

(1980) 04 CAL CK 0030
In the Calcutta High Court
Case No : Civil Rule No. 4000 (W) of 1979

Probodh Kumar Bhowmick

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 25-04-1980

Acts Referred:

Bengal General Clauses Act, 1899 — Section 22
Constitution of India, 1950 — Article 226

Citation : 84 CWN 641

Hon'ble Judges : Sabyasachi Mukherji, J

Bench : Single Bench

Advocate : Bholanath Sen, B. Banerjee and T. Pal, for the Appellant; N. Ray, Tapash Ch. Ray and Sumit Kr. Panja, for the Respondent

Judgement

Sabyasachi Mukharji, J.—This is an application by one Probodh Ku mar Bhowmick who claims to be a Professor of the University of Calcutta, Department of Anthropology. The petitioner's case shortly is that the petitioner was appointed as a Lecturer of Anthropology of Bangabasi College, Calcutta, in the year 1952. In the year 1960, the petitioner states that he had obtained the Ph. D. degree in Anthropology. The petitioner joined the Calcutta University as a part-time Lecturer in the Department of Anthropology in September 1962 and thereafter in April 1963 the petitioner was appointed as a whole-time Lecturer. According to the petitioner the petitioner submitted a thesis entitled, "Socio-Cultural Profile of Frontier Bengal", and according to the petitioner after the approval of the said thesis by the adjudicators, the petitioner was awarded the "Doctor of Science", what is popularly known as D. Sc. degree in Anthropology. He claims that he is the only D. Sc. in Social Anthropology of Calcutta University, and on July 21. 1970 the petitioner was appointed as Reader in Anthropology, and in September 1976 the petitioner was appointed as the Professor and Head of the Department of Anthropology. On the expiry of two-year term as the Head of the Department the petitioner was reverted back to the post of Professor in or about September 1978. The petitioner, further, states that he was appointed as University Grants

Commission Visiting Professor in Social Anthropology which is known as Professor of Eminence in the Department of Social Anthropology of S. Venkateswara University in Tirupati in Andhra Pradesh. The petitioner, further, claims that he has written a number of books in Anthropology in English and Bengali and contributed about 140 original papers in the subject to various scientific journals. The petitioner also claims to have been the President of the Indian Science Congress of Archaeology Section in the year 1973 in Chandigarh Diamond Jubilee Session. It is the case of the petitioner that in view of his distinction in Applied Anthropology the petitioner was invited to participate in the International Symposium in Applied Anthropology held in Amsterdam. He also asserts that he has attended numerous symposiums and seminars either as a participant or as President. He also claims to be the Joint Editor of "Man and Life", the organ of the Institute of Social Research and Applied Anthropology. In the last 10th International Ethnological Congress, 1978, the petitioner was a member of the National Committee. The petitioner also is a member of the Panel Committee of the University Grants Commission and has participated in the selection of lecturers and readers. The grievance of the petitioner, is, that the petitioner came to know from a publication in the newspaper in the Statesman on 8th May, 1979 and other leading newspaper of Calcutta of the same date, that the Calcutta University Council had by a resolution at its meeting held on 7th May, 1979 decided on the basis of an alleged Committee's report, to revoke the D. Sc. degree conferred upon the petitioner in the year 1967. The petitioner challenges in this application the said action of the University of Calcutta. The petitioner has stated that due to certain conduct of the teaching staff incited by the present members of the Academic Council, to the particulars of those allegations for my present purpose it is not necessary for me to go, there was great indiscipline and chaos in the department and there was an Enquiry Committee the particulars whereof I shall refer later on. The petitioner has also made serious allegations of bias against several members of the committee, to which also it is not necessary to deal with, in the view I have taken. The said committee, however had not been appointed to enquire either into any conduct specifically of the petitioner, or to the legality or validity of the granting of the D. Sc. degree at all. This position is manifest and apparent from the records of this case.

2. In the affidavit-in-opposition filed on behalf of the University of Calcutta by one Shri Pratip Kumar Mukherjee there is some history of this alleged cancellation. It appears there was a resolution passed on the 7th May, 1979 at the Special Meeting of the Calcutta University Council. The resolution, inter-alia, was to the following effect :--

1. Resolved that the Report of the Enquiry Committee on the Deptt. of Anthropology be adopted and that the Chairman. Prof S: R. Das and other members of the Committee be accorded sincere appreciation of the Council for performing the duties assigned to them conscientiously.

