
(1956) 02 CAL CK 0025
In the Calcutta High Court
Case No : A.F.O.O. No. 131 of 1955

Sm. Kamala Banerjee

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 14-02-1956

Acts Referred:

Calcutta University Act, 1857 — Section 11
Calcutta University Act, 1951 — Section 4(6)
Calcutta University Regulations, 1951 — Rule 14, 17
Constitution of India, 1950 — Article 226

Citation : AIR 1956 Cal 563

Hon'ble Judges : Chakravartti, C.J.;Sarkar, J

Bench : Division Bench

Advocate : Manindra Nath Ghose and Anil Kumar Sen, for the Appellant;H.N. Sanyal and Amiya Kumar Mukherjee, (for Nos. 1 to 3 and 5), Jajneswar Majumdar and Soumendra Chandra Bose, (for No. 4), for the Respondent

Final Decision : Dismissed

Judgement

Chakravartti, C.J.—We have felt some embarrassment in dealing with this appeal, because while it is clear that the appellant has a just grievance, it is equally clear that no relief can be given to her in the form prayed for, nor indeed any relief in the present proceedings.

2. The facts are as follows. The appellant was a candidate at the Bachelor of Teaching Examination of the University of Calcutta for 1954. She was appearing from the David Hare Training College, for the candidates who were taking their examination in Calcutta, the place of the examination was the Ashutosh Building. The candidates were accommodated in various rooms in the first floor and the second floor, a large number being given seats in a room called the Ashutosh Hall. The appellant had her seat in Boom No. 11 which is on the second floor and in the southern flank of the building and it is contiguous to the Ashutosh Hall.

3. The examination in the first two papers went off smoothly. But on 14-5-1954,

when the examination in the third paper, History of Education, was scheduled to take place, an ugly and discreditable incident occurred. As soon as the question papers were handed out, there were angry protests from a large section of the candidates who began to shout that the questions were too stiff, that they were of such a nature as could not be answered within the time limited and that they included questions on subjects outside the syllabus. The malcontents did not rest satisfied with merely voicing their protests, but resorted to methods which have nowadays come to be known as direct action. They left their seats, apparently bent on wrecking the examination and while shouting slogans of various kinds, began to pull off those of the candidates who were still sticking to their seats by physical force. The scene has been described by the Controller of Examinations as an absolute pandemonium". After some time, however, the tumult and shouting seem to have subsided a little, when some of the men candidates began to return singly or in groups and they sought permission to continue sitting for the examination. Their request was acceded to and they were put inside the Ashutosh Hall and an adjoining room on the same floor where they could sit for the examination. What happened next can be best described in the language of the Controller of Examinations who made a report to the Syndicate on 20-5-1954:

"At about 11.5 a.m., however, a large crowd, about 100 strong, assembled at the entrance of the hall, banged the wooden door violently and was about to break it open. The Assistant-in-Charge of the centre, the invigilators and the peons of the post Graduate Office -- altogether about 12 in number -- who were guarding the Hall from outside, were trying to resist the mob, but were soon over-powered, and the said Assistant was caught hold of by his neck and was so violently shaken that he was about to fall down unconscious when some other persons rescued him away from the crowd.

"The banging at the door and the commotion was so great that the candidates -- many of them were girls -- were visibly shaken. Some surrendered their scripts to the invigilators on duty.

In no time the disturbers jumped into the hall through the ventilators at the top of the door, and overpowering the three invigilators on duty inside the hall, opened the door and allowed the mob to sweep into the hall. The mob snatched away the scripts from the candidates and the invigilators, and tore them to pieces and scattered them all over the floor. They threw the wooden desks and chairs hither and thither, shouted in abusive language and then left the hall. The Assistant Controller who was inside the hall is an eye witness of this mob violence. It is painful to have to record that one of these invaders went so far as to catch hold of the crucifix round the neck of a nun belonging to Loretto House to make her leave her seat."

4. In view of the conditions so graphically described by the Controller of Examinations, the examination was abandoned.

5. The Syndicate next dealt with the matter at a meeting held on 22-5-1954. It had before itself the report of the Controller of Examinations as also communications from the Principal, Berhampore Union Christian Training College, who was obviously in charge of the examination at the Berhampore centre and certain educationists of repute. At Berhampore, the candidates had made verbal protests, but none had walked out. The communications received by the Syndicate all referred to the unsatisfactory character of the question paper on History of Education.

6. The Syndicate referred the case of the candidates of the Berhampore centre to the Bachelor of Teaching Examination Board. With their case we are not concerned in this appeal. As regards the candidates who had appeared at the Calcutta centre, the Syndicate passed three resolutions. It resolved, in the first place, that the candidates who had attempted to appear in the third paper but had been prevented from doing so, as reported by the Controller of Examinations, should be awarded marks on the paper "proportionate to the marks obtained by them in the other compulsory papers." It next resolved that the candidates who had left the examination halls should be debarred from appearing at the Bachelor of Training Examination in 1955. It resolved lastly that the candidates who had taken a leading part in coming out of the examination halls and forcing others to do so, should be asked to explain why further disciplinary action should not be taken against them.

