
(1997) 04 CAL CK 0037
In the Calcutta High Court
Case No : Appeal No. 144 of 1996

Samiran Dasgupta

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 03-04-1997

Acts Referred:

Citation : (1998) 1 ILR (Cal) 555

Hon'ble Judges : Siddheswar Narayan, J; Bhagabati Prosad Banerjee, J

Bench : Division Bench

Advocate : Ajit Kumar Panja and Bog Adhis Mukherjee, for the Appellant; S. Roychowdhury, for the Respondent

Final Decision : Allowed

Judgement

Bhagabati Prosad Banerjee, J.—The fact of this case in this appeal disclosed a very serious state of affair in the matter of admission of students in Post Graduate Medicine in the University of Calcutta.

2. This appeal is from the order dated April 22, 1996, passed by the learned Trial Judge in G.A. No. 1069 of 1996, filed in connection with the writ application in Matter No. 2896 of 1994. The Appellant/Petitioner passed M.B.B.S. Examination from the University of Calcutta in the year 1988, and in February 1993, the Appellant/Petitioner appeared in the Post-Graduate Entrance Examination for M.D./M.S./M.D.S. Course and diploma courses for the session 1993-95.

3. It is the case of the Appellant/Petitioner that he was selected in D.G.O. Diploma Course being serial No. 2 in the merit list of Calcutta University. His Roll No. was 021172. The Appellant/Petitioner got admission in D.G.O. Course in Medical College, Calcutta, in April 1993, and started his classes and hospital duty as required by the authority. On May 28, 1993, a letter was issued by the Secretary, Faculty Council for Post-Graduate Studies in Medicine, University of Calcutta, intimating the Appellant/Petitioner that "you have been provisionally selected for admission in M.D. (G & O) course for the session commencing from

1993 against vacant seat due to non-admission and/or resignation of some selected candidate(s) as per first list published on 02-04-93. You are, therefore, directed to take admission in the aforesaid course within June 21, 1993 failing which your selection will be cancelled. The Petitioner was informed that the Petitioner is to be admitted for such course in IPOMER, Calcutta (Institute of Post-Graduate Medical Education & Research, Calcutta).

4. Thereafter, the Petitioner, by his letter to the principal Medical College, resigned from the DGO Course for the session 1993-1995 in view of his selection for admission in M.D. Post Graduate Course (G & O) for the session 1993-95. The said letter was duly received and accepted by the authorities and the Petitioner was permitted to take admission in M.D. (G & O). On June 11, 1993 the Petitioner took admission in M.D. (G & O) Course for the session 1993-1996 in IPOMER, Calcutta, and joined the said institute by depositing required admission fees for which a receipt was granted. He started attending classes and hospital duty as required under Doctor Prof. Dipak Lahiri in S.S.K.M. Hospital, M.D. (G & O).

5. By the letter dated August 10, 1994, the Registrar, Calcutta University, informed the Appellant/Petitioner that Sri Samiran Dasgupta is directed to see the Vice-Chancellor in his chamber at Darbhanga Building, 1st Floor, College Street Campus on the August 12, 1994 at 5.30 p.m. This should be treated as urgent. On that date and time, the Petitioner met the Vice-Chancellor of the University of Calcutta who told the Appellant/Petitioner that some irregularity was found in the merit list of P.G. Medical Entrance, 1993, and as such the selection of the Petitioner for admission in M.D. (G & O) was irregular and that he was also told by the Vice-Chancellor that he has secured 83.5 marks and one Pawan Agarwal got 84 marks as per merit, and that the Appellant/Petitioner was placed in serial No. 2 and P. Agarwal was placed at serial No. 3 in the merit list.

6. It was further alleged that the other candidate who was placed in serial No. 1 in merit list of DGO did not take admission as he got chance in M.S. Surgery. Sri Pawan Agarwal, placed in serial No. 3 in M.p. (G & O), took admission in M.D. General Medicine on the alleged ground of manipulation of the result sheet. The Appellant/Petitioner gave choice in the application form for M.D. (G & O) and also for D.G.O. Due to non-admission or resignation of some selected candidates as per the first list published on April 2, 1993, the second list for admission was published on May 28, 1993.

