

(1983) 08 CAL CK 0013
In the Calcutta High Court

Case No : F.M.A.T. (Mandamus Appeal) No's. 954, 984, 985 and 988 of 1983

West Bengal Board of Examination for Admission to
Engineering, Medical and Technological Degree Colleges and
Others

APPELLANT

Vs

Dr. Jitendra Lal Banerjee and Others

RESPONDENT

Date of Decision : 17-08-1983

Acts Referred:

Calcutta University Act, 1979 — Section 52, 52(2)
Constitution of India, 1950 — Article 14, 154, 154(2), 162, 226

Citation : AIR 1984 Cal 52 : 87 CWN 1050

Hon'ble Judges : M.M. Dutt, J;C.K. Banerji, J

Bench : Division Bench

Advocate : A.P. Chatterjee, Smritikana Mukherjee and Dipak Kumar Banerjee,
N.N. Goptu, Govt. Pleader and Tarun Roy, for the Appellant; Sushanta
Chatterjee, Himangshu Kumar Basu, Bulu Chatterjee and Prabir Bhattacharya,
for the Respondent

Final Decision : Allowed

Judgement

M.M. Dutt, J.—These appeals have been preferred by the State of West Bengal and the West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges, hereinafter referred to as the Board, against the judgment and order of a learned single Judge making absolute the Rule Nisi issued on the application of the writ petitioners who are some unsuccessful candidates in the Joint Entrance Examination for the year 1982 held by the Board. Initially, one of the writ applications was filed by Dr. Jitendra Lal Banerjee and his son Jayanta Banerjee. Jayanta Banerjee appeared in the Joint Entrance Examination for 1982, but was unsuccessful. Although there was no specific prayer in the writ petition under Order 1, Rule 8 of the Civil P. C., it appears that the learned Judge granted leave under the said provision. After the leave was granted, a few unsuccessful candidates also appeared and were permitted to be added as writ petitioners. The added writ petitioners filed affidavits supporting

the original writ petitioners.

2. Before we proceed to deal with the cases of the respective parties we may, at this stage, refer to the establishment of the Board and its constitution. It appears that the Bengal Engineering College, Sibpore, the Regional Engineering College, Durgapur and the Jalpaiguri Engineering College agreed to have a joint admission test to be conducted by a Board to be constituted with the heads of those institutions or their nominees and a representative of the Education Department, Government of West Bengal. Pursuant to such agreement, the Government of West Bengal issued an order dated April 23, 1962, inter alia, directing that the Board should be an official body with full power to operate the Rules and procedure to be evolved by the Board with necessary staff to be appointed by the Board. Subsequently, the College of Engineering and Technology, Jadavpur University also became a member of the Board. By another Government order, the Board was directed to hold the Joint Entrance Examination of candidates for admission to the pre-medical course in Dental and Medical Colleges in West Bengal. The Board is now constituted with the Principals or Heads of all Medical Colleges and all Engineering and Technological Colleges in West Bengal, the Deputy Secretary, Health and Family Welfare Department, Government of West Bengal, the Deputy Director of Health Services (Medical Education, Research and Training), West Bengal, the Deputy Secretary, Education Department (in charge of technical matters), Government of West Bengal and the Officer-in-charge of the Board. Of these members, the Principal, Bengal Engineering College, Sibpore is the Chairman of the Board. At present Dr. Arun Kumar Seal, who is the Principal of the Bengal Engineering College, Sibpore is the Chairman and Dr. P. K. Roy, a Professor of that College is the Secretary or the Officer-in-charge of the Board.

3. The functions of the Board are to invite applications from the candidates for admission in different Engineering, Technological and Medical Colleges in West Bengal. The Board has framed certain Rules for the Joint Entrance Examination, 1982. It is provided in these Rules that the Board is in no way responsible for admission to the constituent Colleges. It only provides the results of the Joint Entrance Examination to the colleges and the Central Selection Committee and the final selection rests with them. Further, the Board does not publish the result. It does not also communicate the result to any individual candidate and does not have any provision for post-publication scrutiny and review. The Rules also provide for the eligibility of the candidates, the manner of making applications for the Joint Entrance Examination, the registration of candidates, the programme of examination, place of examination and the viva-voce and medical tests.

4. It has been already stated that the writ petitioner Jayanta Banerjee appeared in the Joint Entrance Examination of 1982, but he was unsuccessful. In the writ petition filed by him and his father, the Joint Entrance Examination held by the Board has been challenged on some grounds which will be stated presently. It is

alleged that the first result of the said examination was published on June 30, 1982, but the list was hurriedly withdrawn for re-publication later on. It is alleged that there has not been a fair examination of the answer scripts of the students; including those of the writ petitioner Jayanta Banerjee and that there has been discrimination in tabulation of marks and in publication of the list of successful candidates. In para 15 of the writ petition, it is alleged as follows :

"That there is wide publicity that in certain selected cases, grace marks have been given to the tune of sixty in number without having any declared policy, rules, norms, procedures and lawful practice." The further ground of challenge is that the Board itself has not been properly constituted according to law and its constitution is illegal and invalid.

5. On the above allegations, it has been prayed that a writ in the nature of Mandamus should be issued commanding the respondents (the appellants before us) to rescind, recall and cancel the result of the Joint Entrance Examination, 1982 and to declare the result afresh upon fair tabulation of marks without grace and publish the list of successful candidates including the name of the writ petitioner Jayanta Banerjee on proper scrutiny and assessment. An interim injunction has also been prayed restraining the appellants from giving any effect to the result of the Joint Entrance Examination without including the name of the writ petitioner, Jayanta Banerjee. Similar prayers were made by the other writ petitioners in their respective applications.

6. A copy of the writ petition was served upon the appellants before a Rule was issued as directed by the learned Judge. The appellants appeared before the learned Judge and opposed the prayer of the writ petitioners for the issuance of a Rule Nisi and the granting of an interim injunction by filing affidavits. The matter was heard for several days by the learned Judge and, ultimately, the learned Judge passed a lengthy judgment issuing a Rule Nisi and granting an interim injunction as prayed for. The result of the interim injunction was that about 2000 successful candidates could not be admitted to the different Engineering, Technological and Medical Colleges. The State of West Bengal and the Board preferred appeals against the said interim order of the learned Judge and filed applications for stay of the operation of the impugned interim order. The appeal Court, after bearing the parties, stayed the operation of the impugned interim order till the disposal of the appeals. At the hearing of the said applications, it was complained on behalf of the writ petitioners including the added writ petitioners aggregating about 50/54 that the answer scripts of these Unsuccessful candidates were not properly assessed. Mr. Arun Prokash Chatterjee, learned Senior Standing Counsel appearing on behalf of the Board, made an offer that if these 50/54 unsuccessful candidates so liked, their answer scripts would be re-examined. In such re-examination, the examiners would be appointed by this Court and the entire re-examination would be conducted by this Court independently of the Board, Further, the Board has also offered to give an undertaking that if on such re-examination any of the writ petitioners would

come out successful, he would be admitted to the Engineering, Technological or Medical Colleges, as the case might be. The Appeal Court also tried to persuade the learned Advocates appearing on behalf of the writ petitioners for accepting the offer of the Board, but it was submitted on their behalf that they were agreeable to accept the offer on condition that such re-examination should be without prejudice to the rights and contentions of the writ petitioners in the Rule Nisi pending before the learned Judge. The Board, however, did not agree to such conditional acceptance of the offer. In spite of the best endeavour of the appeal Court all the writ petitioners, except five or six, would not accept the offer of the Board unconditionally and, accordingly, the question of re-examination was dropped except in respect of the said five or six added writ petitioners. Against the order of the appeal Court staying the impugned order of the learned Judge, some of the writ petitioners filed a SLP before the Supreme Court, but the Supreme Court refused to interfere with the said order of the appeal Court. So far as the said five or six added writ petitioners are concerned, their answer scripts were re-examined by qualified examiners appointed by the appeal Court independently of the Board. The re-examination was held under the supervision of the Registrar, appellate side of this Court in the Court building. The result of the re-examination was more or less the same as that of the original examination held by the Board.

