

(1983) 04 CAL CK 0017
In the Calcutta High Court
Case No : C.R. No. 8881 (W) of 1982

Jitendra Nath Banerjee and Others

APPELLANT

Vs

West Bengal Board of Examination for Admission to Medical,
Engineering and Technological Degree Colleges and Others

RESPONDENT

Date of Decision : 12-04-1983

Acts Referred:

Calcutta University Act, 1979 — Section 26, 52
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 14, 154, 162, 226
Evidence Act, 1872 — Section 115

Citation : AIR 1983 Cal 275

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

Bench : Single Bench

Advocate : A.P. Chatterjee, S.K. Mukherjee and Dipak Banerjee, N.N. Gooptu and T.K. Roy, Sushanta Chatterjee, H.K. Basu, Bulu Chatterjee and Prabir Bhattacharjee, for the Appellant;

Judgement

B.C. Ray, J.—The petitioner No. 1 who is the guardian and father of the petitioner No. 2, Sri Jayanta Banerjee and the petitioner No. 2 who appeared in the Joint Entrance Examination held in 1982 by the West Bengal Board of Examination for admission to Medical, Engineering and Technological Degree Colleges, moved this writ application assailing the legality and validity of the Constitution of the said Board of Examination as well as the illegal and arbitrary procedure adopted by the Board of Examiners in the matter of assessment of the examination papers submitted by the candidates appearing in the said examination and also in the matter of conducting and publishing the results of the Joint Entrance Examination held in 1982.

2. The salient facts as appeared in the writ petition in brief are as follows : the petitioner No. 2 applied with registration fee to appear in the Joint. Entrance Examination to be held in 1982 and his registration number in the said examination is M/GAS-114. The admit card issued to the petitioner in respect of

the said examination was annexed as annexure "C" to the petition. The petitioner No. 2 duly appeared in the said examination and answered all questions to his greatest satisfaction. He expected to do better in the said examination and he also expected to be within the successful candidates in order of merit for being admitted in the medical colleges. It has been pleaded that the result was first published on 30th June, 1982 but immediately after publication the list was hurriedly withdrawn for republication later on. The list was subsequently published in July, 1982 and in that list petitioner's name did not appear. It has been stated that the Board does not follow any system to afford an opportunity to the aggrieved student for review, re-examination and/or scrutiny of his or her answer scripts. It has also been pleaded that there was a great difference in the result published in the first blush and in the results that was published in the second time, thereby giving room for serious doubts of arbitrariness, discrepancy, malpractice and utter discrimination at the behest of some persons of influence having vested interest. There has been serious resentment amongst students who appeared in the ensuing examination, examiners connected with the examination, guardians, educationists and people in general as to the mala fide and arbitrary mode of conducting and publication of the result of Joint Entrance Examination, 1982 held by the West Bengal Board of Examination for admission to Engineering, Medical and Technological Decree Colleges. It has been pleaded that the answer scripts of the students were not properly and fairly examined and there is discrimination in the matter of tabulation of marks and in publication of the list of successful candidates. It has also been stated that grace marks have been given to the tune of sixty in number without having any declared policy, rules, norms, procedure and lawful practice. It will be evident if all the relevant documents including answer scripts, tabulation sheets, selection papers and connected marksheet are produced before this Hon'ble Court, that there has been gross injustice, unfairness, arbitrary discrimination, undue favouritism, sacrificing all norms and procedures of fair examination system to the greatest prejudice and injury to the case of the students in general and to the case of the petitioner No. 2, in particular. In spite of repeated asking the authority refused to review the answer scripts on the plea that there was no such rule for review or disclose of the marks obtained by the examinees. As such the instant application has been made in a representative capacity on behalf of the unsuccessful candidates as well as on behalf of the petitioner himself. This application was moved on 30th July, 1982 whereon this court directed the petitioner to serve copies of this application on the respondents and on interim order was made in the meantime restraining the respondents from giving effect to the impugned results of Joint Entrance Examination held in 1982 and they were further directed to produce the results that was published first on 30th of June, 1982 as well as the subsequent results before this court on that day. The respondents were further directed to preserve all the papers of the examinees.

3. On 4th August, 1982, after hearing the learned Advocates for both the parties

eight applications for addition of parties were allowed and they were directed to be added as petitioners to the original writ application and the cause title of the petition was directed to be amended. On 5th August, 1982 two other applications for addition of parties were also allowed and the petitioners of those applications were directed to be added as party petitioners. On 11th August, 1982 also several applications for addition of parties filed up to that date were allowed and the applicants in all those applications were allowed to be added as party petitioners.

4. On 20th August 1982, after hearing the learned Advocates for all the parties the instant, rule was issued and the interim order that was made earlier was extended till the disposal of the rule. Thereafter an appeal was preferred before appeal Bench of this court and the order of stay of operation of the order appealed against was made absolute till the disposal of the rule. This order was made on 24th August, 1982. Against the said order of the appeal court a SLP was filed before the Supreme Court and the Supreme Court rejecting the SLP directed the expeditious hearing of the rule.

5. On 1st October, 1982 an application under Rule 11 of the Rules of the High Court, Calcutta relating to applications under Article 226 of the Constitution of India was filed praying for leave to proceed with the writ application by the petitioners on behalf of the unsuccessful candidates who appeared in the Joint Entrance Examination. It was also prayed in the said application that the petitioner be permitted to proceed with the application on behalf of all the unsuccessful candidates in a representative capacity stating inter alia that some of the unsuccessful candidates have already been added as party respondents by order of the appeal bench of this court. This application was allowed and the petitioner was directed to proceed with the application in a representative capacity on behalf of all the unsuccessful candidates and the petitioners were further granted leave to proceed with the application against the successful candidates in a representative capacity and the cause title was directed to be amended accordingly.

6. A supplementary affidavit has been filed by Sri Satyendra Nath Das, the added petitioner on 6th August, 1982 and the same was sworn on 6th August, 1982. It has been stated in the said supplementary affidavit that there are glaring disparities and contradictions in question papers in English version and in Bengali version and with regard to the Instructions to the Examiners. It has also been stated in paragraph 6 of the said affidavit that in particular in question No. 4 (a) of the Biology paper there is serious discrepancy in English version and in Bengali version. The Instructions to Examiners do not stand in parity with the books of authority on the subject. There are similar instances if the proper scrutiny is being made in comparative study of the question papers and the instructions. It has also been stated in paragraph 7 of the said affidavit that in particular as regards question No. 13 of the Biology paper there is also discrepancy between the English version and the Bengali version and the

Instructions to the Examiners do not tally with any standard book of the authorities approved by West Bengal Council of Higher Secondary Education, It has been further stated in paragraph 8 of the said affidavit that the instructions to examine the answer; scripts are against the tenor of the questions and the answers demanded as per the question. The mode of examination is confusing and injurious to the students. As regards the question No. 6 (b) (i) of the paper Physics there is also discrepancy between Bengali version and English version. The questions in Chemistry papers are very much misleading and the answers given in the standard books do not carry instructions. It has also been stated that the cover pages of the answers scripts of the students are taken off and code numbers have been given and unless the answer scripts are properly examined there are serious apprehension and doubts about mala fide and malpractice relating to conducting of the Examination itself. Another supplementary affidavit has also been sworn by Nirupam Ghose, an added petitioner on 9th August and filed on that day. It has been stated in paragraph 2 of the said affidavit that he having secured 249 marks in the Joint Entrance Examination in 1982 and also having his name published in Merit List did not get a chance to get himself admitted in the Medical Stream for falling much below in serial number of the successful candidates in comparison to the seats available in Medical Colleges. It has been stated that the method of Joint Entrance Examination is basically incorrect. The reasons are obvious that the two separate streams, i.e., Medical Stream and Engineering Stream should have been separately examined for proper merit test for the separate streams, that is. a Biological Science Student Group for Medical Stream and Non-Biological Student Group for Engineering Stream should have been separately examined for avoiding all sorts of arbitrary selection otherwise difficulties would crop up and for various other reasons as suggested in the present case. It has been further stated in paragraph 4, sub-paragraph I that the question paper of Biological Sciences of 1982 and the directions to the examiners by the Head Examiner Mr. Roychowdhury dated 29-4-82 containing the model scripts of answer with the direction how to evaluate the answer script of the students were noted in the said instructions to Examiners by the Head Examiner. The zerox copy of the said question paper and the instruction to examiner are annexed herewith as "C" and "D" to this affidavit. It has been stated that the question No. 1 (II) "What is Osmosis?" is a question appearing in the annexure "C". The instructions given by the Head Examiner with regard to the said question appeared in annexure "D". The direction of the Head Examiner as noted in the instruction to examiners annexure "D" is obviously wrong, if it is read from any standard book of Biological Science followed in the Higher Secondary Course. It has been further stated that the instructions given by the Head Examiner with regard to the said question is "Movement of solvent molecules from higher concentration to lower concentration through a semi permeable selectively permeable membrane." But the correct answer would be from any standard book as follows : "If two solutions of different concentrations are separated by a semi-permeable membrane, then the solvent from the less concentrated solution moves through

the membrane to the more concentrated one." It has been stated that this direction given by the Head Examiner being obviously wrong and as a result any student although answered correctly would be debarred from getting the marks allotted for it. It has also been stated that the Board after receiving the answer scripts took off the first cover page of the answer scripts where the Roll No. of the candidates appears and flexible code number was put in on every answer script before issuing the script to the examiner for examination in order to prevent the examiner or anybody to know the name of the particular candidate. There has been a chance of malpractices in out-tine the number so given by any examiner obtained by "X" candidate in the name of the "Y" candidate. It has also been stated that the Government of West Bengal in Bengali Newspaper as well as in the English Newspaper published a notification under the Heading "Notification regarding admission to Engineering. Medical and Technological Degree Colleges" to the effect that students securing 50% marks in the said examination would be listed in the merit list apart from candidates belonging to Scheduled Castes and Scheduled Tribes whose names would be listed on securing 40% marks. The said notification was annexed as annexures "H" and "I" of the affidavit. It has been pleaded that in a competitive examination this sort of fixation of marks was not necessary and it shows a mala fide act on part of the authority concerned for conducting the examination and publishing the list of successful candidates.

7. Another supplementary affidavit in support of this writ application has been sworn by Sri Gunadhar Maity, one of the added petitioners on 9th August, 1982 and filed on that day. It has been stated that the deponent appeared in the said Joint Entrance Examination of 1982 conducted by the West Bengal Board of Examination, in, Engineering, Medical and Technological Degree Courses. The list of successful candidates was hung up in the notice Board of Medical College, Calcutta. The relevant copies of the list wherein the deponent's name appeared has been annexed as annexure "N" series to the affidavit. It has been stated that, in the said list that has been published the petitioner's name appears against serial No. 341 against his registration No. M/CAC-832. It has been further stated in paragraph 4 of the said supplementary affidavit that while the deponent went to submit the prescribed forms for admission, he was told that his position was 741 as per another merit list. In the receipt his serial No. 341 was first written and thereafter deleted and the No. 741 has been inserted in his place. A xerox copy of the receipt is annexed hereto and marked by letter "O" of the said affidavit, It has been stated in paragraph 5 that he brought this matter to the notice of the authority concerned of Central Selection Committee receiving the application form for admission and he was advised to make a written representation to the Hon'ble Health Minister, State of West Bengal, through the Chairman, Central Selection Committee of Joint Entrance Examination. The deponent has, accordingly, made a written representation a copy of which has been annexed and marked with letter "F" to the said affidavit.