7. It will be noticed that the resolutions themselves did not mention which of the candidates came under which category. According to the University, the roll numbers of the candidates who had returned for taking the examination and who had been placed in the Ashutosh Hall and a neighbouring room had been taken down by the Controller, the Assistant Controller and the Assistant-in-Charge. It was they who were placed under the first category. All the rest were consigned to the second category. Against whom special action was contemplated, on the ground of their having been the chief instigators of the mutinous conduct, does not appear, but it may have been the three candidates whose roll numbers were mentioned by the Controller in the last paragraph of his report.

8. It appears that the Syndicate had occasion to consider the matter further at a meeting held on 5-6-1954. During the interval, a large number of candidates seem to have offered unqualified apologies to the University. On that ground, the Syndicate revised its previous resolution and directed that in the case of the candidates who had offered apologies, only the theoretical portion of the examination would stand cancelled and so far as the practical examination was concerned, they would be guided by Rules 13 to 15 of Chapter XL of the Regulations. It was further resolved that the candidates to whom the benefit of the revised resolution was being extended would be permitted to appear at the examination of 1955, provided they satisfied the other requirements of the Regulations.

9. It is necessary to add a word of explanation here regarding Rules 13 to 15 of

Chapter XL of the Regulations. In substance, those rules provide that the Bachelor of Training Examination can be taken in two parts, one part being the theoretical section and the other the practical section, provided the interval between the two examinations does not exceed two years. The effect of the revised resolution, therefore, was that the candidates to whom the resolution applied, would be able to retain the benefit of the practical examination and would be entitled to complete the examination by taking the theoretical part at a next examination within a period of two years. The ban against appearing even at the 1955 examination was also removed.

10. The appellant's case is that she was not one of the candidates who had deliberately refrained from taking the examination or indulged in the creation of disturbances. As a matter of fact, she had been mobbed out of the examination hall and had been unable to remain there on account of the chaotic conditions that were prevailing. For reasons of sheer physical safety, she had to leave the hall and, completely bewildered, she had sought interviews successively with the Vice-Chancellor & the Registrar. She was unable to see either of those two personages, but was able to meet the Assistant Registrar who told her that he could give her no help and she next approached Mr. S.P. Chatterjee, Dean of the Faculty of Education, who also could render no help but promised that the grievances of the examinees would be duly considered. Thereafter, she appeared at the evening paper and in fact took all the remaining examinations. After the examination was over, she left Calcutta.

11. The appellant's further case is that, while out of Calcutta, she came to know of the resolutions of the 22nd of May and the 5th of June. She ascertained that she had not been given the benefit of proportionate marks, but had, on the other hand, been included in the category of the candidates who had left the examination hall without trying to take the examination. She felt that an unfair discrimination had been made against her without giving her even an opportunity of establishing that she had not been at fault in any manner at all. If the University was minded to give the benefit of proportionate marks on the third paper to candidates who had attempted to appear at the examination but had been prevented from doing so, the appellant thought that she also was among such candidates and there was no reason why the University should exclude her from the benefit of the concession. Accordingly on 24-6-1954, she addressed a representation to the Vice-Chancellor in which she set out her case in full and prayed that she might be put in the category of the fiftyseven candidates in whose case the examination had not been cancelled and who had been given the benefit of proportionate marks.

12. The University appears to have sent some kind of a reply to the appellant on 2-9-1954. That letter has not been exhibited and its contents are not known. The appellant stated in her application to this Court that she had sent repeated reminders to the University with regard to her representation and no final decision was communicated to her till 25-11-1954, on which date the University

informed her that the previous decision, excluding her from the examination of 1955, would stand. The earlier letter of 2-9-1954, was perhaps merely a letter acknowledging receipt of the appellant's representation.

