
(1974) 02 CAL CK 0030

In the Calcutta High Court

Case No : C.R. No's. 4225 to 4227 (W) of 1973

Khagendra Nath Sen

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 14-02-1974

Acts Referred:

Calcutta University Act, 1966 — Section 3, 4, 4(11)
Constitution of India, 1950 — Article 226
West Bengal Societies Registration Act, 1961 — Section 19

Citation : AIR 1974 Cal 187

Hon'ble Judges : Amiya Kumar Mookerji, J

Bench : Single Bench

Judgement

Amiya Kumar Mookerji, J.—These three Rules are directed against the Resolution of supersession of the governing body of the three colleges -- Asutosh, Jogmaya and Shyama Prasad and appointing an ad-hoc committee for the purpose of re-constituting the governing bodies according to the provisions of the law. The said Resolution was passed by the Syndicate of the University of Calcutta in its meeting held on December 14, 1973. The petitioner, the Secretary of the superseded managing committee of the aforesaid three colleges, challenges the said Resolution of the Syndicate.

2. In or about March, 1927, Asutosh College was registered as a society under the Societies Registration Act (Act XXI of 1861) so that its governing body was to be formed in accordance with its rules. In 1929 Asutosh Mukherjee Memorial Institute was also registered as a Society under the said Act. Jogmaya Debi College was originally started as the morning section for women students and Shyama Prasad College as the evening section for Arts and Commerce students of the said Asutosh College. In 1958, the said two splinter colleges created out of the said Asutosh College, were granted affiliation by the University subject to the condition that there would be three separate governing bodies of the three colleges. The Asutosh College governing body was a registered society and the other two colleges, being units of the same parent body, had their governing

bodies constituted on the same lines as that of the Asutosh College. Deputy Inspector of Colleges by his letter dated 26-8-1970 informed the petitioner that the said three colleges, namely, Asutosh, Jogmaya and Shama Prasad had come within the purview of the Statute 100 of the Calcutta University Act, 1966. The said intimation was made according to the direction of the Vice-Chancellor and the Syndicate. Thereafter, the Inspector of College by his letter dated September 10, 1973, requested the petitioner to furnish certain particulars in view of the fact that the petitioner in his letter dated 3-2-1970 referred to the subsequent amended rules. The petitioner replied to the said letter on 18-9-1973 wherein he requested the Inspector of Colleges to allow sufficient time to give a considered report. Thereafter, a reminder was sent by the Dy. Inspector of Colleges by his letter dated 24-9-1973 requesting the petitioner to forward the necessary documents on or before November 5, 1973. By a letter dated 3-11-1973 time was extended till 15-11-1973, Thereupon on November 22, 1973, a show cause notice was issued by the Inspector of Colleges to the petitioner calling upon him to establish with relevant materials the validity of the composition of the governing bodies of three colleges. The petitioner replied to the said show cause on 29-11-1973 wherein the petitioner prayed for time till January 2, 1974, to give his reply. A resolution of the governing bodies of the three colleges held at the meeting on 25-11-1973 was also forwarded along with the said letter wherein it is stated that the Calcutta University be moved for extension of time for compliance with the requirements indicated in the letter under reference at least till 2-1-1974 and that the Secretary be requested to write to the Inspector of Colleges, Calcutta University, to that effect. Thereafter On the 7th December, 1973, another letter was sent by the petitioner to the Inspector of Colleges in reply to the said show cause notice dated 22-11-1973, By a memo dated 15-12-1973, the Inspector of Colleges informed the petitioner that governing bodies of the said three colleges had been superseded by the Syndicate of the Calcutta University in its meeting held on December 14, 1973, and appointed an ad hoc committee for the administration of the said three colleges and requested the petitioner to make over charge of the said three colleges to the Chairman and the Secretary of the said ad hoc committee. Respondents Nos. 5 to 13 were appointed as the members of the said ad hoc committee. On receipt of the said letter, the petitioner wrote a letter on the 17th December, 1973, to the Registrar, Calcutta University, requesting him to furnish the said college authorities with a copy of the resolution passed by the Syndicate in its meeting held on 14-12-1973. On the 24th December, 1973, the petitioner was served with a copy of the resolution of the Syndicate dated 14-12-1973. The petitioner being aggrieved by the said resolution dated 14-12-1973, passed by the University and the Syndicate moved this Court in an application under Article 226 of the Constitution and obtained these Rules on December 28, 1973.

