
(1989) 02 CAL CK 0029
In the Calcutta High Court
Case No : C.O. No. 10969 (W) of 1988

Jaisree Pal and others

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 28-02-1989

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 32
Evidence Act, 1872 — Section 115

Citation : AIR 1990 Cal 253

Hon'ble Judges : Dilip Kumar Basu, J

Bench : Single Bench

Advocate : B. Bhattacharjee, R.N. Mitra, A.R. Goswami and P.K. Giri, for the Appellant; P.K. Chatterjee, Mrs. Gita Gupta, S.B. Bhunia and P.R. Mitra, for the Respondent

Judgement

1. In this writ application 10 students, thorough their respective guardians, studying in Higher Secondary Science Course, at the material time, have challenged certain action of the Principal, Midnapore College i.e. respondent No. 2 when admission of these students in the said college in Class XI, Science Group, for Session 1987-88 was found irregular and when the Secretary (Examination) West Bengal Council of Higher Secondary Education referred to consider a representation of the students and that of college to regularise their admission.

2. On 22nd September, 1988, this court passed an interim order prohibiting and restraining respondents concerned from chan ging and/or for directing the petitioners to give option for changing science groups to arts groups in the Class XII final examination. Before considering claim of the petitioners, facts, transpire from the affidavit in opposition filed by the Principal, Midnapore College, i.e. respondent No. 2, are worth mentioning.

3. On 2nd July, 1988, affairs of 17 students, as regards admission in the Higher Secondary Science Course, were detected inasmuch as those students did not

obtain the prescribed marks in physical science and/or mathematics in the last qualifying examination. Respondent No. 2, on 2nd July, 1988, directed those 17 petitioners to apply for change of their subjects as permissible under Rules and/or to take fresh admission in Class 11 for the Session 87-88 with subjects as per provisions of H. S. Council and the stipulations in the college prospectus. 10 students are among those 17 students. On 27th July, 1988, guardians of those 17 students were requested to meet the Principal i.e. respondent No. 2, on August 1 & 2, 1988 to discuss the matter. In the month of July, 1988, on diverse dates, representations were made before the said respondent No. 2 on behalf of these 17 students. It was contended that they were admitted in Class XI Science Stream in the year 1987 in 87-88 session and were allowed to continue the said course regularly and on successful completion of the course in Class XI, they were promoted to Class XII Science stream in 1988. It has been alleged in the one of the representation dated 26th July, 1988, inter alia.

"That we are in progress since the dates of our admission, we scent foul smell from your end with an attempt to debar us from continuing such science course for the reason of non-obtaining of 45% marks in physical science without caring for our academic lives.

The college authority having been satisfied with our academic attainment on verification of our records during admission as well as forwarding the registration forms to the said council, allowed us to continue in science stream, but it is reliably learnt that you are going to prevent us from allowing us to continue the said course in science stream. If that be so, our lives will be at stake and thereby our future career will be uncertain too for no fault of ours so far as the instant matter is concerned. We are of view that such uncertainty in our academic career is ultimately rest with you for which you are earnestly requested by us to move the appropriate authority for safety of our academic lives so that we are not put to any inconvenient situation causing irreparable loss.

In the present moment we having been disappointed, are in a fix what to do. We have become mentally disbalanced for such alleged action.

We, therefore, earnestly beg the favour of your kind sympathy towards our continuance in science stream with an opportunity to be eligible for appearing at the ensuing Higher Secondary Examination in 1989."

