
(1966) 06 CAL CK 0003

In the Calcutta High Court

Case No : Civil Revision Case No. 827 (W) of 1965

Sashi Bhusan Ray

APPELLANT

Vs

Pramatha Nath Bandopadhyay and others

RESPONDENT

Date of Decision : 17-06-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 72

Citation : 70 CWN 892

Hon'ble Judges : A.N. Ray, J

Bench : Single Bench

Advocate : Nirmal Chandra Sen and Tarak Nath Banerjee, for the Appellant; R.C. Dev, Nani Coomar Chakravarti, Somenath Chatterjee, Mrs. Kanika Banerjee and Jayanta Mookherjee for Dr. Banerjee, Ranadeb Chaudhuri, Sisir Kumar Mukherjee, Nirmalendu Roy, Narayan Ranjan Mukherjee for the Calcutta University and Anil C. Mitra and Ajoy Ghosh for the University Law College, for the Respondent

Judgement

A.N. Ray, J.—The petitioner, Sashi Bhushan Ray, obtained this Rule requiring the respondents to show cause as to why a writ of or in the nature of Quo Warranto should not be issued commanding respondent No. 1 Pramatha Nath Bandopadhyay to exhibit before this Court by what authority he pretends to hold or to continue to hold the public offices, to wit, the office of the Principal or a whole-time Professor or a member of the Teaching Staff of the University College of Law, or the office of the Vice President and Secretary of the Council of the University College of Law, or the office of a member of Board of Trustees for the University Law College Building Fund, or the office of a University Professor or Teacher, or the office of a member of the Senate or the Syndicate or the Academic Council of the University of Calcutta or the office of the Head of the Department of the Post Graduate Teaching in Law or of the Chairman of the Board of Studies in Law under the Faculty of Law, in or under the University of Calcutta. The Rule also directed the respondents to show cause as to why a writ

of or in the nature of Mandamus should not be issued commanding the respondent No. 1 to forbear from receiving or realising or drawing from the University Fund any remuneration or emoluments or other sum of money on account of or in the relation to such offices as aforesaid and to act according to the law. The Rule also required the respondents to show cause as to why a Writ of or in the nature of Mandamus should not be issued commanding the respondent No. 1 to refund to the University Fund of the University of Calcutta all such remunerations, emoluments and other sums of money received or realised or drawn by him on account of or in relation to such offices since and after his attainment of the age of 65 years. The Rule further directed the respondents to show cause as to why respondents Nos. 2 to 11 should not be commanded to forbear from permitting the respondent No. 1 to hold or to function as the holder of any of the aforesaid offices and further to show cause as to why a Writ of Mandamus should not be issued commanding respondents Nos. 2 to 11 to forbear from paying any remuneration, emolument or other sums in relation to such offices to the respondent No. 1. The respondents Nos. 2 to 11 were further directed by the rule to show cause as to why they should not be commanded to realise from respondent No. 1 all remunerations, emoluments and other sums received or realised or drawn by him from out of the University Fund since and after his attainment of the age of 65 years. The respondents were also required to show cause as to why a writ of Mandamus should not be issued commanding respondents Nos. 12 and 13 to audit the accounts of the University College of Law as part of the annual accounts of the University of Calcutta. The petitioner is by occupation a medical practitioner and in paragraph 18 of the petition, the petitioner is described as a registered Graduate of the University of Calcutta who has paid his subscriptions and is, as such, qualified elector to elect members of the Senate of the University, and is interested in the due and proper administration of the affairs of the University and in the due and proper application of the University Fund constituted by and u/s 49 of the Calcutta University Act, 1951.

2. The respondents are 13 in number. The first respondent is Pramatha Nath Bandopadhyay. The respondents Nos. 2, to 11 are the University of Calcutta, the Senate, the Syndicate, the Academic Council, the Chancellor, the Vice Chancellor, the Treasurer, the Finance Committee, the Dean of the Faculty of Law and the Council of the University College of Law respectively. The respondent No. 12 is the State of West Bengal. Respondent No. 13 is the Accountant-General of West Bengal.

3. The petitioner alleges that the University of Calcutta is a body corporate and was originally constituted by the Calcutta University Act of 1857 and was reconstituted by the Calcutta University Act, 1951. The Act of 1951 has from time to time been amended. The Act of 1951 and the First Statute, the First Ordinance & the First Regulation made under the Act of 1951 are included in and published by the University of Calcutta in a book which was tendered and marked as exhibit 1 and is described as Calcutta University Act of 1951 with First

Statute, etc., amended up to 30 June 1962 published by Calcutta University in 1963. Exhibit 1 will hereinafter be, for the sake of brevity, referred to as the Statute Book.

4. The petitioner alleges that it appears from the records of the University that the University College of Law was instituted & established and maintained as a public institution in or about 1908 and has since been maintained out of the University Fund by the University as alleged in various subparagraphs of paragraph 4 of the petition. These allegations are that in 1908 Sir Asutosh Mookerjee in a minute addressed to the Syndicate observed that there were various difficulties regarding legal education in Bengal, and the only solution was to close all law classes and for the University to found a Law College, and that the Law Colleges of other provinces were owned and maintained by the Government and the proposed Law College would be a University College. The minute of Sir Asutosh Mookerjee was considered by the Syndicate at its meeting on 4 July, 1908, when it was resolved that the Syndicate recommended to the Senate that a University Law College be established. On 14 July 1908, the said minute was considered by the Faculty of Law of the University when it was resolved that the Faculty recorded its opinion that for the promotion of legal education of students for degrees in Law it was desirable to establish a University Law College to serve as a model. On 21 July 1908, the Senate resolved that a University Law College be established and that the Syndicate be authorised to appoint a provisional committee to organise it. Since about 1909 the Syndicate has been making appointments of Professors and Lecturers for the Law College and confirming such appointments. The Law College is alleged to have been maintained by and under the Control of the University since the establishment of the Law College. Further allegations are that the receipts of the Law College like those of other University Colleges or departments were and are credited to the University Fund and the expenditure relating to that College was, and is incurred from the same fund. The members of the teaching staff of the Law College are alleged to be treated as University Teachers and guided by the Provident Fund Rules of the University and their Provident Fund Accounts are alleged to be maintained along with that of the members of the other Staff of the University.

5. The petitioner alleges that the Law College is one of the six University Colleges within the meaning of the Act of 1951 and is so declared by Provision 1(a) (5) of the First Statute relating to institution and maintenance of the University Colleges. It is also alleged that the management of the Law College is vested in the Council of the College under provisions 2, 15 and 16 of the said First Statute relating to the University Colleges. These provisions will appear at pages 110 to 113 of Ext. 1. The accounts of the Law College are alleged to be liable to be audited along with and as part of the annual accounts of the University by the respondents Nos. 12 and 13 u/s 23 of the 1951 Act.

6. The respondent Pramatha Nath Bandopadhyay passed the Entrance Examination of the University of Calcutta in the year 1909 and his age as

computed as on 1 March 1909 according to the University of Calcutta publication was 14 years 2 months. It is alleged that the said respondent No. 1 attained the age of 65 years in or about 1960. The respondent is described by the petitioner to be an eminent scholar, jurist and politician. The petitioner further alleged that the respondent No. 1 was on 12 March, 1954 when the First Statute, First Ordinance and First Regulation came into force, the Principal and a whole-time Professor and a member of the Teaching Staff of the Law College and a University Professor within the meaning of the Act and was due to retire at the age of 60 years and could not be employed beyond the age of 65 years under Regulation 25 of Chapter XI of previous Regulations of the University.

7. The petitioner alleges that according to the provision 49 of the First Statute relating to University Colleges appearing at page 122 of Ext. 1 every whole-time University Teacher shall, retire at the age of 62 years, provided that the Syndicate, may in exceptional cases, on the recommendation of a Committee consisting of the respondents Nos. 7, 8 and 10, namely, the Vice Chancellor, the Treasurer and the Dean of the Faculty of Law may by a special resolution extend the term of appointment of that Teacher up to 65 years subject to the condition that such extension shall not be for more than two years at a time.

8. The petitioner alleges that the respondent No. 1 was not qualified or competent to be or to remain the Principal of the Law College or a University Teacher or Professor since and after his attainment of the age of 65 years in or about 1960.

9. The various offices which the petitioner alleges that the respondent has usurped are those of the Principal and whole-time Professor and a member of the Teaching Staff of the Law College under Provision 24(a) of the First Statute relating to University Colleges, member of the Board of Trustees for the University Law College Building Fund under provision 23 of the First Statute relating to University Colleges ; the Office of the Vice President and Secretary of the Law College Council under provision 15(b) of the Statute relating to University Colleges; the office of the member of the Senate in his capacity of a University Professor under S. 16 (1) (vi) of the said Act; the office of the member of the Academic Council of the University in his capacity of the University Professor u/s 26(1) (iv) of the said Act; the office of the Head of the Department of the Post Graduate Teaching in law under the Faculty of Law in his capacity of the Principal of the Law College under provision 16(1) of the First Statute and Regulation relating to the Faculty of the University read with the Explanation to Provision 16(3) of the First Statute relating to the Board of the Studies of the University ; the office of the Chairman and a member of the Board of Studies in Law under the Faculty of Law in his capacity of the Principal of the Law College under provisions 15 and 16 (3) of the said First Statute and the office of the member of the Syndicate in his capacity as the Principal of the Law College in his character of a professional College u/s 20 (1) (viii) of the said Act.

