
(1981) 09 CAL CK 0022
In the Calcutta High Court
Case No : C.R. No. 7103 (W) of 1979

Ram Narayan Keshori and Others	Vs	APPELLANT
University of Calcutta and Others		RESPONDENT

Date of Decision : 09-09-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1982 Cal 1 : 86 CWN 146

Hon'ble Judges : B.C. Ray, J

Bench : Single Bench

Advocate : Noni Coomar Chakraborty and Ambica Bhattacharya, for the Appellant; N.K. Roy and Sarda Parmar, for the Respondent

Judgement

B.C. Ray, J.—This Rule is directed against the order passed by the Calcutta University approving the resolution of the Board of Discipline dated 10-5-79 cancelling the examination of the petitioners who appeared at the B. Lib. Science Examination held in 1978 and the letter issued by the Board of Discipline intimating the same to the Head of the Department of Library Science of Calcutta University which are annexed to the writ petition as annexures C and D respectively.

2. The salient facts in short as appear from the averments in the petition are as follows. The petitioners appeared in the B. Lib. Sc. Examination in 1978. The said examination was held at Pischall Hall, Darbhanga Building College Street Campus, on and from Aug. 29; 1978 to Sept. 19, 1978 and Classification practice (paper II) examination was held on Sept. 15, 1978. On or about May 24. 1978, the result of the said examination was published but as regards the result of the petitioners they were not published and were withheld with the remark "result withheld" against the name of each of the petitioners. Thereafter on Mar. 28, 1978 copies of charge-sheets were issued by the Secretary, Board of Discipline, to the petitioners intimating them of the charges brought against them and directing them to appear at the meeting of the sub-committee of the Board of

Discipline which was entrusted to investigate into the cases of Breach of discipline at the said Lib. Sc. Examination held in 1978 to be held on 6-4-1979 at 3 p. m. It has also been stated in the said notice if the petitioners defaulted in appearing before the sub-committee on the date of the meeting as mentioned hereinbefore the matter would be decided ex parte without any further reference to them. One of the copies of the charge-sheets as well as one of the copies of the notices have been annexed as annexure A to the writ petition. It has been stated that the said notices are vague and the same did not contain relevant particulars in regard to the said charge-sheet. It has also been submitted that no copy of the report alleged to have been submitted by the examiner Shri P. C. Banerjee was served on any of the petitioners though investigation was sought to be made by the sub-committee on the basis of the above report. The petitioners it is stated, appeared before the sub-committee as directed by the said notice and denied the allegations levelled against them in the aforesaid charge sheet. It has also been stated that while they appeared before the sub-committee the answer scripts which were alleged to be vitiated by copying were not produced nor were the same shown to them in order to give them a reasonable opportunity of knowing in particular the nature of the charges and in controverting them properly. It has been further stated that no evidence either oral or documentary was recorded by the subcommittee in their presence nor they were allowed to cross examine the witnesses examined and/or to controvert the evidence so recorded by adducing evidence in support of their case. The sub-committee adopted certain resolutions at its meeting which were considered by the Board of Discipline at its meeting on May 10, 1979 and the particular matter in question appeared as item no. 9 of the proceeding. A resolution was adopted by the Board of Discipline to the effect that the petitioners' examination be cancelled and the said resolution was recommended to be submitted before the Calcutta University Council for their approval. Accordingly on May 18, 1979 the Calcutta University Council at its meeting under agenda No. 31 considered and resolved that the resolution of the Board of Discipline dated 10-5-1979 with regard to the candidates bearing roll Nos. mentioned therein be approved. This resolution of the Calcutta University Council was intimated by the Secretary, Board of Discipline, to the Head of the Department of Library Science, Calcutta University under communication No. BD/255/RA/B-Lib. Sc./78 dated 2-7-1979 which has been annexed as annexure D to the petition.

