

(2007) 08 CAL CK 0029

In the Calcutta High Court

Case No : A.P.O. No. 123 of 2007 and W.P. No. 62 of 2004

Rajorshi De

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 08-08-2007

Acts Referred:

Calcutta University Act, 1979 — Section 2(25), 3, 9(6)
Calcutta University First Regulations, 1979 — Regulation 34

Citation : (2007) 2 CALLT 291 : (2008) 2 CHN 827

Hon'ble Judges : Pratap Kumar Ray, J;Prasenjit Mandal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—Heard the learned Advocates appearing for the parties.

2. Challenging the judgment and order dated 17.1.07, passed by the learned Trial Judge in W.P. No. 62 of 2004, this present appeal has been preferred by the writ petitioner. This case has a chequered history which requires a reference for adjudication of this appeal. This writ petitioner moved a writ application being W.P. No. 2472 of 1998 on the grievance that a writ of mandamus should be issued commanding the respondent Calcutta University authority as well as the authority of the concerned Medical College to award average marks in the internal assessment of the papers Anatomy and Bio-Chemistry on the basis of the marks as obtained in the theory examination, oral examination and practical examination of those relevant subjects of the First MBBS Supplementary Examination, 1997 and thereby to direct the respondents to allow his continuation of study in third year MBBS class and to appear in both practical and theory papers. During the pendency of the said writ application, however he sat for supplementary examination and cleared the Bio-Chemistry internal assessment examination but could not succeed in the Anatomy paper. This writ application was disposed of by Amitava Lala, J. (as His Lordship then was) directing the Vice-Chancellor of University of Calcutta to do the needful for

declaring the writ petitioner as a passed candidate of said examination by finding out any rule to exercise his such discretionary power, if any. The language used in disposing of the said writ application is very vital, which reads as such:

Therefore, this is not cast iron case before this Court when Court should apply discretion by declaring him as pass. Now by not having appropriate rule and not having such cast iron case Court has no other alternative but to direct the authority to apply discretion, if it is otherwise permissible and upon considering those in the manner as directed below. Other issues are incidental to the above two main issues.

26. Under these circumstances, the Vice-Chancellor of the University of Calcutta being respondent No. 2 herein is directed to hear out the representation of the writ petitioner and his guardian immediately on receipt of the signed copy minute of the operative part of the order and after giving reasonable opportunity of hearing sympathetically, if necessary by giving hearing at his residence in case of puja holidays and finding out the position of the rules if there is any scope of applying discretion, can apply the same immediately by declaring him as pass on a date much earlier than the next date of examination on 7th October, 1998 so that the petitioner can get benefit of not losing another educational year and can sit in the examination as aforesaid with special permission.

3. The Vice-Chancellor of University of Calcutta considered the matter in terms of the said judgment passed by Amitava Lala, J. negatively by holding that the Vice-Chancellor had no discretionary power to declare a fail student as a pass candidates. The Vice-Chancellor further observed in the said decision dated 3.10.98 that under the University statutes and rules and Regulations there is no provision to consider the scheme as suggested by the writ petitioner whereby irrespective of his failure to clear Anatomy paper he could be declared as a pass candidate in First Professional MBBS Examination. This decision of Vice-Chancellor became the subject-matter of a further writ application, registered as W.P. No. 2590 of 1999, which was unsuccessful, against which an appeal was led, registered as A.P.O. No. 6 of 2001, which stood dismissed by the judgment of Division Bench [coram the Hon'ble Justice Ashok Kumar Mathur, C.J. (as His Lordship then was) and the Hon'ble Justice Girish Chandra Gupta], dated 10.7.01. An SLP was moved against the said judgment and order dated 10.7.01 of the Division Bench aforesaid, registered as SLP (Civil) C.C. No. 8263/2003, which was dismissed as withdrawn on the prayer of the petitioner as the petitioner submitted that in view of the law which permits the authority to grant grace marks he would seek permission to withdraw the SLP to approach the said authority seeking such grant of grace marks, by the order dated 26.9.03. The petitioner thereafter filed a representation to the Vice-Chancellor of University of Calcutta by referring his power to exercise discretion in terms of Clause 34 of the Calcutta University First Regulations, 1979, which reads such:

34. (1) The Faculty Council for Post-Graduate on Council for Undergraduate Studies concerned shall have power generally to add to the marks obtained by

candidates in a subject or paper at any examination in exceptional circumstances to be specifically recorded, and on the recommendation of the Examination Board, where there is one, or the body of examiners where there is no Examination Board, and not otherwise.

