

(1997) 03 CAL CK 0030
In the Calcutta High Court
Case No : Writ Petition No. 2008 of 1996

Saroj Poddar and Others

APPELLANT

Vs

Vice-Chancellor, Calcutta University and Others

RESPONDENT

Date of Decision : 05-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1998 Cal 65

Hon'ble Judges : Shyamal Kumar Sen, J

Bench : Single Bench

Judgement

Shyamal Kumar Sen, J.—In the instant writ petition the petitioners have challenged the way of conducting and/or holding examination of supplementary Bio-Chemistry, First Professional M.B.B.S. Examination Paper, 1995 held in 1996 and prayed for cancellation of the same. The petitioners have also prayed that the results of the said supplementary Bio-Chemistry examination held in July, 1996 for the year 1995 of the first Professional M.B.B.S. under University of Calcutta should not be published.

2. The petitioners are all admitted in the M.B.B.S. course after being qualified in the West Bengal Joint Entrance Examination held in 1993 and/or in 1994.

3. It is the contention of the petitioners that the panel of examiners for the said examination were appointed by the University authority in violation of rules, regulations, norms, practice and procedure for appointment of panel of examiners and particularly the guidelines issued by the Controller of Examination dated 24th June, 1996 and the Dean. The guidelines have been annexed to the petition. According to the said guidelines several restrictions have been placed upon the examiners which are inter alia as follows:

"(a) He or she should not teach Medical student in any private coaching in violation of the circular of Controller of Examination or any relatives.

(b) He or she should not teach in a private tutorial or he or she should not teach

in private Coaching Centre.

(c) That the examiner should not be a retired teacher, engaged in private coaching during the last 12 months in the particular subject.

(d) His or her son or daughter or near relation should not be an examinee in the relevant examination.

(e) He or she should be acquainted with the syllabus and teaching in M.B.B.S. Course.

(f) He should be acquainted with guidelines as determined by the Controller of Examinations and Dean of Medical Sciences for examination of students and putting marks for Theoretical, oral and practical examination."

4. It has been alleged on behalf of the petitioners that the University authorities intentionally appointed the panel of examiners for the examination concerned in total violation of guidelines, norms, practice and procedure, rules, regulations, circular of Controller of Examinations as well as Dean of faculty.

5. It has been specifically alleged that one of the examiners Dr. C. S. Bhattacharyya is running a coaching school in his residence under the name "Upasama" at 47, M. Ramkrishna Ghosh Lane, Calcutta 50, having his telephone No. 55/- 1652.

6. It has further been alleged in the petition that Dr. Bhattacharyya acted as an examiner and took the examination of his own privately coached students who appeared before him and got higher marks. It has also been alleged that Dr. Siddharta Majumdar also exerts influence on other examiners including Dr. Somendu Sengupta, so that the examiners will put marks according to his instruction/influence.

7. It has further been alleged in the petition that Dr. S. Majumdar who is a teacher in M.D. Course has no knowledge of M.B.B.S. Course of Calcutta University. He is an external examiner of Post-Graduate Institution from Chandigarh, Punjab. He also did not attend the meeting of the Board of examiners and is not at all acquainted with the mode of examination and guidelines of the University for taking the examination in question before.

8. It is also the case of the petitioners that the rule for appointment of examiners were not at all followed inasmuch as a specific procedure and or regulation to the effect that is 50% of the examiners should be taken from external and 50% from internal. It has been specifically alleged that since the petitioners did not take private coaching from Dr. C. S. Bhattacharyya, their marks might be reduced and the said Dr. Bhattacharyya influenced other teachers also to follow him to deprive the petitioners from getting the real and legitimate marks and as a result thereof the petitioners might be victimised.

9. It has been also alleged that there is enmity amongst teachers and teachers and as a result thereof the petitioners have been victimised. It has been

submitted that the petitioners' quality and quantity could be amply proved. It has further been alleged in the petition that the examiners have decided to give higher marks to their own chosen examinees at the behest or instructions of Dr. Bhattacharyya and Dr. S. Majumdar and also at the behest or instructions of (Mrs.) Ranju Bose and deprived the petitioners from getting due and legitimate marks according to their standard, qualification, altitude, knowledge in the subjects. It has also been alleged that there is unhealthy atmosphere and/or enmity between the examinees at the behest or cause of the examiners which should not be approved.

