

(1995) 04 CAL CK 0029
In the Calcutta High Court

Mrs. Malabika Dhar and others

APPELLANT

Vs

University of North Bengal and others

RESPONDENT

Date of Decision : 27-04-1995

Acts Referred:

Advocates Act, 1961 — Section 49
Constitution of India, 1950 — Article 226

Citation : AIR 1995 Cal 303

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Mr. K.K. Moitra, for the Appellant; Mr. K.K. Banerji and Mr. T.K. Banerji, Mrs. Manjari Gupta, for the Respondent

Judgement

1. The three writ petitioners have filed the present writ petition under Art. 226 for quashing the impugned orders bearing Ref. No. SSA/95/10/(41) dated the 15th March, 1995 issued in respect of each of the three petitioners by the respondent No. 6, the Head of the Department of Sociology and Social Anthropology, University of North Bengal by which the petitioners who were already admitted to the M.A. Part-I Class of the said University, have been informed that their admission to the said class has been cancelled by the Executive Council in its meeting held on 13th March, 1995 in view of the gross violation of the prescribed rules for such admission. The petitioners were accordingly instructed therein not to attend the classes with immediate effect. On receipt of the same the petitioner No. 1 also wrote to the respondent No. 7 on the very next day, that is, on 16th March, 1995 that she did not violate any rule and that she got herself admitted in accordance with the official procedure. In the said letter which is annexure-E to the writ petition the petitioner also wondered as to what was her fault for which the Executive Council could take a decision to terminate her academic career. She also requested the respondent No. 6 to let her know the specific rules that she had violated and further requested that if no such rules had been violated by her then she might be informed as to why she should be punished after almost a month of her

admission for no fault committed by her.

2. The petitioners contend that they passed B. A. examination with honours (10 + 2 + 3 system) from the North Bengal University and pursuant to an advertisement issued by the said university in the month of September 1994 in the daily newspaper "Uttarbanga Sambad" inviting applications for admission to different post-graduate courses in the academic session 1993-94, the petitioners separately applied in the prescribed forms for admission to the M. A. Part-I course in Sociology and Social Anthropology within the time stipulated in the said advertisement. It is also the petitioners' case that there were 35 seats for the said subject and the merit list comprising of 70 candidates was prepared by the University and the petitioners were selected and their names were also included in the merit list. According to the petitioners' case, the first list of 35 candidates was published in November 1994 wherein the petitioners names did not appear. But since all the candidates did not respond to the offer of admission to the M. A. Part-I class in Sociology and Social Anthropology, some of the 35 seats remained vacant and admission to the said subject was being made in accordance with the merit list. It is the contention of the petitioners that the last date for admission to the said subject which was originally fixed on 15-2-95 was subsequently extended to 23-2-95 and on 14-2-95 three seats still remained vacant and on approach by the petitioners to the Vice-Chancellor of the University they were admitted to the M. A. Part-I class for the session 1993-94 in the said subject. Annexure-A to the writ petition is a written authorisation dated 22-2-95 issued by the Secretary to the Faculty Council for Postgraduate Studies in Arts, Commerce and Law, University of North Bengal, to the effect that the writ petitioner No.3 may be provisionally admitted to the M. A. Part-I class for the session 1993-94 in the Department of Sociology and Social Anthropology. It is the case of the petitioners that similar authorisations were issued also in respect of the other two petitioners and the petitioners were accordingly admitted to the M. A. Part-I class and they joined the class on 22/24-2-95 and the Library Cards were also issued to them and they were regularly attending their classes after such admission. It is however the petitioners' case that it is the usual practice that the initial admission is made only provisionally in all cases. The petitioners were also given accommodation in the hostel after their admission on payment of hostel charges. It is the contention of the petitioners that the cancellation of their admission when they have not violated any rules or norms, and without giving them any opportunity of hearing in the matter, is wholly illegal, arbitrary, capricious and violative of the principles of natural justice and fair play and accordingly they pray for quashing the impugned actions on the part of the University authorities whereby the petitioners' admissions have been cancelled and they have been asked not to further attend the classes.

