

(1976) 01 CAL CK 0004
In the Calcutta High Court
Case No : Appeal No. 212 of 1971

Latika Sharma Sarkar

APPELLANT

Vs

University of Calcutta and Another

RESPONDENT

Date of Decision : 29-01-1976

Acts Referred:

Calcutta University Act, 1966 — Section 58(2)

Citation : 80 CWN 359

Hon'ble Judges : Mitra, C.J.;S.K. Datta, J

Bench : Division Bench

Advocate : B. Das, Somendra Chandra Bone and A. Dutt, for the Appellant;D.K. De and Debnath, for the Respondent

Judgement

Sankar Prasad Mitra, C.J.—This is an appeal from a judgment of Mr. Justice Sabyasachi Mukherji delivered on December 18, 1970. The appellant before us, in an application under Art. 226 of the Constitution, challenged the second publication of results of the M. A. Examination in Political Science held in 1968. The facts briefly are that the appellant appeared at the said M.A. Examination in Political Science from 29 January, 1969 to 24 February 1969. Her Roll Number was CAL POL 358. The Board of Examiners, in their meeting held on the 30th May, 1969, declared the result. The appellant was placed in the First Class securing 480 marks which were the minimum for a first class. The result declared had certain peculiar features. 73 per cent of the candidates who appeared had failed in the examination but as many as 10 candidates were placed in the first class.

2. On the 2nd July, 1969, the mark sheet was issued. Thereafter the University received representations from students in Political Science which contained allegations against the conduct of the examination. There are also charges against teachers coaching candidates privately, of unfair appointment of examiners and distribution of papers and of personal influence of persons high up in the administrative set up of the University. These representations were

placed before the Postgraduate Council in Arts. On the advice of the Post-graduate Council, the Vice Chancellor constituted an Enquiry Committee to enquire into the charges.

3. On the 12th July, 1969, the University informed all the candidates including the appellant individually that the results published were provisional; the mark sheet issued was also provisional; and the same may be modified on the basis of the recommendation of the Review Committee that may be set up under Regulation 32 of the Calcutta University First Regulations, 1966.

4. The Enquiry Committee set up by the Vice Chancellor, with the Controller of Examinations as its Secretary, decided on the 29th July, 1969 to have the examination papers re-examined by persons outside the State whom the Vice Chancellor would appoint. In this re-examination the appellant secured 472 marks only. In other words, she was pushed down to the second class. The report of the Enquiry-Committee was placed before the Council of Post-graduate Studies in Arts on the 30th January, 1970. The Post-graduate Council resolved as follows :

(i) That the Report of the Enquiry Committee be adopted.

(ii) That no change be made in the results of the candidates who were declared successful at the M.A. Examination in Political Science, 1968.

(iii) That the cases of those unsuccessful candidates who have been given pass marks as a result of the review be referred to the Board of Examiners for decision.

5. On 18 March, 1970, the Vice Chancellor appointed a Review Committee under Regulation 32 of the Calcutta University First Regulations, 1966. The Minutes of the meeting of the Review Committee held on the 21st March, 1970, are as follows:

Date: 21.3.70.

Present:

Nirmal Chandra Bhattacharyya

Nirmal Kanti Majumder.

Subimal Kumar Mukherjee.

Akshoy Kumar Ghosal.

Bela Das Gupta.

The Vice-Chancellor was good enough to attend the meeting. The following documents were placed before the Committee for its consideration :

1. Report of the Enquiry Committee.

2. Controller's powers to each of the new set of persons appointing them examiners for the M.A. Examination in Political Science, 1968.

3. Tabulation Roll.

4. List of Examiners.

After an examination of the Tabulation Roll and condition of the other documents the committee adopted the following resolution unanimously.

That each of the candidates be awarded in each half paper the average of the marks received by him in the first and the second examinations.

N. Bhattacharyya.

N. K. Majumdar.

B. Das Gupta.

S. K. Mukherjee.

A. K. Ghosal.

6. On the same day, namely, the 21st March, 1970, the revised provisional result was published. The appellant was placed in the Second Class. It is this second provisional result which the appellant had challenged in the application under Art. 226.

7. Learned Counsel appearing for the appellant has urged before us the following points:

(i) The Review Committee was not constituted in accordance with the provisions of Regulation 32 of the Calcutta University First Regulations, 1966.

(ii) The Review Committee did not arrive at its decision according to law.

(iii) Once the results are published, there is no scope for reopening them except on the ground of corrupt practice.

8. It would not be necessary for us to deal with the third point which counsel for the appellant had raised because, it seems to us that this appeal can be disposed of on the basis of his first two points.

