

(1990) 05 CAL CK 0017
In the Calcutta High Court

Subrata Kumar Sarkar and Another	Vs	APPELLANT
The University of Calcutta and Others		RESPONDENT

Date of Decision : 11-05-1990

Acts Referred:

Calcutta University Act, 1979 — Section 9(6)
Calcutta University First Ordinance, 1966 — Section 62
Constitution of India, 1950 — Article 226

Citation : (1991) 1 CALLT 109 : (1992) 2 ILR (Cal) 517

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, Bhaskar Ghosh and Saptansu Basu, for the Appellant; Joyanta Kumar Mitra, A.K. Mitra and Chameli Majumdar, for the Respondent

Judgement

Susanta Chatterji, J.—It is a tale of a twin brothers. The providence is presenting them similarities in appearance, and identical events in their respective life. The writ petitioners who appeared in the B.A. (Part-I) Examination with Honours in English held in the year 1989 by the University of Calcutta, have challenged the notice of charges and the order of punishment being Annexures "F" & "G" to the writ petition. It is stated in details that the petitioners are alleged to be good students and they obtained Scholarships at various stages of the School and College career. As regular students from Bangabasi College, Calcutta, they appeared in the B.A. (Part-I) Examination and the Examination Centre was at Moulana Abul Kalam Azad College at Calcutta. They were, however, surprised not to find their Roll Numbers while result of the aforesaid examination was published. Subsequently, they received notices dated 4th of September, 1989 from the Secretary, Board of Discipline along with a copy of chargesheet intimating as if they committed breach of discipline in the examination and they were directed to appear before the Sub-Committee of the Board of Discipline on 9th October, 1989 at 12.30 P.M., in the room of the Deputy Inspector of College, Centenary Building, 5th Floor, Calcutta University and to furnish

explanation about their conduct. The chargesheet as annexed to the aforesaid notice to show cause indicated inter alia that in contravention of the rules of the examination, they surreptitiously took away some additional blank sheets of paper previously written double answers on them outside the Examination Hall before hand, and stitched them with) the answer script in History, 2nd Paper. Copies of the said notice and the chargesheet given to both the petitioners have been annexed to the writ petition and marked collectively with the letter "F". It is further stated that the petitioners have duly appeared before the Sub-Committee and denied the charges. Towards the end of December, 1989 the petitioners were informed through their college that their examination in B.A. Part-I have been cancelled and they have been debarred for one year from appearing at any examination of the said University. A copy of the said order of punishment bearing Memo No. BD-1852/RA/B.A. (Part-I) and (Pass)/89 dated 12th December, 1989 is annexed and marked with the letter "G". The petitioners have alleged that immediately after coming to learn the said order of punishment they went to Principal of Moulana Azad College, Calcutta who was the Presiding Officer of the Examination Centre for the petitioners to ascertain whether he made any report against the petitioners regarding any breach of discipline. Said Principal, however, gave a certificate to the petitioners dated 3rd January, 1990 to the effect that the petitioners bearing their respective roll numbers appeared at all Honours Papers and Pass Papers on the scheduled dates of examination in the B.A. Part-I Examination, 1989 from the College Centre (Moulana Azad College) and it was certified that there has been no allegation against them from the Centre-in-Charge. The petitioners also met the Principal of Bangabasi College and the said Principal and the Head of the Department of English jointly gave a certificate to the petitioners for production before the Appropriate Authority with a request to the Vice- Chancellor to consider the case of the petitioners sympathetically. It is stated in details that there was heavy publicity in newspapers at the intervention of certain Senate Members and politicians and the petitioners have the occasion to meet the Hon"ble Chief Minister and the Vice-Chancellor and several paper cuttings have been annexed to the writ petition relating to the various publicity made in respect of the case of the petitioners as if no proper justice has been made in the case of bona fide good students. The petitioners however, finding no other adequate and alternative remedy are alleged to have come to this Writ Court to seek the reliefs and they have prayed for issuance of a Writ of Certiorari commanding the respondents to produce and/or cause production of the entire records of the case including the report of the investigation, minutes of the enquiry, investigation by the Sub-Committee of the Board of Discipline and the Vice-Chancellor at the time of hearing of the instant application so that on their perusal, conscionable justice may be done. After the inspection of records produced by the University Authorities, and after filing the affidavit-in-Opposition, the petitioners filed an appropriate Affidavit-in-Reply challenging the entire proceedings of Review made in terms of the order of the Vice-Chancellor on 1.1.1990 and also the ultimate decision of the Syndicate on 13.2.1990 mainly relating to the decision to cancel the examination of the

petitioners and debarring them to appear in any examination for one year, as taken earlier on 8.12.1990.

