

(1991) 11 CAL CK 0018
In the Calcutta High Court
Case No : C.O. No. 6706 (W) of 1991

Rabindra Nath Ghosal

APPELLANT

Vs

University of Calcutta and others

RESPONDENT

Date of Decision : 18-11-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : AIR 1992 Cal 207 : (1991) 2 CALLT 465

Hon'ble Judges : K.M. Yusuf, J

Bench : Single Bench

Advocate : Mr. R. Mahapatra and Mr. S.R. Das, for the Appellant; Mr. Pranab K. Chattopadhyaya and Mr. S. Srimani, for the Respondent

Judgement

1. The main contention of the writ petitioner is for a direction upon the University of Calcutta to publish forthwith his complete results with regard to his performance at the M. A. Examination in Islamic History and Culture for the year 1983 along with his mark-sheet. This writ application was moved on on 14th May, 1991 when the Hon"ble High Court after hearing the same adjourned the matter for two weeks after the summer vacation. Immediately thereafter the petitioner"s result was published on 12th July, 1991 declaring him unsuccessful in the Examination.

2. The short case of the writ petitioner, Mr. Rabindra Nath Ghosal, is that he appeared in the M.A. Examination, 1983 in Islamic History and Culture of the Calcutta University which was held in November, 1984. His Roll No, was Cal(N) IHC 274 and Registration No. 35356 of 1970-71. He appeared as a private candidate, The result of this Examination was announced on 6th June, 1985 and the petitioner"s result remained incomplete. He made repeated enquiries at the Enquiry Counter of the University and wrote to the Controller of Examinations by registered post on 10th December, 1990 and also to the Vice-Chancellor on 14th February, 1991. The case of the petitioner is that the non-publication of his result for more than six years is unreasonable, arbitrary and capricious and such

inordinate long delay offends all canons of justice, natural or otherwise.

3. The University of Calcutta filed an affidavit in opposition refuting the allegations of the petitioner by beating the drum that education is not a fundamental right and the petitioner cannot move any writ application as there is no infringement or breach of any legal right. The respondents had acted in accordance with relevant Rules and have duly discharged their duties enjoined upon them and as such the petitioner cannot have any grievance or dissatisfaction. It is stated in the affidavit that the High Court cannot interfere in the domestic or internal administration of the University unless and until there is any element of mala fide or bias. It is very boldly but shamelessly admitted in paragraph 6(iv) of the Opposition that the petitioner prayed for a direction for publishing the result of his Examination held in 1983 and the result was published and the mark-sheet was sent to him on 12th July, 1991 under registered cover and as such the writ petition has become infructuous. It is also admitted that the result of the Examination of 1983 held in 1984 and the result was declared in 1985 and the petitioner's result was announced and/or declared in 1991. The affidavit affirmed by the Controller of Examinations states that as the result of the petitioner remained incomplete because of the posting of marks of 1st Half of VIth Paper in the two copies of Tabulation Rolls differed and this discrepancy was not brought to his notice by the Tabulators, as such this went unnoticed by him till 10th December, 1990. Immediately on receiving the petitioner's application the Controller made enquiry, tried to verify the marks but the answer scripts could not be traced out and the matter was placed before the Vice-Chancellor. who suggested to accept the higher marks and both the Tabulation Rolls were made uniform and the approval was given on 6th April, 1991 by the Vice-Chancellor and the mark-sheet was sent on 12th July, 1991. In the Affidavit the Controller specifically stated on page 6 that "it is not understood why the petitioner did not approach the Result Section for obtaining such information. In any event I have every reason to believe that the petitioner knew his result by making necessary enquiry but deliberately chose to keep silent for a considerable period in order to take advantage of the situation." The allegations in the rest of the paragraphs are denied.

