

(1952) 05 CAL CK 0003

In the Calcutta High Court

Case No : Appeal from Original Order No. 35 of 1952

University of Calcutta

APPELLANT

Vs

Dipa Pal

RESPONDENT

Date of Decision : 05-05-1952

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 56 CWN 730

Hon'ble Judges : Harries, C.J.;S.R. Das Gupta, J;Das, J

Bench : Full Bench

Advocate : A.K. Sen and A.K. Mukherjee, for the Appellant;I.P. Mukherjee, S. Chaudhuri, R. Goho and K.K. Basu, for the Respondent

Final Decision : Dismissed

Judgement

Harries, C.J.—This is an appeal from a judgment and order of Bose, J., dated February 18, 1952, by which he quashed an order passed by the Vice-Chancellor and Syndicate of the University of Calcutta, cancelling the examination of the respondent for the degree of Bachelor of Arts. The respondent was a student of the Muralidhar Girls' College, Calcutta, and appeared at the examination for the degree of Bachelor of Arts of the University of Calcutta in the year 1951 as a non-collegiate student, (her roll number for the said examination being Cal. F. N. 368. She sat for the examination in the premises of the Muralidhar Girls' College and during the examination no suggestion was made to her that she had been guilty of any unfair or dishonest practices. The respondent appears to have been satisfied that she had passed in the examination, but to her surprise she found when the results were published that her name was not included in the list of successful candidates. On enquiry she found that she had been reported against to the University authorities for having adopted unfair mean at the said examination. Eventually the University authorities found her guilty of having adopted unfair means and cancelled her examination, but permitted her to sit for the examination for the degree of Bachelor of Arts in the following year. In her

examination for the degree of Bachelor of Arts one of her subjects was Philosophy in which there were three papers, one being a paper on Psychology. It seems that the examiner noticed a very close resemblance in the papers of a number of examinees in Psychology and on June 11, 1951, he made a report to the Head Examiner of the University. In that report he stated that he was convinced that two groups of candidates had indulged in unfair practices in the examination and he was of opinion that the invigilators at the Muralidhar Girls' College centre had been negligent. It is to be observed that a similarity was noticed between the paper of the respondent which bore the roll number Cal. F. N. 368 and the paper of another candidate bearing the roll number Cal. F. N. 363. The examiner marked with asterisks in red pencil certain portions of answers which had aroused his suspicion and in particular invited the Head Examiner's careful attention to the answer to question No. 6(d). The examiner added that he would be grateful if the Head Examiner would bring the matter before the University authorities if he was satisfied with the correctness of his (the examiner's) findings.

2. On July 20, 1951, the Head Examiner wrote to the Controller of Examinations forwarding the letter of the examiner in Psychology in the examination for the degree of Bachelor of Arts. The Head Examiner reported that he had gone through the papers and that his suspicion was also very strong.

3. On July 23, 1951, the Examination Board appointed a sub-committee to consider the cases of the candidates reported against. The sub-committee appointed consisted of Prof. Srikumar Banerji, Sri Amiya Kumar Sen and Sri Praphulla Kumar Guha; the latter gentleman, it is to be observed, was not a member of the Examination Board.

4. On August 10, 1951, before the subcommittee had made any report the Examination Boards as they were bound to do, under the regulations of the University, reported the results of the examination to the Syndicate and in that report it is stated that thirty-seven students who sat at the examination for the degree of Bachelor of Arts had been reported against for unfair practice, but the Examination Board expressed no opinion upon any of these cases. There is in the report the mere statement that these thirty-seven candidates had been reported against.

5. On August 11, 1951, the report of the Examination Board came before the Syndicate of the University and that body confirmed the proceedings of the Examination Board and resolved that the names of the successful candidates be published. It is also stated that a number of candidates had been reported against for having adopted unfair means at the examination, that their cases were under consideration and that the decision of the Syndicate in all the cases would be communicated to the heads of the colleges, or, in the case of non-collegiate candidates, to the candidates direct. The case of the respondent was amongst these cases under consideration.

6. On August 12, 1951, the results were published and as I have previously stated, the respondent's name did not appear amongst the successful candidates.

7. On August 20, 1951, the Principal of the Muralidhar Girls' College wrote to the Controller of Examinations expressing his surprise that the respondent should have been reported against and he expressed the opinion that the respondent was "incapable of taking part in any unfair dealings". He also mentioned that the respondent and the student, whose paper, it is said, bore a great resemblance to that of the respondent, were seated too far apart for one to copy the other.

8. The Principal was on September 1, 1951, asked to appear before the sub-committee which had been appointed to consider these cases and he did appear and was apparently heard.