2. The writ petition is strongly contested by the respondent Nos. 1 to 6 by filing Affidavit-in-Opposition sworn by the Registrar of the University of Calcutta. It is disclosed, inter alia, that the petitioners were the candidates for B.A. (Part-I) Examination 1989 having Roll Nos. 085/MHA/ 0042 and 085/MHA/0043. In respect of History Second Paper in the Pass Subjects, the petitioners were "Reported Against" by the concerned Examiner to the Controller of Examinations that the petitioners seemed to have taken recourse to unfair means in answering History (Pass) Paper-II in the Final B.A. Part-I Examination, 1989. The said Examiner is alleged to have endorsed-upon the additional sheets, as-"these sheets seen to be supplied from outside." There is also observation of the Examiner that "these sheets do not seem to be written in the Examination Hall". The Controller of Examinations consequently reported the said matter to the Secretary, Board of Discipline whereupon it was detected that the said material irregularities amounted to breaches of discipline by the petitioners and the matter was complained to the Secretary, Board of Discipline in terms of Clause 62(2) of the Calcutta University First Ordinance, 1979. The petitioners, were charge-sheeted for committing breach of discipline in History Second Paper (Pass Course) B.A. Part-I Examination, 1989 in contravention of the rules of examination as to surreptitiously taking away some additional blank sheets previously, and writing answers on them outside the Examination Hall before hand, and subsequently stitched them with their answer scripts. The petitioners were given opportunity to appear before the Sub-Committee appointed by the Board of Discipline under the Calcutta University First Ordinance, 1979 on 19th October, 1989 to defend themselves against the said charges. The said Sub-Committee its one course recommended cancellation of the Examination of the petitioners and their debarment for one year from appearing at any examination of the University. The said recommendation of the Sub-Committee was placed before the Board of Discipline of the University of Calcutta on 4th of December, 1989 and after considering the case of the petitioners the Board of Discipline resolved in the Meeting held on 4th December, 1989 that the recommendation of the Sub-Committee in the case of the petitioners be accepted. It is stated specifically by the University Authority that resolutions passed in the meeting of the Board of Discipline held on 4th of December, 1989 were duly placed before the Vice-Chancellor in the Syndicate on 8th of December, 1989 and were duly approved by him under the provisions of the Calcutta University Act, 1979. Thereafter, the decision of the Board of Discipline was conveyed to the proper Authorities for information and necessary action by and under Circular No. 1.3D/852/RA/BA (Part-I).- Pass/89 dated 12th December, 1989. It is further disclosed in the affidavit-in-opposition that in the meantime on 8th December, 1989 a letter dated 6th December, 1989 sent by Sri M. K. Gupta of the Department of English and Sri Ashis Kumar Mukherjee of the Department of History of Bangabasi College, Calcutta was received by the Vice-Chancellor of the

said University in which the said teachers prayed for an interview of the Vice-Chancellor in connection with the "R.A." case of the petitioners who are good students of Bangabasi College. The Vice-Chancellor by his order dated 1st January, 1990 directed that the cases of the petitioners should be put up before the Disciplinary Committee for review. In pursuance of the said direction of the Vice-Chancellor of the University of Calcutta, the Sub-Committee of the Board of Discipline again held a meeting on 16th January, 1990 for reviewing its earlier decision. The petitioners were asked to appear before the said Sub-Committee and the Sub-Committee recommended that the decision taken by them earlier should be adhered to. The proceedings and recommendation of the Sub-Committee dated 16th January, 1990 were thereafter placed before the Vice-Chancellor who after going through the same directed the petitioners should to appear before him on 1st February, 1990 in his Chamber at Darbhanga Building and the Vice-Chancellor referred the matter to the Syndicate on 13th February, 1990 and the Syndicate resolved that the earlier decision in respect of the petitioners for cancellation of their examination and their debarment for one year from appearing at any examination of the Calcutta University be adhered to. The Syndicate further resolved in the said meeting that a comprehensive enquiry be made into the availability of loose blank answer sheets to candidates from outside the examination campus and the leakage of questions before the examinations, if so, as well as the nature of invigilation carried out in the Examination Hall. It is placed on record that the Sub-Committee and/or the Board of Discipline had reached the conclusion after considering the probabilities and circumstantial evidence and in particular, internal and intrinsic evidences available from the answer scripts of the petitioners themselves. It is stated that the said conclusion is honest and taken bona fide. It cannot be said that the said conclusion was reached and/or the recommendations were made on no evidence at all as alleged. Since this Court is not sitting in appeal over the decision in question, the writ petition appears to be misconceived and it may be dismissed accordingly as submitted.

3. By an order dated 28.2.90 this Court recorded the submission of the learned lawyers of the respective parties as to production of necessary documents relating to the proceedings of the Sub-Committee and the Review Committee for effective adjudication of the matter. Mr. Joyanta Kumar Mitra, learned Counsel appearing for the Calcutta University Authorities submitted that all the documents will be allowed to be inspected and necessary papers relating to the "proceedings will be made available upon requisition. At the time of hearing, xerox copies of a number of documents have been filed by the University Authorities and the learned Lawyers appearing for the petitioners have had the occasions to inspect the relevant original records. Copies of the documents in a bundle are kept on record,

4. In the course of the hearing, the learned Counsel appearing for the University Authorities could not fully connect certain documents produced by the University Authorities as consistent with the Affidavit-in-Opposition sworn on 20th of

February, 1990 and after obtaining leave of the Court, a Supplementary Affidavit was sworn on 24th of April, 1990.

