
(1996) 01 CAL CK 0001
In the Calcutta High Court
Case No : F.M.A.T. No. 3816 of 1995

University of Calcutta

APPELLANT

Vs

Dr. Hasibul Hasan

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Calcutta University Rules — Rule 7
Constitution of India, 1950 — Article 12, 226

Citation : (1998) 1 ILR (Cal) 165

Hon'ble Judges : Satyabrata Sinha, J; Satya Narayan Chakraborty, J

Bench : Division Bench

Advocate : Hirak Mitra, Sadhan Roy Chowdhury and Supriyo Chattopadhyay, for the Appellant; Nigam Chakraborty and Sanjib Misra and Baisali Ghoshal and Soumitra Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—This appeal is directed against a judgment and order dated July 5, 1995 passed by a learned single Judge of this Court in C.O. No. 200048 (W) of 1994 whereby and whereunder the said learned Judge allowed the writ application filed by Dr. Hasibul Hasan, the writ Petitioner/Respondent No. 1.

2. The fact of the matter lies in a very narrow compass. Pursuant to an advertisement made by the Appellant University for filing applications for admission in M.D./M.S. and Diploma Courses both the writ Petitioner and Dr. Subinoy Mondal, the Respondent No. 6 herein filed their respective applications. The writ Petitioner's first option was for M.D. (Paediatrics), second option for M.D. (Obstetrics and Gynaecology) and third option was for Diploma in Child Health (D.C.H.).

2(a). The application of Dr. Subinoy Mondal as well as the writ Petitioner/Respondent No. 1 was considered. Dr. Mondal's position was second in the panel whereas the position of the writ Petitioner/Respondent No. 1 was first in the waiting list. As Dr. Mondal was not being admitted, he filed a writ application in

this Court. In the meanwhile the writ Petitioner/Respondent No. 1 also filed a representation before the Vice-Chancellor, Calcutta University as regards ineligibility of Dr. Subinoy Mondal to be admitted in. M.D. (Paediatrics) Course. As his objection was not being considered, he also filed a writ application in this Court. Both the writ applications were taken up for hearing together and by a judgment and order dated July 25, 1994, the same were disposed of with a direction to the Dean of Faculty, University Medical Council, Calcutta, to consider and pass an appropriate order on the representation of Dr. Mondal together with the complaint petition of Dr. H. Hasan at an early date and not later than 3 days from the date of receipt of a copy of the said order. The said order was modified and instead of Dean of Faculty, the Vice-Chancellor was directed to consider the said representation. The representation of Dr. Mondal is contained in annexure "I" to the writ application. Admittedly in his application form Dr. Mondal did not fill up columns 24 and 25 which reads thus:

24. Are you at present registered for any post-Graduate Diploma/Degree Course including Ph.D. of any University, if so, give particulars....

25. Have you applied for admission or has been admitted to any other course in any institution during this session....

2(b). It is admitted that at the relevant time Dr. Mondal was prosecuting his D.C.H. Course for 1993-95 session. The relevant Clauses of the procedural directive and information is contained in annexure "A" to the writ application and Clauses 1, 7 and 10 which are relevant for the purpose of disposal of the appeal read thus:

1. Incomplete applications will be rejected outright. No communication will be made in this respect.

7. These undergoing any other Diploma/Degree courses including Ph.D. are not eligible for admission in the same session.

10. Even after provisional selection, if a candidate is found guilty of impersonation or of submitting fabricated or tampered documents or making incorrect or false statement or suppression of material, the candidate shall be disqualified for admission and may be penalised in addition as per rules and regulations of the Calcutta University.

