

(1953) 09 CAL CK 0011
In the Calcutta High Court
Case No : Suit No. 81 of 1953

Tapendra Nath Roy

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 09-09-1953

Acts Referred:

Calcutta University Regulations, 1951 — Rule 6, 8
Constitution of India, 1950 — Article 226

Citation : AIR 1954 Cal 141 : 58 CWN 295

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Vinyak Banerjee, for the Appellant; R. Chaudhury, for the Respondent

Final Decision : Allowed

Judgement

Sinha, J.—This is a rule issued upon the respondent to show cause why an order in the nature of a writ of mandamus or any other appropriate writ should not be issued by this Court cancelling or quashing the order under which the petitioner has been made eligible only to sit for a Compartmental B.Sc. Examination, or why an order in the nature of a writ of mandamus or any other appropriate writ should not be issued directing the respondents to declare that the applicant has passed the B.Sc. Examination held in 1953, and for other reliefs.

2. The facts are shortly as follows. The petitioner was sent up by the Surendranath College, a College affiliated to the Calcutta University, for the Bachelor of Science Examination for the year 1953. He duly appeared therein, in three subjects, namely, Mathematics, Physics and Chemistry. The marks obtained by the petitioner in the said examination are as follows :

Marks Obtained Full marks.

Mathematics (Pass) ... 225 300

Physics (Pass)

Theoretical ... 125 200

Practical ... 57

... 182 100

Chemistry (Pass)

Theoretical ... 93 200

Practical ... 32

... 125

100

532 900

The petitioner has not been declared to have passed the B.Sc. Examination but has been made eligible for the B.Sc. Compartmental Examination, 1953. He has been directed to appear both in the theoretical and practical examination in Chemistry.

3. According to the petitioner, under the Rules and Regulations prescribed by and for the said University, he is entitled to be declared as having passed the B.Sc. Examination. The relevant rules bearing on the subject are as follows. The regulations relating to the degree of the Bachelor of Science are to be found in Chapter XXXVI of the Calcutta University Regulations (1951 Edn.). Under Rule 6, every candidate shall be examined in three of the 11 subjects therein, selected by himself. They include the following subjects :

I. Mathematics.

II. Physics.

III. Chemistry.

The subject "Chemistry" is dealt with at page 373, and under that heading are set out various courses, namely, the pass course--theoretical and practical, and the Honours course--theoretical and practical. It is quite clear, therefore, that the word "subject" means the subject of chemistry and includes theoretical as well as practical papers. In fact, Mr. Chaudhury appearing on behalf of the respondents has conceded this.

4. I now come to the "General" rules appearing at the end of Chapter XXXVII of the Regulations at pages 418-419. Rule 1 is as follows:

"1. A candidate must obtain, in order to pass in the Pass Course

Mathematics ... 100 marks

Any other subject ... 60 marks in the theoretical papers

... 40 marks in the practical papers."

Rule 6 is of utmost importance and runs as follows :

"6. Any candidate who has failed in one subject only, by not more than 5 per cent. of the full marks in that subject, and has shown, merit by gaining 50 per cent. or more in the aggregate of the marks of the examination, shall be allowed to pass. If any such candidate has taken up the Pass Course in three subjects he shall not be declared to have passed with distinction. But if the candidate has taken up the Pass Course in two subjects and Honours Course in one subject and has attained the Honours standard in such subject, he shall be allowed to retain his Honours and is placed in the Honours List."

5. Upon a plain reading of these Rules it appears quite clear that the petitioner has passed the B.Sc. Pass Course Examination. As has been stated above, he has obtained more than 100 marks in Mathematics. In Physics he has obtained more than 60 marks in the theoretical and more than 40 marks in the practical. In Chemistry he has obtained more than 60 marks in the theoretical but in the practical paper is 8 marks short. He has also gained more than 50 per cent, in the aggregate marks of the Examination. The full marks in Chemistry is 300 and, therefore, 5 per cent. of it would be 15 marks. The actual shortfall of the petitioner is only 8 marks. Consequently, under Rule 6, he is entitled to be allowed to pass the examination.

