
(1987) 09 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 1261 of 1986

Pranab Kumar Dey

APPELLANT

Vs

The Dibrugarh University, Dibrugarh and Others

RESPONDENT

Date of Decision : 21-09-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Dibrugarh University Act, 1965 — Section 13, 18

Citation : AIR 1988 Guw 61

Hon'ble Judges : K.N. Saikia, C.J.; S.N. Phukan, J

Bench : Division Bench

Advocate : D.N. Barua, C. Baruah and A.K. Maheswari, for the Appellant; P. Prasad, Sr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Saikia, C.J.—The petitioner challenges the notice dated 13th Nov. 1986 issued by the Registrar, Dibrugarh University calling upon him to show cause as to why the degree in Law (LL.B.) conferred on him by the Dibrugarh University should not be withdrawn on the charge of his having fraudulently increased his marks obtained by him at Final Law examination.

2. After obtaining B.Sc. degree the petitioner studied law under the Dibrugarh University (hereinafter referred to as "the University"), and having passed the date Law Examinations he appeared in the final LLB. examination, but he could not clear the first paper on the subject "Civil Procedure Code, Limitation Act and Arbitration Act". As per the Rules he was allowed to appear only on the said subject, namely, "Civil Procedure Code, Limitation and Arbitration Act", in the examination held in Oct. 1984 and was shown to have secured 39 marks in the said paper. Under the University Rules a candidate was required to secure 45% marks in the aggregate and 30% of the marks in each of the four papers. Earlier the petitioner secured the following marks :

Second paper-- 50 Third paper -- 46 Fourth paper -- 45

When 39 marks secured in the first paper were added the total was 180 marks and as such 45% of the total marks, and accordingly, he was declared passed in the 2nd Class. The petitioner was granted a provisional pass certificate by the University whereafter he applied for and was enrolled as an Advocate in the Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura on 16-8-1985 and his name was entered in the Roll of Advocates u/s 17 of the Advocates Act and since then he had become a member of the Dibrugarh Bar Association and had been practising law at Dibrugarh.

3. It appears there were some allegations against two tabulators and the Vice-Chancellor of the University by his Notification dated 5-4-1986 reconstituted the Enquiry Committee to enquire into the allegations against the two Tabulators, namely, (1) Dr. K.D. Gogoi and (2) Shri R.S. Ladia, of the Law Examination held in Oct. 1984 and the three Members of the Enquiry Committee sat on 7th, 8th and 9th April, 1986 and reported, amongst others, as follows :

"In the paper "Civil Procedure etc.", Roll No. 30, Shri Pranab Kr. Dey secured 17 in the first half. The scrutiniser Shri R.S. Ladia changed it to 19 by giving 4 marks with his initial, disfiguring marks awarded by the examiner to question No. 8 of the answer script. The examiner posted marks secured for each question on the cover page as well wherein it is seen that the examiner posted "2" marks for question No. 8 which has been changed to 4 by overwriting. This is an offence.

In the second half of the same paper, the examiner posted 12 marks both in the marksheet and on the cover of the answer script, Both the Tabulators had taken the plea that they read it as 17 instead of 12 as the figure "2" was over written. The committee is of the opinion that this was not done by the examiner but by somebody else. The scrutiniser Dr. K.D. Gogoi did not care to get the marks distinctly posted in the marks from the answer script during the scrutiny".

4. The minutes of the meeting of the 166th Executive Council of the University held on 30-9-1986 on agenda item No. 3 (To report the working of the University since the last meeting) (1-9-1986) read as follows :

"The Registrar reported the working of the University, the Vice-Chancellor also informed the members briefly about the "Gherao" by the under-graduate students by Dibrugarh University on 4-9-1986. The members also noted the decision taken by the under-graduate board in this connection held on 5th September, 1986.

Justice S.K. Dutta then stated that he had earlier pointed out that actions should be taken against the two students who fraudulently took law degrees, and thereby committed a fraud on the University. As such, either their degrees should be withdrawn or their cases be handed over to the police.

The Executive Council took note of Justice S.K. Dutta's contention and decided to constitute a committee to enquire into the matter and to submit a report. The members of the committee are -

1. Justice S.K. Dutta ... Chairman. 2. Dr. N.K. Choudhur ... Member 3. P.K. Bhuyan ... " 4. Registrar, D. U. ... Convenor

The committee was authorised to proceed with the inquiry and report to be submitted to the Executive Council and then put up before the Under Graduate Board. The council also fixed the quorum of this committee as well as the committee constituted by the Executive Council in its meeting held on 29-30 July '86 vide item No. (7) concerning B. Pharma department and decided that two members present in the committee meeting would form the quorum."

