

(1975) 06 CAL CK 0020
In the Calcutta High Court

University of Calcutta and Others

APPELLANT

Vs

Khagendra Nath Sen and Others.

RESPONDENT

Date of Decision : 13-06-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 79 CWN 762

Hon'ble Judges : Salil Kumar Datta, J; Bankim Chandra Ray, J

Bench : Division Bench

Advocate : S.D. Banerjee, D.K. De, N. Roy, M. De, for the Appellant; Noni Coomar Chakrabarti, Bhagabati Prasad Banerjee and Lakshmi Gupta for respondent No. 1 in F.M.A. 394 of 1974, Mr. Somendra Chandra Bose, Sundarananda Pal, Ashim Ghosh and Dipak Mitra for respondent No. 1 in F.M.A. No. 395 of 1974, Mr. Sushil Biswas, Saktinath Mukherjee, Bidyut Banerjee and B.C. Chakraborty for respondent No. 1 in F.M.A. No. 396 of 1974, Mr. Mahitosh Majumdar and Ashoke Ganguli for respondents Nos. 3-11, for the Respondent

Final Decision : Allowed

Judgement

1. By a resolution of the Syndicate of the University of Calcutta adopted on December 14, 1973, the governing bodies of the Ashutosh, Jogamaya and Shyamaprasad Colleges were superseded with immediate effect and an ad-hoc committee of persons named in the resolution was appointed for the administration of the three colleges and with the objective of reconstituting their governing bodies according to law. The petitioner who is claiming to be the Secretary of the superseded governing bodies of the said three colleges as also the Secretary of Sir Ashutosh Memorial Institute challenged the order of supersession by three petitions under Article 226 of the Constitution on behalf of the three colleges and three rules were issued on these applications. These rules were opposed by the University, its authorities and other and after hearing the parties Amiya Kumar Mookherjee, J. by a common judgment made the rules absolute and the said resolution of the University was quashed by a writ of certiorari. The University as also its authorities preferred three appeals against

the said judgment and order in respect of the three colleges while the petitioner also filed three cross-objections in the said appeals challenging certain findings in the impugned judgment. All these appeals and cross-objections have been heard analogously and will be governed by this judgment.

2. The relevant facts as stated by the petitioner are as follows:

In the 1924, the South Suburban College which was a first rate college of South Calcutta, was renamed as Ashutosh College to perpetuate his hallowed memory. Ashutosh College was registered as a society under the Societies Registration Act, 1860 (Act XXI of 1860, in March 1927 and thereafter on September 19, 1929, Sir Ashutosh Mookerjee Memorial Institute was registered under the said Act. A new building, on a plot of land north of Hazra Park leased to the Ashutosh Memorial Institute by the Corporation of Calcutta, was built by the generous donations raised by late Dr. Shyamaprasad Mookherjee. This housed Ashutosh Memorial Hall, a public library as also the Ashutosh College since about 1934; even before since 1932, the college for girls in the morning session was inaugurated while the evening department for commerce was started in 1945 as departments of the Ashutosh College. The Governing Body of the Ashutosh College constituted under the Rules and Regulations of the Society, consisted of eleven members and management of the College vested in the Governing Body subject to general control of the Committee of the Memorial Institute in financial matters. In 1946, the Governing Body of the Ashutosh College adopted a scheme prepared by late C. C. Biswas for amendment of the Constitution of the Ashutosh College. These departments of the Ashutosh College were separated in 1948 with separate offices and governing bodies but they continued to be under the over-all control of the Committee. The Governing Bodies of these three colleges which enjoyed the same premises were of same pattern with members selected by the General Committee of the Memorial Institute under its rules and the President and the Secretary of the Governing Body of the Institute were also the President and the Secretary of the three colleges securing uniformity and co-ordination of policy including service conditions of staff. In 1956 these colleges, as required by the University Grants Commission, took separate affiliations from the University. Under its instructions, the Governing Bodies of three Colleges were constituted which were on same lines as "that of Ashutosh College in relation to Ashutosh College and Ashutosh College Memorial Institute". The colleges were continuing as affiliated colleges even after coming into effect of the Calcutta University Act, 1951 and its repeal by the Calcutta University Act of 1966 and the Governing Bodies of the said colleges were reconstituted in 1972 which had been functioning till they were superseded by impugned resolution.

3. Statute 93 of the First Statutes of the Calcutta University provides that, save as provided in Statute 100 the Governing Body of a college is to consist of members as provided therein. Statute 100 makes special provisions regarding governing bodies of certain colleges, including colleges managed by registered societies and the constitution of such governing bodies shall, in so far as the

terms and conditions of Articles and Memorandum of associations of such registered society so require, continue as such provided that the Articles and Memorandum of a registered society, after the commencement of these statutes (September 18, 1968) shall require the approval of the Syndicate before such society is registered. It appears that on January 20, 1970 the Inspector of Colleges of the University wrote to the Secretary of the three colleges drawing his attention to earlier letters and reminders and asking for submission of the trust deed or memorandum or articles of association with regard to the constitution of the governing bodies of the colleges within January 30, 1970. In default, it was said that the University would presume that action would have to be taken under Statute 93. In reply, the petitioner by his letter dated February 3, 1970, stated that the Ashutosh College was registered as a society on March 30, 1927, and a certificate of the Registrar was enclosed therewith along with the attested copy of Memorandum of Association. It was, further, stated that Jogamaya College and Shyamaprasad College formed out of the morning and evening departments of Ashutosh College, had their respective governing bodies governed by the same rules as framed for the Ashutosh College under its memorandum of association. Under subsequent amendment of the rules, the governing bodies of the three colleges were to be constituted with the President and the Secretary of the Memorial Institute, 9 members from the said Institute elected by the member of thereof for three years, Principal of the Colleges (Ex-Officio), Vice-principal and two other representatives from the whole-time teaching staff elected annually, two additional members co-opted by governing bodies annually from amongst persons interested in education other than members of the Memorial Institute. The President of the Institute was to be the President of the governing bodies while the Secretary of the Institute was to be the Secretary of the Governing Bodies. It was further stated that all these three colleges are constituent units of the Ashutosh Mookherjee Memorial Institute which is a society registered under Act XXI of 1860. By its letter dated August 26/28, 1970, the Deputy Inspector of Colleges of the University informed the Secretary of the three colleges, as directed by the Vice-Chancellor and Syndicate, that these colleges had come within the purview of Statute 100 of the Calcutta University First Statutes under the Calcutta University Act, 1966.

