
(1953) 07 CAL CK 0026
In the Calcutta High Court
Case No : Civil Revn. No. 681 of 1953

Samir Kumar

APPELLANT

Vs

Someswar Mukherjee and Others

RESPONDENT

Date of Decision : 31-07-1953

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Universities Act, 1904 — Section 25, 25(1)

Citation : AIR 1953 Cal 783

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Prakash Chandra Mallock, Tapodhir Krishna Ray Dastidar and Somnath Chatterjee, for the Appellant; A.K. Sen, Arun Kumar Mukherjee and Sunil Kumar Mitra, (for Nos. 2 and 3) and K.K. Basu and Manick Chandra Mitra, (for No. 1), for the Respondent

Judgement

Sinha, J.—This is a rule, calling upon the respondents, the principal Ashutosh College, the Registrar Calcutta University, and the University of Calcutta, to show cause why a writ in the nature of mandamus should not issue directing the said Registrar to withdraw certain directions contained in Circular No. Misc. 13 dated 1-7-1952; and directing the principal Ashutosh College to restore the name of the petitioner in the College Register. The facts are shortly as follows:

There is an institution called "The National Council of Education, Bengal", (hereinafter referred to as the council) having its headquarters at Jadavpur, in the suburbs of Calcutta. The object of this institution appears to be to foster education on patriotic lines with a particular leaning towards vocational education. It appears from the "outline scheme of studies for national schools", published by the institution (Annexure A to the counter affidavit in C. R. 3175 of 1952), that three courses have been prescribed namely Primary or "adyaman", intermediate or "madhyaman" and Final or "antaman". In this application we are concerned only with the Final School Standard examination.

In or about 1949, a number of students who had passed the Final School Standard examination of the council applied to the University of Calcutta (hereinafter referred to as the "University") for recognition of the said examination as equivalent to the Matriculation Examination of the University which has now been supplanted by the School final examination under the Board of secondary education, West Bengal. Thereupon the Syndicate of the University made certain enquiries from the Council, and by a resolution dated 16-12-1950, accepted the final School Standard Examination of the Council as equivalent to the Matriculation Examination of the University. The petitioner appears to have sat for the School Final Examination of the Board of secondary education, as well as for the Final School Standard examination of the Council, held in the year 1952. He failed in the former examination; but passed in the latter one. He then applied for admission to the Ashutosh College Calcutta and was admitted as a student on or about the 17th day of June 1952. He also paid into the hands of the College authorities, a fee for migration and Registration amounting to Rs. 22/-.

2. On or about 1-7-1952, respondent 2 issued a circular to the heads of all affiliated Colleges which is set out below:

Exhibit -- "A". Calcutta University. Circular No. Misc. 13

The Heads of all affiliated Colleges are informed that the recognition granted to the final School Standard Examination of the National Council of Education, Bengal, has been withdrawn with effect from the examination of the year 1953.

Any student who has passed the Final School Standard Examination of the National Council of Education, Bengal, may be admitted to any college affiliated to this University, provided the guardian of the student makes a declaration in writing to the Principal of the College that the student in question has not failed at the Test Examination of any School or the School Final Examination of the Board of Secondary Education, West Bengal, and that in case the declaration be found to be false, the admission of the student shall stand cancelled from the very date on which it was made.

The Heads of Colleges are requested to forward to the Registrar a list of such candidates within one month of the date of their admission for the purpose of checking and verifying the correctness of the declaration by their guardians:

Senate House : -- Sd. S. Dutta, The 1st July, 1952, Registrar.

3. On 24-7-1952, respondent 1 wrote to the petitioner's father and guardian requesting him to make a declaration in writing to the principal that his ward (the petitioner) had not failed at the test examination of any school or the School Final Examination of the Board of Secondary Education. West Bengal. It was intimated to him that unless he filed such a declaration within 7 days, the name of his ward will stand cancelled. The petitioner's father was of course unable to make such a declaration and on 3-12-1952 respondent 1, further intimated to

him that his ward's admission would not be sanctioned by the University. On or about 17-12-1952, the petitioner's father made an application to this Court and a rule was issued by Bose J. on similar lines to the present rule, and an ad interim injunction was granted. This rule came up before me for hearing on 10-3-1953, when I held that the petitioner in that application (the father of the present petitioner) had no locus standi to maintain such an application. The rule was accordingly discharged. The present rule was issued on 11-3-1953 and a similar ad interim injunction, granted.