13. It is necessary at this stage to interpose an account of the case of another candidate which has some bearing on the appellant's grievance. That candidate was one Bijoli Sardar who appeared at the examination from the Loretto House. Her name was originally included among the fifty-even, but subsequently it was excluded on receipt of a letter, dated 15-7-1954 from her Principal which said that she had been amongst the candidates Who had left the examination hall on the 14th of May. Thereafter, on 7-8-1954, Bijoli Sardar served a notice on the University through Mr. Sudhir Chandra Roy Choudhuri, an attorney of this Court, by which the University was required to withdraw the cancellation of her number from among the fiftyseven, failing which she would have no other alternative but to proceed to Court for necessary relief. On receipt of that notice, an enquiry appears to have been made of the Principal of the Loretto House as to the source of her information regarding the conduct of Bijoli Sardar on the date of the examination in the third paper and the Principal informed the University by a letter, dated 14-8-1954, that she had received the information from Bijoli Sardar herself. Nevertheless, the Syndicate, at a meeting held on 21-8-1854, resolved that if Bijoli Sardar had anything further to state, she might do so and the resolution was communicated to Mr. Roy Choudhuri by a letter, dated 24-8-1954. Subsequently, at a further meeting of the Syndicate held on 11-9-1054, the cancellation of Bijoli Sardar's name was cancelled and it was restored among the fiftyseven. Apparently, the candidate had sent a further representation during the interval. We are informed from the Bar that the appellant's case and the case Bijoli Sardar were considered by the Syndicate at the same meeting, but while the prayer of Bijoli Sardar to be heard was conceded, the appellant's prayer was not.

14. Unable to obtain any relief from the University, the appellant moved this Court under Article 226 of the Constitution on 20-12-1954. She alleged discrimination against the University, complained of the University's failure to give her a hearing in support of her case that she had not been one of the recalcitrant candidates and stated further that the resolutions penalising her and other candidates were "illegal, void, unconstitutional, inoperative and "ultra vires" the Calcutta University Act and the Regulations." The petition prayed for a writ in the nature of mandamus, directing the University authorities to include the appellant's name in the first of the categories created by the resolution of 22-5-1954 and then, somewhat inconsistently, for a writ in the nature of mandamus directing the University to cancel the resolution of 22-5-1954, and to make a proper investigation into the matter by giving opportunities to the parties to be heard in de-fence and thereafter to proceed according to law. A writ in the nature of "certiorari", calling for the records and quashing the disputed resolution, was also prayed for.

15. The Rule actually issued on 20-12-1954, was of a much more limited character. It merely called upon the University authorities to show cause why a writ in the nature of mandamus should not issue, directing them to give a hearing to the petitioner in support of her contention that she should be placed in category No. 1 under the first resolution of 22-5-1954 and not placed in any other category before being heard.

16. It appears that, in the meantime, several other candidates had moved this Court and obtained Rules. Among them was one Priti Ranjan Ray Choudhuri, whose case was Civil Revision No. 2551 of 1954 and who was one of the candidates who had tendered apologies to the University. After the several Rules had been issued at the instance of several petitioners, they seem to have come up for hearing together on the same dates and among such dates were the 22nd and 23rd of February, 1955. On one of those titles, the learned Advocate-General, who was then appearing for the University, stated to the Court that, speaking for himself, he found difficulty in supporting the action of the University in allotting marks to students who had not in Tact sat for the examination in the third paper or had been unable to do so. He stated further that the action of the University in meting out a wholesale punishment to all candidates without framing a charge against them and without any proof of any charge did not appear to him to have been justified. The Rule in Priti Ranjan Ray Choudhuri's case appears to have been issued originally in identical terms. The learned Advocate-General pointed out that the Rule, as issued, did not cover the more serious questions as to the power of the University or the Syndicate to award marks for an examination which the candidates had not taken and the legality of their action in debarring all candidates, except the fiftyseven, from appearing even in the next year's examination. Upon that statement being made by the learned Advocate-General, the several petitioners asked for an amendment of the Rules and they were amended on 28-2-1955. By the amendment the scope of the Rules, as originally issued, was enlarged and the University authorities were directed to show cause why a writ in the nature of "certiorari" or any other appropriate writ should not be issued, quashing or setting aside the resolutions of the 22nd of May and the 5th of June, 1954; why a writ in the nature of a "mandamus" should not issue, directing the University authorities to forbear from giving effect to the resolutions as against the petitioners and, lastly, why they should not be directed "to hold an examination "de novo" in paper III viz., History of Education for the year 1954." It was a Rule, so amended and enlarged in every case, which finally came up for disposal on 18-3-1955.

17. The main judgment was delivered by the trial Judge, Sinha, J., in Priti Ranjan Ray Choudhuri's case. In the appellant's case and, presumably in the other connected cases, it was simply stated that for the reasons given in the judgment in Civil Revision. No. 2551 of 1954, the Court did not think that any further interference was called for. All the Rules including the one issued at the instance of the appellant were discharged. Thereafter, the appellant preferred the present appeal.