2. Resolved further that :

(i) The D. Sc. degree awarded to Dr. P. K. Bhowmick in a highly irregular manner be revoked and the decision of the Syndicare dt. 14. 9. 67 regarding this matter (item 3) be adhered to;

(ii) That a show-cause notice be issued to Dr. P. K. Bhowmick as to why disciplinary action should not be taken against him for various lapses and dereliction of duties as substantiated in the Report including the unauthorised induction of his close associate Sri R. Gupta, B. A. the then Police Commissioner and then I. G. of Police, West Bengal, into the Department;

(iii) That departmental enquiries be immediately initiated in respect of the Library, stock verification accounting and related matters including the financial transactions between the Department and the Institute of Applied Anthropological Research and Vidisha Complex;

(iv) That a general warning be issued to teachers and students that the Department would be disbanded unless they eschew their rancorous behaviour patterns and observe strict academic proprieties;

(v) That the State Government be requested to enquire if the Department of Anthropology of Calcutta University were utilised in the interests of clandestine Police operations and/or any other related irregularities during the period 1971-77.

In the resolution some other parts dealt with certain other actions against certain other persons with which again it is not necessary for my present purpose to deal with.

3. In the said affidavit-in-opposition how this resolution came to be passed has been narrated, at least what is the version of the respondents. It appears that there were certain allegations about the connection of one Sri R. Gupta, ex-1. G. of Police with the Department of Anthropology and certain alleged irregularities in the awards of Ph. D. degrees to Dr. S. K. Sengupta, Dr. Ranjana Roy and Dr. Mukulika Ghosh. There were certain alleged partiality by teachers in awarding marks at the B. Sc. and M. Sc. examinations and other irregularities of unduly influencing the composition of the Board of Examiners for the benefit of close relatives of the teachers. For this purpose a short note on Enquiry Committee's report has been annexed to the affidavit-in-opposition. It appears that the Pro-Vice-Chancellor placed the note on the table at the meeting of the Council on the 15th June, 1978. On the basis of the report made by the Pro-Vice-Chancellor who is the present Vice-Chancellor, the Council of the Calcutta University Considered the note of the Pro-Vice-Chancellor which stated that a number of representations containing specific allegations and counter-allegations had been made to him by various groups of teachers and students of the Anthropology Department. He requested that the Calcutta University Council may be pleased to appoint a Committee to enquire about the following matters :--

1. Nature of the connection between the dept, of Anthropology and the ex-1. G. Sri R. Gupta and the academic relevance of the same.
2. Some alleged irregularities in the award of Ph. D. degree to Drs. S. K. Sengupta, Ranjana Roy and Mukulika Ghosh.
3. Alleged partiality by teachers in awarding marks at the B. Sc. and M. Sc. examinations and any others irregularities.
4. Unduly influencing the composition of the Board of examiners for the benefit of close relations of teachers

4. The Council resolved that the proposal be approved and the undermentioned Committee be appointed to enquire specifically into the above matters. A Committee was formed consisting of one Prof. S. R. Das as Chairman, Prof. A. K. Sharma, Prof. D. N. Ganguly, Prof. Buddadev Bhattacharyya, Dr. Asis Ray, and the Secretary, U. C. S. T. A. was directed to act as the Secretary of the Committee. From the report of the Committee it was found out that Shri Gupta was closely associated with the Department of Anthropology, more particularly with Prof. Bhowmik and he also extended active help and co-operation in respect of certain departmental activities. The exact nature of the academic relevance of Sri Gupta's association with the Department could not be fully assessed and it was not possible to ascertain as to what extent the Department drew academic benefits from him. The Committee found out that Shri Gupta nourished a desire to become prominent in the academic field, and the Department of Anthropology, more particularly Prof. Bhowmick was perhaps used by him as an agency for the same. Some teachers had also, according to the report, close association with Shri Gupta. Charges against Prof. Bhowmick in respect of aiding and abetting the activities of Shri Gupta, according to the Committee, had been mostly substantiated. It also felt that Shri Gupta might have exercised undue influence upon the University authorities for realisation of his objective as well as those of Prof. Bhowmick. According to the petitioner in his petition, he came to know and contact with Sree Gupta while the petitioner was carrying on research in Midnapore. Sree Gupta was then the Superintendent of Police. But neither in the report of the Committee annexed to the affidavit-in-opposition nor in the affidavit-in-opposition there is any suggestion or allegation that Sree Gupta had anything to do with the obtaining of the doctorate degree by the petitioner. Nor could that be. This is important. The Committee also expressed the view that Prof. Bhowmick for sometime past had been clearing the path for giving a teaching assignment to Shri Gupta in the Department. His appointment as a research guide had been an irregular act on the part of the Ph. D. Committee. Even Prof. Bhowmick wrote to the University for appointing him as a part-time Lecturer. He used to be invited to deliver lectures as a visiting professor. This practice of inviting Sri Gupta to deliver lectures began from the time of Late Prof. M. N. Bose. In fact, he did deliver lectures to the students and teachers and held frequent discussions with the students. The Committee strongly felt that the presence of a person of the position of I. G., namely, Inspector-General, however

