

(1961) 12 CAL CK 0015
In the Calcutta High Court
Case No : Civil Rule No. 1068 (W) of 1961

Swapan Roy Chowdhury

APPELLANT

Vs

Khagendra Nath Sen

RESPONDENT

Date of Decision : 04-12-1961

Acts Referred:

Bengal General Clauses Act, 1899 — Section 25
Calcutta University Act, 1951 — Section 21(1), 21(2), 52(2)
Constitution of India, 1950 — Article 226
Universities Act, 1904 — Section 25

Citation : AIR 1962 Cal 520 : 66 CWN 221

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Advocate : Arun Prokas Chatterjee, for the Appellant; S.M. Bose, General and Somendra Chandra Bose, for the Respondent

Judgement

B.N. Banerjee, J.—Civil Rule No. 1064(W) of 1961. The petitioner, who was a student in an academic institution known as Asutosh College, was required by the Principal of the College to leave the institution because the Principal thought that such action was necessary in the interest of the institution itself. The petitioner student seeks relief against the order in this Rule.

2. Asutosh College is affiliated to the University of Calcutta and derives some of its powers under the Calcutta University Act, 1951, and the statutes, Ordinances and Regulations framed under the said Act. It is necessary for me to refer to certain provisions of an Ordinance made under the Calcutta University Act, 1951, under which the order requiring the petitioner to leave the College was made.

3. In exercise of the power conferred by Sub-section (2) of Section 52 of the Calcutta University Act, 1951, the Vice-Chancellor of the University made an Ordinance Known as the "First Ordinance relating to the Admission of Students to the University and their Enrolment". Sections 3, 8, 9, 10 and 21 of the Ordinance are to the following effect:

"Section 3. Save as otherwise provided, admission of persons to Colleges shall be allowed ordinarily at the commencement of an academic year and on or before such date as the Syndicate may appoint in that behalf.

Section 8(1). Every candidate for a University examination shall, unless exempted by a special order of the Syndicate made on the recommendation of the Academic Council, be enrolled as a member of a college.

(2) A candidate shall be considered as enrolled when he has been admitted by the Principal and has paid the prescribed fees.

(3) Candidates exempted by the Syndicate shall be non-collegiate students of the University and shall be governed by Part II of these Ordinances.

(4) If a student who is enrolled as a member of a college but whose attendance falls short of the prescribed minimum, is allowed to appear at an examination on payment of the prescribed condonation fee, he is not a non-collegiate student.

Section 9. When a candidate has been enrolled in a college, he shall be considered to belong to that college until:

(a) the end of the academic year in which he has been sent up to a University examination and for purposes of discipline, the date of publication of the result of the examination; or

(b) the date borne on his transfer or withdrawal certificate; or

(c) his name has been struck off the college books for absence without notice, or for non-payment of fees or for breach of discipline; or

(d) he is dismissed from the college.;

"Section 10. If a student has been admitted to a college he shall not except as otherwise provided be subsequently admitted to any other college without the production of a Transfer Certificate from the Principal of the college in which he has last been reading.

Section 21. (1) A Principal may, without assigning any reason, require a student to leave the college if he considers such action necessary in the interest of the Institution. He shall in such a case issue a Transfer Certificate in the prescribed form in favour of the student free of charge. It shall not be open to the student in such cases to ask for the reason.

(2) Action taken under paragraph (1) shall be reported to the University for information."

4. The order on the student petitioner was made or said to have been made under the provisions of Section 21 of the Ordinance.

5. A two-fold contention was made by Mr. Arun Prokas Chatterjee, learned Advocate for the petitioner, against the order and in support of the Rule. He

contended, in the first place, that so long as the authorities do not prescribe a form of transfer certificate, referred to u/s 21, which they have not as yet done, no action u/s 21 of the Ordinance can possibly be taken. He contended further that before making the order, the Principal did not give any opportunity to the student as to why the order should not be made against him and in so doing he violated all principles of natural justice and that such an order must not be allowed to stand.

