG and SB were recorded separately on January 9, 2007, whereas the version of KPG was recorded on February 7, 2007. The versions of SSR and the three supervisors were not made over to SP; similarly the versions of SP and the said supervisors were also not given to SSR. Certain letters were written to the enquiry commission by KPG, which were also not made over to SSR and SP. After a detailed discussion of the versions as well as the materials on record, the enquiry commission proceeded to observe as follows:

"After going through all the documents, I am constrained to observe that plagiarism in its worst form has been committed in this case, tarnishing not only the image of the University but also putting the entire scientific community into shame. Such an act should not go unpunished. However, the exact nature of disciplinary actions to be taken in respect of each one of them should be decided by the appropriate bodies of the University.

As we already mentioned, the University cannot escape from its responsibility in this matter. The entire procedure for examination of the Ph.D. thesis and award of the degree should be thoroughly examined and remodeled to build sufficient safeguard against such possible acts of plagiarism.

Several suggestions are put below for consideration of the University Authority.

1. In the Preface of the dissertation, the candidate must clearly mention his/her original contributions, and the relevant chapters.
2. The supervisors should endorse the above.
3. The candidate should give the details of his/her publication on which the dissertation is based including the complete list of authors, name of the journal, volume, page, year of publication etc.
4. The candidate should be asked to give a seminar talk, of say 30 minutes duration, in presence of the members of the Doctoral Committee in the relevant discipline prior to submission of the thesis.

Of course there cannot be any fool-proof system to ensure that such malpractices would never occur. After all, the sanctity of the entire system depends upon the honesty, integrity of the supervisors, the students and the examiners. Therefore, a clear message should go to all concerned that any

violation of ethical norms would be dealt with very severely."

12. The report of the enquiry commission having been placed before the Executive Council of JU on May 16, 2007, it was resolved as follows: "Resolved that -

1) The report of the One-Man Enquiry Commission on alleged malpractices involving two thesis submitted for Ph.D. Degree under the Faculty of Science, be and is hereby accepted.

2) The degrees awarded by the University vide EC Resl No.236 (d) & (l) dated 5.6.2006 after accepting the recommendations of the concerned examiners of the two candidates, namely Sri Subhamoy Singha Roy and Shri Samit Pahari and the provisional certificates issued thereafter to them be treated as withdrawn and two theses be declared cancelled and the provisional certificates shall be deemed not to have been issued at any point of time.

3) The registrations bearing Ref. No. 153/04/Phys./14 dated 1.1.2004 & No.99/03/Phys/14 dated 18.12.2003 be declared deemed to have been cancelled and the Doctorate Committee of the Science Faculty be instructed for deleting the names of the above candidates against the corresponding Registration numbers.

4) The two candidates namely Shri Subhamoy Singha Roy and Sri Samit Pahari are hereby debarred from any future registration for Ph.D. degree in Jadavpur University.

5) The employer of Shri Subhamoy Singha Roy be informed of the malpractices of which he was found guilty by the enquiry commission.

6) The supervisors involved, namely Prof Kamakhya Prasad Ghatak, Deptt. of Electronics Sciences (Calcutta University), Prof. Ardhendu Ghoshal, Deptt. of I.E.E. (Jadavpur University) and Prof. Subhankar Banerjee, Deptt. of I.E.E. (Jadavpur University) are debarred from acting as supervisor of any Ph.D candidate at Jadavpur University in future and the Doctorate Committee of the Science and Engineering & Technology Faculties are instructed to cancel and delete their names as supervisors for all such candidates who have already registered for Ph.D degree at this University under the said supervisors and to take follow up actions.

7) All such candidates, who might have been registered for Ph.D. (Sc.) or Ph.D. (Engg.) under the supervision of the three teachers named above (jointly or solely as the case may be) be given an opportunity to apply for change of supervisors to the doctorate committees concerned in terms of the relevant clause of the J.U Regulations.

8) Calcutta University, being the employer of Prof. Kamakhya Prasad Ghatak and Association of Indian Universities be informed of the malpractices he has been found guilty of by the enquiry commission.

9) The matter of Prof Ardhendu Ghoshal, Deptt of IEE, Jadavpur University, Prof. Subhankar Banerjee, Dept. of Inst. Engg. and Shri Samit Pahari, Information Scientist being employees of Jadavpur University be referred to the Disciplinary Authority."

13. Having been stripped off his Ph.D. degree, SSR presented his writ petition on September 28, 2007. It was considered on March 5, 2008 by the said learned judge who ultimately decided it. Affidavits from the parties were invited and an early date for hearing was fixed. No interim order as such was passed but the submission made on behalf of JU to the effect that no further steps would be taken pursuant to the resolution dated May 16, 2007 was recorded.

