

(1957) 01 CAL CK 0004
In the Calcutta High Court

Case No : Civil Revn. C. No's. 2955, 3004, 3261-3263 and 3425 of 1956

Maya Majumdar Gupta and Others

APPELLANT

Vs

Principal Basirhat College and Others

RESPONDENT

Date of Decision : 30-01-1957

Acts Referred:

Calcutta University Regulations, 1951 — Regulation 5, 6, 8
Constitution of India, 1950 — Article 226
University Act, 1904 — Section 25

Citation : AIR 1957 Cal 428 : 61 CWN 334

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Nagendra Nath Bose, in Nos. 2955 and 3004 of '56, Ranjit Kumar Banerjee and Tarun Kumar Banerjee, in Nos. 3261-63 of '56 and Arun Prakash Chatterjee, in No. 3425 of '56, for the Appellant; S. Banerjee and Amiya Kumar Mukherjee, for the Respondent

Judgement

Sinha, J.—These are six matters in which the facts are similar and there is a common point of law involved. They have been heard together, and in view of what has happened before me it is unnecessary to deal with them separately and they are being disposed of by a common order.

2. Each of these applications has been made by a candidate appearing in the University examinations held by the University of Calcutta, for the year 1956. The candidate concerned had completed his or her examination, but when the results were published, these candidates found the letters R. A. against their respective roll numbers in the result sheet, meaning thereby "Reported against". What happened was that the examiners had reported against them to the Head examiner of having been guilty of malpractice at the said examination and the Head examiner in turn had reported to the Controller of examinations. These candidates were not the only examinees who were reported against. A total of 411 cases were reported.

Before I proceed further, it is necessary to set out the relevant regulations which govern the procedure in such matters. This is to be found in Ch. XXV, and the relevant regulations are (v) and (vi) set out below :

"(v) There shall be one Examination Board for the I.A. and I. Sc. examinations consisting of-

(a) The Vice-Chancellor, Chairman.

(b) The Head Examiners in the various subjects.

(c) Four members appointed by the Syndicate of whom two at least shall be members of the Syndicate. Of these four, two shall belong to the Faculty of Arts and two to the Faculty of Science, The functions of the Examination Board shall be-

(a) To consider the results and modify them, if necessary in accordance with the principles contained in the University Regulations or laid down by the Syndicate,

(b) To consider all cases of breaches of discipline arising out of the examinations.

(c) To forward the results to the Syndicate for publication. The Statement made to the Syndicate shall contain confidential information on the change made by the Examination Board and the reasons for the change.

(vi) The proceedings of the Board shall be subject to confirmation" by the Syndicate. The Syndicate shall not have the power to modify the results but may refer them back to the Board for reconsideration."

3. I shall now proceed to state as to what actually happened in these cases. The Board of Examiners is an unwieldy body, and it is not possible for them as such to investigate all complaints. So, the Board appointed a sub-committee to go into the matter. The sub-committee appears to have taken great pains to investigate the cases of breaches of discipline arising out of the examinations. So far as these six candidates are concerned, they were notified that on receipt of a report against the candidate concerning breach of discipline in the above examination held in 1956 the case had been placed before a sub-committee and the candidate was asked to appear before it, upon a particular date. No particulars were given of the breach of discipline with which the candidate was charged with. On the specified date, the candidate appeared before the sub-committee and was heard. There is direct conflict of testimony as to what exactly happened at the hearing. The candidates state that they were merely asked questions and in some cases asked to write out certain answers. According to them, the charges against them were never disclosed. The Controller of Examinations admits that there were no written charge sheets, but he affirms that the candidates were verbally told of the charges against them and given an opportunity of meeting the charges. Unfortunately, this statement is verified as true to information received from his office records, but the nature of the record has not been disclosed. At the hearing. I was informed that the reference is to the report of

the sub-committee, a copy of which is annexed to the affidavit in opposition affirmed by the Controller. There is no mention of this fact in the report anywhere. Nor, has the Controller any personal knowledge, as he was not present at the meetings of the sub-committee. Thus, I cannot attach any importance to his statement in "this behalf.

4. The sub-committee however did not report to the Board of Examiners. On the 6th July, 1956 the Board passed the following resolution:

"That the recommendations of the sub-committee in regard to cases reported against be placed direct before the Syndicate, and the publication of results be meanwhile withheld in these cases."

5. This resolution was confirmed by the Syndicate on the 7th July, 1956. The sub-committee placed its proceedings before the Syndicate on the 4th August, 1956 when the following resolution was passed:

"That principal P. N. Banerjee, Principal, Calcutta University Law College be added to the subcommittee already constituted to consider the cases of breach of discipline at the LA. and I. Sc. examinations. 1956 so that with his assistance the sub-committee may further consider the cases and submit the recommendations at the next meeting of the Syndicate."

