CALCUTTA HIGH COURT

Dipa Pal

Vs.

University of Calcutta

Matter No. 224 of 1951

(Bose, J.)

18.02.1952

ORDER

Bose, J.

1. This is an application under Article 226 of the Constitution for an appropriate writ for quashing of an order of cancellation of the petitioner's Bachelor of Arts examination passed by the Vice Chancellor and Syndicate of the University of Calcutta and for direction upon the respondent University to forbear from giving effect to that order. The petitioner was a student of the Murlidhar Girls College at 4, Hindusthan Road, Calcutta. She appeared at the examination for the degree of Bachelor of Arts of the University of Calcutta in 1951 as a non-collegiate student and her roll number in the said examination was Cal F.N. 368 and her seat for the examination was allotted at the said Murlidhar College premises. The case of the petitioner is that she was satisfied with her answers to the questions on which she was examined in the said examination and had reason to believe that she would come out successful, but when the results of the examination were published the petitioner was surprised to find that her name was not included in the list of the successful candidates that was published by the respondent University. The petitioner thereupon made enquiry from the Principal of the Murlidhar College and she came to know that she was reported against to the University Authorities for having adopted unfair means at the said examination. It is alleged that the petitioner does not remember any incident during the examination that might justify anybody to suspect malpractice on her part and neither any Invigilator nor any other person in charge of the examination detected the adoption of any unfair means on the part of the petitioner during the examination. It appears that by a letter dated the 7th June 1951 the Examiner in Philosophy paper No. 1 reported to the Chairman of the Board of Examination in philosophy that he was convinced that two groups of candidates had indulged in foul play and among them was the petitioner. The Chairman of the Board of Examiners forwarded the said letter to the Controller of Examinations on the 20th July 1951 and in forwarding the letter the said Chairman expressed the view that his suspicion in the matter was also very strong. The Examination Board held a meeting on the 23rd July 1951 and appointed by a resolution a sub-committee to consider the cases of candidates who had been reported to have adopted unfair means at the B.A. and B. Sc. examinations 1951. This resolution was confirmed by the Syndicate on the 28th July 1951.

The members of the said sub-committee were Dr. Srikumar Banerjee, Principal A.K. Sen and Principal P.K. Guha. Dr. Banerjee and Mr. Sen were members of the Board of Examiners but Mr. Guha was not a member of the Examination Board. It appears that this sub-committee is known as the Malpractices Committee and it enquires into all kinds of malpractices committed by candidates at the examination hall and it considers all cases reported to it and after due deliberation decides whether there has in fact been any malpractice in any particular case. On 10-8-1951 the Board of Examiners considered and accepted by a resolution the statement of results of the B.A. examination as prepared by the tabulators. On 11-8-1951 the Syndicate confirmed the said resolution and directed the publication of the results and the results were accordingly published on the same date. But the results of the candidates reported against were withheld from publication. On the 20-8-1951 the Principal of the Murlidhar College addressed a letter to the Controller of Examinations in which he pointed out that he had known the petitioner and another candidate whose roll number was Cal F. 677 for some years and that the past conduct and career of the petitioner was such that he could never think that the petitioner could deliberately deviate from the path of rectitude and it was unbelievable that she would adopt any unfair means at the examination. By a letter dated the 31st August 1951 the said Principal was invited to attend a meeting of the Malpractices Committee and it appears that the Principal did attend on the 4th September 1951 and made representations to the effect that the petitioner was a good student and that some other students must have copied from her answer paper. After considering these representations the Malpractices Committee at the said meeting of the 4th September 1951 decided to cancel the examination of the petitioner. On 5-9-1951, the petitioner caused her maternal uncle to write a letter to the Registrar of the Calcutta University in which it was requested that a personal hearing might be given to the petitioner to explain her conduct before any decision might be arrived at by the University Authorities in relation to the charge of her adopting unfair means at the examination. It appears however, that no such hearing was ever granted to the petitioner. The Principal of the Murlidhar College on 7-9-1951 also addressed a personal letter to the Vice-Chancellor in which the Principal set out his view as to how foul play had taken place in the examination and he further pointed put that his own conviction was that the petitioner was incapable of adopting any unfair means and in fact did not adopt any such means or connived at such unfair means being adopted by anybody else. This letter of the Principal was acknowledged by the Personal Assistant of the Vice-Chancellor by a letter dated the 8th September 1951 in which assurances were given that the Vice-Chancellor would personally look into the matter. Thereafter, the Vice-Chancellor reconsidered the matter in consultation with two members of the Malpractices Committee, who were immediately available, and after careful scrutiny of the answer papers and after reconsideration the following final decision was arrived at :