6. The first branch of the contention may be shortly disposed of Section 25 of the Bengal General Clauses Act provides that,

"Where any enactment is, after commencement of this Act, repealed and re-enacted by a Bengal Act or West Bengal Act with or without modification, then, unless it is otherwise expressly provided, any appointment, order, scheme, rule, bye-law, notification or form made or issued under the repealed enactment shall, so far as it is not inconsistent with the provisions reenacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted unless and until it is superseded by any appointment, order, scheme, rule, bye-law, notification or form made or issued under the provisions so re-enacted," u/s 52(b) of the Calcutta University Act, 1951, the Act of Incorporation (Act II of 1857) of the University of Calcutta and the Indian Universities Act (Act VIII of 1904) in so far as they applied to the Calcutta University stood repealed and in their places the new Act of 1951 was re-enacted. Section 25 of the Indian Universities Act, 1904, empowered the Senate to frame regulations "to provide for all matters relating to the University". The Senate of the Calcutta University, in exercise of that power, framed a Code of Regulations of which Chapter XXIII contained Regulations for admission, transfer and withdrawal of students. Regulation 26A of the said Chapter XXIII provided as follows:

"26A. A Principal may, without assigning any reason, require a student to leave the College if he considers such action necessary in the interest of the institution. He shall in such a case issue a Transfer Certificate (in a form prescribed by the Syndicate) in his favour free of charge. The certificate shall not be issued under this section without the previous approval of the governing body of the College.

Action taken under this section shall be reported to the University."

Under that Regulation, the Syndicate did prescribe a form of transfer, which appears at pages 739-40 of the book entitled "University of Calcutta Regulations" published in the year 1951. The form of Certificate, which was issued to the petitioner in the instant case, conformed to the old form prescribed by Syndicate, with the only modification that in place of Section 26A of Chapter XXIII of the Regulations, Section 21 of the Ordinance was mentioned in the heading of the Certificate. Since u/s 25 of the Bengal General Clauses Act the old form is to continue until superseded by a form issued under the new enactment, the certificate of transfer must be deemed to have been issued under the provisions re-enacted. I, therefore, find no substance in the first branch of the contention

made by Mr. Chatterjee and repel the same.

7. I turn now to the second branch of the contention advanced on behalf of the petitioner. It is necessary for me, in this connection, to recount the circumstances which led to the order, requiring the petitioner to leave the College.

8. Reading paragraphs 5 to 12 of the petition and paragraphs 9 to 14 of the affidavit-in-opposition by the respondent Principal, it appears that the relationship between some of the students of the College and the college Principal has degenerated into a relationship of oppositionist over, affairs concerning the Students' Union. It is not for me, in this Rule, to probe into the reasons thereof nor have I the materials to allocate the blame therefore. Still then I feel unhappy that a situation has come to be in the College, in which the Principal is no longer regarded by a Section of the Students as a respected friend, a responsible guide, an inspirer and an instructor but merely as an unsympathetic administrator. The sooner the situation is remedied the better for the institution.

9. So far as the petitioner is concerned, it appears from paragraph 2 of the affidavit-in-opposition of the respondent Principal, that he is horribly short of percentage of class attendance, a defaulter for a considerable time in payment of tuition fees and that he neglected his studies to such an extent that he did not appear at the periodical and annual examinations of the Third year Class and at the supplementary examination, in which he was permitted to appear, he failed in one subject. As a result of his performance in the examination, he became eligible for a "conditional promotion with warning", meaning that he would not be allowed to appear in the Final Examination if he either failed to appear in any of the subsequent examinations or appeared and failed. What accounts for the educational backwardness of the petitioner I am not sure, but it may be that his election as the General Secretary of the Students' Union and his preoccupation with "demands" on behalf of the students were responsible for his inattention to studies. If that is so, his was a wrong emphasis on the opportunities of student life and that error has landed him in the situation in which he finds himself now.