3. The University and its authorities, namely, the Vice-Chancellor and the Registrar contest the writ petition. An Affidavit-in-opposition also has been affirmed on their behalf by one Shri Samar Chakraborty who is a Junior Assistant of the said university posted at Calcutta Campus office. It is inter alia stated in

the said affidavit-in-opposition that in terms of the decision of the Faculty Council of the University dated the 22nd March, 1994 the last date for admission to M.A. Part-I class in Sociology and Social Anthropology for the session 1993-94 was fixed on 15th February, 1995 and that the petitioners never approached the Vice-Chancellor for admission to M. A. Part-I class in the said subject and in any event though the last date of admission was fixed on 15th February, 1995 in terms of the decision of the Faculty Council dated the 22nd March, 1994 yet the petitioners got themselves admitted to M. A. Part-I class in the said subject on the 22/23rd February, 1995 after the last date of admission as fixed by the Faculty Council by its resolution dated the 22nd March, 1994. It is contended on behalf of the respondents that it was specifically resolved in the meeting of the Faculty Council held on 22nd March, 1994 that in the M. A. Part-I class of Sociology and Social Anthropology the intake capacity would be 35 and the admission should be made in order of marks obtained by the candidates at (Honours) Graduate level and that preference would be given to the candidates who graduated with honours in 1993 and the order of preference would depend upon the year of graduation, like 1993 first, then 1992 and so on, inasmuch as a candidate graduated in 1992 though having better marks than a candidate graduated in 1993 would not be entitled to get himself admitted in M. A. class prior to 1993 candidates. The resolution of the Faculty Council dated the 23rd March, 1994 on which the respondents rely has been marked as annexure-K to the affidavit-in-opposition. It is stated in affidavit-in-opposition that it appears from the records that the petitioners were not only wrongly and illegally admitted in the first year M. A. class of 1993-94 session in the Department of Sociology and Social Anthropology after the last date of admission, that is the 15th February, as fixed by the Faculty Council in the meeting held on 22nd March, 1994 but they were so admitted by superseding several candidates who obtained much higher marks than the petitioners. It is stated in paragraph 3 in the affidavit-in-opposition that it appears from the record that the petitioner No. 1 Sm. Malabika Dhar obtained 357 marks and the petitioner No. 3 Aloka Kumar Roy obtained 362 (358) marks and the petitioner No. 3 Sm. Sumita Das gupta being a graduate of 1992 obtained 368 marks but in spite of that they were wrongly and erroneously admitted to M. A. Part-I class by superseding several candidates who secured much higher marks. It is also stated in the said paragraph of the affidavit-in-opposition that the petitioner No. 1 superseded 14 candidates who secured much higher marks than her and the petitioner No. 3 superseded 12 candidates who obtained higher marks and the petitioner No. 2 who was a 1992 honours graduate and who as per rules cannot be admitted before the candidates graduated in 1993 superseded 70 candidates. It is stated in the same paragraph that the last candidate admitted in the general category secured 364 marks. Annexure-L to the affidavit-in-opposition is stated to be the list prepared by the University for admission to M. A. Part-I in the Department of Sociology and Social Anthropology for the session 1993-94 showing therein the marks secured by the respective candidates at the graduation level (honours). In paragraph 3 of the affidavit-in-opposition it is asserted that the admission of the

petitioners was made wrongly and erroneously and in contravention of all rules, norms and procedures, particularly by superseding the candidates who obtained much higher marks than the petitioners. In paragraph 4 of the affidavit-in-opposition it is stated that in any event it was a gross mistake on the part of the concerned office of the university to admit the petitioners and to grant hostel accommodation, etc. It is also pointed out that such admission was given on provisional basis which can be cancelled by the competent authority on authentic ground. In paragraph 5 of the affidavit-in-opposition it is stated inter alia that the Executive Council of the University considered the matter of the irregularities of admission of the petitioners and after being satisfied about the serious irregularities and illegalities committed while admitting the petitioners and after considering the facts and circumstances resolved in the meeting dated the 13th March, 1995 that the admission of the petitioners be cancelled forthwith and their names be struck off from the rolls.