14. SP too met the same fate as SSR. Apart from being stripped off his Ph.D. degree, additionally, SP was proceeded against departmentally by JU on the basis of the resolution dated May 16, 2007. A charge-sheet was issued to him vide Memorandum dated January 24, 2008. He challenged the said resolution and the said charge-sheet in his writ petition, presented on February 5, 2008. Considering the order dated March 5, 2008 passed on the writ petition of SSR, another learned judge on SP's writ petition, on March 17, 2008, granted interim order in terms of prayer (i) thereto until further orders and thereby JU was restrained from taking action against SP on the basis of the report of the enquiry commission and the resolution dated May 16, 2007.

15. Upon exchange of affidavits, the writ petition of SSR was listed first for consideration and final decision. The ordering portion of the judgment and order has been extracted above. The learned judge, it can be discerned, took exception to the impugned action for diverse reasons.

16. Relevant portions from the judgment of the learned judge where His Lordship noticed the case run by SSR and JU's response thereto leading to conclusions reached by His Lordship on factual aspects, are quoted below: "At paragraph 40 of the petition, the petitioner avers that he was neither supplied any documents nor informed of the witnesses whose statements had been used against him. There is no denial of such averment at paragraph 21 of the University's affidavit. At paragraph 23 of the petition he claims that neither the respondent no. 11 nor any other witness had been examined in his presence. At paragraph 15 of the University's affidavit, such allegation is glossed over. At paragraph 41 of the petition the same charge is repeated and at paragraph 22 of the University's affidavit it is again ignored. At paragraph 24 of the petition the petitioner questions the University not giving him an opportunity to cross-examine the co-accused or the other witnesses examined by the Commission. At paragraph 14 of the University's affidavit such charge is skirted. At paragraph 42 of the petition, the petitioner repeats his grievance of not being allowed to cross-examine the University's witnesses, to which there is no response at paragraph 22 of the University's affidavit. There is no dispute on pleadings or otherwise that no charge-sheet was issued; that the statements of witnesses and copies of documents used against the petitioner were not furnished to him; and, that

neither was he extended any invitation to examine any witness nor were the witnesses examined by the Commission subjected to the petitioner's cross-examination. The University admits that no copy of the final enquiry report was served on the petitioner and it was disclosed only in its affidavit. The University says that the Commission's report details all reasons for the findings recorded therein and the final report is neither inconclusive nor vague on any aspect."

17. Dealing with the grievance of SSR that no charge-sheet was issued, the learned judge ruled that : "That there is transgression in the modus operandi adopted by the respondent authorities in this case is evident. But it is only the material departure from the accepted course of action that would invite censure or make the decision and the route taken thereto vulnerable to rectification. It is tempting to bite the petitioner's bait for the red herring that is the charge-sheet argument that he makes. There was indeed no charge-sheet. But the petitioner was in no quandary as to what it was that the Commission sought to probe. The ground stands condemned by the petitioner's written representation to the Commission and his assiduous endeavour to deflect the needle of suspicion from himself. He knew that he could stand only if he pulled the eleventh respondent down and he busied himself in ardently going about what he thought he had to do. It is apparent that he perceived that the Commission (or the University) thought that either he had attempted to palm off the other's work for his or the eleventh respondent had passed off the petitioner's work as his own. It is quite another matter that there were two other scenarios possible, to one of which the Commission did not seem to be alive.

Viewed in isolation, the fact that the petitioner was not issued a charge-sheet is a grave charge, but it is the substance of an alleged irregularity that will reflect on its effect in the larger scheme of things. The purpose for issuing a charge sheet is to make the noticee aware of that which he is charged with for him to make out an adequate defence thereto. From the petitioner's letter of December 12, 2006 issued to the Commission there appears to be no doubt that he was under no dilemma as to the purpose of the exercise. He asserted that it was his thesis that had been copied from and that he was aware of it even before the word got around. In the last paragraph of an earlier letter of November 29, 2006, the petitioner claimed that his was the original work and he offered to be examined "for the truthfulness regarding (his) own contribution covering 13 chapters in the thesis." His statement implied that neither had he copied from another, nor did he benefit from any collaboration with the other candidate. He addressed the charge in right earnest and the three possible shades of the charge against him - that he copied from the respondent no. 11 or that he collaborated with the respondent no. 11 or that the two stole the material from a common source - were met in his replies."

18. Regarding the aspect of non-grant of adequate opportunity to SSR to defend the charge of plagiarism, the opinion of the learned judge reads : "It is the next

aspect, whether he had adequate opportunity to defend himself against the charge, which is of greater significance. There is no rebuttal by the University to the petitioner's grievance that neither were documents or witness accounts made available to him nor was he permitted to cross-examine the witnesses or bring witnesses of his own. The documents and the statements of his supervisors were used against him by the Commission as will appear from this sentence at the eighth page of the 11-page report of the Commission:

"Unfortunately for him (the petitioner), available records and the submissions made by his supervisors, do not support his claims."