4. This Court by Order dated 6th August, 1991 directed the Vice-Chancellor of the University of Calcutta to constitute a one-man Enquiry Committee consisting of a retired High Court judge to probe into the whole affairs as to withholding the result of the petitioner, Rabindra Nath Ghosai, for the M.A. Examination in Islamic History and Culture 1983 held in 1984 and the result of which was declared on 6th June, 1985 while the result of the petitioner was declared only on 12th July, 1991. I further directed as follows:-- "The Enquiry Committee shall go into the cause of negligence of such a long delay on the part of the Officers and the staff of the University in publishing the result of the petitioner and shall also interrogate the Tabulators who were responsible not to bring to the notice of the Controller of Examinations the discrepancy in the copies of the Tabulation Rolls and the examiners of the subject if they were at fault. While conducting the

enquiry the Enquiry Committee shall also take into account the conduct of the Controller of Examinations. The Enquiry Committee shall also interrogate the petitioner, Rabindra Nath Ghosai, and find out from him as to who was responsible from the side of the Calcutta University to pass on to him the information of his being "unsuccessful" which he himself wrote to the Controller in his letter dated 10th December, 1990 being Annexure "C" to the writ petition. The Enquiry Committee shall also take into consideration Annexure "C" to the writ petition which indicates that the date has been twice struck off, originally it was 21st August, 1989 then it was made 7th August, 1989 and thereafter scribed as 10th December, 1990."So far observation in this regard was concerned in my Order dated 13th September, 1991 I made clear that "the Enquiry Committee shall submit its report on the basis of its finding after considering all aspects of the case and any observation made in my aforesaid Order shall not stand in the way". The above quoted passage from my Order of 6th August, 1991 was a part of the Court's Order and the observations in the order were left open to the go into by the Enquiry Committee.

5. Mr. N. C. Mukherji, a retired Judge of the Calcutta High Court, was appointed as one-man Enquiry Committee. Mr. Mukherji submitted his Report dated 27th September, 1991 to the Vice-Chancellor and the same was placed before the Court by the learned Advocate for the University. In his 6 page Report Mr. Mukherji stated that he interrogated the petitioner, the Controller of Examinations, the concerned Examiner, both the Tabulators, the Officer-in-Charge and the dealing Assistant of the Result Section. The Scrutineer was also summoned but he did not accept the notice and did not appear. In the first part of his Report Mr. Mukherji came to the finding that the petitioner knew about his result and there was no conspiracy between the candidate and any staff of the University. He also commented that in spite of appearing in the Law Examinations in 1985, 1986 and 1988 when he used to visit the University he did not care to know about his M.A. result and also he could not give a satisfactory explanation as to why there was inordinate delay on his part to inform the Controller about the delay in the publication of his result, rather the Enquiry Committee found difficult to find out from the candidate as to why he took five years to write to the Controller. Mr. Mukherji very rightly posed the next question as to why the University published the result of the candidate after 6 years and that also after receipt of the candidate's letter of 10th December, 1990. This in my opinion is the crux of the problem. The Controller explained to the Enquiry Committee the procedure followed after examination which is as under: "The answer scripts along with 4 award slips are sent to the Examiner. The Examiner after examining the script puts the marks on the 4 slips. One he keeps for himself, 2 others for 2 Tabulators and the 4th one for the Scrutineer. The 3 slips and the scripts are sent in sealed covers to the Result Section. The Result Section sends the sealed award slips to 2 Tabulators and sends the scripts and the other award slip to the Scrutineer." The Examiner Mr. Ranajit Kumar Das, Reader of History of Heramba Chandra College, appeared before the Committee