5. Mr. Saktinath Mukherjee, learned Advocate appearing for the petitioners has mainly argued that the purported chargesheet does not contain any indication about the materials on the basis of which the charges were proposed to be substantiated. According to him, the Sub-Committee of the Board of Discipline held a so-called enquiry on 19.10.89. He has argued further that nowhere it will appear that the report of the examiner was disclosed to the petitioners or that the answer scripts were produced before them. He has developed his argument that the Sub-Committee acting as a quasi-judicial Tribunal disregarded its obligation to comply with the principle of natural justice. In support of his contention he has drawn the attention of the Court to a number of reported decisions viz. *Dipa Pal Vs. University of Calcutta*, , *Subhas Chandra Paul Vs. University of Calcutta and Others*, and *Ram Narayan Keshori and Others Vs. University of Calcutta and Others*, . The decision of the Sub-Committee according to him, does not specify the kind of internal evidence which forms its foundation. There is no reason at all to justify the conclusion. He has emphasized that there could be no just approval or confirmation of a decision which contains no reason and no disclosure of the materials on which it is founded. In support of his contention he has relied upon the cases reported in AIR 1966 SC, P. 876, *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, , *Travancore Rayon Ltd. Vs. Union of India (UOI)*, and *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, . The recommendation of the Sub-Committee was approved by the Board of Discipline on 4.12.89 and confirmed by the Syndicate on 8.12.89 as it would appear from the averments made in paragraph 5(f) and 5(g) of the affidavit-in-opposition filed by the University Authorities. There is no reason to justify the recommendation. He has submitted that where an appeal and/or revision is maintainable, reasons must be given and, in fact, the Board of Discipline has accepted the recommendation of the Sub-Committee mechanically and the decision has been taken by the Syndicate without applying its mind. He has highlighted the aspect of the case as if only the recommendation and not the decision of the Sub-Committee was placed before the Board of Discipline and such recommendation is purported to be approved. It was thus a purported approval accorded mechanically and without application of mind and as per his argument, this is contrary to law. The penal measure taken against the petitioners were published, communicated and given effect to. At this stage, he has added that the Vice-Chancellor at the instance of two Professors of Bangabasi College, directed by an order dated 1.1.90 to place the matter again before the Disciplinary Committee and not before the Syndicate or the Board of Discipline for review. In particular, he has drawn the attention of the Court to paragraph 5(h) of the Affidavit-in-Opposition and also Page 11 of the bunch of records filed by the University Authorities which have been considered by this Court for the purpose of effective adjudication of the matter in dispute. He has

also drawn the attention of the Court that u/s 9(1) of the Calcutta University Act, 1979 the Vice-Chancellor is a "Principal Executive and Academic Officer of the University" and u/s 17 of the said Act, he is not one of the specified authorities of the University. The Vice-Chancellor being a Member and Ex-Officio Chairman of the Board of Discipline, cannot issue a direction to the Disciplinary Committee for review, since the recommendation of the Disciplinary Committee has been approved by the Syndicate. Section 62(5) of Calcutta University Ordinance provides that all matters to be decided by the Board of Discipline at a meeting of the Board. The presence of 5 (five) members of the Board is required to have the quorum. In view of such legal position, the Vice-Chancellor cannot rise above the Act and the Ordinance, and cannot assume any power to ask for the review of the matter. Since the decision was quasi-judicial in nature, and it was taken in connection with the Disciplinary Proceedings affecting the careers of the students, it cannot be the subject matter of review, unless the power of review is expressly conferred by the Act or the Ordinance. He has emphasized that the original decision was not cancelled and ultimately it was maintained and adhered to, and as such there is no real purpose of the so-called review. The thrust of his argument is two-fold that as a matter of law there cannot be any review and the Vice-Chancellor cannot direct the review of the decision of either the Sub-Committee of the Board of Discipline or the Syndicate. Secondly, the Sub-Committee could not really review as there is a decision of the Board of Discipline approved by the Syndicate.

6. Mr. Mukherjee has made lengthy submission urging inter alia that it is a settled principles of law that when a decision of the Subordinate Authority has been dealt with by higher authority, said Subordinate Authority cannot review its decision. This is also the basic principle of Order 47 Rule 1 of the CPC that a review is permissible so long an appeal is not disposed of. There is no inherent power of review unless it is provided by the Act or the Ordinance. In this regard, he has drawn the attention of the Court to a number of decisions reported in Harbhajan Singh Vs. Karam Singh and Others, , Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, and Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, .