The report gives an overview of the statements made by the witnesses and provides glimpses of what was actually said. The petitioner had no access to the statements, he was not afforded a chance to look the makers of the statements in the eye for them to repeat the statements on his face, he was not presented any opportunity to put his suggestions to the witnesses even if it is presumed that their oral testimony would have remained intact upon the petitioner's cross-examination. He could have, by his suggestions, brought out what he perceived to be the motive of the witnesses to condemn him and thus raised doubts for the Commission to discern with reasons. A party does not have to show that there was actual miscarriage of justice if he is able to demonstrate the likelihood of prejudice being occasioned to him by the faulty course of action, unless it is assessed that the end result would have remained unchanged.

What appears from the Commission's report is that there was substantial identity of the two works. What the Commission leaves unsaid is as to who was the culprit. The Commission missed an opportunity of all facets of the matter being presented before it for it to ponder and deliberate upon them and reason out its conclusions by eliminating the improbable."

19. Insofar as the report of the enquiry commission being inconclusive and not identifying who the plagiarist is, the learned judge remarked : "It is thus that the reasons need to be assessed. For most part, as the Commission's report says, the one thesis is a copy of the other. The first 328 pages of either thesis are not merely similar but are found to be identical. The acknowledgements at the conclusion of either thesis also appear to be similarly worded, complete with identical typographical mistakes and misplaced expressions of gratitude. The Commission's report is somewhat unclear in dealing with the business end of either thesis, the part after page 328 and up to the page preceding the acknowledgement section. It is such part which is the expression of the original thought in either thesis.

There are two aspects as to the reasons and the reasoning for the conclusion drawn in the report. Despite the general sweeping statements in the report, it does not clearly state that the final findings in the two theses after the first 328 pages are identical in substance. Even if the report is construed to convey such meaning - that the findings in the two works are identical - the Commission has

made no effort to enquire whether it was the petitioner who was guilty of plagiarism. That is also the executive council's understanding of the Commission's report. For if the petitioner was guilty of passing off the eleventh respondent's work as his own, the eleventh respondent should not have met the same fate as the petitioner. It is in this that the report appears to be inconclusive and the course of action adopted can squarely be faulted therefor."

(underlining for emphasis by us)

20. On the question of punishment being imposed on the basis of the report of the enquiry commission, this is what the learned judge said: "A party appearing before a quasi-judicial body is entitled to know, either expressly stated by the body or inferentially stated, what it is to which the body is addressing its mind. It was incumbent on the University to tell the petitioner that he stood condemned and was worthy of the punishment for his having been found, on the reasonable test of preponderance of probabilities, to be the plagiarist. The Commission's findings do not inform him so. It is in such failure that the other transgressions in procedure become material: of the petitioner not being told what punishment lay in store for him; of the petitioner not being allowed to examine his witnesses or cross-examine those on whose statements he stood indicted; of the records referred to by the Commission not being given to him; and, of the Commission's report not being furnished for the petitioner to have a chance to persuade the executive council that on the Commission's findings he could not be inflicted this heavy punishment."

21. It is this well-written and well-reasoned judgment and order that JU and SSR have called in question in their respective appeals. While SSR is aggrieved by reason of no direction having been made on JU to issue a charge-sheet, JU is dissatisfied because, according to it, both SSR and SP are equally guilty and, therefore, notwithstanding omission of the enquiry commission to identify anyone of them as the culprit and the Executive Council failing or neglecting to make an attempt in that behalf, the learned judge ought not to have interfered in the proceedings bearing in mind the fact that two very scheming candidates had tarnished the fame and reputation of JU by showing skill in achieving their ends by deceit.

22. In course of hearing we were apprised that the other most important player who could have, with a little degree of carefulness, sincerity and devotion to duty, avert the disaster viz. KPG, had also instituted independent writ proceedings questioning the resolution of the Executive Council dated May 16, 2007. However, the said writ petition stands dismissed for default by an order of a coordinate Bench dated June 25, 2012 and has not been restored since. By the same order, W.P. 2403(W) of 2008 i.e. SP's writ petition, was also dismissed for default but such writ petition has been restored to file by an order dated February 16, 2017 passed by us.

23. Carefully perusing the judgment and order under challenge in the appeals

whereby JU was granted liberty to proceed afresh, no error on its face was apparent and it appeared to us to be a very balanced decision. We had, accordingly, called upon Mr. Kar, learned senior advocate for JU to satisfy us the reason for carrying such decision in appeal, in particular to identify any infirmity in appreciation and analysis of the evidence on record and/or errors, if any, in the findings of fact recorded by the learned judge warranting interference. In his usual fairness, Mr. Kar submitted that a bare reading of the impugned judgment and order may not reveal any apparent infirmity warranting interference but there was one aspect of the matter which, according to him, had not been addressed by the learned judge.