7. Thereafter, the Registrar of the University of Calcutta, by the letter dated August 26, 1994, served upon the Appellant/Petitioner an order passed by the Vice-Chancellor of the University of Calcutta, which is as follows:

In pursuance of the resolution adopted by the Syndicate on 2.8.94 in the matter of irregular admission of some students into the Medical Courses, 1993, Dr. Samiran Dasgupta was granted personal hearing on August 12, 1994.

He was also allowed inspection of documents relating to his admission into M.D.

(Obst. & Gynae.) Course in 1993.

Considering the facts and circumstances of the case, I am of the view that the admission of Dr. Samiran Dasgupta in M.D. (Obst. & Gynae.) course was made in manipulation of records. Had there been no manipulation in the records, Dr. Samiran Dasgupta would not have been granted admission in M.D. (Obst. & Gynae.) Course in 1993 under the norms and provisions of rules for such admission.

I order immediate cancellation of admission of Dr. Samiran Dasgupta in M.D. (Obst. & Gynae) course, 1993.

8. Admittedly, in the instant case, no charge sheet and/or statement of allegation was served upon the Appellant/Petitioner by the Respondents nor any enquiry was made after giving the Appellant/Petitioner any opportunity of being heard and he was not also confronted with any report and/or allegation which he was required to meet. He was kept completely at dark about the state of affair that has happened as a result of which his admission was cancelled by an order passed by the Vice-Chancellor. The resolution of the Syndicate nor the report of any enquiry was disclosed to the Petitioner in advance and before the action was taken by the Chancellor. In the said letter issued by the Registrar, University of Calcutta, the Appellant/Petitioner was not told the purpose for which he was required to see the Vice-Chancellor. The charge of manipulation of records and/or practising any fraud or malpractice against the Appellant/Petitioner was not brought at any point of time nor it was disclosed now the Appellant/Petitioner was responsible for any manipulation of any record belonging to the admission on the basis of which he was granted the admission.

9. On September 10, 1994, the Petitioner moved a writ application before Altamas Kabir, J., challenging the said cancellation of admission of the Petitioner in M.D. (G & O) course 1993, dated August 26, 1994, whereupon on September 16, 1994, Kabir, J., passed the following order:

The Court: This is a matter which, in view of the submission made on behalf of the Respondent/Calcutta University, will have to be considered further on affidavits and also upon production of records.

Let the matter be listed for hearing four weeks after the Puja Vacation. The Respondents will be at liberty to file their affidavit-in-opposition to the writ application within one week after the re-opening. Reply, if any, is to be filed 2 weeks thereafter. Pending the hearing of this application, having regard to fact that the Petitioner was allowed to continue classes in the Post-Graduate M.D. (Obst. & Gynae.) course in 1993 for more than one year two months, in my view, it would be unfair to cancel his admission in the said course in such an abrupt manner. As indicate earlier, the matter will have to be considered further since upon the letter written by the Secretary, Faculty Council for Post Graduate Studies in Medicine, Nursing, Homeopathy, Ayurved and Dental Science, Calcutta University the Petitioner was selected for admission in the aforesaid post.

Accordingly, there will be a stay of operation of the impugne resolution and order, being Annexure "F" to the writ petition, for a period of six weeks till after the Puja Vacation. In the event the writ petition cannot be heard but before the said period, the Petitioner will be at liberty to pray for extension of the interim order upon notice to the Respondents.

It is made clear that this interim order and the Petitioner's continued participation in the aforesaid course will be without prejudice to the rights and contentions of the parties at the time of final hearing of the matter.