4. Annexure-M to the affidavit-in-opposition purports to be an extract of the resolution of the Executive Council of the University dated the 13th March, 1995. In the said resolution it is inter alia recorded that at the start of the meeting. Shri Pankaj Mitra, member of the Council, reported certain irregularities relating to the admission of three candidates in M. A. Part-I class in the Department of Sociology and Social Anthropology in the current academic session. "It is recorded therein that it was found that the three candidates, being the present writ petitioners, were selected for admission superseding a large number of applicants who secured higher marks at the qualifying examination and that the candidates were admitted after the prescribed date for closure of admission. The resolution recorded that in view of the gross violation of the norms as prescribed by the Faculty Council, the Council (that is the Executive Council) resolved that the admission of the said three candidates be cancelled forthwith and their names be struck off the rolls in attendance/ enrolment registers.

5. It may be noticed that there is no allegation that the petitioners committed any malpractice in the matter of getting admission to the M. A. Part-I course. The respondents find fault with the admission of the petitioners for two reasons. One is that they got themselves admitted after the last date fixed by the University for such admission in accordance with the decision of the Faculty Council as contained in the proceedings of its meeting held on 22-3-94 which is annexure-K to the affidavit-in-opposition. The second reason is that they superseded a number of candidates who were entitled to admission before them in accordance with the merit list prepared by the University Authorities for such admission which is annexure-L to the affidavit-in-opposition. There is no allegation on the part of the University Authorities about any conspiracy or malpractice even on the part of the officials of the University in the matter of admission of the three petitioners. All that is projected by the respondents is that the petitioners were given admission wrongly, erroneously and by mistake by superseding others who were entitled to priority over them according to the merit list. It has been argued by the learned Advocate for the petitioners that the averment made in paragraph

4 of the writ petition that the petitioners approached the Vice-Chancellor has not been denied by the Vice-Chancellor by affirming affidavit, and that the Junior Assistant who affirmed the affidavit-in-opposition is not competent to affirm any denial in this respect on behalf of the Vice-Chancellor. This submission on behalf of the petitioners, to my mind, is not devoid of merit.

6. Be that as it may, let us refer to the proceedings of the meeting of the Faculty Council held on 22-3-1994 which is annexure-K to the affidavit-in-opposition. There I do not find that the resolution itself fixes any last date for admission. In paragraph 8 of the said resolution it is stated inter alia that the forms received from the students will be sent to the respective Heads of the Departments for selection and the selection will be made strictly in order of merit following the norms laid down for the purpose by the concerned Faculty Council. It is further stated then that the number of such selected students will be double the number of intake capacity in the Department and all applications along with the list of selected students should reach the office of the Secretary, Faculty Council as early as possible, preferably within seven days from the receipt of the forms. The concluding portion of the said paragraph 8 is quoted below:--

"The Head of the Department shall maintain a register containing names of newly admitted students in his office. Students will be asked to put their signature against their names in that register as soon as they join the Department. After checking the record, the Head of the Department will forward the names of the students who would fail to join their classes within 10 days from the commencement of lectures, for cancellation of their admission. The report should reach the office of the Secretary, Faculty Council for post graduate studies in Arts, Commerce and Law within 7 days from the expiry of 10 days period. However the whole process of admission into M. A./M. Com. Part-I classes for the session 1993-94 including admission against dropped out-cancellation should be completed within two months from the commencement of the lectures.

If any problem arises in interpreting any part/item of the guidelines, the matter shall be referred to the Vice-Chancellor for appropriate decision."