10. The petitioner alleges that the University College of Law is a University

College within the meaning of section 2(o) of the Act of 1951 and not an affiliated college within the meaning of section 2(a) of the said Act. Secondly, it is alleged that the Principal of the Law College under Provision 24(a) of the First Statute relating to University Colleges at page 115 of Ext. 1 is in the facts and circumstances of the case a Teacher of the University or University Teacher within the meaning of section 2(m) and a University Professor within the meaning of sections 2(q) and 16(1) (vi) of the said 1951 Act and is, as such, subject to retirement at the age of 65 years under provision 49 of the First Statute relating to University Colleges. Thirdly, it is alleged that the accounts of the Law College are part of the accounts of the University and are liable to be audited along with Annual Accounts of the University u/s 23 of the said Act of 1951 read with section 2(o) of the said Act and Provision I, of the said First Statute relating to University Colleges. Fourthly, it is alleged that the respondent No. 1 since and after his attainment of 65 years was at all material times and is incompetent or disqualified to be or to remain or to function as either the Principal or a whole-time Professor or member of the Teaching Staff of the Law College, or of the several offices alleged. Fifthly, it is alleged that the respondents Nos. 2 to 11 acted in excess or abuse of their respective powers and jurisdictions under the said Act of 1951 and the said First Statute, First Ordinance and First Regulation made thereunder, in permitting the respondent No. 1 to hold or to function as the holder of the various public offices alleged in the petition or to receive or realise or draw any emoluments or remunerations or other sums out of the University Fund on account of such offices, since and after his attainment of the age of 65 years. Sixthly, it is alleged that the respondents Nos. 1 to 11 acted in excess or abuse of their powers and jurisdictions under the Act of 1951, the First Statute, the First Ordinance and First Regulation obstructing the respondents Nos. 12 and 13 to audit the accounts of the Law College as part of the accounts of the University. Lastly it is alleged that the respondents Nos. 12 and 13 failed to exercise the power and jurisdiction restraining them under the said Act in omitting to audit the accounts of the Law College as part of the Accounts of the University.

11. In paragraph 19 of the petition, the petitioner alleges that the respondents kept the aforesaid facts back from the general public including the persons interested in University education and legal education as well as from the registered graduates of the University and the petitioner accidentally came by a copy of the letter set forth in Annexure "A" to the petition in or about the month of July 1965, and thereafter obtained the aforesaid facts. The letter in the Annexure "A" to the petition is dated 11 March, 1964 addressed by the office of the Accountant-General, West Bengal to the Vice Chancellor and the said letter was circulated to the members of the Syndicate in connection with item No. 55 of the Syndicate Meeting dated 8 April 1964. That letter is on the subject of the special Status of the University College of Law and its Teaching Staff including the Principal and the Vice Principal. The Accountant-General in that letter referred to the opinion affirmed by the Syndicate at its meeting held on 4

January 1964 that the Law College is not to be treated as an integral part of the University and on that basis the office of the Accountant-General stated that it followed that transactions relating to the Law College should not be mixed up and passed through, the University Fund and the accounts of the Law College should not be mixed up with the University accounts. The Office of the Accountant-General referred to the letter of that office dated 25 September 1963 where the views of the Accountant General were expressed to the contrary. The office of the Accountant-General concluded the letter by stating that Audit Certificates of the past years had been passed on the assumption that the University Law College formed an integral part of the University and, therefore, the same might be considered to be modified and it would not be possible for the Office of the Accountant-General to issue certificate of correctness of the accounts of the University unless the accounts of the University excluded accounts of Law College transactions.

12. The petitioner affirmed a supplementary affidavit on 26 August 1965 explaining the circumstances under which the letter annexed to the petition came to be possessed by the petitioner. In paragraph 4(d) of the affidavit affirmed on 26 August 1965 the petitioner alleged that in or about the month of July 1965 in course of the conversation between him and Dr. Sailendra Nath Sen, Professor of Medicine of the Calcutta Medical College and Dean of Faculty of Medicine and a member of the Senate and the Syndicate and several other authorities of the University of Calcutta, the administration of the affairs of the University came up for discussion between the petitioner and Dr. Sailendra Nath Sen when the latter mentioned the dispute between the Accountant-General of West Bengal and the University of Calcutta in respect of Audit of the annual accounts of the University College of Law and showed the petitioner the letter annexed to the petition and thereupon the petitioner requested Dr. Sen to give him a copy of the letter and under these circumstances the petitioner came to possess the letter.

13. In answer to the petitioner's allegations the respondent No. 1 Promotha Nath Bandopadhyay filed an affidavit which was affirmed on 8 March 1966. Golap Chandra Roy Choudhury, Registrar of the University of Calcutta affirmed an affidavit on behalf of the University of Calcutta, the Vice Chancellor and the Treasurer, being respondents Nos. 2, 7 and 8. The affidavit of the Registrar of the University of Calcutta was affirmed on 8 March 1966. Sunil Kumar Mitra affirmed an affidavit on behalf of the Council of University College of Law, and that affidavit was affirmed on 8 March 1966. The respondent No. 13, namely, the Accountant-General of West Bengal filed an affidavit which was affirmed by Satya Ranjan Biswas, a Superintendent of the Office of the Accountant-General and that affidavit was also affirmed on 8 March 1966.

14. The affidavit-in-reply was affirmed by the petitioner on 22 March 1966.

15. It is necessary now to icier to some of the allegations in the affidavit-in-opposition. It appears from the affidavit of the respondent No. 1 that the Council of the University College of Law at its meeting held on 31 May 1956 considered

the question of future development of the University College of Law. The then Vice Chancellor made a statement that for the extension of the University College of Law and for the construction of its building, the University Grants Commission was prepared to pay a sum not exceeding 15 lacs of rupees out of the University Centenary Celebration Grant of one crore of rupees to the University of Calcutta. The Vice Chancellor observed that under the circumstances the University College of Law, which was under the New University Act a post graduate college, should not be only a teaching institution but a research institution as well and that the Principal of the University College of Law who would be necessarily in charge not only of the teaching department of the College but also the administrative department of the College, should be a whole-time Principal and should be assisted by a whole-time Vice Principal. The proposed resolutions were that the teaching staff of the University College of Law would consist of the Principal, who would be a Professor (whole-time), Vice Principal, who would be a Reader (whole-time), Lecturers (part-time) and a whole time lecturer with the salary, emoluments, and status of a Reader in the usual grade for Readers. The Senate at its meeting dated 11 March 1957 discaused the proposal and Shri Nandakisor Ghose, a member of the Senate, submitted before the Senate the new Ordinance in place of Ordinance No. 24 relating to the powers and duties of the Council of the University College of Law. The Council of the University College of Law accepted the proposal that the new Ordinance No. 24 would be that the Teaching Staff of the University College of Law should consist of the Principal, who would be a Professor (whole time), Vice Principal who would be a Reader (whole time), Lecturers (part time) and a whole time Lecturer with the salary, emoluments and status of a Reader in the usual grade for Reader. The old Ordinance No. 24 which was replaced read as follows : That the Principal would be a Professor (part time), Vice Principal would be a Reader (whole time) and Lecturers were part time. In course of discussion of the Ordinance in the Senate Sri Nandakishore Ghose, a member of the Senate, stated that the University College of Law was an affiliated college but it was not an integral part of the University and it had a separate entity and that the Professors of the University College of Law were not University Teachers. It was pointed out that the Professors of the University College of Law were appointed by the Governing Body subject to the approval of the Syndicate. It is further pointed out that the appointments to the University College of Law were not taken before the Academic Council. Reference was then made to the services rendered by Shri Pamatha Nath Bandopadhyay and it was stated that the University College of Law could illafford to lose the services of Shri Bandopadhyay who had been serving it for more than 41 years and it was essential that his services should be retained for a few years more. Eventually the Senate resolved in favour of the Ordinance.

16. At the proceedings of the Law College Council held on 5 January 1960 the terms of appointment of the Principal which was to expire on 31 January 1960 came up for consideration. A letter dated 14 December 1959 signed by Mr. Justice P.B. Mukharji, Mr. S.N. Modak, Mr. N.K. Ghosh, Mr. S.A. Masud, who is

now a Judge of this Court, Mr. Pratap Chandra Chunder and Mr. B.N. Mukherjee and addressed to the Vice Chancellor was placed before the Law College Council. In that letter members of the council of the University requested the Vice Chancellor to invite Shri Bandopadhyay to agree to serve the institution for a period of two years after the expiry of the third period of contract on 31 January 1960 "on the same terms and conditions as heretobefore." The letter further stated that it need not be reiterated that the services rendered by Dr. Bandopadhyay to the College and the University required his presence for the organisation and expansion of legal studies including the construction of a building and a hostel for the College. The letter concluded by stating that if the Vice Chancellor was unable to extend invitation personally to Dr. Bandopadhyay the authors of the letter would be grateful if the Vice-Chancellor would kindly treat the letter as the notice of motion before the next meeting of the Council of the University College of Law for reappointment of Dr. Bandopadhyay as Principal of the

University College of Law for the fourth term. There was a unanimous resolution that Dr. Pramatha Nath Bandopadhyay be invited to agree to serve the institution for a period of two years from 1 February 1960 to 31 January 1962 "on the existing terms and conditions." There appears a note that the Vice Chancellor gave a ruling from the Chair that University age rules in Ordinance No. 49 of the First Ordinance under Part VII, page 124 of the Calcutta University Act, 1951 did not apply in case of teachers of University College of Law.