10. Be that as it may, the circumstances which precipitated the order calling upon the petitioner to leave the College are as hereinafter stated. After the petitioner became eligible for conditional promotion to the Fourth year Class with a warning, the Principal declared, on September 2, 1961, that he would not promote the petitioner to the Fourth year Class and further that the petitioner not having taken readmission in the Third year Class he would not be treated as a student of the College any longer or the General Secretary of the Students' Union. The respondent Principal explains why he did so in his affidavit-in-opposition and his explanations are set out below :

(a) The petitioner was so short of percentage, that even if he had attended all the classes in the fourth year he would not have been able to make up the minimum percentage of attendance entitling him to appear in the University

examination as a Collegiate student.

(b) The petitioner paid his tuition fees up to August, 1960 and thereafter stopped payment of fees. It was only on September 11, 1961 that he offered to pay up the arrears of his tuition fees from September, 1960 to September, 1961.

(c) The conditional promotion was not given to the petitioner because he had not, when the result of his examination was out, cleared his dues for the third year Class and also because he did not, at that time, offer payment of fees already fallen due in the fourth year class.

(d) The petitioner could not also take his re-admission in the third year class because the last date for admission to that class, as notified by the University of Calcutta, was over by that time.

11. As a result of the declaration made by the Principal, there was a Situation created in the College, which was surcharged with emotionalism of a section of the students. In his affidavit-in-opposition, the Principal states that demands were made for withdrawal of the declaration, dated September 2, 1960, agitations were started, and a good deal of disturbance made by the students within the College premises. Some of these statements are disputed in the affidavit-in-reply filed on behalf of the petitioner. Nevertheless, there is one significant statement in paragraph 10 of the petition itself, namely, that the principal was "compelled" to retract, which inclines me to place reliance on the nature of the compulsion as described by the Principal. To cap the situation, the petitioner himself started hunger strike in the College premises, on September 22, 1961, with the object of gaining his promotion to the fourth year class. The form of exhibitionism resorted to by the petitioner is said to have its effect. A fresh chapter of agitation by students is said to have broken out within the College premises, which is described in details by the respondent Principal, in paragraph 2 (h) of the affidavit-in-opposition and is supported in some respects by the supporting affidavits of Hara Prosad Chatterjee, Sukumar Banerjee, Samir Kumar Ghosh, Sunil Kumar Siddhanta and Ajit Kumar Chakravarti, all Professors of the College. The agitation is said to have taken the form of rowdy behaviour, vandalism, use of improper language and assault on the Principal and some of the Professors. The incidents are denied in the affidavit-in-reply and in an affidavit in support of the reply, affirmed by a Professor of the name of Asit Roy. Since questions of fact are disputed, it is difficult for me to pronounce any view on the violence in form which the agitation may have assumed. Put even proceeding on facts in so far admitted I find that the methods applied for obtaining the petitioner's promotion were (i) hunger strike by the petitioner himself (vide paragraph 11 of the petition), (ii) a students' deputation to the Principal claiming promotion for the petitioner (paragraph 11 of the affidavit-in-reply) and (iii) protracted discussion between the Principal and certain persons described as mediators (paragraph 11 of the petition).

12. These were certainly methods of some originality in securing class promotion

and may be equated to self-help pressure tactics and collective bargaining employed by labourers to improve working conditions in industrial establishments. These are not methods which one would purely like to see employed by pupils against their Principal in an educational establishment. On September 25, 1961, the aforesaid methods were employed against the Principal up to 10.30 or 11 in the night and the Principal is not far wrong if he says, as he does, that he became "completely shattered both physically and psychologically and had no other alternative but to agree to the demand of Swapan's promotion." I have no doubt in my mind that the methods employed in compelling the Principal to promote the petitioner were destructive of discipline amongst students in an educational institution.

13. After having promoted the petitioner under the circumstances aforesaid, the respondent Principal called upon the petitioner to leave the College because he considered that such action was necessary in the interest of the institution and issued to him a Transfer Certificate dated October 10, 1961. The petitioner called upon the Principal to withdraw the order and not having received any reply from him, moved this Court, under Article 226 of the Constitution, on November 15, 1961.