7. With regard to the merit of the case he has urged that there was no investigation or enquiry from Invigilators and there was no scrutiny of the examination records. The rules of examination are highly relevant and the University is in possession of the best-documentary evidence but the University Authority failed to make the required scrutiny and investigation not only at the initial stage but also at the subsequent stage. He has also submitted that none of the authorities had at any stage applied their mind to the Rules of the examination referred to in the charge itself and none of the authorities recorded any finding regarding surreptitiously taking away of additional blank sheets previously. Since the Syndicate has resolved that a comprehensive enquiry has to be made into the availability of loose answer sheets to the candidates from outside the examination centre and the leakage of question before the

Examination, if so, as well as the nature of invigilation carried out in the Examination Hall, no conclusion can be made in the case, of the petitioners and no punishment can be awarded without completion of such an enquiry. He has posed a question that the petitioners cannot be held guilty and punished if it is found that there was no question of loose answer sheets being available to the candidates from outside the Examination Centre and there was no leakage of questions before the Examination.

8. Mr. Joyanta Kumar Mitra, learned Counsel arguing mainly for the University Authorities has taken this Court to the Answer scripts of the History Second Paper of B.A. (Part-I) Examination of the year 1989 of both the petitioners. He has also taken to various averments made by the writ petitioners in the main writ petition and the Affidavit-in-Reply and also the averments made by the University Authorities in the Affidavit-in-Opposition as well as the Supplementary Affidavit by the University Authorities. He has also taken this Court to go through the documents filed by the University Authorities. In his usual fairness, he has submitted that the University Authorities are not vindictive. The University Authorities will make every endeavour to place on record all the relevant facts and if the conscience of the Court is satisfied that the petitioners are not guilty of the charges, the University Authority will not stand in the way to allow the petitioners to have the result of the examination and to proceed with their further studies. According to him, there is a strong suspicion by looking at the answer scripts of both the petitioners in respect of History (Pass) Second Paper of the Examination concerned. In the main answer books, there is one type of handwriting written freely and keeping more space whereas in the loose additional sheets, there is another type of handwriting written very carefully having less marginal space and these additional sheets will seem to be written outside the hall and accordingly, the Examiner concerned made a note in the answer script and had drawn the attention of the Controller of Examinations, and the Sub-Committee of the Board of Discipline had enquired into the matter.

9. Mr. Joyanta Kumar Mitra has very fairly submitted that suspicion would not be enough to punish a person. There must be positive proof either by direct evidences or by circumstantial evidences. In the instant case, the petitioners stand in a special position to explain as to how there is such an anomaly in the original answer book and in the loose sheets and unless these anomalies are properly explained by the petitioners themselves, the charges stand proved and the writ petitioners cannot come to this Court for necessary relief.

10. Mr. Joyanta Kumar Mitra has since submitted that the Vice-Chancellor has the power to act in an emergency u/s 9(6) of the Act, and for overall situation facing the petitioners, if he has asked for review of the case and further opportunities have been given to the petitioners, there is no failure of justice and there is no violation of law in any manner whatsoever. The Vice-Chancellor has tried his best to do justice to the petitioners and this case has gained unusual importance due to various press publication and political maneuvering. There is unnecessary

press reports which have confused the matter and practically the petitioners being guilty of charges cannot come to this Writ Court to seek redress. Mr. Joyanta Kumar Mitra has drawn a distinction as to the jurisdiction of the academic authorities vis-a-vis the interference of the Writ Court by drawing the attention of the Court to a number of celebrated decisions reported in *The Board of High School and Intermediate Education U.P. Vs. Bagleshwar Prasad and Others*, *Suresh Koshy George Vs. University of Kerala and Others*, and *Prem Parkash Kaluniya Vs. The Punjab University and Others*. According to him, the Writ Court will be slow to interfere with the decision of the disciplinary action of the University Authorities unless the decision is made upon no evidence at all. Unless, there is anything arbitrary, unjust and patently unfair, the Writ Court may not extend its jurisdiction to interfere with the decision of the Disciplinary Authority attached to academic institutions.

11. With great anxieties, this Court has given patient hearing to the learned lawyers of both sides to advance their lengthy submissions. This Court has had pollute to observe with caution that no unnecessary air of politics may invade the arena of this Court to adjudicate a matter where the dignity of an educational institution like that of the University of Calcutta and the career of students of the said alma mater are concerned, Both the Bar and the Bench will have to solve the problems dispassionately and rising, above the narrow outlook of any political influence. Unless, this institution can rise on the occasion, the confidence of the ordinary people at large will be shaken and it will be a sad day for the cherished hope of the survival of democracy against all conceivable odds.