9. On September 4, 1951, the sub-committee came to the conclusion that a number of candidates reported against, including the respondent, had been guilty of unfair practices and that their examination should be cancelled and that they should be debarred from appearing at any University examination, but that in the case of the respondent she should be allowed to appear at the examination for the degree of Bachelor of Arts in the year 1952.

10. On September 5, 1951, Mr. T. P. Basu, an attorney of this Court and the maternal uncle of the respondent, wrote to the Registrar of the University that he was astonished to hear that his niece had been reported against and he submitted that his niece was entitled to be heard personally before any decision was arrived at in the matter. He, therefore, asked for an opportunity to be given to his niece to appear before the proper authority to explain her conduct.

11. On September 7, 1951, the Principal of the Muralidhar Girls' College wrote a letter to the Vice-Chancellor of the University and in that letter he makes it clear that owing to the circumstances existing in the examination hall at the Muralidhar Girls' College the seats of the candidates had been placed close together in order to obtain the candidates some relief from the electric fans. It would appear therefore that the Principal's earlier statement that the candidates were sitting too far apart from each other to be able to copy was not correct. The Principal informed the Vice-Chancellor that he was feeling Very unhappy about the matter and he appealed to the latter to see that not a single innocent candidate would be penalised.

12. On September 8, 1951, the Personal Assistant to the Vice-Chancellor wrote to the Principal of the Muralidhar Girls' College assuring him that the Vice-Chancellor would look into the matter himself with the members of the committee before any action was taken.

13. On September 10, 1951, the Registrar of the University wrote to the Principal of the Muralidhar Girls' College stating that the matter had been very carefully considered by the mal-practices committee who had given due Weight to the

views of the Principal. They had however found her guilty of adopting unfair methods and the Registrar informed the Principal that the Vice-Chancellor agreed with the sub-committee and that the decision could not be modified. It would appear that the mal-practices committee, as it was called, reported to the Syndicate and a formal resolution of the Syndicate was passed On September 22, 1951, cancelling the examination of the respondent, but she was not to be debarred from appearing in the year 1952.

14. During the course of the hearing we asked Counsel if there was any record of the sub-committee of the Examination Board and counsel on instructions of the Registrar of the University informed us that there was no such record and that the subcommittee appears to have reported directly to the Syndicate.

15. The present proceedings were instituted by the respondent under Art. 226 of the Constitution of India. She prayed for a writ in the nature of certiorari to quash the proceedings of the University authorities which led to the cancellation, of the examination. In the alternative she prayed for a writ of mandamus directing the University authorities not to give effect to the resolution of the Syndicate cancelling her examination.

16. When the matter came before Bose, J., the main point argued was that the University authorities in deciding whether the respondent had or had not been guilty of unfair practices during the examination were acting in a quasi judicial capacity. Therefore, it was said that the rules of natural justice demanded that no order to the prejudice of the respondent should or could validly be made without giving the respondent an opportunity of appearing before the authorities concerned and representing her case. She had, it was alleged, been given no such opportunity and that being so, the proceedings Were liable to be quashed by the issue of a writ of certiorari.

17. It was also argued, though apparently not very strenuously, that the University authorities had in dealing with the case of the respondent failed to follow the rules and regulations of the University and that being so, the order made cancelling the examination was contrary to law and could not be maintained.

18. Bose, J., appears to have been of opinion that the rules and regulations of the University had not been observed, but he did not base his decision upon that ground because he appears to have thought that that point was not clearly taken in the petition. He, however, was of opinion that in deciding the question of whether the respondent had or had not been guilty of unfair practices the University authorities were acting in a quasi-judicial capacity and were therefore bound to give the respondent an opportunity to appear before them and present her version of the case. As no such opportunity had been given the learned Judge held that the proceedings taken were contrary to the fundamental rules of natural justice and he accordingly quashed the proceedings and directed the University to forbear from giving effect to the said order. The University was

directed to reconsider the case of the petitioner in accordance with law.

19. When the case was argued before us to appeared to us to be clear that the University authorities had failed to follow the rules and regulations of the University relating to matters of this kind. Mr. Asoke Sen who appeared on behalf of the University, conceded that if the University had failed to follow their own rules then their decision could not be justified. He did however urge that the point was not open to the petitioner as the claim for the writs had not been based on this ground. It is, I think, however, clear from all the affidavits in this case that the materials for the decision of this point were before the Court and in our view the case can be disposed of upon this question and this question alone.

20. Under the Act of Incorporation (Act No. II of 1857), the University of Calcutta was established and by sections 13 and 14 of that Act the Chancellor, Vice-Chancellor and Fellows of the University are entitled to hold examinations at least once in every year for degrees of the University and by sec. 14 they are empowered at the conclusion of every examination to declare a list of successful candidates and to confer degrees upon them.