3. In the affidavit-in-opposition affirmed by Amitesh Chandra Banerjee and filed on behalf of the University of Calcutta, the Vice-Chancellor and the Registrar, wherein it is stated that investigation revealed that at no material time had any

of the authorities of Asutosh College or any of the other two colleges submitted any alleged amendment of rules of Asutosh College i.e., the Society, to the Registrar of Societies. The authorities of the group of colleges claimed that in July, 1946, the then governing body of the said Asutosh College adopted a comprehensive scheme for the re-constitution of the governing body of the said colleges, but no such effective scheme for the revised constitution of the governing body of the said college has ever been produced before the University authorities or the Registrar of Societies. For years matters were allowed to drift. The authorities of the University learned on representation made on behalf of the said three colleges and believed that each of the said three colleges had a valid constitution which would permit each of them to avail of the privilege of the Statute 100. The University had by virtue of its statutory powers dissolved the governing bodies of the said three colleges and appointed an ad hoc governing body for the said colleges for administration of the three colleges and to reconstitute their governing bodies according to law. It is further stated that by its resolution dated 21-11-1973 the college committee of the University of Calcutta which is a committee constituted from the members of the Syndicate in forms of Section 55 (2) (b) (iii) of the Calcutta University Act, 1966, and is delegated with the powers and duties of the Syndicate to deal with the affairs of affiliated colleges, directed the issue of show cause notice on the said three colleges, requesting them to establish their authority of the composition of the governing bodies of the said three colleges on or before 30-11-1973. The ad hoc committee was constituted by the Syndicate in exercise of its powers u/s 4 (ii) read with Section 23 of the Calcutta University Act, 1966, inasmuch as there was no validly constituted governing bodies of the said three colleges and as such the said three colleges were being managed by incompetent governing bodies to the detriment of the said three colleges. The consideration upon the Syndicate and the Calcutta University to supersede the governing bodies of the said three colleges was that as members of the governing bodies of the said three colleges were not validly appointed and as such they had no authority or competence in accordance with law to act as members of the governing bodies of the said 3 colleges and to administer the affairs of the said colleges.

4. Four preliminary objections were raised by the respondent, the University of Calcutta, viz., (1) The petitioner has no legal right nor has any locus standi to move this application in this Court to challenge the decision of the Syndicate superseding the governing bodies of the three colleges as the members of the superseded governing bodies have not joined as petitioners in making this application, (2) The Syndicate is not a body corporate, so all the members of the Syndicate should have been made parties, (3) There was no demand of justice, (4) The decision complained of is purely an administrative decision of the University and an administration decision cannot be challenged in a writ petition.

5. I will first deal with the second objection. u/s 3 of the Calcutta University Act, 1966, the 1st Chancellor, and the Vice-Chancellor of the University and the 1st members of the Senate, the Syndicate and the Academic Council, and all persons

who may hereafter become such Officers, so long as they continue to hold such office or membership, shall constitute a body corporate by the name of the University of Calcutta. Under Sub-section (2) of Section 3, the University shall have perpetual succession and a common seal and shall sue and be sued by the name of the University of Calcutta. So it appears that the Syndicate is a part of the University and if one of the respondents is University of Calcutta, it include the Syndicate also. So, it is not necessary to make members of the Syndicate as party respondents. In the instant Rules the University has been made a party. In my view, it is not necessary that either the Syndicate or all the members of the Syndicate are required to be made parties in order to challenge the Resolution passed by the University and the Syndicate.

6. u/s 19 of the West Bengal Societies Registration Act, 1961, every society may sue and may be sued in the name of the President, Secretary or any of the office-bearers authorised by the governing body in this behalf. Asutosh College is a society registered under the Societies Registration Act Therefore, the petitioner, being the Secretary, is competent to move this Court in an application under Article 226 of the Constitution.