7. As the interim order that was initially passed by the learned Judge was stayed by the Appeal Court and upheld by the Supreme Court, the successful candidates were admitted to different Engineering, Technological and Medical Colleges. Since the filing of the writ petition, more than a year has passed and, in the mean time we are told, the said successful candidates completed the first year course and are now prosecuting their studies in the second year. Again, the Board has held the Joint Entrance Examination for the year 1983. Before this examination, an attempt was made on behalf of the writ petitioners before this Court for a stay of the holding of the Joint Entrance Examination for 1983 which was, however, refused by this Court. We are also told that the said examination has been held and the successful candidates are being admitted to different colleges on the basis of the result of the examination.

8. The Board and the State of West Bengal opposed the Rule Nisi. In the affidavits-in-opposition affirmed on behalf of the Board by Dr. Arun Kumar Seal, the principal of Bengal Engineering College and Chairman of the Board and Dr. P. K. Roy, member secretary of the Board, it has been denied that the first result of the Joint Entrance Examination was published on June 30, 1982, as alleged. It is pointed out that the Board does not publish the result; it only transmits the result of the Joint Entrance Examination to the constituent colleges of the Board. It has been averred by them that after approving the result of the said examination, cyclostyled copies of the same were sent to the constituent colleges on July 8, 1982. On June 30, 1982, a meeting of the Board was held. In that meeting item No. 5 of the Agenda related to the consideration of the result of the Joint Entrance Examination, 1982 for admission to Engineering, Medical and

Technological Degree Colleges. The consideration of Item No. 5 was deferred as the result was incomplete and by its resolution the Board asked the Confidential Sub-Committee constituted by it to finalise the result and place it at the adjourned meeting of the Board fixed to be held on July 7, 1982. At the adjourned meeting of the Board held on July 7, 1982, the Board considered the result and approved the same. The result was sent to the constituent colleges on July 8, 1982. Further, it has been averred that no selective grace marks have been given to any candidate leading to discrimination. It has been denied that there has been any discrimination in tabulation of mark-sheets or that attempts are being made to destroy relevant papers or that the formation and constitution of the Board is illegal or invalid or ultra vires or without jurisdiction, as alleged in the writ petition.

9. It appears from the affidavit of Dr. Arun Kumar Seal that the Board prepared four lists, namely, (1) Block List containing the registration numbers of candidates included in the merit list, (2) Merit List, which is a list of candidates in order of merit, (3) Zonewise list of candidates showing their names and positions and (4) Additional List of SC/ST candidates.

10. At the hearing of the Rule Nisi, the Board produced its records including tabulation books, the different lists and also a few answer scripts as required to be produced by the learned Judge on the prayer of the writ petitioners. The learned Advocates of the writ petitioners were permitted to inspect these records as also the answer scripts produced by the Board.

11. At this stage, it may be stated that the Board admitted that grace marks had been given to all candidates, but not to any selected few, as alleged. It is the case of the Board that grace marks at flat rates to all candidates have been given on the recommendation of the Confidential Sub-committee as contained in its resolution dated July 3, 1982. The relevant portion of the resolution of the Confidential Sub-committee is as follows :--

"After going through some Head Examiners' reports and having discussion with them, it was found that (i) the highest marks secured in Biology was much less compared to those in other science subjects and (ii) the highest marks secured in Mathematics was also relatively low.

Considering the above facts and to eliminate the disparity, it was decided to raise the total marks of all candidates by adding 50 marks in Biology paper and 25 marks in Mathematics paper. While preparing the position-mark relationship of the merit list, these will be accordingly added."

12. In this connection, it may be pointed out that those seeking admission in the Engineering and Technological Colleges have to appear at the Joint Entrance Examination in English, Physics, Chemistry and Mathematics and those seeking admission in Medical Colleges have to appear in the said examination in English, Physics, Chemistry and Biology. It is the case of the Board that as per the resolution of the Confidential Subcommittee and approved by the Board, grace

marks of 50 in Biology have been given to all candidates seeking admission in Medical Colleges and grace marks of 25 in Mathematics have been given to all candidates seeking admission in Engineering and Technological Colleges. As the grace marks have been given at flat rates to all candidates, none has been prejudiced or could be prejudiced, their respective positions in the merit list remaining the same. After the tabulation works were completed, these grace marks have been given as per the said resolution of the Confidential Sub-committee dated July 3, 1982 and as approved by the Board on July 7, 1982. The reason for giving such grace marks at flat rates to all candidates has been explained before us by Mr. Arun Prokash Chatterjee, learned Senior Standing Counsel appearing on behalf of the Board. It has been stated by him that the Indian Medical Council directed that no candidate seeking admission to Medical Colleges shall be admitted unless he obtained certain marks in the aggregate. Our attention has been drawn by him to a notification of the Government of West Bengal which is said to have been issued in accordance with the said direction of the Indian Medical Council. In the Government notification, it has been stated, inter alia, that copies of the merit list of the candidates securing at least 50% marks (40% marks in the case of SC and ST candidates) in the Joint Entrance Examination conducted by the Board for the purpose of admission to the M. B. B. S. Course in the Medical Colleges in West Bengal in the Academic Session 1982-83 will be hung up on the notice boards of all the Medical Colleges in West Bengal on July 10, 1982. We are told that as the result of many candidates fell short of 50% of marks, the Confidential Sub-committee recommended giving of grace marks to all candidates at flat rates, namely, 50 marks in Biology to candidates seeking admission in Medical Colleges and 25 marks in Mathematics to candidates seeking admission in Engineering and Technological Colleges. It is submitted that if grace marks had not been given, many seats in those colleges could not be filled up. 13. At the hearing of the Rule Nisi, it was contended on behalf of the writ petitioners that the formation of the Board to hold examination for admission to Engineering, Medical and Technological Degree Colleges was contrary to the provisions of the Calcutta University Act, 1979. The impugned order of the Government dated July 7, 1981 constituting the Board and the rules framed thereunder for holding the Joint Entrance Examination were illegal and without jurisdiction. Such formation and constitution of the Board by the Government was in excess of the power conferred by Article 154 of the Constitution. It was submitted that the Board had no authority to delegate its duty of selection of candidates for admission to Engineering, Medical and Technological Degree Colleges to the Central Selection Committee which was not even envisaged by the said Government order constituting the Board. Further, no authority having been conferred on the Board by the said Government order to frame rules, the rules framed by the Board for the Joint Entrance Examination, 1982 were illegal and without jurisdiction. Apart from the said Government order, the rules not having provided for any review of the answer scripts and any opportunity to the candidates to see their answer scripts, such rules were opposed to the principles of natural justice. It was submitted that the answer

scripts were not properly assessed and grace marks were given to a selected few and, accordingly, the result of the examination should be cancelled.

14. The learned Judge, after considering the submissions made on behalf of the parties and the facts and circumstances of the case, came to the findings that the constitution of the Board was illegal, that the Board had no authority to constitute the Confidential Sub-committee and also the Central Selection Committee, that the rules framed by the Board were unauthorised and also violated the principles of natural justice inasmuch as it did not make any provision for review of answer scripts, that the said Government order dated July 7, 1981. constituting the Board was ultra vires Article 154 of the Constitution read with Section 52 (a) of the Calcutta University Act, 1979. Further, the learned Judge held that apart from the resolution dated July 3, 1982 of the Confidential Sub-committee being arbitrary and unreasonable, grace marks have been given to some selected candidates while denying the same benefits to others. The learned judge concluded that the entire result of the successful candidates was wholly illegal and had been stained with arbitrariness, unreasonableness and discrimination.