3A. Though the irregularities in the matter of admission, in science stream in 1987-88, were detected before 2nd July, 1988, the Principal i.e. respondent No. 2, after some exercises at his end, addressed a letter, for the first time, under reference No. 2635 dated 2nd August, 1988, to the Secretary (Examination), W.B.C.H.S., Education i.e. respondent No. 3, communicating the factum of irregularities in the matter of admission in Class XI, Science stream, for the session 87-89. Said Principal, respondent No. 2, forward cases of some students who did not agree to change subject as permissible under rules, for sympathetic consideration of the council. In the letter dated 2nd August, 1988, the Principal,

respondent No. 2 requested the council to take necessary action expeditiously. On 6th August, 1988, by Memo No. 2656 and on 11th August, 1988, by Memo No. 2660, Principal, Midnapre College i.e. respondent No. 2 requested the respondent No. 3 to allow three students and 2 students respectively to change subjects for the academic session 87-88. Out of 17 students, 10 students who did not agree to change the subject in spite of request and pursuation of the principal, have come before this court and obtained an order on 22nd September, 1988 when their representations were not considered by respondent No. 3, effectively.

4. From the records it transpires that West Bengal Council of Higher Secondary Education i.e. respondent No. 3, under their Memo No. 342/OSD/SD/88 dated 9/15-9-1988, considered the representation of the Principal on irregular choice of science package by few students numbering about 18, during 1987-88 session and claim of 5 students for changing elective subjects were considered as a very special case in the greater interest of the students. In the said memo some students were allowed for admission in Class XI with Changes of elective subjects, so far the remaining x students, whose claims are being considered in this writ application, the respondent No. 3 informed the Principal i.e. respondent No. 2 that they would not be allowed to continue their studies with wrong package of science subjects along with mathematics with which they had been continuing in flagrant violation of the stipulations of the council. I place it on record that this writ application was affirmed on 23rd August, 1988 and ultimately this court for the first time passed an order dated 22nd September, 1988.

5. On 22nd December, 1988, considering the urgency of the matter, this court directed the college authority to allow the petitioner to sit in the test examination in view of the fact that the higher secondary examination would be held in the month of April, 1989 and all the students have been allowed to fill up their forms for the said examination. On 11th January, 1989, respondent No. 2, Principal was asked to produce the result of the petitioner who was allowed to appear in the test examination in terms of the order passed by this court on 2nd December, 1988. On 24th February, 1989, Mr. Bhunia, appearing for respondent No. 2, filed affidavit-in-opposition, affirmed on 23rd December, 1988, also statement of marks obtained by 10 candidates at the test examination 1988.

6. Mr. Bhunia, on behalf of the Principal, has also submitted a copy of the memo No. 21198 dated 5th January, 1989 in which the Principal requested the respondent No. 3 to consider the representation of the Principal. It was also communicated that the college authority had not received registration certificates in respect of those 10 candidates though application for registration, filed in by the aforesaid candidates, were submitted to the office of the respondent No. 3 for necessary action.

7. Mr. Mitra appearing on behalf of the 10 students, has challenged action of the Principal inasmuch as according to Mr. Mitra, before issuing provisional

admission, the college authority and the persons in-charge under respondent No. 2 ought not to have admitted the candidates by allowing them to fill up the necessary forms and by depositing necessary fees to the college authority. It is the specific claim of the writ petitioners that their wards, who were minors at the material time, were not supposed to consider and interpret these stipulations, provided in the prospectus of the college for the session 87-88. Mr. Mitra has claimed and contended that the students were granted provisional admission for session 1987-88 and obviously, on the basis of the marks they obtained in the last qualifying examination and they were allowed to continue their studies for the year 1987-88 and it is only on 2nd July, 1988, petitioner were directed by the Principals to change their subjects or to take fresh admission in Class XI for the session 1988-89 with the subjects as prescribed by the Higher Secondary Council and as incorporated in the college prospectus: Mr. Mitra has also invited Court's attention to the modalities of such admission in the colleges and relied on the doctrine of promissory estoppel contending inter alia, that the students concerned were allowed to study in the science stream for the year 1987-88 and for all practical purposes, they did continue their studies at least for the term 1987-88 and for the first time in the month of September, 1988, the respondent No. 3 i.e. Secretary, Higher Secondary Council rejected to consider their representation and memorandum for allowing them to appear in the examination scheduled to be held in the month of April, 1989.