a great academician he may be, in the Department of the University in such a manner had been most undesirable more particularly during the period of emergency. Irregularities were also noted in respect of Ph. D. and P. R. S. thesis of Dr. S. K. Sengupta Dr. Ranjana Ray and Dr. Mukulika Ghosh. It is not necessary for me to set out in detail the report of the Committee about these persons. So far as Prof. P. K. Bhowmick was concerned the Committee appointed by the Council reported that there were certain irregularities in respect of the D. Sc. thesis of Prof. P. K. Bhowmick. It has to be stated that this point was not a subject matter of enquiry referred to the Committee by the University Council. The reports of the adjudicators according to the Committee were placed before the Syndicate and it was resolved that the candidate be asked to correct the thesis and resubmit the same to Prof. Nicholas. According to the Committee the thesis was not resubmitted and on the paper bearing the resolution the Vice-Chancellor wrote something to which I shall refer presently. There were certain charges of partiality by teachers in awarding marks at the B. Sc. and M. Sc. examinations and Prof. Bhowmick was one of them. In the background of these there were also charges of influencing the composition of the Board of Examiners, selection of syllabus and other allied matters and also in the matter of field work. In consideration of these the enquiry committee made a report which was considered by the University Council on the 7th May 1979 and the resolution which I have set out hereinbefore was passed.

5. In order to appreciate the alleged irregularities complained of it would be necessary to examine in what condition Prof- Bhowmick, the present petitioner, was awarded his D. Sc. degree. The Regulation for the award of Doctorate of Science (D. Sc.) Degree was framed by the Senate under the Indian Universities Act, 1904. The said Regulation continued to be in force under Statute 2 of Miscellaneous Statutes and Regulation framed under Calcutta University Act, 1951. On 18th September, 1968 the Calcutta University Act, 1966 read with Statutes, Ordinance and Regulations made thereunder came into operation. In terms of Regulations 31 of the Calcutta University First Regulations 1966, the said Regulation for the award of Doctorate of Science Degree continued to be in force.

6. It is stated in the affidavit-in-opposition on behalf of the respondents that from the records of the University it appears that the petitioner submitted his thesis entitled ""Socio-cultural Profile of frontier Bengal" for D. Sc. (Doctorate of Science) Degree in Anthropology on May 4, 1964 and by a resolution of the syndicate, dated June 4, 1965, the said thesis was submitted for adjudication to a Board of three external examiners, namely Mr. Ralph W. Nicholas of Michigan State University, Mr. Morton Class, an Associate Professor of Columbia University in the City of New York and Professor W. G. Griffiths, of Holy-wood, California. So as Prof. Griffiths is concerned in his letter dated 15th September 1965 on the thesis of the petitioner the said Professor wrote his comments. He divided his comments in different parts. One part was "In Criticism" where he has criticised certain portions of the English used by the petitioner. Then in another portion he

has dealt generally on the documentation and sub-division and the incompleteness and certain inconsistencies in certain Chapters. Then "In Appreciation" he has noted good points in the thesis and on the recommendation, which is headed as "Recommendations" he states as follows :-

1. This examiner definitely commends this thesis for the award of the degree of D. Sc. in Anthropology.
2. When publication is undertaken, I would suggest that Dr. Bhowmick carefully check and edit certain parts so as to present a good standard of English throughout.
3. If an evaluation or mark is to be awarded, I would give this thesis a high second division pass.
7. In the covering letter he has mentioned about the disposal of the honorarium that was offered to him for examining the thesis.

The next Professor whose comments are relevant is Prof. Morton Class. He made his report on 16th December, 1966 and he observed as follows :-

In principle, I find the thesis acceptable and I recommend the awarding of the degree, subject, of course, to the minor corrections and revisions in the text recommended by his thesis advisors.

Prof. Ralph Nicholas, who was the Associate Professor of Anthropology in the Asian Studies Centre, International Centre, Michigan State University submitted his report on 20th July, 1967 and observed in the second paragraph of the report as follows :

On the basis of my careful reading of Dr. Bhowmick's thesis I am prepared to recommend him for the D. Sc. degree of Calcutta University. However, I have attached a list of specific comments and revisions that I think should be made in the thesis. In addition, I would like to make some general comments about the thesis.

