
(1951) 03 CAL CK 0015
In the Calcutta High Court
Case No : Matter No. 2 of 1951

Samarendra Prosad Chakravarty and Another

APPELLANT

Vs

The University of Calcutta

RESPONDENT

Date of Decision : 07-03-1951

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : AIR 1953 Cal 172 : 55 CWN 443

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : I.P. Mukherjee, for the Appellant; A.K. Sen, for the Respondent

Judgement

Bose, J.—This is an application under Article 226 of the Constitution for an order directing the respondent to withdraw or recall its decision that only such students of Class X of the Chakraberia H.E. School who pass the Test Examination conducted by one Subal Chandra Pal, officiating Head Master of the School and are sent up for the Matriculation Examination in 1951 by him will be admitted to the examination by the University and also for an order on the respondent calling upon it to issue the necessary forms and take other necessary steps for the admission of the petitioners to the ensuing Matriculation Examination.

2. The petitioners are two out of 100 students of Class X of a well-known school in South Calcutta known as Chakraberia High English School now located at 93, Bakul Bagan Row and 23/1, Chakraberia Road South. The said school was originally started in 1857 and was run as a Middle English School until the year 1938 when it was converted into a High English School and it was recognised by the respondent University in terms of the University Act, 8 of 1904, as a school entitled to send up candidates for the Matriculation Examination and the students who have passed the Test Examination held by the said school are entitled to sit for such examination.

3. The respondent University was established and incorporated by Act 2 of 1857

which was passed on 24-1-1857. The object for which the University was established is stated in the Preamble of the said Act to be as follows:

"Whereas for the better encouragement of Her Majesty's subjects of all classes and denominations within the Presidency of Fort William in Bengal and other parts of India in the pursuit of a regular and liberal course of education, it has been determined to establish a University at Calcutta for the purpose of ascertaining by means of examination the persons who have acquired proficiency in different branches of literature, Science and Art and of rewarding them by academical degrees as evidence of their respective attainments and marks of honour proportioned thereunto etc....."

4. By Act No. 8 of 1904 which came into force on 1-9-1904 the constitution and powers of the Indian Universities including the respondent University were defined and the Senate of the University was given power to frame regulations for matters relating to the University with the sanction of the Government u/s 25 of the said Act including the regulations with regard to conditions to be complied with by schools describing recognition for the purpose of sending up pupils as candidates for the Matriculation Examination and the conditions to be complied with by candidates for Matriculation Examination whether sent up by recognised schools or not.

5. Pursuant to the said power contained in Section 25 aforesaid certain regulations were framed for conducting the Matriculation Examination. In Chap. 30, Regulation 2 it is provided as follows:

(i) Ordinarily only pupils who have been educated for at least one school year previous to the date of the Matriculation Examination at a School recognised by the Calcutta University for such purpose, shall be admitted to Matriculation Examination.

In regulation 4 it is provided that the Head Masters of recognised schools shall submit to the Controller of Examinations within such date as may be prescribed by the Syndicate the applications of those pupils and private candidates who have passed the Test Examination together with the necessary fees prescribed in regulation 5.

It is provided in Chap. 10 of the Revised School Code sanctioned by the University of Calcutta that case of late admission of students in the matter of Matriculation class, i.e., cases of first admission after the 15th of February or of admission after the 15th of July, should be reported to the University within a certain time and the University may sanction such late admission if there are exceptional circumstances in support of the application for sanction.

6. It appears that the case of admission of petitioner 1 to the Chakraberia High English School was a case of late admission but it has been sanctioned by the respondent University. Petitioner 2, however, has been educated in the said school for over one school year previous to the examination due to be held in

1951. Both the petitioners have passed the test examination held by the said school between 7 and 12-12-1950 in the usual course and they have been recommended to be sent up for the ensuing Matriculation examination by the Head Master Sri Ganendra Nath Sanyal. The petitioners have deposited with the authorities of the said school the necessary fees prescribed by the regulations of the University.

7. After the publication of the result of the test examination held on 7-12-1950 the Head Master of the school pursuant to the enquiries made by the Controller of Examinations sent a representative to bring from the office of the University the necessary forms required to be filled up by the intending candidates for the Matriculation examination. The said representative applied for delivery of the forms but no such forms were delivered on the ground that the same had already been delivered to some other person.