8. Mr. Bhunia, appearing on behalf of the respondent No. 2, has contended that in the prospectus form given, along with blank admission form, among other information, particulars, as to the qualification and marks necessary for admission of students in Higher Secondary science course were available and made known to the students. Mr. Bhunia has invited attention of this Court that the said prospectus, in page 4, specific stipulation is provided for regulating admission in science stream indicating that the students must possess following qualifying marks, inter alia, "candidates desiring to take admission in science stream must possess the following qualifying marks:--

1. Qualifying marks:-- (I) 2nd Division and 45% marks in the aggregate (II) Physical Science -- 45% marks in aggregate and also 45% in mathematics for admission in Physics, Chemistry and mathematics (III) Life Science -- at least 4.5% (45%?) marks in the aggregate for admission in Biological Science."

9. Mr. Bhunia has further contended that in page 12 of the prospectus the modalities of admission in the college are prescribed and according to Mr. Bhunia, the admission, granted to the students, were provisional and liable to be cancelled at any time at the direction of the University/Council or the college administration.

For the purpose of effective adjudication the modalities of admission as referred to by Mr. Bhunia are required to be examined. In page 12.the modalities of admission, inter alia, are as follows:--

ADMISSION

Application for admission is to be made on the prescribed form and within the dates fixed by the College. Candidates selected for admission must take admission and join the college within the stipulated date. The academic session is counted from July to next June. Admission commences immediately after the publication of results of qualifying public examination of the state and closes on the date notified by the College, and the University/H.S. Council. No student shall be admitted on expiry of the last date notified.

The College will not be responsible for the subsequent cancellation of admission due to suppression or misstatement of facts or violation of College rules by students at the time of admission. Students must have obtained pass marks in the subject(s), which he/she intends to take at the Degree level, in the last qualifying Examination. Admission is purely provisional and may be cancelled at the direction of the University/ Council or the College administration at any time.

A student found absent for three months after admission will be deemed to have discontinued his studies and as such, the seat will be deemed as having fallen vacant, another student may be admitted in his place without further reference to the absentee student.

Candidates who lost two chances, may appear at the B. A./ B.Sc. pass Examination as Non-collegiate External candidates on attending Practical classes for six months if permitted by the college, Science students with laboratory based subjects are to pay tuition fee @ Rs.6.00, Dev. fee @ Re. 1.00 and Laboratory fee @ Rs. 6.00 for six months.

Applications for the admission must be accompanied by the documents as directed in the Admission Form:--

1. Marksheets of Secondary/H.S. Examination and documents having date of birth. (Marksheets and Admit Cards in original must be produced at the admission counter for verification at the time of admission)

2. Transfer certificate along with Assessment of Marks (when a student comes from another College/H.S. School to take admission on transfer).

3. A passport size Photograph, duly attested, be pasted on the Application Form at the time of admission.

10. On behalf of the Principal, Mr. Bhunia has shifted the onus of such procedural lapses in the matter of admission upon the students by contending that in spite of the aforesaid stipulation, students took admission in the Higher Secondary Science Stream in violation of the college rule prepared in pursuance of the circular No. HSC/168/Secretary/86 dated 26th May, 1986. issued by the Higher Secondary Council. It was admitted by the Principal in paragraph 3(VI) of the affidavit-in-opposition affirmed on 23rd December, 1988, that mistake or errors or irregularities in the admission of candidate's in science stream in Higher

Secondary course were detected by the college authority eight months after their admission in the college and notice regarding cancellation of those wrong admissions was issued after summer recess of the college in terms of notice dated 2nd July, 1988 and 27th July, 1988 and admittedly, such communication was made after expiry of July-June term of class XI. In paragraph 5 of the said affidavit, Principal, i.e. respondent No. 2, in support to his belated detection of irregularity has contended that in the month of August, 1987. college authority was busy with the University examination as well as admission in degree course and also Higher Secondary Course inasmuch as in the year 1987, result of West Bengal Board of Secondary Education and result of the Council of Higher Secondary Education were published almost simultaneously in the month of July and about 1,100 students were admitted in Arts and Sciences of Higher Secondary and Degree course and as such, proper attention for scrutiny of each and every form could not be made by the members of the college admission committee at the relevant time.

