

(1970) 12 CAL CK 0011
In the Calcutta High Court
Case No : Matter No. 267 of 1970

Latika Sarma Sarkar

APPELLANT

Vs

The University of Calcutta and Others

RESPONDENT

Date of Decision : 18-12-1970

Acts Referred:

Calcutta University Act, 1966 — Section 9
Constitution of India, 1950 — Article 226

Citation : AIR 1971 Cal 436 : 75 CWN 319

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sabyasachi Mukharji, J.—This application reveals an unfortunate state of affairs in the sphere of administration of education. The petitioner who appeared in the M.A, Examination in Political Science for the year 1968 challenges the action of University based on the decision of a Review Committee. It is necessary to set out the facts shortly relevant for the purpose of this application. The petitioner appeared as mentioned hereinbefore in the M.A. Examination in January, 1969. On the 31st of May, 1969 results were declared by the Board of Examiners in their meeting. On the 2nd of June, 1969 results were published. It has been contended on behalf of the University that the said publication was provisional. By the said results published the petitioner secured first class marks having obtained a total marks of 480. It was necessary for her to obtain 480 marks in order to be able to get a first class. It has been stated that thereafter the University received representation which contained the allegations about the conduct of the said examination. It had been alleged that certain teacher examiner had coached privately certain students and there were unfair appointments of examiners and distributions of examination papers. On 18th of July, 1969 the Syndicate had approved the proceedings of the council relating to the publication of the aforesaid result. On the 19th of July, 1969, the petitioner received a letter dated 12th of July, 1969 from the Controller of Examinations,

University of Calcutta, intimating that the results in the said subject already published and mark-sheets issued to the petitioner were provisional pending enquiry by the Review Committee which might be set up u/s 32 of Chapter V of the First Regulation, 1966. On the 29th of July, 1969 the Vice-Chancellor of the University issued notification setting up an enquiry committee. The enquiry committee arranged to send all the scripts of the said examination for revaluation to the examiners outside West Bengal. On 16th January, 1970 the enquiry committee submitted its report to the Vice-Chancellor which was considered by the Post-Graduate Council at its meeting on 30th January, 1970. The enquiry committee noticed what has been described as an intriguing feature of the results, namely ten candidates were placed in the First Class while 73% had failed. On the 30th of January, 1970 after submission of the findings of the said enquiry committee, the Council of Post-Graduate Studies of Arts re-opened the matter in so far as the unsuccessful candidates were concerned by recommending that in cases of those candidates only they should be given the pass marks as a result of the review and referred this matter to the Board of Examiners for fresh decision. At a meeting on the 11th of March, 1970 the Council of Post-Graduate Studies in Arts referred the matter to the Vice-Chancellor. On 18th March, 1970 the Vice-Chancellor appointed a Review Committee to review the results of the candidates. Thereafter, on the basis of the Review Committee's recommendations revised results were published and under the said results the petitioner was able to secure only total marks of 476. She thereby lost her position of being in the first class. Being aggrieved by the said decision the petitioner has moved this Court under Article 226 of the Constitution.

2. The short question with which I am concerned in this application is whether the Vice-chancellor had the power to appoint a Review Committee. Secondly, it is necessary to consider whether the appointment of the Review Committee in the facts and circumstances of the case was proper and thirdly to consider whether the procedure adopted by the Review Committee was in accordance with law. It was contended that after the results were published and after certificates had been given to the petitioner it was not permissible for the University to revise or review the said results without any specific allegation of malpractice against the petitioner and without having proceeded against the petitioner personally in respect of those allegations. It was contended in effect that certificates once granted were final and could not be interfered with. I am, however, unable to accept the position. It appears to me that under the scheme of the Calcutta University Act, 1966 the Regulations framed thereunder and the conventions that have been so long followed, until the conferment of the Degrees and Diplomas and the Certificates at the Annual Convocation the publication of the results must be considered to be provisional. Section 140 of the Calcutta University First Statutes, 1966, provides that the degrees of the University should be conferred at the Convocation of the University. My attention was drawn to a decision of A. N. Ray J., in the case of Kazi Khurshid v. Assistant Controller (1964) 68 Cal WN 403, wherein it was held that there was no legal right to require the holding of an