8. Then he has made certain general comments where he has criticised certain portions about the empirical basis on which the thesis had been presented. He had also suggested that some revisions to be made in the text which are as follows :-

Before publication, at least," I would like to recommend that Dr. Bhowmick make some revisions in his text that will, in my opinion, benefit it greatly. At present, there is hardly any connection among the chapters. I suggest that such connections be made. Also, at present, there are virtually no summaries or conclusions either in individual chapters or at the end of the thesis, these are important to most readers and should be supplied. The accounts of the four villages in Chapter 2 and of the various tribal and Quasi-caste groups in Chapters are very uneven. In each case, I think a common outline should be followed so that comparable information on each village and on each tribe is available.

Finally, before publication, the entire work should be subject to the hand of a competent editor. There are many errors in the use of English words, in spelling and punctuation, in addition to typographical errors, that should be corrected. Also, I believe it is important that all of the Bengali words should be transliterated according to a single consistent scheme, such as the modified system of the Sanskritists that has been fruitfully employed in many distinguished publications of Calcutta University.

9. He has also written about the disposal of the remuneration and he has enclosed a detailed commentary on the different items and in the said commentary he had made certain comments, though the said comments are of no relevancy for the adjudication of the issues involved before me it may not be uninteresting to set out some portion of the comments as perhaps some evidence of what happens when an eminent foreign scholar residing abroad is asked to examine a thesis on socio cultural aspect of a section of people of India. He stated, interalia as follows :--

Page 30, Para 1. It is not realistic to say that in Midnapur, or elsewhere in rural India, "caste demarcations have largely melted away." Until I see Muchi gentleman married to a lady of Brahman caste I cannot accept this statement.

Page 35, Bottom. I strongly object to the reference to "the disintegration of the joint family" without evidence. It is commonly believed that the joint family is breaking down, but it is quite clear that is only a phase in the ordinary development cycle of the Indian family. If there were never any partitionings of joint families in India, the entire country would by this time become single huge joint family--and no one could marry anyone else, since all would be brothers and sisters.

10. When these recommendations were placed before them the Syndicate of the Calcutta University at its meeting on 16th September, 1967 recorded that after consideration of the recommendations it was resolved as follows :--

1. The reports be adopted.
2. That the candidate be asked to correct and revise and resubmit the same for sending it to Prof. R. W. Nicholas.

11, Upon this the then Vice-Chancellor, B. Mullick, on 30th September, 1967 wrote : "I have been through the experts' reports and of the opinion that they have recommended the thesis. He may be admitted to the degree" Thereafter it is stated that the petitioner was conferred the degree of D. Sc. at the Convocation of the University of Calcutta held on the 24th August 1968 in the presence of the Chancellor, Vice-Chancellor, members of the Senate, Syndicate and other invitees of the other Universities. The petitioner was never informed about the decision of the Syndicate dated 16th September, 1967, nor was he ever asked to re-submit his thesis. This position is undisputed and on the basis of the said degree of doctorate the petitioner has been granted two increments to

the knowledge of the members of the Syndicate and Senate of the Calcutta University and indeed it is the case of the petitioner that several persons had been awarded Ph.D. degrees having worked under him and the petitioner has stated his subsequent career which I have enumerated briefly hereinbefore.

12. The challenge in this application under Article 226 of the Constitution is to the action -taken on the 7th May, 1979 which I have set out hereinbefore. In respect of this challenge on behalf of the petitioner it was urged, firstly, that the University had no power to cancel the degree in the manner it had done. Secondly, it was submitted that the University had no power to review its order. Thirdly, it was urged that the petitioner had not been given any opportunity before the purported action was taken and there has been violation of principles of natural justice and the action of the University was wholly without jurisdiction. So far as to the power of the University my attention was drawn by learned advocate appearing on behalf of the University to the fact that at the relevant time when the petitioner was admitted to the degree of D. Sc. the Calcutta University Act, 1951 was in operation. According to the provisions of the said Act, to which my attention was drawn, according to Section 2(g) and 2(k), Section 4(6), Section 10, Section 9, Section 17, Section 18, Section 21, Sub-Section (o) and (q) read with Section 15, Section 18, Section 17, Section 18(3) and Section 27 the Senate was the appropriate authority to deal with conferment of the degree and the matters pertaining to the conferment of the degree. The Vice-Chancellor as such was the executive head in-charge with the duty of enforcing or carrying out the decision of the Senate or the Syndicate. Therefore, according to the University there was no proper conferment of the degree decided by the Senate and what the Vice-Chancellor had purported to do was wholly without jurisdiction. Therefore, according to the University the subsequent action was merely rectification or correction of the wrong done by the Vice-Chancellor in admitting the petitioner to the Degree. The Senate or the Syndicate had not recommended the conferment of the degree. According to the Registrar of the Calcutta University the relevant regulation for the degree of Doctor of Science provided, inter alia as follows :--