15. Upon the above findings, the learned Judge made the Rule absolute and directed the appellants, that is the Board and the State Government to cancel the result of the Joint Entrance Examination published on July 8, 1982 as well as the said Government order dated July 7, 1981. Further, in view of the urgency and the future prospect of the large number of candidates appearing in the admission test, the learned Judge directed the Board to arrange immediately for review, evaluation and re-assessment of the answer scripts of all the examinees within six weeks from April 12, 1983, the date of the judgment of the learned Judge. The learned Judge by his said judgment also dismissed the application of the Board praying for sanction u/s 340, Cr. P. C. against one Sukhendra Nath Chatterjee, the father of one Prosenjit Chatterjee, an added writ petitioner, for swearing a false affidavit.

16. Being aggrieved by the said judgment of the learned Judge, these appeals have been preferred by the Board and the State of West Bengal.

17. It has been urged by Mr. Arun Prokash Chatterjee, learned Senior Standing Counsel and Mr. Naranarayan Gooptu, learned Senior Government Pleader appearing on behalf of the Board and the State of West Bengal respectively, that in the writ petition no prima facie case has been made out by the writ petitioners justifying the issuance of the Rule Nisi. Our attention has been drawn to the allegation of the writ petitioners that the first result of the Joint Entrance Examination was published on June 30, 1982, but the same was hurriedly withdrawn for republication later on. It is submitted on behalf of the appellants that there is nothing to show in the writ petition at whose instance and at what place the publication was made and withdrawn. Again, the allegation as contained in para 15 of the writ petition, which has been quoted above, to the effect that in certain selected cases grace marks have been given to the tune of

sixty in number, suffers from vagueness and ambiguity. Further, it is submitted that no reason has been given in the writ petition why the Board has not been properly constituted according to law and why its constitution is illegal and invalid. Our attention has also been drawn to the fact that almost all the paragraphs of the writ petition including those containing the above allegations have been affirmed by the writ petitioner Jayanta Banerjee, as true to his knowledge and submissions. It is submitted that such affirmation can hardly be said to be a proper one.

18. In our opinion, there is much substance in the above contentions of the appellants, A writ petitioner is required to give all particulars and the basis of the allegations in support of the prayer for the issuance of the Rule. A mere allegation without any material in support of the same will not entitle a writ petitioner to ask for any assistance from this Court, for, otherwise, any unsuccessful candidate in any examination may file a writ petition alleging that the answer scripts have not been properly assessed by the examiners or that grace marks have been given to a selected few of that the constitution of the body or authority conducting the examination is illegal and invalid without disclosing any basis for such allegations. On such vague allegations unsupported by any material, the Court will refuse to entertain a writ petition. It is, however, contended by Mr. Sushanta Kumar Chatterjee, learned Advocate appearing on behalf of the writ petitioners that as it is a public interest litigation, mere allegations will be sufficient for the issuance of a Rule and the authorities concerned will be required to produce all relevant materials and records to disprove the allegations. We are unable to accept this contention. It is not necessary for us to consider whether in a public interest litigation mere allegations without anything more would justify the Court to entertain a writ petition and issue a Rule Nisi thereon, for, in our opinion, the present proceeding cannot be equated with a public interest litigation. The learned Judge also thinks that the proceeding that has been started on the writ petition is a public interest litigation. In support of that finding, the learned Judge has referred to the following observation of the Supreme Court in *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, :

"Where judicial redress is sought of a legal injury or legal wrong suffered by a person or class of persons who by reason of poverty, disability or socially or economically dis-advantaged position are unable to approach the Court and the Court is moved for this purpose by a member of a public by addressing a letter drawing the attention of the Court to such legal injury or legal wrong, the Court would cast aside all technical rules of procedure and entertain the letter as a writ petition on the judicial side and act upon it."

19. The learned Judge has also referred to similar observations made by the Supreme Court in *S.P. Gupta Vs. President of India and Others*, . The principles which have been laid down in the above observation of the Supreme Court do not apply to the facts and circumstances of this case. The writ petitioners are

themselves aggrieved and they have themselves come to this Court. There is, therefore, no question that the writ petitioners are unable to approach the Court by reason of their poverty, disability or socially or economically dis-advantaged position. The said observation of the Supreme Court will only apply to a person or class of persons who are unable to seek judicial redress of the legal injury or legal wrong suffered by them, on account of their poverty, disability etc. The scope of the said observation of the Supreme Court cannot be extended to and applied for the benefit of persons who are neither poor nor socially or economically in a disadvantaged position. It is not that whenever any Government action involving the members of the public or a class of person is challenged in a Court of law, it will be considered as a public interest litigation. It has not been ruled by the Supreme Court in the above decisions that all litigations against the Government or any statutory body or authority in a representative capacity under Order I, Rule 8, C. P. C. are public interest litigations. The scope and extent of a public interest litigation as laid down by the Supreme Court in the above decisions are very limited and to extend the scope of such public interest litigation beyond limit will, in our opinion, upset the judicial system. We are, therefore, of the view that the present proceeding under Article 226 of the Constitution does not come within a measurable distance of public interest litigation within the meaning of the above decisions of the Supreme Court. The contention of the writ petitioners in this behalf seeking to justify the vagueness of the allegations and the absence of materials in support of the same on the ground that it is a public interest litigation, is without any substance whatsoever and is rejected. We are, therefore, of the view that the writ petitioners have failed to make out a prima facie case in the writ petition justifying the issuance of a Rule.

20. The first question that we would like to consider relates to the challenge of the writ petitioners to the legality and validity of the constitution of the Board and the rules framed and the Sub-committee set up by it. It has been already noticed that by a Government order dated April 23, 1962, the Board was constituted for conducting the Joint Admission Test and it was directed to be an official body with full power to operate rules and procedure to be evolved by the Board with necessary staff to be appointed by the Board. That order was passed by the Government as the Bengal Engineering College, Sibpore, the Regional Engineering College, Durgapur and the Jalpaiguri Engineering College agreed to have a Joint Admission Test to be conducted by the Board to be constituted with the heads of those institutions or their nominees and a representative of the Education Department, Government of West Bengal. Subsequently, the College of Engineering and Technology, Jadavpur University also became a member of the Board. By a subsequent Government order, dated September 16, 1970, it was directed that from the Session 1971-72, selection of candidates for admission to the technical courses of certain Technological Colleges would be made by the Board for admission to Engineering Degree Colleges. By order dated Feb. 17, 1972, the Board was directed to hold Joint Entrance Examination of candidates

for admission in the Pre-medical course in Dental and Medical Colleges in West Bengal from the 1972-73 Session. From time to time, the constitution of the Board was amended by Government orders and, ultimately, by the impugned Government order dated July 7, 1981, the Board was entrusted with the duty of selection of candidates for admission to Medical Degree Colleges and Medical and Technological Degree Colleges. By this order, the constitution of the Board was also amended because of the inclusion of the Medical Degree Colleges and Technological Degree Colleges.

21. The contention of the writ petitioners is that the impugned Government order dated April 7, 1981 constituting the Board is ultra vires Section 52 (a) of the Calcutta University Act, 1979 and Article 154(2) of the Constitution, Section 52 (a) of the Act runs as follows :

"52. Subject to the provisions of this Act and the Statutes, Ordinances may be made to provide for all or any of the following matters :

(a) The admission of students to the University and the colleges affiliated to or recognised by it and their enrolment as such."