8. Another supplementary affidavit has been sworn by Sukhendra Nath Chatterjee, the added petitioner on 6th August, 1982 and the same has been

filed on that day. It has been stated in the said affidavit in paragraph 3 that the son of the deponent, Sri Prosenjit Chatterjee bearing Roll No. C/How-203 appeared in the Joint Entrance Examination, 1982 at Model School Centre within campus of Shibpur B. E. College. It has been stated that the student bearing Roll No. C/How-205 had his seat very near the seat of C/How-203. On the second day of the examination and in particular during second session the candidate bearing Roll No. C/How-205 left the hall just after one hour and the said candidate did not appear at all in his usual seat on the last day relating to the examinations of English and Mathematics. It has also been stated in the paragraph 8 of the said affidavit that in the 8th July, 1982 issue of Dainik Basumati a notification by State of West Bengal regarding the marks for qualifying candidates to be obtained by the candidates for being enlisted in the list of successful candidates in order of merit was published. It has also been stated that the names of candidates who have got below 50% marks also appeared in the list and the Roll No. C/How 205 also appears in the list of successful candidates in the Engineering Stream.

9. An affidavit in opposition has been sworn by Dr. Arun Kumar Seal, the Principal of Bengal Engineering College, Sibpur and also the Chairman of the West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges have been filed on behalf of respondents Nos. 3 and 4 on 10th August, 1982 against the issuance of the Rule and extension of the interim order. It has been stated in paragraph 3 of the said affidavit that on 2nd March, 1982 under a memorandum addressed by the Deputy Secretary to the Government of West Bengal, Education Department communicated to the Secretary to Government of India, Ministry of Scientific Research and Cultural Affairs, that seats for the purpose of admission into technical institutions had been pooled in response to the letter No. F.21-72/61-T dated 11th January, 1962 by the Secretary to the Government of India. It was stated that except for the Jadavpur University, all other technical institutions, namely. Bengal Engineering College, Sibpur. Regional Engineering College. Durgapur and Jalpaiguri Engineering College had agreed to have a joint admission test that year to be conducted by a Board constituted with the heads of those institutions or their nominees and a representative of the Education Department. It was pointed out that the Board would invite applications from all students seeking admissions to the various Engineering Colleges charging fees at prescribed rates and will conduct a written admission test in the prescribed manner. The results of the written admission test would be forwarded to the Colleges concerned which will apply their own Rules for the purpose of final selection of candidates. A copy of the said memorandum dated 2nd March, 1962 has been annexed as Annexure "A" to the said affidavit. It has been further stated herein that since the session of 1972-73, the Board has been directed by the Governor to hold Joint Entrance Examination for selecting candidates for admission to the Pre-medical Course in Dental and Medical Colleges in West. Bengal and a copy of the communication of the order is annexed hereto and marked "C (1)". On 7th July, 1981, the Board

was renamed as The West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges and was re-constituted with the additional inclusion. Copy of this order has been annexed as annexure "D" to the writ application. It has been stated in paragraph 9 of the said affidavit that being entrusted with the conduct of Joint Entrance Examination for admission to Engineering, Medical and Technological Degree Colleges, the Board framed certain Rules for the Joint Entrance Examination. 1982, copies of which were supplied to all candidates along with the application forms for applying for permission to appear at that examination so that it might not be said that the candidates for admission to the said degree colleges were not aware of the Rules for Joint Entrance Examination. A printed copy of these Rules has been annexed as annexure-E. It has been stated in the said rules that as regards the admission to Medical Colleges concerned it would be through Central Selection Committee. C/o. Medical College, Calcutta and selection for admission will be judged on merit in the Joint Entrance Examination and subject to passing the qualifying examination which was the Higher Secondary Examination. It has also been stated therein that as regards admission to Bengal Engineering College and the Jalpaiguri Government Engineering College and the 4 Technological degree Colleges in the State of West Bengal it was provided that, after the publication of the results of the Joint Entrance Examination the application form would be given from the College to qualified candidates on production of the Admit Card of the Joint Entrance Examination. The rules gave the programme for Joint Entrance Examination in 1982 and listed the places of examination. The Rules also provided that the Board was in no way responsible for admission to constituent Colleges and that the Board only provided the results of the Entrance Examination to the constituent colleges and that the Board never published the result. It was also made clear that the Board would not communicate the result to any individual candidate and did not have any provision for post-publication scrutiny and review and no such application for post-publication scrutiny and review would be entertained. It was also provided therein that the Board was not responsible for admission to constituent colleges and the Board only provide the result of Joint Entrance Examination for admission to the constituent colleges and the Board would never publish the result. After the examinations are held, the marks are tabulated by different tabulators who are teachers of Technical Degree Colleges and the merit list was prepared on the basis of the total intake to the Engineering, Medical and Technological Degree Colleges as well as on the basis of past experience of candidates not joining or not continuing after admission. In sub-paragraph (5) of paragraph 11A it has been stated that the answer scripts processed by tearing off the top-sheets bearing Board Regulation number A Code No. is given to the top sheets as well as to the answer scripts to maintain linking. This is done to avoid disclosure of the identity of the candidates. The packed answer scripts are given to the examiners after a meeting with the Head and Co-head Examiners to formulate uniform instructions to be followed by all the examiners. The examined answer scripts along with marks (against script No.) are received by the Board and finally given to the Head Examiners. The

scrutinisers do their work as per instructions given by their Head and Co-head. Examiners under their supervision. Thereafter marksheets are given to the Board. It has been further stated in Sub-paragraph (9) of Paragraph 11A that after due checking and summing up, a merit list showing position of candidates in order of merit is prepared. The lists contained only a few number of candidates keeping adequate coverage to the admission requirements with, intake of the constituent colleges. These, after due consideration of the Board and approval, are given to the Constituent Colleges. It has also been stated that the Board after considering the results approved them and cyclostyled copies of the said compilations of the results were sent to the Constituent Colleges on 8th July, 1982. In paragraph 18 it has been denied that the first result of the Joint Entrance Examination was published on 30th June, 1982. It has also been stated that the Board never publishes results, that the Board only provides a list of candidates in order of merit to the Constituent Colleges in order to be admitted in order of merit. It has also been stated that the question of publication of lists of successful candidates and giving their detailed marksheets do not arise. It has also been stated that a meeting of the Board was called on the 30th June, 1982 and item No. 5 of the agenda of the said meeting was to consider the results of the Joint Entrance Examination, 1982, for admission to Engineering, Medical and Technological Degree Colleges. This item was deferred as the result was incomplete. It has been stated that the Board asked the Confidential Sub-Committee to finalise the result and place it at the adjourned meeting to be held on 7th July, 1982. At the adjourned meeting held on 7th July, 1982, the Board considered the results and approved the same. The results were sent to the constituent colleges on 8th July, 1982. In paragraph 23 of the said affidavit it has been stated that no selective grace mark has been given to any candidate leading to discrimination. It has been further stated that the results finalised and placed by the Confidential Sub-Committee were approved by the Board at its meeting on 7th July, 1982. It was not necessary to obtain any consent of the Examiners as such or any approval of the authorities, In paragraph 26 it has been denied that there has been any discrepancy and unfairness, as alleged. It has also been stated that under the rules the results cannot be reviewed. There was an offer at the time of hearing on behalf of respondents 2 and 3 without prejudice to their rights and contentions that the answer scripts of the petitioner No. 2 would be reviewed by other examiners and that offer was made in spite of the fact that, under the rules no review could be granted. But that offer was not accepted by the petitioners. In paragraph 28 it has been further reiterated that no selective grace mark has been given to any candidate leading to discrimination. The results finalised by the Confidential Sub-Committee were approved by the Board at its meeting on 7th July, 1982. It has also been denied that there has been any discrimination in tabulation of marksheets and in not including the name of the petitioner No. 2 in the merit list of candidates or that attempts are being made to destroy relevant papers as falsely alleged. The averments in paragraph 23 of the said affidavit has been affirmed as true to the knowledge of the deponent whereas the averments in paragraph 28 of the

affidavit have been affirmed as submissions of the deponent.

10. A further supplementary affidavit of facts on behalf of respondents Nos. 3 and 4 has been filed on 17th August, 1982 and the same has been sworn by Dr. P. K. Roy, Member Secretary as well as Officer-in-Charge of the West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges against the supplementary affidavit affirmed by Sri Sukhendra Nath Chatterjee dated 6th August, 1982. It has been stated in paragraph 2 of the said affidavit that the allegations made in the said supplementary affidavit to the effect that the candidate bearing registration No. C/How-205 left the hall just after one hour on the second day of the examinations and particularly during second session and that the said candidate did not appear at all in usual seat on the last day relating to the examinations of English and Mathematics are all false and the said candidate bearing registration No. C/How-205 whose name is Subrata Chatterjee appeared in all the examinations, namely, Biological Sciences held on 24th April, 1982 and Chemistry and Physics on 25th April, 1982 and English and Mathematics on 26th April, 1982. It has also been stated in paragraph 3 of the said affidavit that the student bearing Registration No. M/CAC 832 was shown as placed in the merit list in the position 341 in the Zonewise merit list of the Medical Group. It has been stated that there was typographical error and the merit position was shown in the merit list as 741. It has been stated further that the Board issues three compilations (1) a Block Merit list containing registration numbers of the candidates included in the merit list without showing the merit position, (2) Zonewise list showing registration numbers of candidates who have secured a merit position and showing also that merit position, (3) a merit list prepared strictly according to merit in descending order from the 1st position downwards showing such merit position and registration number of the holder of that position. It has also been stated that the results have been compiled in three lists and on 30th June, 1982 only the block merit list was ready. Accordingly, the Board did not consider the results on 30th June, 1982 and consideration of results was deferred till 7th July, 1982. By that date all the three lists of the results were ready and the Board approved the same at its meeting on 7th July, 1982. The averments made in paragraph 3 has been affirmed as derived from records which the deponent believes to be true and averments in paragraph 4 has been affirmed as true to the knowledge of the deponent.

11. Another affidavit in opposition sworn by Dr. P. K. Roy on behalf of respondents Nos. 3 and 4 has been filed on 10th January, 1983. It has been stated in paragraph 7 that the deponent deny that the Board has not been properly constituted and/or that its constitution was illegal and invalid. It has also been stated therein that the composition at the Board was settled by order No. 164-Edn (T)/T-6E-1/71 dated 18th February, 1972 and lastly renamed and re-constituted on 7th July, 1981 as the West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges with 19 members. It has been reiterated in paragraph 8 that the Board is in no way

responsible for admission of students to the constituent colleges. The Board only holds the test, sends the list of candidates in order of merit to the constituent colleges which in their turn, admits students according to their own practice, procedure and regulations. It has also been stated in paragraph 11 (a) that the examination is time-bound with specific purpose of admission based on comparative merit, open provision for review will only destroy the system as majority of eliminated candidates may seek for it. effectively repeating the procedure and jeopardising the normal start of session. Further the process of shuffled coding of scripts, to conceal the identity of candidates to examiners makes the retrieval of scripts extremely difficult and time consuming. It has also been stated that the results were communicated to colleges only once on 8th July, 1982. The allegations of first bunch and 2nd bunch of results are false. It has been denied in paragraph 14 that there has not been any fair examination of the answer scripts of the students including the petitioner No. 2 or that there is discrimination in tabulation of marks or in communicating the merit list of candidates. It has also been stated that no selective grace mark has been given to any candidate leading to discrimination. It has been further reiterated that the results finalised and placed by the Confidential Sub-Committee were approved by the Board at its meeting on 7th July, 1982. It was not necessary to obtain any consent of the Examiners as such or any approval of the authorities. It is not necessary to state the other averments made in the said affidavit as the same are reiteration of the statements made in the affidavit in opposition sworn by Dr. Arun Kumar Seal, respondent No. 4.