12. This Court, however, records with satisfaction that with regard to the instant case both the learned Counsel appearing, for the respective parties have discharged their duties very fairly and they have tried to assist this Court: with the best tradition of the Bar displaying dignity and respect. This Court also records with great satisfaction the stand taken by the learned Counsel appearing for the University Authority that the University Authority is in no mood to punish innocent students and if there be no compliance of the statutory Rules and Regulations and if there be violation of the principles of natural justice, the University will correct the step and the career of a bona fide student will not be prejudicially affected inspite of press reports or otherwise by any influence of politics.

13. Having gone through the pleadings of the parties materials on record and the submissions of the learned lawyers at length, this Court finds that if there is any violation of disciplinary provisions as to examination the following procedure has to be complied with. The same is quoted hereinbelow :-

"Functions and responsibilities of the Board of Discipline.

62. (1) The functions and responsibilities of the Board of Discipline shall be such as may be determined by the relevant Council for Under- Graduate Studies.

(2) All cases of breaches of discipline in connection with the University

Examination shall forthwith be reported with relevant documents and details to the Secretary of the Board of Discipline by the Presiding Officer at the Examination Centres for such action as the Board may consider necessary and where the Presiding Officer suspends or expels an offering student from the examination hall, the order of such suspension or expulsion shall forthwith be reported to the Secretary of the Board together with circumstances of the case leading to such suspension or expulsion :

Provided that the cases of breaches of discipline committed by any examinee before or after or during the examinations which may not be covered by the report of the Presiding Officer at any examination centre as mentioned above shall be reported by the person or persons connected with the University Examinations detecting the same or complaining of the same to the Secretary, Board of Discipline.

(3) On receipt of reports of cases of breaches of discipline the Secretary of the Board shall inform the student concerned of the charges against him and ask him to appear before the Board and furnish an explanation, verbally or in writing, with regard to the charge made against him. The student shall also be informed that in case he fails to appear before the Board and explain his conduct on the date fixed for the purpose his case may be decided ex parte without further reference to him.

(4) If the Board holds that the charges referred to in paragraph (3) have been proved, it may recommend cancellation of the examination of the candidate concerned, of his debarment from appearing at a University Examination for such period as it may deem fit, or both.

(5) All matters to be decided by the Board of Discipline shall be decided at a meeting of the Board :

Provided that the Board may appoint one or more Sub-Committees consisting of three members who may not necessarily be the members of the Board. The Sub-Committee or Sub-Committees shall at the first instance scrutinise all the cases of breach of discipline and exonerate from the charges those students whom they may consider eligible for such exoneration after preliminary enquiry and recommend suitable disciplinary measures including cancellation of examination or debarment from appearing at any University examination for such period as it deems fit or both against whom there are prima facie cases. Such students against whom disciplinary measures have been recommended shall be given an opportunity to defend their cases, if they so desire, after they are intimated about the punishment imposed on them. In such cases the Sub-Committee shall further investigate, interrogate and give them an opportunity to place their grievances before the Sub-Committee. In case such students fail to appear before the Sub-Committee on the fixed date and furnish any explanation, writing with regard to the charges made against them, their cases shall be decided ex parte by the Sub-Committee concerned without further reference to them. Any

such decision relating to disciplinary action so recommended by the Sub-Committee concerned shall be referred to the Board of Discipline for approval:

Provided further that two members shall form the quorum for a meeting of the Sub-Committee.

(6) Decisions of the Board of Discipline shall be subject to confirmation by the Syndicate.

(7) Omitted.

14. It is thus clear that the result of the enquiry of the Sub-Committee has to be placed before the Board of Discipline and the recommendation of the Board of Discipline has to be approved by the Syndicate. Once the decision has been taken by the Syndicate, no authority other than Syndicate can ask for review of its own decision. The Vice-Chancellor is certainly a creature of the Statute. He cannot acquire any extra power above the syndicate. It is true that in an emergency, the Vice-Chancellor can exercise the powers of the Syndicate u/s 9(6) of the Calcutta University Act as quoted hereinbelow :-

Section 9(6) : The Vice-Chancellor may take on behalf of the United such action as he may deem expedient in any matter which, in his opinion, is either urgent or of an emergent nature and shall report the same for confirmation at the next meeting to the authority or body which, in the ordinary course, would have dealt with the matter :

Provided that if the action taken by the Vice-Chancellor is not approved by the authority or body concerned, the matter shall immediately be referred to the Chancellor whose decision thereon shall be final.