6. The contention of the respondents is, however, as follows. Reference is made to Chapter XXV of the Regulations under the heading "Examinations". It appears that under these regulations, an Examination Board has been appointed for the B.A., B.Sc. and B.Sc. (Tech.) Examinations. The Regulations provide as follows :

"The functions of the Examination Board shall be (a) to consider the reports of the Result Committees and co-ordinate them; (b) to modify such results, if necessary, in accordance with the principles contained in the Regulations or laid down by the Syndicate... .."

It is said that the Examination Board on the 1st July 1952 made a recommendation to the Syndicate that the aforesaid Rule 6 in Chapter XXXVI should be applied to a candidate who has failed in the theoretical portion of a Science subject by not more than 10 marks and/or in practical portion of the subject by not more than 5 marks. It is further said that the Syndicate on the 3rd July, 1952 sanctioned this recommendation. It is, therefore, argued that these recommendations must be taken to be principles laid down by the Syndicate and therefore binding on the Board of Examiners.

7. Mr. Chaudhury appearing on behalf of the respondents has tried to support the action of the University on the following grounds. He argues that a Science subject is to be distinguished from an Arts subject inasmuch as a Science subject like Physics and Chemistry has been split up into two papers, theoretical and practical. Unlike Arts subjects, it is necessary in Chemistry and Physics to pass not only in the theoretical paper but also in the practical paper. In fact, he points out that the practical paper has been given more importance inasmuch as 40

marks must be procured in the practical paper whereas 30 marks is sufficient in each of the two theoretical papers. He then argues that this being the case, it is open to the Syndicate to allocate between the theoretical and the practical the 5 per cent., which is mentioned in Rule 6, in a way which would prevent a candidate (sic) badly in a practical paper from passing the examination in the subject.

He further argues that this is a matter of principle and while the Syndicate is bound by the Regulations it is free to enunciate the principles underlying it and that this is expressly recognised under Chapter XXV, Rule 8(v)(b). In other words, while upon a plain reading of Rule 6, Chapter XXXVI, the exemption limit in Chemistry would be 5 per cent, of the full marks on that subject, namely, 15 marks, he contends that the Syndicate is entitled to vary or modify this by allocating 10 marks to the theoretical portion and 5 marks to the practical portion. If such allocation is justified, then of course the petitioner has failed, inasmuch as his shortfall in the practical portion is more than 5 marks.

8. In my opinion, the Syndicate has no such power to modify or alter the provisions of Chapter XXXVI, Rule 6.

9. I shall now proceed to investigate the powers of the Syndicate and try to find out whether it is possible for the Syndicate to vary or alter any of the regulations. The Senate has been constituted by the Act of Incorporation Act II of 1857 (III). The Indian Universities Act VIII of 1904, lays down by Section 4(3) that the Body Corporate shall be the Senate of the University, and all powers conferred by the Act of incorporation or the Universities Act, upon the Chancellor, Rector, Vice-Chancellor and Fellows in their Corporate capacity were to be vested in and exercised by the Senate. The executive government of the University is vested in the Syndicate u/s 25(1), the Senate, with the sanction of the Government, may from time to time make regulations consistent with the Act of Incorporation as amended by the Universities Act, to provide for all matters relating to the University.

One of the headings upon which it can make regulations relates to the appointment of Examiners, and the duties and powers of Examiners in relation to the Examinations of the University (26(2)(f)), and the courses of study to be followed and the conditions to be complied with by candidates for any University Examination, other than an Examination for Matriculation (26 (2) (n)). By virtue of these powers, the Senate has made regulations which have been sanctioned by Government. Under Ch. IV Rule 12 of the regulations, the Syndicate has been given powers to "... ..generally conduct the affairs of the University in accordance with the Act of Incorporation and the Indian Universities Act, the Regulations, and the resolutions of the Senate and the Syndicate". Under Rule 13, the Syndicate may from time to time recommend to the Senate such Regulations as may seem desirable.