24. Mr. Kar drew our attention to the reports of the Dean and the enquiry commission where they had noticed a patent absurdity in the third paragraph of SSR's preface to the thesis. To buttress his contention, Mr. Kar had also placed before us the bound volumes of the theses submitted by SSR and SP. He referred to the third paragraph of the preface written by SP. For facility of appreciation, the same is quoted below: "The author feels very privileged to have worked with his supervisors, Professor Dr. Engg. Kamakhya Prasad Ghatak of the university of Calcutta, and Professor Dr. Ardhendu Ghoshal of Jadavpur University. To each of them he owes a great debt of gratitude for their patience and inspiration. It is not simple to express in a few words the recognition, gratitude and esteem that the author feels about his supervisor, Professor Kamakhya Prasad Ghatak, for the constant attention and the time devoted for the author, for being helping and comprehensive during the difficult moments, for endless patience, support and kindness. The Professor has taught many things, not only in physics, but also to the greater extent in quantum confined materials. The author thanks him deeply. As the supervisor, he has constantly forced the author to remain focused on achieving the goal. His observations and comments helped the author to establish the overall direction of the research and to move forward with investigations in depth. The author also expresses his deep gratitude to his second supervisor, Professor Ardhendu Ghosal who contributed to this work in real sense of the term."

(bold font for emphasis by us)

He then placed the third paragraph of the preface of SSR's thesis, reading as follows:

"The author feels very privileged to have worked with his supervisors, Professor Dr. Subhankar Banerjee of Jadavpur University and Professor Dr. Engg. Kamakhya Prasad Ghatak of the University of Calcutta. To each of them he owes a great debt of gratitude for their patience and inspiration. It is not simple to express in a few words the recognition, gratitude and esteem that the author feels about his supervisor, Professor Kamakhya Prasad Ghatak, for the constant attention and the time devoted for the author, for being helping and comprehensive during the difficult moments, for endless patience, support and kindness. The Professor has taught many things, not only in physics, but also to

the greater extent in quantum confined materials. The author thanks him deeply. As the supervisor, he has constantly forced the author to remain focused on achieving the goal. His observations and comments helped the author to establish the overall direction of the research and to move forward with investigations in depth. The author also expresses his deep gratitude to his second supervisor, Professor Ardhendu Ghoshal who contributed to this work in real sense of the term."

(bold font for emphasis by us)

25. According to Mr. Kar, SB was the first supervisor of SSR and KPG the second. Having regard thereto, it defies logic as to how and why occasion could have arisen for SSR to express his deep gratitude to AG, who was never his supervisor. It was contended that this patent absurdity of SSR expressing gratitude to AG, who was not at all his supervisor, was duly taken note of by the Dean as well as the enquiry commission and there could be no reason not to hold, simply on the basis of the contents of the third paragraph of SSR's preface, that SSR had copied not only Chapters I to XII from SP's thesis but also copied the preface written by SP.

26. Relying on the decisions of the Supreme Court reported in (1999) 6 SCC 237 [M.C. Mehta v. Union of India & ors.], (2004) 4 SCC 281 [Escorts Farms Ltd. v. Commissioner, Kumaon Division, Nainital, U.P. & ors.] and (2005) 6 SCC 321 [Canara Bank v. V.K.Awasthy], Mr. Kar urged us to hold that revisiting the entire matter would be a ritualistic exercise with no possibility of a different outcome on merits and, therefore, the matter need not go back to the Executive Council in terms of the direction given by the learned judge of the writ court.

27. The point raised by Mr. Kar led us to examine the impugned judgment once again. Having found that the same did not deal with Mr. Kar's point, we had immediately called upon Mr. Ghosh, learned advocate for SSR to explain why SSR expressed gratitude to AG who was not his supervisor, without expressing gratitude to SB being SSR's 1st supervisor. Mr. Ghosh referred to the relevant paragraph of the preface and submitted for our consideration that SSR had expressed his mind of feeling privileged to have worked with his supervisors, SB and KPG, and to each of them he owed a great debt of gratitude. Answering a query posed by us as to how the name of AG could surface in the last sentence of the third paragraph, Mr. Ghosh contended that SSR had already explained before the enquiry commission that the same was the result of a mistake committed by him and that SSR stood by that version before us.

28. It was further contended by Mr. Ghosh that the point sought to be raised by Mr. Kar before us was neither pleaded in the counter affidavit of JU to SSR's writ petition nor raised in course of arguments and, therefore, the learned judge cannot be blamed for not dealing with a point that was never urged.

29. Mr. Ghosh also contended that SSR in terms of the regulations had appeared for a viva voce examination where he had to spontaneously answer the questions

posed to him by the experts on the subject of his dissertation. According to him, if indeed SSR had no original contribution to his credit and had merely copied from the thesis of SP, it is unimaginable as to how SSR could acquit himself creditably before such experts. Most certainly, Mr. Ghosh submitted, JU would not confer Ph.D. degree on a student who is incapable to answer the questions.