4. After a lapse of over 3 years, the Inspector of Colleges wrote to the Secretary of the three colleges as also the Secretary of the Institute by letter dated September 10, 1973, asking for certain particulars, namely, full text of the amended rules, the relation between Ashutosh College and Institute under these rules, and also if the amended rules were placed before the governing body of the college and approved by it and if so when and lastly if and when the amended rules were filed with the Registrar of Societies. The Secretary by his letter of September 18, 1970 wrote back to say that there was a strike going on in the colleges and it was not possible to have access to the college files and the President of the Governing Bodies of the three colleges was also lying seriously ill since September, 1970 and was not available for consultation. It was,

accordingly, prayed that sufficient time should be given to reply to the back of September 24, 1973 stating that he was "desired" to inform that the reply and the necessary documents should be forwarded to the University on or before November 5, 1973. It appears that time was further extended at the request of the Secretary of the Colleges under his letter of October 22, 1973, to 15th November 1973. Thereafter on November 33, the Inspector of Colleges wrote a letter termed Show-cause notice" to the Secretary of the three colleges requiring him to establish, with materials, validity of the composition of the governing bodies of the colleges concerned.

5. The Secretary by letter of November 29, 1973, expressed surprise of the college authorities when the show-cause notice was received from the University. It was stated that the compliance with the requirement required detailed study of past records since 1927 and there had never been any doubt about the validity of the constitutions of the Governing Bodies under which the colleges were working. The governing bodies considered the letter of November 22, 1973, and the earlier communication of September 10, 1973, at its meeting on November 25, 1973, and tracing out of the changes that had taken into effect from time to time in the constitution of 1927 and in relation with the Memorial Institute. It was further stated that the governing bodies felt that as the legality of these changes have been questioned, it was also necessary to take an independent legal opinion on the validity of these changes as well as of any act or omission and omission on the part of the administration and how these, if any, could be set right and rectified. It was said that the result of the examination and the legal opinion would have to be placed before the governing bodies for consideration along with the reply to be sent which was expected to be ready by the end of this year. It was prayed that the time might be extended till January 2, 1974. There was a further letter dated 7/8 December, 1973 by the petitioner with reference to the correspondence on the two items of enquiry. It was stated therein that the governing bodies of Ashutosh group of colleges were framed in accordance with rules and regulations of the Memorial Institute and such governing bodies were to be composed of 11 members of which 8 are to be elected annually by the general committee of the Institute. The changes were effected in July, 1946 when a comprehensive scheme prepared by late Sri C.C. Biswas was adopted for reconstitution of the governing bodies. No conclusive evidence could be traced as to whether the revised constitution was filed with the Registrar and it was further as in that they intended to search the records of Registrar of Societies as well if necessary. For this also and for reasons stated in earlier letter competent legal advice was necessary about the validity of the scheme and its amendment for University's satisfaction. About the validity of the composition of the governing bodies it was said that subject to possible technical defect for failure to file the changes with the relevant authority in time the existing constitution had been validly made and it was accepted by the existing colleges ever since it was established. In so far as Ashutosh College is concerned, it was further stated that the Ashutosh College Governing Body was and still is a registered society while

the other two colleges being units of the parent body, the Institute had their governing bodies constituted on the same lines as Ashutosh College and their validity was derived from the fact that they were constituent units of the Institute which was a registered society. It was further stated that the governing bodies of the three colleges secured necessary recognition under Statute 100(1) of the First Statutes. Whether there had been procedural lapses would be known only after the current probe of records was completed. Apart from legal aspect the colleges claimed association of great educationists and sons of the country and requested the University to consider the question in proper perspective. It was further said that if there was any deficiency or lacuna the colleges would be first to come forward and take necessary and immediate step to rectify the same.

The petitioner was, however, served with copy of the resolution of the Syndicate passed on December 14, 1973 by letter of December 22, 1973 whereby the Governing Bodies of the three colleges were superseded. Shortly thereafter on December 28, 1973, the petitioner moved this Court under Article 226 by three applications as already stated contending, inter alia, that the University and its authorities had no power or authority to supersede the governing bodies constituted in terms of the memorandum of association of the society registered under Act XXI of 1860. It was further stated that the constitutions of governing bodies of the colleges being under Statute 100, the University had no jurisdiction over such governing bodies or to supersede the same. It was also stated that the act of supersession was not in accordance with the provisions laid down in the Calcutta University Act and its rules and further there was absence of reasonable opportunity being given to the authorities of the colleges to show cause before action was taken. On these applications three rules nisi were issued on the same date by this Court calling upon the University and its authorities to show cause why a writ in the nature of Certiorari should not issue quashing and canceling the impugned resolution of the Syndicate.

6. The rules were opposed by the University and its authorities (excluding Syndicate) and on their behalf, affidavit-in-opposition to the Rules affirmed by Amitesh Banerjee, Inspector of Colleges, on January 14, 1974 were filed stating, inter alia, that individual members of the Syndicate should have been made parties to the rules which was a fatal defect. The facts stated in the petitions were misleading and the real position was as follows: Ashutosh College was registered as a Society under Act XXI of 1860 in 1927 and its governing body was to be formed according to its rules. In September 1929, Ashutosh Mookerjee Memorial Institute was registered as Society under the said Act but it could not take over the earlier Society, Ashutosh College. In 1958, the three colleges were granted affiliation on condition that there would be three separate governing bodies and the constitutions of such governing bodies were to be submitted to the University for approval. The condition remained unfulfilled for fifteen years. After coming into force of the Calcutta University Act, 1966, the affiliated colleges were required to reconstitute their governing bodies governing bodies under Statute 93, except, under Statute 100, these colleges, which were

managed by trust, society or scheme of court, were to frame the governing bodies under their rules. These colleges claimed that they were entitled to have their governing bodies constituted under Statute 100 and the rules of Ashutosh College had been amended on the basis whereof the governing bodies were constituted.