emergent or special meeting for conferment of degree on the students who had passed the required examinations but did not attend the Convocation. It was further held that the conferment of degree was a matter regulated by Rules and Regulations of the University. In that case the petitioner prayed for granting of original diploma to the petitioner, as he was unable to proceed to the United States of America for Post-Graduate Studies without the original diploma. It was held that the petitioner in that case was not entitled to the said prayer. Even though the publication of the result and the granting of certificate are provisional it has to be considered whether the University has power to interfere with the result provisionally published in the manner it has purported to do in this case. For this purpose it would be relevant to refer to certain statutory provisions. There is no clear definition of what is the meaning of the expression "University of Calcutta". In the definition clause of the Calcutta University Act, 1966, Section 2(20) only says the University is University of Calcutta as constituted under the said Act. Section 3 provides that the Chancellor, the Vice-Chancellor, and the members of the Senate, Syndicate and Academic Council shall constitute the University of Calcutta. Section 4 deals with the powers of the University including the powers to do all acts and things necessary, desirable and incidental for the purposes of the University. Section 6 provides who shall be the officers of the University. Section 9 deals with the powers and duties of the Vice-Chancellor. Sub-section (1) of Section 9 states that the Vice-Chancellor shall be the principal executive and academic officer of the University and shall perform certain specified functions. Sub-section (3) of Section 9 enjoins the Vice-Chancellor to ensure that the provisions of the Act and Statutes and Ordinances are faithfully observed and to take necessary action for such observance. Sub-section (6) of Section 9 is relevant for the present purpose and it is necessary to set it out:

"Section 9 (6). The Vice-Chancellor may take on behalf of the University such action as he may deem expedient in any matter which, in his opinion, is either urgent or of an emergent nature, and such action shall at the earliest opportunity be reported to the appropriate authority or body."

Section 18 of the Act mentions the authorities of the University, and one of the authorities as contemplated under Sub- Clause (9) of Section 18 are authorities as to be established under the Statutes. Under the scheme of the Regulation and the Statutes, Councils of Post-Graduate Studies are constituted. These Councils of Post-Graduate Studies have the authority to appoint Board of Examiners. In that view, the Board of Examiners is an authority contemplated by Statutes of the University. It is now necessary to refer to Regulation 32 of the Calcutta University First Regulation, 1966. Regulation 32 provides:--

"32. (1) In the case of an examination-

(a) for B.A., B.Sc., or B. Com. degree in Honours subjects

(b) for M.A., M.Sc., M. Com., B. Tech. or M. Tech. degree, a Committee shall be appointed by the Examiners concerned consisting of-

- (i) in a case referred to in Clause (a), three members, and
- (ii) in a case referred to in Clause (b), five members which shall include the Head of the Department concerned and at least an external examiner, to scrutinise the marks assigned to each candidate in the examination and, if the Committee considers it necessary so to do, to review and revise the marks assigned to any candidate in any paper.
- (2) The Committee shall submit a report with their recommendations to the Examination Board or the Board of Examiners, as the case may be, which shall forward such report with the recommendations to the Council for Undergraduate or Post-Graduate Studies concerned, as the case may be.
- (3) The Council for Undergraduate or Post-Graduate Studies concerned, as the case may be, may after consideration of the reports of the Committee and of the Examination Board or the Board of Examiners, accept, modify or reject the recommendations made by the Committee."

Therefore, it appears that the Board of Examiners has the power to review the result and for this purpose to take necessary consequential steps. In this case the Board of Examiners could have under the Regulation 32 appointed a review committee to review and revise the marks assigned to any candidate. It was contended on behalf of the petitioner that the power was given specifically to the Board of Examiners, it could not, therefore, be performed by other body, I am, however, unable to accept this contention. Under Sub-section (9) of Section 6 of the Act the Vice-Chancellor is authorised to take action "on behalf of the University". Now the question is, can the action taken by the Board of Examiners be said to be one taken "on behalf of the University"? in view of the whole scheme of the Act as well as the Regulations and the Statutes, it appears to me, action if any by the Board of Examiners in appointing a Review Committee would be an action on behalf of the University. in this connection, it would be relevant to remember that subsection (6) of Section 9 also mentions appropriate body or authority. These appropriate bodies or authorities must be bodies and authorities which are parts of the University, otherwise, there would be no scope of reporting to them any action on behalf of the University. The expression "appropriate authority or body" in my opinion, is an indication of the fact that the different bodies constituted under the Statute and the Regulation are appropriate bodies and authorities and the actions by these bodies and authorities would be actions on behalf of the University of Calcutta. in this connection the provisions of Section 18 are relevant. Under the Act the University of Calcutta has the power to conduct and hold the examination and such examination must be conducted through the appropriate bodies or authorities. These appropriate bodies and authorities must be bodies and authorities of the University of Calcutta and such appropriate bodies and authorities have powers to take actions in certain particular cases. Actions taken by these bodies and authorities would be referable to the powers of the University and what is referable to the powers of the University would be actions on behalf of the University and could be