21. In the year 1904, the Indian Universities Act, (Act VIII of 1904) was passed to amend the law relating to the Universities of British India. By sec. 4 of this Act a body known as the Senate was created which is vested with legislative or rule-making functions, and by sec. 15 a body known as the Syndicate was created, which is the executive body of the University.

22. By section 25(2) the Senate is empowered inter alia to provide for the appointment of examiners and to prescribe their powers and duties in relation to examinations of the University.

23. Chapter XXV of the Regulations of the University provides for the appointment of examiners and for the conduct of examinations. By rule 8(vi) an Examination Board is created for the B. A., B.Sc. (Tech.) examinations. The rule lays down the functions of the Examination Board. It has to consider the reports of the Results Committees which are brought into being by reason of earlier provisions in this Chapter, and to co-ordinate the results and to consider all cases of breaches of discipline arising in connection with the examinations. The Examination Board must forward the results to the Syndicate for publication and it is provided that the statement made to the Syndicate shall contain confidential information on any changes made by the Examination Board and the reasons for such changes. By sub-rule (vii) of rule 8, it is provided that the proceedings of the Board shall be subject to confirmation by the Syndicate. The Syndicate shall not have the power to modify the results, but may refer them back to the Board for reconsideration.

24. I think it is clear from the provisions of Chapter XXV that the body which has jurisdiction to consider cases of breaches of discipline arising in connection with examinations and to modify the results of such examination is the Examination Board. When it has considered the results of the examination and cases of

breaches of discipline it is then under a duty to forward a report to the Syndicate and that report must contain information which is said to be confidential relating to any changes made by the Examination Board and the reasons for such changes.

25. It seems to me to follow from this rule that if a candidate has received the marks necessary to pass an examination, but has been reported against for unfair practices the matter must be considered by the Examination Board. If the latter finds the student not guilty of any unfair practices the Board will include the student in the list of successful candidates. If on the other hand the Board comes to the conclusion that unfair practices have been established the Board may report that such a student should be held not to have passed the examination. If it comes to such a conclusion then it must report its reasons to the Syndicate because it is in effect making a change in the report of the Results Committee.

26. Further, it is clear that the Syndic has no power to vary the findings of the Examination Board. The Syndicate may confirm such findings or if it disagrees with them it may refer them back to the Board for reconsideration. Apparently, however, if the Board insist upon their view the Syndicate ultimately must accept it, otherwise there is a Very serious lacuna in the regulations.

27. Such being the rules of the University, it is clear, I think, that the question whether or not Sm. Dipa Pal had been guilty of unfair practices at the examination was a matter to be decided by the Examination Board. The latter appears to have recognised this and appointed a sub-committee.

28. A point was taken before the learned Judge in the Court below that the subcommittee was improperly appointed because a person who was not a member of the Examination Board was made a member of this sub-committee. Usually, sub-committees of a larger committee consist of members of that committee whose duty it is to consider matters referred to them and to submit their decision or report to the committee. It is not usual to appoint outsiders as members of a sub-committee. But Mr. Asoke Sen contended that there is nothing in the rules which prevents such a course.

29. I do not think it is necessary to decide whether this sub-committee was properly constituted. I shall assume for the purposes of this judgment that it was. But the difficulty arises because the subcommittee admittedly never reported its findings to the Examination Board and that latter body never considered the report of its sub-committee and never arrived at any finding whatsoever. The only communication made by the Examination Board to the Syndicate was made on August 10, 1951, and all that appears in that communication is that thirty-seven students had been reported against and it is clear from the confirming resolution of the Syndicate that these cases were then under consideration.

30. The sub-committee after hearing the Principal of the Muralidhar Girls"

College reported not to the Examination Board but to the Syndicate and the Syndicate undoubtedly acted on that report treating the report as a report of a subcommittee of itself. As I have stated, the Syndicate formally cancelled the examination of the respondent by a resolution on September 22, 1951, and the proceedings of the Syndicate of that date show how they acted. Item 50 of the proceedings reads as follows :

Read the proceedings of the sub-committee appointed by the Syndicate to consider the cases of the candidates who were reported against as having used unfair means in the B. A. and B. Sc. Examinations.

Resolved--that the proceedings be confirmed.

31. In the first place the Syndicate is not empowered to consider questions of malpractices and breaches of discipline. That is a matter for the Examination Board. Further this sub-committee which made its report was a sub-committee appointed by the Examination Board and not by the Syndicate. The sub-committee having made its report to the Syndicate the latter body accepted it as a report of a committee appointed by itself and acting upon that report the Syndicate cancelled the examination.

