

(1976) 06 CAL CK 0009
In the Calcutta High Court
Case No : Matter No. 155 of 1976

Kanailal Chakraborty

APPELLANT

Vs

University of Calcutta

RESPONDENT

Date of Decision : 03-06-1976

Acts Referred:

Arbitration Act, 1940 — Section 2
Calcutta University Act, 1966 — Section 35, 35(2)
Constitution of India, 1950 — Article 226

Citation : (1978) 1 ILR (Cal) 281

Hon'ble Judges : R.M. Datta, J

Bench : Single Bench

Advocate : Somnath Chatterjee, for the Appellant; Nirmalendu Roy, for Respondent No. 1, S.C. Roy and Samir Mukherjee, for the Respondent

Judgement

R.M. Datta, J.—In this writ application, the award dated January 7, 1976 made by an Arbitration Tribunal; constituted u/s 35 of the Calcutta University Act, 1966 (W.B. II of 1966), has been sought to be challenged by the Petitioner Kanailal Chakraborty, a senior Professor of Mathematics in Narasinha Dutt College, Howrah. The Petitioner has also challenged the decision of the Governing Body of the said college on the basis of the said award and has prayed for relief by way of mandamus, certiorari and prohibition.

2. According to the Petitioner, the then Principal of the Narasinha Dutt College by his letter dated July 31, 1958, appointed the Petitioner as the Assistant Professor of Mathematics on a whole time basis on and from August 1, 1958. He was to be on probation for one year and upon satisfactory report from the Head of the Department, he was to be confirmed in that post and would be entitled to all the privileges, that might be accrued to permanent staff of the said college. The scale of pay was also indicated in the said letter. By letter dated December 3, 1965, the Petitioner wrote to the Principal of the said College making a complaint that in spite of the decision of the Governing Body recommending the Petitioner as senior Professor to any other Professor, so far as Mathematics Department

was concerned the Governing Body had placed his name in the acquittance roll chronologically just below the name of Professor Santosh Kumar Ghosh, who according to the Petitioner was junior in service to the Petitioner by 6 months. The Petitioner, therefore, asked for justice and fair play from the Governing Body of the said college. In 1971, the Governing Body at its meeting dated December 12, 1971, passed a resolution wherein the question of seniority of service of the Petitioner and that of Professor S.K. Ghosh in the Mathematics Department was specifically raised and considered and ultimately a resolution was passed by the Governing Body to the following effect:

Item No. 6 :

Considered the question of seniority of service of Shri K.L. Chakraborty and Shri S.K. Ghosh in Mathematics Department. The Governing Body noted in this connection that Professor K.L. Chakraborty has been in continuous service from 8.8.58 and Professor S.K. Ghosh from 2.2.1959. The Governing Body also takes into consideration statute 102A of Calcutta University Statute 1966. In consideration of these facts the Governing Body is of opinion that Shri K.L. Chakraborty is to be considered senior among them

An intimation was given to the Petitioner about the said resolution by the Principal's letter dated December 13, 1971, addressed to the Petitioner.

3. Thereafter in July 1972, the Principal of the college received a communication from the Inspector of Colleges and the same was forwarded to the Petitioner by the Principal's letter dated July 28, 1972. Obviously, the contents of the letter show that S.K. Ghosh made a representation to the University authorities and pursuant thereto the Inspector of College intimated the Principal and Secretary as follows:

Re : Seniority in services of two teachers in the Department of Mathematics.

With reference to your letter dated the 17th February, 1972. I am directed by the Vice-Chancellor to inform you that since the present case does not come within the purview of Sec. 164 of the C.U. Act 1966, the University or the Vice-Chancellor has nothing to do with the case at this stage. The aggrieved teacher may, if he so likes, seek remedy under Sec. 35(1) of the Calcutta University Act, 1966.

4. It would appear that the aggrieved teacher in the said letter was S.K. Ghosh who made the representation to the University authorities.

5. On April 25, 1973, the question of seniority between the said two professors was again brought up before the Governing Body and the Principal of the college intimated the Petitioner by his letter dated May 2, 1973, inter alia, to the effect as follows:

. . . . The Governing Body giving consideration to points raised by Prof. S.K. Ghose and Prof. K.L. Chakraborty as also those made in an earlier meeting by

Professor K.K. Chadraborty (Teachers representative) (Governing Body meeting dated 27.1.73), in favour of Professor S.K. Ghose again reiterated its earlier decision in confirming the declaration of seniority in favour of Professor K.L. Chadraborty as per Statute 102A of Calcutta University Act 1966, First Statutes.