17. On 10 July 1961, it appears from the proceedings of the College Council of the University College of Law that a letter signed by Mr. Justice P.B. Mukharji, Mr. S.N. Modak, Mr. B.N. Mukharji, Mr. N.K. Ghosh, Mr. S.A. Masud (now Mr. Justice Masud) and Mr. Pratap Chandra Chunder was addressed to the Principal, University College of Law that at the meeting of the College Council to be held on 10 July 1961 the members of the College Council who had written that letter would move a resolution inviting Dr. Bandopadhyay to serve the College for a further period of two years on the expiry of the third period of contract on 31 January 1962.

18. The then Vice-Chancellor Dr. Subodh Mitra on 7 July 1961 stated that in his opinion in the interest of the University College of Law, Calcutta and the University of Calcutta and the country an invitation should be extended to Dr. P.N. Banerjee, the Principal of the University College of Law, to agree to serve the College for a further period of two years after 31 January 1962 on the same terms and conditions as before. The Vice Chancellor recorded in the letter that he had no hesitation to recommend this course and the University College of Law, Calcutta would in the future acquire a new shape and from and at that stage the University could not afford to lose the experience and services of Dr. Banerjee who in the opinion of the Vice-Chancellor had been a part of the College. Mr. Justice P.B. Mukharji moved a resolution on behalf of the six signatory members of the College Council which included members of the Syndicate, members of the

College Council and teachers of the college.

The resolution was to the following effect:--

That Dr. P. N. Banerjee, the present Principal of the University College of Law, Calcutta, be invited to serve this College for a further period of two years after the expiry of the fourth period of contract with him from 31 January 1962 on the same terms and conditions as heretofore.

It is resolved--that the motion be accepted and that Dr. P.N. Banerjee, the present Principal of the University College of Law, Calcutta, be invited to agree to serve the institution for a period of 2 years from 1 February 1962 to 31 January 1964 on the existing terms and conditions.

19. It appears that on 3 January 1964 the University Law College Council met to consider a letter written by Mr. Justice P.B. Mukharji, Mr. Justice D.N. Sinha, Mr. N.K. Ghosh, Mr. B.N. Mukherjee, Mr. S.A. Masud (now Mr. Justice Masud), Mr. P.C. Chunder to the effect that the writers of the letter as members of the College Council thereby gave notice that they would move a resolution at the meeting of the College Council to be held on 3 January 1964 in regard to the further appointment of the Principal Dr. P.N. Banerjee. The proposed resolution was worded as follows: --

That Dr. P.N. Banerjee, the present Principal of the University College of Law, Calcutta, be invited to agree to serve this college for a further period of two years after the expiry of the fifth period of contract on 31 January 1964 on the same terms and conditions as heretofore.

The writers of the letter further stated that in their opinion and in the interest of the college and also in the interest of the University as a whole it was essential that invitation should be extended to Dr. P.N. Banerjee.

20. The Vice-Chancellor Mr. Malik in a note dated 20 December 1963 recorded that several members of the College Council had sent him a notice that they were going to move a resolution in regard to the further appointment of Dr. Banerjee as Principal of the University College of Law on the expiry of the present term on 31 January 1964 and that the notice of Motion might be placed before the College Council. The Vice-Chancellor stated that Dr. Banerji had been Vice Chancellor of the University and had been for a long time connected with the Law College and with the University in various capacities. Attempts were being made to introduce changes to improve the working and enhance the reputation of the University. The Vice-Chancellor stated that Dr. Banerjee's long and varied experience at the juncture was likely to prove to be of benefit to the University and in case the Vice-Chancellor could not be present at the meeting he expressed his opinion that the continuance of Dr. Banerjee's connection with the University would be of immense benefit to the University at that stage.

21. The resolution was moved by Shri Rama Prasad Mookerjee that Dr. P.N. Banerjee be invited to serve the College for a further period of two years with

effect from 1 February 1964 on a salary of Rs. 1500 per month and Rs. 250 as administrative allowance and the benefits of provident fund. The Council thereupon resolved that Dr. P.N. Banerjee be invited to agree to serve this college as Principal for a further period of two years from 1 February 1964 on the same terms and conditions as heretobefore

22. In the context of these resolutions it appears from the affidavit of Pramatha Nath Banerjee that doubt arose as to the first constitution of the Senate and the government decided u/s 53 of the 1951 Act that the Law College was a professional college and not a University college. In graph 8 (f) of the affidavit of the respondent no. 1 he alleges that he came to be a voter as a Principal of a professional college and the teachers of the Law College were completely disenfranchised as they were not teachers of the University. It is further alleged that since the operation of the 1951 Act three elections of the Senate had been held under the 1951 Act and in each of those elections the Law College has been treated as a professional college and not as a University College. It is also alleged that the Law College has always been an affiliated college under the 1904 Act and the 1951 Act and the affairs of the Law College including appointments and retirements continued to be governed by the same rules, practice and procedure which obtained under the 1904 Act and the rules, practice and procedure are totally different from those governing the University College of Arts, Science, Technology, Commerce and Medicine. It is also alleged in the affidavit of respondent No. 1 in sub-paragraph (g) of para. 8 that the Law College has not been maintained by the University and is not so maintained since the operation of the 1951 Act. The allegations are that the University realized in the past from the Law College Municipal taxes amounting to Rs. 68,004/- electric expenses amounting to Rs. 68,983/- and house rent amounting to Rs. 1,35,000/-. The further allegations are that an advance to the extent of Rs. 13,92, 055/ had been made by the Law College to the University directly or indirectly out of which the University had repaid to the Law College Rs. 5,67,068/- leaving a balance of Rs. 8,24,987/- due and owing to the Law College. It is also alleged that the receipts of the Law College are made over to the University mainly for the purpose of custody and disbursement according to the requisition of the Law College. In paragraph 9 of the affidavit of respondent no. 1 it is alleged that the administration and management of the Law College has always been and is vested in the Governing Body of the College Council and clause 16 of the Firs provides that the management of the Law College shall vest in the College Council. It is alleged that by virtue of the powers vested in the Governing Body under the 1904 Act and the Collage Council under the 1951 Act the Governing Body or College Council made all appointments of Principals, Vice-Principals and Lecturers of the Law College and Principals. Vice-Principles and Lecturers have never been teacher of the University and are not treated as such.

23. It will not be out of place to mention here that the respondent No. 1 Pramatha Nath Banerjee took a First Class First in his B.A. with Honours in History and again took a First Class First in his Master of Arts Examination in

History and again took a First Class First in his Bachelor of Law Examination in 1917. He was awarded Premchand Roychand Scholarship and Anath Deb Research Prize in Law in the year 1919. He was called to the Bar by the Hon'ble Society of Lincoln's Inn and he took a First Class in Part I of the Bar Examination and was placed 4th in order of merit in the Bar Final Examination. The Senate of the University of Calcutta in the year 1947 conferred upon him the status of a Professor in recognition of the services rendered to the Department of He received the honorary Degrees of Doctorate of Law at McGill University and at Calcutta University.

24. On 30 May, 1919 the respondent Dr. Banerjee was appointed Professor of Law College at a salary of Rs. 200 per month. The appointment was made the Governing Body of the Law College and was confirmed by the Syndicate. He continued as such Professor up to the year 1934. In 1934-35 he acted as Vice-Principal of the Law without any remuneration. On 4 May 1955 it was resolved by the Governing Body of the Law College that "Pramatha Nath Banerjee, M.A., B.L., Barrister-at-Law (one of the Professors of the College, who acted as Vice-Principal on several occasions during the session 1934-35) be appointed Vice-Principal for a period of 5 years with effect from 1 July 1955 on a salary of Rs. 400 per month." The resolution was confirmed by the Syndicate. In 1938 the then Principal of the Law College retired. The Governing Body appointed a sub-committee for the appointment of a Principal on the recommendation of the sub-committee. On 7 May 1938 it was resolved by the Governing Body that "Mr. Pramatha Nath Banerjee, M.A., B.L., Barrister-at-Law be appointed Principal of the University Law College at a salary of Rs. 700/- per month for a period of 5 years in the first instance." By a resolution dated 16 May 1938 it was resolved that the appointment be for a period of 10 years in the first instance from 1 July 1938. On 6 May 1947 the Governing Body of the Law College resolved that "Mr. P. N. Banerjee M.A., B.L., Barrister-at-Law be continued Principal of the Law College till he completes 62 years". Thereafter Dr. Banerjee has been appointed as Principal pursuant to the resolutions of the College Council to which reference has been made and there was a fresh contract of appointment on each occasion.