(2) Notwithstanding the provisions of paragraph (1), if the Faculty Council for Post-Graduate or Council for Undergraduate Studies concerned is in any case satisfied that injustice has been done or is likely to be done to candidates at any examination in view of the fact that the question paper set in a subject is stiff or lengthy or comprises questions beyond the scope of the prescribed syllabus or contains errors, printing or otherwise, the Council may issue such directions as it may consider necessary.

4. As the Vice-Chancellor did not pay any heed to the representation as made, another writ application was moved registered as W.P. No. 62 of 2004, which stood dismissed by the judgment dated 17.1.07, which is now the subject-matter of appeal in this appeal. Besides the aforesaid legal proceeding as initiated by the writ petitioner, as discussed, the writ petitioner moved in another line of legal proceedings assailing the judgment and order passed by Amitava Lala, J. in his writ application whereby direction was given to the Vice-Chancellor, University of Calcutta to find out any rule by which the writ petitioner could be declared as a pass candidate by exercising his discretionary power by adding 10 marks on the Anatomy subject, which was registered as A.P.O. No. 755 of 1998, unsuccessfully keeping all the points open. On a bare perusal of Clause 34 of the Regulation, which has been considered by the writ petitioner as a provision to exercise discretionary power by the Vice-Chancellor of the University of Calcutta to pass a direction for addition of grace marks, it is our considered view that the said provisions, as already quoted above, has not given any such power to the Vice-Chancellor of University of Calcutta to consider the addition of grace marks in respect of any examination of a student. The said provision practically has empowered the Council for Undergraduate Studies to add additional marks in a subject or paper at any examination in exceptional circumstances only and that too, on the recommendation of the Examination Board where there is one or the body of the examiners where there is no such Board and not otherwise.

5. For consideration of this appeal, we need to interpret Clause 34 at the present moment, with a view to find out whether the Vice-Chancellor of the University of Calcutta got any statutory power in terms of the said Regulation and more particularly, Clause 34 aforesaid to add any marks as prayed for in the representation filed by the writ petitioner after the SLP stood dismissed as withdrawn. We are of the view that the Vice-Chancellor had no power under this Clause to decide that issue. The learned Advocate for the appellant, however, referred the general power of the Vice-Chancellor under the Calcutta University Act, being the Act of 1979, by referring to Section 9(6), which reads such:

The Vice-Chancellor may take on behalf of the University such action as he may deem expedient in any matter which, in his opinion, is either urgent or of an

emergent nature and shall report the same for confirmation at the next meeting to the authority or body which, in the ordinary course, would have dealt with the matter:

Provided that if the action taken by the Vice-Chancellor is not approved by the authority or body concerned, the matter shall immediately be referred to the Chancellor whose decision thereon shall be final.

6. On a bare reading of the said section, it appears that the Vice-Chancellor on emergent situation on behalf of the University may take any action which requires placing of the matter for confirmation in the next meeting of the authority or the body. The word University has been defined in the said Act which means the University of Calcutta as constituted under the Act in terms of Section 2(25) and further u/s 3 it is defined that all persons who may be the Chancellor or Vice-Chancellor of the University or the members of the Senate or the Syndicate so long as they continue to hold such office or membership, shall constitute a body corporate by the name of University of Calcutta. On a bare reading of the aforesaid provisions, we are of the view that under Regulation 34, being only provision to allot the grace on additional marks, the Vice-Chancellor of Calcutta University has to do either by suo motu action or by any other action. Hence, mere filing of the representation to the Vice-Chancellor seeking relief to add the grace marks after the SLP was withdrawn has not empowered the Vice-Chancellor to act. It is a settled legal position that a statutory body vested with the power under a statute can act only on those fields as are prescribed by a statute and he cannot go beyond that. Reliance may be had to the judgments passed in the cases *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, . On the legal principle of limitation of exercise of power by a statutory body, by a Calcutta High Court judgment long back it was decided in the case of *Moinuddin Byapari v. Chairman, Municipal Commission, Dhaka* 40 CWN 17, corresponding to AIR 1949 Cal 20, that when an individual may do whatever he likes save and except as are prohibited by law, whereas a statutory body only can act as prescribed under a statute. A reference to that effect would be beneficial for adjudication of this appeal to the Book of Earl T. Crawford on Statutory Interpretation at page 335, which reads such:

If the statute directs that certain acts shall be done in a specified manner, or by certain person, their performance in any other manner than that specified, or by any other person than one of those named, is impliedly prohibited.

7. Since under the Regulation 34 Council for Undergraduate Studies and also the Board of Examiners have been vested with the power to decide the matter, the Vice-Chancellor had no duty to consider the issue. The present writ application was moved assailing the inaction of the Vice-Chancellor to decide the representation as filed. Hence, for getting the relief in the nature of mandamus directing the Vice-Chancellor to act, the writ petitioner must satisfy that the Vice-Chancellor of the University of Calcutta has a duty under a statute to deal with

the subject-matter for which a representation was filed and he failed to perform his statutory duties and the writ petitioner also has to satisfy that he has a legal right to pray for the same. Nowhere in the writ application he has been pleaded that the Vice-Chancellor under the statute was vested with such a duty to perform and for such in action the petitioner got a right to move the writ petitioner. Hence the writ petition itself was not maintainable on the point as raised. However, the learned Advocate for the appellant at this juncture submits that the writ application was on the premise that when Amitava Lala, J. (as His Lordship then was) disposed of the first writ application directing the Vice-Chancellor to find out the rules for exercising any discretionary power to declare the writ petition as a pass candidate, the Vice-Chancellor had the responsibility to find out that rule, namely, the Regulation 34 and to refer the matter to the said body, which the Vice-Chancellor did not perform, it is, accordingly, submitted that the Vice-Chancellor of the University of Calcutta did not act in terms of the judgment passed by Amitava Lala, J. (as His Lordship then was), as already mentioned. However, from the records it appears that assailing the view expressed by the Vice-Chancellor, University of Calcutta on implementing the order passed by Amitava Lala, J. (as His Lordship then was), writ application was moved unsuccessfully and thereafter the appeal preferred therefrom also stood dismissed and the SLP was dismissed as withdrawn. Hence, it appears that the grievance of the writ petitioner that in terms of the order of Amitava Lala, J. (as His Lordship then was) aforesaid, the Vice-Chancellor did not act in accordance with law, has been considered and decided in earlier writ applications and no fresh writ application is maintainable on such grievance even if we consider that in terms of the judgment delivered by Amitava Lata, J. (as His Lordship then was), in the first writ application, the present representation as filed by the writ petitioner after dismissal of the SLP ought to have been considered by the Vice-Chancellor by taking appropriate steps, as in the appeal led from the earlier writ application, the decision of the Vice-Chancellor was the subject-matter of challenge. Hence we are of the view that no fresh writ application is maintainable on that point.

8. However, the learned Advocate for the appellant at this juncture prays for liberty to file an application for review of the judgment passed in the writ application assailing the decision of the Vice-Chancellor of the University of Calcutta as earlier passed on alleged implementation of the order passed by Amitava Lala, J. (as His Lordship then was) in the first writ application. On such prayer we are of the view that he is at liberty to proceed in accordance with law and we are not expressing any opinion either against him or in his favour in this appeal.

9. Having regard to the aforesaid findings and observations, the appeal is accordingly dismissed. The impugned judgment under appeal whereby the writ application was dismissed is modified by holding that the writ application itself was not maintainable as no prayer for writ of mandamus could be issued on the premise as urged in the writ application.

10. Hence, the writ application also stands dismissed.

11. Let urgent xerox certified copy of this judgment, if applied for, be supplied to the parties.

Prasenjit Mandal, J.

I agree.