11. It is not the contention of the Principal, respondent No. 2, that students concerned suppressed some documents, namely Marksheet etc. and got the admission on production of forged documents or otherwise and the admission committee considered their marksheets and issued provisional admission subject to stipulation as provided in page 12 of the prospectus. On the other hand, it is a specific case of the respondent No. 2 that due to rush at the time of admission college mechanism could not function effectively and relevant and necessary documents could not be examined and verified and as such some omissions or irregularities were caused or allowed to be committed perpetuated by the admission committee of college.

12. From the affidavit-in-opposition, affirmed on 23rd December, 1988 by the Principal i.e. respondent No. 2, it transpires that a section of students staged agitation and gherao the Principal against the cancellation of the irregular admission to the Higher Secondary Science Course and factum of agitation and gherao was condemned by Mr. Chatterjee, appearing of behalf of the Board of Secondary Education. This kind of demand through agitation and/or gherao cannot be avoided in a situation when the students do not find any access to the justice due to apathy of the administration in the matter of education and allied subjects. Undoubtedly, students deserve a fair deal. If the principal, Board of Higher Secondary Education and persons in power do not respond to the demand of the aggrieved students for a fair deal, students will resort to agitation and gherao. Same thing has happened here and only, thereafter, possibly tried to resort to agitation before the Court of law by filing the instant writ petition.

13. This agitation, at the instance of the applicants awaiting for justice, is inevitable when administrative mechanism failed to provide justice to the applicants within reasonable time.

14. Court, while adjudicating this kind of grievances, cannot be indifferent and hold a rigid view. Firmness, rigidity are no solution without justice and that too

within a reasonable period. Justice State of Kerala Vs. Kumari T.P. Roshana and Another, has indicated some modalities for distributive justice by observing, inter alia,

"Nor is law unimaginative, especially in the writ jurisdiction where responsible justice is the goal. The Court cannot adopt a rigid attitude of negativity and sit back after striking down the scheme of Government, leaving it to the helpless Government caught in a crisis to make-do as best as it may, or throwing the situation open to agitational chaos to find a solution by demonstrations in the streets and worse. We are, therefore, unable to stop with merely declaring that the scheme of admission accepted by Government is ultra vires and granting the relief to the petitioner of admission to the medical college. The need for controlling its repercussions calls for judicial response. After all, law is not a brooding omnipresence in the sky but an operational art in society."

Justice Iyer further observed "Had we left the judgment of the High Court in the conventional form of merely quashing the formula of admission the remedy would have aggravated the malady confusion, agitation, paralysis. The root of the grievance and the fruit of the writ are not individual but collective and while the "adversary system" makes the judge a mere umpire, traditionally speaking, the community orientation of the judicial junction, desirable in the Third World remedial jurisprudence, transforms the court's power in to affirmative structuring of redress so as to make it personally meaningful and socially relevant. Frustration of invalidity is part of the judicial duty; fulfilment of legality is complementary. This principle of affirmative action is within our jurisdiction under Art. 136 and Art. 32 and we think the present cases deserve its exercise."

15. On 2nd December, 1988, this court directed the Principal to allow the petitioners to sit in the Test Examination which was scheduled to be held on 5th December, 1988. This court was constrained to give this direction considering the effect of withholding such direction and the respondents, including Principal, were directed to file their affidavits within two weeks from date. Though Mr. Bhunia has filed affidavit-in-opposition on behalf of the Principal i.e. respondent No. 2, council has not filed any affidavit-in-opposition and submission of Mr. Chatterjee, on behalf of the council, was entirely on the basis of the documents annexed by Mr. Bhunia and on the basis of unreported decision, which I propose to discuss hereinafter. Petitioner has not filed affidavit-in-reply against opposition of Mr. Bhunia. In terms of order dated 11th January, 1988, Principal was directed to disclose the result of the petitioners who appeared in the test examination, held on 5th December, 1988 and pursuant to such direction given by this court. Mr. Bhunia submitted a statement giving the name of the candidates and also total marks obtained by them and out of 10 candidates 3 secured pass marks. Summary of the marks obtained by the petitioners is given hereinbelow:--