The matter rested there at that stage. But in May 1975 it appears that Professor Santosh Kumar Ghosh moved the University authorities for a decision in respect of the dispute regarding seniority between the said two persons, viz. Professor Ghosh and the Petitioner. Getting ascent of it, the Petitioner, who was then In charge of the Department of Mathematics of the college wrote to the Principal on May 8, 1975, as follows:

Since Sri Santosh Kumar Ghosh of the Department of Mathematics of this college has referred an alleged dispute with the Governing Body of the college to the Arbitration Tribunal of the University of Calcutta and since the said alleged dispute is deeply connected with my right career and prospects, I would like to make representations before the said Tribunal. You will kindly appreciate that the said alleged dispute is not merely between a teacher that is Sri Ghosh and the Governing Body, it is also a dispute between two teachers namely Sri Ghosh and myself.

In this view of the matter, I request you to kindly obtain permission from the Arbitration Tribunal of the University of Calcutta for me to appear and watch the proceedings and also to adduce evidence, if necessary.

I do not want anything more than the above which you will kindly appreciate, would be most normal and proper thing to do.

6. On the very next day the Principal of the college wrote to the Inspector of Colleges, University of Calcutta, inter alia, as follows:

Re : Declaration of seniority in the Department of Mathematics in Narasinha Dutt College, Howrah.

I do hereby bring it to your kind notice that Sri Kanailal Chakraborty placed in charge of the Department of Mathematics in our College by the Governing Body desires to appear before the Arbitration Tribunal of the University of Calcutta, make some representations with documentary evidence and watch the proceedings. Unless otherwise debarred, I request you to see whether such co-operation can be extended to him and inform me accordingly for necessary information to Professor K. L. Chakraborty M.Sc. in time.

7. Thereafter on December 11, 1975, the Petitioner again wrote to the Principal in continuation of his letter dated May 8, 1975, whereby he asked for an opportunity to ventilate his view-points before the Arbitration Tribunal as the matter concerned him directly. The Petitioner in the said letter also intimated as follows:

. ...Further, I beg to submit that the most important document in the matter is

my appointment letter signed by the then Principal Late J. N. San M.Sc and I had not been asked by the authority to produce the same.

I would, therefore, request you to kindly allow me to submit a photostat copy of the same and oblige.

I beg to mention further that I shall produce the document in original wherever asked for.

8. The Petitioner enclosed a photostat copy of the said appointment letter and a copy thereof was sent to the Inspector of Colleges, Calcutta University, for compliance with the report.

9. I have already set out hereinabove the gist of the said letter dated July 31, 1958, whereby the Petitioner was appointed as the Assistant Professor of Mathematics on and from August 1, 1958.

10. An Arbitration Tribunal was constituted u/s 35(2) of the said Calcutta University Act, 1966 (W.B. II of 1966), which provided as follows:

35(2). Any dispute between a Principal or teacher of a " college other than a Government college or a Government sponsored college, not being a teacher of the University and " the Governing Body of the College concerned shall, on the request of such Principal or teacher, be referred to a Tribunal consisting of one member nominated by the Principal or teacher concerned, one member nominated by the Governing Body of the college concerned and a President appointed by the Vice-Chancellor. The decision of the Tribunal shall be final and no suit or proceeding shall lie in any civil Court in respect of the matters decided by the Tribunal. Every such request shall be deemed to be a submission to arbitration upon the terms of this section, within the meaning of the Arbitration Act, 1940 and all provisions of that Act, with the exception of Section 2 thereof, shall apply accordingly.

11. On the basis of the said provision, the Vice-Chancellor appointed Sri N. K. Ghosh, Barrister-at-Law, as the President of the Arbitration Tribunal and the Governing Body appointed their representative and Santosh Kumar Ghosh also appointed his representative. The said arbitrators have been made parties to the proceedings herein and they are the Respondents Nos. 4, 5 and 6. The Principal of the College is the Respondent No. 7 and the said Professor S.K. Ghosh has been made the Respondent No. 8 in this proceeding. Besides them, the University of Calcutta, the Vice-Chancellor, Calcutta University and the Inspector of Colleges have also been impleaded as the Respondents Nos. 1, 2 and 3 respectively. It would appear from the award itself that the Arbitrators held a sitting on December 17, 1975, in which they considered the case of the said Santosh Kumar Ghosh and also the resolution which was relied on behalf of the College authorities being the said item no. 6 of the resolution dated December 12, 1971, as set out above and whereby the Governing Body decided that Sri K.L. Chakraborty had been in continuous service from August 8, 1958 and Sri