Article 154 of the Constitution provides as follows :

"154(1). The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this constitution.

(2) Nothing in this article shall-- (a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor."

22. It is urged on behalf of the writ petitioners that as by Section 52 (a) of the Calcutta University Act, the function of admission of students to the University and colleges affiliated or recognised by it and their enrolment as such has been conferred on the University, the Governor or the State Government had no authority to constitute the Board for the purpose of admission of candidates to Engineering Medical and Technological Degree Colleges and that, accordingly, the constitution of the Board is ultra vires Article 154 of the Constitution. It is also submitted that although under Article 162 of the Constitution, the executive power of the State extends to matters with respect to which the Legislature of the State has power to make laws, yet Article 162 having been made expressly subject to the provisions of the Constitution. Article 154(2) prevails and the Government is debarred from usurping the function of admission of students in the Engineering, Medical and Technological Degree Colleges by the constitution of the Board in violation of the provision of Article 154(2) read with Section 52 (a) of the Calcutta University Act.

23. It is, however, submitted by Mr. Arun Prokash Chatterjee that Article 154(2)

applies only in relation to any existing law. "Existing law" has been defined in Clause (10) of Article 366 of the Constitution as meaning any law, Ordinance, order, bye-law, rule or regulation, passed or made before the commencement of the Constitution by any legislature, authority, or person having power to make such a law, Ordinance, order, bye-law, rule or regulation. It is contended that the Calcutta University Act, 1979 is not an existing law within the meaning of Clause (1) of Article 366 and, as such, Article 154(2) is not applicable.

24. A similar question arose before the Supreme Court in the State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc., . In that case, the question was whether the Entrance Test prescribed by the Government notification dated July 23, 1970, for selection of candidates in four medical colleges run by the State in the Andhra area was justified in law or not u/s 2 (h) of the Andhra University Act, 1926, the Academic Council of the University was conferred with certain powers including the power to make regulations regarding the admission of students to the University or prescribing examination to be recognised as equivalent to University examination or the farther qualifications mentioned in Sub-section (1) of Section 33 for admission to the degree courses of the University. u/s 33 of the said Act no student was eligible for admission to a course of study qualifying for admission to a post-matriculation university examination unless he had passed the examination prescribed as qualifying for admission to such course or an examination recognised by the Academic Council with the previous sanction of the State Government as equivalent thereto and possessed such further qualification, if any, as might be prescribed. It was contended on behalf of the unsuccessful candidates before the Supreme Court that it was Academic Council of the University which was competent to prescribe qualifications for admission into all degree courses in the University and it was not for the Government to substitute itself for a statutory Academic body and test the academic standards of candidates seeking admission into the Integrated M. B. B. S. course by the notification dated July 23, 1970. In overruling the said contention, the Supreme Court observed as follows (at pages 2563-64) :

"The above provisions of law do not make it incumbent upon the Government to make their selection in accordance with the marks obtained by the applicant-candidates at the qualifying examination. Obtaining 50% of the marks at the qualifying examinations was the first hurdle to be crossed by any candidate before he could submit an application for admission into a medical college. The Government which ran the colleges had the right to make a selection out of a large number of candidates and for this purpose they could prescribe a test of their own which was not against any law. Merely because they tried to supplement the eligibility rule by a written test in subjects with which the candidates were already familiar, their action cannot be impeached nor was there anything unfair in the test prescribed. The test prescribed by the Government must be considered in the light of a second hurdle for the purpose of a screening to find out who of all the candidates applying should be admitted and who should be rejected. Merely because the University had made regulations regarding the

admission of students to its degree courses, it did not mean that any one who had passed the qualifying examination such as the P. U. C. or H. S. C. was ipso facto to be entitled to admission to such courses of study. If the number of candidates applying for such admission far exceeds the number of seats available, the University shall have to make its choice out of the applicants to laid out who should be admitted and if instead of judging the candidates by the number of marks obtained by them in the qualifying examination the University thinks fit to prescribe another test for admission no objection can be taken thereto. What the University can do in the matter of admissions to the degree courses can certainly be done by the Government in the matter of admission to the M. B. B. S. course."

In the instant case, no rules or regulations have been framed by the Calcutta University u/s 52 (a) of the Act relating to admission of students to Engineering, Medical and Technological Degree Courses. Further, the number of candidates seeking admission in those colleges far exceeds the number of seats available therein. About 36,000 students applied for admission to those colleges in respect of about 2,000 seats. If it is held that as power has been conferred on the University u/s 52 (a) of the Act in regard to admission of students to colleges, the Government cannot regulate such admission by constituting the Board or holding an admission test, it would be disastrous and upset the entire system of education. The candidates seeking admission to these colleges are from different Universities having different standards of education and that is also the reason why an admission test should be held for admitting students of the same standard to Engineering, Medical and Technological Degree Colleges.

25. In *Minor P. Rajendran Vs. State of Madras and Others*, referred to in the decision of the Supreme Court in *Narendra Nath's case* (supra), petitioners challenged the order of the State Government by which rules were promulgated for selection of candidates for admission to a Medical course. These rules inter alia provided for selection and classification of candidates including one for awarding a maximum of 75 marks for extra-curricular activities which had been specified under five heads, It was held that so far as admission was concerned, it had to be made by those who were in control of the Colleges, in that case the Government, because the medical colleges were Government colleges affiliated to the University. Further, it was held that the Government was entitled to frame rules for admission to Medical Colleges controlled by it subject to the rules of the University as to eligibility and qualifications.

26. In our opinion, so long as no rules or regulations are framed by the Calcutta University, the Government is entitled to constitute a Board for the Joint Entrance Examination for admission of candidates to Engineering, Medical and Technological Degree Colleges. The constitution of the Board as has been done by the impugned notification dated April 7, 1981 is not violative of Article 154(2) of the Constitution or Section 52 (a) of the Calcutta University Act. The Government has ample authority to frame rules and regulations for admission to

the above Degree Courses in exercise of its power under Article 162 of the Constitution which finds support from the above decision of the Supreme Court in *State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc.*, . The learned Judge has sought to distinguish Narendra Nath's case by a sweeping observation contained in one sentence that "there was 110 challenge to the competence of the executive to make Government orders providing for selection test for admission in the medical colleges on the ground that the Government order affected or encroached upon the provisions of the Andhra University Act and thereby violating the provisions of Article 154(2) of the Constitution". We are unable to subscribe to the view of the learned Judge.

27. The learned Judge, in our opinion, has misconceived the provision of Article 154(2) of the Constitution. By the impugned order dated July 7 1981, the Governor has not usurped the functions of the Calcutta University conferred on it by Section 52 (a) of the Calcutta University Act, 1979. As the University has not framed any rules or regulations in regard to the admission of students to colleges affiliated or recognised by it, the Governor constituted the Board for admission of students to different Engineering, Medical and Technological Degree Colleges. Even if the University had prescribed rules and regulations relating to admission of students to colleges affiliated to or recognised by it, such rules or regulations can be supplemented by the Government in order to deal with the claim for admission of a large number of students to a limited number of seats available in these colleges. In such circumstances, namely, where the number of candidates applying for admission far exceeds the number of seats available, the University can also hold a second test as has been done by the Board in the instant case. Adopting the language of the Supreme Court in *State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc.*, , it may be said in the instant case also, that what the University can do in the matter of admission to the Engineering, Medical and Technological Degree Colleges can certainly be done by the Government or the Board constituted by it in the matter of admission to those colleges. The learned Judge, in our opinion, was not at all justified in not relying upon the decision in Narendra Nath's case (supra) on the ground the Government order in that case was not challenged as violating the provision of Article 154(2) of the Constitution. In our view, when upon a challenge made to a governmental action under certain facts and circumstances, the Supreme Court lays down the principles of law either upholding or setting aside such governmental action, the principles of law laid down by the Supreme Court will be binding on all Courts in regards to a similar action of the Government under similar facts and circumstances. It will not be permissible for the Courts not to apply such principles of law on the ground that the challenge of the governmental action was not made before the Supreme Court as violating a particular provision of law. It is true that in Narendra Nath's case (supra), Article 154(2) was not a ground for challenge to the legality of the admission test held by the Government. In the first place, Article 154(2) is not applicable to the holding of admission test by the Government and, secondly, even assuming that

Article 154(2) had some application, it must be presumed that in laying down the principles of law in Narendra Nath's case (supra), the Supreme Court had in its mind Article 154(2).