10. On November 16, 1994 Kabir J. extended the interim order for a period of six weeks till after the puja vacation. On January 25, 1995, the said interim order was extended by Tarun Kumar Chatterjee J. Against the granting of the said interim order an appeal was preferred and the appeal for stay was moved. But the Division Bench did not pass any stay on the order, as a result of which the Appellant/Petitioner continued into the study in M.D. (G & O) course. Thereafter, the University did not permit the Appellant/Petitioner for submitting his thesis which is a part of M.D. course. The final examination in M.D. (G & O) for 1993-96 course was scheduled to be held on June 9, 1996, for which the last date for submitting examination fee was fixed on May 9, 1996. The University refused to take the fees and also refused to submit the thesis on the ground that there was no order from this Court.

11. Under the circumstances, the Appellant/Petitioner filed an application before the learned Trial Judge for a direction upon the University to allow him to sit in the said examination and submit thesis. But the said application was rejected by the learned Trial Judge on April 22, 1996. Against that order, the Appellant/Petitioner preferred an appeal and the Division Bench of this Court on the said application for stay in the appeal, passed an order on May 9, 1996, as follows:

The Court: Heard the learned Counsel for the parties. Let there be an interim order to the effect that the Respondent/University shall allow the Petitioner to appear at the examination on completion of all formalities and on depositing of requisite fees as also the submission of thesis by him without prejudice to the rights and contentions of the parties in the appeal.

It is made clear that the Respondent/University shall not publish the result of the Appellant. It is further made clear that the Appellant shall not claim any equity pursuant to any furtherance of this interim order and in the event this appeal is dismissed, this Court shall be at liberty to pass all consequential orders. The Respondents will be at liberty to produce the records. Hearing of the appeal be expedited. The preparation of paperbook is dispensed with. It is stated that this appeal can be disposed of on the basis of the application for stay filed by the Appellant and the affidavits to be used by the Respondents.

All parties concerned are to act on a signed copy of the minutes of this order on the usual undertaking.

12. The Appellant/Petitioner, in terms of the order of the Division Bench, appeared at M.D. (G & O) Examination, but the result could not be published because of the order passed by the Division Bench on-May 9, 1996.

13. In the meantime, the Appellant/Petitioner was awarded medal by the Institute of Post Graduate Medical & Research, Government of West Bengal," for appreciation of the Appellant/Petitioner's proficiency in thesis work in M.D. (G & O), 1993-96.

14. An affidavit-in-opposition had been filed by the Respondents verified by an affidavit of Dr. Tapan Kumar Mukherjee, Registrar of the University of Calcutta. In the said affidavit-in-opposition, a report of the Committee appointed by the Syndicate for investigation into irregularities in Post-Graduate Medical Admission, 1993, was annexed. The members of the said committee were prof. Arunbaran Banerjee, Dr. Amal jyoti Sengupta, Dr. Subhankar Chakrabarti and Mrs. Ila Sen (Mitra) and the Registrar was the Convenor of the said Committee. The background in which the said committee was set up was that on July 30, 1993, one Sujay Gupta, an applicant seeking admission into P.G. Medical Course in the University, filed a complaint with the Inspector of Colleges, Calcutta University, that one Sri Buddhadeb Hazra Chowdhuri of the University College of Medicine (UCM), had demanded Rs. 15,000.00 from him for doing him the favour of getting him a seat for admission into M.S. (Genl. Surgery) Course of Studies. The said letter was placed before the Vice-Chancellor when he order to transfer Sri Buddhadeb Hazra Chowdhuri, Jr. Superintendent, Office of the Secretary, Faculty Council for P.G. Studies in Medicine, Nursing, etc., and in course of enquiry made by the said committee, serious irregularities were detected and in the said report it was admitted that the Dean was the custodian of the computerised tabulation sheet, until finalisation of the first list, on which comments regarding allotment of a seat of a student in a particular course of study have been shown by him under his own handwriting. The Secretary was the custodian of the same after the publication of the first list. The Secretary was the custodian of all other records. However, on Mondays and Thursdays when the Secretary used to remain engaged otherwise in Goenka outdoor clinic of the University, the Dean used to take charge of all documents even before the publication of the first list. The keys to the almirahs containing the documents were also used by the other members of the Admission Committee as and when required before the finalisation of the first list.