25. The Registrar of the University of Calcutta in his affidavit has set out the history of the formation and growth of the Law College. In paragraph 6 of the affidavit the Registrar states that it will appear from the history of the foundation of the University Law College, its affiliation, its management, its location and the beginning of its library that the University Law College was never an integral part of the University and had always been a separate entity. He further alleges that unlike University Colleges of Science, Technology and Commerce which were treated as departments of the University of Calcutta, the University College of Law was always treated, considered and classified as an affiliated college and was shown as such in the University Calendar. As regards appointment of teachers of Law College and University College the Registrar in paragraph 7(j) of his affidavit states that it appears from the minutes of the Syndicate that none of the rules relating to the appointment of Professors, Readers and Lecturers was

ever followed in connection with the appointment of Principal and Teachers of the Law College and that they were appointed in the first instance by the Governing Body and the same was reported to the Syndicate for confirmation and none of these cases of appointment ever went to the Senate or the Government for approval. The Registrar further states in his affidavit that the cases of Teachers of the Law College in regard to the mode of appointment was thus distinguished from the cases of appointment of University Teachers (Professors, Readers and Lecturers) attached to the Faculties of Arts, Science, Technology and Medicine. The Registrar further states that Chapter IXA, rule 13(a) of the new Regulations had provision for the mode of appointment of Professorship and Readership and for posts other than Professorship and Readership and retirement of such teachers, Rule 13 and sub-rule (4) of the said Regulation is relevant, and no such regulations appear to have been made to govern the appointment of teachers and other professors of the Law College. As regards condition of service of Teachers the Registrar in his affidavit states that the Governing Body of the Law College in 1925 considered rules regarding retirement allowance of the Principals and resolved that rules laid down in Chapter VII, Section 6, clause 5 of the Regulations regarding pension to be allowed in the case of the Registrar be adopted for the Principal of the University Law College. The Registrar has referred to a resolution of the Governing Body of the Law College which came up for consideration of the Syndicate on 30 October 1963 where the Syndicate resolved that "the Syndicate was of opinion that the rule regarding the age of retirement (the age rule applicable to whole-time teachers of the University Professors and Lecturers of P.S. department under Chapter XI of the Regulation) does not apply in the case of Shri Karkoon." As regards funds of the Law College the Registrar in paragraph 8 of the affidavit refers to adjustment of account between the Law College and the University of Calcutta. The Registrar states that the University Law College remained as affiliated College in under the University till the appointed day, 12 March 1954 and thereafter a question arose before the authorities of the University of Calcutta as to the status of the University College of Law as to whether it was one of the affiliated Colleges or it was an integral part of the University. The Registrar states that the affiliation granted to the University College of Law was not withdrawn. On 14 August 1954 the Syndicate confirmed a proceeding of the Council of the University College of Law dated 16 July 1954 when a doubt was expressed as to the legal status of the University College of Law. It is stated that the University College of Law obtained opinion of the Legal Remembrancer. The Registrar further states that the Accountant-General of West Bengal wrote a letter on 11 March 1964 that the University obtained opinion of counsel. The Registrar states that the University Authority acted on the basis of the opinion of the Legal Remembrancer. The Registrar further in his affidavit denies that the Law College since its inception had been maintained or comes under the control and management of the University.

26. The affidavit affirmed on behalf of the Council of the University College of Law contains allegations similar to the allegations made in the affidavit of the

Registrar and of the respondent No. 1.

27. The Accountant-General of West Bengal in his affidavit stated that the accounts of the Calcutta University College of Law had all along been subjected to audit with the rest of the University accounts by the resident audit party but during the audit of the accounts for the year 1961-1962 the authorities of Law College refused to part with the service books of the Law College. It is stated that because of the opinion of the Legal Remembrancer the audit could not be made. The Accountant-General in the affidavit states that since the Accountant-General has been appointed by the State Government in the Education Department as Auditor of the University the accounts of the Law College would have to be separated from the accounts of the University to enable audit to certify the correctness of the accounts of the University or the opinion of the Advocate-General might be obtained. As far as the Accountant-General is concerned it is stated that because of the impasse audit could not be made.

28. In the affidavit-in-reply the petitioner has re-affirmed the allegations in the petition.

29. The Report of the Finance Committee appointed by the Syndicate on 19 February 1932 records at pages 3 and 4 thereof as follows : "The University Law College used to get an annual grant of Rs. 30,000/- from Government. In 1926-27 Government decided to make this grant to the University for its general purposes and not specifically to the Law College, it being left to the University to transfer such portion of the grant to the Law College as might be necessary. During the last few years the Senate found it necessary to allot this grant to the Law College (except in one year) in order to enable it to meet its deficit. The Law College, however, has been annually paying to the University a total sum of about Rs. 22,000/- as rent, contribution for Municipal Tax and electric expenses. Government now proposes that in future the University will not make any grant to the Law College; neither will the latter make any contribution to the general funds of the University. The sum of Rs. 3,60,000/- is therefore, arrived at after taking into account an additional income of Rs. 8,000/- transferred from the Law College grant to the Fee Fund."

30. Counsel on behalf of the petitioner contended that the University of Calcutta created Law College and that the University had no power to create any institution autonomous of it. In other words it is contended that the Law College having been created by the University of Calcutta as a part it is a University College. Secondly, it is contended that the University had power to affiliate Colleges and the University Colleges would also have to be affiliated with the result that just because of the University College of Law happens to be an affiliated College it does not thereby cease to be a University College. Thirdly, it was contended that u/s 18(8) of the 1951 Act the Senate has power to prescribe the conditions of affiliation of Colleges to the University and to allow Colleges affiliated to the University of Calcutta as constituted prior to the appointed day, to continue to exercise rights and privileges conferred on them by such affiliation

and any further privileges conferred by or under this Act and to withdraw affiliation and therefore the affiliation which was granted by the University of Calcutta to Law College was continued by the Senate and it did not have the effect of conferring on the University College of Law a separate and independent existence. Fourthly, it was contended that u/s 33 (b) and (h) of the 1951 Act the statute would provide for the conditions of affiliation of Colleges to the University and the classification and the mode of appointment and of suspension and dismissal of Teachers of the University and the statute would therefore be applicable with regard to affiliated Colleges and the statute would also be applicable with regard to appointment, suspension and dismissal of Teacher of the University.

31. As to affiliation reliance was placed by counsel for the petitioner on the statutes described as "Affiliation of Colleges under the Calcutta University Act, 1951" at page 146 of the Statute where it is stated that in case of a Government College the application for affiliation must be made through the Director of Public Instruction and in the case of any other College, the Governing Body must apply through the Chief Controlling Authority, if any, of the College. In the statute relating to application for affiliation at page 146 it will further appear, as counsel for the petitioner submitted that every application made for affiliation shall satisfy the Syndicate that the College is to be under the management of a properly constituted Governing Body. It was therefore contended by counsel for the petitioner that the presence of a Governing Body would have no effect of rendering the Law College merely an affiliated College and would have not the effect of robbing the University College of Law of its character of University College. In short the contention was that the presence of a Governing Body would be in relation to all affiliated Colleges and a University College would also have to be affiliated and therefore the presence of a Governing Body of a College would not make the College cease to be a University College.

32. Under the 1904 Act, section 19 thereof dealt with affiliated colleges. Section 19 prescribed that save on the recommendations of the Syndicate, or special order of the Senate, and subject to any regulations made in this behalf no person should be admitted as a candidate at any University examination other than an examination for Matriculation unless he produces a certificate from a College affiliated to the University. It was, therefore contended that the right of affiliation was only to present candidates at an examination. Section 21 of the 1904 Act required that a College applying for affiliation to the University was to be under the management of a regularly constituted Governing Body. Section 21, sub-section 4 of 1904 Act required that where the application for affiliation or any part thereof was granted the order of the Government would specify the courses of instruction in respect of which the College was affiliated ; and where the application was refused the grounds of refusal would be stated. Section 20 of the 1904 Act stated that any College affiliated to the University before the passing of the 1904 Act might continue to exercise the rights conferred upon it by such affiliation. Reference was made by Counsel for the petitioner to Chapter 18 of the

Regulations of the University of Calcutta published in the Calcutta University Publication with amendments up to 31 July 1951 in the year 1951. In regulation 4 of Chapter 18 of the Regulation it appears that in the case of a Government College application must be made by the Director of Public Instruction and in the case of any other institution, the application must be made by the Governing Body. Reliance was also placed by Counsel for the petitioner on section 2, sub-section 2, clause (a) of the 1904 Act where the term "College" or "Affiliated College" included any collegiate institution affiliated or maintained by the University.

33. The 1857 Act by which the University of Calcutta was established for the purpose of ascertaining by means of examination, the persons who acquired proficiency in different branches of literature, science and arts enacted by section XII thereof that except by special order of the Senate no person was to be admitted as a candidate for the Degree of Bachelor of Arts, Master of Arts, and Bachelor of Law unless he would present to the Chancellor, Vice-Chancellor and Fellows a certificate from one of the institutions authorised in that behalf to the effect that he had completed the course of instructions prescribed. The provisions contained in the 1857 Act were re-affirmed in section 19 of the 1904 Act. The 1857 and the 1904 Acts were referred to by Counsel for the petitioner in aid of his broad contention that all Colleges had to be affiliated and all colleges other than Government Colleges had to have a Governing Body and therefore the University College of Law did not cease to be a University College of Law either because of its affiliation or because of its Governing Body.

34. The 1951 Act defines Affiliated College in section 2(a) as meaning a College affiliated to the University of Calcutta as constituted prior to the appointed day of the Act or affiliated to the University under the 1951 Act. The other definitions which are necessary to be referred to are to be found in clauses (h), (m), (o) and (q) of section 2 which deal with "Principal" "Teacher of the University," "University College" and "University Professor" respectively. "Principal" means the head of a College by whatever name called. "Teacher of the University" means "Professor," "Reader," "Lecturer" or any other person holding a teaching post appointed or recognised by the University. "University College" means a College or Institute or a College combined with a Institute maintained by the University whether instituted by it or not. "University Professor", "University Reader", or "University Lecturer" means a "Professor" "Reader", or "Lecturer" appointed or recognised as such by the University. The University under the 1951 Act, section 4(9) thereof has the power to affiliate to itself Colleges, to allow Colleges affiliated to the University of Calcutta as construed prior to the appointed day to continue to exercise the rights and privileges conferred on them by such affiliation and any further privileges conferred by or under the Act and to withdraw affiliation from such Colleges. Under sec. 18(8) of the 1951 Act the Senate has power to prescribe, after considering the views of the Academic Council, the conditions of affiliation of Colleges to the University, to allow Colleges affiliated to the University of Calcutta as constituted prior to the

appointed day to continue to exercise the rights and privileges conferred on them by such affiliation and any further privileges conferred by or under this Act and to withdraw affiliation from such Colleges after considering the views of the Syndicate. Section 33(b) of the 1951 Act enacts that the statute may provide for the conditions of affiliation of Colleges. It may be stated here that section 21 (j) of the 1951 Act conferred power on the Syndicate to affiliate Colleges to the University and to recognise constituent or professional Colleges and section 39(1) of the 1951 Act conferred power on the Senate to suspend or withdraw the recognition or affiliation of any College which in the opinion of the Senate is not being conducted in accordance with the conditions prescribed.