1. Any Master of Science or Master of Science (Tech.) of the University of Calcutta, may offer himself as a candidate for the Degree of Doctor of Science provided three years have elapsed from the time when he passed the examination.

Any Doctor of Medicine or Master of Surgery or Master of Obstetrics or Doctor of Philosophy (Ph. D.) in Science of the University of Calcutta may also offer himself for the Degree of Doctor of Science.

2. The thesis mentioned in Regulation 2 and the original contributions if any, mentioned in Regulation 3, shall be referred by the Syndicate to a Board of three Examiners.

3. If the thesis is approved by the Board, and if the candidate has obtained a

First Class at the examination for the Degree of Master of Science or has obtained the Degree of Doctor of Medicine or Master of Surgery or Master of Obstetrics or Doctor of Philosophy (Ph. D.) in Science he shall not be required to submit to any further written examination; but he may be required by the Board, at their discretion, to appear before them to be tested orally or practically, or by both these methods, with reference to the thesis, and the special subject selected by him. The Board shall report to the Syndicate the result of the examination of the thesis, and of the oral and practical examinations, if any and if the Syndicate, upon the report, consider the candidate worthy of the Degree of Doctor of Science, they shall cause his name to be published, with the subject of his thesis, and the titles of his published contributions (if any) to the advancement of science.

4. A diploma under the seal of the University and signed by the Vice-Chancellor shall be delivered at the next Convocation for conferring Degrees to each candidate who has qualified for the degree.

5. Every candidate shall be at liberty to publish his thesis, and the thesis of every successful candidate shall be published by the University, with the inscription : "Thesis approved for the Degree of Doctor of Science in the University of Calcutta.

13. In these circumstances, it was submitted that the University had acted within its power. It was, secondly, submitted that it was merely a question of rectifying or correcting a mistake committed. The petitioner himself had no legal right to the entitlement of the notice as such correction was sought to be made of a wrong done by the University itself. It was urged that there was no guilt of the petitioner which was sought to be rectified. In this connection it is interesting to set out certain portions of the affidavit of the Registrar of the University of Calcutta in paragraph 3, sub-paragraph (i).

The convocation is a formal meeting of the senate where various Degree, Diplomas etceteras are awarded to recipients on the basis of the results of individual candidates, as accepted and approved by the Syndicate. While conferring the said purported degree in its convocation the authorities of the University overlooked the illegalities and irregularities, committed by the then Vice-Chancellor Dr. Malik in awarding degree in favour of the petitioner. In fact, neither the members of the senate nor those of the syndicate attending the said convocation had any opportunity to consider the case of the petitioner for the award of the said degree in his favour. The said members had no opportunity to apply their mind as to whether the award of the degree in the convocation was properly or improperly done, scrupulously satisfying the statutory provision for the award of D. Sc. Degree since convocation is nothing but a decorative function of the Senate where large number of various kinds of Degrees are handed over to candidates on the assumptions that each case has already been checked verified by appropriate university authorities.

14. He further stated in sub-paragraph (n) of paragraph 3 as follows :-

The Council, however, did not recommended for the issue of Show Cause Notice in respect of the award of the said Degree as the award in favour of the petitioner was a nullity and was made possible as a result of the purported act of the former Vice-Chancellor, which was not an official act of the former Vice-Chancellor for and on behalf of the University, In this connection, I repeat and say that the Vice-Chancellor has no power to override the decision of the syndicate against the statutory provision. The aforesaid irregularity being committed by the Vice Chancellor and not by the petitioner it was considered by the Council that no Show Cause notice is necessary in the instant case.