3. It has been submitted on behalf of the petitioners that the impugned resolution adopted by the Calcutta University Council is vitiated by non-observance of the principles of natural justice inasmuch as the sub-committee appointed by the Board of Discipline in accordance with the provisions of Ordinance 62 framed under the Calcutta University Act. 1966 did not allow the petitioners any opportunity to be present at the time when it examined Shri P. C. Banerjee on whose report the disciplinary proceeding was initiated and on whose statements as recorded by the sub-committee the charges were held to have been brought home. It has also been contended that the sub-committee which

under proviso to Clause (5) of Ordinance 62 of the Calcutta University First Ordinances. 1966 requires to be consisted of three members and the quorum in the meeting shall be two did not adopt the impugned resolution at the meeting wherein Shri P. C. Banerjee was examined inasmuch as in that meeting quorum was not there as according to the petitioners only one member of the committee, i. e., respondent No. 6 was present. The other member, respondent No. 7, Dr. A. K. Ohdedar, Chief Librarian, was absent and the third member Shri p. C. Banerjee of the said sub-committee was not permitted to participate in the proceeding of the meeting as a member by an order of the Vice-Chancellor on the ground that it was at Ms instance this prosecution and/or disciplinary proceeding was started and respondent no. 5 was asked to be present as an observer in his place. It has therefore been submitted that the meeting of this sub-committee wherein Shri P. C. Banerjee was examined is also bad and the proceeding adopted in the said meeting is illegal and of no effect as it is in contravention of the mandatory provisions of Ordinance 62 Clause (5) of the Calcutta University First Ordinances. 1966. The instant Rule was issued but the prayer for interim order was not allowed.

4. Mr. Chakraborty learned Advocate appearing on behalf of the petitioners, has submitted in the first place that the impugned resolution adopted by the sub-committee wherein Shri P. C. Banerjee was examined is bad on the ground of non-observance of the principles of natural justice as the said witness was examined without intimating the petitioners to be present or in other words, not in the presence of the petitioners and without giving the petitioner any opportunity of cross examining the witnesses and also of adducing evidence to controvert the statements and/or evidence given by Shri P. C. Banerjee. It has been next submitted by Mr. Chakraborty that at the meeting when Shri P. C. Banerjee was examined by the sub-committee there was no quorum and only one member i. e. respondent no. 6 Dr. Barua alone was present and respondent no. 5 as an observer was present and vice chancellor was present. Therefore this meeting is bad as there was no quorum and resolution adopted at the meeting is also illegal and unenforceable being contrary to the mandatory provisions of Ordinance 62 Clause (5) of the above Ordinances. It has therefore been submitted by Mr. Chakraborty that the impugned resolution adopted by the Calcutta University Council approving of the resolution of the Board of Discipline taken at its meeting dated 10-5-1979 should be cancelled, quashed and set aside.

5. Mr. Roy, learned Advocate appearing on behalf of the Calcutta University, has on the other hand produced before this Court the answer scripts of most of the petitioners and referring to them submitted that the answer scripts will show the allegations that have been made in the report of Shri P. C. Banerjee which has been annexed as annexure a to the affidavit-in-opposition sworn by Shri Pratip Kumar Mukherjee Registrar of the University of Calcutta. It has been further submitted by Mr. Roy that in the meeting of the sub-committee appointed by the Board of Discipline in accordance with the provisions of Ordinance 62 of the said

Ordinance two members were present. This has been stated in para. 19 of the affidavit-in-opposition where it has been stated that the respondent no. 7, an expert on the subject was present as a member of the sub-committee and he along with respondents nos. 5 and 6 investigated into the charges and thus denied the statements made in paras 23 and 24 of the petition that only one member of the sub-committee was present in the said meeting and not Dr. Ohdedar (respondent no. 7) who is an expert on the subject was present. It has also been stated in para 15 of the affidavit-in-opposition that the petitioners were confronted with the report as also the answer scripts but no satisfactory explanations about the similarity of answers as well similar mistakes committed were furnished by any of the petitioners who appeared before the committee. This statement in p. 15 of the affidavit-in-opposition has been affirmed as true to information from the respondents nos. 5 and 6 and records of the University. However the proceedings of the sub-committee have not been produced before this Court to show if this report was produced and/or placed before the petitioners when they appeared before the sub-committee. Mr. Roy also submitted that principles of natural justice require that definite charges are to be levelled and the copies of the charge-sheets are to be given to the persons charged against and they will be asked to show cause. It is not necessary that the persons charged against have to be given an opportunity of cross examining witnesses or that the witnesses are to be examined in his presence. In support of this submission of Mr. Roy some decisions have been cited at the Bar. Mr. Roy therefore has submitted that since the charge-sheet has been served on the petitioners and they were allowed to appear before the subcommittee appointed by the Board of Discipline to show cause against the charges it cannot be said that there has been violation of the principles of natural justice. The resolution adopted at the meeting of the sub-committee and thereafter on its basis the resolution adopted at the meeting of the Board of Discipline on 10-5-1979 and approved by the Calcutta University Council cannot be questioned as bad being violative of the principles of natural justice.