6. The proceedings of what has been described as "This added sub-committee" were placed before the Syndicate on 16th August, 1956 and were confirmed. I have tabulated below the particulars of the punishments imposed upon the respective candidates:

Case No.	Name of candidate.	Roll No.	Exam.	Punishment.
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C. R. 2955/56	Maya Mazumdar Gupta Basir	No. F 25	I. A.	Cancellation of 1956 exam.
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C. R. 3004/56	Pijush Kanti Ghosh	Basir No. 191	I. A.	Do.
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C. R. 3261/56	Dilip Kumar Das	Kat. 9	I. Sc.	Cancellation of 1956 exam. Debarred from appearing in 1957 and 1958
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C. R. 3262/56	Prodyot Kumar Chattapadhyay	Kat. 10	I. Sc.	Do.
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C. R. 3263/56	Sukhomoy Mazumdar	Kat. 7	I. Sc.	Do.
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C. R. 3428/56	Ajoy Dhar	Kat. 23	I. Sc.	Cancellation of 1956 exam. Debarred from appearing in 1957.
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7. These several rules have been issued upon the respondents to show cause as to why these Orders of punishment should not be set aside and for other reliefs.

8. In my opinion, the procedure followed is not in accordance with law and the orders of punishment cannot be sustained. A reference to the relevant regulations will show that the consideration of all cases of breaches of discipline

arising out of the examinations is the function of the Examination Board and not of the Syndicate. Since the Board is a large and unwieldy body, it may appoint a sub-committee which will investigate the complaints and report to the Board. It is the Board which must consider the report and decide how to modify the results. The resolution by the Board that the sub-committee will report direct to the Syndicate and compliance with it by the sub-committee has vitiated the whole proceeding. But the matter does not rest there. The Syndicate not only dealt with the sub-committee directly but appointed an additional member of the sub-committee and this "Added sub-committee" reported back to the Syndicate directly and the Syndicate then dealt with it and not the Board. All this is entirely illegal and cannot be supported.

9. The very point concerned was explained by the Court of Appeal in the case of *University Of Calcutta v. Dipapal*, 56 Cal WN 730 (SB) (A). It was laid down that under Ch. XXV of the Regulations of the University of Calcutta, the body which has jurisdiction to consider cases of breaches of discipline arising in connection with examinations and to modify the results of such examination is the Examination Board created by Rule 8(v). The Syndicate is not empowered to treat the sub-committee appointed by the Board as its own sub-committee. The same defect has arisen in this case, and it does not make the slightest difference because the Board permitted the subcommittee to report directly to the Syndicate. In doing so, the Board failed to discharge its own statutory duty. The regulations do not provide for the appointment of any sub-committee by the Board. That it can do only by way of convenience or expediency. But, the Board as a whole must consider every fact found by the sub-committee and weigh its recommendations and the decision thereon must be the decision of the Board and neither of the sub-committee nor of the Syndicate. The Syndicate can only confirm the decisions of the Board in this behalf. The learned Standing Counsel with his usual fairness has conceded that the procedure followed is not in conformity with the regulations and cannot be supported. I was delighted to hear him say that the future careers of several young citizens being concerned, it was not the intention of the University to take any pedantic or argumentative attitude, but to undo the mischief caused, as quickly and with as little harassment be the candidates concerned, as it was humanly possible. He rightly asserted that there being merely an error in procedure, it did not mean that the candidates were to go scot free if they are guilty. It only meant that the investigations will be speedily repeated in accordance with law. I fully agree. The result is that the rules are made absolute and the respective orders of punishment imposed upon the six applicants before me, as stated in the pleadings, either by the Board of Examiners or its sub-committee or by resolutions of the Syndicate, confirming the recommendations made by them in this behalf by cancellation of the 1956 examination or debarring the candidate from appearing at a future examination, are quashed and set aside and an appropriate writ in the nature of mandamus directing the respondents not to give effect to the same.

10. If the respondents so wish they are at liberty to continue the investigations according to law. In such an event I only hope that in connection with any future enquiry, the candidates will be informed of the charges against them and given the fullest opportunity to defend themselves. Now that the affidavits have been filed, they are to a great extent aware of the charges, but what ever doubts or difficulties may exist should be fully dispelled. Further, I am told that the next examination's are-to be held in March, 1957, so that any proceedings continued should be speedily effected and the results announced without the least delay. The learned Standing Counsel has pointed out that now that the orders made have been vacated, there was no reason why the students should not deposit their examination fees in time, which would be refunded if found necessary. Regard being had to the attitude of the respondents throughout this application, I make no order as to costs.