9. The Calcutta University, as it is now constituted, functions under the provisions of the Calcutta University Act, 1966. Sub-sec. (2) of Sec. 58 of this Act provides that the first Vice-Chancellor shall, with the approval of the Chancellor and with the assistance of a Committee consisting of not less than six members nominated by the Chancellor, cause the first Statutes, the first Ordinances and the first Regulations of the University to be framed.

10. Regulation 32 of the Calcutta University First Regulations 1966, is as follows:

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

(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-

(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.

11. Mr. Somendra Ch. Bose appearing for the appellant has contended that in the instant case the Review Committee was not appointed by the examiners concerned at all. The Review Committee was constituted by the Vice-Chancellor. The constitution of the Review Committee is, therefore, illegal and any decision given by such a Committee has no effect.

12. We are not inclined to uphold these contentions of Mr. Bose, Subsection (6) of Sec. 9 of the Calcutta University Act, 1966, prescribes that 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.

13. Mr. Debi De appearing for the University has submitted to us that in the present case the Vice-Chancellor appointed the Review Committee in exercise of his powers under Sub-section (6) of Sec. 9 aforesaid. The order is as follows:

Senate House

Calcutta 12

March 18, 1970

In view of the urgency of the matter, I hereby nominate the following five members to constitute the committee under Reg. 32(1) (b) to review and revise the marks assigned to the candidates, after proper scrutiny of the marks, who appeared at the MA. Examination in Political Science held in 1968,

1. Sri N.C. Bhattacharya.
2. Sri N.K. Majumdar.
3. Dr. A.K. Ghosal.
4. Sra. Bela Dutta Gupta.
5. Prof. Subimal Mookerjee.

Sd. S.N. Sen.

Dr. S. N. Sen is the Vice-Chancellor of the University.

14. From the order it is clear that he had constituted a Review Committee "in

view of the urgency of the matter".

15. On the 2nd July, 1969, the first mark sheet was issued. Thereafter the University received, as we have seen, representations from students making various allegations against the conduct of the examination. The Vice-Chancellor when faced with these representations thought it necessary to take steps expeditiously so that there might not be undue delay in finalising; the matter. On the facts and in the circumstances which arose in the instant case we are of opinion that the Vice-Chancellor's exercise of power under Sub-section (6) of Sec. 9 of the Calcutta University Act, 1966, was justified, and the Review Committee, in our opinion, was duly constituted.

16. But the second point of Mr. Bose raises difficulty. Regulation 32 authorises the Review Committee to scrutinize the marks assigned to each candidate and if necessary to review and revise the marks assigned to each candidate.

17. The meanings of the word "scrutiny" in the Concise Oxford Dictionary, Fifth Edition, are as follows :

- a) critical gaze.
- b) close investigation.
- c) examination into details etc.

18. "Review" means view again, survey, glance over, look back on. "Revise" means re-examine or reconsider and amend faults in. If a review Committee is to scrutinize the marks or to review or revise the marks the Review Committee must examine the papers themselves. Without looking into the answer papers a Review Committee cannot scrutinise or review or revise the marks to discharge its obligations under Regulation 32. In the present case we have found from the minutes of the Review Committee that the answer scripts were not placed before it at all. It did not examine or look into the answer papers nor had it any occasion to do so to review and revise the marks in accordance with law. The Review Committee had merely looked at the marks awarded by two sets of examiners and decided that an average of the two sets of marks would be given to each candidate and the final result published on that basis. It seems to us that the procedure-adopted by the Review Committee in the present case was not in compliance with the requirements of Regulation 32. The decision of the Review Committee awarding average marks without examining the answer papers has, therefore, to be set aside.

19. We asked Mr. Debi De appearing for the University of Calcutta whether the answer papers are still available so that the Review Committee could go through the papers and come to a decision in accordance with the provisions of Regulation 32, Mr. De, on behalf of the University, informed us that the answer scripts were no longer in existence. In these circumstances, though reluctantly, we are compelled to set aside the appellant's revised provisional result which the University had announced on the 21st March, 1970.

20. We have already said that we are not expressing any opinion on the last point of Mr. Bose that once results are published they cannot be reopened except on the ground of corrupt practice.

In the result this appeal is allowed.

Let a Writ in the nature of Mandamus be issued directing the respondents and/or each of them to rescind, cancel and withdraw all proceedings connected with the second publication of the results of the petitioner bearing Roll Cal. Pol No. 358 on the basis of decision of the Review Committee and Memo, dated the 12th July, 1969, issued by the Controller of Examinations, Respondent No. 9, addressed to the appellant and further commanding them or each one of them not to take any steps or any further steps there under.

There will be no order as to costs.