28. In this connection, we may refer to a later decision of the Supreme Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, . In that case, the Regional Engineering College, Srinagar sponsored by the Government of India was administered and managed by a Society registered under the Jammu and Kashmir Registration of Societies Act, 1898. The Society laid down certain rules and procedures for admission of students to the said college. The principal contention that was advanced before the Supreme Court was, inter alia, that the Society acted arbitrarily in the matter of granting admission, first by ignoring the marks obtained by the candidates at the qualifying examination; secondly, by relying on viva-voce examination as a test for determining comparative merits of the candidates. In overruling the said contention Bhagwati, J. observed as follows (at page 500) :

"The entrance test also facilitates the assessment of the comparative talent of the candidates by application of a uniform standard and is always preferable to evaluation of comparative merit on the basis of marks obtained at the qualifying examination, when the qualifying examination is held by two or more different authorities, because lack of uniformity is bound to creep into the assessment of candidates by different authorities with different modes of examination. We would not, therefore, regard the procedure adopted by the Society as arbitrary merely because it refused to take into account the marks obtained by the candidates at the qualifying examination, but chose to regulate the admissions by relying on the entrance test,"

29. We are, therefore, of the view that Article 154(2) of the Constitution has no manner of application to the facts and circumstances of the case, and that by constituting the Board for holding the Joint Entrance Examination for admission to Engineering, Medical and Technological Degree Colleges by the impugned Government order dated July 7, 1981, the provision of Section 52 (a) of the Calcutta University Act. 1979 was not violated. The constitution of the Board was, accordingly, quite legal and valid and the contention of the writ petitioners that the impugned Government order dated July 7, 1981 is ultra vires Article 154(2) of the Constitution read with Section 52 (a) of the Calcutta University Act is without any substance whatsoever. In our opinion, the Joint Entrance Examination is not only desirable but is a necessity for admission of students to the Engineering. Medical and Technological Degree Colleges in view of the fact that the number of candidates applying for admission far exceeds the seats available in those colleges. The view which We take, finds support from the above decisions of the Supreme Court.

30. The next question that arises for our consideration is whether the Board had authority to set up and constitute the Confidential Sub-Committee. It has been held by the learned Judge that the formation of the Confidential Sub-committee

is wholly illegal and unauthorised as the impugned Government order dated July 7, 1981 did not provide for formation of such Confidential Sub-committee. Farther, it has been held that the delegation by the Board to the Confidential Sub-committee the power to consider and finalise the result of the candidates and the adoption by the Board of the resolution dated July 3, 1981 of the Confidential Sub-Committee recommending addition of 50 marks in Biology and 25 marks in Mathematics were illegal and without jurisdiction.

31. It has been earlier noticed that by the Government order dated April 23, 1962, the Board was constituted for conducting the Joint Admission Test and it was directed to be an official body with full power to operate rules and procedures to be evolved by the Board with necessary staff to be appointed by the Board. The Board was, therefore, authorised to frame rules and procedures for the purpose of such Joint Admission Test. The Board was, therefore, competent to constitute Sub-committees and, accordingly, the constitution of the Confidential Sub-committee was quite within the authority of the Board. The learned Judge has referred to the impugned Government order dated July 7, 1981 for the purpose of showing the absence of any authority of the Board to constitute a Confidential Sub-committee, It is indeed true that in the impugned Government order, the Board was entrusted with the duty of selection of candidates for admission to Medical Degree Colleges and Engineering and Technological Degree Colleges without any provision for laying down the rules and procedures for making such selection. But there can be no doubt that when power is conferred on an authority to do a particular act, it must be deemed that such power also includes the power that will enable the authority to evolve ways and means and to frame rules, regulations and lay down procedures to do that act. It is unthinkable that without laying down rules and procedures and division of functions by setting up of Sub-committees, whether Confidential or otherwise, the Board can discharge the duty entrusted to it by the impugned Government order. The contention of the writ petitioners in this regard is so absurd on the face of it that to uphold the same would be to lay down that the Board cannot also appoint examiners for assessing the answer scripts of the candidates as it has Dot been authorised to do so by the impugned Government order. The finding of the learned Judge that the formation of the Confidential Sub-committee is wholly illegal and unauthorised cannot be supported on any legal principle. Consequently, the finding of the learned Judge that the delegation by the Board to the Confidential Sub-committee of the power to consider and finalise the result of the Joint Entrance Examination (sic) is equally untenable.

32. We are also unable to subscribe to the view of the learned Judge that the delegation by the Board to the Confidential Sub-committee of the power to consider and finalise the result of the Joint Entrance Examination (sic) is equally untenable.

33. We are also unable to subscribe to the view of the learned Judge that the Board was not justified in adopting the resolution of the Confidential Sub-

committee dated July 3, 1982 recommending the addition of 50 marks in Biology and 25 marks in Mathematics. It has been observed by the learned Judge that the said resolution of the Confidential Sub-committee is wholly illegal and arbitrary inasmuch as the selection test is not an ordinary examination and the question of passing in the said examination does not arise. Further, the learned Judge observes that it, is essentially a competitive test and the selection is to be made strictly on the basis of merit and by the yard-stick of the marks obtained by the candidates in the Joint Entrance Examination. Accordingly, it has been held by the learned Judge that the formation of such Confidential Sub-Committee and also the resolution adopted by the Confidential Sub-Committee on July 3, 1982, were arbitrary and illegal and also discriminatory as the same frustrates the very purpose of the merit test.

34. The learned Judge has, however, completely overlooked that as grace-marks had been given to all candidates at flat rates, namely, 50 marks in Biology and 25 marks in Mathematics, the position of each candidate in the merit list remained the same. We have already noticed the circumstances under which the Confidential Sub-Committee recommended giving of grace marks to all candidates. In our opinion, the Confidential Sub-Committee had the authority to recommend the giving of grace marks to all candidates and the Board had also the authority to adopt and approve of such recommendation of the Confidential Sub-Committee. Whether grace marks should be given or not is completely within the domain of the authority of the Board and, we are afraid, this Court in a proceeding under Article 226 of the Constitution has no jurisdiction to question the propriety of the giving of grace marks which did not change the positions of candidates in the merit list. We are, therefore, unable to accept the said findings of the learned Judge.

35. It has been observed by the learned Judge that the resolution of the Board dated Nov. 21, 1981 constituting the Confidential Sub-Committee has not been entered in the Minute Book inasmuch as a loose sheet of paper containing the said resolution was produced before the learned Judge. This observation of the learned Judge is not correct. The Minute Book containing the said resolution was produced before us on behalf of the Board. It is not disputed that the said Minute Book was also produced before the learned Judge.