12. Another affidavit in opposition on behalf of respondents Nos. 3 and 4 has been sworn by Dr. P. K. Roy, Officer-in-Charge of the West Bengal Board of Examination on 31st January, 1983 against the supplementary affidavit sworn by Nirupam Ghosh. In paragraph 4 of the said affidavit it has been stated that there is no scope for separate examination for students who intend to go in for Engineering Courses and for students for Medical Courses in view of the Govt. order No. 162-Edn (T) dated, Calcutta, the 17th February, 1972, annexed as annexure "E" to the affidavit dated 10th January, 1983. It has also been stated that the Board has allotted 200 marks for Biology and 200 marks for Mathematics and only 100 marks each on the other subjects with an eye to the students who will respectively be going in for Medical Courses and Engineering Courses, students for Medical Courses being given a chance to compete by getting greater marks in Biology and students for Engineering Courses by getting greater marks in Mathematics, it has been further stated that a large number of candidates were common candidates, that is, they appeared both in Biology and Mathematics, thus taking a change for both the courses at the same time. It has been stated in paragraph 6 that the instructions to examiners are prepared by the Head Examiners in collaboration with Co-Head Examiners. Model answers, as given by paper-setters, are also taken into account. The answers are finalised at a meeting of all the Examiners who are teachers of the same subject or Examiners thereof in other public examinations. It has been denied that the

model answer for "Osmosis" was wrong or that the instruction for the question No. 3 (a) (i) was not good or correct instruction, other portions of the statements being not relevant are not required to be stated therein.

13. An affidavit in rejoinder was filed on 11th January, 1983 and the same has been sworn by Dr. Jitendra Lal Banerjee, petitioner No. 1. It has been stated in paragraph 7 of the said affidavit that there has not been any proper formation of the Board. No rules have been framed to hold impartial examination on the competitive basis. There is no reason to award grace marks without the consent of the Examiner, Head Examiner, Tabulators and Moderators. There is no disclosure under what circumstances a confidential secret committee was formed and under what provisions and under whose authority, it assumed jurisdiction to award Grace mark in a competitive examination. It has been further stated that there was submission from the Bar that the grace marks have been awarded to all candidates uniformly, the affidavit-in-opposition is absolutely silent on this score and it has not been explained why the grace marks have been given to all the candidates while the Joint Entrance Examination does not stand for qualifying examination with the significance of "pass and fail". It is essentially a competitive examination, award of grace mark itself raises grave suspicion and the alleged rule to refuse review and re-examination are mala fide and motivated. It is further stated in paragraph 8 that the materials on record clearly indicate that the Board itself published the result and there are serious anomalies, contradictions, inconsistencies and arbitrary discrimination. It has also been stated in paragraph 10 that the formation of the Confidential Sub-Committee is unauthorised and unknown in law. It has also been disputed that the Board approved the purported decision of the confidential sub-committee. In paragraph 11 of the said affidavit it has been submitted that the alleged offer of re-examination by fresh new separate sets of examiners was never refused by the petitioner. All that the petitioners submitted before the learned Appeal Court that without prejudice to their rights and contentions to the main rule itself, such examination of the answer scripts could be made, The Board did not agree.

14. Mr. Sushanta Chatterjee, learned Advocate appearing on behalf of the petitioner has submitted in the first place that the petitioner having made this application in a representative capacity on behalf of the unsuccessful candidates who appeared in the Joint Entrance Examination held in 1982 for admission to Engineering, Medical and Technological Degree Colleges and leave having been granted to proceed with the application under Rule 11 of the Rules framed by this Hon'ble Court in respect of applications under Article 226 of the Constitution in a representative capacity. This application is maintainable in this jurisdiction. It has also been submitted by Mr. Chatterjee that the application whereon this instant rule was issued is maintainable inasmuch as it is a public interest litigation involving the interest of a large number of unsuccessful candidates whose names were not published in the merit list and the challenge that has been made in this application is the same, namely, that the West Bengal Board of Examination has not been properly constituted and there has not been a proper assessment of the

answer scripts and also tabulation of marks and there has been irregularity and illegality in the matter of conducting and publishing the results of the examination-in-question. This application is therefore maintainable. Several decisions have been cited at the bar by Mr. Chatterjee in support of his argument. It has been next submitted that there has not been any unusual delay in moving this application and this application is not liable to be dismissed on that ground of delay or laches as has been alleged on the part of the petitioner in coming before this writ court at the earliest opportunity. It has also been submitted that the application is not barred by estoppel and acquiescence as the petitioners had no other alternative but to appear in the said admission test in order to get themselves admitted in the Engineering, Medical and Technological Degree Colleges. It has been next submitted that the formation as well as constitution of the Board of Examination to hold examination for admission to Engineering, Medical and Technological Degree Colleges being contrary to the provisions of the Calcutta University Act. The impugned order of the Government constituting the Board and the rules framed thereunder for holding the Joint Entrance Examination for admission to Engineering, Medical and Technological Degree Colleges are wholly illegal, unwarranted and without jurisdiction as the same has been made contrary to the provisions of the Calcutta University Act, 1979 (West Bengal Act XXXVII of 1979). It has been further submitted in this connection by Mr. Chatterjee that the formation of the Board for holding, the said examination on the basis of the Govt. order is illegal and inasmuch as the exercise of the executive power making the Govt. order is in excess of the provisions of Article 162 of the Constitution of India. The Government order dated 7th July, 1981 which entrusted the West Bengal Board of Examination with the duty of selection of candidate's for admission to Engineering, Medical and Technological Degree Colleges has not been followed and/or observed as the act of selection has been given to the Central Selection Committee not envisaged in the said Government order, nor any manner or mode regarding the formation of the Central Selection Committee as well as exercise of the power of the Selection Committee has been laid down therein. It has been further submitted that the rules that have been framed by the Board is contrary to the Government order inasmuch as no power has been conferred on the West Bengal Board of Examination to frame rules laying down the manner of holding examination for selecting candidates. The rules are, therefore, unauthorised and without jurisdiction. It has also been submitted in this connection that the power to select candidates for admission had been conferred on the Board and the Board is not competent to confer that power on the Central Selection Committee or delegate any part of its power to Selection Committee. It has also been submitted that the rules specifically do not provide for any review of the answer scripts and also for giving any opportunity to the candidates to see their answer scripts and as such the rules framed by the Board of Examiners are opposed to the rules of natural justice. It has also been submitted that there has been discrimination in the matter of assessment of answer scripts and giving grace marks which were given only to some selected candidates while excluding others

from such benefits, thus treating equals unequally. It has also been submitted that one of the added petitioners Gunadhar Maity whose name duly appeared in the merit list and who was supplied with a form for admission in Medical College by the Central Selection Committee was illegally prevented from getting admission on the plea that there was a typographical mistake in the merit list.

15. Mr. Himangshu Kr. Bose, learned Advocate appearing on behalf of some of the added petitioners have adopted the arguments of Mr. Sushanta Chatterjee and he submitted that the holding of the Joint Entrance Examination for admission both in the Medical, Engineering and Technological streams is bad inasmuch as candidates intending to appear in the test for admission in Medical Colleges are not necessary to appear in Mathematics. Moreover, for such candidates greater consideration is to be made in respect of marks obtained in the Biology Papers whereas in the case of candidates seeking admission into the Engineering Colleges their merit will be judged on the basis of marks obtained by them in Mathematics. It has, therefore, been submitted that the holding of the Joint Entrance test in these two streams is wholly bad.

16. Mr. Arun Prakash Chatterjee, learned Standing Counsel has submitted before this Court that the Government order dated 27th July, 1981 annexed as annexure "D" to the affidavit-in-opposition sworn by Mr. Arun Kr. Seal, Principal, Bengal Engineering College as well as Chairman, West Bengal Board of Examination on behalf of respondents Nos. 3 and 4 on 10th August, 1982 is not bad inasmuch as this order has been made in exercise of the executive power conferred upon the Government by Article 162 of the Constitution and this order does not go against, or infringe any of the provisions of the Calcutta University Act, 1979. It has also been submitted by Mr. Chatterjee that by this Govt. order the Government prescribed an additional test in order to select candidates on the basis of merit for admission to the Engineering, Medical and Technological Degree Colleges as the number of candidates far exceeds the total number of seats available for admission in the Engineering, Medical and Technological Degree Colleges. It has been submitted further that the minimum qualification that has been prescribed by the Calcutta University for admitting students in the aforesaid streams is not contravened but as the government runs these colleges the government has every right to put the additional hurdle by introducing any test for selecting candidates for admission in these colleges as the total number of seats is far less than the candidates who applied for admission in these colleges. In this connection Mr. Chatterjee has cited some decisions at the bar. It has also been submitted by Mr. Chatterjee that the formation of the Board which has been made by the aforesaid government order is perfectly valid and the Board was competent to frame rules for providing the manner of holding test for admission in these colleges. The rules that have been made by the West Bengal Board of Examination cannot be assailed as illegal and without jurisdiction inasmuch as to effectually exercise the powers of the Board it is necessary to frame these rules which are incidental to the exercise of such power. It has been next submitted that by these rules it has been provided that the Board will not

review the results, the Board will not published the results but the Board will merely send the merit lists of successful candidates to the different colleges according to the number of seats to be filled up. The absence of the provisions for evaluation or review does not lead to any civil consequences and as such the question of giving an opportunity of hearing does not arise. The principles of natural justice cannot be invoked in such case. It has also been submitted that the students cannot claim evaluation of papers though they can ask for an inspection of their answer scripts but no such claim has been made and as such this application is without any substance and it is liable to be dismissed. It has also been submitted by Mr. Chatterjee that there has been proper assessment of the answer scripts and tabulation was made properly and the merit list that was prepared by the Confidential Sub-Committee was placed before the Board at its meeting and the Board duly approved the same at its meeting on 7th July, 1982. The merit list was published on 8th July, 1982 by the Medical Colleges. Mr. Chatterjee has submitted that there was no publication of the list on 30th June, 1982 for the first instance.

17. Mr. Naranarayan Gooptu, learned Government Pleader who appeared for respondents Nos. 1 and 2 raised certain preliminary objections. The first contention is that this application by the petitioner in a representative capacity is not maintainable as it is not a public interest litigation nor it involves determination of any issue in which a large number of students are interested. It has been next contended that this writ petition is liable to be dismissed as the petitioners have submitted to the terms and conditions laid down in the Rules framed by the Board of examination and they have appeared in the said examination accepting these terms and conditions. They cannot now turn round and after being unsuccessful in the examination they cannot challenge these rules in this writ application. It has been further submitted that the application is not made bona fide. It has been further submitted that the application will fail for non-rejoinder of necessary parties inasmuch as the Universities as well as the Medical Colleges were not impleaded as parties respondents. It has also been submitted that the scripts were properly valued and it is a highly disputed question of fact as to whether the answer papers had been duly examined and as such this cannot be agitated in this writ application. It has also been submitted that the Government is competent to issue administrative instructions in a field not covered by legislation. In the instant case there is no averment that any ordinance or statute has been violated or infringed. It has been therefore, submitted that this application is not maintainable.

18. Before considering the merits of the submission made on behalf of the respondents it is relevant to consider first the preliminary objection that has been made as to the maintainability of this writ application. It has been submitted that the writ application is not maintainable at the instance of the petitioners on behalf of all the unsuccessful candidates. This submission in my opinion, is totally devoid of merit inasmuch as the subject matter of challenge in this writ application is the legality of the Constitution and formation of the Board

by the Government order dated 7th July, 1981 and also the competence of the Board to hold such examination for admission to Engineering, Medical and Technological Degree Colleges when specific provisions have been made in the Calcutta University Act 1979 empowering the University authorities to make regulations, statutes or ordinances for admission of students in these colleges which are undoubtedly affiliated to the Universities. All the unsuccessful candidates along with the petitioners are commonly interested in the subject-matter of challenge. Therefore, in my opinion, this application is maintainable in this jurisdiction. Moreover, this is a public interest litigation and it has been brought by the petitioners on behalf of all the unsuccessful candidates who are aggrieved by the arbitrary manner as alleged in which the answer scripts were examined and tabulation was made and the merit list was published Reference may be made in this connection to the decision reported in People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, where it has been observed as follows :--

"Where judicial redress is sought of a legal injury or legal wrong suffered by a person or class of persons who by reason of poverty, disability or socially or economically disadvantageous position are unable to approach the court and the court is moved for this purpose by a member of a public by addressing a letter drawing the attention of the court to such legal injury or legal wrong, court would cast aside all technical rules of procedure and entertain the letter as a writ petition and on the judicial side and take action upon it."