15. It was further observed in the said report that "the second list of selected candidates as prepared by the Secretary with the assistance of Buddhadeb Hazra Chowdhuri, was displayed by the Secretary on May 28, 1993", and that the statements made by the Dean, Medicine, the Secretary, UCM, Prof. A.K. Ganguly and Prof. S.K. Datta revealed that "Buddhadeb Hazra Chowdhuri used to help the committee in preparing the merit list. Usually it took quite a few days to prepare the merit list and while the work was in progress, Sri Hazra Chowdhuri used to consult the Register in preparing the merit list. Sri Hazra Choudhuri also used to

carry the Register with him to his office room. Sri Hazra Chowdhuri had, however, no authority to write anything whatsoever on the Register," and that during enquiry by the said high power committee, it was found that "all the four members of the Admission Committee identified a large number of entries in the Register to have been made under the handwriting of Buddhadeb Hazra Chaudhuri who had, however, no authority to enter anything in the Register as stated in the preceding paragraph."

In paragraph 3.11 of the said report, it was recorded:

Comparison of handwriting under which names were inserted at the end of the typewritten second list identification of this handwriting by the Secretary to be of Buddhadeb Hazra Chawdhuri and comparison of this handwriting with the sample handwriting of Buddhadeb Hazra Chawdhuri provided by the Secretary from office file, reveal that the tampering with the second list was done by Buddhadeb Hazra Choudhuri.

In paragraph 3.12 of the report, it is stated that scrutiny of the Register and the admission forms of candidates reveal that these have been grossly manipulated to facilitate admission of the candidates who secured lower marks and who had no chance to come under the zone of consideration for admission to the various disciplines in which they were admitted.

16. Insofar as the writ Petitioner Dr. Samiran Dasgupta is concerned, it was alleged in the said report that he was allowed admission from the waiting list. He obtained 83.5 marks in the admission test. He was selected in DGO Course in the first list. It was alleged that the tabulation sheet and the admission form of Samiran Dasgupta and Pawan Agarwal were examined and certain irregularities, were found and it was observed that it was clear from the same, the Dean should have kept Sri Agarwal in the third position in the waiting list and Sri Samiran Dasgupta in the fourth position in the waiting list of the same course. Further it was alleged that the entries in columns 2 and 4 were altered through overwriting. It also appears from the said report that there was some tampering of records done before the publication of the first list of selected candidates, and that the admission form of Sri Samiran Dasgupta shows the following endorsement by the Dean on March 23, 1993:

Selected DGO 3

17. In another place on the same admission form the following words were superscribed in the handwriting of Buddhadeb Hazra Chaudhuri without any authentication by the Dean:

Resigned from DGO and selected in M.D. (G & O) from WL.

18. In the said report, there were very serious allegations against Buddhadeb Hazra Choudhuri, who was found responsible for tampering the records of the admission at will and in respect of several other candidates. Ultimately, the said Enquiring Committee made the following recommendations:

1. That regular disciplinary proceedings be initiated against Sri Buddhadeb Hazra Chaudhuri for his act of tampering with several official documents for unlawful gain thereby securing admission for the following candidates:

- a. Sri Sujay Gupta
- b. Sri Debashish Chakrabarti
- c. Sri Pawan Kumar Agarwal
- d. Sri Adit De
- e. Sri Samiran Dasgupta
- f. Sm. Sutapa Roy
- g. Sri Gautam Patra
- h. Sri Indranil Roy
- i. Sm. Sipra Chaudhuri

in courses in which they were not eligible for admission;

2. That the Secretary, UCM be asked to show cause why disciplinary proceedings shall not be initiated against him for gross negligence in the duties assigned to him in connection with the admission to the Post-Graduate Medical Courses, 1993.

3. That the Dean, Medicine be censured for his definite lapses in allotting seats to candidates in appropriate courses and for his neglect of duty as Chairman of the Admission Committee.

4. That the admission of the following candidates be cancelled after giving them hearing by the Vice-Chancellor;

- a. Sri Samiran Dasgupta (02 1172) in MD (Obs. & Gynae.) course;
- b. Sri Gautam Patra (02 1419) in MD (Path.) Course;
- c. Sri Indranil Roy (08 0284) in MD (Path.) course;
- d. Sm. Sipra Chaudhuri (02 3148) in MD (Path.) course.