15. But said Section 9(6) clearly indicates inter alia that on the next available meeting of the Syndicate, the decision taken by the Vice-Chancellor has to be placed and/or to be ratified. Upon close scrutiny, this Court finds that once the result of the enquiry of the Sub-Committee has gone to the Board of Discipline and the recommendation of the Board of Discipline has been approved by the Syndicate, there cannot be any direction for review by the Disciplinary Committee again. This in view of the materials on record, this Court is of the view that the Board of Discipline at its meeting held on 4th of December, 1989 accepted the recommendation of the Sub-Committee has been placed before the Vice-Chancellor in Syndicate as claimed on 8th December, 1989 and duly approved by him and the decision of the Board of Discipline was conveyed to the proper authorities for information and necessary action by and under Circular No. 13D/852/RA/B.A. (Part-I and Pass)/89 dated 12th December, 1989 the Vice-Chancellor cannot ask the Disciplinary Committee again for review by his order dated 1st of January, 1990. The matter reached its finality by the decision and/or approval of the recommendation of the Board of Discipline on 8th of December, 1989 by the Syndicate and/or by the Vice-Chancellor in Syndicate. Thereafter, no decision for review can be taken by the Vice-Chancellor alone without placing the

entire matter before the Syndicate and without cancelling the earlier decision of the Syndicate taken on 8th of December, 1989. This Court is of the view that all the steps taken after 1st of January, 1990 are thus absolutely irregular and illegal and those have got no legal consequence. An explanation has, however, been given in the supplementary affidavit that on 8th of December, 1989 the proceedings of and the resolution passed in the meeting of the Board of Discipline were duly placed before the Vice-Chancellor in Syndicate and were duly approved by him under the provisions of the Calcutta University Act, 1979, and the Vice-Chancellor by virtue of his office is a Member and Chairman of the Syndicate and in terms of the provisions of Section 9(6) of the said Act, may take on behalf of the University such action as may be deemed expedient in any matter which, in his opinion, is either urgent or of emergent nature and shall report the same for confirmation at the next meeting to the authority or body which in the ordinary course would have dealt with the matter. Incidentally, it is found by this Court that the recommendation of the Board of Discipline was approved on 8th of December, 1989 and there is a regular meeting of the Syndicate on 12th of December, 1989 and the decision for review was made by the Vice-Chancellor himself on 1st of January, 1990. It is rather curious to note that on 12th of December, 1989 the matter of approval by the Vice-Chancellor even if taken u/s 9(6) of the Act on 8th of December, 1989 was not placed. Moreover, the decision taken by the Vice-Chancellor on 1st of January, 1990 was taken without informing the Syndicate and even the ultimate decision of the Syndicate on 13th of February, 1990 resolving that the earlier decision in respect of candidates bearing Roll No. 85 MHA No. 42 and 43 in B.A. Part-I Examination, 1989 year for cancellation of examination and debarment for one from appearing at any examination of this University be adhered to, was not based upon any information that there is a review by the Disciplinary Committee in terms of the order of the Vice-Chancellor on 1st January, 1990. The Syndicate was not informed as to what happened after 8th of December, 1989 and the Syndicate had no occasion to consider the case of the petitioners after 8th December, 1989. While there is an approval by the Syndicate in respect of the recommendation of the Board of Discipline made in terms of the enquiry report, all proceedings after the decision on 8th of December, 1989, have become fine rhetoric's empty of all meaning and worth. It is a settled principle of law that any statutory authority cannot have its inherent power of review unless the statute confers such power upon it. Moreover, the Vice-Chancellor being a part of the Syndicate cannot have its own independent power to upset the decision of the Syndicate without taking consent of the Syndicate, obtaining accord. The decision taken on 1st January, 1990 was not placed before the Syndicate on the next available meeting and all steps taken relating to review have become irregular and illegal. Besides this Court has considered whether even during review, there was any adjudication of the case on merit.

16. By looking at the materials on record further it appears that the Sub-Committee made recommendations as per their meetings held on 17th October,

1989, 18th October, 1989 and 25th of October, 1989 in respect of various candidates appearing at B.A. Part-I (Pass) Examination, 1989 including the petitioners. From the proceedings of the Sub-Committee placed before this Court it appears that in Item Nos. 132 and 133 the cases of the petitioners have been indicated. It transpires from the records, the following observations have been made which are quoted hereinbelow :-

132 Samresh Chandra 1. Took additional Charge denial. Sarkar, blank sheets pre Vill: Purbajagadanandapur, piously. (Hospital Para), P.O. Bethuadahari, 2. Wrote answer on Charge is established Nadia, them before-hand from internal Roll 85/MHA/ outside the Examination evidence No. 42, Regn. Hall and EC+DBI No. 63890 of stitched them with 1987-88 his answer-script in History, Paper-III. 133 Subrata Kumar 1. Took additional Charge is established Sarkar, blank sheets previously. from internal Vill: Purbajagadanandapur, BC+DBI. evidence, P.O. Bethuadahari, 2. Wrote answers on Nadia, them before-hand Roll 85/MHA/ outside the Examination No. 43 Regn. Hall and No. 63897 of stitched them with 1987-88. his answer-script in History, Paper II.