5. The impugned notice has accordingly been issued by the Registrar. It reads :

"Whereas there was an allegation that you in collusion with two tabulators viz. Dr. K.D. Gogoi and Shri R.S. Ladia got the marks obtained by you in the subject of Civil Procedure Code, Limitation and Arbitration Acts fraudulently increased in the Final Law Examination, October 1984;

Whereas on investigation by a committee appointed by the Vice-Chancellor a prima facie case was found against you;

Whereas the Executive Council decided to draw up proceedings against you for the withdrawal of your degree in Law, fraudulently obtained as aforesaid and appointed a committee consisting of the following persons to inquire to the matter viz.

1. Justice S.K. Dutia ... Chairman 2. Dr. N.K. Choudhury ... Member 3. Dr. P.K. Bhuyan ... Member 4. Registrar, D.U. ... Convenor.

Now, therefore, you are called upon to show cause why the degree in Law conferred on you by this University should not be withdrawn on the following charge :

CHARGE

You in collusion with the two tabulators viz. Dr. K.D. Gogoi and Shri R.S. Ladia got the marks obtained by you in the subject of Civil Procedure Code, Limitation and Arbitration Acts fraudulently increased in the Final Law Examination, Oct. 1984. But for this fraud you would have been unsuccessful in the said examination.

You are to submit written explanation within one month from receipt of this notice and to say within the said period whether you will like to be personally heard. If you do not take any steps in your defence the case will be disposed of ex parte."

6. Admittedly the petitioner has not , shown cause pursuant to the impugned notice and has instead filed on 15-12-1986 this petition on which a Notice of Motion was issued on 22-12-1986 returnable by 19-1-1987, and later a Rule was issued on 20-3-1987. In the connected Misc. Case No. 322/87 by order dated 20-3-1987 further proceeding pursuant to the impugned notice was stayed till

disposal of the Civil Rule; and the University was granted liberty to move this Court for modification, cancellation or alteration of the said order, if so advised. The University-filed an application in Misc. Case No. 729/87 for vacating the stay order and the petitioner filed an affidavit-in-opposition thereto. On 22-7-1987 on the prayer of the learned counsel for the parties, this case was ordered to be posted for hearing on 4-8-1987. It was specifically ordered that the parties might file and exchange affidavits in the meantime, otherwise, the application for vacating the interim order should be treated as an affidavit in opposition filed in the Civil Rule and the affidavit-in-opposition filed in that Misc. Case should be treated as an affidavit-in-reply in the Civil Rule. No further affidavits have been filed except one by the petitioner after the minutes of the Executive Council were produced by Mr. Prasad.

7. Mr. D.N. Barua, the learned counsel for the petitioner, canvasses, inter alia, following contentions : (i) that the Enquiry Committee against the two Tabulators having nowhere reported any fraud on the part of the petitioner in respect of the examination held in Oct. 1984, the decision of the Executive Council of the University to draw up proceedings against the petitioner for withdrawal of his degree in law, and the issuance of the impugned notice pursuant thereto, prejudging the issue, are acts of malice in law and facts and as such illegal and liable to be set aside; (ii) that the Executive Council without first considering the recommendation of the Post Graduate Board, has no jurisdiction to initiate any such proceeding and hence the proceeding is without jurisdiction and liable to be quashed; (iii) that the Registrar of the University was a party to the Examination Board as referred to in Section 13(d) of the Dibrugarh University Act, hereinafter referred to as "the Act, and as such his inclusion in the Inquiry Committee is against the principle of natural justice, and it has vitiated the proceedings; (iv) that the University having not initiated any such proceeding against other students who were also reported against by the Investigating Committee, this proceeding against the petitioner alone is discriminatory and is violative of Article 14 of the Constitution of India and hence liable to be set aside; and (v) that the provisions of Section 18(a) of the Act conferring power of withdrawal of a degree on the Executive Council is void being against public interest and violative of Article 19(1)(g) of the Constitution of India.