> "We, the Members of the Malpractices Subcommittee have gone very carefully into the case of Dipa Pal and given full and anxious consideration to the Principal's very high eulogy of her conduct and character. At the same time we feel that having regard to the close similarity of several answers extending up to common mistake and common excursions into irrelevant digression we could not completely exonerate her from connivance in respect of her allowing her answer to be copied, if not from positive guilt. We have been constrained to apply the same standards applied in similar cases. In fact, we have been more lenient in this case, only cancelling her examination for this year owing to the special representations of the Principal on her behalf. I also beg to add that we have

been unanimous in our finding.
Sd/- S.K. Banerjee."

2. This decision or finding appears to have been arrived at on 10-9-1951. Thereafter the Vice-Chancellor himself scrutinised the answer papers and accepted the said decision reached by the Malpractices Committee. On 10-9-1951 the Registrar wrote to the Principal of the Murlidhar College communicating the decision of the Vice-Chancellor. The said proceedings before the Malpractices Committee and the Vice-chancellor were thereafter forwarded to the Syndicate and were confirmed by the Syndicate on the 22-9-1951 and the Additional Controller communicated the order of the Vice-Chancellor and the Syndicate to the Principal on that date. As the petitioner appeared as a non-collegiate student, a letter dated 1st October 1951 was addressed to her by the Additional Controller of Examination, in accordance with the usual practice, communicating to her the said decision about cancellation of the examination. It is alleged in the petition that this letter was received by the petitioner on the 12-11-1951.

3. The Act of Incorporation of the University of Calcutta (Act II of 1857) in its preamble states that the University was being established for the better encouragement of Her Majesty's subjects in the pursuit of a regular and literal course of education and the function of the University is to ascertain by means of examination, the persons who have acquired proficiency in different branches of literature, Science and Arts and of rewarding them by Academical Degrees as evidence of their respective attainments, and marks of honour proportioned thereunto. Thus, one of the most important functions of the University is to hold examinations and decide the fates of candidates at such examinations. At the conclusion of every examination, the Examiners declare the name of every candidate whom they shall have deemed entitled to any of the degrees and his proficiency in relation to other candidates (Section 14 of Act II of 1857).

4. The Universities Act (Act VIII of 1904) brought into existence different boards and committees for discharging the different functions of the Universities, and various regulations were framed under the Act for carrying out the purposes for which the Universities were established.

5. Chapter XXV, Clauses 8 (VI) and (VII) of the Regulations in so far they are relevant are as follows : There shall be one examination Board for B. A., B. Sc. and B. Sc. (Tech.) examinations consisting of, (a) The Vice-Chancellor, Chairman (b) Dean of the Faculty of Arts (c) Dean of the Faculty of Science (d) Chairman of the Results Committees (e) Five members appointed by the Syndicate, of whom two shall be selected from amongst the members of the Syndicate, one shall belong to the Post-graduate Department in Arts, one to the Post-graduate Department in Science and one to an affiliated college.

6. The functions of the Examination Board shall be :

(a) To consider the reports of the Results Committees and co-ordinate them.
(b) To modify such results, if necessary in accordance with the principles contained in the Regulations or laid down by the Syndicate.
(c) To consider all cases of breaches of discipline arising in connection with the examination. (d) To forward the results to the Syndicate for publication.