7. Investigations revealed that no amendment of rules of Ashutosh College had been filed with the Registrar of Societies nor any amended rule or scheme stated to have been adopted in 1946 for reconstitution of governing body of the said college was produced. The University, however, relied on the representations that the three colleges had valid constitutions permitting them to avail of the privilege under Statute 100. After repeated reminders and indulgence proceedings were at last initiated to afford the colleges final opportunity to satisfy that the condition of affiliation had been fulfilled by the three colleges or their governing bodies were validly constituted but the University remained unsatisfied about the alleged amended rules of the Ashutosh College or of Society to entitle then the privilege of Statute 100. In the circumstances the University by virtue of its statutory powers dissolved the governing bodies of the said colleges as none of the college had a validly constituted governing body. Except as stated above, all allegations in the petitions were denied. It was further stated that the governing bodies of the three colleges could not be constituted on the same footing, as after separation they cease to function in law as one institution and they were required to be managed by separate governing bodies and rules of the Institute could not provide for governing bodies of the said colleges. As to the letter of August 26, 1970 the letter was issued as the colleges suppressed that they had no amended rules of Ashutosh College or Society. In September 1973, the University came to know that the governing bodies of the said colleges were constituted differently than that provided in the deed of 1927 and the University wanted to know if and when the Rules were amended or if they were filed with the Registrar of Societies. The particulars, in spite of opportunities and reminders, were not furnished and accordingly the governing bodies of the Colleges were not validly constituted. By the said letter of August 26, 1970 the University only recognized the position that Ashutosh College being a registered society could claim special protection under Statute 100 if so provided in its rules. The University relied on their representations and was not made aware of the true state of affairs.

8. It was further stated that the petitioner was delaying or avoiding the explanation and it was obvious from the resolution of the governing bodies dated November 25, 1973 that there was no rule which could justify special constitutions of the governing bodies of the three colleges and steps were mere devices to delay the matter and there was no question of legal opinion when the "hiatus" in the narrative of facts remained undisclosed and unexplained. Sufficient opportunity was given to the said Colleges as would appear from the relevant correspondence and after considering the reply, the Syndicate superseded the Governing Bodies which were functioning without authority and

appointed the Ad-hoc Committee in exercise of powers u/s 4(11) read with section 23 of the said Act. The Syndicate considered the letter 7/8th December, 1973 which was circulated amongst the members of the Syndicate prior to the resolution and on due consideration of the relevant facts the resolution was adopted. It was stated that the main consideration for which action was taken by the University was that the governing bodies of the said colleges were not properly or validly constituted. It was denied that the governing bodies of the colleges were protected under Statute 100 or that there was no provision for dissolution of the governing bodies or that Ordinance 64 had any application. It was stated that the University was legally competent in law to adopt the resolution superseding the governing bodies of the three colleges. It was further denied that any principle of natural justice was violated.

9. Supplementary affidavits in the said rules were filed by Arun Ray, the Registrar of the University on its behalf affirmed on January 14, 1974 and thereby the statements and contentions made in the above affidavit were adopted.

10. An affidavit-in-opposition affirmed on January 10, 1974 was also filed by Nirod Kumar Bhattacharjee, Principal, Ashutosh College and a member of the Ad-hoc Committee appointed by the University for self and other members of the said Committee. Various allegations were made against the statements made in the petition and it was said that no documents in support of such statements were filed regarding amendments about the constitutions of the governing bodies of the colleges. Reference was made to the various financial and other irregularities in respect of the funds of the said colleges with which we are not really concerned in these appeals. It was further contended that the governing bodies of the colleges were not constituted the according to the registered deed of 1927 or registered amendments and as such the functioning of the said bodies were irregular, illegal and without jurisdiction.

11. The petitioner filed an affidavit-in-reply affirmed on January 19, 1974 denying all allegations made in the affidavit on behalf of the members of the Ad-hoc Committee. With reference to the affidavit filed by Amitesh Banerjee, it was stated that the constitution of the governing bodies was approved and recognized by the University under Statute 100 and even earlier under 1951 Act and there was no scope for further investigation and the benefit under Statute 100 granted to three colleges on due consideration could not be reopened. When there had been no change since recognition the University was estopped from contending otherwise. The revised scheme of 1946 was duly acted upon and the amended rules were duly filed with the Registrar of Societies. The governing bodies of the three colleges were validly and legally constituted in the same manner, the only difference being that the Ashutosh College was a registered society. The allegations that the petitioner was delaying or avoiding explanation were denied and it was stated that sufficient opportunity was not given to establish the valid constitution of the governing bodies and since the last approval there had been no change or amendment in the constitution. It was

further contended that the College Committee had no jurisdiction to usurp the functions of the Syndicate and had no authority to issue show cause notice on the colleges which even was without authority as the Inspector of Colleges had no such authority. It was stated that the letter of the petitioner dated December 7/8, 1973 was not considered by the Syndicate. The grounds for supersession disclosed in para 24f), of the affidavit-in-opposition differed materially from the resolution or show the cause notice. It was submitted that provisions of section 23 could not be invoked in the absence of any charge while the show cause notice was itself invalid and supersession order could not be passed on the basis thereof. It was also submitted that sufficient opportunity was not given to the colleges to satisfy the University about the valid composition of the governing bodies of the colleges. For all these reasons the impugned resolution should be set aside.

12. The learned Judge by his judgment under appeal held that it was not necessary to implead the Syndicate or all its members while the petitioner as the Secretary of the Ashutosh College was competent to move the application on behalf of the Ashutosh College. Further even if the impugned resolution is an administrative order, such order can be challenged when there is violation of the principles of natural justice. It was further held that the University or the Syndicate is not precluded or estopped to call for documents to satisfy itself that the governing bodies of the colleges have been constituted in accordance with Statute 100 and if not, even once recognition is given, to dissolve the governing body u/s 4(1) of the Act....It was held that no material was placed to establish that the College Committee was validly delegated with powers to pass resolution on the basis whereof the University could act. It was further held that in superseding the governing bodies of the three colleges, the petitioner was not given reasonable opportunity to defend his case, as there was no disclosure why immediate action was called for granting time only for 19 days and the University did not act fairly and reasonably in the case. The rules were accordingly made absolute and the impugned resolution was quashed by a writ of certiorari. The University and the Syndicate were given leave to start fresh proceedings for dissolution of the governing bodies after giving the petitioner reasonable opportunity in accordance with law.