It will thus be seen that mere fixation of any initial date for admission does not rule out subsequent admission against available vacancies. It has been only stated that the whole process of admission including admission against dropped out/ cancellation should be (and mark -- not, must be) completed within two months from the commencement of the lectures. Therefore the process of completion of admission was not tethered to any narrow or inflexible time frame, although an outer limit of two months from the commencement of the lectures was indicated as the desirable period within which the admission process should be completed. Now, if initially the last date of admission was fixed on 15th February, 1995 it can well be presumed that a period of two months from the commencement of the lectures did not expire before the 15th February, 1995 or even before 23rd February, 1995 within which date the petitioners took their admission. It may be mentioned here that the date on which lectures in the

concerned subjects commenced has not been disclosed either in the writ petition or in the affidavit-in-opposition, but the resolution of the Faculty Council dated 22-3-1994 requires the Head of the Department to send a report to the Secretary of the Faculty Council within 17 (10 + 7) days from the commencement of lectures showing the names of the students who would fail to join their classes within 10 days from the commencement of the lectures so that their admission may be cancelled. Paragraph 8 of the said resolution also contemplates admission against dropped out/cancellation and the process is desired to be completed within two months from the commencement of the lectures. Now, if the last date for admission was initially fixed on 15th February, 1995 and if the Head of the Department was required to send within 17 (10 + 7) days from the date of the commencement of the lectures the names of the students who failed to join their classes, and if the whole process of admission was desired to be completed within two months from the date of commencement of the lectures, there is no scope of holding that any admission given on the 22nd or 23rd February, 1995 was beyond the desired time limit of two months from the date of commencement of the lectures, more particularly when the last date for admission itself was initially fixed on 15th February, 1995. Therefore, there does not seem to be any merit in the plea of the respondents that the admission of the petitioners had taken place beyond the prescribed date and is bad and illegal for that reason. Firstly, the admission of the petitioners does not seem to have taken place beyond the desired period as mentioned in paragraph 8 of the Faculty Council resolution dated 22-3-1994. Secondly, the period of two months mentioned in the said paragraph 8, by reason of the very word "should" as used in that connection, does not seem to be consigned or reverted to inflexibility so as to make any admission given by the University itself at any time thereafter, illegal for that reason alone. If the last date of admission was initially fixed on 15th February, 1995 the admission given to the petitioners on 22nd or 23rd February, 1995 by way of filling up of residuary vacancies cannot obviously be termed as illegal because paragraph 8 of the Faculty Council resolution itself contemplates such admission to fill up the residuary vacancies and here in the present case the petitioners were given admission not after a long lapse of time but soon enough after the vacancies arose.

7. The plea of the respondents that the petitioners were given admission superseding a number of candidates who in view of their position in the merit list were entitled to priority in the matter of admission is indeed a plea which deserves serious consideration. There is no doubt that the petitioners should not have been given admission by superseding the priority claim of other candidates, if there were any. The mere fact however that there were also other candidates in the seniority list over the petitioners may not necessarily indicate that their claims have been superseded. In fact many of the candidates might have chosen not to accept the offer of admission as it happens at times. In the present case the university authorities have not disclosed whether the other candidates having priority claim against the three vacant seats were offered admission, and if not,

then why the candidates were not offered admission according to their priority in the merit list after the last candidate who obtained 364 marks obtained, admission. Evidently three seats were still lying vacant when the petitioners were offered admission. The Executive Council in its resolution dated the 13th March, 1995 recorded gross violation of the norms in giving admission to the petitioners. But unfortunately the said resolution does not show any concern to fix up responsibility as to why the writ petitioners were offered admission to fill up the three residuary vacancies without offering such admission to other priority candidates finding place in the merit list. Any irregularity or violation of norms that might have been committed in the matter of giving admission to the petitioners has been committed by the university through the university functionaries and officials. There is no allegation that the petitioners committed any malpractice or manipulation or conspiracy for getting themselves admitted. In the circumstances the Executive Council, before or at the time of taking the resolution for cancelling the admission of the petitioners on the ground of irregularities and mistake pointed out therein should have at least expressed concern to fix up responsibility in the matter so that the officials found responsible for such irregularities and mistake could be adequately dealt with for avoiding repetition of the same in future. The fact that the Executive Council did not think in term of taking even the slightest of departmental action against the erring officials prima facie indicates that they were taking it to be a case of innocent or accidental mistake on the part of the concerned officials. But even then it is really unfortunate that the Executive Council did not show any concern for devising ways and means to ensure that even such innocent or accidental mistake may not any more recur in future because such events are detrimental not only to the interest of the deserving students but also to the reputation of any university necessarily committed to a degree of responsibility good enough to ensure wholesome effects of its performance upon a vital field like education which is destined to mould the quality of the national life. No university can also remain complacent about its mistakes. Lack of adequate care on the part of a university at every stage of its performance is fraught with the danger of plunging the career of individual students into irredeemable gloom and doom for ever.