1. Jaysri Pal 396 2. Jhurajhumi Chakraborty 459 3. Chanda Mondal 493 4. Ashis Roy Chowdhury 283 5. Rajesh Hati 382 6. MukulMahato 312 7. Manas Sanyal 353 8. Tuhinara Nayak 457 9. Sisir Kr. Dutta 238 10. Indrajit Das 304

From amongst those 10 candidates only Sl. Nos. 2 3 & 8 have secured pass marks but others according to Mr. Bhunia could not secure the pass marks.

16. Mr. Mitra on behalf of the petitioner, on instruction, has contended that other students who obtained identical marks as in serial Nos. 1, 4, 5, 6, 7, 9 & 10 also have been allowed by the college authority to appear in the Higher Secondary Examination, when Mr. Bhunia was confronted with this statement, Mr. Bhunia, in his usual fairness, has stated that the college authority has sent almost all the students irrespective of their marks to try their luck in the higher secondary examination. Mr. Mitra appearing for the students has suggested that this writ petition was moved on 22nd September, 1988, and since then, all the students had been suffering with unusual tension and anxiety as regards fate of their writ application. Mr. Mitra also has persuaded this court that this anxiety and agony was not from the date of moving the writ petition in the High Court but since 2nd July, 1988, when the Principal i.e. respondent No. 2, for the first time, directed the student to opt for a change of their subjects, inasmuch as, the irregularity in the admission for the session 1987-88, in respect of students concerned, were detected. According to Mr. Mitra, since 2nd July, 1988, the students had been suffering with a mental agony and tension and possibly that is why 7 students out of 10 students could not secure pass marks in the test examination. In any event. It has been contended by Mr. Mitra that all the students should be allowed to appear in the Higher Secondary Examination inasmuch as they have been subjected to mental pressure and torcher by the authorities.

17. Though Mr. Chatterjee has tried to persuade this court, with all emphasis at his command, relying on the unreported bench decision, that students do not deserve any consideration from this court. It is true, the bench decision is the indicator and a guideline in regulating admission in the schools and colleges for which detailed modalities have been formulated. Admittedly as I have observed that the college authority, through Principal i.e. respondent No. 2, could not fulfil their obligations to the students by adopting a rational, careful approach to the whole system of admission for the session 1987-88. The unreported judgment is required to be followed but considering the error and omission at the instance of the respondent No. 2 students cannot be held responsible and they cannot be allowed to suffer any prejudice by giving & go by to their valuable constitutional right to education and to prosecute a career by changing their subject from the one stream to other, or from one package to other. This kind of situation is inevitable but the approach of the court should not be rigid and that must have some bearing towards beneficial distributive justice to the applicants. I am trying to find a rational approach. Justice V. R. Krishna Iyer in *Charles K. Skaria v. Dr. C. Mathew*, AIR 1980 SC 1230, has given indication by holding, inter alia, "Whatever might be the passion for correct law and provocation and on account of governmental indifference, the court in our view, must use its power to correct error and promote order and not strike down an illegal erro'r without going forward to affirmative action which may minimise injury generally. Indeed, the judicial process, in its creative impulse, must hesitate to scuttle, salvage

wherever possible and destroy only when the situation is beyond retrieval a life giving facet forgotten by the High Court when quashing the admissions for the year. This positive perspective justifies the final direction that we issue in the concluding para of this judgment, if we may anticipate the nature of the relief we have moulded." Justice Iyer further observed, "Equity shall over power technicality where humane justice is at stake." Justice Iyer also has given a caution against ritualistic approach towards dispensation of justice by observing, inter alia, "It is notorious that this formalistic, ritualistic approach is unrealistic and is unwittingly traumatic unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanise the administrative judicial and even legislative process in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over emphasis on the external rather than the essential. We think the Government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life we know how exasperatingly delatory it is to get copies of decrees, decrees and deeds, not to speak of other authenticated documents like Marksheet from University while, even bail orders from courts and government orders from public offices."