7. The statement made to the Syndicate shall contain confidential information on the change made by the Examination Board and the reasons for the change. (Vii) The proceedings of the Board shall be subject to confirmation by the Syndicate. The Syndicate shall not have the power to modify the results but may refer them back to the Board for reconsideration.

8. Thus, one of the functions of the Board of Examiners is to consider all cases of breaches of discipline arising in connection with the examination but there is no detailed procedure laid down as to how the Board will discharge this function.

9. In cases where breaches of discipline are detected by the Invigilators or other officers present in the examination hall and candidates concerned are expelled from the hall or are otherwise dealt with, question of any enquiry or investigation upon notice to the candidates may not arise. But where no case of breach of discipline is actually detected but subsequently upon examination of the answer papers the Examiners come to entertain suspicion about adoption of unfair means by particular candidate or candidates and the Examination Board has to consider such cases and come to a determination as to the nature of the offence committed and has to apportion the penalty which can properly be inflicted upon the delinquents, it is only fit and proper that the party arraigned should have an opportunity to defend himself and to offer an explanation, if any. To brand a candidate with the stigma of adoption of unfair means at the examination or in other words finding her guilty of dishonesty or misconduct and thereby causing an irreparable injury to the character and reputation of such candidate, without giving him or her any opportunity to explain, is contrary to all notions of justice and good sense. The decision of the Board of Examiners may have very serious and far reaching consequences on the whole career of the candidate concerned. Instances are not rare where candidates branded with the stigma of misconduct at the University Examinations have been denied opportunities to hold important offices in the departments of the Government and elsewhere.

10. It is true that the Board of Examiners is an Administrative Body but it appears to me that when they are conducting enquiries or investigations into cases of misconduct of the candidates they are exercising quasi-judicial functions. They are a "body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals" '*Wood V. Wood*[1]'. at p. 196. As pointed out by Das, J., in the case of 'IN RE, BANWARILAL ROY', 48 Cal WN 766, at p. 800 :

> "A judicial or quasi-judicial act, on the other hand implies more than mere application of the mind or the formation of the opinion. It has reference to the mode or manner in which that opinion is formed. It implies a proposal and an opposition and a decision on the issue."

11. About six years after this observation by Das, J., the Judicial Committee of the Privy Council in the case of '*Nakkude Ali V. Jayratne*', in dealing with the question as to the

[1](1853) 9 Ex 190

circumstances under which a writ of Certiorari can be issued made very similar observations as those made by Das, J., Lord Radcliffe in that case (1951) AC 66 at p. 75 (PC), made the following observation :

"But even in the cases of Certiorari and Prohibition, the English law does not recognize any distinction for this purpose between the regularly constituted judicial tribunals and bodies which while not existing primarily for the discharge of judicial functions, yet have to act analogously to a Judge in respect of certain of their duties. The writ of Certiorari has been issued to the latter since such ancient times that the power to do so has long been an integral part of the Court's jurisdiction. In truth, the only relevant criterion by English law is not the general status of the person or body of persons by whom the impugned decision is made but the nature of the process by which he or they are empowered to arrive at their decision. When it is a judicial process or a process analogous to the judicial, certiorari can be granted."

12. Mr. A.K. Sen the learned Counsel for the respondent University has contended that before an act of a tribunal or body of persons can be a judicial act it is not enough that the tribunal or the body of persons should have legal authority to determine questions affecting the rights of subjects but there must be super-added to that characteristic the further characteristic that the body has the duty to act judicially. There cannot be any doubt as to the soundness of the proposition. The proposition is too well settled to be questioned at the present day, but the difficulty lies in determining with reference to the facts of particular cases and with reference to the provisions of particular statutes whether such a duty to act judicially is cast upon a particular body in respect of certain of their "duties.