4. I have before me a detailed explanation as to why the University caused the circular dated 1-7-1952 to be issued. It is as follows:

It appears that upon receiving several applications in the year 1949, to recognise the final standard examination of the Council, the Syndicate made enquiries and found that the subjects prescribed compared favourably with those prescribed by the University for the Matriculation. The Syndicate of the University took favourable note of the fact that in addition to the theoretical studies, a student had to undergo training in practical or vocational training in one or more subjects like spinning and weaving, carpentry and smithy, survey and draughtsmanship etc.

Candidates for the Final Standard Examination of the Council are of two kinds -- "Interval" i.e., those sent up by the Schools affiliated to the Council "and external or private". The University found nothing to indicate that an external candidate was exempted from the practical training, and as a certain percentage of attendance at the workshop or office was compulsory to qualify a student for appearing at the examination, it was presumed that even an external student, somehow managed to get the necessary practical and vocational training. Before external students applied for permission to present themselves at an examination they had to produce a certificate by the Headmaster of a High School or the Principal or Professor of a College, or a member of the Council or a legal practitioner of a rank not lower than a district court pleader that the applicant possessed sufficient fitness to be permitted to appear in the above examination.

5. It is stated that the University never contemplated that students who had failed in the test examinations of schools under the University, for the Matriculation or had become unsuccessful in the Matriculation examination itself, should somehow procure a certificate of the nature mentioned above and sit in the Final School Standard Examination of the Council and thus qualify themselves for admission into the intermediate Arts or Science Courses of the University. It is pointed out that students reading in Schools affiliated to the University could never legitimately sit for the Final School Standard Examination of the Council, inasmuch as the schools affiliated to the University do not impart the necessary practical or vocational training. Anyhow, such a state of things was not contemplated. This brings us to the real genesis of the situation, which has given rise to this application and a number of others. I am told that the matter

affects hundreds of students who have taken admission into various colleges under the University, having passed the Final School Standard Examination of the Council. They have, however, either failed in the test examination of a school affiliated to the University or failed in the Matriculation or the School-final.

6. The problem would become clearer upon a closer investigation of certain Statistics furnished by the Registrar of the Council in his letter dated 13-6-1952, to Respondent 2. In the year 1949, six candidates appeared in the Final Standard Examination of the Council, all from schools affiliated to the Council. In 1950, twenty candidates appeared, all from schools similarly affiliated. The Council had several schools affiliated to it in that part of Bengal which has after partition become Eastern Pakistan. There was one school in Calcutta which has now been disaffiliated. In 1951, thirty-seven Students appeared, 9 from schools affiliated to the Council and 28 as external or private candidates. In 1952, thirty-two candidates appeared from Schools affiliated to the Council and as many as 1664 candidates appeared as external or private.

7. It is alleged that unfair advantage had been taken of the recognition of the Final School Standard Examination as an equivalent to the Matriculation or the School Final Examination, by students who had either failed in a test examination or the school final examination of the Board of secondary education West Bengal. It is stated that they "some how obtained false certificate of fitness" and appeared at the final Standard Examination of the Council without possessing the requisite qualifications.

That something like this has happened is only too clear from the Statistics given above. I must however point out that there is no evidence before me that the petitioner used any false certificate or that he has passed the final School Standard Examination of the Council without complying with the rules of that institution, it must therefore be assumed that he had passed an examination which the Syndicate of the University had recognised as an equivalent to the Matriculation examination of University, which now equates with the School Final Examination of the Board of Secondary Education, West Bengal. No argument has been advanced before me that the University had recognized the Final School Standard Examination of the Council as equivalent to the Matriculation and not the School Final. It is assumed that this makes no difference.

8. The point therefore lies within a small compass. Suppose there is a student pursuing his regular studies in a School affiliated to the University. He appears at the test, and for the School Final Examination of the Board of Secondary Education and is either disallowed in the test or fails in the School Final. As a second string to the bow, he appears as an external or private candidate in the Final School Standard Examination of the Council and passes. He then applies for admission into a College affiliated to the University and is admitted therein. Thereafter, can the University:

(a) Refuse to sanction such admission

(b) Direct a College not to admit such a student

(c) Direct a College to remove such a student from the rolls if already admitted

(d) Can the College remove such a student from its rolls after having already admitted him and allowing him to study therein for a length of time.