10. It is clear therefore that the Syndicate has no power to override or to vary or

alter or to ignore a regulation passed by the Senate and sanctioned by Government. In purely executive matters, where there exist no clear regulations, it can by resolution deal with such matters. But such resolutions cannot override the regulations on a point completely covered by it. Under the Calcutta Universities Act 1951, also, the Senate has been declared to be the "Supreme governing body of the University". The Syndicate is the administrative body. New rules governing the Senate and the Syndicate have not yet come into operation. So we are still concerned with the existing regulations.

11. The regulations which are relevant for our purpose, have been mentioned above. Mr. Chaudhury has not challenged the validity of Rule 6 in Chapter XXXVI, but he argues that under Ch. XXV, Rule 8(vi), a power is granted to the Syndicate to lay down principles according to which the Board of Examiners are bound to modify the results. The Syndicate does not derive its power from this rule. This rule merely directs the Board of Examiners to modify results "in accordance with the principles contained in the Regulations or laid down by the Syndicate". Mr. Chaudhury tried to make a distinction between a rule laid down in a regulation and the principles contained therein. I am unable to appreciate this distinction. The principles laid down governing a particular subject are to be gathered from the regulations themselves when such regulations exist. Rule 6 of Chapter XXXVI, lays down, a rule and also a principle. While the "General rules" (see page 120) lay down the general rules as regards the marks required to pass a course, Rule 6 engrafts an exception. The rule as to the exception as well as the principles governing it, are to be found in the wordings of Rule 6, and the Syndicate cannot be permitted to vary or alter it or ignore it.

12. Mr. Chaudhury definitely concedes that the word "subject" in Rule 6 refers to the subject of "Chemistry" and not to the theoretical or practical paper in it. That being so, it is not open, to the Syndicate to apportion the "5 per cent, of the full marks" in chemistry between the theoretical and practical papers at its sweet-will. If this is permitted the rule must then read as follows :

"Any candidate who has failed in one subject only by not more than 5 per cent, of the full marks in that subject, (but in the case of a Science subject which has a theoretical and a practical, the five per cent will be allotted according to the proportion laid down by the Board of Examiners and approved by the Syndicate)"

This in my opinion amounts to an alteration of the rule. I find no power in either the Syndicate or the Board of Examiners to alter the rule in this fashion.

13. The exact resolution of the Board of examiners which was sanctioned by the Syndicate is as follows:

"The aforesaid rule should be applied to a candidate who has failed in the theoretical portion of a Science subject by not more than 10 marks and/or in the practical portion of the subject by not more than 5 marks."

Thus, while the rule upon a plain reading, applies to a certain set of persons, the resolution makes it applicable not to that set of persons but to a different and more restricted set. In my opinion, neither the Board of examiners, nor the Syndicate have power to do this. It is for the Senate to alter the rule, after obtaining sanction of the Government.

14. A case very like the present one was decided by the Chief Justice of the Assam High Court in -- Himendra Chandra v. Gauhati University, AIR 1954 Gau 65 (A). That was an application under Article 226 of the Constitution, and the facts were briefly as follows : The petitioner was a student of the Jorhat Agricultural College and appeared in the Bachelor of Science examination in agriculture for the year 1952 as an examinee. The petitioner secured 1172 marks out of an aggregate of 2400 marks in the examination, that is to say, he secured in the aggregate 48.8 Per cent, marks and he got more than 30 per cent marks in each subject. According to the rules of the Gauhati University, the B.Sc. course in agriculture consists of 11 subjects. One of the subjects is Agricultural Botany which consists of two papers, "plant Physiology" and "Genetics etc." In each paper there is a theoretical examination and a practical examination. The marks are allotted as follows :

Agricultural Botany (1) Plant Physiology.