and stated that it was not possible for him to remember whether he awarded 04 or 08 on the mark slips and he did not preserve the mark slip. The script was also not available as it was destroyed by order of the Vice-Chancellor. The Scrutineer did not find any discrepancy between the mark awarded and the mark put on the slip sent to the Scrutineer. The Committee came to the conclusion that as the answer scripts were collected from the residence of Prof. Amar Banerjee, Scrutineer, and disposed of by sale by the order of the Syndicate, it could not be ascertained that the initial mistake was made by the Examiner and he put different marks on the award slips. The Committee next comes to the two Tabulators, Prof. M. Hasan and Prof. M. S. Asad. Prof. Hasan, the 1st Tabulator, produced the mark slip which showed the Examiner put 04 mark and he correctly entered the mark on the Tabulation sheet and the Scrutineer put his initial. There was no mistake or inaccuracy on the part of Prof. Hasan. So far Prof. Asad, the 2nd Tabulator, is concerned, he could not produce the slip and stated that he had not kept the same for so long; but at the same time he stated that he put 08 mark on the Tabulation sheet as he got this mark from the Roll Slip sent by the Examiner. The conclusion of the Enquiry Committee on this point is that it could not be said who actually committed the mistake, the Examiner or the 2nd Tabulator; but at the same time the Committee pointed out that it was clear that one Tabulator put 09 and the other 04, there was discrepancy and this discrepancy was not noted by the Scrutineer though he put his signature on the relevant tabulating sheets. Both the Tabulators submitted a joint report to the Result Section but the Section-in-Charge, however, denied and with emphasis stated that no such report was received by him. The Section-in-Charge stated that none of the Tabulators pointed out this discrepancy and only put "Ind." (meaning result incomplete) in the extreme cage. The Section-in-Charge stated before the Committee that it was not possible for him to take care of results of so many candidates of so many examinations, and the dealing Assistant should have pointed out which he did not. The dealing Assistant, Mr. Subrata Mukherjee, admitted that it was his duty to see the results were incomplete. He stated that he informed the Scrutineer but he did not get any reply.

6. Mr. Mukherji, constituting the one-man Enquiry Committee, came to the following conclusions : --

"1)The candidate knew that he was unsuccessful soon after the publication of the result.

2) In the absence of relevant papers it cannot be said that the Examiner put different marks on the 2 slips of the Tabulators.

3) (a) The scrutineer failed in his duty in not detecting the discrepancy and yet putting his signature signifying that the marks on the Tabulation sheets were correct.

(b) His conduct in not appearing before the Enquiry Committee does not speak

well.

4) The Tabulators did not notice the discrepancy and even if they had noticed, they did not point out the same to the authority. They were under obligation to do so.

5) The dealing Assistant ought to have been more vigilant in pursuing this matter.

6) The Section-in-Charge of the Result Section ought to have made enquiry about incomplete result. The Section-in-Charge of the Result Section or for the matter of that any Officer in the Controller's department must have to see that a result does not remain incomplete for long years.

7) The Controller should find out ways and means and should take such steps so that in future result does not remain incomplete for years as in the present case.

8) I do not find any conspiracy between the candidate and any staff of the University."

7. The conclusion arrived at by the one-man Enquiry Committee in its Report of 27th September, 1991 is of vital importance. It is stated by the Enquiry Committee that according to the statement of the Controller when a candidate makes any enquiry at the Enquiry Counter of the Result Section, he comes to know about his mark in all the papers and as such the candidate knew that he was unsuccessful. It is well-known procedure of the University that after the result of any examination is officially published/announced, the cases of incomplete results could be known by a candidate by producing his Admit Card at a Counter in the Result Section. This certainly does not mean that the result of the candidate was officially announced or published. The petitioner's knowledge of being unsuccessful was derived from the above procedure but his official result was withheld by the University till 11th July, 1991 and was published only on 12th July, 1991. When the M.A. Examination of 1983 in Islamic History and Culture was held in November, 1984 and the result was announced on 6th June, 1985, so whether the candidate knew about his unsuccessful position in the Examination is absolutely immaterial as no official intimation as incumbent on the University was announced/ published/communicated to him and the Enquiry Committee has very rightly pointed out in Observation No. 7 that the Controller should find out ways and means and should take such steps so that in future result does not remain incomplete for years as in the present case. The above part of the Enquiry Report resolves the query made in my order of 6th August, 1991 where I directed the Enquiry Committee to interrogate the petitioner to find out from him as to who was responsible from the side of the Calcutta University to pass on to him the information of his being unsuccessful which he himself wrote to the Controller in his letter of 10th December, 1990. The knowledge of being unsuccessful before 12th July, 1991 does not go against the petitioner but certainly the candidate knew officially about his failure on the publication of his result only on 12th July, 1991. So there was a clear delay on the part of the University in announcing the result of the petitioner by six years one month and