Similar observation has been made in S.P. Gupta Vs. President of India and Others, . This application is therefore maintainable. Moreover, it has been observed in the case of N.C. Upadhyaya and Others Vs. State of Uttar Pradesh and Others, that joint petition by tenants of houses sought to be acquired is maintainable as petitioners have common cause of action and the right is joint and inseparable.

19. The objection regarding maintainability of the writ application on the ground of non-impleading of necessary parties namely the Calcutta University and other Universities and also the Medical Colleges is also, in my opinion, devoid of any merit. The subject-matter of challenge in this application is the arbitrary and illegal manner of conducting and publishing the results of the examination held by West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges and also the legal competence of the Board of Examination to frame rules and to hold the said examination. To determine the said question the West Bengal Board of Examination for admission to Medical, Engineering and Technological Degree Colleges is the necessary and proper party and the same has been impleaded as respondent No. 3 and its Chairman has been impleaded as the respondent No. 4. It appears from the rules that the Central Selection Committee and/or the respective colleges are to call for interview those candidates who have reached qualifying standards for viva voce and medical test. In this case no Challenge has been thrown to the viva voce and

medical test held or to be held by the different colleges concerned or by the Central Selection Committee and as such in my opinion, non-impleading of the medical colleges does not render the application infructuous or bad exposing it to the danger of being dismissed in limine.

20. Another preliminary objection raised on behalf of the respondents Nos. 1 and 2 is that there has been unusual delay and laches on the part of the petitioners in moving this writ application before this court and this prevents the petitioners from setting this extraordinary relief by way of issuance of a writ and/or appropriate order or direction from this writ court. This objection is not also sustainable inasmuch as the result of the Joint Entrance Examination was published as has been stated in paragraph 9 of the petition on 30th June, 1982 and the said list was hurriedly withdrawn from publication later on. Subsequently, the list was published on 8th July, 1982. The instant application has been moved on 30th July, 1982. In these circumstances I am unable to hold that this application is liable to be dismissed for unusual delay, more so when it involves a very important question challenging the arbitrary and capricious manner in which without laying down any norms and/or standards marks have been added to the candidates without consulting the Board of Examiners arbitrarily and the merit list was published in a most arbitrary manner seriously affecting the future prospects of a large number of candidates who appeared in the said admission test.

21. Another preliminary objection which deserves consideration is that the application is barred by estoppel and acquiescence inasmuch as the petitioners knowing fully well the rules framed by the West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges which were supplied to them along with the application forms for appearing at the said test clearly providing that the examination will be held by the Board of Examination in the manner laid down therein appeared in the fact. The petitioners having acquiesced and accepted the terms contained in the said rules appeared in the said examination though there was no compulsion on them to appear in the said examination and so they cannot question the same, After finding that their names did not appear in the selection list published in different colleges in order of merit they have now come to challenge these rules. This cannot be done inasmuch as they cannot approbate and reprobate at the same time. It has also been submitted in this connection that having accepted then rules and acted on the basis of the representations as contained in the said rules they (the petitioners) cannot now turn round and challenge or question the legality and validity of these rules and also the result declared or sent by the Board of Examination on the basis of the test held by them. Section 115 of the Evidence Act which deals with estoppel provides that when a person by declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself or such person or his representatives to deny the truth of that thing. It has been rightly contended by

the learned Advocate appealing on behalf of some of the candidates. i.e., added respondents that this provision has got no application to the instant case inasmuch as no question of any declaration or representation arise in this case. A student intending to get admission in medical colleges or in Engineering Colleges or Technological Colleges has no other alternative but to appear in the examination held by the West Bengal Board of Examination for admission of students in those colleges. If the student who is desirous of prosecuting studies in engineering or in medical stream does not choose to appear in the said admission test has got no other avenue open before him for getting admission in the medical and/or engineering and/or technological colleges and his long cherished hope will never be fulfilled. In such circumstances, there is no question that the petitioners having been fully aware of the declaration contained in the rules framed by the Board for holding the examination for admission in medical and/or engineering and/or technological colleges and after appearing in the said examination are estopped from assailing the rules and also these rules cannot be, under any circumstances, treated as a declaration or representation as provided in Section 115 of the Evidence Act and any student appearing in the said examination is not estopped from challenging the arbitrary and capricious manner in which answer scripts were examined and evaluated and assessed, the tabulation works were made and results were published. The doctrine of estoppel in the facts and circumstances of this case does not apply and this application, in my opinion, cannot be dismissed on this ground. The question of promissory estoppel also cannot arise.

22. The vital question that requires consideration is whether the Government order dated 7th July, 1982 as mentioned in annexure "D" to the affidavit-in-opposition sworn by Dr. Arun Kumar Seal, Chairman, West Bengal Board of Examination on behalf of the respondents Nos. 3 and 4 on 10th August, 1982 has been validly made and whether the Board has been validly constituted. To decide this question it is necessary to set out hereinbelow the provisions of Article 162 of the Constitution :

"Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws :

Provided that in any matter with respect to which the Legislature of a State and parliament has power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

23. This provision thus lays down that the executive powers of the State is co-extensive with the legislative powers of the State. The only limitation is that in any matter with respect to which the legislature of a State or Parliament have power to make laws, the executive power of the State shall be subject to and limited by the executive power expressly conferred by this Constitution or by any

law made by Parliament upon the Union or authorities thereof. This article, therefore, provides that the State in exercise of its executive power can make or pass orders in regard to matters with respect to which the State Legislature has power to make laws. It is pertinent to refer in this connection the decision rendered by the Supreme Court in the case of *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, . It has been observed by B. K. Mukherjea, C. J., as follows (at p. 554):--

"Thus under this Article, the executive authority of the State is exclusive in respect to the matters enumerated in List II of Seventh Schedule. The authority also extends to the concurrent list except as provided in the Constitution itself or in any law passed by the Parliament. Similarly Article 73 provides that the executive powers of the Union shall extend to matters with respect to which the Parliament has a power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or any agreement. The proviso engrafted on clause (1) further lays down that although with regard to the matters in the Concurrent List the executive authority shall be ordinarily left to the State it would be open to the Parliament to provide that in exceptional cases the executive power of the Union shall extend to these matters also."

"Neither of these Articles contains any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the State on the other. They do not mean, as Mr. Pathak seems to suggest, it is only when the Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive as the case may be, can proceed to function in respect to them.

On the other hand, the language of Article 162 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already."

24. It has been further observed in the aforesaid cases as follows (at p. 556) :

"The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws."

25. The aforesaid judgment has been relied upon in the case of *Naraindas Indurkha Vs. The State of Madhya Pradesh and Others*, . In that case, the question arose for determination was that if the State Government in exercise of its executive power could prescribe text books for primary and middle schools in

the absence of any enactment in this respect. Bhagwati, J. who spoke for the Supreme Court observed, "But that does not mean that the State Government was not entitled to prescribe these 28 text books in exercise of its executive power under Article 162 of the Constitution. The executive power of the State Government under Article 162 extends to all matters with respect to which the State Legislature has power to make laws and since education is a subject which falls within Entry II of List II of the Seventh Schedule of the Constitution the State Government could apparently in exercise of its executive power prescribe these 28 text books provided that in doing so it did not trench on the rights of any person. It is well-settled by the decision of this Court in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, that the State Government can act in exercise of its executive power in relation to any matter with respect to which the State Legislature has power to make laws, even if there is no legislation to support such executive action, but such executive action must not infringe the rights of any person. If the executive action taken by the State Government encroaches on any private rights, it would have to be supported by a legislative authority, for under the rule of law which prevails in our country every executive action which operates to the prejudice of any person must have the authority of law to support it, vide paragraph 27 of the judgment of this Court in *Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others*, . Similar observation has been made by the Supreme Court in the case of *State of Madhya Pradesh and Another Vs. Thakur Bharat Singh*, . It has been held that all executive action which operates to the prejudice of any person must have the authority of law to support it and the terms of Article 358 do not detract from that rule. Article 358 does not purport to invest the State with arbitrary authority to take action to the prejudice of the citizens.

26. Apropos in this context to refer to the provisions of Article 154 of the Constitution of India which provides that the executive power of a State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. In Clause 2 (a) of the said Article, it has been further provided that nothing in this Article shall be deemed to transfer to the Governor any function conferred by any existing law on any other authority. It has also been provided in Clause 2 (b) that nothing in this Article shall prevent Parliament or the legislature of the State from conferring by law functions on any authority subordinate to the Governor. This Article, therefore clearly enjoins that the Governor is empowered to exercise either directly or through officers subordinate to him the executive powers of the State in accordance with the Constitution. The only restrictions imposed upon the exercise of such power by Clause 2 of the said Article is that the Governor cannot exercise any function which has been conferred on any other authority by the enactment of any existing law and also the legislature of the State or of the Union is not debarred from conferring by law any function on any authority subordinate to the Governor. The same view has been reiterated in *Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others*, .

27. On a conspectus of the decisions pronounced by the Supreme Court in the aforesaid cases as also of the provisions of Articles 154 and 162 of the Constitution of India the position is now well settled that the executive power of the State though extends to matters with respect to which the State Legislature has power to make laws, yet the limitation to the exercise of such executive power by the Government are twofold; first, if any Act or law has been made by the State Legislature conferring any function on any other authority, in that case the Governor is not empowered to make any order in regard to that matter in exercise of his executive power nor can the Governor exercise such power in regard to that matter through officers subordinate to him. Secondly, the vesting in the Governor with the executive power of the State Government does not create any embargo for the legislature of the State from making and/or enacting any law conferring functions on any authority subordinate to the Governor. Judged by this test in the instant case, the impugned orders made by the Government dated 17th February, 1972 and 7th July, 1981 annexed as annexures "C(1)" and "D" to the affidavit-in-opposition sworn on 10th August, 1982 by Dr. Arun Kumar Seal, Principal, Bengal Engineering College. Shibpur and also the Chairman of the West Bengal Board of Examination for admission to the Engineering, Medical and Technological Degree Colleges on behalf of the respondents Nos. 3 and 4 cannot have any legal effect in view of the fact that the Calcutta University Act, 1979 (West Bengal Act XXXVIII of 1979) had been passed by the State Legislature and the same was published in the Calcutta Gazette on 31st December, 1979. The preamble of the Act provides that the Act has been introduced in order to reconstitute the University of Calcutta to enable it to function more efficiently as a University encouraging and providing for instruction, teaching, training and research in various branches of learning and courses of study, promoting advancement and dissemination of knowledge and learning, and extending higher education, to meet the growing needs of the society etc. The medical college as well as the engineering and technological colleges in question are undoubtedly affiliated to the University of Calcutta. Section 17 of the said Act specifies the authorities of the University which amongst others includes the Council for Undergraduate studies. Section 25 of the said Act states that the Council for Undergraduate studies shall include within "it amongst others; (1) the Council for undergraduate studies in medicine, dental science etc., (2) the Council for undergraduate studies in engineering and technology. The mode of constituting these Councils have been specified in Sub-section (2) of Section 25. Section 26 of the said Act, specifies the powers and duties of the Council for undergraduates studies. Clauses (iv), (xvi) and (xi) of Section 36 which are relevant for the present purpose are set out hereunder :--

(iv) to fix the last date of admission of students to different courses of studies and the date of commencement of examinations in consultation with other Councils for undergraduate studies:

(vi) to hold and conduct examinations and to approve and declare the results of the examinations within such period as may be prescribed:

(xi) to provide for the inspection or investigation into the affairs of undergraduate college or institutions recognised by the Council or affiliated to the University and to exercise general supervision and control over them :

Sub-section (2) (i) and (ii) provided that, the Council for undergraduate studies for medicine, dental science, Homoeopathy and Ayurvedic shall have general responsibility for academic affairs of medical colleges affiliated to the universities relating to entrance requirements, curricula, instructions, examinations, discipline, student activities etc. This Council is empowered to frame rules and make regulations relating to courses of undergraduate studies in medicine and division of subjects in regard thereto. Section 52 enjoins that subject to the provisions of this Act, and the statutes, ordinances may be made to provide for all or any of the following matters: -- (a) the admission of students to the University and the colleges affiliated to or recognised by it and their enrolment as such. Section 55 of the said Act provides the manner of making regulations by the Syndicate.

