CALCUTTA HIGH COURT

B.C. Das Gupta

Vs.

Bijoyranjan Rakshit

A.F.O.O. Nos.101 to 119 of 1952

(K.C. Das Gupta and Lahiri, JJ.)

27.06.1952

JUDGMENT

K.C. Das Gupta, J.

1. The respondents in these 19 appeals are students of different medical schools who appeared at the Intermediate Licentiateship Examination of the State Medical Faculty of West Bengal in June, 1951, at the Burdwan Centre. Of them, some appeared only in the Anatomy paper and the rest in all the three subjects, Anatomy, Physiology and Pharmacology. The written examination was held on the 7th June 1951, and the oral examination on the 18th June 1951. On the 28th June 1951, one of the three examiners in Physiology Sent a report to the Secretary, State Medical Faculty, in which he stated that while correcting answer papers of questions Nos.1 and 2 he found that almost all the answer papers were the same in language and content, that when the same questions were put to these candidates in the oral examination not a single student could answer them, that some of them could not follow the meaning of the answer paper when the contents were read to them and that in his opinion unfair means were taken by the candidates in the written examination either copying from slips of loose paper inside the examination hall or the answer papers were collected by the candidates from outside. The report concluded with the recommendation that the examination be cancelled. On the same date, one of the examiners in Anatomy submitted a report that on examination of written papers of the Burdwan Centre he found that three sets of answers were in exactly the same language, that many of the students could not answer the same questions in oral examination and that there was a strong suspicion that the written papers were copied from three sets of slips brought from outside.

2. These reports were considered by the Board of Studies of the State Medical Faculty on that very date the 28th of June 1951, and finally after a further report of the examiners the Board came to the conclusion that a large number of candidates must have had with them either cut-out pages of certain portions of GRay's Anatomy and Chakravarti's Aids to Human Physiology or

written copies of the same when writing their answers and used them in answering their questions. The Board of Studies Sent this report to the 'Governing Body' and this Body agreed with the above conclusion of the Board and resolved (1) that the examination of the term in all the subjects thereof of the 51 candidates be cancelled, (2) that the candidates may be allowed to appear at the "next usual half-yearly examination due in November 1951, subject to their satisfying the Superintendent by their conduct and attendance during the interval and payment of the usual fees."

3. In accordance with this resolution, a notice signed by the Secretary to the Medical Faculty to the effect that the examination of the 51 candidates, whose names were mentioned, had been cancelled for taking unfair means, was given.

4. The Governing Body also decided that such of these students who had at a previous examination passed in the other two subjects - i.e. Physiology and Pharmacology - will have to appear in those subjects also.

5. Aggrieved by this order of cancellation of the examination, the 19 respondents applied to this Court for writs or orders under Article 228 of the Constitution directing withdrawal of the order of cancellation of the examination and publication of the results of the examination.

6. In all the applications (1) Mr. B.C. Das Gupta, (2) Mr. M.N. Gupta, Secretary, (3) The State Medical Faculty of West Bengal and (4) the Board of Studies were made opposite parties.

7. Bose, J. who delivered one judgment on the application of Bejoyranjan Rakshit and others and another judgment on all the other applications came to the conclusion that the Governing Body had not exercised their powers reasonably and with due care and caution and had violated the first principle of natural justice by failing to give the candidates an opportunity to explain. He also rejected the contention that the applications should fail as the Governing Body had not been made a party or that the State Medical Faculty could not be properly made a party, and further the contention that there had not been a proper demand for justice before the opposite parties. Accordingly, he allowed the applications in part. The final order on Bejoyranjan Bakshit's application is in these terms:

> ".....the Rule is made absolute to the extent that the opposite parties are directed to revoke the order of cancellation of the entire examination in Anatomy held in June, 1951, and the order that the petitioner is to appear in all the three subjects at the ensuing examination. The opposite parties will be at liberty to enquire into the individual case of the candidate concerned and after such enquiry they will take such steps as they are entitled to take in accordance with law....."

