
(2008) 09 CAL CK 0040
In the Calcutta High Court

Case No : Writ Petition No. 22673 (W) of 2007 and C.A.N. No. 4253 of 2008

Tanushree Dutta

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-09-2008

Acts Referred:

Calcutta University Act, 1979 — Section 123(3A), 25, 26
Constitution of India, 1950 — Article 226

Citation : (2008) 4 CALLT 131

Hon'ble Judges : Saliendra Prasad Talukdar, J

Bench : Single Bench

Advocate : P.K. Mukherjee and Tapas Majumder, for the Appellant; Sambuddha Chakraborty, Sutanu Kumar Patra and Rajib Basak for Calcutta University and Subrata Mukhopadhyay, for the Respondent

Judgement

Saliendra Prasad Talukdar, J.—Grievance of the writ petitioner as ventilated in the present application relates to alleged illegal and arbitrary action on the part of the authority in not considering her case relating to the result of the Special Compartmental Examination as per Sections 25 and 26 of the Calcutta University Act, 1979.

2. Factual backdrop of the case is:

The petitioner passed Secondary Examination securing 65.8% marks in 2001. In 2004, she passed the Senior School Certificate Examination securing 60% marks. Though she secured 55% marks in B.Sc. (Hons.) subject, she could not qualify in Chemistry in 2006. She applied for review in respect of the said subject. On 19th March, 2007, Special Compartmental Examination was held for "Chemistry". On 23rd April, 2007, the B.Sc. (Hons.) Examination was started. On 23rd July, 2007, result of the Special Compartmental Examination and B.Sc. (Hons.) was published. Since the petitioner was allowed to appear in B.Sc. (Hons.), Part-II examination held in the month of April, she was under the impression that she duly passed Chemistry in the Compartmental Examination held in the month of

March, 2007. She did not get the result of the Special Compartmental Examination before the examination of B.Sc. (Hons.) Part-II.

3. The petitioner appeared for admission test on 15th July, 2007 in Post Graduate Course in Food Processing and Nutrition at Bengal Engineering and Science University on the basis of her result in B.Sc. (Hons.) Part-I and II examinations. She successfully passed the said test. She was provisionally admitted in the 1st year Master of Science on 7th September, 2007 in Bengal Engineering and Science University. It was only on 29th of July, 2007 that the petitioner came to know that she obtained only 36 marks in the theoretical paper in the Special Compartmental Examination and thus, failed to qualify. The petitioner submitted an application on 16th August, 2007 for inspection of the answer script. She was verbally told that since the Special Compartmental Examination was conducted in an abnormal situation, there was no provision for review of the answer scrip.

4. The State Public Information Officer cum Registrar of the Calcutta University informed the petitioner by letter dated 17th September, 2007 that no inspection of any answer script or examination conducted by the University shall be allowed under the Right to Information Act, 2005. The petitioner alleged that her answer script was not properly examined and the Authority-concerned proceeded on hypothetical basis and gave marks according to whims. It was specifically claimed that the petitioner could not secure less than 40% marks if the answer script was properly examined. The petitioner through her advocate approached the Authority for issuance of fresh mark sheet thereby qualifying her in the Special Compartmental Examination. There had been no response whatsoever. The petitioner was informed that her Part-II Examination, 2007 stood cancelled and the information as sought for could not be supplied.

5. In such circumstances, the petitioner approached this Court with such application under Article 226 of the Constitution for redressal of her grievances. She sought for direction upon the respondents-authorities for reassessment of the answer script and issuance of mark sheet on the basis of such re-examination. She also sought for a direction upon the University of Calcutta, thereby restraining it from taking any action by way of disturbing the petitioner's study in the Post Graduate Course. The petitioner also sought for direction upon the said Bengal Engineering and Science University to allow the petitioner to continue in her Post Graduate Course.

6. Respondent Nos. 2, 3, 4 and 7 contested the case by filing affidavit-in-opposition, denying, inter alia, the material allegations made by the petitioner. The said respondents claimed that the petitioner was unsuccessful in B.Sc. Part-I Examination, 2006. She applied for re-examination of the two Chemistry papers. After such re-examination, the marks of the petitioner were reduced further. The petitioner was given a fresh mark sheet with two marks reduced. As per Regulations of the University being Notification No. CSR/64/99; candidates declared eligible for Compartmental Examination cannot go for Third Year Class before they cleared the said examination. There is no Combined Course/

Examination under the New Regulations?