7. Where only writ prayed for is, a writ of mandamus and if there is no demand for justice in that case the application may fail on that ground, but in the instant case the petitioner also prays for a writ of certiorari and in the instant case the appropriate writ is a writ of certiorari and not mandamus. Therefore, in absence of a demand for justice, these Rules cannot fail on that ground.

8. In the instant case the petitioner has challenged, the jurisdiction of the Syndicate to supersede the governing bodies and the petitioner also complains violation of the principles of natural justice. It is well settled that in such cases even the administrative orders can be challenged in a proceeding under Article 226 of the Constitution.

9. In my opinion there is no substance in any of the preliminary objections raised by the respondents Nos. 1 to 3 in these Rules.

10. Mr. Chakraborty, appearing on behalf of the petitioner in support of the Rule, contended that the purported ground on the basis of which the said impugned order of supersession, was made, could not be a ground for supersession of the governing body of a college under the Calcutta University 1st Ordinance, 1966. u/ s 4 (11) of the Act powers have been conferred upon the University to dissolve the governing body of any affiliated college in such manner as may be prescribed. "Prescribed has been defined in Sub-section (13) of Section 2 of the Act which means prescribed by statutes, ordinances or regulations. Paragraph 64 of the 1st Ordinance, 1966, lays down two conditions, namely, where proper standards of leaching are not being maintained or the affairs of the college are brine; managed improperly and to the detriment of the college or institution as an educational institution, the Syndicate may issue to the governing body of the college such direction as it may think fit including direction for re-constitution of

the governing body of the college. Under paragraph 2 of Section 64, if such directions of the Syndicate are not complied with within a specified period then the Syndicate may call upon the governing body of the college on whom such directions were issued to show cause and after considering cause showed by the governing body of the college, the Syndicate may by order temporarily take over the management of the College and for that purpose appoint an administrator or ad hoc governing body consisting of such number of members as it may deem fit. In the instant case the condition precedent for assumption of powers u/s 4 (11) of the Act have not been fulfilled,

11. Mr. Banerjee, appearing on behalf of the University, contended that provisions of paragraph 64 of the Ordinance have got no application to the present case. The resolution of the University was made u/s 4 (11) of the Act for the purpose of reconstitution of the governing body under Statute 93. Mr. Debi Dey who supplemented the arguments of Mr. Banerjee, contended that "may be prescribed" contained in Section 4 (11) of the Act referred also to the Statute 93 of the Calcutta University 1st Statute 1966.

12. Mr. Chakraborty on the others hand contends that Statute 93 has got no application with respect to governing bodies where provisions of Statute 100 are applicable. In the letter dated 26th August, 1970, the University and the Syndicate intimated to the petitioner that the 3 colleges had come within the purview of the Statute 100 of the Calcutta University Act, 1966. That being so, supersession, could not be done by the Syndicate u/s 4 (11) of the Act for the purpose of re-constitution of the governing bodies as provided in Statute 93.

13. Mr. Dipankar Gupta, appearing on behalf of the ad hoc Committee contend that Statute 100 provides that in case of a college managed by registered society, the constitution of the governing body shall in so far as the terms and conditions of Articles and Memorandum of Association of such registered society as the case may be so required to continue as such. According to Mr. Gupta, the letter dated 26th August, 1970, only indicated that the governing bodies of the said colleges might continue in terms and conditions of the registered society, but even then the University is competent to ascertain whether a particular governing body of a college is continuing in terms of the registered society or not and if it is found that the governing body of a particular college has been functioning not in accordance with the terms and condition of the registered society, the University has got powers u/s 4 (11) of the Act to dissolve the governing body for the purpose of re-constituting the said Body in "accordance with Statute 93.

14. Where a statute provides that in particular circumstances the governing body of a college shall continue in terms of the Memorandum and Articles of Association of the registered society, that letter dated 26th August 1970, did not confer any additional privilege inasmuch as the privilege was statutory. Even without that letter, the governing body could enjoy the privileges contained in Statute 100, provided the constitution of the governing body was in accordance to the terms and conditions laid down in the Articles and Memorandum of

Association of the registered society. In my view the University of Calcutta or the Syndicate is neither precluded nor prevented to call for the documents or materials from the Secretary to the governing body in order to satisfy that the governing bodies of the colleges have been constituted in accordance with Statute 100 and continue as such. Accordingly, I hold that the University and the Syndicate have powers to dissolve the governing body u/s 4 (11) of the Act, if it is found that the governing body of the colleges, even once given recognition under Statute 100, is not continuing as such. No question of estoppel does arise in this case.