19. In this connection, the case of the Appellant/Petitioner is that one person was placed in serial No. 1 in the merit list of DGO, but did not take admission as he got chance in M.S., Surgery and by one girl was placed in serial No. 3 in M.D. (G & O), took admission in M.D., General Medicine, on the alleged ground of manipulation of the result sheet, and further the Appellant/Petitioner gave choice in his application form for M.D. (G & O) and also for D.G.O. Due to non-admission or resignation of some selected candidates as per the first list published on April 2, 1993, the second list of admission was published on May 28, 1993, whereupon in the facts and circumstances of the case stated above,

the admission was given to the writ Petitioner.

20. In this background, the court has to decide whether the admission of the writ Petitioner could be cancelled by the Vice-Chancellor in the manner it has been done.

21. Admittedly, there was no allegation of manipulation and tampering with the records by the Appellant/Petitioner. Admittedly the records were in the custody of the University authorities and from there the committee found that Buddhadeb Hazra Choudhuri was solely and wholly responsible for tampering with the records and the tampering made by his handwriting was also proved on evidence. It is not understood why the university was afraid of charging the student openly the disclosing the facts and/or the reports. It is all the more mystreous that the university wanted the report disclosing a clandestyne affirm of the university staffs to be kept concealed so the people cannot know of these affairs. In this way one cannot keep his image clean and enjoy confidence of all.

22. In the instant case, admittedly no charge sheet was issued against the Appellant/Petitioner and he was not charged given any opportunity and/or any hearing. He was not charged for any manipulation and/or tampering or forgery with the records and admittedly in the report of enquiry, the allegation of tampering with the records was made against Sri Buddhadeb Hazra Choudhuri an employee of the university. The Appellant/Petitioner was not given a copy of the enquiry report nor he was afforded of any reasonable opportunity of being able to meet anybody, including the Vice-Chancellor. In the letter, the Appellant/Petitioner was asked to meet with the Vice-Chancellor, but without disclosing the reasons and/or the grounds for which the Vice-Chancellor wanted to see him. In this circumstances, can it be said that the Appellant/Petitioner is guilty of fraud and/or manipulation in the matter of getting the admission and that for commission of such fraud and manipulation by the writ Petitioner, the writ Petitioner should be punished? True, it may be at best a case where because of some manipulation made by Sri Buddhadeb Hazra Choudhuri, the Appellant/Petitioner got chance to get the admission. But, admittedly there is no evidence on record and/or any suggestion that the Appellant/Petitioner had any hand in this unholy affair. There was no proof nor any suggestion that he had procured the admission in an unlawful means.

23. In this connection, in The Board of High School and Inter-mediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others, the Supreme Court held that where a duty arises in a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed. It was held that cancellation of the examination was a quasi judicial function and it was incumbent upon the authority to issue show cause notice to the candidate before inflicting the penalty of cancellation and in this connection it was observed that "principles of natural justice are to some minds burdensome but this price a small price indeed - has to be paid if we

desire a society governed by the rule of law.

24. The Supreme Court in the case of *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, have stated that an administrative function is called quasi judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no such obligation, the decision is called "purely administrative" and there is no third category. An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim *audi alteram partem*. It means that the decision maker should afford to any party to a dispute an opportunity to present his case. The shift is to a broader notice of "fairness" or "fair procedure" in the administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly. For this concept of fairness, adjudicative settings are not necessary, not it is necessary to have *lites inter partes*. There need not be any struggle between two opposing parties giving rise to a "*lis*". There need not be resolution of *lis inter partes*. The duty to act judicially or to act fairly may arise in widely different circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rules of fairness in the administration. But then, even such an administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would judicially be called at least a privilege does not involve the duty to act fairly consistent with the rules of natural justice.

25. In *S.L. Kapoor Vs. Jagmohan and Others*, it was held that the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proposed against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. The person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known, the requirements are met.