13. Before we enter into the real questions in controversy, it will be proper to consider the objections raised on behalf of the appellants as to the maintainability of the applications giving rise to the connected Rules. It was contended that the resolution superseding the governing bodies is an administrative order and no writ of certiorari would lie to correct errors of a statutory body in the discharge of administrative functions. Reliance was placed on the decision, *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, wherein it was held that a writ of certiorari will not lie to correct the errors of a statutory body which is entrusted with purely administrative functions. In the said decision it was observed:

...a writ of certiorari will lie to control such a statutory body if it purports to act without jurisdiction or in excess of it or in violation of the principles of natural justice, or commits any error apparent on the face of the records, provided that on a true construction of the Statute creating such body, it can be said to be a quasi-judicial body entrusted with quasi-judicial functions.

14. The Calcutta University Act, 1966 incorporated for the purpose, inter alia, of controlling higher education, confers on the University various powers u/s 4. Exercise of such powers like supersession of governing bodies of colleges with which we are concerned, is based on objective factors and relevant circumstances and affect statutory and legal rights of persons. Orders and decisions can only be passed or taken thereunder by the University and its authorities in the nature of things for a just and fair decision after hearing persons who may be affected or prejudiced by such order and such procedure is the basic concept of natural justice. Such functions required to be discharged by the University and its authorities are thus quasi-judicial in character and a writ of certiorari will be available to control such authority to act within its jurisdiction and powers conferred by law and in accordance with the principles of natural justice. It is further to be noted that the University in discharging its duties has to exercise powers in accordance with the provisions of the Act which created it. Any breach in this respect will warrant issuance of a writ of a mandamus requiring the University and its authorities to act in accordance with law.

It has next been contended that no proprietary or pecuniary right or status recognized by law was involved in the case before us to warrant issuance of writ as the right claimed was only in respect of the valid constitution of the governing bodies of the colleges concerned. Right to hold office of a member of a governing body is a statutory right or a legal right. It is not necessary that such right must necessarily be a proprietary or pecuniary right, the infringement whereof will only be amenable to writ jurisdiction. A person thus will be entitled to relief under constitutional provisions by way of appropriate writs of directions if he is aggrieved by deprivation of his statutory, constitutional or legal rights on account of the arbitrary action of statutory authority in violation of law or the principles of natural justice.

15. It is further contended that the petitioner is not entitled to move the applications as the other members of the governing bodies did not join as petitioners to the proceedings. It has been claimed by the petitioner that he had been duly authorised by the governing bodies to move the court challenging the impugned resolution while in fact all other members of the respective governing bodies were impleaded as respondents. It is thus obvious that there is no defect on this score.

16. About impleading the Syndicate the parties have taken different positions. According to Mr. N. C. Chakravarti as also Mr. S. C. Bose and Mr. Sakti Nath Mukherjee, learned counsel for the petitioner respondents in the appeals, the Syndicate, which was made a party to proceeding, did not file any return to Rules

and is its resolution was under challenge, the Rules should have been made absolute straightway apart from any other consideration. According to appellants since the Syndicate is not a corporate body, it cannot be impleaded by itself except through its members. Since this was not done, the Rules suffered from a fatal defect of parties. In our view both contentions are misconceived. By section 3(1), the Chancellor, Vice-Chancellor, members of the Senate and Syndicate, Academic Council and all persons holding office or membership shall constitute a body corporate by the name of the University of Calcutta with perpetual succession which shall sue and be sued by its name. u/s 18, the Syndicate is one of the authorities of the University and thus a limb and component of the University. Section 23 provides for the powers and duties of the Syndicate and all acts done and powers exercised by the Syndicate are to be deemed to be acts of and by and on behalf of the University. As such the Syndicate by itself is not a necessary or proper party to sue or be sued and it will be sufficient to implead the University even if an action of the Syndicate is challenged. It may be that when any act or decision of its authorities who by themselves are not bodies corporate is challenged or there may be occasions when there are specific allegations of malafides against the members of the Syndicate, it may be necessary to implead the members of the Syndicate while challenging its action or resolution. This is however not the case before us as the allegations were of the general nature to the effect that the Syndicate did not act fairly and bonafide in the matter. As to Mr. Chakravari's contention that no returns were made to the Rules by the Syndicate, it is to be noted that the action of the Syndicate in passing the impugned resolution was an exercise of powers by and on behalf of the University. The University has filed its returns opposing the Rules and as we have seen, in the circumstances of the case, there was no occasion or necessity for the filing any return on behalf of the Syndicate and its members. Appropriate writ thus can be issued against the University quashing the resolution of its authorities including the Syndicate.

17. One of the material points in controversy is whether the University is competent under provisions of the Act and its rules at all to supersede the governing bodies of colleges the as it purported to do and if so in manner done by the impugned resolution. In fact thus is the contention raised by the petitioner in his cross-objections which we propose to deal first for the purpose of convenience, as in the even the decision is in favour of the petitioner it will not be necessary to consider other issues in controversy. Mr. Chakravarti submitted that a statutory body can only function and exercise its powers in terms of the provisions of the statute which creates it. He referred to the following observations in the decision, in *S.R. Tewari Vs. District Board Agra and Another*, :

...the powers of a statutory body are always subject to the statute which constituted it, and must be exercised consistently with the statute, and the Courts have, in appropriate cases, the power to declare an action of the body illegal and ultra vires...

It has been said in Crawford's "The Construction of Statutes" (1940) p. 334.:

..... if the Statute directs that certain acts shall be done in a specified manner, or by certain person, their performance in any other manner than that specified or by any other person than one named, is impliedly prohibited." This rule of law, laid down in Taylor v. Taylor (1875).

1 Ch. D. 426, as noticed in Ram Chandra v. Govind Joti AIR 1975 S.C. 914 has stood the test of time and failure to comply with the mandatory provisions of the Statute by the statutory authority will render the action invalid in law.