8. Mr. Prasad answers that the Executive Council being the highest executive body of the University has the power and jurisdiction to constitute the committee to inquire into the matter of the results of its examination against the petitioner; that there having been clear finding against the petitioner regarding manipulation of his marks by the tabulators, there can be no question of any malice either in law or in fact in instituting the inquiry and in issuing the impugned notice to the petitioner to show cause; that the Inquiry Committee is purely a fact finding committee and its report will have to be forwarded to the Undergraduate Board, LL.B. being an Undergraduate course; that the conducting of the inquiry is within the exclusive jurisdiction of the University and is not to be interfered with by the Court; that the petition is premature as no action

straightway is being taken against the petitioner; that each individual candidate's case being separate and independent there could be no question of any discrimination or violation of Art 14 in instituting the instant proceedings; and that the Registrar having been a statutory officer under the University in connection with the examination his inclusion in the instant committee as convenor is not violative of any principle of natural justice.

9. We now deal with the rival contentions. The first main contention of Mr. Barua is that the Executive Council has no jurisdiction to institute the inquiry for the purpose of withdrawal of the degree. This contention must be examined on the basis of the relevant provisions of the Dibrugarh University Act, 1965, hereinafter referred to as "the Act", the Statutes and the Ordinances framed thereunder. u/s 3(1) of the Act, the Chancellor; the Vice-Chancellor, the Rector and the members of the Court, the Executive Council, and the Academic Council, so long as they continue to hold such office or membership shall constitute a body corporate by the name of "The Dibrugarh University". Section 4 of the Act enumerates the powers of the University. Clause (iv) thereunder empowers the University "to hold examinations and grant to, and confer degrees, diplomas, certificates or other academic distinctions and to deprive persons of any degrees, diplomas, certificates, or distinctions granted to or conferred upon them by the University for good and sufficient cause". Clause (xviii) empowers it "to do all such other acts and things, whether incidental to the powers aforesaid or not, as may be requisite in order to further the objects of the University". Section 14 specifies the authorities of the University. The Executive Council is an authority under the Section. Section 18 specifies the powers and duties of the Executive Council. Subject to the provisions of the Act and the Statutes, the Executive Council shall have the powers and duties, inter alia, (a) "to institute and confer degrees, titles, diplomas, certificates and other distinctions to be conferred on the basis of examinations and to withdraw any such degree, title, diploma, certificate or other academic distinctions previously conferred, after considering the recommendations of the Post-Graduate Board and the Under-Graduate Board, as the case may be. Mr. Baruah at one stage submitted that the Executive Council has no power to constitute any Committee. However, in view of the provisions of Section 18(j) which empowers the Executive Council to constitute an Examination Committee and Clause (n) mentioning about the Finance Committee, the submission is confined to Enquiry Committee. However, Clause (p) gives the residuary power to the Executive Council and we have not been shown any other provisions for constitution of Enquiry Committee. Hence we hold that under Clause (p) the Executive Council has the power to constitute an Enquiry Committee to inquire into the questions relating to examination results. But it cannot straightway proceed to withdraw any degree previously conferred without considering the recommendations of the Post-Graduate Board and the Under-Graduate Board, as the case may be. As we find from the resolution of the Executive Council that the report of Enquiry Committee is to be sent to the Under-Graduate Board the resolution constituting the Enquiry Committee cannot

be said to be without jurisdiction or ultra vires the powers u/s 18 of the Act.

10. The Under-Graduate Board is an authority u/s 14 of the Act. Section 23 of the Act prescribes the constitution and Section 24 of the Act specifies the powers and duties of the Under-Graduate Board. Under that Section subject to the provisions of the Act, Statutes and Ordinances, the Under-Graduate Board shall have the powers and duties, inter alia (c) "to make recommendations to the Executive Council for the award of scholarships, prizes and other awards and for the conferment of degrees, diplomas, titles, certificates and other academic distinctions in the Under-Graduate Courses. It may be noted that the Under-Graduate Board has not expressly been conferred the power to recommend withdrawal of degrees. The Post-Graduate Board, however, u/s 22(c) has the power to recommend to the Executive Council for the withdrawal of degrees. In view of the absence of express power of recommendation for withdrawal of degree on the part of the Under-Graduate Board the power may be implied from the provisions of Section 18(a). However, it is for the University to consider this question.