3. By reason of the impugned order dated August 23. 1991 the learned Vice-Chancellor opined as follows:

On consideration of the records, I am of the opinion that the purported grievances of Dr. Hasibul Hassan against the admission of Dr. Subinoy Mondal in M.D. (Paed.) course in 1994 is, frivolous in nature. Dr. Mondal submitted his resignation from the D.C.H course on 1.3.94 in which course he was admitted in 1993, while the entrance examination for the M.D. Course was held on 6.3.94. There might have been a mistake on the part of Dr. Subinoy Mondal in not filling up items 24 and 25 of the application form for admission but I find the mistake

to be genuine and bonafide. Moreover Dr. Hassan has already taken admission to D.M. (Obst. & Gyno.) course in 1994 and has since been perusing his studies in that course. The representation of Dr. Hasibul Hasan is accordingly rejected and Dr. Hasibul Hasan is accordingly rejected and Dr. Mandal will continue in M.D. (Paed.) course. The Secretary of the Faculty Council for Post Graduate Studies in Medicine is being directed to restore clinical attachment of Dr. Mandal.

4. The writ Petitioner/Respondent No. 1 filed the aforementioned writ application questioning the said order dated August 23, 1994 which is contained in annexure "H-1" to the writ application.

5. An affidavit-in-opposition was filed on behalf of the University of Calcutta wherein it was, inter alia, admitted that the aforementioned columns 24 and 25 of the prescribed form was not filled up by Dr. Mandal. It was also admitted that on January 31, 1994 when the said application form was filed, Dr. Mandal was a student of D.C.H. but he resigned from studentship of D.C.H. Course on March 1, 1994 whereas the entrance examination was held on March 6, 1994 and the result thereof was declared later on. It was further stated that Dr. Mandal got his admission to M.D. (Paediatric) course on April 12, 1994. Dr. Hasibul Hasan was also selected for M.D. (Obs. & Gyn.) and was in the third position in the list of selected candidates. Objections were raised as regards the irregularities committed by Dr. Mandal not only by Dr. Hasan but also by Dr. Abhijit Roy Chowdhury on April 18, 1994 and April 20, 1994. Despite the said fact, according to the Appellant as per practice followed by the University, Admit Cards were issued to the candidate who did not mention about studentship in any other course at the time of application. It is, however, stated that admit cards were issued to those candidates after submission of necessary resignation letters.

6. The learned trial Judge upon consideration of the submissions made by the learned Counsel for the parties without disturbing the admission taken by Dr. Mandal, directed as follows:

Accordingly, I dispose of this application by quashing the order passed by the Vice-Chancellor, Calcutta University, on 23rd August, 1994 being Annexure "H1" to the writ application. The Vice-Chancellor in consultation with the Dean, Faculty of Medicine, University College of Medicine, Calcutta University, is directed to admit the Petitioner in the Post Graduate course in Paediatrics for the 1995-98 session immediately upon communication of this order, subject to the Petitioner submitting his resignation from the course he is now pursuing.

Mr. Hirak Mitra, the learned Counsel appearing on behalf of the Appellant has raised two contentions in support of this appeal. The learned Counsel firstly submitted that the writ Petitioner/Respondent No. 1 could not have been directed to be granted admission in a technical faculty keeping in view the fact that in terms of Regulation framed by the Medical Council of India the number of seat in M.D. Course is limited and more so in view of the fact that the Medical Council of India had not been impleaded as a party in the writ application. In support of the

aforementioned contentions the learned Counsel has relied upon a decision of the Supreme Court in the case of State of Punjab and others Vs. Renuka Singla and others, . It was further submitted that Rule 7 aforementioned in the case of Mausumi Nandi v. University of Calcutta 1995 (1) Cal. L.T. 198 and in view of the aforementioned decision the impugned order cannot be sustained.