18. Briefly stated, Sinha J., held that the Syndicate had no right to allot proportionate marks to any candidates for a particular paper in which they had not taken the examination and that, therefore, he could not possibly direct the University to do a further act which was beyond its powers and which was not in accordance with law. The prayer that the University should be directed to give the appellant a hearing in support of her case that she should be included among the candidates to whom proportionate marks were to be given, was thus disposed of. The learned Judge held that even in the case of the fiftyseven candidates who had been given the benefit of proportionate marks, the University had acted beyond its powers, but as the cases of those candidates were not before the Court, he could do nothing in regard to the illegality. Proceeding next to consider the other substantive prayer of the petitioners for a direction on the University to hold a fresh examination in the third paper alone, the learned Judge held that the examination had fallen through for no fault of the University and if the University had decided to deal with the situation in a particular manner which was not inconsistent with the Rules, he would not be justified, sitting as a Court, to direct the University to proceed in another manner. The learned Judge held that if the University authorities had not in the meantime decided to permit all the candidates at the 1954 examination to take the 1955 examination in the theoretical section alone, it might be necessary to give appropriate directions as to the further action to be taken by them, But since they had already revised their decision further and agreed to allow all the 1854 candidates to take the next examination, no further interference on the part of the Court was called for. The reason behind the last observations of the learned Judge will not be understood unless reference is made to some further resolutions passed by the University on 12-3-1955 which I should really have mentioned earlier. On 12-3-1955, the Syndicate reverted to the matter and passed three more resolutions. By the first, it decided to allow all candidates who had previously been debarred from appearing even at the 1955 examination to appear at that examination, if they applied for the purpose. Those who had passed the practical portion of the 1954 examination were to be allowed to appear in the 1955 examination in respect of the theoretical portion only. The second resolution stated that the names of candidates who had passed the practical portion of the 1954 examination and who would appear in and pass the theoretical portion of the 1955 examination would be published in the "class lists" arranged in order of merit according to the provisions of Section 14 of Chapter XL of the Regulations. By a third resolution the date of submitting fees was extended up to the 30th of March next. Why the University thought of passing these resolutions, apparently "suo motu". does not appear, but it may perhaps be presumed that in the meantime it had received" salutary advice from the learned Advocate-General who was representing it in the Rules.

19. Having regard to those resolutions, the view taken by Sinha J., was that inasmuch as the cancellation of the whole of the theoretical portion of the 1954 examination and the substitution of the same portion by the 1955 examination

was a decision warranted by the regulations the University and the University had in the exercise of its discretion, taken that decision, he would not be justified in forcing the University to conduct the examination in some other fashion.

20. I have already referred to the terms of the Rule, issued at the instance of the appellant, as amended. We had occasion to point out to Mr. Ghose, who was appearing on behalf of the appellant, that some of his client's prayers were such that even if they were to be allowed, no benefit of any kind would accrue to her. If the resolutions of the 22nd of May and the 5th of June were cancelled and if the University authorities were restrained from giving effect to those resolutions, the appellant would remain just where she was. Mr. Ghose realised that no useful purpose would be served by pressing the appeal with respect to those prayers of the appellant. Accordingly, he formulated only two points before us. His submission was (a) that the appellant was entitled to be awarded proportionate marks on the third paper of the examination and that the University authorities should be directed to award such marks and (b) that, in any event, they should be directed to hold a fresh examination in the third paper alone for the year 1954 and for all candidates who might be eligible for appearing in it.

21. The Rule is only for a direction on the University to give a hearing to the appellant in support of her case that she was entitled to be included among the candidates to whom proportionate marks were to be given under the first resolution of 22-5-1954. A direction on the University by this Court to give the appellant the benefit of the first resolution is not within the scope of the Rule. It might, therefore, seem that whether or not proportionate marks could be given, need not be considered. But this Court cannot direct the University to give a hearing to a party for a particular purpose, if the purpose be such that no effect to it can legally be given. In spite, therefore, of the limited character of the Rule, it is necessary to see if the University has any power at all award on a paper, which candidates have not answered, marks proportionate to those obtained by them on other papers. In my view, Sinha J., was entirely right in holding that the University had no such power.

22. In view of the nature of the arguments addressed to us, it is not necessary for me to deal with this matter at any great length. Mr. Ghose apparently felt pressed by the reasons given by the learned Judge for repelling his argument and contended but faintly that the University had power to award marks on unanswered papers. Mr. Sanyal who appeared for the University submitted that the University had no such power and that in awarding proportionate marks to fiftyseven candidates on the paper on History of Education which they had not answered, his client had arrogated to itself a power which it did not possess and had clearly blundered.

23. It was somewhat curious to find the University which had exercised the power of granting proportionate marks, disclaiming before us through its Counsel that in law, it had any such power as it had exercised. It was equally curious to find the appellant, who was impugning the resolutions of the 22nd of May and

the 5th of June as "ultra vires", insisting, at the same time, that she should be given the benefit of one of those resolutions. The matter must, however, be examined on its merits.