exercised by the Vice-Chancellor in terms of Section 9 (6) of the Act. It was contended on behalf of the petitioner that such a construction should not be made mainly for two reasons. It was contended firstly that specific functions had been given to specific bodies, and it would be inappropriate to construe the Act in such a way that other bodies should be able to perform those specified functions. It was argued that while natural persons have the authority to do everything save and except what is prohibited by law, artificial or statutory bodies can have authority only to perform specified or authorised functions. Broadly speaking that is true; but whatever be the specific functions of the specified bodies all these specified functions have been left to be performed by the residuary provision by the Vice-Chancellor under Sub-section (6) of Section 9. It would not be appropriate to read that those specified functions can, only be performed by those specified bodies and authorities and nobody else in spite of the clear language of Sub-section (6) of Section 9. That would require a restricted construction of Sub-section (6) of Section 9 of the Act. I find no warrant for such construction either in the context or in the language of the Act. It was then contended that the construction as mentioned hereinbefore would lead to an anomaly, in the sense that where specialised functions had been given to specific bodies they might be exercised by persons without any specialised knowledge for example, an economist Vice-Chancellor might be called upon to examine a Biology paper as an examiner. It is true that construction as indicated above might lead to a certain amount of anomaly, but there is the possibility of anomaly if the other construction is made because if it is construed that the Board of Examiners is the only authority who could appoint a Review Committee, then, If the allegations were made against the Board of Examiners then the Board of Examiners was not expected to appoint a committee and in that case a Review Committee in such circumstance would never be appointed. Anomalies can only be avoided if the powers given by the different sections are exercised bona fide to fulfil the purpose for which the said powers have been given. In that view of the matter. I am of the opinion, that in view of the language of Sub-section (6) of Section 9 of the Calcutta University Act, 1966 there is power for the Vice-Chancellor to appoint Review Committee.

3. It is not necessary for me to see whether the exercise of the power in this case by the Vice-Chancellor was properly made or not. As a matter of fact it was not argued that there was no emergency, but prima facie, it appears to me that there was an emergency because the results could not be held up for long and the decision by the University Senate or the Syndicate would have delayed matters and held up the publication of the final results. It is also not the case here that the Vice-Chancellor had exercised the power mala fide or for ulterior purpose. Prima facie, it appears to me that the exercise of the power by the Vice-Chancellor was made bona fide and on a correct situation. My attention was drawn to a decision of D. Basu, J. In the case of Adwaitya Kr. Matty v. President, W. B. Board of Secondary Education (1967) 71 Cal WN 396 where the Court was concerned with the construction of the emergency powers given under similar

provision under the West Bengal Board of Secondary Education Act, 1963. Similar is the case on which reliance was placed on Bidyut Kr. Biswas v. West Bengal Board of Secondary Education (1969) 73 Cal WN 417. In the view I have taken it is not necessary for me to discuss these cases in detail.

4. The Review Committee was appointed consisting of members as enjoined by Regulation 32 referred to hereinbefore. Nothing has been shown to me that the procedure enjoined by the regulation had not been followed. Until the publication of the result finally, the Board of Examiners and the University retained the power to review the results and in appointing the Review Committee and reviewing the results, that power has been exercised. It was alleged that there were serious allegations against two of the candidates who had secured first class marks in the first publication of the results. The petitioner in this case and the petitioner in the next case are not those candidates. If serious allegations are made of malpractices against a particular candidate, whether in conducting a review principles of natural justice need be followed or not in deciding whether there has been malpractice by a particular candidate or not is a question that does not fall for my decision in this case. In this case there was nothing personal about the petitioner. I find the result rather unfortunate because the petitioner had secured, under the first publication the total marks of 480 and she has only lost 4 marks, by the review. There was no personal allegation against her by the University authority. However unfortunate the result might be, until the conferment of degree by the University, the University has authority to review its decision in the manner indicated above and it having done so. and as there was no irregularity in the procedure followed the decision of the University cannot be interfered with.

5. In the result, this application must fail and is accordingly dismissed. The Rule nisi is hereby discharged. Interim orders, if any, are vacated. There will be no order as to costs.