7. As per Notification No. CSR/04/07, compartmental candidates as a very special case were allowed to attend Third Year Classes and to appear at their respective Part-II Examination, 2007 subject to fulfillment of all other relevant conditions. It was specifically mentioned that the candidates failing in the Special Compartmental Examination would be declared as disqualified and their Part-II Examination would stand cancelled. The petitioner appeared in B.Sc. Part-I Special Compartmental Examination, 2007. She was unable to pass the said test. She was thus, declared "disqualified".

8. Consequently, her Part-II Examination stood cancelled for which no mark sheet was issued in her favour. The petitioner having accepted the statutory provision at the time of appearing in the said examination and after taking benefit of the Special Compartmental Examination cannot be permitted to question the cancellation of her Part-II Examination, which had been done in accordance with the Notification dated 5th January, 2007. Such Respondents specifically contended that Notification being No. CSR/4/2007 whereby the candidates were given an opportunity to appear in the Compartmental Examination along with their respective Part-II Examination was a very special decision, which was taken in order to save one academic year of the candidates. But in the event, the candidates failed in the Special Compartmental Examination, their respective Part-II Examination would stand cancelled. The petitioner took advantage of the Special Compartmental Examination, which was arranged by the University to save an academic year and after participating in the said process, that too, without raising any objection, cannot now be permitted to raise grievance regarding the outcome of the said examination. The Regulations of the University do not provide any scope for re-examination of a Special Compartmental Examination. Answer script of the petitioner was assessed by experienced teachers being engaged by the University. Such respondents denied that there was any decision, which was again communicated to the Press that the evaluation of the Special Compartmental Examination would be made instantly. It was specifically made known that in the event the candidates failed to qualify the Special Compartmental Examination, their respective Part-II Examination would stand cancelled.

9. Dismissal of the writ application was, thus, prayed for.

10. On behalf of the petitioner it was urged that the authority-concerned acted illegally in refusing inspection of the answer scripts of Chemistry, Paper I & II of the Special Compartmental Examination. It was then submitted that the Notification dated 5th January, 2007 could not be binding upon the petitioner since it was never published through any Media or in the Official Gazette. It was thus, contended that the respondents-authorities cannot take any advantage of such Notification dated 5th January, 2007. The said Notification dated 5th January, 2007 was severely assailed by the learned Counsel for the petitioner mainly on the ground of its non-publication. Relying upon the decision in the case

of State of Maharashtra Vs. Hans George, , it was submitted that where there is a statutory requirement as to the mode or form of publication and they are such that, in the circumstances, the Court holds to be "mandatory, a failure to comply with those requirements might result in there being no effective order the contravention of which could be the subject of prosecution but where there is no statutory requirement, the principle that is usually followed that it should be published in the usual form i.e., by publication within the country in such media as generally adopted to notify to all the persons concerned the making of the rules.

11. Reference was made to the decision in the case of D.B. Raju Vs. H.J. Kantharaj and Others, , in support of the contention that even in absence of statutory requirement publication of such notification was essentially required. Relying upon the decision in the case of Harla Vs. The State of Rajasthan, , Their Lordships in the case of D.B. Raju (supra) observed that where there is no statutory requirement as to the mode or form of publication, "we conceive the rule to be that it is necessary that should be published in the usual form, i.e., by publication within the country in such media as generally adopted to notify to all persons concerned the making of the rules".

12. Mr. Mukherjee invited attention of the Court to a report published in the daily Newspaper "Pratidin" dated 8.12.2006 while submitting that the authority-concerned took the decision of having a Special Examination in view of the disaster in the Part-I Examination result. Annexure-P6 dated 23rd August, 2007 indicates that Dr. Mukul Sengupta authorized Smt. Sreya Sen to look into the General Papers I & II "Chemistry" 2007, Special Compartmental Examination of the petitioner and three others. In response to the application dated 16th August, 2007 under the Right to Information Act, 2005, the petitioner was informed by letter dated 17.9.2007 that no inspection of any answer script of any examination conducted by the University shall be allowed to the petitioner.