32. It appears to me that this resolution of the Syndicate cancelling the examination was clearly contrary to the rules of the University. Sm. Dipa Pal could only be found guilty of a breach of discipline by the Examination Board. That body could have modified the results and cancelled her examination and reported the matter to the Syndicate. That latter body could have confirmed the decision on the Examination Board or if they disagreed with it the decision could have been referred back for reconsideration. The rules nowhere provide that the Syndicate on its own initiative is entitled to decide this question or to appoint any sub-committee to go into the matter. In fact, as I have already said, it did not appoint a sub-committee but treated the sub-committee appointed by the Examination Board as its own subcommittee and acting upon its report cancelled the examination without any finding or report whatsoever from the Examination Board itself. The proceedings were wholly unwarranted by the rules and regulations of the University and the question arises whether the resolution of the Syndicate is in accordance with law.

33. 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 agree to deal with the student whom they have accepted in accordance with their rules and regulations. The rules and regulations of the University provide the machinery for deciding whether a student has or has not been guilty of malpractices at an examination. If a student is found guilty in accordance with these rules, then apart from the wider question as to whether the student has a right to appear, the decision of the University could not be questioned. However, if the decision is not arrived at 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.

34. It has always been the view of Courts in England and in India that if by agreement, powers such as powers of expulsion are given to a body then an order of expulsion can only be valid if all the provisions relating to the exercise of such power have been strictly complied with. The question has frequently arisen in connection with membership of clubs, where rules provide for the expulsion of a member who is found to be undesirable. The courts have invariably held that unless all the rules relating to proceedings for expulsion have been Strictly complied with, an order expelling a member is of no effect.

35. A typical case is the case of *Young v. Ladies' Imperial Club, Limited* [(1920) 2 K B. 5231. In that case one of the rules of a ladies' proprietary club provided that if the conduct of any member should, in the opinion of the executive committee, be injurious to the character and interests of the club, the committee should have power to suspend the member from the use of the club and to recommend her to resign, and if she did not do so within a certain time, the committee should erase her name from the list of members, provided that no member could be so suspended or recommended to resign unless a resolution to that effect should have been passed by a certain majority of the members of the committee actually present at a meeting specially convened for the purpose.

36. Acting under the rule the committee of the defendant club recommended the plaintiff, who was a member, to resign, and, as she did not do so, the committee erased her name from the list of members.

37. In an action for a declaration that the plaintiff was still a member of the club the Court of Appeal in England reversing the trial Judge held that the omission to summon a member of the committee invalidated the proceedings of that body. In that case the committee consisted of fourteen members including the Chairman, the Vice-Chairman and twelve members, and one of those members was the Duchess of Abercorn. The Duchess of Abercorn was not summoned and no notice of the meeting was sent to her. It was said that no notice was sent to her because she was really only a nominal member of the executive committee and would not have attended if she had been summoned. Therefore it was said that it was unnecessary to send her notice. Apparently the Duchess of Abercorn had desired to resign from this committee, but had been persuaded not to do so on an undertaking being given her that she would not be troubled.

38. It seems fairly clear that if notice had been sent to the Duchess of Abercorn it is most unlikely that she would have attended. Nevertheless the Court of Appeal held that as no notice was sent to her the proceedings of the committee were invalid and the member's name had not been properly erased from the list of members. It might be said that the failure in that case to summon the Duchess of Abercorn was a mere technicality. Nevertheless the Court of Appeal held that it was fatal. The rules of the club had not been complied with and that being so, the resolution of the committee was without force.

39. This principle appears to me to be applicable in this case and the present case is a very much stronger one. So far from there being mere technical breaches of the rules and regulations the order in, this case was made by a body which had no power to make it and it acted contrary to the rules laid down for dealing with such matters. That being so the resolution of the committee cannot have any legal effect and cannot be enforced.

40. Having regard to the view which we have taken on this first point we do not think it is necessary to consider the second point, namely, whether in deciding matters of this kind the University authorities were acting in a quasi-judicial capacity and therefore must give the person concerned an opportunity to be heard before making an order to his Or her prejudice. That question is one of very great importance and difficulty and having regard to the view which we take on the first point, any decision of this Bench on this other point would be merely in the nature of obiter. The decision on the first question makes it wholly unnecessary to decide the second question and therefore we wish to make it clear that we express no opinion upon this very difficult point. The learned Judge has decided that the University authorities were acting in a quasi-judicial capacity. But it must not be assumed from the fact that this appeal is dismissed that we agree or dissent from that view. We leave the matter entirely open to be considered when a decision on the question is necessary for the decision of a case.

41. Holding as we do that the decision of the University authorities was not in accordance with their rules and regulations, a mandamus must issue directing the University to forbear from giving effect to the said order. The University must reconsider the case in accordance with its rules and regulations and in accordance with law and then take such steps as it is entitled to take. It is true that the point upon which we decide this appeal was not stressed, as I think it should have been, before the learned Judge. That being so, we think that it is only fair that each party should pay its own costs of this appeal.

Das, J.

I agree.

S.R. Das Gupta, J.

I agree.