8. The learned Advocate for the petitioners submits that before cancelling the petitioners' admission the petitioners should have been given an opportunity of hearing and in this connection the learned Advocate relied on the decisions of the Supreme Court in *Divisional Superintendent, Eastern Railway, Dinapur and Others Vs. Shri L.N. Keshri and Others*, and *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, (the last few lines of paragraph 33). On the other hand the learned Advocate for the respondents submits that since in this case the petitioners were granted only provisional admission and since it was later found that the admission was illegal and irregular the same was

cancelled and there is no question of giving any opportunity of hearing or of violation of principles of natural justice in the matter. The learned Advocate for the respondents also relies on certain decisions which are noted hereafter. *Rajesh Namdeo v. Awadesh Pratap Singh Vishwavidyalaya, Rewa* reported in 1950 (2) All I E L C 616 is a decision of a Division Bench of the Madhya Pradesh High Court. There both the writ petitioners obtained less than 48% marks in aggregate in their B. Com. examination. Pursuant to a direction of the Education Minister the petitioners were admitted to the LL. B. Part-I course as a special case, although according to the Rules framed by the Bar Council of India no student was eligible for admission to the course of instruction in law unless he had, inter alia, obtained at least 48% marks in the qualifying examination. The admission was granted provisionally. In course of time the petitioners appeared in the LL. B. Part-I examination, but their examinations were cancelled by the university on the ground that they had secured less than 40% marks in the qualifying B. Com. examination as fixed by the Bar Council of India by Rules framed, in exercise of the power conferred under S. 49 of the Advocates Act, 1965. The petitioners by filing the writ petition challenged the action of the university in cancelling their examinations. The court however, refused to interfere on the ground that the petitioners were not eligible for admission to the LL. B. Part-I course in view of the statutory rule barring admission of students to the course of instruction in law who had secured less than 40% marks in the qualifying examination and that no power of relaxation of the said requirement vested either in the Education Minister or in any of the respondents. The facts of that case are however clearly distinguishable from the facts of the present case. There in the reported decision the petitioners were not eligible for admission because they did not obtain the minimum marks required for the purpose as fixed by the statutory rule. There in the reported decision the petitioners were granted admission by ignoring the statutory requirement prescribed for eligibility of admission. In the present case however the petitioners were not suffering any infirmity regarding eligibility for admission. They were definitely qualified and eligible for admission to the course and their names were also there in the merit list of the eligible candidates prepared by the University. Obviously the case of cancellation of an admission where the admission has been given to a candidate who does not qualify for such admission in view of certain statutory rule cannot be equated with a case where the candidate admitted is otherwise qualified and eligible for such admission. In the former case the admission was illegal but in the latter case the admission was not illegal. In the said decision the Division Bench held that the decision of the Supreme Court in the case of *Shri Krishnan Vs. The Kurukshetra University, Kurukshetra*, had no application to the facts and circumstances of the case that was being dealt with by the Division Bench.

9. The decision of the Division Bench of the Orissa High Court in *Suresh Chandra Chowdhury v. The Berhampur University* reported in (1991) All In Ed C 612 on which the respondents relies upon is also clearly distinguishable on facts. That was a case where the petitioner was, by mistake, declared to have passed the B.