On the other applications the final order is in these terms:

> "So far as the Civil Revision Cases Nos.2433 of 1951, 2762 of 1951, 2771 of 1951, 2501 of 1951, 2504 of 1951 and 2508 of 1951 were concerned, these rules are made absolute to the extent that the opposite parties are directed to revoke the order of cancellation of the entire examination in Anatomy held in June 1951, and the order that the petitioners in these cases are to appear in all the three subjects at the ensuing examination".
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> "So far as the Civil Revision Cases Nos.2763 of 1951, 2764 of 1951, 2765 of 1951, 2766 of 1951, 2768 of 1951, 2769 of 1951, 2770 of 1951, 2502 of 1951, 2503 of 1951, 2505 of 1951, 2506 of 1951, and 2507 of 1951 are concerned these rules are made absolute to the extent that the opposite parties are directed to revoke the order of cancellation of the entire examination in all the three subjects viz. Physiology, Pharmacology and Anatomy, held in June, 1951".

There was a further order to the following effect:

> "The opposite parties are to enquire into the individual case of each of the candidates concerned in the Civil Revision Cases which are being disposed of today and after such enquiry they will take such steps as they are entitled to take in accordance with law".

8. These appeals have been preferred by the President of the Governing Body and the Secretary to the State Medical Faculty.

9. The first contention of the appellants is that the Governing Body which passed the resolution for cancellation of the examination was a necessary party to the application and the Governing Body not having been made a party the applications should have been rejected.

10. The argument overlooks the fact that the Governing Body is a part of the State Medical Faculty which was impleaded. The State Medical Faculty was established by a resolution of the Government of Bengal, which was published on the 11th of August, 1914. The Statutes and byelaws of the Faculty were published immediately below the resolution. The first section of the Statute says that there shall be established a State Medical Faculty and mentions the purposes. Section 2 of the Statute is in these words:

> "The State Medical Faculty shall consist of (a) A Governing Body, (b) Fellows, (c) Members, and (d) Licentiates".

The fact that certain duties have been assigned to the part of the Faculty mentioned in clause (a) does not alter the fact that it is a part of the Faculty. When the State Medical Faculty has been made a party, it is neither necessary nor proper that any part of it should be separately made a party. A command on the State Medical Faculty will, in law, amount to a command on all its component parts, - the Governing Body, the Fellows, the Members and the Licentiates. If

therefore the State Medical Faculty has been properly made a party, the Governing Body is also before the Court and the omission to make the Governing Body a distinct party is no obstacle to the success of the application.

11. This brings us to the question whether the impleading of the State Medical Faculty by its name is in accordance with law. It has been argued that as it is not a body corporate, it cannot be made a party by name and the only way to make the Faculty a party is to implead by name its members. As has been pointed out by Bose J., "person" includes under the General Clauses Act "any company or Association or body of individuals, whether incorporated or not". Article 226 of the Constitution gives this Court power to issue directions, orders or writs to any person or authority. This would be sufficient to justify the conclusion that the State Medical Faculty as such is a "person" against whom a direction, order or writ can issue. It may be mentioned in this connection that the reports of the English Courts mention innumerable cases of writs of mandamus being issued against unincorporated bodies. It was pointed out by Kumarswamy Sastri J. in the passage quoted by Bose J. in the case of - 'In Re Natesan', 40 Mad.125:

> "The practice in English courts seems to be that where the application is to compel public officer or body to perform a public duty the persons are not named but are proceeded against under their official title. For example, writs of mandamus have been issued to Justice of a County, inhabitants of a Parish, a Church warden, overseers, inhabitants and bailiffs of a town, keepers of the common seal of a University, the assessment committee of a borough, the Registrar of the British Pharmaceutical Society etc. There has been, so far as I can see, no objection taken in any of the reported cases on the ground that except in the case of corporations, all other public bodies or officers should be proceeded against in the individuals' names of the members composing them".