15. In paragraph 13 of the said affidavit the said Registrar stated as follows :

The Calcutta University Council adopted the present resolution against an act of the then Vice-Chancellor who without any authority and acting in violation and/or contrary to the provision of the Calcutta University Act and the Statutes framed thereunder took a decision which was ultra vires on the face of the records. In the premises the petitioner has nothing to say with regard to the said decision and the conferment of the D. Sc. degree upon the petitioner on the basis of the said ultra vires decision which did not create any right in favour of the petitioner. It would appear from the facts and circumstances stated hereinbefore that the petitioner had nothing to say in respect of the illegality committed by the then Vice Chancellor. Further, the matter being in respect of examination of the thesis of the petitioner, the University authorities thought it bonafide that the said matter cannot be disclosed to the petitioner and as such there was no question of making any show cause notice to the petitioner. If, however, in the subsequent meeting of the Calcutta University Council, the Council decides that before affirming the said resolution the petitioner should be given an opportunity of making representation then steps would be taken to do so accordingly.

16. It was also urged that in any event, though no formal notice had been given to the petitioner when the enquiry regarding the conduct of the association in the Department of Anthropology regarding Sree R. Gupta, had been taking place, the petitioner was aware in substance of the charges against the petitioner. Therefore, there was substantial compliance with the principles of natural justice. It was, also, urged that there was no question of power of review because under the relevant provisions of the Calcutta University Act, the University could control the education and therefore had the power to do that was necessary for this purpose. It was also emphasised that in view of Sections 16, 17 and because of, specially the Section 22 of the Bengal General Clauses Act, the University had power to recall any order or any privilege or a degree passed or conferred on the petitioner and therefore there was no bar n reviewing and, as such, there was no error in reviewing its previous order. In any case, learned advocate on behalf of the University, submitted that if any injustice had been caused to the petitioner by not giving him any specific opportunity of meeting the charges, such injustice might be rectified by appropriate directions that the order would not be given effect to until the petitioner was given fair opportunity to make his

representation.

17. In my opinion, in view of the relevant provisions of the Calcutta University Act, 1966 read with the notification, it is indisputable that both the Acts being the Calcutta University Act, 1966 and the Calcutta University Act, First Statutes 1966 came into operation on the 18th September, 1968 and, therefore, at the time when the petitioner was admitted to D. Sc. degree, the Calcutta University Act, 1951 was operative. But, if that was the position, the question is, whether the University has the power to recall a degree granted at a convocation to a student or to a thesis holder. There is no proper definitions of the expression convocation in the legal dictionary which deals mainly with the expression convocation" in the context of convocation of clergy of Centerbury or York giving an indication as to what expression "convocation" conveys. According to the. Shorter Oxford dictionary (3rd Ed.) one of the meanings of convocation is the action of calling. But popularly known, of which judicial notice can be taken, convocation of a University is public action when the University admits its student and proclaims to the world that a student has either passed the particular examination or has been admitted to several degrees at which he is conferred a degree at the convocation. On behalf of the petitioner, it was urged that even assuming that the degree of D.Sc, had been conferred on the petitioner under the Calcutta University Act, 1951, in view of Section 58 sub-section (7) subclause (e) of the Calcutta University Act, 1966 the rights and privileges flowing from the degress conferred or granted under the Act of 1951 would enjoy the same privileges as are granted to the degrees conferred under the Act of 1966 and the statute as formed thereunder. Sub-section (7) of Section 58 of the Calcutta University Act, 1966 repeals the Calcutta University Act of 1951 but clause (e) provides :

All things done or deemed to have been done and all actions taken or deemed to have been taken by the former University under the Calcutra University Act, 1951, shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to be things done or actions taken by the University under this as if this Act had been in force when such things were done or such actions were taken :

Provided that until such repeal reference to the Vice-Chancellor under the said Act shall be deemed to the reference to the first Vice-Chancellor

The other proviso is not relevant for my present purpose. Therefore, basing on this subclause, it was urged that, actions taken under the Calcutta University Act, 1951 if it was not inconsistent with the provisions of the Calcutta University Act, 1966, would be deemed to have been done or taken under the Calcutta University Act, 1966.

18. Now, so far as the convocation and conferment of the degrees are concerned, though there are no specific sections dealing with such matters in the Calcutta University Act, 1966 or the statute framed thereunder being the

Calcutta University First Statutes, 1966, Section 140 onwards, specially Section 146 deal with the detailed provisions of convocation. Therefore, in my opinion, on a plain reading of this section, it appears to me that the degrees conferred under the Calcutta University Act, 1951 would be deemed to be also degrees, as if conferred under the Calcutta University First Statutes, 1966 read with the Calcutta University Act, 1966 and those must be judged in that light.