6. Undoubtedly it is well settled that a public authority while exercising disciplinary powers having civil consequences is under an obligation to observe the principles of natural justice. What do the principles of natural justice mean or in other words what does the term *audi alteram partem* mean. Is that mere formality to be observed by giving a copy Of the charge-sheet and asking him to explain and that will be a sufficient compliance of the principles of natural justice. Even a report is relied upon or some witness is examined at the back of the petitioner charged against and decision is made in the said disciplinary proceeding solely on the basis of that evidence or on the basis of the report it is not necessary to conform to the principles of natural justice to give the petitioner a reasonable opportunity by asking him to be present at the time when the witness is examined and also allowing him to cross-examine the witnesses and/or to adduce any evidence to controvert the statements or evidence of the particular witness and to confront him with report relied upon. If that be the

position then the whole foundation and the basic principles of natural justice will be an empty formality and will be illusory and futile which in this late hour of the day this Court is not prepared to accept. The scope of the principles of natural justice has been very succinctly and elaborately elucidated in the judgment rendered in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, wherein the law prescribing the forfeiting of a passport of a citizen did not provide for giving an opportunity of hearing. Still then the Supreme Court pronounced that the right guaranteed under Article 21 of the Constitution of India demands that principles of natural justice have to be observed in the democratic form of our Government and the citizen whose passport is being cancelled has to be provided with reasonable opportunity of being heard. The Same view was also reiterated in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, where it has been said in no uncertain terms that in the matter of distribution of privileges, contracts, largess by public authorities it is incumbent on them to observe the principles of natural justice. Therefore there is no iota of doubt that the sub-committee which is examining Shri P. C. Banerjee on whose report disciplinary proceeding was initiated and on whose evidence the sub-committee came to a decision and the Board of Discipline after considering the resolution of the sub-committee adopted a resolution to the effect that the petitioners are guilty of breach of discipline in the examination of B. Lib. Sc. held in 1978 it is imperative and it is an impelling necessity in order to observe the principles of natural justice that the witness on whose evidence the resolution is going to be made is to be examined in the presence of the petitioners and the petitioners have to be given opportunity of cross-examining the witness and also if necessary to allow him opportunity to adduce evidence in support of the petitioners' case and to controvert the evidence adduced by this particular witness. This is the immediate and essential requirement of the principles of natural justice. In this case undoubtedly as has been candidly admitted by Mr. Roy, learned Advocate appearing on behalf of the Calcutta University, that Shri p. C. Banerjee was not examined in presence of the petitioners nor the petitioners were ever intimated to be present in the meeting of the sub-committee when this particular witness would be examined nor any opportunity was given to the petitioners to adduce evidence to controvert the evidence adduced by this witness and/or to cross examine this witness. Therefore in these circumstances in my view the principles of natural justice have been violated and have not been observed. For "his infirmity alone the impugned order as embodied in annexure C i. e. the resolution of the Calcutta University Council dated 15-5-1979 is liable to be quashed and get aside. It is not necessary for me to go into and/or deal with the other points raised in the petition. Therefore, for the reasons aforesaid the arguments advanced on behalf of the petitioners succeed and the Rule succeeds.

7. The Rule is made absolute. The impugned order of the Calcutta University Council annexed as annexure C to the petition and also the communication made thereon by the Secretary of the Board of Discipline annexed as annexure D to the petition are illegal and bad.

8. Let a writ of mandamus be issued commanding the respondents to forbear from giving effect to the said resolution of the Calcutta University contained in annexure C and also the communication of the same contained in annexure D to the petition.
9. Let a writ of Certiorari be issued quashing and setting aside the said resolution and also the communication.
10. The University of Calcutta may proceed in this matter in accordance with law.
11. This order is made only with regard to the petitioners who are before this Court.
12. L/Advocates for the parties may take plain copies of the ordering portion of this order, as prayed for.