9. A decision on these points must depend upon the interpretation put upon the Indian Universities Act 8 of 1904; the regulations made by the Senate, framed under powers granted by the said Act, and the Act of incorporation of the University of Calcutta Act 2 of 1857. As there is no question of any denial of natural justice in this case, the petitioner in order to succeed must show that the respondents have acted in violation of these Acts or regulations. It is not denied that the respondents must keep strictly within the four corners of the Acts and regulations and cannot be permitted to act in contravention thereof *University of Calcutta Vs. Dipa Pal*, (A). It is also argued on behalf of the petitioner that if the Acts and regulations warrant his removal from the rolls, they infringe his fundamental rights under Articles 14 & 19(1)(g) of the Constitution & are therefore unconstitutional and void. (10) I shall at first examine the regulations of the University. The most important chapter to consider is Chapter XVI, which is headed "Non-Collegiate Students". Rule 1, lays down that no person who could not produce a certificate from a College affiliated to the University to the effect that he had completed the course of instruction prescribed by the regulations, should ordinarily be admitted as a candidate at any University examination other than an examination for Matriculation. Rule 2 gives power to the University to grant exemption from the operation of this rule upon the recommendation of the Syndicate. The most important rule is Rule 7 which runs as follows: -"7. The Syndicate shall have power in any case to admit to any University Examination in any faculty any person who shall present a certificate from any institution authorised to grant certificates by the Governor-General of India in Council, or by a local Government or from such other institutions as may be from time to time recognised for the purpose by the Syndicate showing that he has attended courses of study, passed examinations or taken degrees equivalent to those which are required in the case of students of the Calcutta University."

10a. This is the only rule to be found in the regulations which deals with the case of students who have not passed the Matriculation or any other examination of the University itself and yet wish to sit at a University Examination.

10b. The rule itself seems inappropriate to students who are not appearing as non-collegiate but have been actually studying in Colleges affiliated to the University and have taken a complete course therein. In such a case, how can the question arise of having taken a course "equivalent to those which are required in the case of students of the Calcutta University", since the student has been taking a course prescribed by the University itself? Mr. Sen has argued that the rule applies only to non-collegiate students who have passed an equivalent examination and have pursued a course not under the University itself but

recognised by it.

11. Now, it is common knowledge that the degrees of other sister University in India are recognized by the University of Calcutta (with just exceptions) and students migrating to this University have to bring migration certificates and have to file them in the University and get themselves registered. I asked both parties to point out to me rules concerning these students. I was surprised to hear that there are no specific regulations bearing on this important topic. My attention was however drawn to the following:

(1) According to the Indian Universities Act (8 of 1904,) Section 25 (1), the Senate, with the sanction of Government may from time to time make regulations consistent with the Act of incorporation (Act 2 of 1857) as amended by the Indian Universities Act, to provide for all matters relating to the University.

(2) According to Section 15, Indian Universities Act, the executive government of the University is vested in the Syndicate.

(3) Under Ch. IV, Rule 1 of the regulations as made by the Senate and sanctioned by the Government, the executive government of the University is vested in the Syndicate. Under Rule 12, the Syndicate is empowered generally to conduct the affairs of the University in accordance with the Act of incorporation and the Indian Universities Act, the regulations and the resolutions of the Senate and the Syndicate.

(4) The Syndicate passed a resolution dated 15-1-1916, to the effect that no students except Matriculates, undergraduates & graduates of the Calcutta University shall be admitted to any College affiliated to the University without the express sanction of the Syndicate, previously obtained. Circulars were to be sent to all the affiliated colleges.

(5) Circular No. 94 (originally 9624) dated 25-1-1916, 118 (originally 20) dated 18-1-1917, were sent to all affiliated colleges. They require a foreign student desirous of continuing his studies in the University to obtain previous sanction of the Syndicate to his migration for which a formal application was to be submitted by him through the head of the institution in which he sought admission. The particulars to be stated therein and the documents to be annexed are then set out. These circulars are to be found (or relevant portions thereof) in a handbook published by the University entitled, "Handbook of information for colleges affiliated to the University of Calcutta". The circulars are based upon resolutions passed by the Syndicate and the standing orders.

(6) In the handbook, extracts from circulars and standing orders have been set out in Ch. II, item VII, showing the requirements of an application from a student migrating from a foreign University or Education Board, together with the fees prescribed for that purpose.