11. Mr. Barua raises two other objections to the impugned notice. Firstly, it is submitted that a particular member of the Executive Council spoke about the fraudulent raising of marks by two students and that very member ought not to have been included in the Enquiry Committee and such inclusion amounts to allowing one to be Judge in his own cause. We are not impressed with the submission. The fact that a particular member happened to suggest in the Executive Council that action should be taken against the students if they fraudulently raised their examination marks, as alleged, it cannot be said that it was the member's own cause and, therefore, he would "be disqualified to be a member of the Committee. Nothing personal against the individual member has been alleged. We accordingly hold that by inclusion of that member in the Enquiry Committee" the principle of "nemo judex causa sua" has not been violated Next he submitted that the Registrar, who was a witness before the Investigating Committee constituted earlier by the Vice-Chancellor ought not to have been included in the Enquiry Committee as he would be interested in upholding his own evidence given earlier before the Investigating Committee. We are unable to accept the submission in the form it is made. The Registrar is an officer of the University. u/s 12(1) of the Act he is a wholetime salaried officer of the University. Under Sub-section (2) thereof he shall be the Secretary of the Court, the Executive Council, the Academic Council, the Post-Graduate Board, the Under-Graduate Board, the Finance Committee and the Selection Committee but shall not be deemed to be a member of any of these authorities except that of the court. u/s 13 of the Act, the powers and duties of the Registrar includes the power (c) "to issue all notices convening meetings of all Authorities and Committees of which he is the Secretary, to keep minutes of meetings of all such Authorities and Committees", and, (j) "to performs such other work as may from time to time be assigned to him by the Executive Council or the Vice-Chancellor". From the resolution of the Executive Council it is clear that the Registrar is not a

member but only the convenor. He would not, therefore, participate as a member. We, therefore, hold that the appointment of the Registrar of the University as the convenor of the Enquiry Committee would also not violate the principle of "nemo judex causa sua."

12. It is contended for the petitioner that the first two recitals in the impugned notice about there having been an allegation that the petitioner in collusion with the tabulators got the marks fraudulently increased and that the Investigating Committee found a prima facie case against the petitioner are not borne out by facts in as much as no such allegation was investigated by the Investigating Committee and no such finding was arrived at. It is submitted that the petitioner having completed his examination had nothing to do with the preparation of the results and if there was any negligence on the part of the tabulators, as had been found by the Investigating Committee, the petitioner could not be in any way made responsible for it and even if the petitioner's marks were so raised that would not imply any allegation against the petitioner. Mr. Prasad demurs saying that the expressions "allegations" and "charges" have been used to give the petitioner a reasonable opportunity of knowing what has been inquired into by the Committee. It is not that the Investigating Committee did not find anything in respect of the petitioner's marks. The Investigating Committee clearly found that the petitioner (Roll No. 30) secured 17 marks in the first half which was changed to 19 and in the second half while the Examiner posted 12 marks both in the mark sheet and the cover of the answer scripts the tabulators raised it to 17 and the digit "2" was overwritten. The Committee was of the opinion that this was not done by the Examiner but by somebody else. In face of the above findings of the Investigating Committee it cannot be said that there was nothing against the petitioner whatsoever justifying the institution of an Enquiry Committee, as has been done by the Executive Council, for sending its report to the Under-Graduate Board. After such a finding has been recorded by the Investigating Committee we are not persuaded to hold that the Executive Council acted unreasonably in adopting the resolution to institute an Enquiry Committee. The Executive Council has the power to confer and to withdraw the LL.B. Degree if there are material to raise a doubt whether a degree was rightly conferred or not, the Executive Council acting in accordance with the provisions of the Act, the Statutes and Ordinances, is acting within its exclusive jurisdiction in appointing an Enquiry Committee whereby the petitioner's degree is not directly and immediately affected. The petitioner has been asked to show cause and as such, he shall have every opportunity to show that the allegations are either nonexistent or false and that he was in no way to be held responsible and punished for what has been found out by the Investigating Committee in respect of his marks over which he had no control.

13. The petitioner's next contention that the acts of constituting the Enquiry Committee and drawing up the charge are acts of malice in law and fact has also to be rejected in view of the finding of the Investigating Committee regarding his marks being raised. Malice in fact, express malice or actual malice means ill-will,