8. On 18-12-1950 the University through its Assistant Registrar, Mr. P. Banerjee, issued a notice to Mr. Someswar Mukherjee, the Secretary of the Chakraberia School, to the effect that the University had decided that only such students of Class X of the School who passed the test examination conducted by Subal Chandra Pal, the officiating Head Master and are sent up for the Matriculation Examination in 1951 by him will be admitted to the examination by the University. It is stated in the petition that Someshwar Prosad Mukherjee is not the Secretary nor is he entitled to function as such and the said Subal Chandra Pal was only a teacher in the said school and never was or is the officiating Head Master nor had any right or power to hold any test examination of the school. The case of the petitioners is that Ganendra Nath Sanyal has been at all material times the Head Master of the said school and the direction or decision by the University given by their notice of 18-12-1950 is illegal and ultra vires and is mala fide.

9. In order to appreciate this attitude taken up by the respondent University as expressed in the letter of 18-12-1950 it is necessary to state a few facts about the past activities of the Chakraberia School and the part played by the University in relation thereto. It appears that on 17-5-1947 certain persons including the said Someswar Mukherjee constituted themselves into a Managing Committee of the Chakraberia School under the auspices of the South Suburban School Committee. It may be noted that this committee was constituted not in accordance with Clauses 2, 3, 4 and 5 of Chap. I of the Revised School Code approved and published by the University. According to Clause 10 of Chap. I of the School Code the members of the managing committee other than the Head Master hold office for three years from the date when the composition of the committee is completed by election or nomination. It appears that on 23-12-1949 certain charges were framed against Ganendra Nath Sanyal, the Head Master for arrogant, unmannerly and disorderly conduct particularly insubordination and insult showed to the managing committee of the school and for maladministration of the school, for irregular attendance at school, for failure

to keep discipline in the school and for joining the strike of the teachers on 15 & 16-9-1949, for non-compliance with the instructions of the managing committee and so on. On 26-12-1949 a copy of these charges was sent to the Head Master and he was called upon to submit his explanation to these charges. The Head Master, however, on 7-1-1950 instead of submitting any explanation wrote to the Secretary as follows:

"With reference to your letter of 26-12-49 forwarding a copy of a resolution of the managing committee dated the 23rd of December last, I beg to inform you that the charges against me are so palpably unfounded and flimsy that they need no explanation."

It is thus clear that the Head Master treated the resolution of the managing committee with scant respect. The result was that on 15-1-1950 the services of the Head Master were terminated by a resolution of the managing committee. But in spite of such dismissal Mr. Sanyal continued to function as the Head Master being backed by some of his supporters. On 18-1-1950 one Biswanath Bagchi was set up by Mr. Sanyal and his supporters to file a suit in the Court of the Fourth Munsiff at Alipore, being suit No. 143 of 1950 against the members of the Someswar Mukherjee managing committee including the Head Master Mr. Sanyal. On 82-1-1950 a new managing committee was constituted with Mr. R.M. Sen, Solicitor and certain other persons as members thereof including Mr. Sanyal, the Head Master, and it continued to function as such. On 31-3-1950 the University issued a circular to all the schools for electing committee in terms of the Revised School Code. On 14-5-1950 the election at Chakraberia School was held and the said Ad Hoc Committee formed in January, 1950 was elected as the managing committee at such election with Sanyal the Head Master as the ex-officio member. On 21-5-1950 the newly elected committee applied to the Syndicate of the University for approval of the committee. As the University did not communicate their approval or disapproval for some time, reminder was sent to the University. On 21-7-1950 the Syndicate passed a resolution approving the old committee constituted by Someswar and others and did not approve the new committee.

On 26-1-1950 the suit at Alipore was compromised on certain terms. One of such terms was that the Head Master would render accounts of all receipts and disbursements from 15-1-1950 supported by vouchers and other papers. Another term was that the salaries drawn by the Head Master and the staff till date would be deemed to have been paid as their salaries. There was a further term that things done by the Head Master in good faith would be ratified. On 31-7-1950 the University by a letter communicated to Someswar Mukherjee that the Vice Chancellor and the Syndicate desired to inform him that the managing committee constituted on 14-5-1950 was not approved of by the University and the old managing committee should continue to function until further orders.

10. As Mr. Someswar Mukherjee asserted his rights to interfere with the management of the school a second suit was filed at the instance of the new

committee constituted by R.M. Sen and others in the Alipore Court being suit No. 705 of 1950 on 2-8-1950. On 7-8-1950 Mr. Sen the Secretary of the new committee wrote to the Registrar of the University enquiring why no approval of the new committee by the University was forthcoming. On 8-8-1950 Mr. Sen received a reply from the Assistant Registrar that his letter was receiving attention. On the 10th of August Mr. Sen asked for an interview with the Vice Chancellor and on the 24th of August he was granted an interview by the Vice Chancellor. In the meantime on 11-8-1950 certain criminal proceedings u/s 144, Criminal P. C. were started before the District Magistrate at the instance of Someswar Mukherjee and his supporters and an ex parte injunction was obtained. But in view of the pendency of the civil suit before the Munsiff the injunction made by the District Magistrate was withdrawn by him on 31-8-1950.