13. Mr. Sen referred to the case of '*Franklin V. Minister Of Town and Country Planning*'[2], for the purpose of showing that although the New Town Act, 1946 laid down provisions for an elaborate enquiry it was held that the duties of the Minister were purely administrative and the statute only prescribed certain methods of or steps in discharge of that duty. The object of the enquiry by the Minister was to inform his mind and not to consider any issue between him and the objectors. This decision turned on the construction of the provisions of the particular Statutes which were the subject-matter of consideration before the House of Lords and cannot form a guide to the construction of the Regulation which is before me or for determination of the question whether the Examination Board in deciding about the cases of malpractices adopted by the candidates concerned was under any duty to act judicially. As I have pointed out before the nature of the inquiry and the subject-matter of the Enquiry imply that the Board was under such a duty.

14. The affidavit of the Additional Controller shows that the Malpractice Committee's function is to enquire into all kinds of malpractices committed by students in the Examination Hall. The Committee is usually constituted of eminent and experienced persons and after due deliberations the Committee decides whether there has in fact been any malpractice in any particular case. It is thus clear that the University Authorities have interpreted and understood the duty of the Board to consider cases of breach of discipline

[2](1948) Ac 87

as postulating an enquiry or investigation into the reported cases of malpractice committed during an examination.

15. It is laid down in Maxwell on Interpretation of Statutes that a Statute conferring powers

(judicial) to affect prejudicially the rights of person or property, is understood as silently implying when it does not expressly provide, the condition or qualification that before the power is exercised the person sought to be prejudicially affected shall have an opportunity of defending himself. In the case of '*Reg V. Chancellor and Masters and Scholars Of The University Of Cambridge*'[3]. such a condition was implied in a Statute and as it was found that this condition was not observed, a mandamus was allowed to go against the University for restoration of Dr. Bentley to academical degrees. Similarly in the case of '*Cooper V. Wandsworth Board Of Works*[4]', the condition that no man is to be deprived of his property without his having an opportunity of being heard was implied in construing the 76th Section of the Metropolis Local Management Act. See the judgment of Erle, C.J., at page 417. The observations of Byles, J., are also very pertinent to the question at issue and the relevant portion may be set out hereunder :

> "It seems to me that the Board are wrong whether they acted judicially or ministerially. I conceive they acted judicially because they had to determine the offence, and they had to apportion the punishment as well as the remedy. That being so, a long course of decisions beginning with Dr. Bentley's case and ending with some very recent cases establish that, although there are no positive words in a Statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the Legislature. The judgment of Mr. Justice Fortescue in Dr. Bentley's case, is somewhat quaint, but it is very applicable, and has been the law from that time to the present. He says. 'The objection for want of notice can never be got over. The laws of God and man both give the party an opportunity to make his defense, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God). 'Where art thou? Has thou not eaten of the tree whereof I commanded thee that thou shouldest not eat? and the same question was put to Eve also'.....There has been neither notice of the one sort nor of the other; and it seems to me, therefore, that whether the Board acted judicially or ministerially, they have acted against the whole current of authorities, and have omitted to do that which justice requires and contravened the words of the Statute."

16. In '*Dawkins V. Antrobus*'[5], at page 630, Brett, L.J., made the following observation :

> "In my opinion there is some danger that the Courts will undertake to act as courts of appeal against the decisions of members of clubs whereas the Court has no right to sit in appeal upon them at all. The only question which a court can properly consider is whether the members of the club, under such circumstances have acted ultra vires or not and it seems to me the only question which a court can properly entertain for that purpose are whether anything has been done which is contrary to

[3] 1 Strange 557 : 93 Er 698 [5] (1881) 17 Ch 615

[4] (1863) 143 Er 414

> natural justice, although it is within the rules of a club - in other words whether the rules of the club are contrary to natural justice; etc.....(at page 631) .....The first thing then is whether there was anything contrary to natural justice. If a decision was

come to depriving a gentleman of his position on such a charge as must be made out here, namely that he has been guilty of conduct injurious to the character and interests of the club, in my opinion there would be a denial of natural justice if a decision was come to without his having an opportunity of being heard." (See also '*Hopkins V. Smethwick Local Board*'[6], at page 716, per Lord Esher; '*Ambalal Sarabhai V. Phiroz H. Antia*'[7], and *'M.S. Ezra V. Mahendra Banerjee*[8]',)