S.K. Ghosh had been in service from February 2, 1959 and that Sri Chakraborty was senior to Sri Ghosh. It would also appear from the said Award that the College authorities produced the relevant papers including the proceedings of the Governing Body all material dates, acquittance rolls with respective dates, commencement of provident fund deductions of Sri Ghosh and of Sri Chakraborty and the respective dates of fixation of pay of the two teachers concerned by the University Grants Commission. It would also appear that the Inspector of Colleges Calcutta University also produced letters written by Sri Ghosh and also by the Principal of the College and the Members of the Governing Body of the College. On the basis of such documents the Tribunal made its Award the operative part whereof read as follows:

AND WHEREAS the Tribunal is satisfied Shri Ghose was appointed in a vacancy, to a permanent post on 2.2.59 on probation for one year and Shri Chakraborty was Appointed on 4.5.59 after creation of a post on the same date, on probation for one year and Shri Ghose was confirmed on 2.2.60 and Shri Chakraborty on 4.5.60 and that provident fund deduction of Shri Ghose commenced on and from 2.2.60 and that of Shri Chakraborty on and from 4.5.60 and fixation of university Grants Commission scale of pay of Shri Ghose was made from 2.2.59 and Shri Chakraborty from 4.5.59.

And whereas the Tribunal is satisfied that the provisions of Statute 102A of the Calcutta University first Statutes, 1966, which for the first time came into operation on and from 19th September, 1968 and were not in force on the relevant date, namely, 2.2.60, on which date Shri Ghose was on fired in service, had no application to the facts of the case and could not be given retrospective effect to the prejudice of Shri Ghose.

And whereas having carefully gone through the relevant documents and papers, the Tribunal had unanimously awarded and adjudged, as follows:

(I) That Shri Santosh Kumar Ghose is senior to Kanailal Chakraborty in service a Lecturer in Mathematics Department in Narasinha Dutta College, Howrah and is entitled to be recognised as such with all benefits attached to such seniority.

(ii) That the resolution is Item No. 6 of the proceedings of the Governing Body of Narasinha Dutta College Howrah, dated 12.12.71 is hereby declared to be null and void and cancelled.

(iii) That the purported appointment of Shri Chakraborty as Head of the Department of Mathematics by the then Principal and the resolution of the governing Body of Narasinha Dutta College, Howrah, dated 27.1.73 are hereby declared null and void and cancelled.

The Award has been signed by the said Members including the President and is dated January 7, 1976, which appears against the signature of Sri N.K. Ghose, President.

12. The matter has been argued on two principal points, first it is argued that the

real person who was affected or whose interest was going to be affected was the Petitioner himself and in spite of the fact that he particularly asked for a hearing to represent his case personally, such hearing was not allowed and the Tribunal proceeded to consider his case without hearing him and making the Award to his prejudice. The second point which has been canvassed is that there is an error of law on the face of the Award inasmuch as the Tribunal has specifically given reasons in the Award that it has arrived at its decision and has made the Award on the basis that in deciding the point of seniority, in the face and circumstances of the case, it has found that the provisions of Statute 102A of the Calcutta University First Statute, 1966, had no application.

13. The said provision of Statute 102A of the Calcutta University First Statutes, 1966 on the basis whereof the Tribunal has come to its decision and has found Sri S.K. Ghose as senior to Sri K.L. Chakraborty provides as follows:

Commencement of period of service.

102A. In calculating the period of service of a teacher of a college in any post for any purpose including the operation of a time-scale of pay, service shall be counted from the date of his joining the post on his first appointment as a probationer; provided that if the teacher began his service as a temporary appointee who was afterwards appointed as a probationer for the same or any other post, service shall be counted from the date of his joining the appointment as a temporary appointee, if there is no break in service during the period preceding his permanent appointment.

It is contended that if the Award did not contain the reason for coming to the decision the same could not have been challenged at all but since the Tribunal has satisfied itself and has specifically mentioned in the Award that the provisions of Statute 102A of the Calcutta University First Statutes, 1966, have no application, the Court is in a position to consider whether such provision would apply in the facts and circumstances of this case and if not, whether the Award becomes bad as containing an error on the face of it.