It appears that thereafter on 3-9-1950 the general committee of the South Suburban School re-elected the old committee constituted by Someswar Mukherjee and others. On 7-9-1950 the Munsiff granted an interim injunction in the second suit restraining the old committee from interfering with the R.M. Sen Committee, On 11-9-1950 the District Judge granted a stay of the operation of the injunction order passed by the Munsiff. On 18-9-1950 the University approved of the old managing committee reconstituted on 3rd of September as aforesaid. On 21-9-1950 the Vice Chancellor wrote a letter to Mr. R.M. Sen in reply to a letter written by Mr. Sen to him on the previous date. The learned Vice Chancellor pointed out that Mr. Sen did not mention before him on the date that he had interview with the Vice Chancellor the fact that his committee formed on 14-5-1950 was not approved by the Syndicate and by the order of the Syndicate the old committee was allowed to function; and the Vice Chancellor made it clear that he was not going to override the decision of the Syndicate, and the committee approved by the Syndicate would function.

On 6-10-1950 the University acting upon the complaint received from some teachers of the school to the effect that Mr. Sanyal -was still wrongfully interfering with the management of the school, passed a resolution calling upon Mr. Sanyal to show cause by 10-11-1950 why he should not be debarred from working in any school as a teacher. On the same date a third suit was filed at the instance of the R.M. Sen committee in Alipore being suit No. 841 of 1950 and the University was made a party to this suit. It may be noted that the university was not a party to the previous suits. Although the new R.M. Sen committee was not approved by the University and although the University disapproved of the interference with the management of the school by the Head Master Mr. Sanyal, the latter held a test examination between 7-12-1950 and 12-12-1950 in which the petitioners and certain other students of the school appeared and sat for the examination. On 12-12-1950 Mr. R.M. Sen wrote a letter to the University intimating that there was a rumour that the test examination held by Mr. Sanyal, the Head Master, would not be acceptable to the University and pointed out that if that was so then such thing would be most improper. Thereafter it appears that the University issued the Notice dated 18-12-1950 to the effect that only such

students who passed the test examination held by Subal Chandra Pal the officiating Head Master would be allowed to sit for the Matriculation Examination of the University to be held in 1951.

11. It is not quite clear as to when this Subal Chandra Pal was appointed as Head Master of the school. Mr. Pal has filed an affidavit in these proceedings but he does not mention any date as to when he began to function as Head Master of the school. The paragraphs 9, 15, 17, 22 and 25 of the affidavit of Mr. Banerjee, the Assistant Registrar leave the matter in a state of utter confusion. He makes conflicting statements as to the date of appointment of Mr. Pal as Head Master in these various paragraphs. This much is clear however that before Mr. Pal held the test examination on 18th December his status as a Head Master was recognised by the University and by the Committee approved by the University.

12. It is noticeable that Chakraberia School is not governed in the matter of constitution of the managing committee of the school by the Revised School Code but by special rules framed by the general committee of the South Suburban School. This fact appears from the letter of Mr. Sanyal dated 24-8-1943 and also from other documents which have been filed in these proceedings before me.

13. It has been contended by Mr. I.P. Mukherjee the learned counsel for the petitioners that the facts stated above show clearly that the Vice Chancellor and the Syndicate have acted mala fide in arriving at the decision expressed in the letter of 18-12-1950 and instead of dealing with the situation in a spirit of detachment they have taken sides in matters - of party politics and have expressly displayed partiality towards the Committee constituted by Someswar Mukherjee and his supporters.

14. I am unable to view the facts in the lights suggested by Mr. Mukherjee. The Calcutta University is the supreme head of the educational institutions of the State of West Bengal. The Senate of the University is responsible for framing regulations relating to the conditions to be complied with by schools desiring recognition for the purpose of sending up pupils as candidates for the Matriculation examination and the conditions to be complied with by candidates for matriculation whether sent up by recognised schools or not. The Senate has framed regulations. According to Regulation 4 of Chap. 30 the Head Masters of recognised schools have to submit to the Controller of examinations the applications of pupils and private candidates who have passed the test examination together with necessary fees prescribed in Regulation 5. The syndicate of the University which is vested with the executive government of the University (Section 15 of Act 8 of 1904) has to see that the regulations are complied with. If it is brought to the notice of the University that a particular Head Master who has purported to hold a test examination and to forward applications of pupils desirous of appearing in the Matriculation examination is not really the Head Master but some body else is the Head Master it becomes the duty of the Syndicate to take notice of the fact and to decide the course of action

it should pursue in the matter.