18. Strongly relying on the above propositions, it was submitted that the Calcutta University Act or its First Statutes or First Ordinances do not empower the Syndicate to supersede the governing bodies of the colleges as was purported to be done. Section 4(10) provides for taking over temporarily the management of any college (other than Government or Government Sponsored College) in order to ensure of proper standards of teaching. u/s 51, Clause (h) and Ordinance 64 thereunder, there is an elaborate procedure proceeding a temporary taking over of management in circumstances therein mentioned namely non-maintenance of proper standard of teaching or improper management of the affairs of the college to its detriment. Even in such circumstances the Syndicate has to call upon its governing body to comply with its directions as may be deemed fit. If there is non-compliance with such directions the Syndicate has to issue notice calling upon the governing body to show cause why the such body should not be dissolved and management of the college should not be taken over by the University. Only after considering the cause if shown, the Syndicate may temporarily take over the management of the college and appoint an administrator or ad-hoc governing body. Section 4 of the Act also provides for the following powers of the University:

Sec. 4. The University shall have the following powers namely: -

(1) **

(8) to provide for the inspection, or investigation into the affairs, of colleges or institutions recognised by it or affiliated to it and to exercise general supervision and control over them.

(11) to dissolve the Governing Body of any Affiliated, Constituent or Professional College or Institution, other than a Government College or a Government Sponsored College, and, pending the reconstitution of the governing body thereof in such manner as may be prescribed, to appoint an Administrator or an ad-hoc governing body.

Section 23, sub-section (1) provides for specific powers and duties of the Syndicate, Clause (xiv) whereof is as follows:

Sec. 23. (xiv). To take over temporarily the management of an affiliated or a recognised college or institution, other than a Government College or a

Government Sponsored College, in order to ensure that proper standards of teaching, training of instruction are maintained therein.

Sub-sections (2) and (3) of section 23 are as follows:

Sec. 23 (1) * *

(2) The Syndicate shall exercise all powers of the University not otherwise specifically provided for and for and all other powers which may be necessary to give effect to the provisions of this Act.

(3) The Syndicate shall, on being satisfied as a result of enquiries initiated by it, or otherwise, that the affairs of any Affiliated, Constituent or Professional College or Institution are being mismanaged to the detriment of the College or Institution as an effective educational Institution, have the power to dissolve the Governing Body of such College or Institution and pending the reconstitution of the governing body thereof in such manner as the Syndicate may prescribe, to appoint an Administrator or an ad-hoc Governing Body consisting of such members as it may deem fit:

Provided that the provisions of this sub-section shall not apply to any Government College or a Government Sponsored College.

19. It has been contended that the powers of the University u/s 4 clauses (10) and (11) have been specifically conferred on the Syndicate is no scope for application of the provisions of sub-section (2) of section 23. In exercise its powers so conferred, the Syndicate in either case has to follow the procedure laid down in Ordinance 64 of the First Ordinances 1966 as indicated above which in the instant case was never followed by the Syndicate. The Syndicate thus acted in excess of and contrary to the powers conferred upon it by the Statute. There was a further submission that in invoking section 4(1) as urged by the appellants the governing body can only be dissolved "in such manner as may be prescribed" and "no manner as such has yet been prescribed and accordingly the summary and peremptory manner in which the governing body was dissolved, is not warranted by the statute and its bye-laws. There was also a faint suggestion that if section 4(11) contemplated the exercise of powers without any guidance or indication of existence of circumstances in which such power could be exercised it would amount to uncanalised and arbitrary delegation of power inconsistent with the concept of the rule of law.

20. These contentions have been disputed by Mr. S. D. Banerjee and Mr. D. K. De, learned Counsel, appearing for the University and its authorities. It was contended that the University has always the power to enquire if the University is satisfied that there is no such constitution, its Syndicate has the power to dissolve the governing body for the purpose of its reconstitution according to law under provisions of the section 4(11) read with section 23 (2) of the Act. In exercising such powers the Syndicate did not travel beyond the provisions of the Statute and its Rules.

21. On consideration of the respective contention of the parties, it appears to us that clause (10) of section 4 which is in pari materia with clause (xiv) of Section 23, contemplates temporary taking over the management of the college for ensuring maintenance of proper standards of teaching. Section 23(3) provides for dissolving the governing body of the College when the affairs of the college are being mismanaged to the detriment of the college as an effective educational institution, pending reconstitution of the governing body thereof and for appointment of an Administrator or an ad-hoc governing body. In either of the two eventualities, the Syndicate has to follow the procedure laid down in Ordinance 64 of the First Ordinance which we have noticed above. The powers conferred on the Syndicate u/s 23(3) are not however co-extensive with those provided in clause (11) of section 4 though the powers u/s 23(3) are included in clause (11) of section 4. Clause (11) of section 4 is much wider in its scope and application and by its terms it confers powers on the University to dissolve the governing body of the college and pending reconstitution of its governing body to appoint an Administrator or an ad-hoc governing body. Though the clause does not expressly refer to the circumstances which must exist before the power can be exercised, it contemplates exercise of powers by the University necessary for discharge of its statutory functions namely to encourage, extend, co-ordinate, control and import higher education and promotion of research. Such powers have also been expressly reserved in clause (8) of Section 4 quoted above. Conferment of such powers cannot be said to be absolute and uncanalised delegation of powers, circumscribed as they are by the purposes of the Act and the duties and responsibilities imposed on the University by the Act. This power of control over colleges has been provided in various clauses of section 4, like clauses (4) to (11). Accordingly when the University is of opinion that the governing body has not been validly constituted according to law, the University is entitled to take action under clause (11) of section 4 dissolving the governing body and in its place appointing an administrator or an ad-hoc governing body pending reconstitution of the governing body thereof in accordance with the Statutes. In taking such action, no procedure has been provided in the Act or its Rules and Ordinance 64 has no application to the actions taken in such contingency. This power again is not provided in sub-section (1) or sub-section (3) of section 23 as existence of a Governing Body invalidly constituted has not at all (far less specifically) been contemplated under those sub-sections. Under Sub-section (2) the Syndicate has been conferred with all powers of the University, not otherwise specifically provided for and also all powers necessary to give effect to the provisions of the Act. The Syndicate, thus under sub-section (2) of section 23 is entitled to exercise the powers of the University u/s 4(11) not otherwise specifically provided for to give effect to the provisions of the Act, namely, control of higher education which in its application contemplate ensuring of valid constitution of governing bodies of colleges in accordance with the statutory provisions under the Act and its Statutes.