24. The University is not a sovereign body that it can bestow the favour of ordinary academic degrees in any way it pleases on any one whom it may consider deserving of the favour. Nor is the University of Calcutta a body created by Royal Charter and invested with unlimited power to confer marks of academic distinction with or without tests. It is a body created by statute and, like all such bodies, it has only such powers and functions as the statute creating it has conferred on it and as the Regulations framed under the statute provide for. As to examinations and decrees, the Act of Incorporation states in its preamble that the University is being established

"for the purpose of ascertaining, by means of examination, the persons who have acquired proficiency in different branches of Literature, Science, and Art, and of rewarding them by Academic Degrees as evidence of their respective attainments." Section XI of the same Act provides that the University authorities "shall have power, after examination, to confer the several degrees," and then the names of several degrees are mentioned. The Act of 1951 is to the same effect. IE provides by Section 4(6) that the University shall have "inter alia" power:

"to hold examinations and to confer degrees, titles, diplomas and other academic distinctions on persons who:

(a) shall have pursued an approved course of study in an Affiliated, Constituent, Professional or University College or a University Laboratory, unless exempted therefrom in the manner prescribed by the Statutes and shall have passed the prescribed examination of the University." Leaving aside the case of honorary degrees or higher degrees like doctorates which may be obtained by the submission of a thesis of adequate merit, a degree has to be earned by appearing at an examination and passing it in accordance with the Regulations of the University and the University can confer a degree only on persons, who are qualified to appear at the relevant examination, who have appeared in it and who have passed it in accordance with the Rules.

25. Coming next to the examination for the degree of Bachelor of Teaching, it appears from Rule 7 of Chapter XL of the Regulations that every candidate shall be examined in five compulsory subjects and also, if he so desires, in one additional subject. Rule 8 provides that on such subjects there shall be a written examination". Besides that, a practical examination for testing the candidate's skill in certain, matters shall also be held. Rules 7, 3, 9 and 10 of Chapter XXV which deals with examinations generally make it abundantly clear that the answers submitted by the candidates at the written examinations shall be examined and marked. Reverting to Chapter XL of the Regulations, Rule 14 provides that "in order to pass, a candidate must obtain 40 per cent, of the

marks in each of the compulsory subjects and 40 per cent, of the marks in the practical examination." There are certain further provisions relating to aggregates and marks obtained in the additional subject, but it is not necessary to refer to those.

26. In the Rules to which I have just referred there is clearly no scope for awarding marks in vacuum. A candidate can be awarded marks only on answers submitted by him and in accordance with the quality of those answers. Rule 14, when it states that in order to pass, a candidate must "obtain" 40 per cent, of the marks, does not mean or imply that marks can be obtained by a gift from the University. It is true that a somewhat questionable practice of awarding grace marks is "in vogue in the University, but that" practice can be justified on the footing that it really means a liberalisation of the standard by which answers actually submitted by the candidates are to be judged. The practice does not involve the University moving in vacuum. There does not appear to be any scope in the Rules for importing a standard of attainments in respect of one subject from answers to papers on other subjects or for proceeding by what economists and statisticians call the rule of averages.

27. But it was contended that the University was not required to be tied down to the Regulations I have mentioned in all cases and that there were other clear provisions, authorising the University to give special directions in cases where no proper question paper had been set or where injustice might result from other causes or where the situation was such that there was no provision for it in the Act or the Regulations. We were first referred to Rule 17 of Chapter XXV of the Regulations which deals with the case of questions set for an examination which are such that the candidates cannot reasonably be expected to answer them within the time allotted or that they had not been fairly distributed over the whole course in the subject or that they did not conform to the Regulations or that they showed a marked change of standard. In such cases, the Syndicate is empowered by the Rule to "issue such directions as may be necessary to rectify matters." We were next referred to a provision in one of the miscellaneous statutes framed by the Senate under the 1951 Act which provides as follows:

"In any case not expressly provided for in the Act, statutes, ordinances and Regulations, the Syndicate shall give such directions as may be necessary in the special circumstances of the case."

It was said by Mr. Ghose, though it was not said by the learned Counsel for the University, that the Syndicate could under those provisions do what it had done by the first resolution of 22-5-1954.

28. In my view, the contention is absolutely mistaken. Rule 17 of Chapter XXV of the Regulations clearly applies to some cause or matter which affects all the candidates at an examination equally. It deals mainly with unsatisfactory question papers which must affect all candidates and provides power to make amends. It does not authorise any action with respect to a section of the