28. Therefore, from the above provisions set out hereinbefore, it is clear that the Council for undergraduate studies in medicine, dental sciences as well as the Council for undergraduate studies in engineering and technology are empowered to fix last date of admission of students to different courses of studies and the date of commencing of examination as well as to hold and conduct examination and to approve of and declare results of the examination within such a period as may be prescribed. It is also evident that Council for undergraduate studies in medicine and dental science is empowered to frame rules and make regulations relating to courses of undergraduate studies in medicine and they will have the general responsibility relating to entrance requirements. Section 52 also provides that ordinances may be made providing for all or any of the matters mentioned therein including admission of students to the Universities and Colleges affiliated to the Universities. Therefore, the Calcutta University Act 1979 has empowered the Calcutta University Council for undergraduate studies in medicine and dental science as well as the Council for undergraduate studies in engineering and technology to frame rules for admission of students in these courses of studies in accordance with the ordinances that will be framed u/s 52 of the said Act. In this context the impugned orders which have been relied upon by both the Government Pleader appearing on behalf of the respondents Nos. 1 and 2 as well as the learned Standing Counsel appearing on behalf of the respondents 3 and 4 that the Constitution of the West Bengal Board of Examination for admission to engineering, medical and technological degree colleges and also investing the said Board impliedly to frame rules are competent is not sustainable as the power to hold examination for admission to these medical and technological degree colleges affiliated to the Calcutta University has been expressly conferred on the Calcutta University and its council for undergraduate studies for medical and dental science and the council for undergraduate studies in engineering and technology.

29. It has been urged on behalf of respondents Nos. 3 and 4 by the learned Standing Counsel that the Government Order impugned as mentioned in annexure D to the said affidavit in opposition is valid and rules framed thereunder by the West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges providing the manner of holding the said test are administrative rules and they are also valid and cannot be questioned on the ground that the impugned order and rules are contrary to the Calcutta University Act (Act XXXVII of 1979). It has also been submitted in this connection that the University has prescribed the minimum qualification namely, passing of Higher Secondary Examination held by the West Bengal Council of Higher Secondary Education or its equivalent examination as the requisite for getting admission to engineering, medical and technological degree colleges. In this case as there are large number of candidates far exceeding the total number of seats available for admission in the engineering, medical and technological degree colleges, the Government which runs all these colleges affiliated to the various Universities such as Calcutta University, Burdwan University and North Bengal University has power to hold selection test for admitting students to these medical, engineering and technological degree colleges as has been done in the instant case. It has been submitted that, the Constitution of the Board by the impugned Government order for holding the Entrance Examination for admission to the aforesaid degree colleges does not in any way affect the Calcutta University Act, 1979. In the case of State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc., the challenge was directed against the entrance test prescribed by the Government by order dated 23rd July, 1970 for selection of candidates for admission in 4 medical colleges run by the State on the ground that the academic council of the Andhra University was empowered u/s 23 of the Andhra University Act (Act II of 1976) to make rules prescribing the courses of study and also determining curricula and general control of teaching within the University and under Sub-section (2) (h) of the said Act such powers include the power to make regulations regarding admission of students to the University etc. as well as to make regulation prescribing further qualifications and mentioned in Sub-section (1) of Section 33 for admission to degree colleges of the University. The aforesaid Government order and/or notification prescribing for a selection test to be conducted by the Director of Medical and Health Services is an attempt to assess merits of candidates on academic standards different from those fixed by the University. It would constitute an encroachment upon the central subject as specified in Entry 66 of List I of the 7th Schedule of the Constitution. It has also been urged that Section 33 of the said Act specifically provides that a student to be eligible for admission to a course of study qualifying for admission to a Post-Matriculation University Examination has to pass the examination prescribed as qualifying for admission to such course or an examination recognised by the Academic Council with the previous sanction of the State Government as equivalent thereto. The petitioner having already acquired that minimum qualification the selection test, that was prescribed by the Government is wholly in excess of the executive

power conferred by Article 162 of the Constitution. This contention was negated by the Supreme Court and it was held that the Government which ran the colleges had a right to make selection out of a large number of candidates and for this purpose they could prescribe a test of their own which was not against any law. The Government merely tried to supplement the eligibility rule by a written test in regard to subjects in which the candidates were already familiar, their action could not be impeached, nor was there anything unfair in the test prescribed. The test so prescribed by the Government must be considered in the light of second hurdle for the purpose of a screening to find out who of all the candidates applying shall be admitted and who should be rejected. Merely because the University had made regulations regarding the admission of students to its degree courses, it did not mean that anyone who had passed in the qualifying examination such as P.U.C. or H.S.C. was ipso facto to be entitled to admission to such courses of study. If the number of candidates applying for such admission far exceeds the number of seats available, the Government can prescribe such a selection test and it could not be said to be encroaching on the Calcutta University Act. It was also held that this prescribing of selection test did not in any way affect, or encroach upon the powers conferred on Parliament by Entry 66 of List I of the 7th Schedule. This decision was also relied upon in the decision in *R. Chitralakshmi and Another Vs. State of Mysore and Others*, . In that case also a minimum qualification for getting admission in the Medical Colleges were prescribed by the Academic Council u/s 22 of the Mysore University Act which empowered the Academic Council to prescribe conditions of admission to Medical Colleges affiliated to the University. The Government order providing for holding interview for selection of candidates having minimum qualification prescribed by the University for admission to the medical colleges by a selection committee for selection for admission to medical colleges and also by another selection committee for selecting students in Engineering Colleges did not contravene the Rule prescribed by the University. The Government order merely appointed a selection Committee and prescribed rules for selection of students who have the minimum qualification prescribed by the University to be eligible for admission. Such a Govt. order could not be attacked as encroaching upon the powers of the parliament provided in entry 66 of list 1 of 7th Schedule.

36. In the instant case nothing has been placed before this Court to show that the Calcutta University or that the Council for Undergraduate studies in Medicine and the Council for undergraduate studies for engineering and technological degree colleges have made any rules and regulations relating thereto or framed any statute and ordinance providing for admission of students to these degree colleges affiliated to the University. As such the decision of the case reported in *State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc.*, does not apply to the facts of his case. Moreover, at the time of the aforesaid decision Entry No. 25 of the concurrent list in the 7th Schedule of the Constitution merely provided for "Vocational and Technical Training of Labour". As

such there was no power provided in the said entry for making any Act providing for education including technical education and medical education and Universities. The only challenge in the aforesaid case was that the Government order providing for the selection test constituted an encroachment on the power of the Parliament to make laws under entry 66 of List I of the 7th Schedule which relates to "coordination and determination of standards in institutions for Higher education or research and scientific and technical institutions." The Entry No. 25 in the concurrent list that is List. II in the 7th Schedule was substituted by the Constitution 42nd Amendment Act, 1976 by Section 57 which was enforced on 3rd January, 1977. The substituted Entry No. 25 is quoted hereinbelow :

"Education including technical education, medical education and Universities, subject to provisions of Entries 63, 64, 65 and 66 of List I: vocational and technical training of labour."

This Entry No. 25, therefore, confers both upon the Central as well as upon the State Legislatures" power to make laws with regard to education including technical education, medical education and Universities which was not in the earlier Entry No. 25. On the basis of the Dower the Calcutta University Act, 1979 (Act XXXVII of 1979) was enacted by the State Legislature in order to enable the University of Calcutta and other Universities also to function more efficiently by encouraging and providing for instructions of teaching, training and research in various branches of learning and courses of studies, promoting advancement and dissemination of knowledge and learning. Section 25 of the said Act as stated hereinbefore specifically provided for the formation of council of undergraduate studies in Engineering and Technology. Section 26 which deals with the cower and duties of the council for undergraduate studies as provided in Sub-section (1), Clause (iv) that the council may fix the last date of admission of students to different courses of studies and the date of commencement of the examination in consultation with the other council of undergraduate studies. Section 52 of the said Act has specifically provided that statutes and ordinances may be made by the Universities in Clause A for the admission of students to the University and the colleges "affiliated to or recognised by and their enrolment as such." Therefore the Calcutta University Act, 1979 has specifically conferred powers on the University to make ordinances providing for the mode or manner as well as the conditions in accordance with which the admission to Engineering, Medical and Technological Degree Colleges are to be made. In State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc., there was no challenge as to the competence of the executive to. make Government orders providing for selection test for admission in the medical colleges on the ground that the Government order affected or encroached upon the provisions of the Andhra University Act and thereby violating the provisions of Article 154(2) of the Constitution of India. In this case as the aforesaid Act has already been made conferring powers upon the Calcutta University and its Council for undergraduate studies in Engineering and Technology, medicine and dental sciences to provide for admissions in these discipline by Training Rules, Regulations, Statutes etc.

The impugned Government order providing for formation of the West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges and empowering the Board for holding the test for selecting candidates to be admitted in these courses of studies is in contravention of the provisions of the Article 154(2) of the Constitution and as such this impugned Government order is invalid and unenforceable. This will be evident also from the fact that before the Calcutta University Act, 1979 (Act XXXVII of 1979) was enforced by Government order dated 2nd March, 1962 a decision was made to have a Joint Entrance test to be conducted by the Board constituted with the Heads of the Institutions and one representative of the department of education for holding a test for admission to various Engineering degree colleges and on the basis of this order a Board was constituted for this purpose. It appears that by a subsequent Government order dated 23rd April, 1962 annexed as annexure "B" to the affidavit-in-opposition sworn by the respondent No. 4 on 10th August, 1982 that the Board was constituted by the earlier Government order for adopting the joint admission test should be an official body with full power to operate the rules and procedure to be evolved by the Board. This Government order was issued under No. 1-169-29/62. It appears that on 12th February, 1972 another Government order was issued under No. 164-Edn(T)-T-6E-Edn/71 annexed as annexure "C" to the affidavit in opposition whereby in partial modification of the earlier Government order dated 2-3-62 and 9-2-72 the Governor was pleased to approve the composition of the West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges with persons named therein. Thereafter on 17th February, 1972 another Government order was made providing for selection of candidates for admission into the Pre-Medical Courses in the dental sciences and the Medical Colleges run by the Government and the Universities. Subsequently on 7th July, 1981 the Government order in question was issued whereby the West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges was entrusted with the duties for selection of candidates for admission to Engineering, Medical and Technological Degree Colleges and the Board of Examination for admission was entrusted with the duties to hold test for selection of candidates for admission to Engineering, Medical and Technological Degree Colleges. The Board framed rules for Joint Entrance Examination and held the selection test, It appears on a consideration of all these Government orders as well as the Calcutta University Act, 1979 that the Board which was constituted in 1962 for holding admission test for admission in Engineering Colleges was subsequently empowered to hold admission test not only for Engineering degree colleges but also for Medical and Technological Degree Colleges in 1981. In such circumstances and in the absence of any rules or regulations or any statute or ordinance framed by the University on the basis of the Calcutta University Act 1979 or on the basis of other acts whereby other Universities are governed providing for admission to these colleges the submission tried to be made on behalf of the respondents Nos. 3 and 4 that the Government order in question which provides for a second hurdle namely the selection test for admission to the

aforesaid degree colleges for candidates who are eligible to be admitted in those degree colleges according to the qualification prescribed by the University cannot be accepted, On the other hand, the Board having been constituted prior to the coming into the force of the Calcutta University Act, 1979 the only inescapable conclusion is that the aforesaid Government order made in exercise of the executive power is in excess of the provisions of Clause (2) of Article 154 of the Constitution, of India and as such these orders cannot have any legal force and effect.