10. It has been contended by the petitioners that the biased examiners may go to such extent even by giving "Fail" marks which may ruin the career of the petitioners due to such bias, motivated and corrupt examiners who are indulging and encouraging in wrong doing, victimising the petitioners. Alleging several irregularities as aforesaid the petitioners claimed that if the result is declared, they will be seriously prejudiced. The petitioners have referred to the letter of the Controller of Examination, University of Calcutta dated 24th June, 1996 relating to appointment of examiners for the conduct of M.B.B.S. Examination (First Professional) held in July, 1996. In the said letter it has been specifically directed that "it is not desirable that a person, engaged in private coaching during the last 12 months in any of the subjects of the examination in which he has been appointed as examiner or having any near relation appearing at an examination, should act as examiner in that subject it has been decided that when accepting appointment as an examiner in any subject he should report to me for the information of the Syndicate, if any, of his near relation is appearing at the examination or he has privately coached a student in the subject for which he is appointed an examiner.

11. The Declaration Form appended hereto may be detached and returned to this office duly filled in and signed by you within 15 days of the date of receipt of this letter.

12. I am also directed to invite your attention to Section 16, Chapter XXV of the Regulations which runs as follows :

"Examiners are required to keep the results of the examination and marks assigned to candidate strictly secret."

13. The Vice-Chancellor desires that the above rules should strictly be followed.

14. It has further been alleged in the petition that no such Declaration Form has been submitted by Dr. Bhattacharyya though he has acted as examiner. Pursuant to the leave granted an affidavit was affirmed on 28th January, 1996 by Saroj Poddar, the petitioner, which is stated as supplementary affidavit. In the said supplementary affidavit it has been alleged that Dr. Bhattacharyya has been running the said coaching school for last 7 years and has coached Bio-Chemistry including the examinees who appeared in the examination in question. It has further been alleged that the petitioner Nos. 3 and 6 went to Dr. Bhattacharyya

for being coached for 2/3 days when he disclosed that he teaches only those students who can afford his monthly fees of Rs. 2000/- per student which was not possible for the petitioners as they are SC/ST students and/or comes from very ordinary family. Names of the students coached by Dr. Bhattacharyya who appeared in the relevant Bio-Chemistry Examination in question specifically have been mentioned in the said affidavit.

15. It has further been alleged that Dr. Bhattacharyya never granted any receipt of such monthly fees to any student only to avoid Income Taxes. It is also the allegation in the said supplementary affidavit which is as follows:--

"Sri P. Roy Chowdhury, Head Examiner of Physiology also another associate of Dr. Bhattacharyya teaches in the same coaching centre and divulge questions, formed model answers of the questions forgetting higher marks. He also acts on the dictate of Dr. Bhattacharyya. Dr. S. Majumdar influences Dr. S. Sengupta, the other examiner. Dr. B. N. Das convenor is apprehended to be involved in the tampering, interpolation or overwriting in the Rough/Raw Tabulation Sheet. Those facts will be proved on production of Raw Rough Tabulation Sheet of the respective examiners and convenor. Therefore, refusal to produce Raw/Rough Tabulation Sheet should be discarded being for an oblique purpose.

16. It is significant that the examination was held in July, 1996. The instant writ petition was moved on 26-9-96. A declaration was obtained by the University from Dr. Bhattacharyya on 24-12-96 and 26-12-96 to the effect that he has not coached any examinees of Bio-Chemistry. The fact that such declaration was obtained on 24-12-96 and 26-12-96 amply proves that no declaration was filed by the said Dr. Bhattacharyya on the basis of the said letter of the Controller of Examination dt. 24-6-96. The University authorities, it is apparent, did not comply with its own guideline framed by the University for the purpose of examination since Dr. Bhattacharyya did not file any declaration as asked for in the letter dt. 24-6-96. Further allegation has been made that the said Dr. Bhattacharyya made discrimination while giving marks to students other than his privately coached students.