22. Reference was made on behalf of the petitioner respondent to the decision in

State of Mysore Vs. Allum Karibasappa and Others, in which it was observed that in the guise of exercising "control" which suggests check, restraint or influence and is intended to regulate and hold in check or restrain from action, the State Government could not displace the Committee of Management of the Co-operative Bank which again was in violation of Section 54 of Mysore Co-operative Societies Act, 1959. The decision, in our opinion, has no application, as the governing bodies in this case were dissolved and an ad-hoc Committees appointed pending reconstitution of the governing bodies in accordance with law when the governing bodies of the colleges, according to the University, were not legally and validly constituted requiring their supersession. We do not find here any usurpation of excess powers nor any act in violation of the statutory provisions.

23. It has been contended that even under clause (11) of section 4, the dissolution of the governing body is to be "in such manner as may be prescribed" which under Sub-section (13) of section 2 means prescribed by Statutes, Ordinance or Regulations. Accordingly the peremptory manner in which the Syndicate had dissolved the governing bodies was unwarranted in law as no rules, apart from Ordinance 64, has been prescribed by the Chancellor. It may however be noted that the words "in such manner as may be prescribed" follows words "pending the reconstitution of the governing body" and all these words are circumscribed by two comas, one at the commencement of the words and the other at the end. It is thus obvious that "in such manner as may be prescribed" governs the reconstitution of the governing body and not to dissolution of the governing body which provision is outside the circumscribed limit as aforesaid and the manner of reconstitution has been prescribed in Statute 93 of the First Statutes. We accordingly hold that Clause (11) Section 4 read Section 23 (2) empowers the Syndicate to resolve for the dissolution of the governing bodies in appropriate circumstances for the advancement of the objects of the Act enjoined on the University under the Act and in absence of any procedure in the Act or its rules, the authorities are entitled to adopt a procedure which is reasonable and consistent with the principles of natural justice.

24. It has been submitted that by the impugned resolution the Syndicate while superseding the governing bodies of the colleges, appointed an ad-hoc Committee for administration of the three colleges, while u/s 4(1) the Syndicate could appoint, if at all, an ad-hoc governing body for each of the three colleges. An ad-hoc committee and such committee again for three colleges has not been contemplated or provided in the Act or its rules. It does not appear to us that there is any express prohibition for appointment of an ad-hoc governing body for more than one college and in view of the fact that three colleges are situate in the same premises and two of them are splinter colleges of Ashutosh College, it was considered expedient that there should be one committee for the time being pending reconstitution of the new governing bodies of the colleges. The Ad-hoc Committee, as it appears, is really a governing body for each college invested with the power of administration of the colleges and we do not find any illegality

on this aspect.

25. The next contention relates to question as to whether the notice to show cause was bad in law as it was issued by the Inspector of Colleges who, it was contended, was not competent to issue such notice. From averments made in paragraph 24(d) of the affidavit-in-opposition affirmed by Amitesh Chandra Banerjee, it appears that the College Committee, constituted from the members of the Syndicate in terms of section 55, sub-section 2(b)(iii) of the Calcutta University Act, 1966 was delegated with the powers and duties of the Syndicate to deal with the affairs of all affiliated colleges. The said Committee by its resolution dated November 21, 1973 directed the Inspector of Colleges to issue a show cause notice on the said three colleges requesting them to establish the validity of the composition of their governing bodies on or before 30th November, 1973 and the notice was issued accordingly. The learned Judge in absence of any material before him could not come to any decision as to whether the College Committee was duly delegated with the power of the Syndicate or was competent to pass any resolution for issue of notice on the basis whereof the University could act.

26. Mr. Chakrabarti contended that the College Committee could not usurp the functions of the Syndicate and it was incumbent for the Syndicate to disclose all material particulars including its resolution regarding delegation of its powers to the Committee while the report of the Committee was not made available. It appears that the Syndicate had itself spoken about such delegation and had also in effect ratified the action taken by the College Committee and the Inspector in respect of the said colleges which were in the nature of enquiry about the valid constitution of governing bodies. The decision for superseding the governing bodies was taken by the Syndicate itself and it was based on the admitted failure of the colleges to produce evidence supporting the valid constitution of the governing bodies. We accordingly do not think any prejudice was thereby caused to the governing bodies which never had any doubt about legal validity of the notice. In our opinion there was this no legal infirmity in the circumstances in respect of the impugned resolution for the non-production of materials delegation or the report of the College Committee.

27. The next question requiring our consideration as to whether there has been a violation of the principles of natural justice in passing the impugned resolution, it was submitted that I the show cause notice issued by the Inspector of Colleges no punishment was indicated and sufficient time was not given to the petitioner and the existing governing bodies of the colleges to comply with the requisition made by the University. The resolution was not in accordance with the provisions of the Act and its rules and further the Syndicate did not act fairly and bonafide in the matter. On these grounds it has been contended that there has been a total and complete failure in the observance of the principles of natural justice which even every administrative authority is required to follow and observe.

28. In (6) A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , the

Supreme Court observed as follows:

...The Concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be judge in his own cause and (2) no decision shall be given against a party without affording him a reasonable hearing. Very soon thereafter a third rule was envisaged and that is that a quasi-judicial enquiries must be held in good faith, without bias and no arbitrarily or unreasonably.

In (7) The Government of Mysore and Others Vs. J.V. Bhat and Others, it is observed:

It is only where there is nothing in the Statute to actually prohibit the giving of an opportunity to be heard, but, on the other hand, the nature of statutory duty imposed itself necessarily implied an obligation to hear before deciding that the "andialteram partem" rule cold be imported. The nature of the hearing would of course vary according to the nature of the function and what its just and fair exercise required in the context of rights affected.

There is no dispute before us that the Syndicate was required to hear the authorities of the colleges before it could consider the position and pass the resolution dissolving the governing bodies, involving as it did, exercise of quasi-judicial functions affecting rights of parties to hold office recognised by the Statute. It will however be necessary to consider the nature of the rights the petitioner seeks protection of against the inroad made by the Syndicate. The relevant provisions of law are to be found in Statutes 93 and 100. Statute 93 provides for the constitution of the governing body of a college which is to consist of the Principal of the College, two teachers elected from whole-time teachers, one member from the Government where the college receives government grant, three members nominated by the Syndicate, donors under terms and conditions of donation as also representatives of donors. Such is to be the constitution of the governing body of a college save as otherwise provided in Statute 100. Statute 100 is as follows:

Statute 100. (1).