Sc. examination and the petitioner thereafter got himself admitted into law college and was prosecuting his studies there when he came to know of a notification issued by the university declaring that he had failed in the B. Sc. examination. The petitioner filed the writ petition contending that since the authorities of the university by their representation led him to believe that he had passed the B. Sc. annual examination and acting on such representation he had taken further action in getting himself admitted to the law college and prosecuting his studies for several months thereby spending money and time, the authorities were estopped from cancelling his result subsequently. It was contended on behalf of the concerned respondents that the release of the petitioner's result declaring him to have passed the annual B. Sc. examination was an outcome of mistake since the petitioner secured only 30% marks in physics practical whereas the minimum marks to be secured in order to enable him to pass in his said paper was 40 and that therefore the petitioners should have been declared to have failed in the examination and this mistake having been detected subsequently the order cancelling the declaration that the petitioner had passed the examination was issued. In the background of the facts and circumstances of the case the court however refused to interfere with the impugned cancellation of the declaration. Obviously, the facts of that case are totally different from the facts of the present case. There the petitioner did not qualify for being declared to have passed in the particular examination in view of the fact that he failed to secure the qualifying marks required for the purpose, but he was declared to have passed by mistake. In the present case, as I have already pointed out, there is however no question of any deficiency in the petitioners regarding the qualification required for the purpose of admission. In the present case it is not that the petitioners did not pass the qualifying examination necessary for admission to the concerned course.

10. The third decision relied upon by the learned Advocate for the respondents in the present case is the decision of the Division Bench of Allahabad High Court in *Sanjai Kr. Singh v. Vice-Chancellor, Purvanchal University*, reported in 1950(3) All In Ed C 642. Purvanchal University to which Udai Pratap College was affiliated, granted formal permission to the college to enroll students in M. Sc. (Agriculture) Part-I fixing the ceiling of 15 students in each department, namely, Economics, Horticulture and Animal Husbandry and Dairying. The college, keeping in view its resources, admitted six students in Animal Husbandry and Dairying Department up to 1978 and on the increased availability of resources, the management decided to admit two more candidates with effect from 1979 onwards. The Admission Committee constituted under the Rules for admission of students for M. Sc. (Agriculture) Part-I for the session 1988-89 consisting of the three Heads of Department under M. Sc. (Agri.) met on 23rd September, 1988 and recommended 8 candidates for Animal Husbandry and Dairying Department along with a waiting list prepared in accordance with the merits and it was duly notified on 26th September, 1988. The writ petitioner No. 2 of that case was placed at serial No. 8 in the waiting list and the writ petitioner No. 1 was not

included in the waiting list because of his low percentage of marks. In the middle of session the Head of the Department, Animal Husbandry and Dairying Department of the college issued a notice dated 2nd January, 1989 notifying that two more admissions were to be done in M. Sc. (Agri.) I (Animal Husbandry and Dairying) and only those candidates were eligible for admission who had applied in that year and that those desirous of admission should contact him up to the 7th January, 1989 and the admission would be strictly on merit out of those present on 7th January, 1989 at 10 a.m. The petitioners in response to the aforesaid notice claimed to have submitted admission forms and deposited tuition fees in the college on the 7th January, 1989. The principal of the college by his letter dated the 18th/19th January, 1989 warned the three Heads of the Department of Agriculture Faculty not to flout the usual norms of number of seats and the merit of the student to make out of the way admission and sent the copy of the letter to the Office Superintendent of the College, to screen out the cases, if any, while forwarding forms to the university. There were some correspondence between the Principal of the college and the Head of the said department, and the Principal of the college then passed the impugned order dated the 2nd March, 1989 and held that since the recommendations for admission were not in order and were based on some extraneous consideration, it was not possible to entertain their admission and the petitioners were in turn informed accordingly and thereafter they moved the writ petition. The court in the background of the facts and circumstances of that case refused to interfere with the impugned action of the Principal of the college. The court took notice of the fact that the Head of the Department admitted the petitioners beyond the number of seats fixed by the college in the middle of session and the admission of the petitioners was not done by the Admission Committee and there was no vacancy in the Department of Animal Husbandry and Dairying. The court also found that the petitioners were in collusion with the Head of the Department and got the admission by manipulations in collusion with the Head of the Department. It was observed by the court in the circumstances that any concession shown by the court towards the petitioners, who got their admissions by manipulations in collusion of the Head of the Department concerned, would cause a heavy blow to fair play in the matter of admissions of the students in the institution. We may however notice that the facts of the present case are totally different. There in the reported decision the admission of the petitioners was not done by the Admission Committee which was the appropriate authority for the purpose. In the present case it is not the case of respondents that the admission of the petitioners was done not by the proper authorities. As we have seen in the present case the authorisation letter for admission was issued by the competent authority, namely, the Secretary to the Faculty Council for Post-graduates Studies in Arts, Commerce and Law. It is not the case of the respondents that he was not the proper authority in this connection. The case of the respondents is that the admission was given erroneously and by mistake. There is no whisper anywhere either in the resolution of the Executive Council or in the affidavit-in-opposition that there was any collusion or manipulation in connection with the admission of