(7) Ch. XX, Rule 4 of the regulations makes it mandatory upon affiliated colleges to maintain an admission register in such form as the Syndicate may from time

to time prescribe. The form is set out in Appendix B. The seventh heading is "School or College last attended". (In the case of a student migrating from a different University or Board, the name of the University or Board to be noted).

(8) In the Handbook, Appendix c (page 46) sets out the form of Statement to be filled in by the College and forwarded to the University, in the case of a student migrating from a foreign University or Education Board. Item 9 is -"The date of his provisional admission into the College affiliated to this University."

12. In my opinion, Chap. XVI, Rule 7 of the regulations is not intended to cover the case of a student migrating from another University or Education Board, to the University of Calcutta and seeking to get admitted in a College affiliated thereto, on the strength of having passed an examination equivalent to the Matriculation (to the school final as the case may be) or a higher examination, and intending to go through the full prescribed course therein. The rules governing such cases are to be found in the regulations and the resolutions of the Syndicate or the Senate; and the circulars and standing orders issued in pursuance thereto. Some of the relevant resolutions and circulars have been noticed above. The result may be summarised as follows:

(1) The Syndicate has general power of carrying on the administration of the University, according to the Universities Act, the Act of incorporation, the regulations, own resolutions and the resolutions of the Senate.

(2) The Syndicate has the power of recognising an examination of a recognised University or Education Board as equivalent to the Matriculation Examination (or the School final examination as the case may be) by passing a proper resolution to that effect (unless a regulation to that effect is made by the Senate).

(3) Where students migrate from a foreign University or Education Board after passing an examination recognized as an equivalent to the Matriculation (or the School final examination as the case may be), they have to make an application to the Syndicate through the heads of the Institutions into which they propose to study, in the prescribed form and with prescribed fees.

(4) The permission of the Syndicate is a condition precedent to their right to enter the University and their admission, until such permission is granted, is entirely provisional.

(5) The Syndicate is not bound to grant such permission.

13. I will now consider the regulations from the view point of the Colleges into which such students seek admission or have been provisionally admitted. The regulations are contained in Chap. XXIII. According to Rule 7, a student will be recognised as admitted to a College as soon as he has been accepted by the Principal, and has, where fees are required by the College, paid his admission and first month's fee. Rule 8 states that a, student who has been admitted to an affiliated College, shall be considered to belong to that College until he has given notice to withdraw, or has been expelled or struck off the rolls for absenting

himself or not-paying his fees. It will also terminate at the end of the academics year when he has been sent up for a University examination or when he takes a transfer. A Principal may expel a student for breach of College discipline. Rule 4 lays down that a student who has passed the Matriculation or the Intermediate in Arts or Science or the B.A. or B.Sc. examination maybe admitted to a College. It is argued on behalf of the petitioner that once having been admitted to the College, he could not be expelled until Rule 8 was satisfied. There is of course no case of indiscipline to be considered. On the other hand, it is argued by the respondents that the petitioner could not be admitted into the College at all because the Colleges are not entitled to admit anyone not qualified under Rule 4. Both these arguments are inaccurate.

The Acts, regulations, resolutions and circulars referred to above, entitle a student who is migrating from another University or School Board and has passed an examination equivalent to those mentioned in Rule 4 and recognised as such by the University to make an application for admission into a College. The College then forwards the particulars to the University (Hand book page 46 appendix C) under the signature of the Principal. Until the Syndicate grants permission, the admission necessarily remains provisional. Since the Syndicate can refuse its permission, I do not see why it cannot impose conditions for granting such permission.

14. Let us now examine the facts of the present case, in the light of these rules and regulations. The University has accepted the final school standard of the Council as equivalent to the Matriculation, and for the School Final Examination of the Board of Secondary Education, West Bengal. The petitioner is a student of the Calcutta University and appeared at the School final examination. He however, also appeared at the final school standard examination of the Council as an external or private student. He fails in the former but passes in the latter. He states that he submitted a formal application through the College authorities of the Ashutosh College together with all necessary documents, migration fee and registration fee, in order to obtain sanction to his migration. He then got admission to the College. This admission must necessarily be provisional. As I have shown above, no College can admit such a student without previous sanction of the Syndicate. No such application has yet been received by the University and no sanction has been given. Meanwhile, the Syndicate has decided that no student who has passed the final school standard can be admitted to any College if he has failed in any test examination or the School final examination of the Board of Secondary Education West Bengal. In other words it would not sanction the migration of such a student, if it can be called a migration at all. It is quite clear that this is not a bona fide case of migration. A student of a School affiliated to the University fails to come up to its own standard but somehow passes the examination of another institution whose examination has been recognised but in view of recent facts, held suspect. The Syndicate is not satisfied that such a student has achieved a standard which would make him fit for admission to a College affiliated to it and refuses to sanction it.