evil motive or personal spite. In law an act is malicious if done intentionally without just cause or excuse. So long as a person believes in the truth of what he says is not reckless, malice cannot be inferred from the fact that the belief is unreasonable. A malicious act is a wrongful act, intentionally done without just cause or excuse. In *The Regional Manager and Another Vs. Pawan Kumar Dubey*, it was observed that when there was enough of impropriety and unreasonableness in reverting Sughar Sing, solely for a stale reason, which had become logically quite disconnected to make out a case of malice in law even if it was not a case of "malice in fact". If an authority acted on what were, justly and logically viewed, extraneous grounds, it would be a case of malice in law. Acting on a legally extraneous or obviously misconceived ground of action would be a case of "malice in law". Malice in law is use of power affecting other's rights for an improper object. Motive signifies the reason for conduct. Sometimes "motive" may be used in the sense of evil motive, or it may signify doing an act wilfully without just cause or excuse. In law of torts if conduct is presumptively unlawful, a good motive will not exonerate the defendant; if the conduct is lawful apart from motive, a bad motive will not make him liable. The general irrelevancy of evil motive in tort was affirmed by the House of Lords in *Bradford Corporation v. Pickles* (1895) AC 587 and *Alien v. Flood* (1898) AC 1. "A man is said to act "maliciously" when he intended to do the very unlawful act with which he is charged, or if the act is the necessary consequence of some other criminal act in which he was engaged, or where the act charged was the probable result of the act contemplated, who either foresaw or ought to have foreseen the consequences and yet persisted in the unlawful act in which he was charged." Malice in fact or express malice or actual malice in the sense of ill will or spite or any indirect or improper motive in the mind is to be distinguished from malice in law which is presumed to exist in an injurious action without justification or excuse.

14. In *Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another*, the difference between "malice in fact" and "malice in law" was pointed out. Malice in law may be assumed from the doing of a wrongful act intentionally but without just cause or excuse or for want of reasonable or probable cause. A person who inflicts injury upon another in contravention of law is guilty of malice in law (*Shearer v. Shields* (1914) AC 808). In the instant case no ill will or spite has been alleged in the petition.

15. Applying the law of malice to the facts and circumstances of the case and need for maintaining the standard and purity of the University examination and the powers and duties of the University Executive Council in regard thereto, we are unable to hold that the action of the Executive Council in constituting the Enquiry Committee and the action of the Committee in issuing the impugned notice is an act of "malice in fact" or "malice in law". Nor can the action be said to be unlawful or wrongful. Taking a degree by fraudulently raising marks, if proved, would affect the integrity and purity of the whole examination system. The question cannot be said to have been stale. Action taken to find out whether

it was so can neither be held to be wreckless, without justified cause or to be with ill will, bad or improper motive. The charge framing was not malicious, the contention is accordingly rejected.

16. Next contention is that of discrimination against the petitioner inasmuch as no similar inquiry has allegedly been held against other students in respect of whose marks also the Investigating Committee made observations. Mr. Prasad states that it is not correct that steps have not been taken against others. According to him only two students obtained their degree allegedly on basis of raised marks; and appropriate action was taken. Roll No. 184 was an Intermediate Law student. We are not impressed by the argument that no action could be taken to find out the facts relating to the petitioner unless similar actions are taken against all of them. *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, is clearly distinguishable on facts. So also the decision in *E.S. Reddi Vs. Chief Secretary, Government of A.P. and Another*, Besides, fraud is a vitiating element and he who commits fraud cannot be allowed to say that he must not suffer the consequences of it unless all others committing similar frauds are also made to suffer. "*Fraus et dolus nemini patrocinari debent*" -- Fraud and receipt should defend or excuse no man. "*Fraus et jus nunquam cohabitant*" -- Fraud and justice never dwell together. However, the petitioner has not been found to be guilty of fraud. Only enquiry is being made into the facts. The contention is. therefore, rejected.

17. Next contention of Mr. Barua is that by mentioning the punishment the issue is being prejudged. This is not tenable. The petitioner is being told about the case he has to meet and of the consequences in case the charge is proved. The petitioner is being given opportunity to defend himself. The report will be put up before the Under-Graduate Board There is, therefore, no question of pre-judging the issue.

18. We record the submission of Mr. Prasad that the Enquiry Committee is fact finding Committee and it is not authorised to take action against the petitioner. Mr. Barua does not controvert this submission, but submits that facts finding itself affects the petitioner who will be subjected to the findings of the enquiry. For this reason we reject Mr. Prasad's contention that the petition is premature. Mr. Prasad's last submission is that the enquiry is within the exclusive jurisdiction of the University and this Court may not intervene at this stage. We find this submission to be reasonable. The principle of autonomy of the University and the need for doing justice by the Court have to be considered side by side.