7. Mr. Nigam Chakraborty, learned Counsel, appearing on behalf of the writ Petitioner/Respondent No. 1 submits that this Court should not hear the Appellant in view of the fact that despite an interim order passed by this Court directing the University to provisionally admit the writ Petitioner/Respondent No. 1, the University failed and neglected to do so and thus committed contempt of this Court by violating the Court's order and unless it purges the contempt, it cannot be heard in this matter. It was further submitted that the appeal was filed without filing a certified copy of the impugned judgment and order under appeal. It was also submitted that Clauses 1, 7 and 10 should be read together and from a perusal thereof it would appear that the said Clauses are mandatory in nature. According to the learned Counsel Dr. Mondal could not have felt any difficulty in filling up the Clauses 24 and 25 of the application form and thus the Vice-Chancellor must be held to have misdirected himself in passing the order. It was further submitted that the objections raised on the part of the Appellant to the effect that the direction of the learned trial Judge would violate the guide-line of the Medical Council of India is based on no materials. According to the learned Counsel some materials should have been produced before this Court to show that the University backs the necessary infrastructure. It was further submitted that the writ Petitioner/Respondent No. 1 could not be made a victim of the law's delay and in that view of the matter, this Court should not interfere with the impugned order. It was submitted that the Appeal Court should only interfere when the judgment of the trial Judge is not right but is clearly wrong. In support of his aforementioned submission, the learned Counsel has relied upon a decision of the Supreme Court in the case of Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others,

8. Before we proceed to consider the rival contentions of both the parties we are of the opinion that having heard the matter on merit we should not dismiss this appeal at this stage only on the ground that the certified copy of the impugned judgment and order has not been filed. Filing of such certified copy is merely a matter of procedure. This Court, in our opinion, has ample jurisdiction to waive filing of certified copy of the impugned judgment particularly when this Court can always call for the records of the learned trial Judge and to have the original order before this Court. In fact in some jurisdictions, the certified copy of the judgment is not required to be filed along with the Memo of Appeal.

9. So far as the submission of Mr. Chakraborty to the effect that the Appellant cannot be heard unless it purges the contempt, we do not find any merit therein. It is true that in certain cases the Court may not hear the Appellant unless the contempt is purged. Such order can be passed only when a contempt application

is filed and the contemner is found to be guilty of wilful disobedience of the Court's order.

10. The learned Counsel for the Appellant on instruction stated that the Calcutta University had no objection in taking admission of the Respondent No. 1 provided he submitted his resignation from the M.D. (Obst. & Gyno.) Course which he had been undergoing for the present. Furthermore, the question as to whether the Appellant would not be heard unless he purges the contempt, depends upon the facts and circumstances of each case. The said doctrine does not have any universal application. It is not, according to us, a rigid rule but is a flexible one. The said doctrine can be applied by the Court at its discretion, inasmuch as, the matter of contempt is a matter between the Court and the contemner and any other party has no say therein. This aspect of the matter has recently been considered by a Division Bench of this Court in *State Trading Corporation and Ors. v. Anjan Banerjee* 1995 (1) C.H.N. 66. Coming now to the merit of the matter although we are of the view that this Court in exercise of its jurisdiction under Article 226 of the Constitution cannot sit in a penal over the decision of a statutory authority, inasmuch as, this Court is not concerned with the merit of the decision but only with the decision making process; however, it is also well known that the power of the Court to interfere with the order passed by an administrative authority, inter alia, is if illegality, irrationality and procedural irregularity is found in the decision making process of such authority. Reference in this connection may be made to the case of *Tata Cellular Vs. Union of India*,

In *Mausumi Nandi's* case *Supra* it was, inter alia, held that "the words "same session" would include such session in which a student is undergoing his course of studies and thus the whole session shall include the part thereof". Furthermore the phraseology used in Clauses 1 and 7 leave no manner of doubt that the same are mandatory in nature. The objection of the writ Petitioner/ Respondent No. 1 therefore could not have been thrown out without taking the said fact into consideration. The Vice-Chancellor thus must be said to have been committed illegality in passing the said order as in arriving at the said decision, he failed to take into consideration a relevant factor. It is now well-known that the Administrative authority must ask himself the correct question so as to acquaint himself with the fact in order to arrive at a just decision and if he fails to do so, he will be guilty of self misdirection. Such misdirection in law comes within the purview of the power of judicial review of this Court.