14. Mr. Roy, appearing on behalf of the University of Calcutta, has informed this Court that prior to the enactment of this provision of Statute 102A of the Calcutta University First Statutes, 1966, there was if such provision in the earlier Statutes of the University. That position is not disputed by any of the parties herein. The point that has been urged before me is that in so far as the Statute 102A is concerned, the same came into operation on and from September 19, 1968 and accordingly, when the service of the two respective Professors were confirmed, the said provision was not available and as such the same could not be applied in the matter of determination of the seniority of the said two Professors.

15. Mr. Mukherjee, appearing on behalf of Santosh Kumar Ghose, contends that this provision creates substantive rights and provides substantive law and into procedural law and as such this should not be construed to have retrospective

effect when actually no express language has been used to give it retrospective effect. It should be given only prospective effect on and from the date it came into force and accordingly, if this provision is not applicable, then the Tribunal has rightly arrived at its decision and there could not be any error of law on the face of the Award.

16. The question before me is whether in deciding the dispute between the parties which has been referred to the Tribunal under the Calcutta University Act, the Tribunal constituted thereunder should be guided by this provision or not. It would appear from the language used in the said Statute 102A that the calculation of the period of service of a teacher of a college would be made on the basis of certain principles as enunciated by the said provision and the said principle would be applied for any purpose that might come up for consideration. It has been provided thereunder that such service shall be counted from the date of his joining the post of his first appointment as a probationer. It has also taken into consideration that even if a teacher began his service as a temporary appointee who was afterwards appointed as a probationer for the same for any other post, his service would be counted from the date of his joining the appointment as a temporary appointee, provided, of course, there should not be any break in the service during the period preceding his permanent appointment. In short the period of his service even for the purpose of seniority would be counted from the date of his joining the post as a teacher even on a temporary basis.

17. The main question which has been canvassed before me is whether this provision of Statute 102A was not applicable as had been held by the Tribunal of Arbitration. In other words, the Tribunal of Arbitration had expressed its mind on this legal proposition and had based their decision in accordance therewith. It follows, therefore, that if the said Statute 102A is applicable to the facts and circumstances of this case then the Arbitration Tribunal which is a statutory body, had failed to exercise, their jurisdiction vested in them by Statute while sitting as a quasi-judicial body. If the correct legal position is that this provision of Statute 102A should have been applied in the facts and circumstances of this case then the award is bound to be vitiated on the ground that there is an error on the face of the award.

18. In the resolution dated December 12, 1971, the Governing Body found as a matter of fact that Chakraborty had been in continuous service from August 8, 1958 and S.K. Chose was in continuous service as from February 2, 1959. The Governing Body applied the provision of Statute 102A of the Calcutta University Statutes, 1966 and on that basis found in favour of Chakraborty so far, as the seniority among the two persons were concerned. It would appear further that the Tribunal has taken into consideration several factors on the basis whereof the seniority of S.K. Ghose has been determined. The same are that Sri Ghose was appointed in a vacancy to a permanent post and that Chakraborty was appointed after creation of a post at a later date on probation for one year and the

confirmation of Ghose was prior to that of Chakraborty. The Tribunal further took into consideration another factor, viz., that Provident Fund deduction of Ghose commenced at a date earlier to the date of Chakraborty's and so also the fixation of University Grants Commission scales of pay in respect of Ghose was earlier in point of time than that of Chakraborty. These are matters which are nowhere to be found in the Act or in the Statute or Regulation of the University in the matter of determination of seniority and the Tribunal acting as a statutory body has definitely exceeded its jurisdiction in taking into consideration such irrelevant facts relating to determination of seniority. The Tribunal as a statutory body is bound to act within the four corners of the Statute and could not have acted arbitrarily in their own way and in accordance with its personal notion of the matter.

19. To my mind, the Tribunal has proceeded by the Statute. In the absence of any other law to the contrary since no other similar provision existed prior to the coming into existence of the provision of Statute 102A, the Tribunal was bound to follow the principles laid down thereunder and should have considered the same as a guiding principle for the purpose of determining all questions appointments took place before the coming into force of the said provision of Statute 102A. It is not a question of giving retrospective effect to the said provision of Statute 102A because the same was not overriding any other existing or prior Provision of law on similar point. It laid down the guiding principles in respect of all matters and for all purposes which the arbitral Tribunal was bound to follow and to act in accordance therewith. Having expressly held that the said provision had no application to the facts of the case the Tribunal definitely failed to exercise its jurisdiction apply its quasi-judicial mind in the manner it was required to apply and committed an error on the face of the award. Under the circumstances the award must be struck down.