17. In the case of *'Fisher V. Keane*'[9], at page 362 (bot.) - 363, the celebrated Master of the Rolls Jessel M.R. in dealing with the powers of a Club Committee to expel a member defined their powers in the following words :

> "They ought not, as I understand it, according to the ordinary rules by which justice should be administered by Committees of Clubs or by any other body of persons who decide upon the conduct of others, to blast a man's reputation for ever perhaps to ruin his prospects for life, without giving him an opportunity of either defending or palliating his conduct. In my opinion upon this ground also the Committee have not acted properly or fairly."

18. In 'LAPOINTE'S CASE', (1906) AC 535, Lord Macnaghten delivering the judgment of the Judicial Committee interpreted Rule 45 of the Rules of the Montreal Police Benevolent and Pension Society as imposing upon the Board of directors the duty to decide the matter judicially. The words in the Rule were "considered" and "determined." The Rule was in the following terms :

> "Rule 45 : Any member entitled by length of service to a gratuity or pension who is dismissed from the force or is obliged to resign, shall have his case considered by the board of directors and his right to such gratuity or pension determined by a majority of the board."

19. Lord Macnaghten observed at page 540 (bot.) : "The Board of directors must bear in mind that they are judges, not inquisitors."

20. In the case of '*Board Of Education V. Rice*'[10], Section 7 (3) of the Education Act, 1902 (2 Ed. VII, Ch 42) was as follows :

> "If any question arises under this section between the local education authority and the Managers of a School not provided by the authority, that question shall be 'determined' by the Board of Education."

21. Lord Loreburn interpretated the duty cast upon the Board by this section as duty to act judicially.

[6](1890) 24 Qbd 712
[7] AIR 1939 Bombay 35
[8]51 Cal Wn 612
[9](1879) 11 Ch D 353
[10](1911) Ac 179

22. The Lord Chancellor made the following observation : (p. 182)

> "Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view. Provided this is done, there is no appeal from the determination of the Board under Section 7, sub-section 3 of this Act. "The Board have, of course no jurisdiction to decide abstract questions of law, but only to determine actual concrete differences that may arise, and as they arise, between the managers and the local education authority. The Board is in the nature of the arbitral tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari."

23. In the present case before me, Mr. Mukherjee the examiner made the complaint of adoption of unfair means by the petitioner, to the Examination Board, the petitioner was the person charged, and the deciding authority to adjudicate upon the charge, was the Malpractice Committee set up by a Syndicate. The charge was misconduct or dishonesty. In the context of these facts, it is difficult to resist the conclusion that the word "consider" in Chapter XXV, Reg. 8 (VI) (c) must necessarily involve and import a decision not merely depending upon opinion but depending upon inquiry or investigation. In the case of 'IN RE PROVASH CH. ROY', 40 Cal 588, the candidates were summoned to attend at the inquiry and there they confessed their guilt. The Enquiring body felt the necessity of summoning the candidates, (page 588 (bottom)).

24. The word "judicial" as has been pointed out in the case of '*Royal Acquarium V. Parkinson*'[11], at page 452, has two meanings –

> "It may refer to the discharge of duties exercisable by a Judge or justices in Court or to administrative duties which need not be performed in Court but in respect of which it is necessary to bring to bear a judicial mind - that is a mind to determine what is fair and just in respect of matter under consideration."

25. In the case of '*Province Of Bombay V. Khusaldas Advani*'[12], Das, J.,

[11](1892) 1 Qb 431 [12]1950 Scr 621
observed that if a statutory authority has power to do any act which will prejudicially affect the subject, then although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final decision of the authority will yet be a judicial act provided the authority is required by the Statute to act judicially.