the petitioners. In the said reported decision the admission was given in the middle of the session. In the present case the admission was given at the beginning of the session. In the said reported decision there was no vacancy in the concerned department when the two petitioners were given admission. In the present case there were three vacancies yet left against which the university authorities admitted the three petitioners and the three petitioners were also finding place in the merit list prepared by the university for the purpose of such admission. In paragraph 8 of the said reported decision in Sanjai Kr. Singh v. Vice-Chancellor reference has been made to another case namely, Vinod Kr. Singh v. Vice-Chancellor where the court interfered with the action of cancellation of admission. The Division Bench deciding the case of Sanjai Kr. Singh v. Vice-Chancellor took notice of the distinguishing features of the case of Vinod Kr. Singh v. Vice-Chancellor where the petitioner was granted relief against cancellation of admission. The court noticed that in the case of Vinod Kr. Singh the petitioner was admitted by the Admission Committee in the vacancy caused by the departure of another student from the college but the proper procedure was not followed in admitting him and Vinod Kr. Singh alone was not found to be at fault and he was admitted against a vacancy. The facts of the present case rather appears comparatively akin to certain relevant aspects of the case of Vinod Kr. Singh. In the present case also the petitioners were given admission by the competent authority of the university and such admission was given against available vacancies and there is no allegation of any malpractice or manipulation in regard to the admission of the present petitioners. That being so the decision in Sanjai Kr. Singh v. Vice-Chancellor (supra) does not seem to be attracted to the present case.

11. To recapitulate, it is not that the petitioners do not have the necessary qualification for admission to the concerned course. In fact their names also find place in the merit list prepared by the university for such admission. There is absolutely no allegation of any manipulation, malpractice or collusion in the matter of admission of the petitioners, far less on the part of the petitioners. The university as it appears from the resolution of the Executive Council as well as of the affidavit-in-opposition in the case seems to have taken it to be a case of accidental mistake on the part of the university to admit the petitioners without offering admission to the other priority candidates of the merit list. Even at the risk of repetition I have no hesitation to say that giving of admission to any candidate by ignoring the priority claim of other candidates finding place in the merit list is absolutely undesirable and is also highly reprehensible as it defeats the legitimate claim of the deserving candidates. There is no doubt that I would not have hesitated for a single moment to dismiss the writ petition if it were a case of admission by collusion or manipulation. But even according to the university authorities it appears to be a case of innocent or accidental mistake on the part of the university and by reason of such innocent or accidental mistake on the part of the university the petitioners unsuspectingly took admission by availing the offer of admission, and such offer and admission have obviously

kindled an aspiration in the minds of the petitioners that they being qualified for admission and having been admitted by the university, will not be deprived of the opportunity to prosecute their studies for no fault on their part. They also changed their position by taking admission not only to the course but also to the hostel, and were attending classes. Their admission to the course is not per se illegal. Even if any irregularity is there in the form of supersession of others in the matter of admission, they were not responsible for the same. Therefore even if the university has given them provisional admission and even if there were any irregularity in the matter for which the University is responsible, it was incumbent upon the university authorities namely, the Executive Council to be circumspect and responsive to the delicacy of the situation.