14. This is, in short, the background in which the order calling upon the petitioner to leave the College was made and this is amply clear from the affidavit-in-opposition filed by the Principal.

15. Mr. Arun Prokas Chatterjee, learned Advocate for the petitioner, contended that the petitioner had the right to continue his studies in the College until he completed his University examination and the Principal was wrong in asking him to leave. He further contended that the order should not have been made without affording to the petitioner an opportunity to show cause why such an order should not be made against him. This he characterised as violation of the principles of natural justice.

16. The petitioner's right to continue in the College, Mr. Chatterjee argued, flowed from Section 9 of the Ordinance. I have already quoted Section 9 of the Ordinance and I need not repeat the same. Assuming for the sake of argument that Section 9 confers any right on the petitioner to continue in the College (which of course I do not hold), that right terminates under the provisions of Clause (b) of Section 9 itself, on the date borne on the transfer or withdrawal certificate. Therefore, after the date of the transfer certificate, the petitioner had not, in any event, any right to continue in the College. Then again Section 21 co-exists with Section 9 in the same Ordinance and delimits the right, if any, of a student to continue his studies in a College. Therefore, after an order is made u/s 21, directing a student to leave the College, his right to continue in the College, ends and terminates. Since the existence of a right is the foundation of the exercise of jurisdiction under Article 226 of the Constitution, the petitioner is not entitled to any relief under that Article after his right, if any, came to an end. In this opinion I am fortified by the observations of Kania, C. J. in the case of The

17. Faced with this position, Mr. Chatterjee concentrated his argument on the point that the petitioner's right to continue in the College had not been properly taken away and that the order on the petitioner to leave the College was made in violation of all principles of natural justice, inasmuch as the Principal did not call upon the petitioner to show cause why the order should not be made against him and did not grant a personal hearing to the petitioner in the matter. In support of his contention Mr. Chatterjee relied on the case of *General Medical Council v. Spackman* 1943 AC 627, wherein Lord Wright observed :

"No doubt in the absence of special provision as to how a person who is to decide, is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a Judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will, proceed in the matter and he must act honestly and impartially."

He relied further on a judgment of this Court delivered by Das Gupta and Lahiri, JJ. (as their Lordships then were) reported in *B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others*, . *B.C. Das Gupta v. Bijoy Ranjan Rakshit*, where their Lordships also expressed a similar view. He also relied on certain English decisions, namely, *Cooper v. Board of Works for Wandsworth District* (1863) 14 CB (NS) 180 : 143 ER 414, *Dawkins v. Antrobus* (1881) 17 Ch D 615 and *Local Government Board v. Arlidge* 1915 AC 120, all of which emphasised on the necessity of observance of rules of natural justice in some form or other, before a man's right was taken away.

18. This branch of the argument by Mr. Chatterjee is not very well conceived. Cases in which an Act leaves the decision of some matter to the opinion of the administration by some such expression as "is satisfied" or "if it has reason to believe" or "if it considers necessary" are legion. As to the effect of such a provision it has generally been held that the opinion of the administrative authority named in the Act is conclusive, subject to certain well-defined exceptions. The opinion is not conclusive if observance of the procedure prescribed by law, as a condition precedent to the formation of the opinion, has been lacking, nor if the opinion was not bona fide formed, nor if in forming the opinion the authority concerned proceeded on a fundamental misconception of the law and the matter in regard to which his opinion had to be formed. These exceptions have been laid down in innumerable cases of which I mention a few, namely, *Minister of Health v. The King* 1931 AC 494, *Robinson v. Minister of Town and Country Planning* 1947 KB 702, *Lewisham Borough v. Roberts* (1949) 2 KB 608 and *Ross Clunis v. Papadopoulos*, (1958) 2 All ER 23. In the last of the above-mentioned cases Lord Morton of Henryton observed :