35. Section 52 of the 1951 Act conferred power on the First Vice Chancellor to cause the first Statute, first Ordinance and first Regulations to be framed. Counsel for the petitioner contended that the fact that the University College of Law was affiliated and there was no withdrawal or suspension of affiliation would not affect the question as to whether it was a University College or not. In the 1904 Act a College meant affiliated College u/s 2 (2) (a) of the 1904 Act. u/s 3 of the 1904 Act the University was empowered to appoint University Professors and Lecturers and to hold and manage educational endowments and to erect and maintain University Libraries and u/s 25 of the 1904 Act the Senate with the sanction of the Government had powers to make regulations to provide for appointment of Professors and Lecturers appointed by the University. Reference was made by Counsel for the petitioner to the 1951 Act and it was said that the University could take over management of another Institution of the University and reliance was placed on sub-section (7) of section 18 of the 1951 Act where the Senate has the power to enter into any agreement with any Government or with a private Management for assuming the management of any Institution and for taking over its properties including its liabilities. Reliance was also placed by Counsel for the petitioner on section 33(c) of the 1951 Act where statutes would provide for institution and maintenance of University Colleges. In the background of these provisions Counsel for the petitioner placed reliance on the statutes relating to University Colleges appearing at page 110 of Exhibit 1. The first Statutes for the institution and maintenance of the University Colleges state that until the Senate otherwise determines on the advice of the Academic Council there shall be six University Colleges and the University College of Law is mentioned as number 5. The Statutes are enacted u/s 52 of the 1951 Act. It is said by Counsel for the petitioner that the maintenance of the University College arises by reason of the provision contained in section 33 of the 1951 Act. In the first Statutes appearing at page 113 there are Statutes regarding the composition of the Council of the University College of Law. Basing his arguments on these provisions Counsel for the petitioner contended that the 1951 Act empowered the University to maintain Colleges and the Statutes stated that there was a University College of Law and the Statutes also regulated as to what the Council of the University College of Law would be and that the management of the University College of Law was vested in the College Council and the

Teaching Start of the University College of Law as appearing in Ordinance 24 consisted of the Principal as a whole-time Professor, and, therefore, it was a University College of Law and the Principal was a University Professor. As such counsel for the petitioner contended that Rule 49 appearing in part 7 of the Ordinance at page 122 of Exhibit 1 would apply to the Principal of University College of Law and there would not be any term of appointment beyond the age of 65.

36. There were three sets of arguments on behalf of the respondents. Mr. Deb appeared on behalf of the respondent Pramatha Nath Bandopadhyay, Mr. Mitra appeared on behalf the University Law College and Mr. Hanadeb Chaudhuri appeared on behalf of the University of Calcutta. Counsel on behalf of the respondents made some common arguments. The first contention was that the Law College was not a University College. The test of a University College, it was said, was whether it was maintained by the University. Mr. Deb put in the forefront the contention that there had to be evidence that the University College of Law was created as a University College and was being maintained by the University. Establishment of a University College was said by Mr. Deb to be proved as a fact. At page 110 of exhibit 1, namely, the Statutes, it is stated that until the Senate otherwise determined on the advice of the Academic Council there shall be six Colleges. These Statutes indicate that there shall be six Colleges and not that six Colleges are being created by those Statutes. These Statutes do not have the effect of taking over the University College of Law and creating the same as a University College of Law. The other contention on behalf of the respondents was that there had to be evidence that the University College of Law was being maintained by the University of Calcutta. Mr. Chaudhuri's contention was that Law College was affiliated prior to 1951 Act and that affiliation not having been withdrawn the same College could not by virtue of the Statutes be deemed or treated to be created a University College of Law. Mr. Mitra emphasized on the aspect of maintenance of a University College by the University and contended that it was not proved by evidence that the Law College was being maintained by the University of Calcutta and it was one of the disputes controverted by affidavit as to whether, in fact, the Law College was maintained by the University of Calcutta. The question bristles with many disputed facts. First, whether there has been creation of a University College of Law ; secondly, whether the University Law College is being maintained by the University as a University College to bring it within the definition of University College ; thirdly, whether the fact that the Law College was affiliated prior to 1951 Act and continues to be affiliated and affiliation not having been withdrawn it is or has become a University College.

37. Counsel on behalf of the petitioner contended that these were questions of law and did not raise any disputes as to facts and even if there had been disputes the question could be gone into by this Court. Counsel for the petitioner contended that it was manifest from these provisions that it was a University College of Law. First there has to be a University College and secondly, the

respondent has to be a University Teacher in order to be brought within the ambit of Ordinance 49 at page 122 of the Statutes which states that there cannot be extension of the term of appointment of a whole-time University Teacher beyond the age of 65 years. Teacher is defined in section 2(1) of 1951 Act to mean a Professor, Reader, Lecturer or any other person holding a teaching post, appointed or recognised by the University. University Professor, University Reader and University Lecturer is said in section 2(q) to mean a Professor, Reader or Lecturer appointed or recognised as such by the University. Counsel for the respondent No. 1, contended that if the appointment was by Law College it could not be an appointment by University at the same time. The appointment in the present case was also confirmed by the Syndicate. In section 3 of the 1951 Act the constituent limbs of the University are mentioned as the first Chancellor and Vice Chancellor of the University and the first members of the Senate, the Syndicate and the Academic Council and all persons who may hereafter become such officers and members so long as they continued to hold such office or membership. Therefore, a University Professor or Reader or Lecturer under the definition means a Professor, Reader or Lecturer appointed or recognised as such by the University. Mr. Deb, in my view, rightly contended that in view of the constituent limbs of the University being categorised in section 3 of the Act and in view of the fact that appointment in the present case was made by the Law College Council and the appointment was, as appears in the affidavit evidence, an extension of a term of contract from time to time, it could not be said that Dr. Pramatha Nath Bandoypadhyay was appointed as a University Professor or as a University Reader or as a University Lecturer. In section 46 of the 1951 Act there is an additional reason as to why Dr. Bandopadhyay cannot be accepted to be a University Professor within the meaning of the Act. Sec. 46 of the 1951 Act indicates that every University Professor shall be appointed on the recommendation of the Selection Committee consisting of the Vice Chancellor, the Dean of Faculty and a person having special knowledge of the subject in which the Professor is to impart instruction and two persons nominated by the Syndicate having special knowledge of the subject in which the Professor is to impart instruction. There is no evidence whatever in the present case that Dr. Bandopadhyay was appointed a University Professor by such a Selection Committee. When the Statute regulates the mode of appointment and if that mode of appointment is not followed it cannot be said to be statutory appointment to be within the mischief of the Statute. On the contrary, the unimpeachable affidavit evidence in the present case is that the appointment of Mr. Bandopadhyay was made by the Law College Council and it came up before the Council and the appointment was treated as a matter of contract.

38. Reference to the Statutes Ext. 1 at page 115 would indicate that Ordinance No. 24 in relation to the Teaching Staff of the University College of Law stated that the Teaching Staff would consist of the Principal who would be a whole time Professor. It is not stated there that the Principal would be a University Professor. In order to bring any appointment within the mischief of the Statute it has to be

brought within the strict terms thereof. If it be looked at from the point of view of Ordinance 49 at page 122, Dr. Bandopadhyay has to be a University Professor in order to be within the mischief of Ordinance 49. I have already indicated that the evidence does not establish that he was appointed as a University Professor. If on the other hand, Ordinance 24 be extended to mean University Professor, the Ordinance is being amplified by implication and construction and such course is in my opinion forbidden. Again reference may be made to Ordinance 14 appearing in part III of the first Statute relating to institution and maintenance of University Colleges at page 113 where Teaching Staff of a University College is said to consist of whole time teachers and part time teachers. In the explanation it is stated that a Teacher of the University means a Professor, Reader, Lecturer or any other person holding a teaching post appointed or recognised by the University. The second explanation is that if a question arises whether a person holds a teaching post within the meaning of section 2(1) of the Act the matter shall be referred to the Vice Chancellor whose decision shall be final. There is no such explanation to Ordinance 24 and it is not without reason that the framers of the Statutes made the distinction. Ordinance 24 speaks of University College of Law whereas Ordinance 14 speaks of the Teaching Staff of a University College. Mr. Deb in my view rightly contended that Ordinance 24 need not be referable only to a University Professor as the Principal of the Law College.

39. On the rival contentions of the parties I am of opinion that the affidavit evidence does not establish that the Law College was created as a University College nor does the affidavit evidence establish that the Law College is being maintained by the University.