30. In conclusion, Mr. Ghosh submitted that the procedure adopted by JU being thoroughly flawed and in gross breach of principles of natural justice and SSR not having been given a fair deal, the judgment and order under appeal does not warrant any interference except to the extent it omits to direct the Executive Council to issue a charge-sheet.

31. In support of SSR's appeal, it was contended by Mr. Ghosh that a party before being proceeded against by an administrative authority for any perceived wrong doing/misconduct on his part is entitled to know the accusations against him and the persons/documents by which such accusations are proposed to be established. According to him, JU adopted a novel procedure right from the very beginning by which procedural safeguards were thrown asunder to the utter prejudice and detriment of SSR and he was virtually condemned unheard. He urged us to hold that for meeting the demands of natural justice, JU had been rightly directed by the learned judge to revisit the matter but that His Lordship had erred in the exercise of jurisdiction by not directing the process to commence afresh from the stage of issuance of charge-sheet.

32. Answering Mr. Ghosh's argument, Mr. Kar contended that citing mistake as a defence is nothing but an afterthought of SSR, and that absence of any justification, worthy of acceptance, is sufficient to hold that SSR is the plagiarist. He, however, once again fairly conceded that not having been present before the learned judge in course of hearing of SSR's writ petition, it was not possible for him to say as to whether the point was argued or not. Nevertheless, it was contended by him that in the conspectus of facts, more particularly the contents and conclusions of the theses being identical and the defence of SSR being on record, it would be a virtual useless formality to remand the matter back to the Executive Council. Referring to Order 41, Rule 24 of the Civil Procedure Code (for short the CPC, hereafter), it was contended that the point having been taken before the appellate court, the evidence being on record and it not being a case of SSR being taken by surprise coupled with the fact that Mr. Ghosh has been heard at length, we as the appellate court may proceed to give our decision on such point.

33. It was also contended by Mr. Kar that JU was under no obligation to arrive at the finding as to who precisely was the plagiarist between SSR and SP; the theses submitted by SSR and SP have not been found to be original work and that in terms of the relevant regulations, it constitutes sufficient ground to take penal action against both of them which the Executive Council rightly did.

34. The aspect highlighted by Mr. Kar referring to the third paragraph of the

preface of SSR is no doubt attractive and if the contention raised were accepted as sufficient to nail SSR, that by itself and without anything more could exonerate SP from the charge of plagiarism. However, it is significant to note that in course of hearing, Mr. Kar on behalf of JU did not admit the pleaded case of SP. He stood by the decision of the Executive Council saying that SP cannot be exonerated merely because of the absurdity in the third paragraph of SSR's preface. Whether or not SP had fulfilled the requirement of regulation 25(i) of the Regulations i.e. his thesis is an original contribution to knowledge bearing evidence of he having carried out individual investigation in his chosen field is doubtful and, thus, he cannot be left scot-free.

35. Mr. Mukherjee, learned advocate appearing on behalf of SP contended that the defence of "mistake" raised by SSR cannot be accepted as credible and SP should be declared innocent. He further contended that the report of the enquiry commission did not indict SP, since there was no evidence to suggest his complicity. It was further submitted by him that Chapter XIII is an additional work of SP, which ought to have been taken into consideration by the enquiry commission to return a finding that SP had original work to his credit and recognition of such original work by JU leading to conferment of Ph.D. was not a tainted exercise. He also urged that SP was not given any chance to put forth his explanation against the proposed action of cancellation of his Ph.D. degree and the decision of the Executive Council accepting the report of the enquiry commission, insofar as it affects SP without there being any conclusive opinion in such report as to whether SP copied from SSR or SSR copied from SP and without identification of any common source from whom either or both may have copied, must be declared illegal and arbitrary. It was thus prayed that the decision of the Executive Council dated May 16, 2007 and the charge-sheet dated January 24, 2008 ought to be set aside and SP extended all service benefits that have been withheld since initiation of disciplinary proceedings against him.

36. It is recorded that JU has not dealt with the writ petition of SP by filing any affidavit-in-opposition. Omission to file it post June 25, 2012 is quite understandable. JU was under the impression that the writ petition of SP was no longer pending on the file of this Court having been dismissed for default by the order dated June 25, 2012. However, why no affidavit-in-opposition was filed from April 18, 2008 (i.e. the date within which JU was given liberty to file affidavit-in-opposition by the order dated March 17, 2008) till June 25, 2012 has not been explained at all. Be that as it may.