18. Mr. Chatterjee on behalf of Higher Secondary Council has relied upon documents, annexed with the affidavit-in-opposition filed by the respondent No. 2 and has relied upon a bench decision of this court dated 5th August, 1988 in re : West Bengal Council of Higher Secondary Education v. Tapan Kr. Das, decided by the Division Bench presided over by Mr. M. N. Roy, Acting Chief Justice in which I was also a party. Mr. Chatterjee has produced the un-reported decision and has opposed vehemently the claim of the candidates. Mr. Chatterjee has cited the unreported decision and particularly the observation made by this court, inter alia, "We find the restrictions as sought to be imposed by the said council, over the entry and appearance of the students in the science stream, are just, proper justiciable and not unreasonable. We further feel that if such just control as sought to be imposed by the said council and that too, through such instructions/regulations, are not allowed or upheld, then the cause of the students would suffer and they would ultimately be placed in great hardship, as in this case and that too after prosecuting studies for a long time." Mr. Chatterjee has also deferred and relied upon unreported judgment, inter alia, "All authorities of the school at all material times were and are still bound to follow the said instructions/ regulations as framed by the said council in the matter of admission of the students of the present nature and they cannot afford to or authorised to act contrary to them. If they do so or act in any manner contrary to the said instruction/regulations, they would certainly be at their own risk and peril and by such act or action, they would get themselves exposed to appropriate actions."

19. Mr. Chatterjee, on behalf of the respondent No. 2, has vehemently contested the claim, of the students, inter alia, that the students were given opportunity to

change their subjects but some of the students had accepted suggestions of the principal but petitioners did not accept such suggestion for changing the subject and therefore, the council has had no obligation to allow the candidates to sit for the examination and accordingly, council should not be directed to encourage the students and the college authorities to give a go by to the stipulations and/ or regulations framed by the council for regulating admission in different colleges effectively. Mr. Chatterjee has also contended that students are bound to suffer inasmuch as the admission was granted in their favour provisionally, and more so, they were given an opportunity by the college authority to amend their subjects or to revise their tracks but even such opportunities were given, the students were not amenable to reasons and therefore no relief is available to the students. Though on behalf of the petitioners, Mr. Mitra has thrown a challenge against the propriety and/or legality of the instructions i" regulating the admission in the colleges. Mr. Chatterjee, on behalf of the council, has cited the unreported decision and has contended that the point, raised by Mr. Mitra, has been settled by the Bench Decision of this Court. In view of the unreported decision, on the legality and/or otherwise, all the instructions given by the council for regulating admission in the colleges, were considered and examined and accordingly I think and hold that petitioners are not entitled to raise this issue in this writ petition.

20. In the aforesaid unreported decision Mr. Chatterjee was the learned counsel, appearing for the Higher Secondary Council and he referred to a decision of the Supreme Court in *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, and this court in the unreported decision, had considered and followed the observation of Chief Justice Bhagawati, in paragraph 8 of the *Rajendra Prasad v. Karnatak University (supra)*, inter alia,

"But the question still remains whether we should allow the appellants to continue their studies in the respective Engineering colleges in which they were admitted. It was strenuously pressed upon us on behalf of the appellants that under the orders initially of the Learned Judge and thereafter of this court, they have been pursuing their course of study in the respective engineering colleges and their admission should not now be disturbed because if they are now thrown out after a period of almost 4 years since their admission their whole future will be blighted. Now it is true that the appellants were not eligible for admission to the engineering degree course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the engineering colleges which granted admission than upon the appellants. It is quite possible that the appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the 1st year B.Sc. Examination of the Rajasthan and Udaipur university was recognised as equivalent to the pre-university examination of the Pre-, University Education Board, Bangalore. The appeilant being young student from Rajasthan might have presumed that since they had passed the 1st year B.Sc. Examination of the Rajasthan or Udaipur University or in any event the Higher Secondary

Examination of the Secondary Education Board Rajasthan they were eligible for admission. The fault, lies with the engineering colleges which admitted the appellant because Principals of these engineering colleges must have known that the appellants were not eligible for admission and yet for the sake of captive fee in some of the examinations they granted admission to the appellants. We did not see why the appellant should suffer for the sense of the management of this engineering colleges. We would, therefore, notwithstanding the view taken by us in this judgment allow the appellant to continue their studies in the respective engineering colleges in which they were granted permission."