13. Mr. Mukherjee submitted that the Council of Calcutta University took the decision that Compartmental Examination should be held from February to March and the results of the appearing candidates would be published instantaneously. It also took the decision that Special Examination for the Compartmental Candidates should be held before the commencement of the B.A., B.Sc. Part II Examinations. The petitioner appeared in the Compartmental Examination in Chemistry which was held on 19.3.2007 and she appeared in Part-II Examination in Food and Nutrition Honours which were held on 23rd April, 2007 and also appeared in the Environment Science (ENVS). She was informed that she secured 57.5% marks in the Honours. She did well in the Compartmental Examination and was under the impression that she would successfully clear the same. She appeared in the admission test for Post Graduate Course in Food Processing and Nutrition Science at Bengal Engineering Science University, Shibpur, which was again held in 15.7.2007 and 10.8.2007. She successfully cleared such test and took provisional admission on 7.9.2007 for academic

session 2007-2008 on the production of mark sheet of Part-I Examination issued by the University of Calcutta and the Admit Card for Part-II Examination and also declared that she obtained 57.5% marks in Part-II Honours.

14. The petitioner reasonably expected that the result of the Compartmental Examination would be published instantaneously, as assured and since she was not informed of any failure, it was presumed that she cleared the said Compartmental Examination. The petitioner through her advocate approached the authority-concerned by letter dated 28th September, 2007 for issuance of fresh mark sheet showing the petitioner as qualified in the Special Compartmental Examination as also for issuing mark sheet for Part-II Examination.

15. By letter dated 21st September, 2007 the respondents-authority informed the petitioner that as per Notification No. CSR/04/07 dated 5.1.2007, candidates failing in the Special Compartmental Examination were declared disqualified and their respective Part-II examination, 2007 stood cancelled.

16. The Newspaper dated 8th December, 2006 undoubtedly indicates that there had been a disaster in the result of Part-I Examination. This prompted the concerned University-Authority to take some remedial measures. This was proposed to be done by way of conducting a Special Compartmental examination and to publish its result instantaneously. Grievance of the petitioner as ventilated by learned Counsel Mr. Mukherjee, essentially relates to the inordinate delay in publication of the result of the Special Compartmental Examination. It was submitted that the University-Authority could not keep its promise thereby resulting in disastrous consequences. It was highlighted by learned Counsel Mr. Mukherjee that the writ petitioner did well in the Part-II Examination and in anticipation of her success in the said Compartmental Examination got herself provisionally admitted in the Post Graduate Class. It was then submitted that it was not a fault on the part of the writ petitioner that acting upon such assurance, she proceeded with her higher studies without even guessing that this could go against her.

17. In response to this, Mr. Chakraborty appearing as learned Counsel for the respondents-University submitted that the relevant "Regulation" is not under challenge. It was categorically mentioned that there is no statutory obligation or requirement of publication of the relevant "Regulation", which came into effect immediately. It was contended that such news item published in paper is of limited relevance for the purpose of adjudication of the controversy raised in the present application. In fact, it was further submitted that the newspaper reports are at best secondary evidence, if not hearsay evidence.

18. The learned Counsel for the respondent No. 9 and for the respondent/State echoed the submission made on behalf of the respondent/University.

19. Question that was initially raised is whether it could be declared that the petitioner passed the Special Compartmental Examination or her answer script

could be re-assessed for issuance of a fresh mark sheet for the said examination and mark sheet of B.Sc. (Honours) Part-II Examination. Mr. Mukherjee strongly submitted that it was not just and proper on the part of the University-Authority to refuse to check up and re-examine the answer script of the writ petitioner.

20. The unreported decision of the learned single Bench of this Court in the case of Pritam Rooj v. University of Calcutta and Ors. in W.P. No. 22176 (W) of 2007 was relied upon in support of the contention that it was obligatory on the part of the University-Authority to allow re-examination of such answer script. In fact, the case of Pritam Rooj (supra) essentially relates to the appreciation of the relevant provision of the Right to Information Act. The learned single Bench of this Court in the said case took into consideration the various aspects of the said Act of 2005. It was held that "an examining authority has every right to judge the student's knowledge and expression of that knowledge, but it cannot take away the examinee's right to know the methodology of and the criteria for its evaluation. But again this is straying into the zone of the consequence of information of the subject kind being made available." His Lordship Banerjee, J. in the said case further observed:

Whether it is on the anvil of the legal holy trinity of justice, equity and good conscience, or on the test of openness and transparency being inherent in human rights, or by the myriad tools of construction, or even by the Wednesbury yardstick of reasonableness, the State Public Information Officer's rejection of the writ petitioner's request to obtain his answer script cannot be sustained....