"In the case of a college managed by any Trust or Registered Society or under a scheme laid down by competent court, the constitution of the Governing Body shall, in so far as the terms and conditions of such Trust, Article and Memorandum of Association of such registered Society or such scheme, as the case may be, so require continue as such:

Provide that, after the commencement of these Statutes the terms and conditions of any such Trust, the Articles and Memorandum of Association of any such Society or any such scheme shall require the approval of the Syndicate before such Trust is created, such Society is registered or such scheme is submitted to the court.

29. The provisions noted above thus postulates the existence of Article and

Memorandum of a registered Society on the date of the commencement of the Statutes, terms and conditions whereof will govern the constitution of the governing bodies the Society will not be entitled to the benefit of Statute 100 and in fact no such question would arise in the circumstances. The governing bodies if constituted as claimed on the basis of amended rules of the Society, the existence whereof is not established, will not be legally and validly constituted governing bodies. Being thus without legal authority, such governing bodies will have no power or authority in law to function as such nor can the University permit such governing bodies to function further in view of its statutory obligations.

30. If the Syndicate in this state of affairs decide not to permit such governing bodies to act as such, and to dissolve the governing bodies pending their reconstitution according to law, it will only by acting in terms of the provisions of the Act and its Statutes while in-action on the part of the University will amount to permitting governing bodies to function as such contrary to the provisions of law. We accordingly find no substance in the contention that the governing bodies were to be appraised of consequences taking place by operation of law in case of their failure to comply with the requirement of the show cause notice even though there is no provision for the issue of show cause notice. It is also to be remembered that Ordinance 64, which provides for an elaborate procedure before a governing body is dissolved proceeds on the basic position that there is a validly constituted governing body which however is guilty of serious lapses. We also do not find any substance in the contention that the grant of benefit by the University under Statute 100(1) should be revoked before the governing bodies were superseded. There is no question of any grant of benefit under Statute 100(1) by the University, since it is a right conferred on the governing bodies by the Act and its Statutes and accordingly there is no occasion for its revocation. The contention that there should be revocation of the grant of benefit by the University under Statute 100(1) before action taken appears to be untenable in law.

31. There is no dispute that the University by its letter of August 26, 1970 informed the petitioner that the above Colleges came within the purview of Statute 100 of the Calcutta University Act, 1966. It has been stated that the University accepted the position that Statute 100 would be applicable in view of the representation made by the Colleges which was relied upon. There is no legal impediment or estoppel on the University from considering the position once again and to ensure proper application of the provision of law relating to the constitution of the governing bodies which is a positive duty imposed upon the University by a Statute of public benefit and interest as was held in respect of similar statute in AIR 1937 114 (Privy Council) .

32. Mr. Chakravarty had drawn our attention to the original agenda of the meeting of December 14, 1973 which was "also to consider a letter dated December 7, 1973 from the Ashutosh group of Colleges (Letter enclosed

herewith)." It was suggested that this agenda was later on inserted by a different type-writer at the top of the page, which indicated the agenda was inserted later and the Syndicate never had any occasion to consider the said letter of the petitioner. These allegations were denied on behalf of the University. It is not possible for us to arrive at the conclusion that such agenda was inserted later on or that the Syndicate had no opportunity to consider the said letter on these allegations denied by the other side.

33. It is now to be examined if the Governing bodies were given sufficient time and opportunity to comply with the requisitions made by the Inspector of Colleges. The Inspector of Colleges by his letter of January 20, 1970 referred to the documents relating to the constitution of the governing body of the colleges and stated:

...Please state if such documents do exist and I shall be grateful to have a certified copy of the same within 30th January, 1970, otherwise the University will presume that action will have to be taken in accordance with Statute 93 of the Calcutta University Act, 1966.

In reply by his letter of February 3, 1970, the petitioner stated that the Society known as the Ashutosh College was registered on March 30, 1927. Further the Jogamaya Debi College and the Shyama Prasad College were formed out of the morning and evening departments respectively of the original Ashutosh College and separate affiliation was granted to the three colleges by the University in 1958 and they had been functioning as such ever since. It was further stated that the governing bodies of each of the three colleges were constituted with 17 members, specified therein under the subsequent amended rules. By letter dated August 26, 1970, the Deputy Inspector of Colleges informed the petitioner that as directed by the Vice-Chancellor and the Syndicate, the three colleges came "within the purview of Statute 100 of C.U. Act, 1966.

34. On September 10, 1973 the Inspector of Colleges, by the letter to the petitioner, referred to his letter of February 3, 1970 and as directed by the Vice-Chancellor requested him to furnish full text of the amended rules showing the relationship between the Ashutosh College and the Sir Ashutosh Mookherjee Memorial Institute. It was further enquired if and when amended rules were approved by the governing body of the college and also if and when the amended rules were filed with the Registrar of Societies. It was further stated that the matter was to be treated as extremely urgent and the answer should be forwarded within one week of receipt of the letter. The petitioner by his letter of September 18, 1973 asked for sufficient time to give a considered reply to the letter as the officers of the colleges were picketing the college offices prohibiting normal work and the President was lying seriously ill. The Deputy Inspector of Colleges by his letter of September 24, 1973 requested that the reply and necessary documents should be forwarded by November 5, 1973. It appears that at the request of the petitioners' time was extended to November 15, 1973. The College authority meanwhile, it was said, started searching old records and the colleges were

closed for the Puja vacation from October 1, 1973. On November 22, 1973, the petitioner received the following letter from the Inspector of Colleges.

Sir

Subject : Show Cause Notice.

You are hereby requested to inform me on or before 30th November 1973 when and how the governing bodies of the colleges were framed. You are, further, called upon to establish with relevant material the validity of the composition of the Governing Bodies concerned.

35. In reply the petitioner by his letter of November 29, 1973 after referring to past correspondence, stated that the letters of Inspector of Colleges dated September 22, 1973 were placed before the Governing Body at its meetings on November 25, 1973 which on the report that due to unavoidable reasons it had not been possible to collect all materials, ordered for collection of all relevant material regarding amendment of the Original constitution and regulations of the Governing Body and also for legal opinion about the constitution and regulations of the Governing Body and validity of the same with full report for necessary action. The Secretary was directed to move the University for time till at least upto January 2, 1974 for compliance. The petitioner while enclosing the resolution in his said letter stated, inter alia:

Since as the Governing Body of the Ashutosh College feels, the legality of some of these changes has been questioned, it is necessary to make an independent legal opinion on the validity of these changes as well as of the act of omission or commission on the part of the administration and how these if any could be set right and rectified.