12. I asked the learned Government Pleader to show me instances where any such objection appears to have been raised in the English Courts and he could not show any. My conclusion is that the State Medical Faculty being the public body entrusted with the duty of examining candidates for the purpose of ascertaining whether they have attained certain standard of training and proficiency, has rightly been made a party by the name "State Medical Faculty" and that the part of the State Medical Faculty to which the Statutes assign the duty of holding the examinations, namely, the Governing Body, could not properly be impleaded as a separate party.

13. It is now necessary to consider the question whether in performing its duty the State Medical Faculty has been guilty of such dereliction that a writ of Mandamus should issue to ensure that it performs its duties properly. It is necessary, therefore, to have a clear idea of the duty which the State Medical Faculty, through its Governing Body, had to perform in the circumstances of these cases.

14. I think it proper to mention that neither the bye-laws nor the rules of the State Medical

Faculty contain any specific provision as regards what should be done on such reports from examiners. Rule 16 of the Rules for the guidance and conduct of candidates during examinations which, according to the appellants, applies to such cases provides first for cases of detection in the examination hall of a candidate "in helping another or attempting to obtain unfair assistance in answering a question". It says also that candidates are not permitted to have in their possession while in the examination hall any book, memorandum, pocket book, notes or papers whatsoever even if these are in no way connected with the subject under examination, except for the question paper, the Secretary's receipt or the admit card and the books provided by the Faculty for writing out the answers and a sheet of blotting paper, and then lays down that candidates disregarding this caution are liable to the same penalty as those using unfair means. Reading the rule as a whole, I think it is clear that it contemplates cases of detection in the examination hall and does not provide for cases where the fact that unfair means were used is discovered after the candidate has left the examination hall.

15. The absence of any specific rule in this matter does not however affect the power of the State Medical Faculty as a whole, or its Governing Body, to take proper action if and when it received a report that unfair means were used by a candidate.

16. From the resolution establishing the Faculty and the Statutes there under it is clear that the State Medical Faculty has the duty of examining the candidates and that for administrative convenience this duty of examination is assigned to a part of the Faculty - the Governing Body. The duty of examination necessarily involves the duty of deciding in a proper case whether the examination of any particular candidate should be cancelled when it is alleged and proved that he took unfair means in answering some or all questions. It is hardly necessary to point out that allegation is not proof nor that proof of use of unfair means need not necessarily result in the decision that an examination should be cancelled.

17. The crux of the matter is that the State Medical Faculty and its Governing Body have in performing the duty of 'examining the candidates' to decide, when a charge of use of unfair means is made against a candidate, whether the charge has been established and if so, what the proper punishment should be.

18. I have no doubt therefore that when the Governing Body decided that 51 candidates had used unfair means in answering questions and that the proper punishment was that the examination should be cancelled, it acted with jurisdiction. The question we have to decide is whether there was such defect in the exercise of jurisdiction that Mandamus would lie to cure the same.

19. It has been contended on behalf of the appellants that the Governing Body is a domestic tribunal set up by the Government and unless it appears to have acted in bad faith the Courts will not interfere with the action taken.

20. The authorities are clearly against this contention.

21. In the case of - *'General Medical Council v. Spackman[1]',* the House of Lords had to consider the question of proper exercise of the statutory jurisdiction conferred on the General Medical Council, - which was a domestic forum established by Parliament - to remove from the medical register a practitioner who was co-respondent in a divorce suit and had been found by the Divorce Court to have committed adultery with the respondent therein to whom he stood in professional relationship. The General Medical Council gave him notice that a meeting of the Council would be held to decide whether his name should be removed from the medical register for infamous conduct in a professional respect. At the hearing he desired to call on the issue of adultery evidence which had not been called on the hearing of the petition although it was then available. The Council declined to hear the fresh evidence but accepted the decree nisi as prima facie proof of adultery and directed that the petitioner's name should be erased from the register. It was held that the Council was bound to hear any evidence tendered by the petitioner and that having refused to hear such evidence it had not made "due enquiry" under Section 29, Medical Act, 1858. In dealing with the question how the Council should proceed, Lord Simon, L.C. observed,