six days which is very apparent on the face of the record and does not need any elucidation, clarification, argument or defence of any nature whatsoever. This is a simple arithmetical calculation, and a tribute to the University's criminal act of callousness and negligence. So far this long inordinate delay is concerned the Enquiry Committee has rested the responsibility upon the Scrutineers, the Tabulators, the dealing Assistant and the Section-in-Charge as is apparent from the Observations Nos. 3, 4, 5 and 6 of the Committee.

8. This Court is not going into the internal affairs of the University but is basing itself upon the conclusion in shape of observations of the one-man Enquiry Committee which made adverse remarks about the Scrutineers who "failed in his duty in not detecting the discrepancy and yet putting his signature signifying that the marks of the tabulation sheets were correct". His conduct was rightly questionable. According to the Committee, The Tabulators did not notice the discrepancy and even if they Had noticed, they did not point out the same to the authority. They were under obligation to do so". Then "dealing Assistant ought to have been more vigilant in pursuing this matter" and "the Section-in-Charge of the Result Section ought to have made enquiry about incomplete result". The above are the findings of the one-man Enquiry Committee and it speaks volumes about the internal administrative affairs of the University and the callousness on the part of the University administration which is under the direct supervision of the Controller of Examinations.

9. The Court accepts the final observations of the one-man Enquiry Committee and from the said observations it is crystal clear that the entire mess was created by the employees and officials and those connected with the result of the Examination of M. A. in Islamic History and Culture, 1983. It was due to the criminal neglect on their part whether they be Scrutineers, Tabulators, dealing Assistant, Section-in-Charge or the Controller that the result of the petitioner could not see the light of the day for over six years.

10. Now it is an admitted position that there was a criminal delay in announcing the result of the petitioner by six years one month and six days and the entire responsibility of this criminal act and negligence rests on the authorities of the Calcutta University. The petitioner could have appeared in the next M.A. Examination if the result would have been announced on 6th June, 1985 or immediately thereafter instead of remaining incomplete for such a long duration. Now, where the petitioner stands today? Let this question be put to the Vice-Chancellor himself. I am sure he would fail to give a satisfactory reply. This act of the University has tarnished the image of the Calcutta University in the sub-continent and also demonstrated to the public the way the results are so negligently tackled by this Institution, once the pride of India. I am firmly of the opinion that the Court dealing with a writ petition has extraordinary powers to give consequential relief to the petitioner and to uphold justice by redressing the grievances not theoretically but practically. The time of long six years already wasted by the petitioner has changed the course of his career and a valuable life

has been misled by the negligent act of the officials of the Calcutta University. Whether a candidate is successful or not, he must know the same at the proper time or immediately thereafter and not to be intimated about the result after lapse of years together. This act itself is enough to inflict upon the Calcutta University an exemplary order.