Time till January 2, 1974 was asked for submission of the reply as the results of the examination and the legal opinion were to be placed before the governing bodies for their consideration and the petitioner expected to be ready by that time.

36. The petitioner wrote another letter to the Inspector of Colleges on December 7/8, 1973 stating that the amendments to the constitution of the governing body of the Ashutosh College was based on the scheme of July 1946. While they were engaged in tracing the amendments in the process they also intend to search the records of the Registrar of Societies as well, if necessary. About the constitution of the governing bodies, it was said that there might have been procedural lapses in a few cases in the failure to file these changes with the Registrar of Societies. If lapse was detected necessary steps would be taken for rectification after taking legal advice. The Syndicate thereafter adopted the impugned resolution on December 14, 1973 which is as follows:

Whereas the Secretary governing bodies of Ashutosh College, Jogamaya Devi College and Shyamaprasad College, has in spite of repeated reminders, failed to furnish the University with the details of the Memorandum of Association of the

Society, registered on March 30, 1927 or the subsequent amendments as required under letters of Inspector of the Colleges, dated 10th September, 1973, 24th September, 1973 and 3rd November, 1973 and whereas the Secretary, Governing Bodies of the aforesaid three colleges has failed to establish the validity of the Governing Bodies of the colleges concerned as requested by the Inspector of Colleges in his letter dated 22nd November, 1973 the Syndicate, after considering all the details.

Resolves that the Governing Bodies of the Ashutosh College, Jogamaya Devi College and Shyamaprasad College be superseded with immediate effect and that an Ad-hoc Committee consisting of the following persons be appointed for the administration of all the three colleges and with the objective of reconstituting the Governing Bodies according to the provisions of law.

37. The respective contentions of the parties regarding observance of the principles of natural justice will have to be considered in the context of attending circumstances. The letter for furnishing within a week the relevant informations about the amended rules under which the Governing Bodies had been constituted was received by the petitioner on or about September 14, 1973. Time was extended till November 5, 1973 for reply with necessary documents. There was a further extension to November 15, 1973 and lastly to November 30, 1973 and all at the requests of the petitioner. The meetings of the Governing Bodies were at last called and held on November 25, 1973 to consider matters of such seriousness and importance. There is no explanation for not taking steps earlier during the period or for not calling the meeting earlier and even all correspondence between the petitioner and the University authorities was not placed before the Governing Bodies. The unavoidable reason for inability to collect throughout the period the relevant materials stated in the resolution were not disclosed to the University. While the Governing Bodies directed immediate collection of all materials regarding amendments to the original constitution and regulations of the Governing Body, it was also directed that legal opinion should be obtained about the validity of the same and a full report was to be placed before the Governing Bodies for necessary action. It was also resolved that the University should be moved for extension of time, till January 2, 1974 at least, for compliance with the requirements.

38. The course of action taken by the petitioner and the Governing Bodies does not appear to be the proper and fair approach to the questions at issue. There had been unnecessary and unexplained delay in taking proper steps in time during the period. It was stated that the constitution of the Ashutosh College as revised on July 28, 1946, was filed with the Registrar of Societies, a fact denied by the University. It was also said that the recommendations made by the Governing Body of the Ashutosh College were adopted by the Memorial Institute and same had been duly filed before the appropriate authority on August 29, 1957 on behalf of the Institute. No steps were however taken at any time to search the records of the Registrar of Societies to find out the state of affairs.

Again by resolving to obtain legal opinion after collection of materials about the validity and constitution of the Governing Bodies and for setting right any omission or commission on the part of the college administrations the petitioner as also the Governing Bodies were raising issues leading to controversy. For obtaining legal opinion on the composition of the Governing Bodies and rectification of lapses on their part, the College authorities can not be considered to be entitled to defer compliance with the requisitions of the University. In view of the duties and responsibilities imposed upon the University under the Act, it was hardly possible for the University, in the context of the delay involved and the inaction of the college authorities as noted above, and of the position taken by them, to refrain from taking action in accordance with law as was considered fit and proper by the Syndicate. The college authorities in the circumstances cannot be heard to complain that there was failure in observance of the principles of natural justice enabling them to take benefit of their lapses and of attempt to raise a controversy after delay over the matter without acceptable reasons or even an explanation for their inaction over the period. We are accordingly of the opinion and hold that there was no failure in the observance of the principles of natural justice in regard to time or otherwise on the part of the University in adopting the resolution and also taking steps in pursuance thereof.

39. It may be noted that the University itself made enquiries which revealed that no amendments of rules as alleged were filed with the Registrar of Societies by the Ashutosh College or any of the other Colleges. The Act and its Statutes enjoin on the University to ensure that the Governing Bodies of the Colleges under its affiliation should be constituted in accordance with law. If the validity of the composition of the Governing Bodies is not established and after considerable delay controversy is attempted to be raised, one can hardly blame the University when it acts in accordance with law.

40. We are accordingly unable to sustain the judgment under appeal in respect of its findings challenged by the appellants. Before we conclude we must mention that we gave the petitioner as also the members of the superseded Governing Bodies opportunity to produce before us documents in support of their case but, it appears, no documents were produced before us.

41. The appeals in the circumstances are allowed and the judgment in so far as it relates to the findings on the question of natural justice and on the College Committee are set aside. The findings in the judgment on the preliminary objections, estoppel and on the legal competency of the University to pass the impugned resolution are sustained and cross-objections are dismissed. As a result the connected rules obtained by the petitioners are discharged; all interim orders are vacated. There will be no order for costs.

42. During the hearing Mr. Banerjee submitted off and on that in case the Governing Bodies of the Colleges are in a position to produce documents in support of the valid composition of the superseded Governing Bodies, he would instruct the Syndicate to reconsider the position in the light of such disclosure. In

view of the above submission, we give the petitioner and the members of the superseded Governing Bodies liberty to produce before the Syndicate such documents as they think fit in support of the valid composition of the said Governing Bodies and if such documents are produced, the Syndicate will consider the same in accordance with law and pass appropriate orders accordingly. Such documents are to be produced as early as possible latest within four weeks; during which period the University or the Ad hoc Committee will not take further steps for reconstitution of the Governing Bodies of the said Colleges.