> "Its members may usefully bear in mind the language of Lord Loreburn L.C. in - *'Board of Education v. Rice[2]',* where, dealing with the decision of an

[1](1943) AC 627

[2](1911) AC 179

> administrative body the Lord Chancellor said that 'they must act in good faith and fairly listen to both sides, for that is the duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial ..... 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'."

22. Lord Wright, who concurred in the opinion of the Lord Chancellor, quoted with approval the statement of the law by Lord Loreburn in - *'Board of Education v. Rice[3]',* and also the observations of the Earl of Selborne in - *Spackman v. Plumstead District Board of Works[4]'* The observations appear at page 240 of the Report and are in these words:

> "No doubt in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper Sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the Statute if there were anything of that sort done contrary to the essence of justice ..... This is a matter not of a kind requiring form, not of

> a kind requiring litigation at all, but requiring only that the parties should have an opportunity of submitting to the person by whose decision they are to be bound such considerations as in their judgment ought to be brought before him."

23. Lord Wright referred to these authorities as throwing light on what "natural justice" connotes. Later, in the judgment, after referring to the criticism of Hamilton L.J. in - *'Rex v. Local Government Board, Ex parte Arlidge*[5]*',* that the phrase "contrary to natural justice" was sadly lacking in precision, Lord Wright observed:

> "So it may be and, perhaps, it is not desirable to attempt to force it into any procrustean bed, but the statements which I have quoted be, at least, taken to emphasize the essential requirements that the tribunal should be impartial and that the medical practitioner who is impugned should be given a full and fair opportunity of being heard..... If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision."

24. If these statements of law are applicable to administrative tribunals and to domestic forum of the nature of the General Medical Council, I can see no reason why they should not apply to the State Medical Faculty or its Governing Body when it decides whether the examination of candidates should be cancelled on the charge that they had used unfair means.

[3](1911) AC 179 [5](1914) 1 K.B. 160

[4](1885) 10 AC 229

25. It is unnecessary to multiply authorities but mention may be made of the decision in some Club cases.

26. In the case of - *'Fisher v. Keane*[6]*',* which was an action for a declaration that a resolution purporting to expel the plaintiff from membership of the Club was null and void, Jessel M.R. observed as follows:

> "They" (the Committee) "ought not, according to the ordinary rules by which justice should he 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." He held that the Committee had not acted properly and fairly and gave judgment in favor of the plaintiff.

27. In - *'Russell v. Ressell*[7]*',* the learned Master of the Rolls, in considering whether the Court should refuse to allow certain matters to be referred to arbitration, quoted with approval a statement of law in the case of - *'Wood v. Wood*[8]*',* at P.196 in these words:

> "..... With regard to *'Wood v. Wood'*, I am sorry to say that my acquaintance with it has

begun today. I must say it contains a very valuable statement by the Lord Chief Baron as to his view of the mode of administering justice by persons other than Judges who have judicial functions to perform, which I should have been very glad to have had before me in both of those club cases that I recently heard, namely, the case of - *'Fisher v. Keane*[9]*',* and the case of - *'Labouchre v. Earl of Wharncliffe*[10]*',* The passage I mean is this, referring to a committee, "They are bound, in the exercise of their functions, by the rule expressed in the maxim, audi alteram partem, that no man shall be condemned to consequences resulting from alleged misconduct unheard and without having the opportunity of making his defence. This rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals" I am very glad to find that that eminent judge has arrived at the same conclusion which I arrived at independently, but I should have been still more glad had I been able to fortify my conclusion by citing this, which I may call a most admirably worded judgment."