36. The writ petitioners have also challenged the validity of the rules framed by the Board for the Joint Entrance Examination, 1982 on the ground that such rules have not provided for any post-publication scrutiny or for review of the answer scripts, and that they have conferred arbitrary and unreasonable power on the Board to send the result of the Joint Entrance Examination to the colleges and to the Central Selection Committee after holding the selection test of the candidates. It is also the contention of the writ petitioners that as by the impugned Government order, the Board has been entrusted with the duty of selection of candidates for admission to the above Degree Colleges, the Board should have framed rules for effectively and properly discharging its functions in

the matter of holding the selection test and in publishing the result including the preparation of the merit list, but the Board cannot by framing rules delegate some of its essential functions to the Central Selection Committee, the formation of which is totally invalid being in contravention of the powers conferred by the impugned Government order.

37. The above contentions of the writ petitioners have been upheld by the learned Judge. It has been held by the learned Judge that the rules framed by the Board which provide that there will be no post-publication scrutiny or review of answer scripts, nor the result would be published, is arbitrary and unreasonable and, accordingly, invalid and unenforceable. In coming to the said finding, the learned Judge has placed reliance upon a decision of the Bombay High Court in *Paritosh Bhupeshkumar Sheth and Others etc. Vs. The Maharashtra State Board of Secondary and Higher Secondary Education, Pune and Another*, and also a decision of the Supreme Court in *Chief Settlement Commissioner, Rehabilitation Department, Punjab and Others, etc. Vs. Om Prakash and Others etc.*, wherein it has been observed that in our constitutional system, the central and most characteristic feature is the concept of the rule of law, which means, in the present context, the authority of the Law Courts to test all administrative actions by the standard of legality.

38. The rules framed by the Board for the Joint Entrance Examination, 1982 *inter alia* provides as follows :

"It should be noted that the Board is in no way responsible for admission to the constituent colleges. The Board only provides the results of the Entrance Examination in the Colleges and Central Selection Committee and the final selection rests with them. The Board does not publish the result.

The Board does not communicate the result to any individual candidate and does not have any provision for post-publication scrutiny and review and hence will not entertain any such application."

We should not lose sight of the fact that in the instant case, the Joint Entrance Examination is an admission test and not a qualifying examination like the Secondary, Higher Secondary or Degree Examinations. There is, in our opinion, a good deal of difference between an admission test and a qualifying examination. Whereas in qualifying examinations, there may be provision for review or post-publication scrutiny, but in admission tests it is not feasible to provide for the same. On the basis of the result of the Joint Entrance Examination, a candidate will be admitted to the Engineering, Medical or Technological Degree Colleges; such admission will have to be made within a particular date. If after the admission test, review or post-publication scrutiny of answer scripts has to be made, it will be difficult, if not almost impossible to complete the work of admission and, consequently, the academic sessions for the Degree Courses cannot be started within the due date and completed within the prescribed period. The assessment of answer scripts and publication of the result of about

36,000 candidates will normally take more than a couple of months. The admission test, that is to say, the Joint Entrance Examination in the instant case, has to be held at a particular time of the year depending upon the date of holding of the qualifying examination which is the Higher Secondary Examination. The post-publication scrutiny or review will undoubtedly take some time, the length of which will depend upon the number of applicants. After the result of the admission test is published, some time has to be given to the candidates for making applications for review or post-publication scrutiny, as the case may be. If 10,000 candidates apply, it will of course take a considerable length of time and, so long as the result of review or post-publication scrutiny of such applicants is not published, the selection of candidates for admission will have to be kept in abeyance. This will mean a considerable delay in starting the academic session for degree courses beyond the due date and the courses will not be finished. But this will not be the case with qualifying examinations like the Secondary, Higher Secondary and Degree Examinations, for, in these cases, there is no question of admission or the starting of the academic session within a due date. In our opinion, therefore, it cannot be said that as the rules framed by the Board for the Joint Entrance Examination, 1982 have not provided for review or post-publication scrutiny, they are arbitrary or unreasonable, as held by the learned Judge.

39. In Paritosh Bhupeshkumar's case of the Bombay High Court Paritosh Bhupeshkumar Sheth and Others etc. Vs. The Maharashtra State Board of Secondary and Higher Secondary Education, Pune and Another, , the examination that was challenged was the 12th Standard Examination and not any examination for admission. The learned Judge has placed reliance upon an observation made in the said decision to the effect that an examinee is entitled to have his papers correctly and properly evaluated which right can be spelt out from the very power and function of holding examinations entrusted to the Board under the Maharashtra Secondary Education Boards Act, 1965. It has, however, been not laid down in the said decision that where the rules of examination do not provide for review or post-publication scrutiny, such rules will be invalid. All that has been held in that case is that an access of the student to the answer books would enable him to verify : (1) if the papers are his own, and (2) supplementary answer papers are duly tagged, and (3) all answers are evaluated, and (4) totals are correct, and (5) marks of his practicals or internal assessment are included therein, and (6) his adverse results are not due to any error or manipulations. It has been observed that an inspection should be given to a candidate of his answer scripts for the above purposes. We fail to understand how on the basis of this decision of the Bombay High Court, the rules framed by the Board for the Joint Entrance Examination, 1982 can be held to be unreasonable, arbitrary or invalid. We are not at all impressed with the reasoning of the learned Judge in support of his finding that the rules framed by the Board are invalid.

40. There is also no substance in the contention made on behalf of the writ

petitioners that the Board had no authority to send the result of the Joint Entrance Examination to the Central Selection Committee. It may be stated here that it is the case of the Board that the Central Selection Committee has not been constituted by it but by the constituent colleges. Even assuming that the Central Selection Committee has been set up by the Board, no exception can be taken to the Board communicating to such committee the result of the examination. Much reliance has been placed on behalf of the writ petitioners upon the impugned Government order dated July 7, 1981 in support of their contention that the Board has not performed its duty in making the selection itself. We have referred to the different Government orders in regard to the constitution of the Board and the powers conferred on it. It is true that by the Government order dated July 7, 1981, the Board has been entrusted with the duty of selection of candidates for admission to the Engineering, Medical and Technological Degree Colleges. The holding of an examination for the assessment of merits of the candidates for admission is the most important aspect of selection. The Board holds the examination and prepares the merit list on the basis of such examination and sends the same to different colleges and the Central Selection Committee for final selection. It cannot, therefore, be said that the Board has not performed its duty in the matter of selection of candidate as enjoined by the impugned Government order. The very name of the Board-- "The West Bengal Board of Examination for admission to Engineering, Medical and Technological Degree Colleges" suggests that its function is to hold the examination for admission to the said degree colleges. In any event, it is not correct to say that the Board has not performed its duty in the matter of selection of candidates as contended on behalf of the writ petitioners and as held by the learned Judge. There is no substance in such contention.

41. Now we come to the most important question as to whether the Board has given grace marks to a selected few candidates of its choice arbitrarily. It was contended on behalf of the writ petitioners before the learned Judge that if the answer scripts as well as tabulation sheets, selection papers and connected mark sheets were produced, it would be evident that there had been gross injustice, unfairness, arbitrary discrimination, undue favouritism and sacrificing of laws and procedures of a fair examination system to the prejudice and injury of the students in general including the writ petitioner, Jayanta Banerjee. We have already noticed the case of the Board that it has given grace marks to all candidates at flat rates, namely, 50 marks in Biology and 25 marks in Mathematics. In the affidavit-in-opposition affirmed on behalf of the Board by Dr. Arun Kumar Seal, and Dr. P. K. Roy, it has been denied that grace marks have been given to a selected few. The learned Judge is not correct in proceeding on the basis that the averment made in para 15 of the writ petition that grace marks have been given to some selected candidates has not been denied by Dr. Arun Kumar Seal and Dr. P. K. Roy in their respective affidavits-in-opposition. Further, the learned Judge is also not right in accepting the submission made on behalf of the writ petitioners that on an inspection of tabulation papers of the

