

(1990) 11 CAL CK 0001
In the Calcutta High Court
Case No : C.O. No. 10403 (W) of 1989

Sri Tapas Mukherjee

APPELLANT

Vs

The University of Calcutta and Others

RESPONDENT

Date of Decision : 14-11-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114

Citation : (1991) 1 CALLT 354

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : K.K. Chakraborty, for the Appellant; A. Mitra and Chameli Majumdar, for the Respondent

Judgement

Susanta Chatterji, J.—It is an unfortunate case indeed. In spite of all the reasonable opportunities extended to the University Authorities, they have intentionally abused the same and have embarrassed the learned Advocates appearing for them. This court granted sufficient time to produce all the relevant papers for effective adjudication. It is not appreciated as to why the University Authorities are not carrying out the orders of the Court and are wilfully and deliberately flouting the Court's order by not producing the records.

2. It is submitted by Mrs. Majumdar learned Advocate appearing for the University Authorities that she personally met the concerned officers of the respondent authorities and requested them to produce the records before this Court. :

3. The matter was adjourned for several occasions and even when the matter appeared for delivery of judgment and time was granted. It is placed on record that the affidavit in opposition was lost from the file of the learned Advocate. Be that as it may, the same has been reconstructed and is filed in Court today. This Court accepts the same with reservation for the ends of justice.

4. This Court has considered all the materials on record and delivers the Judgment with the reasons recorded hereinbelow.

5. The writ petitioner appeared at the B.Sc. Examination (2 years Pass Course) as a casual candidate in the year 1985 conducted by the University of Calcutta. The combination subjects of the petitioner are Physics, Chemistry, Mathematics and Additional English. The Roll Number as allotted to the petitioner was 141/MS-PX for the year 1985. It is stated that the result of the said examination was declared on 28th of February, 1986 and the Mark sheet was sent to the petitioner on 7th of March 1986. Immediately after receipt of the said Mark sheet the petitioner made an application in the prescribed form within the specified time for scrutinising the answer papers and deposited the necessary fees. Since then nothing has been intimated to the petitioner till January, 1989 and inspite of meeting and/or visiting the concerned authorities on several occasions, the petitioner did not get any response and he made a representation to the Vice-Chancellor to the University of Calcutta on 3rd February, 1989. It is alleged that the petitioner again met the Assistant Controller of Examinations personally on 13th February, 1989 and inspite of attempts nothing was communicated to the petitioner. The petitioner made a representation, to the Ministry in Charge of Higher Education and other officials of the State Government. However, being aggrieved by and dissatisfied with the inaction on the part of the respondents in not scrutinizing the answer papers, the petitioner has come to the Writ Court for issuance of a writ of Mandamus commanding the respondents to scrutinize the answer papers to the petitioner and to publish the results afresh and for other reliefs as indicated in the petition itself. While entertaining the writ petition on 22.8.89 this Court could not appreciate the negligence on the part of the University Authorities to keep the matter pending for a long time and not to scrutinize the papers of the petitioner. It was, however, submitted on behalf of the University Authorities that the result of the scrutiny could not be completed prior to March 1988 and even then receipt is not traceable as the register is a very heavy one. Neither any affidavit was filed in time nor any record has been produced to controvert the allegations of the petitioners. Since the Court could not appreciate such a deliberate negligence on the part of the University Authorities a specific direction was made on 22.8.89, to enable the University Authorities to file affidavit in opposition and to produce the relevant records relating to the scrutiny of the papers together with the receipt of the communication and the results of the petitioner at the time of hearing of this matter. Nothing has been complied with.

6. Having heard the learned lawyers of both sides and considering the materials on record, this Court finds that there is utter negligence on the part of the Calcutta University Authorities to scrutinize the papers of the petitioner. It is also not appreciated as to why all the papers have been withheld from the Court for effective adjudication. For non-production of the records and non-traversing the averments made in the writ petition, this Court can hold an adverse interference in accordance with law. The contentions of the University Authorities at a belated

stage as to the ground of destruction of papers is overruled.

7. Upon persual of the materials on record and regard being had to the facts and circumstances of the case, this Court does not find any bar and/or impediment to allow the writ petition. Let a Writ be issued commanding the respondents Calcutta University Authorities to publish the result of the petitioner upon scrutiny within 2 (two) weeks from date. In default the petitioner would be declared to have passed in the B.Sc. Examination in 2 (two) years course for the year 1985 within 4 (four) weeks. There will be no order as to costs.