20. It is next argued that the award has been filed or is going to be filed under the arbitration Act and it could be challenged only at threat state and not by writ petition. I am satisfied that the Petitioner would not have any locus standi in the said award proceedings after the same would be filed because the Petitioner is not a party thereto. His case will go unrepresented. No Justice could be obtained by him. Even the Governing Body has gone against him and he would be prevented from agitating his case in the award matter and his case would go by default because the Governing Body of the college and of Principal has now taken side with S.K. Ghose.

21. The question, therefore is whether the petition has, under those circumstances, any locus standi to make this application and to move the writ Court in the manner he has done. I have set out the correspondence in detail and it would appear there from that the Petitioner had all along asked for an opportunity to represent his case himself. From the very beginning he had expressed his intention to appear and to get a hearing before the arbitral Tribunal and on that basis he wrote to the Principal of the college. Th Principal in

its turn had requested the arbitration tribunal to give the Petitioner a personal hearing. It is an undisputed fact that the main contest is between S.K. Ghose on the one hand and Petitioner on the other. Before the arbitration Tribunal S.K. Ghose had referred the dispute and all the the Governing Body did was to forward the papers and documents before the arbitration Tribunal. The arbitration Tribunal held one sitting and made their award only on the basis of the papers which were placed before them. The Arbitrators did not pay any heed to the repeated requests made by the Petitioner to get a personal hearing although the Petitioner's rights were going to suffer great prejudice in their hands. In fact, it was quite apparent even from the papers placed before it that the Governing Body had no interest in the matter except to abide by the Award that would be passed by the Tribunal of arbitration and there was not even any representation from either side. It would appear from the conduct of the Governing Body that after the Award was made it supported the same and communicated its intention by writing a letter to the Petitioner. It is clear from the above that the Governing Body was not representing the interest of the Petitioner in any manner whatsoever and it was not in the least interested as to what would happen to the fate of the Petitioner. It follows, therefore, that the Petitioner rightly apprehended from the beginning that unless he would be allowed to represent his case by getting a hearing he would not get justice because his case would go unrepresented.

22. Mr. Mukherjee on behalf of S.K. Ghose contends that the Petitioner all along knew that the Tribunal of arbitration had been constituted and that they were going to decide the matter without giving him a hearing, but in spite thereof he did not choose to come up before this Court at that stage; and in support of that Mr. Mukherjee referred to paragraph 4 of the letter dated February 10, 1976 written by the solicitor of the Petitioner to the said Arbitrators and to the University authorities as also to the Principal of the said college. The Petitioner all along knew that the dispute was between S.K. Ghose and the Governing Body and that the Petitioner could not have made any representation before the Tribunal, but in spite of such knowledge he did not pursue his right, if any and seek his remedy, if any, before this Court of law. It follows, therefore, that he took the chance of a decision in this favour and waited till the Award was made by the said Tribunal of Arbitration and it was only when he found that the said Award went against him that he had been agitating this point in this Court by this writ petition.

23. To my mind, this contention cannot be accepted as correct because, as stated hereinabove, the Petitioner had all along been agitating and making a continuous grievance that he was not being given a hearing before the said Tribunal of Arbitration. As stated above, his rights were going to be vitally affected in deciding the dispute and neither the Principal nor the Governing Body were empowered or authorised by him to represent his case before the Tribunal. Under those circumstances it was incumbent upon the Arbitrators to give him a hearing because his rights were likely to be affected by the award. When such a

right had been denied the Arbitrators must be held to have acted in a manner not consistent with their quasi-judicial position which they were holding in deciding the said dispute. The Arbitrators had before them the Principal's letter whereby the demand for justice on the part of the Petitioner was communicated to them.

24. Mr. Chatterjee appearing on behalf of the Petitioner has referred to the Supreme Court decision in the case of *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, , where the Supreme Court considered a case of even a stranger to the action on the question of his locus standi to invoke the certiorari jurisdiction when such a stranger's right would be liable to be affected. The High Court in that case held that such a person had no locus standi because, no right vested in the Appellant had been infringed or prejudiced or adversely affected as a direct consequence of the order impugned by him. The Supreme Court dismissed the appeal on the facts of that case but laid down the principle with the following observations:

10. Article 226 of the Constitution empowers the High Court to issue to any person for authority, including the Government, within its territorial jurisdiction, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of fundamental rights and for any other purpose.