Theoretical 100

Practical 50

(2) Genetics, crop breeding.

Theoretical 100

Botany of crop plants

Practical 100

In order to pass the B.Sc. examination in Agriculture, a candidate must pass in all the subjects by obtaining 30 per cent, or more marks in the theoretical papers and 40 per cent, or more marks in the practicals. The actual marks obtained by the candidate in the theoretical papers were as follows :

(1) Plant & Physiology: Theoretical 51

(2) Genetics etc. Theoretical 28. There was no question that in the practical papers he had got more than 40 Per cent. He had also got the pass marks in all other sub jects. The University would declare the can didate as having passed but directed him to appear again in Genetics. If Agricultural Botany was a "subject" the candidate had ob tained 30 per cent, in the theoretical. The Uni versity however insisted that the candidate must pass in each of the theoretical papers in "plant physiology" and "genetics etc." by obtaining 30 per cent in each paper.

Sarjoo Prosad C. J. stated as follows :

"The arrangements of the subjects in Rule 5 itself show that there are only eleven subjects for that examination. The syllabus which is given at page 189 of the University Calendar shows the same thing. It is Agricultural Botany which is shown as a subject, and not the two papers on plant physiology and genetics etc... ..Therefore if on casting up the marks obtained in each paper, the candidate obtained 30 per cent. or more marks in the subject, he should be declared to have passed in that subject... .. The relevant Rule has to be very strictly construed, specially when it affects the valuable rights of the examinees and is likely to jeopardise the career in life."

The learned Chief Justice ordered that a writ of mandamus should issue to the respondents directing them to declare or announce appropriately that the petitioner had passed the Bachelor of Science Examination in Agriculture of the Gauhati University in 1952.

15. In -- "University of Calcutta v. Dipa Pal" 56 Cal W N 730 (SB) (B), Harries C. J. stated as follows:

"It appears to me that when a person is accepted as a student of the Calcutta University he or she agrees to be bound by the rules and regulations of the University. Similarly the University agrees to deal with the student whom they have accepted in accordance with their rules and regulations... .. If the decision is not arrived (sic) in accordance with the rules then it appears to me to be clear that the decision is not in accordance with law and has no binding effect."

A writ of mandamus was issued upon the University directing it to forbear from giving effect to an order made in violation of its own rules.

16. Mr. Chaudhury has not argued that if the interpretation which he seeks to give to the rules is not correct, an application under Article 226 will not lie. In view of -- "Dipa Pal's case (B) (supra)" it is too late to advance such an argument. Reference may also be made to -- "King v. Chancellor, Masters and Scholars of the University of Cambridge" (1716) 93 E. R. 698 (C), -- S.K. Ghosh and Others Vs. Vice-Chancellor, Utkal University and Others, (D), and the decision of the Assam High Court cited above.

17. In view of my findings on this point it is Unnecessary to consider the point raised to the effect that in fact, there was no such resolution passed by the Board of examiners or approved by the Syndicate. The original resolution was produced before me. I must however note with regret that the few pages of typewritten sheets containing the resolution (as handed up to me) , consists of alternate pages in different types and the only material sentence (containing approval of the rules) is typed on a line heavily erased out. I am also told that there is a misprint in the printed copy of the minutes handed to me, at page 128. I have no doubt that these are capable of explanations and there is no reason really to reject the papers as anything but genuine. I am constrained however to remark that the records of a public body of the eminence of the Calcutta University should be better kept and should be beyond suspicion.

18. The result is that the rule must be made absolute. There will be an order for the issue of a writ of mandamus directing the respondents to appropriately declare and/or announce that the petitioner has passed in the pass course of the Bachelor of Science examination of the Calcutta University in 1953 and to issue to him all the necessary certificates consequent thereon to which he is entitled under the rules of the University.

19. I had postponed a decision in the matter to give the University a chance of doing the right thing, but it has decided to rest on its legal rights. The first respondent must therefore pay the costs of this application to the petitioner.