11. The writ petitioner suffered mental torture, agony and oppression all these years which told heavily upon him coupled with uncertainty of his future career and the responsibility of this heinous drama played with the petitioner rests with the University and the University alone. The Supreme Court in two of its decisions reported in AIR 1984 SC 1026 : Sebastian M. Hongray Vs. Union of India (UOI), and Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others, have dealt with severity of torture, agony and mental oppression as well as suitable consequential relief of monetary compensation. Though the facts were otherwise but the principles enunciated in two cases are no less applicable as well as more deserving and enforceable in the instant case. The jurisdiction of the Writ Court is wide enough to give substantial relief to the petitioner even though not specifically asked for in the writ petition. The prayer (f) which runs thus:-- "Such other or further order or orders as Your Lordships may deem fit and proper" is enough for the Court to do substantial justice. Article 226 confers on the High Court very wide powers which were never possessed before and as the powers under this Article are discretionary, no limit can be placed upon discretion but, of course, the discretion must be reasonable and not arbitrary. The power can undoubtedly be exercised for a non-fundamental right. The concluding words of clause (1) of Art. 226 "and for any other purpose" make the jurisdiction of the High Court quite extensive than that of the Supreme Court because these words are absent from Art. 32. It has been laid down in P.J. Irani Vs. The State of Madras, that the High Court under the jurisdiction like those of the Supreme Court under Art. 32 is not confined to the prerogative writs and the High Court while issuing directions and orders can travel beyond the contents of the writs which are normally issued. It is well-settled now that the High Courts in India should not feel bounded by the procedural technicalities of the English writs, T.C. Basappa Vs. T. Nagappa and Another, It must also be borne in mind that a relief under Art. 226 must be refused solely on purely technical and narrow procedural grounds. The Court can undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned in order to mete out justice in the case. As far as possible the anxiety and endeavour of the Court should be to remedy an injustice when it is brought to its notice. In this connection the case of B. R. Rama-bhadriah v. Secretary, Food and Agriculture Deptt., Andhra Pradesh, reported in B.R. Ramabhadriah Vs. Secretary, Food and Agriculture Department, Andhra Pradesh and others, is of importance. The decision reported in Ganga Singh Vs. Commissioner of Police and Another, also indicates a relief to redress injustice.

12. I have based my findings on the observations of Mr. Mukherji as contained on pages 5 and 6 of his Report. In Observation No. 1 Mr. Mukherji stated that "the

candidate knew that he was unsuccessful soon after the publication of the result". The result was published on 6th June, 1985. The petitioner might have known his result from the Result Section but it was incomplete and was not announced and this is the admitted position. The petitioner's result was declared or published or announced only on 12th July, 1991. Simply knowing that he was "unsuccessful soon after the publication of the result would not have solved the problem of the petitioner until he got the result in his hand so that he might prepare to sit in the next examination. This observation of Mr. Mukherji is merely to shield the University by hook or by crook. In Observation No. 3 Mr. Mukherji stated that "the Scrutineer failed in his duty in not detecting the discrepancy and yet putting his signature signifying that the marks on the Tabulation sheets were correct" and further he stated that "his conduct in not appearing before the Enquiry Committee does not speak well". In Observation No. 4 Mr. Mukherji stated that "the Tabulators did not notice the discrepancy and even if they had noticed, they did not point out the same to the authority. They were under obligation to do so". In Observation No. 5, Mr. Mukherji stated that "the dealing Assistant ought to have been more vigilant in pursuing this matter". In Observation No. 6 Mr. Mukherji stated that the "Section-in-Charge of the Result Section ought to have made enquiry about incomplete result. The Section-in-Charge of the Result Section or for the matter of that any Officer in the Controller's department must have to see that a result does not remain incomplete for long years". In Observation No. 7 Mr. Mukherji stated that "the Controller should find ways and means and should take such steps so that in future result does not remain incomplete for years as in the present case". Thus the one-man Enquiry Committee holds the University squarely responsible for this extraordinary delay.