12. Does the cancellation of the admission of the three students admitted by mistake cure the irregularity or mistake committed by the university and who bears the brunt of the decisions of the university, -- the first decision being the decision to give admission to the students by breaking priority thereby unduly depriving the priority candidates and the second one being the decision to cancel such admission on the ground of mistake without trying to fix up responsibility for such mistake and without taking into consideration whether such cancellation of admission really cures the mistake or purges the university of the wrong committed by mistake? These decisions affects two different sets of students but the University suffers no consequence although the entire situation stemmed out of its own fault. Well, if there were still three vacancies to be filled up from the merit list and those vacancies were to be offered to the other priority candidates at the first instance, can that object be attained by simply cancelling the admission of the candidates who have been mistakenly given admission? The Executive Council does not take any decision that on cancellation of the admission of these three candidates the three seats will be offered to the other candidates in accordance with the merit list although the last date for admission might have elapsed in the meantime. The result is that with the cancellation of admission of these three candidates the three valuable seats remain vacant in the concerned session which benefits neither the university nor the deprived students, not to speak of the students whose admission has been cancelled.

13. Having regard to the facts and circumstances I am of opinion that the situational fairness demands that the petitioners being only three in number and having no fault of their own in the matter, should be allowed to continue their studies in the course in which they have been admitted instead of being jettisoned at this stage inasmuch as cancellation of admission, in the complexity of the situation, practically serves no purpose. The mistake or error in the matter of admitting the petitioners by breaking the priority claim of others, if there be any, is the creation of the University and therefore the responsibility or the brunt of the same must be borne not by the students but by the university itself to the extent it can be made feasible by striking a possible balance. The university undoubtedly has committed a grave injustice to the candidates whose priority claim it has ignored by giving admission to the petitioners. The situational

demand for doing complete justice particularly at this stage, to all concerned as far as feasible when the session has just begun (and the classes I understand were also suspended for quite some time at this stage) in my assessment, requires that the university should create three more seats in the M. A. Part-I class of the session 1993-94 so that the students whose priority claims were bypassed by erroneously giving admission to the petitioners can yet be accommodated. The number of candidates being three only it will not be difficult for the university, if necessary by extra efforts, to accommodate three more students in the said course. Even the resolution of the Faculty Council meeting dated the 22nd March, 1994 annexure-K to the affidavit-in-opposition also contemplates and provides opportunity for increasing the intake capacity in its decision No. 1 where it is stated that if the departmental committee decides to increase the intake capacity beyond the stated quota it has to be approved by the Faculty Council. Therefore to meet the situation arising out of its own fault and to do justice to all concerned I direct the respondent university and its concerned authorities to increase the intake capacity by three more seats in the M. A. Part-I Sociology and Social Anthropology course for the session 1993-94 and admit three more students from the merit list in accordance with the priority of claim out of those candidates who may still be willing and available to be admitted in the said course of the said session. For that purpose the university will display within a period of 10 days from this date in their Notice Board the list of candidates according to their position in the merit list who should have been offered admission before the three writ petitioners were admitted and ask them to appear before the appropriate authority at a particular date and time, leaving a margin of at least 7 days, if they are interested in getting admission in the said session in the said subject so that out of them three candidates present on the particular date and time may be given admission on the basis of their position in the merit list. Simultaneously with the posting of the said notice in the Notice Board O'f the University the university will also give insertion in the local newspaper Uttar Banga Sambad that a list of candidates in the order of priority in the merit list has been displayed on the Notice Board of the university for admission of three more students in the concerned department and the intending candidates may apprise themselves of the position from the list notified in the notice board of the university. In view of the facts and circumstances elaborately discussed above the impugned action of the North Bengal University and its authorities in cancelling the admission of the petitioners is hereby quashed with the direction that the petitioners shall be allowed to continue in the concerned course. The writ petition stands disposed of accordingly. Since this order has been made to meet the ends of situational fairness, the same may not be treated as precedent.

14. Order accordingly.