19. University's autonomy means its right of self government, and particularly, its right to carry on its legitimate activities of teaching and research without interference from any outside authority. However, consideration of natural justice, abuse of power, mala fide, and other principles of administrative law take judges into areas that cannot be fenced off as academic and beyond proper jurisdiction of the Court. "Students found in the past little solace from the courts.

Courts bowed to the judgment of University authorities acting "in loco parentis" in decisions concerning students. Students placed themselves under the disciplinary authority of Principal or Vice-Chancellor when they accepted the privilege of attending the institution. Judges feared that undue intrusion would undermine the Universities' disciplinary control over students in academic and non-academic matters". However, it has been observed : "The doctrine of "in loco parentis" has lost its strength against constitutional principles. Because a college degree is an important credential to obtain even a clerical job, the courts often attempt to construe statutes and rules in a light most favourable to the student. Students may challenge disciplinary decisions with impunity and with occasional success. University authorities must treat every one fairly as a matter of law".

20. The doctrine of exclusive jurisdiction of University was applied in *Patel v. University of Bradford* (1978) 1 WLR 1488 when re-admission of a failed candidate was refused. The theory of domestic dispute was applied in *Rex v. Dunsheathex parte Meredith* (1951) 1 KB 127 holding that the court would not issue an order of mandamus if there was an alternative remedy open to the applicant. Where there was a visitor of a corporate body, here the London University, the court would not interfere in any matter within the Visitor's jurisdiction, and any question of a domestic nature was essentially one for the Visitor, whose decision upon it was final. These principles applied equally to a corporation setup by Act of Parliament as to a corporation established by charter, and equally to a college as to a University. It was observed that the dispute concerning the refusal of an officer of a University established by Act of Parliament to perform a duty alleged to be placed upon him by statute was a domestic matter within the jurisdiction of the university visitor, and accordingly mandamus would not lie to compel him to perform that duty. However, it is well established that the Universities while holding enquiry under domestic statutes the principles of natural justice have to be complied with. Thus in *University of Ceylone v. E.F.W. Fernando* (1960) 1 WLR 223, after the respondent, a student of the University of Ceylone, had sat for the final examination for the degree of Bachelor of Science, an allegation was made to the Vice-Chancellor that the respondent had prior knowledge of the content of a passage in the German language which had to be translated in one of the papers, a commission of inquiry consisting of the Vice-Chancellor and two others, acting under Clause 8 of the statute of the University, which required the Vice-Chancellor to be "satisfied", inter alia, that any candidate had prior knowledge of the content of any paper, found that the allegation against the respondent, was substantiated and, as required by Clause 8, reported their finding to the Board of Residence and Discipline, who suspended the respondent indefinitely from all University examinations. In an action by the respondent for, inter alia, a declaration that the finding of the commission of inquiry and the decision of the Board of Residence and Discipline were null and void, he alleged that the finding of the commission was contrary to the principles of natural justice in that, inter alia, the evidence of the various witnesses, including that of the person who had made

the allegation was taken in his absence, and he was not aware of the evidence led against him or of the case he had to meet. He was questioned about the matter by the commission. In evidence he denied the allegation. It was held that in the absence in Clause 8 of any express requirement as to the procedure to be followed at the inquiry, it must comply with the elementary and essential principles of fairness, which must as a matter of necessary implication be treated as applicable in the discharge of the Vice-Chancellor's admittedly quasi-judicial functions under CL 8, or, in other words, with the principles of natural justice. The Vice-Chancellor was not bound to treat the matter as a trial, but could obtain information in any way he thought best, and it was open to him, if he thought fit, to question witnesses without inviting the respondent to be present, but a fair opportunity must have been given to him to Correct or contradict, on the facts of this case that had been complied with, in that the respondent had, by letter from the Vice-Chancellor and at interviews with the commission of inquiry, been adequately informed of the case he had to meet, and had been given at the interviews an adequate opportunity of meeting the case alleged against him. The fact that the commission to volunteer the suggestion that the respondent might wish to question the person who had made the allegation against him, or to tender her unasked for cross-examination by the respondent -- was not an omission sufficient to invalidate the proceedings of the commission as failing to comply with the requirements of natural justice in the circumstances of the present case. The mode of procedure adopted by the Vice-Chancellor in bona fide exercise of the wide discretion as to the procedure reposed in him under Clause 8 was sufficiently complied with. The principle of exclusive jurisdiction was also applied in *Thorne v. University of London* (1966) 2 QB 237, whereby the endorsement on his writ and statement of claim the plaintiff, a law student, claimed damages against the defendants, the University of London, for negligently misjudging his examination papers for the intermediate and final LL.B. degree, and sought an order of mandamus commanding the defendants to award him the degree at least justified. The plaintiff had sat for but failed to pass certain examinations for the LL.B. degree; he claimed that his failure was the result of negligence on the part of the examiners. The defendants, who had entered an unconditional appearance to the writ, applied to strike out the plaintiffs writ and statement of claim and to dismiss the action on the grounds that it was frivolous, vexatious and disclosed no reasonable cause of action. The Judge acceded to that applicaion, struck out the writ and statement of claim, and dismissed the action. On an application by the plaintiff for leave to appeal it was held, dismissing the application, that all questions affecting the construction and carrying into effect of the regulations of a University with respect to examinations and degrees were within the exclusive jurisdiction of the visitor to the University and were not justiciable by the High Court; and that accordingly, the plaintiffs action was not maintainable and was properly dismissed