31. In view of my finding above that the impugned Government orders are not enforceable as power to make rules and regulations or frame the statutes or ordinances for prescribing the manner of admission to the Medical, Engineering and Technological Degree Colleges affiliated to the Calcutta University being already provided for in the Calcutta University Act, 1979 and other Acts the Constitution of the Board of Examination for admission to Engineering, Medical and Technological Degree Colleges and the rules that have been framed by such Board for holding the admission test are all illegal and bad and as such they are not enforceable. I, therefore, hold that the impugned Government order dated 7th July, 1981 providing for formation of the Board of Examination and the rules framed by the Board for holding the Joint Entrance Examination are invalid and unenforceable. As such the West Bengal Board of Examination on the basis of those orders is not competent to hold the Joint Entrance Examination for admission to Engineering, Medical and Technological Degree Colleges nor the Government is competent to constitute such a Board of Examination in total disregard of the statutory provisions stated hereinbefore as embodied in the Calcutta University Act, 1979 which invests the University and its authorities with all powers of making rules, regulations, statutes and ordinances for the purpose of prescribing the course of studies to be followed by the Medical, Engineering and Technological Degree Colleges affiliated to it and also providing for the manner in which admissions are to be given to the students desirous of reading in any of these course of studies. The aforesaid impugned Government orders so to say cannot be considered as supplementing the minimum qualification that has been prescribed by the Calcutta University regarding the eligibility of candidates who seek admission in the Engineering, Medical and Technological Degree Colleges as I have already held that the respondents Nos. 3 and 4 signally failed to produce before this court any such rules and regulations and/or ordinance framed by either Council for Undergraduate Studies or by the Academic Council prescribing such qualification for admission in these courses of studies.

32. Even assuming for argument's sake, that the Government order dated 7th July, 1981 annexed as annexure "D" to the aforesaid colleges is a valid one behalf of the respondents Nos. 3 and 4 by Dr. Arun Kumar Seal, Chairman of the Board of Examination for admission to the aforesaid colleges is a valid one still then the rules that have been framed by the Board of Examination whereby it has been provided that the Board did not publish the result nor it would

communicate the result to any individual candidates nor there would be any provision for post-publication review and so it will not entertain any such application for review, are, in my opinion bad inasmuch as they are contrary to the very conception of holding fair examination. The impugned rules annexed as annexure "I" to the affidavit-in-opposition sworn by Dr. P. K. Roy on 10th January, 1933 as well as annexure "E" to the affidavit-in-opposition sworn on 10th August, 1982 by the respondent No. 4 are on the face of it wholly arbitrary as they confer arbitrary and unreasonable powers on the Board of Examination in the matter of sending the results of the Joint Entrance Examination to the colleges and to the Central Selection Committee after holding the selection test of the candidates. It has been provided in the said rules that the Board does not publish the results and it does not communicate the result to any individual candidate. There is also no provision for post-publication scrutiny and review and hence the Board did not entertain any such application, it has also been submitted in this connection on behalf of the respondents Nos. 3 and 4 by referring to the results sent to the colleges that the Board does not disclose the marks obtained by the successful candidates whose names appeared in the merit list. Thus in the matter of publication of the merit list the students appearing in the said test had no opportunity of knowing their results, that is, the marks obtained by them as well as the marks obtained by the candidates whose names appeared in the merit list sent by the Board of Examiners to the different colleges as well as to the Central Selection Committee. These rules are therefore arbitrary, unreasonable and they are discriminatory and also opposed to fairness and justice. Moreover, the Government order provides for the formation of the Board of Examination and entrusting the Board with the duty of selecting candidates for admission to the aforesaid three courses of studies. The Board may make rules for effectively and properly discharging their functions in the matter of holding the selection test and in publishing the results including the preparation of the merit list but the Board cannot by framing the rules delegate some of its essential functions in regard to admission to the Central Selection Committee. The formation of which is totally bad and invalid inasmuch as it was done in contravention of the powers conferred by the Government by the impugned Government order on the West Bengal Board of Examination. These rules, therefore, are in my opinion bad and the Central Selection Committee referred to in these rules is also not an authorised body to exercise any of the powers of the Board of Examination. It is relevant to mention here the observations made by the Bombay High Court in the case of Paritosh Bhupeshkumar Sheth and Others etc. Vs. The Maharashtra State Board of Secondary and Higher Secondary Education, Pune and Another, :

"Examinations are no doubt aimed at judging the calibre of the examinee, which is assumed to have been reflected in his performance in the answer books. The evaluation of answer papers thus forms the heart of this process, all other processes from the stage of seating the question papers to the stage of declaration of results, including the verification process under regulation 104,

being merely ministerial and ancillary to the main process of such evaluation. Examinee is entitled to have his papers correctly and properly evaluated which right can be spelt out from the very power and function of holding examination entrusted under the Act to the Board."

Hence the Rules framed by the Board which provided that there will be no evaluation of answer scripts nor any review of the same nor the results would be published is, therefore, arbitrary and unreasonable and so invalid and unenforceable. It has been observed in *Chief Settlement Commissioner, Rehabilitation Department, Punjab and Others, etc. Vs. Om Prakash and Others etc.*, :

"In our constitutional system, the Central and the most characteristic feature is the concept of the rule of law which means, in the present context, the authority of the law courts to test all administrative action by the standard of legality. The Executive or Administration action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court of law. The rule of law rejects the conception of the Dual State in which Government action is placed in a privileged position of immunity from control by law. Such a notion is foreign to our basic constitutional system."

33. It has been pleaded in the writ application that the West Bengal Board of Examination while taking the selection test have not acted fairly and properly inasmuch as there was wide publicity that the Board has given grace marks to the tune of 50 marks in certain selected cases without having any declared policy, rules, norms, procedure and lawful practice. It has been further pleaded in paragraph 16 of the writ application that in giving these grace marks to some selected candidates neither the consent of the examiners had been sought for nor any approval of the authorities concerned including the Medical Council of India was obtained and no consistent principle and systematic formula has been followed in this respect. It has been further pleaded in paragraph 17 that if the answer scripts as well as tabulation sheets, selection papers and connected mark sheets are produced it will be evident that there has been gross injustice, unfairness, arbitrary discrimination, undue favouritism, sacrificing all norms and procedures of fair examination system to the greatest prejudice and injury to the case of the students in general and to the case of the petitioner No. 2 in particular.

34. In the affidavit-in-opposition that has been filed on behalf of respondents Nos. 3 and 4 on 10th August, 1982 and which was sworn by the respondent No. 4, Chairman of the West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges it has been stated in paragraph 19 that the number of candidates to be placed in the merit list were based on the total intakes in the Engineering, Technological and Medical Colleges as well as on the basis of past experience of candidates not joining or discontinuing after joining. The merit list was prepared accordingly. The list was prepared zonewise as well as the merit list was prepared and these were placed

in the meeting of the Board concerned on the 30th. June, 1982 wherein the agenda No, 5 was to consider the results of the Join Entrance Examination, 1982. This item was deferred to the next meeting of the Board as the result was incomplete and the Board asked the Confidential .Sub-Committee to finalise the result and place it at the adjourned to be held on 7th July, 1982. It has also been stated that the adjourned meeting was held on 7th July, 1982 and the Board considered the results and approved of the same. The results were sent to the Constituent Colleges on 8th July, 1982. It has also been stated in paragraph 23 of the said affidavit-in-reply to the statements made in paragraphs 14, 15 and 16 of the writ application that no selective Grace mark has been given to any candidate leading to discrimination. It has also been stated that in the matter of finalisation of the results and the giving of grace marks it was not necessary to obtain any consent of the Examiners as such or any approval of the authorities. In paragraph 28 also it has been stated that no selective marks has been given to any candidate leading to discrimination

35. In the application for addition of parties filed on 4th August, 1982 by Sri Nirupam Ghosh who has been added as petitioner it has been stated in paragraph 3 of the said petition that his name was published in the merit list and he secured 249 marks out of 500 marks in the said examination but he was not supplied with any application form for admission. Had this grace mark of 50 been added to this petitioner his position would have been much higher up in the list of successful candidates but in spite of the resolution of the said Confidential Sub-Committee this grace mark was not given to the petitioner nor the same was added to the total marks of the petitioner in his Biology paper.

36. The same averments have been repeated in the affidavit-in-opposition sworn by Dr. P. K. Roy, Officer-in-Charge of the West Bengal Board of Examination on 10th January, 1983 wherein it has been denied in paragraph 10 of the said affidavit that the first result of the Joint Entrance Examination was published on 30th June. 1982 and it has been stated that only a block merit list was ready on that day. The result was incomplete. Accordingly the meeting was adjourned till 7th July, 1982 by which the zonewise list and the merit list was finalised. The list of candidates in order of merit was sent to the Constituent. Colleges and this list was prepared on the basis of total intake of the colleges as well as on the basis of the past experience of candidates not joining or discontinuing after joining. In paragraph 14 of the said affidavit it has been denied that there has not been any fair examination of the answer scripts of the students including the petitioner No. 2 or that there is discrimination in the tabulation of marks or in communicating the merit list of candidates. It has been stated that no selective grace mark has been given to any candidate leading to discrimination. It has been further stated that the results were finalised and they were placed by the Confidential Sub-Committee for approval by the Board of Examination at its meeting on 7th July, 1982. It was not necessary to obtain any consent of the Examiners as such or any approval of the authorities in the matter of adding certain marks.

37. Another rejoinder was sworn by the petitioner No. 1 on 11th January, 1983 and it has been stated in paragraph 7 that it being essentially a competitive examination award of grace mark itself raises grave suspicion and the alleged rule to refuse review and re-examination are mala fide and motivated. It has also been stated in paragraph 8 that in the result that has been published by the Board there are serious anomalies, contradiction and arbitrary discrimination. It has also been stated that the statement that the petitioner refused offer of the Board in the trial court as well as in the appeal court for fresh examination of the answer scripts is wholly wrong as wrongly made in the said affidavit-in-opposition. On the other hand, the petitioner agreed for fresh examination of the answer scripts by separate sets of examiners in the appeal court.