40. The contention on behalf of the respondent is that the petitioner in the present case has no interest to maintain this application. It is said that the petitioner has no pecuniary or proprietary interest. There is also the question of delay as far as the petitioner is concerned. It is stated that he came to possess from Dr. Sailendra Nath Sen a copy of a letter. The circumstances under which he came to possess this letter do not reveal that it is natural that in the year 1965 there would be a discussion whereat a letter issued in the year 1964 would be given to the petitioner. Mr. Mitra on behalf of the respondents contended that the petitioner was set up by certain persons and he suggested that the petitioner was set up by Dr. Sailendra Nath Sen. The criticism does not appear to be unjustified. The affairs of the University are well known to members of the public. The appointment of Dr. Bandopadhyay has come up before the Council and there has been extension from time to time. The affairs of the Law College have been debated between the University on the one hand and the office of the Accountant-General on the other for quite some time. The University sought the opinion of the Legal Remembrancer and acted on it. The inordinate delay of six years has not been explained. It is true that delay by itself is not fatal but it depends on the facts and circumstances whether the delay is bona fide or not. In the present case I am of opinion that there is no cogent explanation as to why there has been such delay of six years. Counsel on behalf of the petitioner relied

on the decision in *Sonusampat v. Jalgaon Municipality*, ILR 1958 Bom. 113, and the observation at page 126 of the report that if any act is illegal there would be a fresh cause of action every day and therefore there would be no delay. It might be said that which is illegal continues to be so *de die in diem* but that is no reason why the petitioner who comes with an application for relief of this nature gives no adequate explanation for the delay. As to whether it is an illegal act in the present case is another matter but it has to be said that this delay is not satisfactorily explained.

41. As to the petitioner's interest Counsel for the petitioner relied on the decision of the Supreme Court in *Calcutta Gas Company v. State of West Bengal*, reported in 1962 (2) S.C.A. 147, and contended that the petitioner need not have special interest. He also relied on the decisions reported in ILR 40 Mad. 125 (*Natesan's case*), 17 Q.B. 149, 117 E.R. 1238 *Queen v. Guardians of the Poor of St. Martin's*) and on the observation at page 1242 of the report in support of the contention that the petitioner need not have any special interest where a question of usurpation of public office was brought to the notice of the Court. The decision in *Radha Films Limited v. West Bengal Board of Censors*, reported in AIR 1952, Cal. 653 and the decision in *Bijoy Ranjan Vs. B.C. Das Gupta, President, Governing Body, State Medical Faculty of West Bengal and Others*, that proceedings against a fluctuating body by name of that body could be maintained and incorporate body could be proceeded against in their official title or designation were relied upon by Counsel for the petitioner in answer to the contention of Mr. Chaudhuri that the Syndicate was not a legal entity or a Corporation sole and therefore could not be sued in that name but the individuals forming the Syndicate had to be sued personally. In *Bejoy Ranjan's* case reference was made to the decision in *Natesan's* case reported in ILR 40 Madras, 125, that where the application was to compel some public officer to perform a public duty the persons are not named but are proceeded against under their official title. In *Natesan's* case the Syndicate of the University which was constituted by a statute was being proceeded against. There is an observation in *Bejoy Ranjan's* case that it is clear from *Natesan's* case that unincorporated bodies can be proceeded against in their official title or designation. In *Bejoy Ranjan's* case the State Medical Faculty was impleaded and the contention was that the Governing Body which was a smaller body should have been impleaded. It was said that the act of decision of the Governing Body was an act of decision of the State Medical Faculty. In the case of *Radha Films Ltd. Vs. West Bengal Board of Censors*, , it was held that where persons holding the office are a statutory body fluctuating from time to time and who bear an official designation given to them by a Statute the proper course is to take proceedings against the body in its official description and not against each of such persons individually, and reliance was placed in *Natesan's* case reported in ILR 40 Mad. 125, in support of that proposition. Relying on these decisions Counsel for the petitioner contended that the members of the Academic Council and the members of Senate and Syndicate need not be impleaded personally.

The contention on behalf of the respondents is that the Syndicate is not a Corporation sole and as such should not be sued. Similarly it was said that the Law College Council is not a legal entity. These contentions on behalf of the respondents have lost much force in view of the fact that the University is impleaded. The decisions in Bejoy Ranjan's case and Natesan's case are of aid to the petitioner in meeting the technical objections on behalf of the respondents.

42. As to the petitioner's interest which is required in applications of this nature it is contended on behalf of the respondents that the petitioner has no pecuniary or proprietary interest. Counsel for the petitioner contends that the petitioner need not have any special interest. In the Calcutta Gas Co. case, (1962) 2 S.C.A. 147, the Managing Agents impeached the Government action in taking possession of the Gas Company. It was said by the Supreme Court that the action and in particular the legislative enactment by virtue of which the Government wanted to take action against the Gas Company affected the managing agents and therefore, they had sufficient interest to warrant their making an application. In the present case, Counsel for the respondents relied on the decisions reported in *In Re: Oriental Gas Company Ltd.*, in support of the contention that the petitioner must have interest. It was rightly said by Mr. Chaudhuri that rights of registered graduates were to elect members of the Syndicate and it was such a remote right that it had no nexus with the right of the petitioner to intervene in the matter of appointment of University Teachers or in the matter of regulation of affairs of the Law College. In regard to the principles governing the right of a person to apply for a Writ of Quo Warranto it is said that the petitioner in the present case is not interested either from the pecuniary or from the proprietary point of view to apply. In cases of Quo Warranto where the petitioner has interest in the office of the Principal there is unmistakable interest. In the present case the petitioner has no such interest. If it be contended that the petitioner has interest in the affairs of the administration of the University because he is a University graduate that will be extending the right of any or every person to intervene in the affairs of the University. That is not legal rights. If in an application the petitioner is the next immediate candidate who is entitled to succeed or if there is likelihood of reversion of the office to the petitioner on the failure of the respondent to substantiate his case the Court may issue a Writ at the instance of the person who has the chance of succeeding to the office.

43. Even if doubts as to the petitioner's locus standi were overlooked the other important question in this case is whether the Court will at all intervene in the matter by reason of the fact that Dr. Bandopadhyay has resigned. Counsel for the respondents relied on the statement of law in *Ferris Extraordinary Legal Remedies* on two questions, first as to whether the office of Principal is a public office in regard to which the Court will intervene and secondly, whether the right has abated by reason of the resignation of Dr. Bandopadhyay. In regard to public office at page 166 in *Ferris* the law is stated to be that a public office is the right, authority and duty created and conferred by law, by which an individual is vested

with some portion of the sovereign functions of the Government to be exercised by him for the benefit of the public, for the term and by the tenure prescribed by Law. In other words, it implies a delegation of a portion of the sovereign power. It is a trust conferred by public authority for a public purpose embracing the ideas of tenure, duration, emolument and duties. Relying on this statement of law Counsel for the respondents rightly contended that the office of the Principal of the University Law College is not a public office and it was neither an executive nor a legislative nor a judicial function.

44. It was contended on behalf of the respondents that the respondent No. 1, Dr. Banerjee had tendered resignation and the office of the Principal of the Law College was no longer in his occupation and therefore the writ of Quo Warranto abated and the rule became infructuous. It will appear from the statement of law in Ferris on Extraordinary Legal Remedies at page 173 that resignation from public office cannot in every case constitute a defence to an information for ouster. The public has an interest in the action and the judgment to be rendered is of no less consequence to it than to the individual interests of the defendant. If issues have been joined, testimony taken and the case is ripe for trial before such resignation, the defendant cannot then by surrendering the office divest the Court of jurisdiction, nor thwart the purposes of the proceeding. On the other hand it is the general rule that where the term of office to which the relator may have a right has expired, the proceeding abates. Ordinarily the Court decides actual controversies by a judgment which can be carried into effect and does not give opinions upon moot questions or abstract propositions which cannot have effect on the matter in issue.

45. Counsel for the petitioner relied on the decision in Kashinath Laxman Bhide and Others Vs. The State of Bombay, and on the observations appearing at page 43 of the report that when a person is unqualified the Court should prevent him from occupying the position. An information in the nature of quo warranto will be against a person who claimed or usurped an office, franchise or liberty to enquire by what authority he supported his claim in order that the right to the office or franchise might be determined. An election to certain offices could not be questioned save by election petition. Further, the proceeding by way of quo warranto is not the same as an election contest. It is the title of defendant that is tried, not that of relator, and the proceeding therefore terminates with the ouster if justified. Nor does the defendant try his title as against that of relator. For this reason want of title in relator is not a sufficient objection when the information shows a good cause of action on behalf of the State. A private relator could apply for an information against several members of a Corporation on grounds affecting their individual titles to show by, what authority they claimed to exercise their individual functions. A private relator could apply for an information in cases which concerned the public government and accordingly an information could be sought by a private relator against a Privy Counsellor calling upon him to show cause by what authority he claimed to be a member of the Privy Council. (See R. v. Speyer, (19-16) 1 K.B. 595, (12) R. v. Cassel, (1919) 2

K.B. 858. A private relator had to have some interest in the election which he impeached. *R. v. Hodge*, 2 B & Ald. 344). The Court will not in general permit a mere stranger to a corporation to file a quo warranto information to impeach the title of a corporator, but the relator must be a person having some interest in the corporation. See *R. v. Kemp*, 1 East 46. Again the decision in the matter of Harri's, 6 Ad & El. 475 : 112 E.R. 182 it was held that a question of title was not to be tried in quo warranto proceedings. It is not necessary on the one hand that the relator should be a member of the corporation, nor on the other hand is inhabitancy in the corporate town a sufficient interest to entitle a party to become a relator, unless he can show that he is subject to the local jurisdiction of the corporation, as by being liable to the borough rates or otherwise. (See *R. v. Hodge*, 2 B & Ald. 344, *R. v. Quayle*, 11 A & E 508). He alone is a competent relator who has some interest other than such as may belong to the community at large, in the question to be tried by quo warranto and who has not by delay or acquiescence disqualified himself from acting as prosecutor. (See *R. v. Brown*, 3 T.R. 574).