17. It has further been alleged that one Sakuntala Panja, Roll No. 554/95 is a privately coached student of Dr. Bhattacharyya. She has not been admitted in the M.B.B.S. Course through J.E.E. (M). She was candidate of the "M.B.B.S. Study" under Chief Minister's quota. She got much lower marks than the marks required for admission in the M.B.B.S. Course.

18. It has been alleged that she was given higher marks at the instance and behest of Dr. Bhattacharyya. The petitioners have claimed that several examinees whose answer scripts if compared with that of the petitioners would show that the petitioners have been victimised for not being coached under Dr. Bhattacharyya and his other associate examiners.

19. It has been submitted on behalf of the petitioners that the answer scripts of the petitioners and that of other students named above should be compared and

reevaluation be made by an expert committee to be formed out of the M.C.I, and from the examiners of the other Universities. In this connection learned advocate for the petitioners has relied upon the judgment and decision in the case of State of Orissa v. Prajnaparamita Samanta, (1996) 7 SCC 106 President, Board of Secondary Education v. D.Suvankar 2006 JT 10 .

20. In supplementary affidavit affirmed by the petitioner Saroj Poddar on 20-11-96 a letter of Professor and Head of the Deptt. of Bio-Chemistry. R.G. Kar Medical College dt. 27-7-96 addressed to the Principal, R.G. Kar Medical College has been annexed. The said letter is set out as follows :

"To The Principal

R. G. Kar Medical College,

Calcutta. dt. 27-7-96. Sir,

With due respect I like to state that the following students have been reassessed for Semester Exam. and obtained the following marks for their Internal assessment along with the current batch (1994-95).

1. Surajit Singh Hansda-Roll-Cal No. 389/ 94: Marks-9.00

2. Lakshmi Narayan Saren-Roll-Cal No. 399/94: Marks-9.00

May I request you to take necessary action at the earliest and oblige.

With best regards.

Prof, and Head of the Deptt. of Biochemistry

R.G. Kar Medical College,

Calcutta."

21. It has been alleged that on the basis of the said letter Laxmi Narayan Saren and Surajit Singh Hansda the petitioners Nos. 3 and 4 wrote to the Principal, R.G. Kar Medical College by letter dated 30th July, 1996 to correct the internal assessment principle. But nothing was done in the matter and as a result thereof the said petitioners 3 and 4 suffered in the practical and viva-voee examination. It has been alleged that the entire examination results stand vitiated not only due to corrupt practice of ineligible examiners but also intentionally wrong recording of marks in the mark-sheet as well as in Tabulation Sheet.

22. Objection has been raised on behalf of the University on the maintainability of the writ petition on the ground that the writ petitioner did not make any representation to the University authorities, prior to this writ petition. On the contrary, the writ petitioners appeared at the examination. It has further been pointed out on behalf of the respondents that had any such complaint been made with the University authorities at the first instance, the University authorities could have determined such questions of fact pertaining to the allegations made

by the writ petitioners effectively by taking recourse to and, appointing high power enquiry committee to enquire into the allegations.

23. The said objections, in my view, is uncalled for. Firstly, because the letter of appointment sent to the concerned examiner on behalf of the Controller of Examination itself records that a declaration has to be made by the concerned examiner to the effect that he has not been, rendering coaching to students and also none of his relation is appearing at the concerned examination.

24. Admittedly, the said declaration has not been made by the said C.S. Bhattacharyya, the University authorities could have insisted on Dr. Bhattacharyya to make the declaration before being asked to examine the answer scripts or not to have the answer script examined by such examiners. On the contrary the University authorities have obtained declaration during the pendency of the writ petition. It is not expected that the petitioners or any student is in a position to ascertain prior to the examination if an examiner is engaged in coaching a student who is an examinee nor it is expected that the students will ascertain the names of the examiners and if the examiner is coaching any examinee.

25. It has been submitted on behalf of the University that the said circulation of the Controller of Examination requiring declaration to be obtained is a mere guideline and need not be followed strictly.