17. It is not a speaking order. There is no reason. There is no recording of evidence. It is not appreciated as to what is the nature of intrinsic evidence. Admittedly, neither the Invigilator has been examined nor any report has been made available from the Centre-in-Charge. The Examiner concerned has also not been examined as to how he has formed any opinion that the answer sheets seemed to have been supplied from outside. It is also not clear as to why there has been no examination of the relevant registers where the additional sheets are supplied to such intending candidates at the Examination Hall upon the signature of the Centre-in-Charge and/or the Invigilator. No enquiry has been made whether the loose sheets of answer papers were obtained by the petitioners surreptitiously nor there is any evidence as to the leakage of the question papers and as, to writing of the petitioners however, outside the Examination Hall. It is, however, interesting to note in this regard that the University Authorities have placed before this Court the answer scripts of both the petitioners relating to History Paper-I of the Self-same examination and upon perusal of those two answer scripts which are not disputed indeed that the Roll No. 42 the petitioner No. 1 has obtained 73 out of 100 and the Roll No. 43, the petitioner No. 2 has obtained 76 out of 100 although in both those answer scripts, similar type of handwriting appear as that of in the History Second Paper in the loose sheets. Mr. Mitra has, however, tried to explain that relating to the History First Paper the Examiner concerned did not lodge any formal complaint and as such there is no enquiry and it does not mean that the petitioners are not guilty of the charges, while detection was made in respect of History Paper-II. True it is, that one wrong cannot ratify another wrong. True it is, that by analogy the petitioner cannot escape any guilt if detected and proved according to law. This Court with utmost care and caution has gone through the answer scripts of the disputed papers and gone through the relevant papers of enquiry of the Sub-Committee and thereafter the recommendation of the Board of Discipline and

also the accord of the Syndicate and all other steps taken thereafter. This Court is of the clear view that suspicion, however, strong, cannot be the only sheet anchor for punishment. Jurisprudence of any form demands that by mere suspicion no one can be punished. Something more than suspicion has to be proved. This Court is of the view that the members of the Sub-Committee were persuaded by looking at the answer scripts only. They depended upon their observations looking on the answer scripts only. The best evidences possessed by the University Authority were not called for. There is no examination of any evidence whatsoever to find out whether there is any lawful basis for holding that the petitioners are guilty. Suspicion and suspicion alone has sealed the fate of the petitioners. The tragedy lies here. While the University Authority is possessed of the best evidences as to the register of maintaining loose blank additional sheets at the Examination Hall, the availability of the Invigilator and the Centre-in-Charge of the Examination Hall and to enquire as to whether there was at all any leakage of the question paper and supply of the answer sheets from outside the Examination Hall and without examining such evidences, the Enquiry Committee has concluded by looking to the alleged internal evidence which has also not been explained as to what are the internal evidences. Practically the recommendation of the Sub-Committee is without any evidence whatsoever. There is total non-application of mind. This one line observation has been accepted mechanically by the Board of Discipline along with many other cases. Since, there is no reason, there is no examination of the case individual-wise. There is significant failure on the part of the Board of Discipline to examine the report and/or recommendation of the Sub-Committee. The recommendation and/or decision of the Board of Discipline has been blindly approved either by the Syndicate or by the Vice-Chancellor in Syndicate on 8th of December, 1989. All these steps have been taken blindly without discussing the case of the persons affected and without considering the merit of the case. There is gross failure on the part of the Statutory Authorities viz. the Sub-Committee, the Board of Discipline and the Syndicate. It has to be remembered that the actions taken by the respondent authorities have serve consequential effect upon the life, fate and career of a student. It may operate as a mark of disgress for the whole life. No water of the Ganges and no perfume of Arebia can wash and wither away the stigma of "Reported Against" as branded on the back of the petitioners without proving the charges levelled against them as required under law and accepted norms. It is settled that the decision of any disciplinary authority has not to be equated to a Criminal Trial but at the same time it has to be remembered and remembered strongly that any authority acting as a quasi-judicial authority is not to be permitted to conclude anything without any evidence at all but only on the basis of mere surmises, and inferences and upon mere suspicion. Suspicion no doubt raises a doubt and such doubt has got to be proved or dispelled by direct or circumstantial evidence, and upon cogent reasons, the conclusion has to be drawn.