26. In *Norwich City Council v. Secretary of State for the Environment* (1982) 1 All E.R. 737, Lord Denning observed that, in exercising the default power, the Minister had dismissed the local authority, replaced it by his own civil servant and made it to pay the cost. The rules of natural justice or fairness require that this should not be done unless the authority was told what was alleged and given an opportunity of hearing.

27. In *R. v. Army Board of the Defence Council* (1991) 3 All E.R. 375 *ex parte Anderson*, it was held that the mere fact that the power affects rights or interest is what makes it "judicial" and so subject to the procedures required by natural justice. In other words, a power which affects rights must be exercised "judicially" and the fact that power is administrative does not make it any the less judicial for this purpose.

28. In *Lloyd v. McMohan* (1987) 1 All E.R. 1118 at 1161 it was held "...so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when anybody, domestic, administration or judicial has to make a decision which will affect the rights of the individuals depend on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on anybody the power to make decision affecting individual, the courts will not only require the procedure prescribed by the statute to be followed but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.

29. In *Recht v. Managhan* 307 NY 461 (1954) where an American car driver's licence was cancelled without compliance with the rules of natural justice, it was held "Although the statutes empowering the hack bureau and the Commissioner to grant, suspend or revoke a hack driver's licence do not expressly require that those licenses may be withdrawn only upon notice and an opportunity to be heard, it is not necessary that they do so. Where the exercise of statutory power adversely affects property rights, as it does in the present case, the courts have implied that requirements of notice and hearing where the statute is silent.

30. Accordingly, it is well settled principle that in a matter like this, when the future of a student is at stake, whose future and reputation is at stake, the principles of natural justice have to be observed. A fair and reasonable procedure has to be adopted by the university authority, particularly the Vice-Chancellor. He should have been told the allegations made against him so that he could get a right to represent his case. He has a right to the report of the committee. It was suggested by Mr. Roy Chowdhury, learned Counsel appearing on behalf of the Respondent/University that the Vice-Chancellor thought that as because the writ Petitioner was a doctor, nothing should be disclosed publicly or before hand and it was thought fit by the university that if the Petitioner was told about the irregularities, then he would have volunteered to resign, i But there was no bonafide basis for dispensing with the requirements of natural justice and fairplay in action that a student concerned would have withdrawn himself and volunteered to resign, even if he has not disclosed the material and was not told in advance what was the charge against him and what was the report in this behalf. In such a matter, the university authority has a duty to act justly and fairly having regard to the fact one of the Officer of the University who found guilty of tampering and manipulations.

31. In *Shri Krishnan Vs. The Kurukshetra University*, Kurukshetra, the Supreme Court held that once the candidate was allowed to take the examination, rightly or wrongly then the statute which empowers the university to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity which should have been looked

into before giving the candidate permission to appear. In this connection, it was observed that if the University authorities acquiesced in the infirmities which the admission form contained and allowed the candidate to appear in the examination, then by force of the University Statute the University had no power to withdraw the candidature of the candidate.

32. In *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, the Supreme Court held that the candidate concerned could not fulfil the eligibility for admission in B.E. Degree course and was wholly ineligible as the examination in which the candidate passed was not recognised as equivalent to the required standard, and in this connection, the Supreme Court, even though held that the student concerned was ineligible for admission, but still then the Supreme Court observed:

But the question still remains whether we should allow the Appellants to continue their studies in the respective Engineering College in which they were admitted. It was strenuously pressed upon us on behalf of the Appellants that under the orders initially of the learned Judge and thereafter of this Court they have been pursuing their course of study in the respective Engineering Colleges and their admissions should not now be disturbed because if they are now thrown out after a period of almost four years since their admission their whole future will be blighted. Now it is true that the Appellants were not eligible for admission to the Engineering Degree course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the Engineering Colleges which granted admission than upon the Appellants. It is quite possible that the Appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan, nor the first year B. Sc. examination of the Rajasthan and Udaipur Universities was recognised as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The Appellants being young students from Rajasthan might have presumed that since they had passed the first year B. Sc. examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan, they were eligible for admission. The fault lies with the Engineering Colleges which admitted the Appellants because the principals of these Engineering Colleges must have known that the Appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the Appellants. We do not see why the Appellants should suffer for the sins of the managements of these Engineering Colleges. We would therefore, notwithstanding the view taken by us in this judgment allow the Appellants to continue their studies in the respective Engineering Colleges in which they were granted admission.