26. So, even assuming that in the case of an examinee and the Board of Examiners there is only the "Statutory authority and the subject" in the words of Das, J., who are concerned in the proceedings, and the Examiner who reported does not come into the scene, the proceeding can still be a quasi-judicial proceeding. Further as I have pointed out, the duty to act judicially although not expressly conferred by the words of the Statute may be implied from the Statute. Fazl Ali, J., also in 'KHUSALdas ADVANI'S CASE', 1950 SCR 621 (p. 641) observes :

> "There are no express words in Section 3 or any other section to impose such a duty, nor is there anything to compel us to hold that such a duty is implied,"

thereby suggesting that a duty to act judicially can be implied in a Statute in certain circumstances.

27. Mr. Sen has drawn my attention to certain provisions of the Acts governing the University and to certain Regulations of the University for showing that whenever any inquiry is intended to be held in respect of any particular matter it has been so provided in express terms and provision has also been made for giving notice to persons to be affected by the result of the inquiry. Mr. Sen has referred to Section 21 (2) and Section 24 of Act VIII of 1904 (Indian Universities Act) and Rules 7, 8 and 10 of Chapter XXI of the Regulations. It may be noted that these provisions relate to matters of affiliation and recognition of colleges and schools respectively, and it cannot be said that these provisions for notice or inquiry have imposed any duty on the Syndicate to act judicially in respect of such matters.

28. The inquiry envisaged in these provisions resembles the nature of inquiry which was the subject-matter of consideration in 'FRANKLIN'S CASE', (1948) AC 87, and which was held as not partaking of the character of a Judicial inquiry. The question whether a particular power is to be exercised judicially or quasi-judicially or merely in an administrative capacity depends on the nature, scope and effect of the particular power. A mere provision for enquiry or notice does not furnish any conclusive test. As I have pointed out with reference to decided cases that even where there is no provision for enquiry or notice in relation to discharge of certain statutory duties, courts have spelt out an obligation to act judicially or quasi-judicially in the discharge of such duties.

29. It was further submitted by Mr. A.K. Sen that as the members of the Board of Examiners have not been made parties the decision of the Board cannot be quashed in their absence. But it appears from the affidavits filed and the correspondence exhibited, that the decision of the Board of examiners has merged in the order of the Syndicate, which is the confirming authority under regulation 8 (VII) of Chapter XXV, and it is the order of the Syndicate dated the 22nd September 1951 which has been communicated to the petitioner as the final order which has cancelled the

examination of the petitioner. Inasmuch as the proceedings of the Board of Examiners are subject to confirmation by the Syndicate, the Syndicate has power to approve or disapprove of the proceedings of the Board and thus has control over the Board the only restriction being that the Syndicate has no power to modify the results of the examination. So a Writ directed against the Order of the Syndicate will give effective relief to the petitioner. If the Syndicate had no control or power of confirmation it might be said that the proper authority against whom any writ could be directed was the Board of Examiners. (36 Cal 671). But whether it is the decision of the Board or the decision of the Syndicate, these different bodies are discharging the different functions of the University and their acts are the acts of the University. These different bodies are part and parcel of the University which is a body corporate. By the Act of Incorporation (Act II of 1857) it is provided that the University of Calcutta shall by such name sue and be sued, implead and be impleaded and answer and be answered unto in every Court of justice. So a Writ can be properly directed against the University in the present case.

30. A point was made by Mr. Sen that the confirmation of the Syndicate was at any rate an executive act and so no certiorari lies to quash the order of the Syndicate. If the decision of the Examiners' Board or the Malpractice Committee is a judicial act the act of the Confirming authority which confirms the judicial act must be regarded as a judicial act as well. If the Syndicate had decided not to confirm the proceedings of the Board of Examiners, it might be necessary for the Syndicate to hold an independent enquiry.
If the act of the Board had been a purely administrative act, act of confirming authority would be also an administrative act unless the Statute enjoined something in the manner of discharge of the duty of the confirming authority which made the act of the confirming authority judicial act. Even assuming that the act of confirmation of the Syndicate was in the nature of an executive act the mere confirmation cannot legalize the proceedings of the Board of examiners which were conducted in violation of the requirements of the Statute or in other words in breach of their duty to follow the principles of natural justice. Both the decision and its confirmation remain tainted with illegality. There has not been any proper determination according to law and so mandamus can issue directing the respondent to reconsider the case of the petitioner according to law.