21. In *Sanasam Udhop Singh Vs. Pheiroijam Kunjaraj Singh and Others*, it was held that the Executive council was the chief administrative authority of the

University; and that the University had got the power to confer a degree. It had also got the power to provide for the academic requirements of the students who had joined the University and also the power to maintain discipline of the University. In order to exercise those powers some additional powers had been given to the University with sufficient guidelines. The court held that there were sufficient guidelines for exercise of that power.

Nripen Goswami was conferred a degree of Bachelor of Arts by the Gauhati University in the Convocation held in 1965. Earlier in Nov. 1964 he got himself admitted in P.G. M.A. Class. Some disturbances having occurred in the University it decided to expel him and cancel his degree (B.A.) which was upheld by the High Court.

22. In *Board of The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, it was observed that in dealing with writ petitions against the others of the Universities or Education Boards, cancelling the examinations results of candidates who were declared to have been passed, it was necessary to bear in mind that educational institutions like the Universities of the Boards set up enquiry committee to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic tribunals to decide all relevant questions in the light of evidence adduced before them. In the matter of adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. Unless there is justification to do so the Court should be slow to interfere with the decisions of domestic tribunal appointed by the educational bodies like the Universities. While dealing with the validity of the impugned orders passed by Universities under Article 226 the High Court is not sitting in appeal over the decision; its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order. Enquiries held by domestic tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunal must scrupulously follow rules of natural justice, but it would not be reasonable to import into these enquiries all considerations which apply to criminal trials in ordinary Courts of law.

23. In *Principal, Patna College, Patna and Others Vs. Kalyan Srinivas Raman*, it was held that matters falling within the jurisdiction of educational authorities should normally be left to their decision, and the High Court should interfere with them only when it thinks it must do so in the interest of justice. In *Latika Sarma Sarkar Vs. The University of Calcutta and Others*, it had been held interpreting Section 9 of the Calcutta University Act that until conferment of degree by University, publication of results is only provisional and the Vice-Chancellor can appoint a review committee to revise those results and when there is no irregularity in the procedure, the revised results cannot be interfered with under

Article 226. Where after the provisional publication of the results allegations about conduct of examination affecting results are received, appointment of review committee by the Vice-chancellor to review the result was held to be proper. Similarly, in *Chinmoy Das Vs. University of Calcutta*, it has been held-that penalty in a disciplinary proceeding by a quasi judicial body must be on the basis of the findings arrived at. In *Prem Parkash Kaluniya Vs. The Punjab University and Others*, it was held that whether an examinee has copied at examination is a matter for the Standing Committee of the University to decide. The conclusion reached on evidence before it cannot be re-examined by the Court except on certain very limited grounds. In *Naren Das v. The Gauhati University* 1973 G LR 49 : AIR 1973 Gau 19 it was reiterated that in the matter of disciplinary action against student for using unfair means the basic minimum of natural justice must be observed and the violation thereof will render the order liable to be set aside.

24. In *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, where in the ordinary meeting of the University Syndicate under the item "other matters, if any," the Vice Chancellor, who presided over the meeting, put the question of a leakage of a question paper of certain examination was discussed and after careful consideration the Syndicate unanimously passed a resolution that they were satisfied that there was leakage of the question paper and that examination in that particular paper be cancelled, it was held that the resolution was validly passed and that in mandamus petitions, the High Court or the Supreme Court would not act as Court of appeal and consider and examine the facts for themselves. It was further held that it was not the function of the Court of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question was entrusted by the law. The University authorities acted honestly as reasonable and responsible men confronted with an urgent situation as they were entitled to act. This was decidedly not the sort of case in which a mandamus ought to issue.