21. Here in the backdrop of the present case, the controversy, unfortunately for the writ petitioner, did not stop then and there. The fact remains that without passing the said Special Compartmental Examination or without having its result, on the basis of the Part-II Examination, the writ petitioner took provisional admission in the Post Graduate Course. Thus, the venue of the entire dispute shifted from one place to another. This naturally contributed liberally to the confusion.

22. Mr. Mukherjee referring to the decision in the case Ramsewak and Others Vs. State of M.P., sought to elaborate value of the newspaper report or its impact. But the said decision does not lend any support to the petitioner's case. In the said judgment there is discussion on appreciation of evidence but in the context of a criminal trial. There is nothing in the said decision, which can have any binding effect on the present case.

23. In course of submission reference was made to the decision in the case of Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, . In the said case it was held that "a news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publish it. In this process the truth might get perverted or garbled. Such news item cannot be said to

prove themselves although they may be taken into account with other evidence if the other evidence is forcible. A fact has first to be alleged and proved and then newspaper reports can be taken in support of it but not independently".

24. In the case of Ebrahim Suleiman Sait Vs. M.C. Mohammed and Another, , it was held that "the report of a speech even though not fully reported appearing in a newspaper can be relied on to consider whether it constitutes corrupt practice falling within Section 123(3A) of the Act, especially when the maker of the speech has admitted that the reporter's version of the speech does, more or less, tally with the views expressed by him in the meeting". This decision however, does not seem to have much relevance in the factual backdrop of the present case.

25. It was submitted that newspaper reports, advertisements, message etc. are not admissible unless original manuscript is produced and proved by the concerned person. (Ref: Quamarul Islam Vs. S.K. Kanta and others,).

26. Learned Counsel for the petitioner sought to derive inspiration from the decision in the case of Commissioner of Endowments and Others Vs. Vittal Rao and Others, . No doubt. High Court can pass an appropriate order while exercising jurisdiction under Article 226 of the Constitution. What would be an appropriate order depends upon the facts and circumstances of a particular case. It naturally varies from situation to situation. There is no doubt that this Court has also the power to mould reliefs in the interest of justice.

27. The learned Counsel for the respondents-authorities in this context brings to the notice of the Court to the relevant instruction to the candidates seeking admission to the M.Sc. Course as contained in the Information Brochure. It clearly indicates that "all candidates who are eligible for admission but whose results are yet to be declared, will be offered provisional admission, if found qualified by the university. They will be required to submit their results of the qualifying degree examinations by 31.8.2007, failing which their admission may be treated as cancelled". Thus, there is a clear instruction that the admission in the Post Graduate Course may be provisional, on the basis of the Part-II results and in the event of failure to clear the Special Compartmental Examination, such admission would stand cancelled. I am afraid, this Court does not have any scope to re-enter into the aspect and pass any such order or issue any such direction, which could really rescue the writ petitioner, who seems to be floating in the ocean of unpleasant uncertainty.

28. Sadly enough, the facts of the present case go a long way to indicate that the petitioner is the architect of her own misfortune. She took a chance by appearing in the Special Compartmental Examination. She did well in the Part-II examination but could not clear the said Compartmental Examination. Thus, it cannot be said that she could be treated as a graduate and as such, there could be no wonder that her admission in the Post Graduate Course stood cancelled.

29. Grievance relating to University-Authority's refusal to review/re-examine the

answer script has lost much of its relevance with the passage of time. It cannot be denied that the petitioner has otherwise been doing well. But a person cannot go for study in Post Graduate Class, without completing graduation. I wish I could mould the relief sought for in an appropriate manner for redressal of her grievances. But perhaps, this Court is left with no choice in that regard.

30. Thus, the present application being W.P. No. 22673 (W) of 2007 fails and be dismissed.

No order as to costs.

31. Consequently, the application being CAN No. 4253 of 2008 also stands disposed of.

Xerox certified copy of this judgment, if applied for, be supplied to the parties upon due compliance of the legal formalities.