31. Not only has the University acted contrary to the principles of natural justice but it has failed to act in conformity with the Regulations in other respects. It appears that Mr. P.K. Guha who was appointed a member of the Sub-Committee is not a member of the Examination Board. The Regulation (Reg. 8(vi)(c) page 120) requires consideration by the Board. But a stranger or outsider was allowed to participate in the deliberations of the Committee and it is not known how far his deliberations influenced the other members in arriving at the decision. It is not unlikely that if Mr. Guha had not been there, the Committee would have come to a different conclusion. In my view, the decision of the Committee cannot properly be regarded as the decision of the Examination Board. The University must act strictly in conformity with the Statutes and the Regulations.

32. Apart from this the University has also acted irregularly and contrary to the provisions of the Regulation in leaving the matter of consideration of the breaches of discipline to a Sub-Committee consisting of only two members of the Examination Board. The Regulations require that the whole board of examiners should consider the cases of breaches of discipline. It does not appear from the affidavits that the malpractice committee submitted a report to the Board of examiners and the Board confirmed the Report. If this had been done, it might be said that the

requirements of the Regulation were complied with. The Judicial Committee in 'LAPOINTE'S CASE', (1906) AC 535, characterized the appointment of a sub-committee as irregular (See the last paragraph at bottom of page 538 to 539). In the case of 'IN RE PROVASH CHANDRA ROY', 40 Cal 588, Imam, J., considered this kind of delegation as illegal and not permissible by the rules and regulations governing the Pleadership examination. (See the learned Judge's observations at page 593). The petitioner was apparently not aware of these irregularities and has not sought any relief on these grounds in her petition, although Mr. I.P. Mukherji, the learned Counsel for the petitioner in course of his argument, pointed out and complained of these irregularities. As no case has been made in the petition for reliefs on the score of these irregularities I do not propose to give any relief on the basis of these irregularities.

33. It was contended by Mr. Sen that the Board of examiners has an unfettered discretion in determining whether a particular candidate has passed an Examination or not and the Court has no jurisdiction to interfere. It appears to me that a candidate by the very act of presenting himself for an examination by the University, submits himself to the decision of the authorities appointed by the University for conducting the examination and it is inconceivable that a Court of law will declare a candidate to have passed an examination when the University authorities empowered to adjudicate upon the results of the examination declare him to have failed. But where, as here, a candidate who has admittedly obtained pass marks in all the subjects and has qualified herself for the degree of Bachelor of Arts, is declared to be disqualified from obtaining the degree because the University authorities have arrived at the conclusion that the candidate has been guilty of misconduct or adoption off unfair means at the examination, and it appears that the decision is reached in violation of the principles of natural justice or in other words by a process contrary to the spirit and intendment of the statutory regulation governing the matter, the Court has undoubtedly the jurisdiction to interfere.

34. In England the Courts have refused to interfere with the internal affairs of the Universities only when there is a Visitor. There are numerous such cases to be found collected in English Empire Digest, Vol. 8, pages 385-386. See also *'R. V. Dunsheath*[13]*',* But in the absence of a Visitor the Court has interfered. (*R. V. Cambridge University*[14]*',*). Again where the Visitor has refused to act or the existence of a visitor is left in doubt the Courts have interfered, (*Queen V. Hertford College*[15]*',* at p. 703). In India it has been held that the Syndicate is amenable to the jurisdiction of the Court. (See '*In Re Natesan*[16]*',* and '*S.K. Ghose V. Utkal University*[17]*',*)