19. If that is the position, then, the question is after a degree has been conferred at the convocation, can the University recall that degree at all ? This question slightly in a different form came up for consideration before me, in a decision in the case of Latika Sarma Sarkar vs. University of Calcutta 75 CWN 319 where I had an occasion to deal with Section 9(6) of the Calcutta University Act, 1966 and I held that under the scheme of the Calcutta University Act, 1966 the Regulation framed there-under and the conventions that had been so long followed until the conferment of degrees and diplomas to any student at the annual convocation and publication of the result and awarding of degree must be considered to be provisional. Section 140 of the Calcutta University First Statutes, 1966 provides that the degrees of the University should be conferred at the Convocation. Therefore, I proceeded on the basis that it was only at the Convocation that the degree was conferred and the degree holder obtained the rights, Under sub-section 6 of Section 9, the Vice Chancellor was authorised, according to me, in the said decision, to take action on behalf of the University. It was, further, held by me that in view of the whole scheme of the Act as well as the Regulations and the Statutes, action, if any taken by the Board of Examiners to appoint a Review Committee would be an action on behalf of the University and I, further, held that the University had the power to appoint a Review Committee, in the facts of that matter and to review as in that case till then no degree was conferred. In the said decision I had also occasion to refer to another decision in the case of Kazi Khurshid Bakht Vs. Asst. Controller and Controller of Examinations, Calcutta University, where it was held that there was no legal right to require a holding of an emergent or a special meeting for conferment of degree on the student, who had passed the required examination. The said decision of mine had gone up in appeal before the Division Bench of this Court in the case of Latika Sharma Sarkar Vs. University of Calcutta and Another, where the Division Bench took the view that under Regulation 32, a Review Committee was to scrutinise the marks assigned to each candidate in the examination and if it considered necessary so to do, to review and revise the marks awarded. To do so, the Review Committee must examine the papers themselves. Without looking into the answer papers it could not scrutinise, review or revise the marks to discharge the obligations under Regulation 32. As it appeared from the minutes of the Review Committee that the answer scripts were not placed before it at all and that it: did not examine or look into the answer papers nor it had any occasion to do so to review and revise the marks in accordance with law but had merely looked at the marks awarded by the sets of examiners and decided that an average of the two sets of marks would be given to each candidate and the

final results published on that basis, it was held finally that the procedure adopted by the Review Committee was not in compliance with the requirements of Regulation 32 and its decision regarding awarding average marks without examining answer papers was liable to be set aside. Therefore, in so far as I held that the Review Committee had power, the Division Bench had set aside that portion of the order and held that the Review Committee in the facts and circumstances of that case had no such power. But the Division Bench had no occasion to deal with other aspect of the matter, viz. as to whether after the conferment of degree at Convocation it could be recalled. As to the applicability of powers under the Bengal Clauses Act, Section 16, 17 and 22 of the Bengal Clauses Act, these do not deal with the conferment of degree as such but deal with the orders passed or licences granted. In my opinion the convocation, being a public act of the University finalises the matter and unless there is specific power, conferment or grant of degrees at a Convocation, by the analogy of the principle of the General Clauses Act, cannot be recalled. Convocation is the act of the Senate, Syndicate, Academic Council, Chancellor and Vice-Chancellor in public. Such recognition granted at the Convocation without any fraud on the part of the recipients of the degrees, which is not the case here, cannot be recalled at all.

2. The application of this principle, is, moreover, strengthened by the facts and circumstances of this case and the observations of the Supreme Court in the case of *The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another*, where it was held that the writ petition was entitled to succeed where the respondent had permitted the petitioner for 13 years to act upon the basis of respondent's action. There Chandrachud, J., as the learned Chief Justice then was, observed, *inter alia*, as follows;--

The writ petition filed by the respondent No. 1 could succeed, in our opinion, on the narrow ground that he had been permitted to function for over thirteen years as secretary of the Bank and that his appointment as Secretary was decided upon in a meeting over which the Registrar of Co-operative Societies had himself presided. The Writ petition in substance is directed not against any order passed by the Cooperative Bank but against the order passed by the Registrar disapproving the appointment of respondent no. 1 as Secretary of the Bank. It was not Open to the Registrar, in our opinion, to set aside respondent No. 1 's appointment as a secretary after having acquiesced in it and after having for all practical purposes, accepted the appointment as valid. It is undesirable" that appointment should be invalidated in this manner after a lapse of several years.

21. If that is the position in case of appointment this position would apply with greater force in the case of degree, publicly granted, acted upon and acquiesced by the University for nearly thirteen years. If that is the position then the question whether there is any scope of application of the power of review is not necessary to be examined, In that light, it is not necessary for me to examine the decision in the case of *Patel Narshi Thakershi and Others Vs. Shri*

Pradyumansinghji Arjunsinghji, .