candidates and certainly it does not authorise any discrimination. As regards the provision in the statute, it applies only to cases not expressly provided for in the Act, Statutes, Ordinances and Regulations. In what manner an examination is to be held, on what material marks are to be awarded, what proportion of the marks is to be obtained in order to qualify for a pass, are all matters provided for in the Acts and Regulations. Situations may undoubtedly arise which are not expressly covered by the Acts and the Regulations and the University undoubtedly has power to deal with such situations in appropriate ways. But it cannot be that these residuary provisions authorise the University to disregard the express Rules and Regulations in order to meet situations not specifically covered by the Statutes and the Regulations. The residuary power can be exercised only by way of implementing the express provisions in the Acts and the Regulations and cannot be exercised in a manner inconsistent with them. If, for example, the examination in a certain paper at a certain centre cannot take place for the reason that the question papers have not reached the local authorities in time or that they are stolen, a situation will arise which is not expressly provided for in the Acts and the Regulations, Such a situation will have to be met, but if it has to be met, the University will have to fall back upon the Acts and Regulations to find out in what manner a further examination may be held and failure to hold the examination made good. A residuary rule cannot override the express provisions. Suppose no part of a particular examination can be held at a particular centre because of say a calamitous flood, the University cannot in the name of giving relief against hardships not provided for in the Act or Statutes and under colour of the power said to be conferred by the residuary provisions, declare that the candidates at that centre shall be awarded such marks as they had obtained in the test examinations held in their respective colleges. Any such declaration would be clearly illegal & would not, in my view, be covered by the residuary provisions. I think I need not stress this point further, because as I have repeatedly said, the University was no longer claiming that it was entitled under the law to award proportionate marks in the manner it had done in the present case.

29. I would only add that if the matter be looked at from a broader point of view, the impropriety of awarding proportionate marks on papers which candidates had not answered, becomes patent. When a University declares a candidate to have passed a certain examination, it makes a representation to the public that it has examined the candidate in accordance with the Regulations and that in its judgment, the answers written by the candidate at the examination exhibit abilities of a standard sufficient for earning the minimum marks required for passing or higher marks. If the University awards proportionate marks on a paper which a candidate has not answered and thereby declares the candidate to possess the requisite proficiency in that subject without having any evidence before it of such proficiency, it makes a misrepresentation to the public. Similarly, it makes a misrepresentation if it gives a candidate only proportionate marks but his proficiency in that particular subject is exceptionally high. I am

entirely unable to see how the residuary provisions can be construed so as to read in them a power to award proportionate marks by the introduction of two fictions, first, the fiction of the existence of answer papers which do not exist and secondly, the fiction of there being answers on those non-existent papers of a quality, equivalent to the average quality of the answers in the other papers, actually answered.

30. Had the Regulation provided that even if a candidate failed to appear in some of the papers of an examination, the University would be entitled to pass him in those papers or given him credit in accordance with the impression created by his answers in other papers, the position might have been different.

31. For all the reasons given above, I am clearly of opinion that the learned trial Judge was entirely right in holding that the University had no power to award proportionate marks to the fifty-seven candidates to whom it had given such marks and that it cannot be directed to award similar marks to the appellant or to hear her in support of such a claim. The first point taken by Mr. Ghose must accordingly fail.

32. The second point taken by Mr. Ghose was that, in any event, the University should be directed to hold a fresh examination in the third paper alone for the year 1954 and that such examination might be for all eligible candidates. As I have already stated, the learned trial Judge, dealing with the matter in March, 1955, did not feel able to give any such direction because he thought that while holding a fresh examination in the third paper alone might be a proper way of meeting the situation, holding a fresh examination in the whole of the theoretical part was also a possible way and if the University, in whose discretion the matter lay, had decided in favour of the second course, the Court could not interfere with its discretion. The learned Judge also pointed out the practical difficulty of giving the direction prayed for, inasmuch as even at the time when he was dealing with the Rule, the year 1954 had already elapsed and the date of the 1955 examination was not very distant. I entirely agree with the learned trial Judge in the view taken by him and I would add that for us, who are dealing with the matter in February, 1956, the difficulty of directing the University to hold a fresh examination in the third paper for 1954 is even greater. Mr. Sanyal, at one stage of his argument, contended that in no circumstances could the University hold a fresh examination in one paper alone. That extreme contention I am unable to accept. To recall the illustration which I gave a few moments ago, if the examination in a particular paper cannot be held at a centre or if an examination in a particular paper cannot be held at any centre at all for some extraneous reasons, I am unable to see why a fresh examination in that one paper cannot legally be held. Under the Regulations, the University is required in respect of each of the examinations to hold a complete examination. If for reasons beyond its control, the scheduled examination in a particular paper falls through, it would act not in violation of but in accordance with the Regulations if it proceeded to hold a fresh examination in that one paper. Mr. Sanyal then said that even

assuming that the University could hold a fresh examination in one paper alone, it would still have to hold such examination before the expiry of the year for which the examination was being held. Again I am unable to agree. As I pointed out in the course of the argument, if an examination be scheduled to take place towards the end of the year and then for some unforeseen reason it falls through as respects some of the papers, I can see no reason why the fresh examination in those papers cannot lawfully be held, simply because the year has passed out.