37. Let us first decide the point raised by Mr. Ghosh in regard to the necessity for a direction that a charge-sheet ought to first issue before SSR is proceeded against afresh. Here, JU had embarked upon an enquiry at the administrative level to find out whether there was any truth in the version of the anonymous caller. The Dean was, accordingly, directed to conduct a preliminary enquiry. Once the report of the Dean was placed before the Executive Council on July 12,

2006, it decided to appoint the enquiry commission. Given the nature of enquiry that the enquiry commission was required to conduct, it would have been desirable if SSR and SP were told beforehand what the allegations against them were. They were not told so but it appears from the records of enquiry proceedings that in course thereof, they derived sufficient knowledge and were made aware of the reason for which they had been summoned by the enquiry commission. The exercise undertaken by JU to penalize SSR, before the learned judge interdicted its action, was unlike disciplinary action in connection with departmental proceedings that normally commence with a memorandum (read : charge-sheet) whereby the charges levelled against a delinquent employee, which are sought to be enquired into, are communicated followed by actions to unearth facts by collection of evidence and an order of the disciplinary authority punishing such employee for proved misconduct, if at all; it was an enquiry to facilitate administrative action for malpractice that bore manifestation in two students seeking doctoral degrees based on theses which had more or less identical contents and thus was in total contravention of the essence of the relevant regulations. Now that there are rival claims, i.e. both SP and SSR are in denial mode and each says that he has not copied from the other, there is sort of a lis that needs to be resolved. The learned judge rightly pointed out the flaws from which the proceedings conducted against SSR suffered and after recording satisfaction that SSR was practically condemned unheard made certain directions for taking the proceedings to its logical conclusion. In terms of the direction of the learned judge, JU is required to start afresh from the stage of enquiry. After one full round of legal battle before the learned judge, there seems to be little requirement to apprise SSR why his conduct is under the scanner. He cannot feign ignorance after so much water has flown down the Hooghly. The allegation against SSR is clear and having stuck to his stand that he has not copied from the thesis of anyone, issuance of a formal letter of allegation would be an idle formality on facts and in the circumstances. We hold that the circumstances do not call for such formal letter to be issued. Accordingly, FMA 516 of 2009 stands dismissed.

38. It is now time for us to decide the appeal of JU. Considering the materials that have been placed before us and on hearing the parties, we are in complete agreement with the initial observation of the enquiry commission that he had been entrusted by JU to conduct a formal enquiry into "perhaps one of the most daring acts of plagiarism". Nevertheless, we are also of the opinion that the enquiry commission being conscious of the onerous duty imposed on it by the Executive Council, such commission ought to have made an attempt to find out the plagiarist. The report of the enquiry commission is inconclusive, as rightly found by the learned judge. The enquiry should have been carried forward and the plagiarist identified holding him responsible for submitting a thesis, which closely resembles the thesis of another aspirant for a doctoral degree in respect of its material contents so much so that one thesis could be passed off as the replica of the other.

39. The Dean and the enquiry commission noticed in great detail to what extent the theses of SSR and SP closely and substantially resembled each other including also the mistakes, punctuations, etc. There is, however, one other mistake that both SP and SSR committed, which perhaps escaped the notice of the Dean and the enquiry commission. It is not that such mistake would be crucial in identifying the plagiarist but is referred only to reinforce the finding of the enquiry commission that "plagiarism in its worst form has been committed in this case". Both SSR and SP appear to have written "Engg." (highlighted in bold font earlier) between "Dr." and "Kamakhya" towards the beginning of the third paragraph of their respective preface. Surely, "Engg." does not fit in where it finds place in such preface. It is obviously a mistake. However, to follow the mistake blindly only shows that in copying the preface, whoever between SSR and SP has been the plagiarist, he was totally mindless and oblivious of even what is right and what is wrong.

40. There is, however, another revelation from the third paragraph of the preface written by SSR. Towards the end thereof, he expressed gratitude to his 2nd supervisor, naming him as AG. Even if we accept Mr. Ghosh's explanation that SSR should have named SB instead of AG and that it is simply a mistake committed by SSR in incorrectly naming his 2nd supervisor, the needle of suspicion still points towards SSR. SSR's 2nd supervisor was KPG and not SB, who was his 1st supervisor. Why would SSR write a preface naming SB as his 2nd supervisor when he was in fact the 1st supervisor, has been not been explained by Mr. Ghosh to our satisfaction. The anomaly and absurdity in the third paragraph of the preface of SSR is too conspicuous to be overlooked accepting Mr. Ghosh's argument of a mistake having been committed by SSR.

41. We could have, considering the materials collected in support of the allegation of plagiarism and on the touchstone of preponderance of probability, arrived at a particular conclusion in regard to the identity of the plagiarist based on the aforesaid discussion. However, we are inclined to give SSR the benefit of doubt at this stage for more reason than one.