38. It is quite clear from the averments made in paragraph 15 of the writ application that grace marks have been given to some selected candidates to the tune of 60 marks. This specific averment has not been denied in either of the affidavits sworn on behalf of the respondents Nos. 3 and 4 on 10th August, 1982 by the respondent No. 4 as well as the affidavit sworn on 10th January, 1983 by Dr. P. K. Roy, Officer-in-Charge of the Board of Examination. In paragraph 23 of the affidavit sworn by the respondent No. 4 it has been merely stated that no selective grace marks have been given to any candidate leading to discrimination. Also paragraph 28 of the affidavit reiterated the same statement. The statement in paragraph 23 has been affirmed as based on information derived from record while the statement in paragraph 28 has been affirmed as the statement of deponent to the court. In paragraph 14 and 19 of the affidavit-in-opposition sworn by Dr. P. K. Roy it has been averred that no selective grace marks have been given to any candidate leading to discrimination and these have been affirmed as true to his knowledge. In none of the affidavits there is any specific averment that no grace mark has been given as alleged in paragraph 15 of the writ application. On the other hand, while arguing the case on behalf of the respondents Nos. 3 and 4 Mr. A. P. Chatterjee, learned Standing Counsel submitted that grace marks to the tune of 50 marks have been given to all the Medical candidates and similarly 25 Marks have been added to the Engineering candidates. This submission of Mr. Chatterjee has been noted in my earlier order dated 20th August, 1982 whereby the Rule was issued and interim order was made. Pursuant to the direction of this court the respondents Nos. 3 and 4 produced before this court the answer scripts of the petitioners including some added petitioners and also some other examinees which were inspected in the presence of the Deputy Registrar of this court. After such inspection a written submission was filed on behalf of the added petitioners Nirupam Ghosh, Subrata Chandra and Sarbani Ghosh by Himangshu Kr. Basu, learned Advocate wherein it has been stated that on examination of tabulation papers of the successful and unsuccessful candidates vis-a-vis merit cards and the answer scripts it is nowhere to be found that grace marks at a flat rate have been given to the Medical students as well as to the Engineering students to the tune of 50 marks and 25 marks respectively. Similarly Mr. Sushanta Chatterjee, learned Advocate

appearing on behalf of the petitioners, submitted a written submission wherein it has been stated that there is no record to show that grace marks have been awarded separately on the answer scripts and this does not appear either from the answer scripts or from the tabulation sheets or from any other document. It has also been submitted that there are discrepancies in the examination of the answer scripts of the successful candidates and the unsuccessful candidates. Mr. Chatterjee has also pointed out in this connection that Roll No. C/How/292 Goutam Das secured 46 in English, 25 in Physics, 50 in Chemistry, 81 in Biology thus making a total of 202 marks. But in the Chemistry answer paper total mark of 50 is written on the front sheet, but on the reverse side it is written as 52-- when the total comes to 204. Similarly in regard to Roll No. M/CAC/832 Gunadhar Maity, it appears from the answer scripts produced in court, there are deletion of marks in the answer scripts without initials of any authority and there is no evidence of any re-examination. Thus securing a total of 213 marks he has not been selected. On my repeated asking to Mr. A. P. Chatterjee, learned Advocate appearing on behalf of the respondents Nos. 3 and 4 to produce before this court, the original merit lists that have been finally approved by the members of the Board the only answer Mr. Chatterjee gave was that there was no such original list. All the lists were cyclostyled and did not bear the signature of the members of the Board of Examination. This in my opinion, creates great suspicion as to the authenticity and genuineness of the cyclo-styled copy of the merit list and also of the block merit list and also zonewise merit list which were produced before this Court not signed by the members of the Board of Examination. It is very relevant to note in this connection that in the affidavit in opposition sworn by the respondent No. 4, Dr. Arun Kumar Seal, Chairman of the Board of Examination in paragraph 19, it has been stated that a meeting of the Board convened on 30th June 1982 to consider certain agendas one of which was to consider the result of the Joint Entrance Examination for admission to Engineering, Medical and Technological Degree Colleges was deferred as the same was incomplete. It has also been stated therein that the Board asked the confidential sub-committee to finalise the result and to place the same at the adjourned meeting to be held on 7th July, 1982. At the adjourned meeting held on 7th July, 1982 the Board considered the result and approved the same. The results were sent to the Constituent Colleges on 8th July, 1982. The impugned Government order dated 7th July, 1981 which provide for formation of Board of Examination with power to hold selection test for selecting candidates for admission to Engineering, Medical and Technological Degree Colleges did not provide for formation of any such confidential sub-committee. As such this Court asked Mr. Chatterjee, the learned Standing Counsel, to produce the proceedings of the meeting of Board of Examiners held on 21-11-81. It appears from the said proceedings that a resolution was taken for the formation of the confidential sub-committee. The resolution in question was not entered in a minute book. But a loose sheet of paper containing the said resolution was produced before this Court. It also appears from the proceedings of the meeting held on 13th June, 1982 of the Confidential Sub-Committee which has been marked as Exhibit "B"

that a resolution was adopted to the effect that 50 marks be added in Biology paper and 25 marks in Mathematics paper to eliminate disparity. The formation of the Confidential Sub-Committee is, in my opinion, wholly illegal and unauthorised as the impugned Government order did not provide for formation of such confidential sub-committee. The delegation by the Board of Examination to the confidential sub-committee the power to consider and finalise the result of the candidates and also to adopt the resolution of 3rd July, 1982 recommending for addition of 50 marks in Biology and 25 marks in Mathematics papers is wholly illegal, without jurisdiction and so bad. This resolution of the confidential subcommittee is wholly illegal and arbitrary inasmuch as the selection test is not an ordinary examination and the question of passing in the said examination does not arise. It is essentially a competitive test and the selection is to be made strictly on the basis of merit and this is to be judged solely on the yardstick of the marks obtained by the candidates in the said written test held in June, 1982. In such circumstances the formation of such a confidential subcommittee and also the resolution adopted by the confidential sub-committee on 3rd July, 1982 recommending for addition of 50 marks in Biology and 25 marks in Mathematics is per se arbitrary and illegal and discriminatory as it frustrates the very purpose of the merit test. The merit list of successful candidates published on the basis of the grace marks given to the successful candidates in the merit list is, in my opinion, wholly illegal, arbitrary and discriminatory and as such such a merit list in public interest should not be allowed to remain and the so-called successful candidates whose names appeared in the merit list under any circumstances cannot be taken to be the successful candidates on assessment of their merits on the basis of their performances in the said selective test. Moreover, as I have mentioned hereinbefore the submissions that have been made by the learned Advocate for the petitioner as well as on behalf of some of the added petitioners that it does not appear from the answer scripts of the petitioner nor and also some of the added petitioners that any grace mark in accordance with the resolution aforesaid has been given or added to those students. This clearly goes to show that the merits of all the candidates have not been properly taken into consideration in preparation of the merit list on the basis of the assessment of the answer scripts as made by the examiners. It is also arbitrary on the part of the Confidential Sub-Committee to adopt such a resolution for adding marks without the advice or consent or approval of the examiners who examined the answer scripts of the candidates and also without any direction by the Board of Examiners who is the only competent body to prepare the list of candidates purely on the basis of merits as assessed from the answer scripts of the examinees. The resolution to add marks, that is, grace marks, is wholly illegal and unauthorised and the merit list that has been prepared on its basis cannot be said from any point of view as the merit list of successful candidates prepared strictly on the basis of merit of the candidates appeared in the said test. I have also stated hereinbefore that no authenticated merit list has been produced before this court bearing the signature of all the members of the Board nor any seal of the Board has been affixed on the cyclostyled list produced before this

court to show the authenticity of the list and even the signature of Dr. P. K. Roy who is the Officer-in-Charge of the Board of Examination also does not appear and his mere cyclostyled signature appears which raised great doubt and suspicion in the mind of the court as to the authenticity of the merit list produced before this court. Moreover, the way and the hesitating manner in which the merit list and the tabulation sheets etc. were produced after repeated directions caused serious doubts as to the genuineness and authenticity of the cyclostyled list produced before this Court. There is no documentary evidence produced before this court in spite of repeated asking by the Court to prove that the cyclostyled list has been cyclostyled or copied from the original list which has been placed before the Board at the alleged meeting of the Board on 7th July, 1982 and has been approved by the members of the Board present in the said meeting. Everything has been done in a hush-hush manner and arbitrariness in the matter of preparation of the merit list of successful candidates appeared in the list is at galore. It will not be out of place to mention in this connection that one of the added petitioners namely Gunadhar Maity swore a supplementary affidavit on 3th August, 1982. In para-graph 2 of the said affidavit, it has been stated that a list of successful candidates was hung up in the notice board of Calcutta Medical College and the relevant portion of the said list was annexed as annexure "N" series. It was further stated in paragraph 3 that in the said list his position has been shown as serial No. 341 against his Registration No. M/CAC/232 and in accordance with the rules he has been supplied an application form for taking admission. He submitted the said form after duly filling up the same to the Selection Committee and receipt was given to him. But, subsequently when he called on that office to enquire, he was told that his position was not 341 but 741 as per another merit list. In the receipt his serial No. 341 was first written and thereafter it was deleted and No. 741 was incorporated after taking receipt from him. A Xerox copy which has been annexed is annexure "O". To this affidavit Dr. P. K. Roy, Officer-in-Charge of the Board of Examination sworn a further affidavit of facts on 17th August, 1982. In paragraph 3 of the said affidavit, it has been stated that the student bearing No. M/CAC/832 was shown as 341 in merit in the zonewise list of the Medical Group but that was a typographical error and the correct position was shown in the merit list as 741. This has been affirmed as derived from records without mentioning whether it is true to his knowledge or submission. As I have said already that in order to verify the submission, I also asked the Advocate for respondents Nos. 3 and 4 to produce the authenticated merit list but this was not produced. As such I am unable to accept this statement made in the further affidavit of facts sworn by Dr. P. K. Roy, Officer-in-Charge of the Board.

39. In the writ petition, it has been alleged that the list of successful candidates was first published on June 30, 1982. This statement has been denied in the two affidavits-in-opposition sworn on behalf of the respondents NOS. 3 and 4 by respondent No. 4 and Dr. P. K. Roy, Officer-in-Charge of the Board respectively and it has been stated that the merit lists were sent to the different colleges on

8th July, '82 after approval by the Board. It appears, however, from the merit lists that have been annexed to the affidavit of rejoinder as annexure "M" sworn by petitioner No. 1 on 11th January, 1983 that the same bears the signature of Dr. P. K. Roy in Xerox copy with date mentioned as June 30, 1982 beneath it. The same also appears from the zonewise merit list of candidates as well as from the merit list of successful candidates produced before this Court. Moreover, in some Xerox copy of the lists produced before this Court by the learned Advocate for respondents NOS. 3 and 4 the signature of the Officer-in-Charge appears without any date as to when such list was signed by him. This clearly supports the statements made by the petitioner as well as by some added petitioners that lists were first published in June 30, 1982. It also goes to support the specific allegation that the merit lists have been prepared in an arbitrary manner without following any norms or procedure. I have already held hereinbefore that no authenticated original merit list of successful candidates approved by the members of the Board and bearing their signatures was ever produced before this Court to controvert the aforesaid allegations made in the writ petition. It is also evident from the resolution of the confidential sub-committee adopted at its meeting held on June 30, 1982, that 50 marks be added in Biology paper and 25 marks be added in Mathematics papers. This resolution apart from being arbitrary and unreasonable as has been held already has been applied in a discriminatory manner without following any norms as these grace marks have been given to some selected candidates while denying the same benefit to others. In the supplementary affidavit sworn by the added petitioner Nirupama Ghose, it has been stated in paragraph 5 that there has been great resentment among the members of the public including the noted educationists and guardians of students appearing in the said Joint Entrance Examination that there had been arbitrariness in the matter of examination, of answer scripts, preparation of merit lists and publication of the list of successful candidates without mentioning therein marks obtained. It has been further stated in paragraph 6 of the said affidavit that a notification was published in newspapers both in Bengali and in English that students securing 50% marks in the said Entrance Examination would be admitted in the colleges. Copies of the said publications have been annexed as annexures "F", "G", "H" and "I" of the supplementary affidavit by Satyendra Nath Das Swarup on 6th August, 1982. The notification that has been published in the newspapers prescribing the names of candidates securing 60% marks and candidates belonging to Scheduled Castes and Scheduled Tribes securing 40% mark in the Joint Entrance Examination would be considered for admission to Engineering Medical and Technological Degree Colleges and their names would be hung up in the notice board of all the colleges in West Bengal on 10th July, 1982 and saleable application forms for admission would be issued to only those candidates whose names appeared in the merit list. This notification prescribing the marks obtained by a candidate for entitling him to be in the merit list is wholly arbitrary and unreasonable inasmuch as it is not an ordinary examination involving the question of passing the same but competitive examination where the only