46. Counsel for the petitioner contended that an information in the nature of quo warranto was always a living question because the Court would find out by what authority the respondent was occupying the office and if the person occupying the office was not qualified the Court would declare so and the relator need not have special interest save and except that the relator would have interest in the corporation. In the present case it was said that the relator was a registered graduate and therefore the relator could bring to the notice of the Court the usurpation of office by the respondent who was not qualified to hold the office.

47. The fact that the respondent Dr. Banerjee has resigned cannot be lost sight of. As a general rule the Court will not grant an information to question the defendant's title to office after he has actually ceased to hold it. There are three exceptions. First, where the office has been resigned after order nisi granted for Lord Ellenborough observed in *R. v. Warlow*, 2 M. E.S. 75 (105 E.R. 310) a resignation is no answer though it may regulate the discretion of the Court in imposing the fine. Secondly, where the object is to try a civil right an information against an Alderman four years after his office has expired in order to invalidate the election of other members chosen whilst he was in office may be put in issue to prove that he was not a legal officer. Thirdly, where the relator's object is to substitute another candidate at once in the office. Reference may be made to the case of *R. v. Blizzard*, 1866-67, 2 Queen's Bench cases 55. The Court in that case made a rule in a quo warranto information absolute although the defendant had resigned the office and his resignation has been accepted before the rule was obtained because the object of the relator was only to cause the defendant to vacate the office but to substitute another candidate at once in the office as in such a case the relator was entitled to have a judgment of ouster or a disclaimer entered into the record. In *Blizzard's* case the relator gave notice of the disqualification of the defendant and said that the votes given in favour of the defendant were thrown away and must be treated as though they had not been

given and the effect to place a relator in a majority and entitled him to be elected.

48. In the case of Rameshwar Dayal Vs. The State of Punjab and Others, question arose as to whether there was any living issue by reason of the fact that the respondents were no longer holding the office of District Judge. The State asked for specific determination of the question in that case.

49. In the case of the Queen v. Cousins (1873) 8 Queen's Bench cases 216 an information in the nature of a quo warranto called upon Cousins to show by what authority he claimed to exercise the office of a guardian. Blackburn, J., said that a Court would not give an opinion in the abstract upon the propriety of a certain mode of conducting the election because the Court sat to decide controversies and not to give advice. Again in the case of Sun Life Assurance Corporation of Canada v. Jervis, reported in 1944 A.C. 111, Viscount Simon L. C. said "I think it is an essential quality of an appeal fit to be disposed by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue". In the Sun Life Assurance Company's case an action was brought to settle the rights under an endowment policy of life insurance issued by the Insurance Company. The policy holder received the benefits from the Company and yet a friendly action was taken to the House of Lords.

50. In the present case there was a contract appointment, the term of the contract expired and the respondent Dr. Banerjee submitted his resignation. The present case is not to be compared with the case of an election where the question of reversion arises or where the right of the next candidate becomes important by reason of the resignation or retirement of the person against whom information has been made. The abatement in the present case arises by reason of two facts. First, the efflux of time and secondly, voluntary resignation in the case of a contract appointment. As to the abatement by efflux of time, it will appear that on 3 January, 1964, the respondent Dr. Banerjee was invited to agree to serve the College for a further period of two years after the expiry of the fifth period of contract on 31 January, 1964, on the same terms and conditions as before. The contract was extended up to 31 January 1966. The stipulated period came to an end on 31 January 1966. Irrespective of the efflux of time the respondent Dr. Banerjee also tendered his resignation. Counsel for the petitioner contended that the Court should give its decision on the qualification of appointment of Principal of Law College in the present case. The decision is that the appointment of the respondent Dr. Banerjee was contractual and such contract appointments are not justiciable by information in the nature of quo warranto. Counsel for the petitioner contended that the office of Principal was a public office. The test as to whether an office is of a public nature and not merely a ministerial one is whether the office is held at the will and pleasure of others. Quo warranto does not lie against persons who have duties of a mere private nature unconnected with the private Government. See R. v. Ogden, 10 B

& C. 233). The appointment of Dr. Banerjee was a matter of internal management of the affairs of the Law College and the management was entrusted to the members of the College Council who bestowed their experience and judgment in regard to the extension of time in the contract appointment of Dr. Banerjee. The contract has come to an end. There has been resignation. There is no living issue. It is not a public office. It has been held in the decisions reported in (24) Bhairulal Chunilal Vs. State of Bombay, and (25) Sukhdeo Narayan and Others Vs. Mahadevananda Giri, that the Court will, not grant a writ where it would be futile in result. It is not to be understood that I express any opinion that a writ in the nature of quo warranto would lie in the present case because I am of opinion that there is no public office and the appointment of Dr. Banerjee was a pure case of contract. One of the tests of a public office is whether the duties are of a public nature and another test is whether it is a substantive office under the Statute. See *The Queen v. Guardian of St. Martin*, 17 Ad El. 149 : 117 E.R. 1238 and *Ashgar Ally v. Birendra Nath Dey*, 49 C.W.N. 658.

51. Mr. Chaudhuri relied on the unreported decision of the Supreme Court in Civil Appeal No. 743 of 1965. *The Principal, Patna College, Patna and others v. Kalyan Srinivas Raman*, dated 24 September, 1965. (Since reported in (1966) 1 S.C.A. 618). The Supreme Court in that case dealt with the construction of Regulation No. 4 and the Regulations framed by the Academic Council of the Patna University. The respondent's name was shown in the list of candidates who were eligible to appear. A notice was put up on the notice board indicating that the respondent was not eligible to be sent up for the examination. The respondent felt aggrieved by this notice and applied for redress of his grievances. The Patna High Court passed an order and directed that the respondent should be permitted to appear at the examination. There was an interim order. After passing the interim order the Bench directed that the petitioner could get an affidavit sworn to that effect. The Patna University relied on Regulation No. 4. The Supreme Court came to the conclusion that in dealing with matters relating to orders passed by authorities of educational institutions under Article 226 of the Constitution, the High Court should normally be very slow to pass ex parte interim orders and matters falling within the jurisdiction of the educational authorities should normally be left to their decision, and the High Court should interfere with them only when it thinks it must do so in the interest of justice. The Supreme Court further said :

Even on the merits, we think we ought to point out that where the question involved is one of interpreting a regulation framed by the Academic Council of a University, the High Court should ordinarily be reluctant to issue a Writ of certiorari where it is plain that the regulation in question is capable of two constructions, and it would generally not be expedient for the High Court to reverse a decision of the educational authorities on the ground that the construction placed by the said authorities on the relevant regulation appears to the High Court less reasonable than the alternative construction which it is

pleased to accept.

These two principles which have been laid down by the Supreme Court first, that in matters affecting education the Court should be reluctant to interfere unless justice demands interference and secondly that if the matter be one of bona fide doubt and if the authorities have acted in a manner pursuant to some opinion or some advice and if it appears that both constructions were open the action of the authorities should not be interfered with in domestic forum. In the present case Mr. Chaudhuri contended on behalf of the University Authorities that the affidavit of the Registrar of the Calcutta University indicated beyond any doubt that as far as the University is concerned the Law College was not treated as an integral part of it and the Legal Remembrancer sought to support the action of the University in that behalf. The Office of the Accountant-General did not agree with the opinion of the Legal Remembrancer. The Legal Remembrancer persisted in giving a second opinion to the Calcutta University and adhering to his views. The office of the Accountant-General did not accept the views on which the Calcutta University sought to act. The University sought opinion of lawyers. What else could the University authority do. The University found itself placed between the horns of a dilemma. There was the Legal Remembrancer's opinion to the University that the Law College was not an integral part of it. On the other hand there was the office of the Accountant-General contending that the affairs of the Law College should be brought within the affairs of the Calcutta University. It is no wonder that the Registrar rightly alleged in his affidavit that the University was left with no choice in this matter but to act according to the advice given to them by its adviser. As to whether the Law College is an integral part of the University or not the question need not be pursued here and cannot be gone into in these proceedings. In view of my conclusion indicated earlier that the appointment of Dr. Banerjee was a case of contract, no writ can go.

52. It should be stated here that Counsel appearing for the Accountant-General contended that the affairs of the University College were to be within the audit of the Accountant-General in view of the fact that the funds of the Law College were dealt with by the University. The mere manner of auditing accounts cannot be decisive of the question. It appears that the Accountant-General has not audited accounts for the last three years because of the raging controversies between the Accountant-General on the one hand and the University Authorities on the other. It appears affidavit affirmed on the part of the Law College as also by the Registrar that the income and expenditure of the Law College is entirely met from its fund and that the Law College has surplus and that the Law College has invested its income in securities. I do not wish to express any opinion on the controversies between the Accountant-General on the one hand and the University on the other as to what should be the scope of the audit. If it is a University College within the meaning of the statute and if the statute requires that this fund should be audited it will be audited. On the disputed facts I cannot come to the conclusion that it is a University College. There is no evidence that it is maintained by the University. There is no evidence to show that it has been

created as a University College. If the University Authorities have sufficient evidence one way or the other or if the Accountant-General has evidence one way or the other as it may be law will take its course.

53. Mr. Chaudhuri contended that the Rules or Statutes at page 110 of Ext. 1, which stated that that there shall be six University Colleges are ultra vires the Act because sec. 33 of the 1951 Act did not confer authority to make University Colleges by Rules. Mr. Chaudhuri also relied on the Calcutta University calendar for the year 1956 which showed at page (vi) 4 University Colleges and at pages 680, 706 list of institutions affiliated to the University and two Law Colleges were shown there. Again the University calendar for the year 1956, Part I at page 1176 showed that the University College (Law) was declared as a professional College for purposes of the first constitution of the different authorities of the University under the 1951 Act. In view of such disputed facts these questions cannot be gone into.