42. First, having looked at the pleadings in the affidavit-in-opposition of JU to SSR's writ petition to support Mr. Kar's contention, the only pleading that we consider to be of some relevance is in paragraph 4(vi)(i) of such affidavit. It has been pleaded there that both SSR and SP in the third paragraph of their respective preface mentioned AG as the 2nd supervisor although factually KPG was SSR's 2nd supervisor. While dealing with such paragraph, SSR in his reply did not admit any statement except those appearing from the records. The pleading of JU lacks teeth in that the assertion of the case that JU could have put forward is missing and the inference that could be drawn from SSR's third paragraph of the preface was not hinted. This being the nature of pleading, we find it difficult to hold that a contentious issue did arise before the learned judge on the pleadings and His Lordship erred in the exercise of jurisdiction in not addressing such issue.

43. Secondly, it is not too clear to us as to whether the point urged by Mr. Kar in respect of the absurdity emanating from the third paragraph of the preface of SSR's thesis was at all argued by the learned advocate appearing for JU before the learned judge or not. The impugned judgment and order, running into a little less than 50 (fifty) pages, appear to have dealt with all the possible points that could have been urged on either side. It would require very strong reasons for persuading us to hold that a point urged was not dealt with. No such strong reasons are forthcoming. Mr. Kar or his junior were not present before the learned judge and as such are unaware of what exactly was argued before His Lordship. We are left with no other option but to accept Mr. Ghosh's submission that the point was not raised, and are, therefore, unable to upset the impugned judgment and order based on Mr. Kar's contention.

44. Order 41 Rule 24, CPC does permit an appellate court upon resettling the issues to return a finding on a point not urged before the trial court if the materials are sufficient on record, but it cannot be gainsaid that such provision has limited application in an intracourt letters patent appeal arising out of writ proceedings. In an intra-court appeal where a decision of a learned judge exercising discretionary writ jurisdiction is under challenge, an appellate court ought to be careful and circumspect to interfere and may interfere if the decision of the learned judge is clearly wrong and not when it is not right. Law is also well settled that in an intra-court appeal unless the decision under challenge before the appellate court appears to be perverse in respect of findings of fact, it may not be proper to interdict. Here, it is a worse situation, for, the point that seems to be the sheet-anchor of JU, was neither pleaded nor argued and hence the learned judge did not have the occasion to deal with it, much less record any wrong finding thereon. Principles flowing from Order 41 Rule 24, CPC would not be attracted in a case where the requisite pleadings in support of a point are lacking.

45. Thirdly, and very importantly, while arguing in support of the appeal of JU, Mr. Kar has not conceded to the case run by SP in his writ petition. JU, therefore, considers both SSR and SP to be on the wrong side of law. This is also reflected from the impugned decision of the Executive Council of JU. The conduct of SP also being under the scanner, it would be unwise to hold SSR guilty only on the basis of the third paragraph of the preface to his thesis. The Executive Council while choosing the easy route to punish both SSR and SP, although there was scope to leave one of the two unscathed, should have realized that after all the future of two students was at stake and it would amount to an abdication of duty if the exercise of identifying the plagiarist was left incomplete. Much has been argued by Mr. Ghosh and Mr. Mukherjee to impress us how diligent SSR and SP were to ensure that none has access to their respective thesis before the doctoral degree is awarded to them. These are factual issues which need to be decided once an opportunity in this behalf is given to SSR and SP. Thus, we hold that it may not be proper to deny SSR and SP the liberty of raising effective defence as and when the occasion therefor arises whilst JU proceeds to comply with the

order that we propose to pass.

46. Finally, from the factual narrative, it would be clear that SP had submitted his thesis subsequent to submission of the thesis by SSR. It could be a possibility that SSR having submitted his thesis on September 15, 2005, SP gained access thereto and thereafter added an additional chapter in his thesis before submitting it on November 17, 2005. On the contrary, it could further be true that SSR might have gained access to the first twelve chapters of SP's thesis and in haste submitted the thesis containing those chapters only. Pertinently, no finding has been returned either by the Dean or the enquiry commission that the theses of SSR and SP are drawn from a common source. That leaves us with the other possibility, if at all, of both SSR and SP having jointly worked and prepared a common thesis for submission towards obtaining the doctoral degrees by hoodwinking JU. These are, no doubt, in the realm of surmise and conjecture but not too irrelevant when one has to ponder over the question as to who has been wronged, although not on the wrong side. One would have expected JU to go to the depth of the matter to identify the wrongdoer and take appropriate measure to eradicate the malaise which, unfortunately it did not.

47. We are of the further view that the intervening period between submission of theses by SSR and SP was not too long and both of them being guided by a common supervisor, i.e. KPG, it is KPG who could have given the best evidence as to who contributed majorly in the work of preparation of the thesis, thus making the decision regarding the identity of the plagiarist easy. KPG did in fact appear before the enquiry commission but regrettably, what KPG said and produced were not brought to the notice and knowledge of either SSR or SP. To our mind, it is a sad reflection of the competence and efficacy of the decision makers and the nature of seriousness shown in conducting the proceedings. Adherence to a fair procedure is an obligatory duty of an authority, which is a "State" within the meaning of Article 12 of the Constitution, when it takes action visiting an individual with evil and civil consequences. Such adherence was sadly lacking in the instant case.