In the present case the University was kept informed about the course of events happening in the school. The Syndicate had granted its approval to the Someswar Committee and so it knew which Committee was the validly constituted Committee and which not. Before the reconstitution of the Someswar Committee on 3-9-1950 this Someswar Committee was functioning as the Managing Committee since 17-5-1947. It was this Committee which had dismissed the Head Master Mr. Sanyal on 15-1-1950. The Committee formed by Mr. R. M. Sen and his supporters on 14-5-1950 had not been approved by the Syndicate. Having been in possession of all the facts the Syndicate decided to recognise the Head Master who came to be in office by virtue of an appointment made by the proper Managing Committee. I do not see anything capricious or malicious or any want of good faith in the action of the Syndicate or the Vice Chancellor.

Under Rule 6 of the Revised School Code, the constitution of the committees of all schools shall be subject to the approval of the Syndicate which retains the power in special cases or classes of cases to approve of Committees efficiently discharging their duties, although not constituted in accordance with the rules of the revised code. The Someswar Mukherjee Committee was approved by the Syndicate pursuant to this rule. It may be that Mr. Someswar Mukherjee whose conduct as an Examiner was censured by the Investigation Committee appointed by the Chancellor of the University should not have received the support of the Syndicate but it appears that for some reason or other the Syndicate has readily extended its support to Mr. Someswar Mukherjee and his supporters when they asked for such support. It may be that the reason was that Mr. Mukherjee had some hold or influence on the Syndicate or it may be that the Syndicate viewed the conduct of Mr. Sanyal as to his insubordination and insult to the Managing Committee and of his joining the teachers' strike with such disapproval that the Syndicate thought it prudent to leave the management of the school even in the hands of the Committee formed by Someswar Mukherjee and his group rather than leave it in the hands of Jnanendra Nath Sanyal and his group. It is not within the province of this Court, however, to speculate as to the real reasons and in the absence of definite proof I am unable to come to any finding that the conduct of the Syndicate or the Vice Chancellor in arriving at the decision as embodied in the letter of 18-12-1950 was tainted with any sinister motive or with want of good faith.

15. It was contended by Mr. I.P. Mukherjee that the acts of Mr. Sanyal having been ratified by the Someswar Committee by the compromise of the suit at Alipore and being otherwise accepted by the said Committee as also by the University, the University and the Someswar Committee are estopped from challenging the validity of the acts of Mr. Sanyal including his act of holding the test examination. I am unable to -accept the contention. The terms of compromise in the first suit are far from clear and I do not find in the conduct of

the University any indication that the University accepted Mr. Sanyal as the Head Master properly in office or that he had the right or authority to hold the test examination of the school. Moreover it is an elementary principle that estoppel does not furnish any cause of action.

16. Beyond making the remarks aforesaid which I think are sufficient to dispose of this application I do not propose to enter into any detailed investigation as to the title or respective rights of the Someswar Mukherji Committee or the R.M. Sen Committee with regard to their control and management of the school. I understand that there is a suit pending in which such questions are intended to be agitated and adjudicated upon. It may be that when the parties have adduced all the evidence in their possession both oral and documentary, some facts will come to light which will make it more easy for the Court to come to a definite finding on the issues involved in the case. I want to make it clear that the observations made by me in this application are made for the limited purpose of deciding this application and I am not deciding the title or rights of the two rival Committees who are not parties to this application and such questions are left open.

17. It has been stated in -- "Kesho Prosad Singh v. Slacke" 38 Cal 553 which was an Original Side matter decided by a Bench of two Judges that

"It is an elementary principle that the title to property will not be tried in mandamus proceedings and the writ will not issue when it is necessary to try or decide complicated or extended questions of fact." (page 557)

18. Although this proposition is based on some American decisions it appears to me to be a sound and salutary principle and I see no reason to differ from it. (See also- -- "Rasul A; In the Matter of 41 Cal 518 at p. 527).

19. It was contended by Mr. A.K. Sen the learned Counsel for the respondent University that the application is defective inasmuch as the proper respondent should have been the Syndicate whose acts and authority are challenged in these proceedings and not the University of Calcutta which is a wider body of which the Syndicate is only a part or a member.