26. I am unable to accept such contention on behalf of the University. Such declaration, in my view, is intended to maintain the sanctity of the examination and conduct of examination in appropriate and fair manner. There is no cogent explanation on behalf of the University for non-compliance with the said condition of obtaining declaration from the concerned examinee. Under such circumstances, it may be assumed that the University authorities departed from its own guideline and if any student is aggrieved, the Court cannot remain silent spectator. It is well settled that the writ Court is entitled to interfere whenever an authority acts arbitrarily and such arbitrary action causes prejudice to the aggrieved party. There are admitted irregularities and discrepancies in the instant writ petition which calls for interference.

27. Conduct and holding of examination in an appropriate and fair manner is absolutely imperative and strict vigil is required on the part of the University for observation of proper procedure, rules, and guideline inasmuch as the career of students depend upon the result of the examination.

28. In the instant case, considering the facts and circumstances of the case and in view of the undisputed position that the declaration has not been obtained from the concerned examiner i.e. Dr. C.S. Bhattacharyya against whom allegation of discrimination and favouritism has been made, although it was made a condition in the letter of appointment, there is reasonable basis of apprehension that the students may not get fair treatment on the basis of such examination and the petitioners may have genuine scope for grievance. It is

quite true that normally the Courts do not sit in appeal against the decision of the examining bodies. In the instant case, however, since there is apparent irregularity, in my view, the students who have approached the Court, their answer scripts may be revaluated and/or re-examined by an expert. In this connection, judgment and decision in the case of *State of Orissa v. Prajnaparamita Samanta*, (1996) 7 SCC 106 President, Board of Secondary Education v. D.Suvankar 2006 JT 10 may be taken note of. In the aforesaid decision it appears that an entrance examination was held for the medical courses for the academic year 1991-92. The students who failed in the examination, approached the High Court by various writ petitions. The contention of the students was that there was 38 questions which were (a) either outside syllabus, or (b) were such for which key answers given were wrong while the correct answers were available in the alternative answers given against the said question, or (c) for which the alternative answers given were all wrong, or (d) such for which more than one alternative answers provided were correct. The Supreme Court held inter alia that "normally, the Courts do not examine such grievances and sit in appeal over the decision of the examining bodies. However, the High Court took pains and examined the said grievances of the students and ultimately came to the conclusion that according to it, there were nine questions for which the answers could be more than one. On this conclusion, the High Court directed the MBBS/BDS Selection Board to reevaluate the answer books of those of the examinees who had secured a minimum of 105 marks, and after re-evaluation of the nine questions concerned give admission to those of the examinees who would secure a minimum of 114 marks. The High Court further made it clear that the benefit of its order would be available only to those who had approached the High Court till 27-3-1992 which was the date of its decision. Against the said decision, the present writ petitions and appeals have been filed."

29. However, considering the facts of the case involved the High Court itself took pain and examined the grievances of the students and ultimately came to the conclusion that according to it, there were 9 questions for which the answers could be more than one. The Supreme Court declined to interfere with the decision of the High Court and did not accept the plea of the appellant that revaluation of answer scripts is not permissible. However, the Supreme Court limited the relief of revaluation only to the candidates approaching the High Court till the date of decision.

30. Considering the facts on record and the decision noted as above, in my view, the interest of justice will be best served if the answer scripts of the petitioners are re-examined and/or revaluated by Head of the Department of Biochemistry and Anatomy. Burdwan University Medical Faculty who will be specially appointed for such purpose by the Vice-Chancellor, University of Calcutta. Such appointment is to be made within 2 weeks from date and the answer scripts will be revaluated and/or examined and result declared within six weeks thereafter. Results of the petitioners as already declared will not be effective and on the basis of such revaluation of the petitioners' answer scripts, authorities will make

a fresh declaration of results on the basis of such revaluation and/or re-examination of answer scripts.

31. It is expected that in view of the apparent irregularity in holding of the examination which is subject-matter of this writ petition, the Vice-Chancellor, University of Calcutta will cause an enquiry to be made by appointing a high power committee and take appropriate steps in the matter.

32. The writ petition stands disposed of with the directions as above.

33. There will be no order as to costs.

34. The Vice-Chancellor, University of Calcutta and all parties are to act on signed copy of the operative portion of the judgment on the usual undertaking.