11. As explained by this Court in *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, the founding fathers of the Constitution have designedly couched the Article in comprehensive phraseology to enable the High Court to reach injustice wherever it is found. " In a sense, the scope and nature of the power conferred by the Article is wider than that exercised by the writ courts in England. However, the adoption of the nomenclature of English writs with the prefix "nature of superadded, indicates that the general principles grown over the years in the English Courts can, shorn of technical procedural restrictions and adopted to the special conditions of this vast country, in so far as they do not conflict with any provision of the Constitution, or the law declared by this Court, be usefully considered in directing the exercise of this discretionary jurisdiction in accordance with well recognised rules of practice.

12. According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the Petitioner should be an "aggrieved person" and in a case of defect of jurisdiction, such a Petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character and is a stranger, the court will in its discretion deny him this extraordinary remedy, save in very special circumstances. This takes us to the further question. Who is an aggrieved person? The expression "aggrieved person" denotes an elastic and to an extent an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is

alleged the specific circumstances of the case, the nature and extent of the Petitioner's interest and the nature and extent of the prejudice of injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an Applicant is eligible for this cargos as to have the necessary locus standi or "standing" to invoke certiorari jurisdiction.

this Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an Applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is or modified. In other words as a general rule, infringement of some legal interest inhering in the Petitioner is necessary to give him a locus standi in the matter. See *The State of Orissa Vs. Madan Gopal Rungta*, ; *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, : *Ram Umeshwari Suthoo v. Member Board of Revenue, Orissa* (1967) 1 S.C.A. 413; *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, ; *State of Orissa and Others Vs. Rajasaheb Chandanmull Indrakumar (P) Ltd. and Others*, ; *Dr. Satyanarayana Sinha Vs. S. Lal and Company (P) Ltd.*, .

34. The expression "ordinarily" indicates that this is not a cast iron rule. It is flexible enough to take in those cases where the application has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject matter of the proceedings will be covered by the rule. The principles enunciated in the English cases noticed above, are not inconsistent with it.

36. It will be seen that in the context of locus standi to apply for a writ of certiorari, an Applicant may ordinarily fall in any of these categories: (i) "person aggrieved"; (ii) "stranger"; (iii) busy body of meddlesome interloper....

25. With regard to the persons falling under category (i) the Supreme Court has observed that such persons are those whose legal rights have been infringed and they stand in the category of "persons aggrieved". In respect of the second category, i.e. the stranger the principle enunciated is that all persons in that category might not be persons aggrieved; in respect of such category the test would be

whether the Applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongfully deprived him of something or, wrongfully refused him something or wrongfully

affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by" him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?

26. To my mind, following the above observations and the principles as laid down therein I Should exercise my discretion in favour of the Petitioner and consider him as a very fit and proper person who should come within the category of "aggrieved person" so as to enable him to apply to invoke the writ jurisdiction of this Court. His interest has undoubtedly been seriously affected and his case was sought to be decided in his absence and in a case in which the Governing Body practically did not and was not empowered to act on his behalf at all, as its subsequent conduct had disclosed.

27. I agree with the contention of Mr. Roy appearing on behalf of the University of Calcutta that die writ should not lie against the University authorities but only against the members of the Tribunal because all that was done by the University authority was to appoint the President of the Tribunal by the Vice-Chancellor of the University and save as aforesaid the entire thing was done by the Tribunal of Arbitration u/s 35 of the University Act, 1966.

28. Under those circumstances, the Petitioner is bound to succeed in this application and the Rule nisi which was directed against the Respondents Nos. 4, 5 and 6 being the members of the said Tribunal of Arbitration and against the Respondent No. 7, being the Principal of the said college and against the Respondent No. 8 being the said Sri Santosh Kumar Ghosh, is hereby made absolute by striking down the said award. Since the award goes, along with it goes the decision of the Governing Body of the College as communicated by the Principal, on the basis of the Award. There will be no order as to costs.

29. I have been requested that the Tribunal of Arbitration should be directed to act in accordance with law but it would seem, in the facts and circumstances of this case, that the Tribunal has become functus officio after making the said Award and if the dispute is sought to be reagitated then the action would have to be taken again u/s 35 of the Calcutta University Act and in such event the arbitrators, then appointed, would have to act in accordance with law and on the basis of the interpretation of the Statute 102A as indicated in this judgment but save as aforesaid it is, made clear that the question of merits have not been decided by this Court.

30. At the request of Mr. Mukherjee, learned Advocate for the Respondent No. 8, S.K. Ghosh, the operation of this order would remain stayed for 10 days from

date hereof.