54. For all these reasons I am of opinion that the application for the issue of a writ of quo warranto fails. There was a prayer for the issue of a writ of mandamus requiring the respondent Banerjee to forbear from receiving remuneration and to refund all remunerations received after he attained the age of 65 years. That prayer cannot be acceded to for the reasons already given and particularly given hereunder.

55. The petitioner made another application. That application is supported by an affidavit of Sashi Bhusan Ray affirmed on 26 February 1966. The application is for an order directing the respondent No. 1, to refund or to restore all remunerations, emoluments, including the sums of Rs. 31,594.99 and Rs. 7,200.00 received or realised by him from the respondent No. 2 since 27 August, 1965, irrespective of the result of the Civil Rule and for an order directing the respondents Nos. 2, 4, 8 and 11 to cancel or rescind all their resolutions and/or orders recommending and/or sanctioning and/or authorising and/or making payment of all remunerations, emoluments and other sum including the sums of Rs. 31,594.99 and Rs. 7,200.00 to the respondent No. 1. Broadly stated the grounds for the application are that the respondent No. 1 is liable to refund or restore all remunerations received or realised by him since and after 27 August 1965 or since the date of the grant of the Rule. There are affidavits-in-opposition and in reply. Counsel for the petitioner submitted that this application was a substantive application. Whether it is so or it is ancillary to the application for quo warranto where the petitioner contended that the respondent Banerjee was not entitled to any remuneration and was liable to refund all remunerations received, the first and foremost thing to be considered is whether there is any statutory duty to receive payment or any statutory duty to refund payment. Mr. Deb, in my view, rightly contended that it is only when there is a statutory duty that the Court would intervene. In the facts and circumstances of the present case the affidavit evidence shows that the appointment of Principal was a matter of contract. The Supreme Court in the case of Lekhraj Satramdas, Lalvani Vs.

Deputy Custodian-cum-managing Officer and Others, , said that a Writ of Mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. The appointment of a person as a manager by the custodian under s. 10 (2) (b) of the Administration of Evacuee Property Act was held to be contractual in nature and there was no statutory obligation as between the latter and the former. The Supreme Court said that in such a case there could be no right to a Writ. The Supreme Court referred to the decision of the Judicial Committee in Commissioner of Income Tax, Bombay Presidency and Aden v. Bombay Trust Corporation Limited, 63 I.A. 408, where in an application u/s 45 to set aside an assessment to Income tax and to repay the tax paid by the applicant, the Bombay High Court made the order asked for but the decision of the Bombay High Court was set aside by the Judicial Committee with the observation that before Mandamus can issue to a public servant it must be shown that a duty towards the applicant has been imposed upon the public servant by statute so that he can be charged thereon, and independently of any duty which as servant he may owe to his principal. Similar view was expressed in the Calcutta decision in P.K. Banerjee Vs. L.J. Simonds and Another, . The law is stated in similar terms in Halsbury's Laws of England, 3rd Edition, Vol. 11, page 87, footnote (a).

56. In the present case there is impeachable affidavit evidence that the appointment was contractual. I have not been shown any provision of the statute which made it obligatory on the respondent No. 1 not to receive money or on the respondents other than No. 1, not to pay money under the provisions of the statute. If there is no statutory duty to refund it cannot be enforced by a writ of mandamus. The fundamental principles of mandamus must not be lost sight of. There must be a legal right. There must be a legal duty. The legal right and legal duty must be enforceable under the statute. The duty that is owed must arise under the statute. In the present case there is no averment in the petition that any duty was owed. I have not found in the statute that there is any duty owed by the respondent No. 1 to the petitioner not to receive money or to refund money. There is no statutory duty not to receive money for services rendered. Similarly, there is no statutory duty to refund money. The other aspect in the present case is that services have been rendered and accepted. There is no legal duty to refund. Mr. Deb's contention is, in my opinion, unassailable that the moneys that have been received by Dr. Banerjee cannot be enforced to be refunded by mandamus. If on the other hand there is no valid contract there would be greater difficulty in giving any relief. In the present case the question would arise that the parties proceeded upon the basis and assumption of a valid and subsisting contract. I have already referred to the resolution of the College Council where members of the College Council bestowed their attention upon the matter and came to the conclusion that the contract should be extended. There is no doubt that as far as the respondent, Dr. Banerjee is concerned, he acted on the basis of a valid contract. If there is no valid contract no relief could

be given on the present application. Reliance was placed on the decision of the Supreme Court in *Suganmal Vs. State of Madhya Pradesh and Others*, . The question which arose there was whether the High Court would have power to pass appropriate order under Article 226 of the Constitution where the petitioner prayed for the issue of a writ of mandamus directing the State to refund moneys alleged to have been illegally collected by the State as tax. The Supreme Court said that the assessee had no right under the statutory law to the refund of tax paid and no duty was cast on the State to refund the amount realised and the mere order of the appellate authority that the tax collected was not authorised by law was not a decision to the effect that the State was to return the amount to the assessee nor could it be taken to amount to a law making it incumbent to the State to refund. Counsel for the petitioner sought to distinguish this decision on the ground that in the case before the Supreme Court the sole question was refund of money. In the present case if the present application be treated as a substantive application it is solely for refund of money. If on the other hand it be treated as ancillary to the main application it fails because if the substratum fails the foundation on the substratum should also fail.

57. Mr. Deb, in my view, rightly contended that if payment had been made voluntarily by the authorities the moot question would be whether there was any mistake to entitle recovery of any money. There are no allegations in the present case as to whether there was mistake. Again, if the Court proceeds on that, then the Court would be going into facts bristling with disputes. Mistake is a question of fact. The Supreme Court in *Suganmal Vs. State of Madhya Pradesh and Others*, observed at page 1744 that it would be a moot point to consider whether the payment of tax made by the appellant can be said to be made under "mistake" within the meaning of that expression u/s 72 of the Contract Act. That point cannot be gone into in this application.

58. One of the principles of mandamus which is sometimes lost sight of is that there must be a demand and refusal. Sometimes it is said that it is not a matter of mere form but a matter of substance. It has also sometimes been said that there is no magic in having a demand just for the purpose of having a refusal. But these writs are founded on concepts of law which have been evolved through centuries of experience and guidance. In *Tapping on Mandamus* published in the year 1848 it is stated at page 282 that it is an imperative rule of the law of mandamus, that, previously to the making of the application to the Court for a writ to command the preformance of any particular act, an express and distinct demand or request to perform it must have been made by the prosecutor to the defendant, who must have refused to comply with such demand either in direct terms or by conduct from which a refusal can be conclusively implied. The statement of law is the same today in *Halsbury's Laws of England*. Again, the Law is stated in *Tapping on Mandamus* at page 323 that the averment of a demand or refusal is inoperative. In the present case the application for refund suffers from the vice of infraction of this wholesome and salutary principle of the grant of writ of mandamus. Counsel on behalf of the petitioner contended that

because the rule was issued the respondents could not have taken any step. Mr. Deb in my view rightly submitted that there was no injunction to prevent the respondent Banerjee from receiving any payments; if the petitioner were so advised the petitioner could have moved an application for injunction in that behalf. As a matter of fact, an order for injunction was asked for at the time the application was moved and that was refused. No application for interim order was renewed.

59. In *Ferris on Extraordinary Legal Remedies*, Third Edition, 1896, the law is stated at page 114 to be that when disputed question arise as to the title to a public office, the incumbent de facto is regarded as vested by his commissioning with the prima facie evidence of his right and as entitled to the emoluments of the office until the State by a proper proceeding has revoked the authority with which it had previously invested him. Mandamus therefore lies in such case to a State auditor to compel him to draw his warrant upon the treasurer for payment of the salary due the incumbent defacto, notwithstanding in quo-warranto instituted by the attorney-general of the State to test the title to the office. The respondent Banerji was entitled to draw his salary and there was no restriction on his right to do so.

60. Counsel for the respondents contended that writ would not lie against a private person. Reliance was placed on the decision of the Supreme Court reported in *Sohanlal Vs. The Union of India (UOI)*, . That was a case where some evacuee obtained possession of a property. Attempt was made to disturb his possession. It was said that possession was obtained by virtue of some Statute and therefore writ could go. The Supreme Court repelled that contention by holding that no writ would go against a private person. In the present case in view of my conclusion that there is no statutory provision showing that any duty is owed by Dr. Banerjee to refund any money nor that there is any provision in the statute showing that there is any right on the part of the petitioner to withhold any money from being paid to Mr. Banerjee, the payments received by him by virtue of his contractual right cannot be the subject-matter of a writ of mandamus. A writ obviously does not lie. Mr. Mitra supported the contention of Mr. Deb with the additional reason that when personal moneys were taken away one could not ask for refund in a writ application. The petitioner was not entitled to the money under any law. Mr. Mitra contended that the appointment of Dr. Banerjee was defensible as a de facto appointment which could not be collaterally attacked by an application for refund and reliance was placed on the Bench decision reported in 15 Calcutta Law Journal, 517 in support of that proposition.

For all these reasons I am of opinion that the petitioner's application for refund fails. Both the applications fail. The rules are discharged. The petitioner is to pay costs to the respondents. There will be one set of costs for the University authorities to be shared and one set of costs payable to Dr. Banerjee.