33. In *A. Sudha Vs. University of Mysore and Another*, it was held that a candidate who could not secure 50% marks in physics, Chemistry and Biology group at qualifying examination, was not eligible. But relying upon the decision of the Supreme Court in *Rajendra Prasad's* case, it was held that "the Appellant

was therefore quite innocent and she was quite justified in relying upon the information supplied to her by none else than the principal of the Institute in the said letter in regard to the eligibility of the admission in the First Year MBBS course. In the circumstances, we do not think that we shall be justified in penalising the Appellant by not allowing her to continue her studies in the MBBS course. Prima facie it was the fault of the principal of the Institute, but in our view, the statement that was made by him in his said letter to the Appellant as to the eligibility of the Appellant for admission in the MBBS course, was on a bona fide interpretation of the regulations framed by the Mysore University for admission to MBBS course for the academic year 1985-86, which to some extent suffer from ambiguity. The regulations should have been more clear and specific. Be that as it may, following the decision of this Court in Rajeendra Prasad Mathur's case while we dismissed the appeal, we direct that the Appellant shall be allowed to prosecute her studies in the MBBS course, and that her result for the First year MBBS Examination be declared within two weeks from date.

34. Had it been a case where the Appellant/Petitioner himself had indulged in tampering with the records and/or guilty of any misrepresentation and manipulation, he was not entitled to any protection from any court of law. As pointed out by Lord Justice Danning in *Lazarus Estate Limited v. Beasley* (1996) 1 QB 702 that "no judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything". Fraud or misrepresentation does not give any cause of action. But, in the instant case, in peculiar facts and circumstances, when an officer of the university is found guilty of fraud, manipulation and tampering with the records with some ulterior motive and in the absence of any suggestion or any proof that the Appellant/Petitioner was in any way involved in the matter, the Appellant/Petitioner's admission could not be cancelled by the Vice-Chancellor. This Court feels that for the sins committed by the officers of the university, a student cannot be penalised. Fruits of the hard labour of a student would not be allowed to be denied on the basis of manipulation done admittedly by an officer of the university, at whose instance not known, but done with some ulterior and unholy motive, the Petitioner cannot be made to suffer. Suspicion cannot be allowed to take the place of proof. The student concerned was admitted on the basis of the letter issued by the Secretary of the Faculty Council for Post-Graduate Studies in Medicine, who is admittedly a top official of the university in this behalf, and the Petitioner bona fide acted on that basis, took admission and prosecuted studies in that course and thereafter for the sins committed by Buddhadeb Hazra Choudhuri, at whose instance and machination not known, the student concerned cannot be punished and penalised. It does not appear that excepting transferring that officer, the University has not as yet taken any deterrent action against that officer. Purity or administration has to be maintained not by penalising the students, but punishing the real culprits.

35. Because of the reasons aforesaid and for gross violation of the principles of natural justice, absence of fairness and fair play in action and because of the fact

that it is the university authority who passed the orders for admission and on the basis of the orders passed by the university authorities he changed the line and that he was given admission and on the basis of the admission he was prosecuting studies and that it also appears that the academic distinction of the Appellant/Petitioner is not so bad that he would have indulged in all sorts of activities for getting admission in a clandestine manner.

36. Accordingly, the writ petition succeeds. The order of the Vice-Chancellor, communicated by the letter dated August 26, 1994, by the Registrar of the Calcutta University is cancelled. The appeal is allowed and the University is directed to publish the result of the Petitioner's examination in M.D.(G & O) in which he was allowed to sit by an interim order passed by the Division Bench, within two week from today.

Sidheswar Narayan, J.

37. I agree.