20. It may be noted that in the case of --"In Re Natesan", 40 Mad 125 it was pointed out that the Syndicate being a statutory body vested with the executive government of the University the persons constituting it become ipso facto holders of a public office and can be proceeded against by an application u/s 45, Specific Relief Act (page 143). In that case it was the Syndicate which was proceeded against and the application against the Syndicate succeeded. The case is, however, no authority for the proposition that any application for the issue of prerogative Writs against the University which is a body corporate and a statutory body and which is responsible for the acts of the Syndicate is necessarily bad. The acts of the Syndicate are the acts of the University and I do not think that the application is to be thrown out on this highly technical ground although no doubt the appropriate thing would have been to proceed against the

Syndicate whose specific acts are complained of in these proceedings. In Clause (1) of Act 2 of 1857 it is provided that the University of Calcutta "in such name shall sue and be sued, implead and be impleaded and answer and be answered into in every court of justice."

21. It was also contended by Mr. A.K. Sen although this point is not taken in the affidavit on behalf of the respondent University that the application is bad as Subol Chandra Pal. Jnanendra Nath Sanyal and the members of the rival committees have not been made parties to these proceedings. I do not think that there is much force in this contention. The petitioners are aggrieved by the act or decision of the University and their object is to compel the University to do certain acts which they think they are entitled to demand performance of from the University. This is not a regular suit, and merely because certain questions will have to be determined incidentally in giving or not giving the reliefs asked for in this application does not make each and every person interested in such questions necessary parties to these proceedings. It may be noted that though Mr. Sanyal and Mr. Pal are not formally parties to these proceedings they filed affidavits in these proceedings. I hold that the application is not defective by reason of non-joinder of the members of the two managing committees or Mr. Sanyal and Mr. Pal as parties to these proceedings.

22. It was further contended by Mr. A.K. Sen that the application is not made in good faith but for an indirect purpose. It is really made on behalf of some third party, viz., Jnanendra Nath Sanyal. Mr. Sen relies on Halsbury Vol. 9 para. 1306 in support of his contention. This argument of Mr. Sen appears to me to be without substance. One of the objects of this application is no doubt to get a decision as to the status of Mr. Sanyal as Headmaster of the School and as to the validity or otherwise of the constitution of the two rival committees squabbling for power and control over the management of the school but I do not think that that is the whole object of this application. The petitioners' first and foremost object is to get themselves and some of their fellow students allowed to appear at the ensuing Matriculation examination and incidentally to have the other questions decided. There are suits pending in which the status of Mr. Sanyal and Mr. Pal and the question of the validity of the constitution of the two rival committees are directly and substantially in issue. The petitioners' cause of action, if any, if I may be allowed to use that expression, has arisen after the filing of the third suit by reason of the decision of the Syndicate embodied in the letter of 18-12-1950 and as they are vitally affected by the said decision they have moved this Court for speedy redress of their grievances. I am unable to hold, therefore, that the application is for the benefit of third party or is not actuated by good faith.

23. It was also contended by Mr. Sen that the Court has no power to interfere with decisions of domestic tribunals such as the University of Calcutta, and reliance is placed on the decision reported in -- "R. v. Dunsheath (1950) 2. All. E. R. 741. The conditions prevailing in England differ materially from the conditions

prevailing in this country. The System of Visitors obtaining in England is not prevalent in India. It has been held in clear and unambiguous terms in -- "In re Natesan" 40 Mad 125 at p. 143 that the Syndicate of the University is amenable to the jurisdiction of the Court and it is compellable to do acts which it is enjoined to do by Statute by an application u/s 45, Specific Relief Act. This contention of Mr. Sen must, therefore, be rejected.

24. Mr. I.P. Mukherjee has contended that the letter of 18-12-1950 shows that the Syndicate or the vice-Chancellor in arriving at the decision as embodied in that letter has taken into consideration extraneous matters and has thus exceeded the jurisdiction conferred by the Statutes and the Regulations framed thereunder. The only ground disclosed in the letter of arriving at the decision is the pendency of a suit. It is not at all clear from the letter itself what the Syndicate or the Vice-Chancellor wanted to convey by referring to the pending suit and how far they actually made this fact the ground of their decision as expressed in the letter. The laconic language employed in the letter whether it was intentional or unintentional makes it "difficult for this Court to any definite opinion on the point. But if the language of this letter is considered in the background of all the facts that have been set out in the earlier part of this judgment, the matter of reference to the pending suit cannot, in my view, be considered really as an extraneous matter. It is a link in the chain of events and the Syndicate or the University could not possibly or properly ignore it or belittle the importance of it. The decisions cited by Mr. Mukherjee turned on their special facts and are distinguishable from the facts of the present case.

25. In my view the Syndicate or the University was quite competent to come to the decision complained of and it has acted within the four corners of the powers committed to it by the Statutes and the Regulations. I am further unable to hold as indicated already that the Syndicate or the University has acted mala fide.

26. In the result the petition fails and the Rule must be discharged with costs.