33. The above considerations, however, do not avail the appellant. She wants not merely that she should be given a fresh chance to take the examination for 1954, but also that she should be required to take the examination in the third paper alone. So far as holding the examination for 1954 is concerned, I do not think that there is any practical importance in the demand, because in fact the examination would have to be held at the present time and it is difficult to see what the appellant would gain by calling it an examination for 1954. Her point is not that she should be allowed to retain the benefit of the practical examination and to take a fresh examination in the theoretical portion alone because an offer in similar terms was in fact made by the resolutions adopted by the Syndicate on 12-3-1955. The real point in the second contention on behalf of the appellant is that the fresh examination would be limited to the third paper only and she should be allowed to retain the benefit of the rest of the theoretical part of the 1954 examination.

34. I am entirely unable to see how such a direction can be given at the present stage. Of the 502 candidates of the Calcutta Centre alone, a large number apologised and have already taken the 1955 examination. All candidates at the Barhampore Centre took the original examination. Of the candidates who took the 1955 examination, some may have passed and those who failed are probably preparing for the 1956 examination, which means an examination in the whole of the theoretical section. No other candidate in the same position as the appellant is before us and the candidates who availed themselves of the resolutions of the 5th of June, 1954 and the 12th of March, 1955, are also not before us. In those circumstances, to direct the University to hold a fresh examination in the third paper alone would be virtually to direct to hold such an examination solely for the benefit of the appellant. In our view, it is impossible to give any direction of that kind, because by doing so, not only will the Court be giving a direction of a wholly unpractical kind, but would also be discriminating between the candidates who were responsible for and affected by the extraordinary events which took place on 14-5-1954.

35. I may also add that the examination having admittedly fallen through for no fault of the University, the means of dealing with the situation lay in the University's discretion. It is trite knowledge that a Court can issue a writ in the nature of a mandamus to a public body only in respect of duties which are obligatory, but not also in respect of duties which are of a discretionary character, it is, however, true that Article 226 of the Constitution is not limited to the

various writs specifically mentioned but also contains a provision for making other orders or directions. I do not however think, for the reasons I have already given, that we can give a direction of the nature prayed for. The second ground taken by Mr. Ghose in support of the appeal must also fail.

36. There remains the question of costs. While the Rule was pending before the learned trial Judge, the University passed the resolutions of 12-3-1955. The appellant did not take advantage of those resolutions. She failed before the trial Judge for reasons which we are upholding and yet appealed. In those circumstances, the University, which is winning, would normally have been allowed the costs of the appeal as the successful party. But there appear to be certain considerations which make it impossible to apply the ordinary rule that costs should follow the event.

37. It cannot for one moment be disputed that what took place on 14-5-1954 was discreditable in the extreme. Those who indulged in the demonstration were not callow youths or inexperienced school girls. They were mature men and women, already graduates of the University, some of whom had presumably been teaching in schools and the rest expecting to be called to the same profession and to take charge of the education of the youth of the country. That grown-up men and women of that character with any pretence to education should have behaved in the fashion, witnessed in the Ashutosh building on 14-5-1954, could hardly be believed, if it had not actually happened. If the University dealt with candidates of that kind in bold and straightforward fashion, it would have the sympathy and support of all right-thinking persons, even if it took the sternest measures. If, for example, the University had cancelled the whole examination and refused to entertain any pleas for leniency, a few innocent candidates might suffer, but the University would be justified in saying that it could not possibly, as the learned Judge has pointed out, embark upon a vast enquiry as to who was guilty and who was innocent and that if some innocents suffered, they had only their compeers to blame. No one likes to see the University to be intimidated by candidates who want to take an examination on their own terms.

38. But the course actually adopted by the University seems to have been wholly different. In the first place, it chose fiftyseven of the candidates for special favour. The basis on which the fifty-seven were chosen is not very firm, because although it is stated in the affidavit of the Controller that their roll numbers were taken down by the "Controller, the Assistant Controller and the Assistant-in-charge", the affirmation with respect to the statement is that it is true to the Controller's information received from the records of his office. If the Controller himself was one of the persons who had taken down the roll numbers of the fiftyseven candidates and was personally present there, one should have expected the relevant statement in the affidavit to be affirmed as true to his knowledge. The Controller, however, does not appear to have liked to take the responsibility for the accuracy of the notation and has, therefore, relied upon