13. From the above quotations of Mr. Mukherji's observations (Emphasis mine), it is clearly evident that the entire responsibility for this inordinate delay of criminal nature rests upon those persons who were either employees or officials or in any way connected with the Examinations and the publications of the result of the said Examination. The University cannot shrink its responsibility by merely taking the refuge under Observation No. 1 of Mr. Mukherji that the candidate knew that he was unsuccessful soon after the publication of the result. Even if the candidate knew from the Result Section about his incomplete result, he had the right for declaration of his result officially and this was done only after the writ petition was filed on 14th May, 1991 and the result was published on 12th July, 1991. He had to knock the door of the High Court for the redress of his grievance and in my opinion it was not incumbent upon the petitioner to write or to bring to the notice of the Controller of the Examinations about the non-publication of his result. The Affidavit-in-Opposition filed by the University which was affirmed by the Controller of Examinations stated that the petitioner's result remained incomplete due to the fact that the posting of marks in the 1st half of the 6th Paper in the two copies of the Tabulation Rolls differed and this discrepancy was not brought to the notice of the Controller by any one of the

Tabulators till 10th December, 1990. On receiving the application from the petitioner the necessary correction in the Tabulation Rolls were made and the mark-sheet was sent to the candidate by registered post on 12th July, 1991. The contention of the University that why the petitioner did not approach the Result Section of the University for obtaining the information is quite absurd and the conclusion of the Enquiry Committee that the candidate knew that he was unsuccessful soon after the publication of the result is equally without any substance. It is the duty of the Controller to see that all the results of an examination are out and no candidate is left out. This performance of duty, which is incumbent on the Controller, does not require any remainder from an examinee. No candidate is under any obligation to write to any authority of the University if his/her result is not announced. It is the duty of the University as a whole to look into the matter and do the needful.

14. A valuable life has been made to suffer harshly at the hands of the authorities of the Calcutta University by sheer neglect of the authorities and the petitioner was kept in darkness officially of his result for six years one month and six days. Had this crime been committed in the United States or in any European country the petitioner would have been compensated with damages in millions of dollars but, unfortunately, in spite of all the protection guaranteed to citizens in India in the Constitution of Justice, Liberty, Equality and Fraternity, the citizens are being treated in a shabby way and no justice is meted out to them by the black hands of the incompetent autocrat authorities in various walks of life. Whenever an injustice is done to an individual and one pleads for justice, as in the instant case, an attempt is made to gag him and to label him as culprit with counter allegations instead of accepting the guilt fairly with the spirit of healing the wound.

15. I have taken a serious view of this case where the poor petitioner's career has been marred by the negligent act of the authorities of the Calcutta University and six fruitful years of the petitioner's life have been lost. When he appeared in the Examination he was about 34 and now he has crossed 40. The time and the loss suffered cannot be measured in terms of money but still he deserves to be compensated for the heinous crime committed by the officials of the Calcutta University and the University deserves a deterrent order so that the examinees in future are not dealt with in such negligent, callous and criminal manner and the University should not play with the career and fortune of examinees like a football.

16. In that view of the matter, I direct the University of Calcutta and the Vice-Chancellor to pay to the writ petitioner a sum of Rs. 60,000-00 (Rupees Sixty thousand) as monetary compensation and damages by way of consequential relief within 31st January, 1992. I further direct the Vice-Chancellor to take appropriate steps as he thinks fit and proper against the Scrutineer, tabulators, dealing Assistant and Section-in-Charge and above all against the Controller of Examinations and all those who were in any way involved with the publication of

the result of the petitioner's M.A. Examination, 1983 in Islamic History and Culture and who defaulted in discharging their duties.

17. The writ application is allowed by way of consequential relief and the respondents are directed to pay costs assessed at 200 G.Ms, to the petitioner.

18. The Registrar, Appellate Side, is directed to send xerox copies of the Judgment to the Vice-Chancellor and the Controller of Examinations of the University of Calcutta at College Square, Calcutta-73, by special messenger without delay.

19. Let xerox copy of the Judgment be made available to the parties on usual undertaking and upon compliance of necessary formalities.

20. After the delivery of the judgment, Mr. Chatterji, learned Counsel for the University, prayed for the stay of the order. In the facts and circumstances of the case and the discussion made hereinbefore I am not inclined to accede to the prayer. As such the prayer is rejected.

21. Petition allowed.