11. However, we are also of the opinion that in a giving situation a law may not be strictly enforced if it produces manifest injustice. In Article 271 of *Statutory Construction* by Crawford, it is stated as follows:

Even where a statute is clearly mandatory or prohibitory, yet, in many instances, the courts will regard certain conduct beyond the prohibition of the statute through the use of various devices or principles. Most, if not all of these devices find their justification in considerations of justice. It is a well known fact that often to enforce the law to its letter produces manifest injustice, for frequently

equitable and humane considerations, and other considerations of a closely related nature, would seem to be of a sufficient calibre to excuse or justify a technical violation of the law.

12. Furthermore as indicated hereinbefore admittedly Dr. Mondal was admitted as far back as on April 12, 1994. Dr. Mondal has continued his study for more than one year and nine months. No appeal has been preferred as against that part of the judgment of the learned Trial Judge whereby admission given to him by the Appellant was not interfered with either by the Calcutta University or by the writ Petitioner/Respondent No. 1.

13. At this stage, the question which, therefore, arises for consideration in this appeal is as to whether in view of our findings aforementioned the judgment of the learned Trial Judge should be sustained.

14. As noticed hereinbefore, the objection raised by the writ Petitioner/Respondent No. 1 was valid in law and the impugned judgment could not have been sustained. In this situation, one of the courses open to the learned Trial Judge was to set aside the admission of Dr. Subinoy Mondal and direct admission of Dr. Hasan. The learned trial Judge on humane consideration and in order to do substantial justice between the parties had adopted a third course in not interfering with the admission of Dr. Mondal and at the same time directing the University to admit the writ Petitioner/Respondent No. 1 for 1995-98 session.

15. Mr. Chakraborty, learned Counsel appearing on behalf of the Respondent No. 1 rightly submits that although this Court in exercise of its writ jurisdiction under Article 226 of the Constitution cannot normally direct the University to increase the seat but the Appellant has failed and/or neglected to produce any material whatsoever as regards the existing student-teacher ratio and other relevant materials so as to enable this Court to come to a definite conclusion as to whether the mandatory provision of the Regulation framed by the Medical Council of India would be violated or not.

16. This Court is not only a Court of law but also a Court of equity. Ends of justice, as is well known, is higher than the law although justice has to be done in accordance with law. If in a given case no mandatory provision of law is violated, in our opinion, it would not be proper to set aside the judgment of the learned Trial Judge only on a technical ground and keeping in view the dictum of the Supreme Court reported in *Gujarat Steel Tubes Ltd. v. Its Mazdoor Sabha* Supra wherein it has been clearly held that the appeal Court should not set aside the judgment when it was not right but only when it is clearly wrong.

17. It is a well known principle of law that the appeal Court normally does not interfere with the discretion exercised by the learned trial Judge unless exercise of such discretion is found to be bad in law or causes manifest injustice. We are, therefore, of the view that it is not a fit case in which this Court should interfere with the impugned judgment.

18. We may, however, make it clear that this judgment shall not be treated as precedent in future as the impugned direction was given by the learned trial Judge in an extraordinary situation so as to do justice between the parties. Similar direction was given recently in *The Convenor, EAMCET-92, A.U. College of Engineering Vs. Jasmeet Singh Siddu and others*,

19. Before we part with the case, we hope and trust that the authorities of the Calcutta University henceforth shall endow its due consideration as regards essential ingredients for issuance of Admit Cards and permit the students to appear at the Entrance Examination so that in future unnecessary litigation may not crop up.

20. The University is not only a State within the meaning of Article 12 of the Constitution of India but they have a special status, vis-a-vis, the students and the teachers must act fairly, reasonably and equitably.

21. In this view of the matter, we have no doubt that if the writ Petitioner/ Respondent No. 1 tenders his resignation forthwith, the competent authority of the Calcutta University shall take his admission in terms of the order passed by the learned trial Judge keeping in view the fact that the session is running out.

22. For the reasons aforementioned, this appeal is dismissed but in view of the facts and circumstances of this case, there will be no order as to costs.

Satya Narayan Chakraborty, J.

23. I agree.