22. Reliance was also placed on certain observations of the Supreme Court on Promissory estoppel and my attention was drawn to the observations of the Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, as well as to observations of the Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , where the Supreme Court explained the nature of promissory estoppel by saying :--

Doctrine of promissory estoppel has been variously called "promissory estoppel," "requisite estoppel". "Quasi estoppel" and "new estoppel". It is a principle evolved by equity to avoid injustice and though commonly named "promissory estoppel" it is neither in the realm of justice nor in the realm of estoppel. The true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if he would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties and he should be so irrespective of whether there is any pre-existing relationship between the parties or not. The doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application by way of defence. That is no reason in logic or principle why promissory estoppel should also not be available as a cause of action, if necessary to satisfy the equity. It is not necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise. But if by detriment we mean injustice to the promisee which would result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise. If this is the kind of detriment contemplated, it would necessarily be present in every case of promissory estoppel, because it is on account of such detriment which the promisee would suffer if the promisor were to act differently from his promise, that the Court would consider it inequitable to allow the promisor to go back upon his promise. In India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognized as affording a cause of action to the person to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of enforcement of such promise

23, Reliance was also on the observations in the book *Estoppel by Representation* by Spenser, Bower and Turner, 1977 Edition page 48. In the view, I have taken in this matter it is not necessary for me to repeat my decision on the plea of promissory estoppel or estoppel by representation. But independent of the same in the facts and circumstances of the case in the absence of specific power I hold that the University has no power to revoke degree conferred at a convocation after over 12 years.

24. The next aspect of the matter is assuming that the University has the power, has it been validly exercised, or in other words whether there has been violation of the principles of natural justice. It appears to me that the Vice Chancellor had no right to confer any degree and the Senate and the Syndicate were the appropriate bodies. The recommendation of the Senate and the Syndicate was in the light, I have indicated before, that is to say, the recommendations of the Board of Examiners were accepted and the recommendations were couched in such terms, as I have indicated before, which went to show that such recommendations were, at the highest, capable of two interpretations, that is to say, that the Syndicate had unequivocally accepted the thesis or at best they had asked the thesis to be sent to one of the examiners for correcting the English and as such the candidate was asked to resubmit the thesis. If such was the position, then if in such a situation the Vice-Chancellor had construed the resolution in carrying out the order of the Syndicate that the Syndicate had accepted the thesis and all parties, Syndicate, Senate and the Academic Council proceeded thereafter on that basis, then if the University in its wisdom 12 years after, was of the opinion that it should be reviewed, which review I have held it had no power to do then petitioner should have been given an opportunity of representation against any proposed action. An opportunity should have been given to the petitioner and the reasons should have been recorded and after that they could pass the order in the manner it has been done. The University, in this case in its affidavit-in-opposition, has stated in paragraph 13 that there was no question of any opportunity being given to -the petitioner because no negligence or delinquency on the part of the petitioner was being investigated. The mistake of the negligence or the delinquency if any, on the part of the University officials or of the Vice-Chancellor was being investigated, if that is the position, then in view of the internal irregularity if a third party was going to be affected then this should not have been done in the manner it was purported to be done. Therefore, on that principle also, in my opinion, there has been violation of the principle of natural justice.

25. My attention was drawn in this connection also to the observations of the Supreme Court in the case *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, where at paragraphs 63 & 64 of the judgment the Supreme Court had emphasised the basic requirement of the principle of justice to be adhered to So far as this question is concerned, as I have already indicated in this case, Mr. Roy, learned advocate on behalf of the University had fairly conceded that the University was prepared to give to the petitioner opportunity of making

representation before disposing of the matter and such an order may be passed. As I have held the University has no power to deal with this, this the University cannot be given. According to the affidavit of the Registrar of the Calcutta University one gets the impression that the members of the then Syndicate and Senate and other officials of the University was unmindful of their duties and did not apply their minds but he has not explained how the very attentive present members of the Council of the Calcutta University accepted the committee's recommendation that the D. Sc. degree of the petitioner be revoked without remembering this was not a matter referred to the committee and without perusing to consider whether the University had power to revoke decree conferred at a Convocation. In the view I have taken, for the reasons mentioned hereinbefore, the resolution of the University dated 7th May, 1979 in so far as it had resolved that the D. Sc. degree of the petitioner be revoked is hereby set aside and the respondents are restrained from giving effect to this resolution. The Rule is made absolute to the extent indicated above.

In the facts and circumstances of the case there will be no order as to costs.