I think it is entitled to take that view and there appears to be nothing illegal in it. If the petitioner had been a proper bona fide student of the Council, there would have been some injustice if he was arbitrarily shut out. It might then have been said that the student was suffering from the caprice of the Syndicate, who give recognition with one hand and take it away with another. But these facilities of mutual recognition extended to sister universities or educational institutions are not meant to be used as devices to circumvent the educational programme of the University, or to destroy its own standards. In such an eventuality, the Syndicate has the power to refuse sanction and it must be allowed to use that power. This Court is not called upon to interfere.

I must here mention that the University offered before me to grant sanction if the petitioner sat for an examination specially held for the purpose, upon the subjects which the petitioner had studied in the intermediate science course and upto the point which he had reached. The idea is to make certain that the petitioner is capable of following the course leading upto the intermediate examination. The petitioner has refused to sit for such a test.

It is next argued that even if the Syndicate has power to refuse sanction to migration, it has no power to ask the college to remove a student from the rolls. This is a curious argument. If the Syndicate refuses to sanction migration, what is the point of a student being kept on the rolls, and how can he be permitted to remain there and continue his studies? If the admission was provisional, the college is entitled to put an end to it, as it must do in the interest of the student himself since the admission is not capable of being sanctioned" by the University. Nor can there be any exception taken to the University, through the Syndicate attempting to control the admission of such students or directing the Ashutosh College to remove the petitioner from the rolls if the requisite conditions were not satisfied. The Syndicate, as the body in whom the administration of the University is vested, has a plain duty to see that the affiliated colleges admit students who will, when the time comes, be allowed to sit in the University Examinations. There would be little point in continuing to impart education to any student upon a false pretence that he will be allowed to do so.

Finally it is argued that such regulations or rules if they exist are unconstitutional, as they violate the fundamental right under Articles 14 & 19(1) (g) of the constitution. It is further submitted that the respondents are not acting according to their own rules and should be compelled to do so.

15. I have entirely failed to see how Article 14 has been violated. If the Syndicate makes special rules for students who migrate to it from another University that is not discrimination. All categories of students cannot be treated alike. To treat students migrating from another University as a separate class, from students passing the University's own examinations, is not an unreasonable classification and certainly has a rational basis. "State of Bombay v. F.N. Balsara" AIR 1951 S.C. 318 (B).

16. Also, I do not see, how Article 19(1)(g) has been violated. It is argued that study in an University is an "occupation". Firstly, I do not see how that is so. The dictionary meaning is "Employment, business, calling" none of which is applicable to academic pursuit simpliciter. A teacher may be said to have an occupation. A student cannot be said to be following any occupation, in the generally accepted sense of the term.

17. Next comes the question as to whether the respondents were violating their own rules. I have shown above that none of the respondents are guilty of violating the rules. The University is within its rights to refuse sanction (through the Syndicate), the college cannot continue a provisional admission without any prospect of such sanction being obtained. Respondent 2 is of course a mere employee of the University and has no independent volition in the matter. He must carry out the rules, regulations and orders of the Syndicate.

18. I must confess that I somewhat regret the conclusion which I have reached in the matter. It will inevitably result in the wastage of much invaluable time and affect the careers of hundreds of students. I cannot but feel that they have been ill-advised to turn down the offer of the University to sanction their migration, subject to a test, it is however for them and their guardians to do what they think is most beneficial. While I am compelled to dismiss this application, I must observe that the University should have been more thorough in its appraisal of the merits of the council. The awakening has been somewhat belated. Respondent 1 also should have made it perfectly clear to the petitioner that his admission was purely provisional. I do not also see what justification there was in receiving the application for sanction together with the fees and not forwarding the same to the University for such a length of time.

19. The rule is accordingly discharged, the interim orders vacated. There will be no order as to costs.

20. As the petitioner intends to appeal, the interim order will remain in operation for a further period of 3 weeks after which any further stay must be obtained from the Court of Appeal.