successful and unsuccessful candidates, merit cards and the answer scripts, it is nowhere to be found that the grace marks at flat rates have been given as alleged by the Board. It has been observed by the learned Judge that no authentic merit list has been produced before him bearing the signatures of all fine members of the Board, but only cyclostyled list has been produced. In making that observation, the learned Judge has made a mistake in thinking that the merit list that was produced before him was a cyclostyled list and not the original list. The said list has been produced before us and it is the original merit list containing the signature of Dr. P. K. Roy, the member Secretary and Officer-in-Charge of the Board. It has been already stated that the resolution of the Confidential Sub-Committee to the giving of grace marks to all candidates was taken on July 3, 1982, that is, after the examination of the answer scripts and the preparation of the tabulation papers and accordingly, neither answer scripts nor the marks in the tabulation sheets could show the giving of grace marks. But in each tabulation book containing the tabulation sheets, there is a written note about the giving of grace marks. Thus each tabulation book containing tabulation, sheets of candidates for admission in the Medical Colleges, there is a written note on the first sheet that 50 marks to be added to the tabulated marks of Biology, raising the total marks of all as resolved in the meeting of the Confidential Sub-Committee. There are similar notes about the giving of grace marks in Mathematics in each tabulation book of candidates for admission in the Technological and Engineering Colleges. When any educational authority decides to give grace marks, such decision is generally made after the answer scripts are examined and, therefore, the answer scripts cannot show the giving of such grace marks. It has been commented by the learned Judge that the way and the hesitating manner in which the merit list and the tabulation sheets were produced after repeated directions, caused serious doubts as to the genuineness and authenticity of the cyclostyled list produced before the learned Judge. Further, it has been observed that there is no documentary evidence produced before the learned Judge in spite of repeated asking by him to prove that the cyclostyled list has been cyclostyled or copied from the original list which had been placed before the Board at its meeting on July 7, 1982 approved by the members of the Board present in the said meeting. This comment of the learned Judge has no factual basis. The original merit list signed by Dr. P. K. Roy, the member-Secretary and Officer-in-Charge of the Board and also the Minute Book containing the resolution of the Board dated July 7, 1982 had been produced before the learned Judge. They have also been produced before us. It is also not correct to say that the merit list, tabulation sheets etc. were produced before the learned Judge in a hesitating manner or after repeated directions giving rise to serious doubts as to the genuineness and authenticity of the cyclostyled list. In this connection, we may refer to the order of the learned Judge dated Feb. 4, 1983 which shows that the Board produced the records and allowed inspection to the learned Advocates appearing on behalf of the writ petitioners. Further, the records were produced, by the Board within a reasonable time as directed by the learned Judge. It is difficult to understand why the learned Judge has made She

above remarks against the Board and also against Dr. Arun Kumar Seal. Principal of Bengal Engineering College, Sibpore and Dr. P. K- Roy, a Professor of that College who had affirmed the affidavits-in-opposition on behalf of the Board as its Chairman and Secretary respectively.

42. Be that as it may, after careful examination of the records and the resolution of the Board and of the Confidential Sub-Committee, we are satisfied that there is no basis whatsoever in the allegation of the writ petitioners that grace marks have been given only to a selected few. In order to show the unfairness and the arbitrariness of the examination held by the Board, the learned Judge has discussed the examination of answer scripts of certain added writ petitioners. The first case that has been referred to by the learned Judge is that of the added writ petitioner, Nirupam Ghosh. In his affidavit, it has been alleged that his name was published in the merit list and he secured 249 marks out of 500 marks in the Joint Entrance Examination, but he was not supplied with any application form for admission. It has been alleged that if the grace marks of 50 had been added to the Biology paper of the said Nirupam Ghose, his position would be much higher up in the list of successful candidates, but in spite of the said resolution of the Confidential Sub-Committee, grace marks were not given to him nor was the same added to the total marks obtained by him in the Biology paper. In order to verify the said allegation of Nirupam Ghose and also the observation of the learned Judge, we looked into all the answer scripts of the said Nirupam Ghose and noted the marks obtained by him on different subjects as follows :

Subjects	Full Marks
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English --	44 100
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Physics --	9 100
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Biology --	99 200
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Chemistry --	47
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	100
--	-----

	199
--	-----

	500
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In the merit list, the total marks secured by him was shown as 249, that is to say 199-50 (grace marks) 249. Therefore, the allegations of the said Nirupam Ghose are untrue,

43. Next is the case of the added petitioner, Goutam Das. The learned advocate for the writ petitioners has drawn our attention to the Chemistry paper of Goutam Das where, on the front page, the total marks obtained by him has been recorded as 50, whereas he has, as a matter of fact, obtained the total marks of 52 in that paper which has been recorded on the back of the answer script. We have looked into the answer script of Goutam Das in Chemistry. It appears that

be answered question 4 (ka) in the beginning, but he did not complete the same. He got 3 marks. Towards the end of the answer script, he answered the remaining portion of 4 (ka), but he was given Zero by the Examiner. Thereafter, he answered 4 (kha) and he got 2 marks. This additional 2 marks was missed and the total marks as mentioned in the front page has been recorded as 50. All the marks were, however, added on the back of the answer script correctly and the total was 52. In the merit card, the aggregate marks in all the papers has been correctly recorded as 204 on the basis of allotment of 52 marks in the Chemistry paper, otherwise the aggregate marks would have been 202. In our opinion, no wrong has been committed by the Board and the learned Judge has placed reliance upon the case of Goutam Das unnecessarily.

44. Much comment has been made by the learned Judge in respect of the answer scripts of the added petitioner Gunadhar Maity. It has been observed by the learned Judge that from the answer scripts produced in Court, it appears that there are deletions of marks in the answer scripts produced in Court, it appears that there are deletions of marks in the answer scripts without the initial of any authority and there is no evidence of any re-examination. We have ourselves looked into the answer scripts of Gunadhar Maity. It appears that in the Chemistry answer paper certain changes in the allotment of marks have been made by the Examiner, but all these changes have been initialled by the Examiner. The learned Judge is, therefore, not right in saying that the deletion of marks in the answer scripts of Gunadhar Maity has not been initialled by any authority. Further, his position was through mistake recorded as 341, but subsequently it was corrected in the merit card issued to him where his position was recorded as 741. This has been relied upon on behalf of the writ petitioners in support of their case of unfairness and arbitrariness in the matter of the examination held by the Board. We have ourselves ascertained as to whether his position was really 741 or not and we are satisfied from the records produced in Court that this position is really 741 and not 341 as wrongly recorded through mistake. The candidates who have been placed in the positions of 341 up to 740 have secured more marks than Gunadhar Maity. It is, therefore, a case of pure mistake. Such mistakes are bound to happen where the number of candidates is more than 36,000.

45. One instance of an alleged illegal admission has been relied upon by the learned Judge. It has been observed that although one Enamul Haque obtained in the aggregate 216 marks in the selection list, the total marks obtained by him has been shown as 266. One of the subjects of Enamul Haque was Biology and in the merit card, the aggregate marks obtained by him has been rightly shown as 266, for if the grace marks of 50 in Biology be added to the total marks of 216, it comes to 266. It, therefore, shows that grace marks have been given to all candidates.

46. In course of hearing of the appeal, we asked Mr. Sushanfa Kumar Chatterjee, learned Advocate appearing on behalf of the writ petitioners to find out from the

records any case where grace marks have not been given by the Board. Mr. Chatterjee cited a few cases of candidates, both successful and unsuccessful, but in all these cases it was found that grace marks have been given. In spite of his best endeavour, the learned Advocate failed to cite a single instance where the Board has either committed any illegality or has not taken into consideration the grace marks in recording the positions of the candidates in the merit list. In other words, the writ petitioners have miserably failed to establish, even prima facie, their allegation that grace marks have been given to a selected few. The allegation is baseless. The finding of the learned Judge that grace marks have been given arbitrarily only to a few selected candidates has no basis whatsoever. The contention of the writ petitioners in this regard is overruled.