second-hand material contained in the records. But even assuming that the names of the fiftyseven candidates were correctly taken down and that those candidates had in fact returned for the purpose of taking the examination, there seems to be little reason for thinking that, among the faithless, the only faithful were those fiftyseven. On 22-5-1954, when the Syndicate was deliberating on this matter, it had before itself the report of its own officer, the Controller of Examinations, which stated that men candidates had tried to force those of the women candidates who were sticking to their seats to surrender their scripts and to leave the hall and that, at a later stage, the mob had snatched away scripts from the hands of the candidates and had also manhandled the invigilators, including a lady invigilator. Why in those circumstances the Syndicate should have thought that none who had not returned for taking the examination in the Ashutosh Hall could have had any intention but to wreck or avoid the examination, is not at all clear. The situation which was described by the Controller, as an absolute pandemonium was obviously sufficient to unnerve the more timid of even the male candidates and it could by no means be said that no one desiring to take the examination other than those who had returned to take it, had been prevented by the unruly mob from acting according to their personal inclinations. The case of Bijoli Sardar to which I referred a little while ago is pertinent in this context. She too had been excluded from the fiftyseven after having been first included among the number and when she asked for a restoration of her name with a threat or legal action, she was given an opportunity to make a further representation, although, according to her Principal, she had herself admitted having left the hall. The appellant also asked for the same concession and the least she asked for was a hearing. One could have understood the University refusing to hear anyone at all, but if it could hear Bijoli Sardar, against whom there was the testimony of her Principal, it is difficult to see why it could not hear the appellant. The only difference between her case and that of Bijoli Sardar that one can see is that she pleaded her own case, whereas Bijoli Sardar had a Solicitor to do it for her. Even in this proceeding, the conduct of the University has been peculiar. The appellant says that though eager to take the examination, she was mabeed out of the hall by the rowdy section of the candidates and, in her desperation, she tried to see various University authorities and in fact saw the Assistant Registrar and the Dean of the Faculty of Education to whom she represented her plight. It is not without significance that there was no affidavit by either the Assistant Registrar or the Dean, denying that the appellant had seen them or stating that when she came to them, her attitude was rebellious and not that of a candidate anxious to take the examination. Only the Controller stated in his affidavit that he did not admit the truth of the appellant's statement, but as he added that he had no personal knowledge of the facts, his assertion was completely valueless. It was clearly necessary that the University should at least have made an enquiry of the Assistant Registrar and the Dean and placed their version before the Court. Be that as it may, the action which the Syndicate took after having decided which of the candidates had been prevented from taking the examination, was itself "ultra vires" its powers.

It was that resolution and the concession made by it to certain of the candidates which was the cause of the appellant's application and similar applications by other candidates. Not only did the University purport to grant a concession to fiftyseven of the candidates, which it had no power to grant, but in the case of others about whom it had made no enquiry, whom it had not heard and against whom nothing specific had been proved, it punished them in a wholesale manner, by not only cancelling the examination for 1954 but also excluding them from the 1955 examination. It is material to note in this connection that soon the University saw the error of its ways and practically recanted the earlier resolutions by the resolutions adopted on 12-3-1955. If, on 22-5-1954, the University had not granted concessions of an unwarranted character to fiftyseven of the candidates and had not excluded the remaining candidates from the benefit of not only the examination of the current year but of that for the next year as well, the appellant's application would almost certainly not have been made. It must also be remembered that disgraceful as the conduct of the majority of the candidates was, the ultimate responsibility must be borne by the University. It has not been able to deny that the questions were too stiff, that they were of such a nature that no candidate could be reasonably expected to answer them within the time allotted and that they included questions on subjects outside the syllabus. It is not the appellant only who is making that allegation, but there were observations to the same effect by the Principal of the Eerhampore Union Christian Training College, by the Head of the Teacher Training Department and by the Principal of the David Hare Training College. It is saddening to think that a body which takes it upon itself to examine other people and pronounce on their merit, could not itself turn out even a question paper in accordance with its own Regulations, stiffness is a relative term and no one would condemn an examining body for the stiffness of a question paper, simply because the examinees called it stiff, though in the present case, it was not the examinees alone who were of that opinion. But there could be no excuse, in any circumstances, for setting questions on subjects outside the syllabus.

39. I have referred to the conduct of the University in some detail, only because we are departing from the normal rule of awarding costs to the successful party. It is clear that although the appellant's application failed and her present appeal also fails for reasons of the practical difficulty of giving her relief, the application was caused by the conduct of the University and one cannot say that such an application ought never to have been made. The Advocate-General before the learned trial Judge and Mr. Sanyal before us both conceded that the University had adopted an illegal, mistaken and, in its effect, unjust course in awarding proportionate marks to fiftyseven of the candidates and, in the case of all but them or all but them and those who had apologised, in not only cancelling the 1954 examination but also debarring them from the 1955 examination without any enquiry, or charge of any kind. Indeed, in our view, the conduct of the University has been such that we were inclined at one stage to award costs against the University, although it wins the appeal, but having regard to the fact

that it is a public institution, we refrain from making that order.

40. The appeal is accordingly dismissed, but there will be no order as to costs.

Sarkar, J.

41. I agree.