"Counsel for the appellant submitted that the only duty cast on the appellant was to satisfy himself of these facts; that the test was a subjective one, and the

statement in paragraph 12 of the appellant's affidavit was a complete answer to the argument for the counsel of the respondent unless it could be shown that the statement in the affidavit was not made in good faith and bad faith was not alleged. Their Lordships feel the force of this argument, but they think that if it could be shown that there were no grounds on which the appellant could be so satisfied, a Court might infer either that he did not honestly form that view or that, in forming it, he could not have applied his mind to the relevant facts. In the present case, however, there were ample grounds on which the appellant could be fully satisfied."

19. The position in law is that where an administrative authority is required to decide a matter against the interest of a person objectively, he may be required to give to the person concerned an opportunity for objection and to determine, having regard to those objections, as to whether the objective tests had been satisfied. But if the administrative authority is to act on his subjective satisfaction only and is empowered so to do, it is not necessary for him to give any opportunity to the person, against whom the action is proposed to be taken, to object or to be heard. Suffice it for his purpose if he does act bona fide and also acts within the four corners of the Act and if his decision is not vitiated by any fundamental error as to law and fact. The error which Mr. Chatterjee makes, is to import the law applicable to cases of objective satisfaction to cases of subjective satisfaction as well.

20. In my opinion the petitioner was responsible for creating a situation in the College which was subversive of discipline. The maintenance of discipline amongst students, in an educational institution, is of prime importance, because it is discipline alone which creates the atmosphere of collective education. It was the duty of the Principal to see that discipline be and be always maintained. If in his opinion the Principal thought that by requiring the petitioner to leave the College, discipline would be better maintained it cannot be said, in the circumstances of the case, that he was basically wrong or acted mala fide. Section 21 of the Ordinance leaves this decision to the subjective satisfaction of the Principal and he is not required to arrive at this satisfaction under any particular formality of procedure. If the Principal's satisfaction is final, as it is under the law, the criticism that such satisfaction was arrived at without affording to the petitioner any opportunity to show cause why the order to leave the College should not be made against him is of no substance. I, therefore, repel the contention that the order was bad because the principles of natural justice were not respected when the order was made.

21. Mr. Chatterjee lastly made a somewhat sentimental appeal. He submitted that a transfer certificate of the nature granted to the petitioner would not avail him in taking admission in any other College, because no other College would like to admit him with the certificate that his continuance in the previous College was considered not to the best interest of that College. This, Mr. Chatterjee contended, would result in stoppage of further education for the petitioner. All

this is mere speculation. I have no reason to think that other educational institutions -would take up a hostile attitude to the petitioner. To do so would be a mistake. Scratch the green rind of a sapling repeatedly or wantonly twist it in the soil, and a scarred or a crooked oak will tell of the act for years to come. So it is with the youngster. Treat him un-sympathetically or shut to his face all the doors of educational institutions and an uneducated or a half-educated youth may live a useless life to proclaim what men want only did by refusing to him all opportunities of College education. I can only hope that this will not happen to the petitioner when he seeks admission to another educational institution, with a genuine desire to read more.

22. Then again there is another ground why the petitioner is entitled to no relief against the respondent Principal in an application for high prerogative writ. The respondent is the Principal of a private College. The fact that the College is affiliated to the University of Calcutta or receives grant from the University or is obliged to conform to the conditions contained in the Statutes, Ordinances or Regulations issued by the University, will not make the Principal of the College a public officer or the College a statutory body and no writ will be issued against the Principal under Article 226 of the Constitution. That is an additional reason why this Rule must fail.

23. This Rule is accordingly discharged but I make no order as to costs.

Civil Rule Nos. 1065 (w) to 1068 (w) of 1961.

24. Mr. Chatterjee conceded that the points for consideration are the same as in Civil Rule No. 1064 (w) of 1961, which I have already discharged. I, therefore, make the same order in these Rules and discharge them without any order as to costs.