21. Mr. Chatterjee has strenuously argued that in view of the Bench decision (Unreported decision cited by Mr. Chatterjee), this court should not give any relief to the students otherwise there will be no sanctity to the regulatory mechanism in the matter of admission in different colleges and schools which was approved by the court as valid and legal. Mr. Chatterjee has contended that students should not be allowed to violate and/or indulge in any act of violation or infraction of statutory limitations and/or obligation prescribed by the council in regulating admissions in the colleges and schools. There is substantial force in the submissions of Mr. Chatterjee. At the same time this court cannot be unmindful to the factum of admission vis-a-vis date and academic session. The unreported decision, cited by Mr. Chatterjee, was delivered on 5th August, 1988 by the appellate court but the concerned students were admitted in the month of July, 1987, for the session 87-88 and it was held in the unreported decision, inter alia, "We express our concern whether council has made any provision fixing accountability of erring schools who, for reason best known to them, admits students without any authority and ultimately the students, being a victim of such an illegal and authorised action, after completion of his academic career of his course, find it difficult to appear in the examination, for which he had studied for a full season. We think that council should satisfy itself that the guidelines, so prescribed should "be received by the school authority before commencement of the academic year and in spite of such receipt of the guidelines if, a student is admitted, then several courses are open to the council and we suggest the following course to fix the accountability of persons concerned and also to check this irregularity in the academic arena :

The recognition of the school may be withdrawn, if the school authority, including Headmaster/Principal, admits any students without any authority and in clear violation of the guidelines prescribed by the council. If a student is given admission by any of the Headmaster/Principal/any person associated and in charge of the management he should be made accountable for such lapse and/or lapses and a penalty should be awarded against the concerned persons for such illegal admission which should be a substantial amount. Considering the duration of course, standard of the course students should be given liberty to sue the teacher/person concerned for damage and/or compensation in accordance with the law. Management itself will be required to pay compensation and damage as may be prescribed by the council, at the first instance which they may recover

from the Headmaster or the accountable persons, in appropriate proceedings".

22. As the unreported judgment was delivered on 5th August, 1988, the above relief and/ or remedies which were prescribed by this court in the aforesaid unreported decision are not available to these petitioners and as the petitioners were allowed to continue their studies on the date of moving the writ petition for one year and, as on today, for about two years. I do not think that students should be held guilty and/or accountable for any lapses or laches on their own.

23. Following determination as made in Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, other decision referred to in the foregoing paragraphs and also following the unreported decision cited by Mr. Chatterjee, I think and hold that the students were admitted though provisionally by the admission committee of the college or the principal of the college i.e. respondents No. 2, even contrary to the instruction and/or regulations prescribed from time to time by the West Bengal Higher Secondary Council, students cannot be held responsible for such omission and commission therefore they cannot be made to suffer for laches and lapses of the respondent No. 2.

24. On the facts and circumstances and in view of the observations made hereinbefore, I feel and hold that the candidates concerned are entitled to appear in the ensuing Higher Secondary Examination and accordingly, I direct the respondents to allow the candidates to appear after observing necessary formalities forthwith preferably the 7th March, 89.

25. This writ petition is thus disposed of. There will be no order as to costs.

26. A copy of the operative part of this order (paragraphs 23 to 25) be given to the learned advocate appearing for the petitioners, Higher Secondary Council and the college authority, duly countersigned by the Assistant Registrar.

27. Order accordingly.