yardstick for selecting candidates for admission to the different Engineering, Medical and Technological Degree Colleges is strictly on the basis of merit, that is, their performances in the written admission test. Moreover, it has been submitted by Mr. Chatterjee, learned Advocate appearing on behalf of the petitioner after inspecting the answer scripts of the petitioners and some other candidates that Enamul Haque, Roll M/CAC/418 secured a total of 216 marks -- 42 in English 24 in Physics, 61 in Chemistry, 89 in Biology. This mark also appears in the merit card and in the tabulation sheet. In the selection list on the basis of which he has been selected as a successful candidate total marks obtained by him was shown as 260. It has also been submitted that there is nothing to show from the answer scripts that any grace mark has been added to all the candidates in general. This will also appear from the tabulation sheets and other documents. There are also discrepancies in the answer scripts of successful and unsuccessful candidates. Roll No. C/How/292-Goutam Das secured in total 202 -- 46 in English, 25 in Physics, 50 in Chemistry, 81 in Biology. In Chemistry answer paper total mark of 50 is written on the front sheet but on the reverse side it is written as 52 -- when the total comes to 204. Similarly Roll no. M/CAC/832 --Gunadhar Maity there are deletion of marks in the answer scripts without initials of any authority and there is no evidence of any re-examination. His marks are -- 43 in English, 33 in Physics, 58 in Chemistry and 79 in Biology making a total of 213 though he has not been, selected. There is nothing to show that the grace marks of 50% has been added to his Biology paper and in accordance with the resolution of the Confidential Sub-Committee mentioned hereinbefore had this been added then his name certainly would have found place in the list of successful candidates at a much higher position and in fact his name appeared in the list of successful candidates and he was supplied admission form. But when he submitted the application form he was given a receipt. Subsequently when he went to enquire he was told that his position was 741 according to another merit list and the receipt with the serial No. 341 was taken from him by the authorities who struck down serial No. 341 and inserted in its place 741 and he was denied admission. It has also been submitted by Mr. Chatterjee that in the merit list 50 candidates have been bracketted together against a particular total number. If there is a change of one mark the upward positions become substantially changed. It has also been submitted by Mr. Himangshu Kr. Bose, learned Advocate appearing on behalf of the added respondents Nirupam Ghosh. Subrata Chanda and Sarbani Ghosh that no grace marks have been added at a flat rate to the extent of 50 for Medical students and 25 marks for Engineering students as will appear from the answer scripts as well as other records inspected by them. There is nothing to show that in the ledger against each of the candidate, it is not possible for any one to come to a definite conclusion as to whether the said grace mark has been added against the total marks of each of the candidates. This raises suspicion as to the conduct of examination and publication of merit list by the Board. All these go to show that the answer scripts were not properly scrutinised and the tabulation of marks was also not done properly and the merit list has been prepared and published in an

arbitrary and whimsical manner. There is nothing to show that the merit list was prepared strictly on the basis of merits. It has also not been Proved that the results were placed before all the members of the Board and the Board approved the results. Moreover, the resolution of the Confidential Sub-Committee which is a thoroughly unauthorised and illegal body recommending for addition of 50 marks in Biology and 25 marks in Mathematics is also arbitrary and unreasonable on the face of it and as I have held already that there is nothing to show even if assuming that the resolution is a valid one that the erace marks were given uniformly to all the candidates. In these circumstances, the only conclusion that follows is that the entire result of successful candidates that has been published is wholly illegal and bad being tainted with arbitrariness and unreasonableness and discrimination. It appears from the facts and circumstances that the Confidential Subcommittee which is an unauthorised body played a main part in the preparation of the merit list and setting the same approved. The Government order does not provide for formation of such a Confidential Sub-Committee nor if is made clear before this court how and on what authority the Board is competent to form such a Confidential Sub-Committee nor it has been disclosed who are the members of the Confidential Sub-Committee and on what basis this sub-committee was constituted. It appears that the Chairman of the Board, the respondent No. 4 and also the Officer-in-Charge, Dr. P. K. Roy both took leading part and acted arbitrarily in the matter of conducting the examination and preparation of the merit list and publication of the same giving enough room for suspicion and arbitrariness and this has been clearly voiced by the members of the public and also by the guardians, the examinees and also by the eminent educationists in newspapers.

40. Moreover, it will be appropriate to mention in this connection that brilliant and meritorious students added as petitioners in the Rule like Anjan Guba Thakurata Mousumi Chatterjee, Smt. Kum Kum Atta, Biswajit Nun, Dibvendu, Banerji, Sujit Banerji, Subhas Chandra Kumar and Santanu Dev etc. who secured High marks both in Secondary and Higher Secondary Examinations were not selected. Biswajit Nun secured 69.3% marks in Madhyamik Parikshya and 69.6% marks in Higher Secondary examination. Dibyendu Banerji secured 75.7% marks in Madhyamik Parikshya and 67.8% marks in Higher Secondary examination. He secured 64% in Physics, 74 1/2% in Chemistry, 60 1/2% in Biology. He held a national Scholarship. Sujit Banerji obtained 68. 6% in Madhyamik Parikshya and 62. 3% in Higher Secondary Examination. He secured 64% in Physics, 94% in Chemistry, 95% in Mathematics, 66 1/2% in Biology. His resistration No. is C/ CAC/123. Subhas Chandra Kumar obtained 749 marks, i. e., one mark below the "S" ar mark in Madhyamik Parikshya, and 649 marks, i. e., 64. 9% in Higher Secondary Examination. He was also a National Scholar and he secured 69% marks in Physics, 59% marks in Chemistry 66% in Biology, His registration no. is M/GAN/450 : Santanu Dey obtained 677 marks i.e., 67.7% in Madhyamik Parikshya and 650 marks i.e., 65% in Higher Secondary Examination. He secured 67% in Physics, 66% in Chemistry, 63.1/2% in Biology. His registration No. is C/

MID-180. Anjan Guha Thakurata, Resistration No. C/ CAC-900. He secured 80.6% marks in Madhyamik Parikshya and 76.4% in Higher Secondary Examination. . He obtained in Biology 79%, in Physics 67%, in Chemistry 77% of marks. Mousumi Chatterjee Roll No. M/CAC/(F)/374 secured 66.4% marks in Madhyamik Parikshya and 62.3% marks in Higher Secondary Examination securing 63 1/2% in Biology, 66 1/2% in Chemistry, 71% in Physics. Smt. Kum Kum Atta Reaistration No. M/BAN-7 secured 72.6% marks in Madhyamik Parikshya and 62.3% marks in Higher Secondary Examination. Those are some of the instances of the brilliant and meritorious students who failed to have their names enlisted in the merit list of the successful candidates. This clearly goes to confirm the allegations made in the petition that the answer scripts of the examinees were not properly valued nor the merit list was properly prepared strictly on their performances in the examination and dent's performance is unsatisfactory, is wholly arbitrary and discriminatory.

41. Apropos to mention here the case of Jawaharlal Nehru University Vs. B.S. Narwal, , it has been observed that if the assessment by the academic body permitted the consideration of "non-academic circumstances also a right to be heard may be implied. But if the assessment is confined to academic performance, a right to be heard may not be implied. Of course, if there are allegations of bias and mala fides different considerations might prevail but in the absence of allegations of bias or mala fides we do not think that the declaration by an academic body that a student's performance is unsatisfactory is liable to be questioned in a Court on the ground that the student was not given an opportunity of hearing. In the instant case I have already pointed out hereinbefore that the Confidential Sub-Committee which is wholly an unauthorised body adopted a resolution recommending for addition of 50 marks in Biology and 25 marks in Mathematics, This resolution is wholly arbitrary and unreasonable and the giving of marks to certain selected candidates on the basis of this resolution is wholly opposed to the very spirit of competitive examination where merit is the sole test. Therefore though I am not. unmindful of the fact that the Session 1983-84 has started and the classes have commenced for a period of time still then considering all these aspects I am constrained to hold that in public interest as well as in the interest of education the results as published by the West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges cannot be maintained and the same cannot be given effect to.

42. In the premises aforesaid the Rule succeeds and is made absolute. Let a Writ of Mandamus issue commanding the respondents to forbear from giving effect to the results contained in the merit list of successful candidates published on 8th July, 1982. Let a Writ of Certiorari be issued directing the respondents to quash, cancel and set aside the impugned results published on 8th July, 1982 as well as the impugned government order mentioned in annexures "D" and "E" to the affidavit in opposition sworn by the respondent No. 4 on 10th August, 1982.

43. In view of the urgency and the future prospect of a large number of candidates appearing in the admission test the West Bengal Board of Examination for admission to Medical, Engineering and Technological Degree Colleges is directed to arrange immediately for review, evaluate and reassess the answers scrips of all the examinees within six weeks from the date and to publish the merit lists within that time.

44. In the facts and circumstances of the case there will be no order as to costs.

45. An application was filed on 17th August, 1982 by Dr. P. K. Roy, Officer-in-Charge of the West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges, 1982 alleging inter alia that in the supplementary affidavit affirmed by Sri Sukhendra Nath Chatterjee, father of Prosenjit Chatterjee alleging that the student bearing Registration No. C/How-205 left the hall just after one hour on the second day of the examinations and particular during the second session and that the said candidate did not appear at all in usual sit on the last day relating to the examinations of English and Mathematics. It has also been alleged that the candidate left the hall just about one hour. It has been stated in paragraph 5 of the said application that this allegations made in the supplementary affidavit have been made recklessly in order to mislead and influence this court. It has also been stated that this candidate bearing Registration No. C/How-205 named Subrata Chatterjee appeared in all the examinations duly, that is, in Biological Sciences on 24th April, 1982, Chemistry and Physics on 25th April, 1982 and English and Mathematics on 26th April, 1982 and the seat was at Sibpur B. E. College. Model School. It has also been submitted that swearing the said supplementary affidavit containing those false statement, he has exposed himself to offences mentioned in Sections 193 and 196 of the Indian Penal Code and accordingly he was liable to be punished under the aforesaid sections. It was therefore proved that in the interest of justice a complaint should be directed to be made in writing by the Registrar of this court before a competent Magistrate and the accused should be directed to be sent to the custody of such Magistrate as the offence is as non-bailable.

46. It appears that in the supplementary affidavit sworn by Sukhendra Nath Chatterjee that his son Prosenjit Chatterjee who appeared in the Joint Entrance Examination in the Model School centre within the campus of Sibpur B. E. College stated in paragraphs 3 and 4 that his son Prosenjit Chatterjee bearing Roll No. C/How-203 appeared in the said Joint Entrance Examination. 1982 at Model School Centre within the campus of Sibpur B. E. College. It has also been stated that the student bearing Roll No. C/How-205 had his seat very near to the seat of C/How-203. It has been stated that on the 2nd day of examination particularly during the second session the candidate bearing Roll No. C/How-205 left the hall just after one hour and he did not appear in the usual seat on the last day relating to the examination of English and Mathematics. This submission has been affirmed as true to his information received from his son. Prosenjit

Chatterjee. There is no affirmation that he believes it to be true.

47. The information received by the petitioner from his son, Prosenjit Chatterjee is a mere information and this has not been affirmed that he believes such information as true nor the information has been affirmed as true to his knowledge. At best this statement made in the supplementary affidavit sworn by Sukbendra Nath Chatterjee on 6th August, 1982 may amount to a submission or a mere information only and as such on the fact of this affirmation it cannot be said that he has intentionally made this statement in order to mislead this court to form an opinion on the evidence to entertain an opinion touching my mind to the points material to such proceedings. And as such I am not inclined to accept the submission made by Mr. A. P. Chatterjee, learned Standing Counsel appearing on behalf of the respondents Nos. 3 and 4 in support of this application. In my opinion, it is a case where this court thinks that a direction should be made for sending a complaint written by the Registrar of this Hon'ble Court to a competent Magistrate for taking cognizance. The application is, therefore, summarily rejected.