25. By and large Court's attitude towards academic autonomy in theory and in practice is not specifically changed though with the changing socio-educational conditions the Court's attitude towards the University is adjusting itself. The Court still respects the University autonomy and confined its function to hold the University accountable to the Constitution of India, to the University Acts and Statutes, and to other laws and regulations applicable to Universities. Judiciary is called to supervise alleged breaches of conduct within narrow limits. Respects towards " University autonomy prevents the Courts from substituting their judgment for the judgment of the authorities that are entrusted with the academic responsibilities by law.

26. A University Degree admittedly is a ticket for a better life, which, their holders find worth litigating to preserve. University autonomy is subject to recognised constraints. Apart from the process of law or procedure, consideration of natural justice, abuse of power, mala fides and other principles of administrative law cannot be fenced off as academic and beyond proper

jurisdiction of the Courts. Court also bowed to the judgment of the University authorities acting "in loco parentis" in decisions concerning students who placed themselves under the disciplinary control of the University.

27. Courts exercise restraint in deciding University cases when University authorities have acted within their authority, exercised their judgment in good faith, and followed the applicable laws. Within these recognised restrictions Universities have autonomy to act. When the University authorities err, the courts act within their autonomous sphere to correct errors of fact and interpretation. There is thus a dichotomy between legal and academic matters. Courts interfere when Universities break the law but hesitate to dislodge decisions of academic bodies. If the Chancellor or any authority decides an academic matter or an educational question the court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the Court out. In legal affairs the views of educational experts are entitled to great consideration but not to exclusive wisdom.

28. In *Nrushingha Charan Sarangi Vs. Chancellor, Utkal University and Another*, the petitioner submitted a thesis for Doctorate and appeared in the viva voce test but his result was not published. The Chancellor of the Utkal University in exercise of powers u/s 5(7) of the Utkal University Act annulled the resolution of the Syndicate appointing the Board of Examiners to examine the thesis paper of the petitioner and hence the examination of the thesis was held to be void. The Chancellor had directed the Syndicate to constitute a fresh Board of Examiners and to conduct a fresh viva voce test after restoring the status quo ante in the matter. It was held that the action of the Chancellor was in accordance with law and the petitioner could not claim the result on the basis of the examination by the Board which was cancelled by the Chancellor.

29. Applying the foregoing principles of law to the facts and circumstances of the case we find that the power of conferment and withdrawal of degree having been entrusted to the University through the Executive Council on recommendation of the Post-Graduate board or the Under Graduate board as the case may be, the matter is within the exclusive jurisdiction of aforesaid University authorities. The Court is only to see whether the constitutional provisions, the provisions of the Act, the Statute and the Ordinances and the principles of natural justice have been complied with by the University authorities. Within these limiting principles the jurisdiction is exclusively vested with the University and the court will not substitute its judgment for those of the authorities. The responsibility of maintenance of discipline and the purity and integrity of University examinations have been entrusted to the University. True, that the University degree in law is a ticket for the legal profession and the petitioner is not to be deprived of it except in accordance with the provisions of law and the principles of natural justice. The petitioner has only been asked to show cause and he is being given the opportunity to defend himself.

30. We have not been shown valid reasons as to why Section 18(a) of the Act

should be held ultra vires. In view of the foregoing decisions, are unable to hold the provision of Section 18(a) to be ultra vires Article 19(1)(g).

31. We, therefore, are unable to quash the impugned notice. However, from the impugned notice it appears that the Executive Committee decided to draw up proceedings against the petitioner for withdrawal of his degree. Except the resolution of the 166th Meeting of the Executive Council dated 30-9-86 no other materials have been produced before us to show that the impugned notice had the approval of the Executive Council. It is for the Executive Council to consider this matter keeping in view the purpose of the Enquiry Committee with information to the petitioner. The petitioner has not otherwise been able to show any violation of the provisions of the Constitution, the provisions of the Act. Statutes and the Ordinances or any principles of natural justice. Subject to the above observation this petition is accordingly found to be without merit and hence it is rejected. The Rule is discharged The stay order dated 20-3-1987 in Misc. Case No. 322 of 1987 stands vacated We, however, make no order as to costs.

S.N. Phukan, J.

32. I agree.