47. It has been already noticed that in the writ petition, one of the allegations of the writ petitioners is that the first result of the Joint Entrance Examination was published on June 30, 1982 and the list was hurriedly withdrawn for republication later on. The insinuation of this allegation is that the result was subsequently changed by giving grace marks to a few candidates. It has been already pointed out that the allegation is vague. It has been denied by the Board that any list was published by it on June 30, 1982. It is the case of the Board that it does not publish the result of the Joint Entrance Examination and, accordingly, there was no scope for publishing the result on June 30, 1982. Further, the case of the Board is that on June 30, 1982, a meeting of the Board was held and, as the result was found to be incomplete, the Board referred the matter to the Confidential Subcommittee asking it to finalise the result and place the same at the adjourned meeting of the Board fixed to be held on July 7, 1982. The Confidential Sub-committee at its meeting held on July 3, 1982 considered the result and recommended the giving of grace marks to all candidates, namely, grace marks of 50 in Biology and grace marks of 25 in Mathematics. There is no reason why we should not accept the case of the Board as made out in the affidavit-in-opposition submitted by Dr. Arun Kumar Seal and Dr. P. K. Roy. In order to substantiate their case that the result was published on June 30, 1982 and, thereafter, hurriedly withdrawn, the learned Advocate for the writ petitioners placed reliance upon a list containing the marks and the positions of candidates, a copy of which has been annexed to the affidavit-in-reply of the writ petitioner Dr. Jitendra Lal Banerjee. There is no indication in the said list that it was published on June 30, 1982. Moreover, the marks and the positions mentioned in the said list have been found to completely tally with the merit list. The learned Advocate for the writ petitioners has not been able to lay his hand on any position or marks which does not tally with the merit list. Even assuming that a list was published and thereafter hurriedly withdrawn on June 30, 1982, that will be of no consequence so long as it is not shown that such list was changed arbitrarily.

48. Our attention has also been drawn to one or two lists of result signed by Dr. P. K. Roy on June 30, 1982. It is submitted on behalf of the writ petitioners that if the result was incomplete on June 30, 1982, how such lists could be prepared

and signed by Dr. P. K. Roy on June 30, 1982. This contention is wholly without any substance. Unless such lists of result were prepared, neither the Confidential Sub-committee nor the Board could be in a position to consider the result for the purpose of finalising the same. Again, one or two lists were dated July 1, 1982. The contention of the writ petitioners is that how after the resolution of the Board passed on June 30, 1982 directing the Confidential Sub-committee to finalise the result and before such finalisation by the said Sub-committee, such lists were prepared on July 1, 1982. This contention is equally devoid of any merit. Such lists might have been prepared for the consideration of the Confidential Sub-committee. All these points have not been taken in the writ petition and the Board did not get any opportunity to deal with the same in its affidavits-in-opposition. Be that as it may, the preparation of the lists either on June 30, 1982 or on any date thereafter, is quite irrelevant and is of no assistance to the writ petitioners. There is, therefore, no basis of the allegation of the writ petitioners that the Board published the result on June 30, 1982, but hurriedly withdrew the same on that date.

49. In order to show the irregularity committed by the Board in the matter of holding the Joint Entrance Examination. We have been shown certain questions set in the examination and the instructions issued by the Board to the examiners. One of the questions that was set in Biological Sciences is "what is Osmosis"? Our attention has been drawn to the instruction given to the examiners on the said question. It appears that some mistake has been committed in the instruction containing the answer to that question. We, however, fail to understand what relevance has it to the allegations made in the writ petition. The mistake is not of the Board, but of the paper setter who issued the instructions. The contention of the writ petitioners that the above fact goes to show carelessness and negligence of the Board in conducting the Joint Entrance Examination is overruled.

50. The learned Judge has in his judgment referred to the marks obtained by some of the writ petitioners numbering eight in the Madhyamik and Higher Secondary Examinations. It has been observed by the learned Judge that although the results of the said writ petitioners show that they are brilliant and meritorious students, yet they failed to have their names listed in the merit list of successful candidates, and has come to the finding that this clearly goes to confirm the allegations made in the writ petition that the answer scripts of the examinees were not properly evaluated nor the merit list was properly prepared strictly on the basis of the performance of the students in the examination, and that the merit list that was published is wholly arbitrary and discriminatory. Even assuming that the said writ petitioners are meritorious and brilliant, in our opinion, the learned Judge was not justified in relying upon the same and in coming to the said finding. If such brilliant and meritorious students were so sure that their answer scripts were not properly assessed, we fail to understand why they did not unconditionally accept the offer of the Board for the re-examination of their answer scripts by an independent set of examiners to be appointed by

this Court. This shows that the writ petitioners had no doubt that their answer scripts were properly evaluated.

51. The learned Judge has made certain remarks against Dr. Arun Kumar Seal and Dr. P. K. Roy, the Chairman and Secretary of the Board respectively. It has been observed by the learned Judge: "It appears that the Chairman of the Board, the respondent No. 4 and also the Officer-in-charge Dr. P. K. Roy both took leading part and acted arbitrarily in the matter of conducting the examination and preparation of the merit list and publication of the same giving enough room for suspicion and arbitrariness" It appears from the discussion made above that the writ petitions are founded on untrue and incorrect allegations which are also vague and misleading. The writ petitioners have miserably failed to establish any of their allegations. They were given ample opportunities to inspect the records of the Board but, even after such inspection, they could not point out any single instance where the Board had acted illegally or arbitrarily. In our opinion, the learned Judge should not have made such remarks against Dr. Arun Kumar Seal and Dr. P. K. Roy, the former being the principal of the Bengal Engineering College, Sibpore and the latter being a Professor of that College. We have not come across any fact against Dr. Arun Kumar Seal and Dr. P. K. Roy giving rise to any suspicion as to their conduct. The remarks of the learned Judge against them are uncalled for.

52. Sri Sukhendra Nath Chatterjee, the father of Prosenjit Chatterjee, one of the writ petitioners had sworn a false affidavit against the Board. The Board made an application u/s 340 of the Cr. P. C. praying for sanction for prosecution. The learned Judge, however, rejected the application. Although there is some substance in the contention made on behalf of the Board that it is a fit case for sanction, we are of the view that as the learned Judge has not acceded to the prayer of the Board for sanction holding that the affidavit was not properly affirmed, we do not feel inclined to interfere with the order of the learned Judge rejecting the said application u/s 340 of the Cr. P. C.

53. Before we part with this case, it may be recorded that Mr. Naranarain Gooptu, the learned Senior Government Pleader has raised certain preliminary objections to the maintainability of the writ petition. We have already held that the writ petitioners have failed to make out a prima facie case for the issuance of a Rule Nisi. Be that as it may, in view of the findings made above, it is not necessary for us to deal with the said preliminary objections raised by Mr. Gooptu.

54. For the reasons aforesaid, the judgment of the learned Judge is set aside, the writ petitions are dismissed and the Rule Nisi is discharged. The appeals are allowed. There will be no order as to costs in any of the appeals.

55. Mr. Bulu Chatterjee, learned Advocate appearing on behalf of the writ petitioners in all the appeals, prays for Certificate under Article 134A Of the Constitution. In our opinion, no substantial question of law of general importance is involved in these appeals which need to be decided by the Supreme Court and,

accordingly, the prayer for Certificates is disallowed.

C.K. Banerji, J.

56. I agree.