15. Mr. Chakraborty next contended that in the show cause notice the petitioner was not told what has been found against him. The petitioner was only requested to inform when and how the governing bodies of the colleges were framed and he was called upon to establish with relevant materials the validity of the composition of the governing bodies of the colleges concerned. The proposed action was not mentioned in the show cause notice. The petitioner had been deprived of making any representation against the impugned order of supersession of the governing bodies and as such there has been violation of the principles of natural justice.

16. In reply, Mr. Banerjee contended that the Court should act with a broad vision and look to the substance and not to the technicalities. Taking into account the entire correspondence, it has been clearly established that the petitioner was told what had been found against him and he was given full and fair chance to defend his case. In support of his contentions Mr. Banerjee relied upon a decision of the Supreme Court, *Willie (William) Slaney Vs. The State of Madhya Pradesh*, which has been followed in a subsequent decision of the Supreme Court in the case of *Gurbachan Singh Vs. State of Punjab*.

17. In that case the Supreme Court observed that in judging a question of prejudice, as of guilty. Courts must act with a broad vision and look to the substance and not to technicalities and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given full and fair chance to defend himself.

18. In *Willie (William) Slaney Vs. The State of Madhya Pradesh*, two accused R and W were charged u/s 302 read with Section 34 of the Penal Code. There was no separate alternative charge u/s 302 against W. The Court below held W guilty u/s 302 Penal Code while the other accused R was acquitted for absence of evidence against him. The Supreme Court held that having regard to the nature of the charge framed the omission to frame a separate charge u/s 302 against W was only a curable irregularity which in the absence of prejudice could not affect the legality of conviction u/s 302 of the Penal Code. In the context of the above facts the Supreme Court made the above observations. In my view that observation has got no application to the facts of the present case.

19. Next case referred to was Burn and Co., Calcutta Vs. Their Employees, . My attention was drawn at page 49 of the report wherein the Supreme Court observed:

"It is true that no charge-sheet was formally drawn up against him, but that would not vitiate the order of dismissal if he knew what the charges against him were and had an opportunity of giving his explanation."

Mr. Banerjee submitted that assuming that no charges were mentioned in the show cause notice but even then if the petitioner was aware of the charges, in that case, merely absence of writing the charges will not contravene the rules of natural justice.

20. In the case referred to by Mr. Banerjee the ground of discharge against Asimananda Banerjee was, his continued absence and his inability to do work. So under these circumstances the Supreme Court found that it was difficult to see what purpose would be served by formally issuing charge-sheet to him and what conceivable answer he could give thereto. So that case is obviously distinguishable from the facts and circumstances of the present case.

21. The last case referred to is The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others, . In that case the Supreme Court observed; the concept of natural justice cannot be put to a strait jacket. It is futile, therefore, to look for definitions or standard of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is, that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably.

22. In that case, u/s 18-A of the Industries (Development and Regulation) Act, 1951, the appellant's company was taken over by the Government. In January, 1970, the report of the Investigating Committee was submitted and on the appellant's own showing, they knew that there was a likelihood of the Government's appointing a Controller u/s 18-A of the Act. At page 397 of the report, the Supreme Court observed; there are at least five features of the case which make it impossible for us to give any weight to the appellant's complaint that the Rules of natural justice have not been observed. At least they received a fair treatment and to make out their own case before the Government. They could not be allowed to make any grievance of the fact that they were not given a formal notice calling upon them to show cause why the undertaking should not be taken over or they had" not been furnished with the copy of the report They had made all the representations that they could possibly have made against the proposed take-over. By no stretch of imagination can it be said that the order of takeover took them by surprise. In fact Govt. gave them ample opportunity. It is well-settled that the requirements of natural justice must depend on the circumstances of each case.

23. So considering the facts and circumstances of that case, the Supreme Court

had found that there was no violation of the principles of natural justice.

24. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , the Supreme Court observed that an unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry. If the purpose of the rules of natural justice is to prevent miscarriage of justice there is no reason why those rule should be made inapplicable to administrative enquiries. The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case. Whenever a complaint is made before a Court that some principles of natural justice have been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

25. Coming to the facts and circumstances of the present case, it appears that where the governing body is not dissolved under paragraph 64 of the Ordinance, there is no provision for issuing any show cause notice. Even then in the instant case a show cause notice was issued but neither the proposed action nor the charge against the petitioner was mentioned. Reasonable opportunity means that a person should be told what have been found against him and the should be given reasonable opportunity to make a representation against the charges. [Apart from all technicalities, the petitioner was never told at any time that the governing bodies of the three colleges were not continuing in terms of Statute 100, If the letter of the 26th August, 1970, was not there, in that case, taking into account the entire correspondence, I could have accepted the contentions of Mr. Banerjee that the petitioner at least knew what were the charges against him. So there was no necessity of making any representation and the University rightly took action u/s 4 (11) of the Act That letter, although it did not confer any additional privilege, but even then, the petitioner was given to understand that provisions of Statute 93 would by no means be applicable to the governing bodies of the 3 colleges, so long as the letter of the 26th August, 1970, had not been re-called or revoked. It was beyond the comprehension of the petitioner that the University, could take any steps whatsoever for dissolution of the governing bodies for the purpose of reconstituting the same in terms of Statute 93. The petitioner was not even told what would be the consequences if he failed to comply with the requirements of the show cause notice. If the proposed action was indicated, in that case at least the petitioner knew that there was likelihood of the University to supersede the governing bodies of the three colleges. But nothing of that kind was stated in the said show cause notice. Obviously the order of supersession took the petitioner by surprise. Considering the facts and circumstances of the instant case, in my opinion, there has been violation of the principles of natural justice. On that ground alone, the resolution of supersession dated 14th December, 1973, cannot be sustained and must be quashed by a writ of certiorari.

26. Mr. Chakraborty lastly contended that the College Committee had no

authority to pass a resolution as disclosed in the Affidavit-in-opposition filed on behalf of the University and the report of the said College Committee had also not been made known to the petitioner.

27. It is contended by Mr. Dey appearing on behalf of the University that u/s 55 (2) (b) (iii) the Syndicate may delegate any of its powers or duties conferred or imposed by or under the Act to a Committee constituted from amongst its own members.

28. No material was placed before me to show that there has been a valid delegation. The report of the Committee also has not been annexed to the Affidavit-in-opposition nor it was produced at the time of hearing. So under these circumstances it is not possible for me to decide whether the powers of the Syndicate have been validly delegated upon the College Committee and the college committee was competent to pass any resolution and whether on the basis of that resolution the University can act.

29. From the facts disclosed from the affidavit it is absolutely clear that the University had knowledge about the subsequent amended rules of the governing bodies of the 3 colleges in February, 1970.

30. It is surprising that after three years the University started correspondence with the Secretary only to ascertain the validity of the constitution of the governing bodies of the three colleges. When the governing bodies of the said colleges prayed time till January 2, 1974, it has not been disclosed why it was necessary for the University to take an immediate action without granting time only for 19 days. I do not approve the conduct of the petitioner in not furnishing the particular asked for, by the Calcutta University, but at the same time. I am unable to appreciate the action of the University in superseding the governing bodies of the 3 colleges without giving the petitioner any reasonable opportunity to defend his case. The University and the Syndicate did not act fairly and reasonably in the present case.

31. In *The Board of High School and Inter-mediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others*, the Supreme Court observed that the principles of natural justice are to some minds burdensome, but this small price indeed is to be paid if we desire a society governed by the rule of law.

32. In the result these Rules are made absolute. The impugned Resolution of the Vice-Chancellor and the Syndicate dated 14-12-1973, which is Annexure "O" to the petition is quashed by a writ of certiorari. The University and the Syndicate, however, would be at liberty to start fresh proceedings for dissolution of the Governing bodies of the three colleges, after giving the petitioner reasonable opportunity and in accordance with law.

33. There will be no order for costs. Rules made absolute.