35. It was contended by Mr. Sen that as no right of the petitioner has been affected by the impugned decision of the University authorities the petitioner cannot invoke the jurisdiction of this Court under Article 226. I cannot accept this contention. The decision of the University authorities affects not only the rights of the petitioner as an examinee but also her right to reputation. (See *S.K. Ghose V. Vice-Chancellor, Utkal University'*[18]*,* and *'Fisher V. Keane'*[19]*,* at p. 363 and Gatley on Lible 3rd Ed., page 1.) Moreover the injury that is caused to her fair name is an

[13]1950-2 All Er 741 [15](1878) 3 Qbd 693 [17] Air 1952 Ori 1
[14]93 Er 698 [16]40 Mad 125 [18] Air 1952 Ori 1
[19](1879) 11 Ch Div 353

irreparable injury. If she sues for damages for libel she will at once be met by the defence of qualified privilege and unless she proves malice (which will be difficult if not impossible for her to prove) she gets no relief in the suit.

36. So far as the facts of the present case are concerned, it is admitted that although the petitioner appeared as a non-collegiate student in the examination she was not given any notice to offer any explanation of her conduct. The Principal of the Murlidhar College took personal interest in the matter and on his own initiative he managed to get an opportunity to attend at the inquiry held by the Malpractice Committee and there he made certain representations in the interest of the petitioner. It is stated on behalf of the respondent that the Principal represented the petitioner in this inquiry and so the principles of natural justice were observed. It is however denied in the affidavit in reply that the Principal appeared as the agent of the petitioner or that he had any authority to so appear. In the absence of any opportunity given to the petitioner herself, I am unable to hold that the principles of natural justice had been observed. If the petitioner had been asked to attend the inquiry or to offer a personal explanation and if the petitioner had appeared in person and had been interrogated by the Members of the Malpractice Committee it may be, that the Committee would come to a completely different conclusion.

37. In my view, the Board of Examiners and the Syndicate in considering the cases of breaches of discipline must act reasonably and with due care and caution. (See *S.K. Ghose V. Vice-Chancellor, Utkal University'*[20]*,*

38. Mr. Sen placed before me a page of the answer paper of the petitioner and the answer paper of another candidate for comparison. The page contained a portion of the petitioner's answer to question 6(d). It is this answer which especially aroused suspicion in the mind of the Examiner, as appears from the letter of the Examiner dated the 7th June 1951. Mr. I.P. Mukherji points out that the comparison of the two answer papers discloses similarity only in respect of eight lines out of the 762 lines written by the petitioner in answer to questions set in the Philosophy paper, and submits that it is not impossible for another candidate to copy these lines from the petitioner's answer without the knowledge or connivance of the petitioner. Mr. I.P. Mukherji also has commented on the nature of the conclusion arrived at by the Malpractice Committee, and points out that there is an element of doubt discernible in such conclusion. Mr. A.K. Sen stated that there are other portions in other answers which disclose such similarity. It is not the function of this Court to enter into a discussion of the merits of the decision of the Committee or to substitute the decision of this Court in place of the decisions of the Board of Examiners and the Syndicate. The University authorities are the sole judge in respect of this matter.

39. I have not the slighest doubt that the Committee which made the enquiry into the case of the petitioner and the Vice-Chancellor and the Syndicate acted in absolute good faith and to the best of their judgment, but in my view the procedure that they adopted in arriving at their conclusions is not the correct one and in the circumstances the order of cancellation of the examination of the petitioner cannot stand.

40. In the result, the petition succeeds and the Rule is made absolute to the extent that the

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order of cancellation of the examination of the petitioner is quashed and the respondent University is directed to forbear from giving effect to the said order. The respondent is to reconsider the case of the petitioner in accordance with law and it will be at liberty, upon reconsideration, to take such steps as it is entitled to take according to law. The petitioner is entitled to costs of the present proceedings.

Application allowed.