18. In the case of Miss Chitra Das and Ors. v. University of Calcutta in C. O. No.

7576 (W) of 1989 Reported in CAL. IX 1990(2) HC 28 this Court has elaborately discussed the scope of the enquiry of the disciplinary authority in any academic institution like University, and the power, jurisdiction and befitting situation for interference by the Writ Court. The unreported judgment was made available to the learned lawyers of both sides in this present case. Strangely enough that both Mr. Saktinath Mukherji for the petitioners and Mr. Joyanta Mitra for the University Authority appeared in the above case and it is brought to the notice of this Court that the University Authority without preferring any appeal, has accepted the Judgment and acted in terms thereof. It will appear from AIR 1966 S.C. 876 (Board of High School and Intermediate Education, U. P. Allahabad and Ors. v. Bagleswar Prosad and Anr.) that the Hon"ble Supreme Court discussed about the scope of the petition under Article 226 of the Constitution of India vis-a-vis order by quasi judicial Tribunal based on no evidence. There is clear observation that it is necessary to bear in mind that Educational Institutions like the Universities or the Boards set up Enquiry Committee to deal with the problem posed by the adoption of unfair means by candidates and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of adoption of unfair means, direct evidence may sometimes be available but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is a justification to do so, Courts Should be slow to interfere with the decisions of domestic tribunals appointed by Educational Bodies like the Universities. In dealing with the validity of the impugned orders there as passed by the University, under Article 226, the High Court is not sitting in appeal over the decision in question, its jurisdiction, is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order but the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Being aware of the aspect of jurisdiction of the Court exercising the power under Article 226 of the Constitution of India and the limitation indicated above, this Court with great caution tried to satisfy its conscience as to whether there are probabilities and circumstantial evidences to justify the impugned conclusion arrived by the University Authorities in the present position. Regard being had to the materials on record this Court is of the clear view that the University Authorities have not considered the evidences available to them. They have preferred to rely upon suspicion by ignoring consideration of the best available evidences both direct and circumstantial. Mere suspicion cannot certainly be equated to an evidence. It cannot be treated as internal and/or not finished evidence as sought to be done in the instant case. The responsibility demands more caution in cases of suspicion. The principle of law propounded in various reported decisions cited from the bar does not indicate the power of any quasi judicial authority to punish anybody upon suspicion. This Court has

carefully examined the decision making process as observed in State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, and finds that the impugned decision taken by the respondent authorities suffers from irregularities and illegalities.

19. By looking further to the materials on record, this Court finds that even during review although made irregularly, the Disciplinary Committee has again committed the same mistake. The Disciplinary Committee has not examined any evidence as indicated above to prove whether the charges are justified or not. Certain irrelevant matters have crept in due to press media publication and it must be looked in the proper perspective that life is full of pride and prejudice. This Court has to find out as to what has happened on merit. It is safely found that at no stage either before review or after review the University Authority considered the case of the petitioners on merit by examining the evidences in its possession or to find the petitioners guilty. It is always taken for granted that Courts will not give any indulgence to any recalcitrant examinee, nor there will be any shelter to any dishonest examinee but at the same time the Courts have rigorous duties to see that an innocent examinee cannot be a victim of irresponsible action, high-handedness and arrogance of the Disciplinary Authority while discharging its duty by sacrificing the principles of natural justice and by concluding on the basis of mere suspicion and, in particular, not by examining the evidences as available. This Court fully appreciates the subsequent stand taken by the Syndicate in its meeting on 13.2.90 that here must be a comprehensive enquiry into the availability of loose answer sheets to the candidates outside the Examination Centre and the leakage of questions before the Examination, if so, as well as the nature of invigilation carried out in the Examination Hall. Since, such an enquiry is envisaged, it will be futile to uphold the finding of the Sub-Committee being accepted by the Board of Discipline and approved by the Syndicate. Unless such an enquiry is held in accordance with law, the punishment meted out to the petitioners is ipso facto bad in law and the same cannot be sustained.

20. Considering all the aspects of the matter, this writ petition is allowed to the extent that the punishment awarded to the petitioners by cancelling the examination and debarring them from appearing in the Examination is set aside. The petitioners are entitled to have their results published in accordance with law and to appear in any examination as proposed and/or submitted before this Court that the petitioners are likely to appear in the B.A. Part-II Examination starting from 15th of May, 1990. It is, however, made clear that this decision of this Court will not prevent the University Authorities to hold the enquiry afresh as to the charges levelled against the petitioners within a specific time as indicated below by examining the Invigilator, Centre-in-Charge, the Examiner concerned, the register of the additional sheets and making probe as to whether there is leakage of questions and supply of sheets outside the Examination Hall. The petitioners are entitled to have their full opportunity to defend their cases in accordance with law. It is also made clear that the result of the petitioners for

appearing at the Part-II Examination will not be published till the disposal of the fresh enquiry if initiated within a period of six weeks from date. The result in B.A. Part-I and Part-II will abide by the result of the enquiry if initiated within time, and concluded within three months from the date of initiation. It is brought to the notice of this Court that in the case of Chitra Das v. University of Calcutta as discussed above the University Authorities having accepted the judgment has since appointed a Retired Judge of this Hon''ble Court to hold the enquiry. This Judgment will not prevent the authorities to consider the appointment of any other Retired Judge of this Hon''ble Court to hold the comprehensive enquiry as per decision of the Syndicate on 13. 2.1990 which will have a great impact upon the outcome of the charges levelled against the petitioners. The University Authorities are directed to extend all facilities to enable the petitioners to appear at the B.A. (Part-II) Examination of the year 1990 on and from 15.5.90 and/or any date thereafter without prejudice and subject to the conditions as mentioned earlier.

There will be no order as to costs.