48. We have noted that the titles of the theses submitted by SSR and SP are not identical. Since we are not experts, we wish not to make any comment on the contents of the theses submitted by SSR and SP. However, we are minded to believe that engagement of an expert in the chosen field of research of SSR and SP by JU and entrusting such expert to peruse the theses for furnishing his comments as to whether the same are consistent with the respective titles, may have made the task easier for JU to find out the plagiarist. We wish such exercise had been undertaken by JU.

49. We have not been shown any statutory regulation laying down the procedure to be followed in a case of the present nature. In the absence thereof, it was obligatory for JU to regulate the proceedings within the contours of the rules of natural justice. Any procedure to identify the plagiarist upon extending reasonable and adequate opportunity to the students to be affected by any

decision adverse to his/their interest should have been thought of by the Executive Council of JU to guard against any possible challenge to its ultimate decision on the ground of violation of *audi alteram partem*, which seems to have been well and truly established by SSR and SP.

50. It is for these reasons and taking an overall view of the situation, we feel that the aspect pointed out by Mr. Kar by referring to the third paragraph of SSR's preface to the thesis and the other aspects should first fall for consideration and decision of the Executive Council, which should proceed in accordance with law as directed by the learned judge. We, therefore, dismiss FMA 212 of 2009 too.

51. Lastly, we take up the writ petition of SP for decision. Considering in particular the grievance raised by Mr. Mukherjee on behalf of SP, we hold that the same is of substance. For identical reasons as assigned by the learned judge while upholding the claim of SSR and for the reasons discussed above, we allow W.P. 2403(W) of 2008. The resolution dated May 16, 2007 along with the charge-sheet dated January 24, 2008 stands set aside, subject to what is observed hereafter.

52. We are inclined to the view of reiterating the directions given for commencing proceedings afresh treating the report of the enquiry commission as a preliminary enquiry report, based whereon a proper and regular enquiry should be conducted to identify the plagiarist. The enquiry could be conducted by the Executive Council itself or by delegating such task to a body of expert(s) in the relevant field for such purpose.

53. Having scanned the further materials that have been placed before us by Mr. Kar towards the final stage of the proceedings (the letters written by KPG to the enquiry commission), we are of the considered view that it is KPG (being the common guide of the two students) who can throw light as to whether SSR copied from SP or vice versa. Although there are some indications in the letters written by KPG to the enquiry commission that SSR is perhaps the plagiarist, such statements neither having been furnished to SSR and the oral version of KPG too not having been recorded in the presence of SSR, such statements/version are not considered to be of any worth for the present. More than a decade having lapsed since the scandal was detected, we wished to know about KPG's present status. We have been informed that KPG has been spending his retired life. It would, therefore, be proper and in the fitness of things to direct the Executive Council to request KPG to either attend proceedings before it to facilitate ascertaining the identity of the plagiarist or before a body of expert(s), as the case may be, and require KPG to give his version in the presence of SSR and SP and also to answer questions that might be posed to him by SSR and SP. If any other supervisor is called upon to appear, his statement should also be recorded in the presence of SSR and SP. Both SSR and SP shall be given opportunity to pose questions to them and to each other too. If a body of expert(s) is nominated and a report is submitted by it, the same shall be made

available to SSR and SP and their comments thereon sought. Upon receipt of their comments or if no comments are received within the stipulated time, the proceedings may be taken to its logical conclusion in accordance with law. Should KPG not cooperate or be disabled to do so, the enquiry shall proceed in his absence. Irrespective of whether KPG participates in the enquiry or not, the statement of SSR shall not be recorded in the absence of SP and vice versa.

54. We are also of the considered opinion that if anyone between SSR and SP is the real creator of the disputed thesis, which could be regarded as an original contribution to knowledge and bears evidence that he has carried out individual investigation in his chosen field, he ought not to be denied the opportunity of reaping the fruits of his labour. In the unlikely event of a further enquiry failing to establish the identity of the plagiarist, cogent reasons must be assigned in regard to such inability as well as any decision that JU might take to deny SSR and SP the credit of the Ph.D. degrees conferred on them earlier.

55. Liberty is granted to JU to complete the process as directed by the learned Judge as well as in the light of the observations made above as early as possible, preferably within six months from date. Till such time a decision is given in terms of this judgment and order, SSR and SP shall remain restrained from taking any advantage of the Ph.D. degrees conferred on them.

56. There shall be no order as to costs.

57. Photocopy of this judgment and order, duly counter-signed by the Assistant Court Officer, shall be retained with the records of FMA 516 of 2009 and W.P 2403(W) of 2008. Urgent photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.