28. The case of - *'Dawkins v. Atrobus'*[11]*,* was an action by one Colonel Dawkins who had been expelled from the Travellers' Club claiming a declaration that the expulsion was invalid and for an injunction against the Committee. It was held that the Court would not interfere against the decision of the members of a Club professing to act under the Rules unless it could be shown either that the rules were contrary to natural justice or that what had been done was contrary to the rules or that there had been mala fides or malice. It is worth mentioning that it was found that the plaintiff was given ample notice and given every opportunity of saying anything he chose to say to the Committee or to the meeting.

[6](1879) 11 Ch D353 [8](1874) 9 Ex.190 [10](1880) 13 Ch D 346
[7] (1880) 14 Ch D 471 [9](1879) 11 Ch D 353 [11](1881) 17 Ch D 615

29. The law as laid down in these cases was followed in our own Court in - *'M.S. Ezra v. Mahendra Banerjee*[12]*',* and in the Bombay High Court in - '*Ambalal Sarabhai v. Phiroz H. Antia'*[13]*,*

30. On a consideration of the authorities, I have come to the conclusion that the law requires that the State Medical Faculty or the Governing Body, in performing its duty of deciding whether the candidates have been guilty of unfair means and what punishment should be inflicted, must not only act in good faith, but also fairly and reasonably and without violation of the principles of natural justice.

31. In the present cases, the Governing Body gave no notice at all to the candidates of the charges against them and no opportunity whatsoever of showing that the allegation was not true or that even if the allegation was true, the punishment should not be what the Governing Body proposed.

32. I am also of opinion that even apart from this there was not a fair consideration of the cases, as it is clear that the cases of the different candidates were not individually considered.

33. There remains for consideration the contention that no order or direction in the nature of a writ of Mandamus should issue in the cases, as there was no proper demand. We shall assume for the purposes of these cases that such a formal demand was necessary but I have no hesitation in agreeing with Bose J. on a consideration of the affidavits and the counter-affidavits that such demand was made. The assertion that the petitioners went on a deputation to the Faculty and the Governing Body with a pRayer for cancellation and withdrawal of the order of the Faculty and the Governing Body but they refused to do so, has been made by each of the petitioners on affidavits. The correctness of this assertion is challenged by one HariDas Ganguly who claims to be the Head Assistant of the office of the State Medical Faculty of West Bengal for over 20 years. What he has said is that the assertion that the petitioners went to the Governing Body of the Faculty is not true and categorically denied, that there was a meeting of the Governing Body on 20th August 1950, but no such deputation had waited on that Body nor was any written request for a deputation made either before or after that date, nor was any written representation for cancellation of the order of the Governing Body received in the office of the Faculty.

34. In my judgment, this denial by the Head Assistant of the Medical Faculty is wholly insufficient to show that the assertion made by the petitioners was not true. The proper person to deny the truth of the assertion made by the petitioners was the Secretary to the State Medical Faculty or the President of the Governing Body or some member of the Governing Body. Both the President of the Governing Body and the Secretary to the State Medical Faculty were made parties to the applications. They are the appellants. It is worthy of note that none of them has cared to pledge their oath that the assertion made by the petitioners is untrue. It may well be that the Head Assistant was not aware of the visit of the deputation. The denial of a person who is not competent to make the denial is of no use whatsoever.

[12]51 Cal WN 612

[13] AIR 1939 Bom 35

35. My conclusion is that the order passed by Bose J. is perfectly justified. The appeals are accordingly dismissed with costs, one set of hearing-fee for all the appeals being assessed at ten gold-mohurs.

36. The Cross objections are not pressed and are accordingly dismissed, but there will be no order for costs in them.

37. In concluding I would only express my hope that in dealing with the matter afresh the Governing Body would not be in any way prejudiced by the fact that the students have sought the protection of the Court and they will try to dispose of the matters as early as possible.

Lahiri, J.

38. I agree.

Appeals dismissed.