

(2004) 09 CAL CK 0012

Calcutta High Court

Case No: Writ Petition No. 640 of 2004

Mahua Nag

APPELLANT

Vs

Vice-Chancellor of Calcutta
University and Others

RESPONDENT

Date of Decision: Sept. 17, 2004

Citation: (2005) 3 CHN 513

Hon'ble Judges: Jyotirmoy Bhattacharya, J

Bench: Single Bench

Advocate: Bidyut Kiran Mukherjee and Sajal Kumar Ghosh, S. Biswas and Sonali Mitra, for the Appellant; Biswaroop Bhattacharya and Billwadal Bhattacharya, for the Respondent

Final Decision: Dismissed

Judgement

Jyotirmoy Bhattacharya, J.

An unsuccessful student, who appeared in the Final year LL.B. Examination, 1996 held in May 1997, has filed this writ petition by raising a dispute with regard to her result of the said Examination.

2. The petitioner appeared in LL.B. Part-I Examination (5-Year Course) in the year 1992 but became unsuccessful. The petitioner again appeared in the LL.B. Part-I Examination in 1993 as a supplementary candidate along with LL.B. Part-II Examination. The petitioner again became unsuccessful in both Part-I Supplementary Examination as well as in Part-II Examination. Subsequently, the petitioner again appeared in LL.B. Part-I Examination in the year 1994. This time, however, the petitioner became successful. Thereafter, the petitioner appeared in LL.B. Part-III Examination along with the LL.B. Part-II Supplementary Examination in 1995. However, the publication of the result of the petitioner of Part-II and Part-III LL.B. Examination was kept withheld by the University on the ground that the petitioner was not eligible to appear in LL.B. Part-III Examination along with the LL.B. Part-II Supplementary Examination in 1995 under the extant Examination Regulation. However, pursuant to a special permission granted by the

Pro-Vice-Chancellor (Academic), the petitioner was allowed to appear in LL.B. Part-IV Examination in the year 1996. But since the petitioner could not pass the said Examination, her result of LL.B. Part-III Examination was withheld. Subsequently, however, in terms of a special permission granted by the respondent No. 1, the results of the Part-III and Part-IV Examinations of the petitioner were released pending publication of the result of her LL.B. Part-II Examination.

3. In the aforesaid background, there was some delay in publication of the result of the petitioner by the University concerned. The result of LL.B. Part-IV Examination, 1996 was published on 23rd September, 1997. But the petitioner ultimately received the mark sheet of the LL.B. Part-IV Examination on 17th April, 1998, i.e., after expiry of about six and half months from the date of publication of the result. After obtaining the marksheet of the said Examination, the petitioner found that the marks, which were given to her in different subjects of the said Examination, were much below than her expectation. The petitioner became very much suspicious about the evaluation of her answer scripts and accordingly the petitioner intended to apply for scrutiny of her answer scripts of the said Examination but the University authority refused to accept the application for scrutiny from the petitioner.

4. Mr. Bidyut Kiran Mukherjee, learned Senior Advocate, appearing on behalf of the petitioner, by referring to the voluminous documents being Annexures "R-1" to the affidavit-in-reply, submitted that the petitioner moved from pillar to post seeking permission from the authority concerned, so that the answer scripts of the petitioner are scrutinized by the University authority. Mr. Mukherjee submitted that in spite of receipt of the repeated applications and/or representations from the petitioner, the authorities concerned did not consider the petitioner's those representations at all. Mr. Mukherjee further submitted that even the authorities concerned did not care to reply to any one of the said letters of the petitioner. Mr. Mukherjee further submitted that ultimately the petitioner moved before the Human Rights Commission as well as before the Governor of West Bengal being the Chancellor of the said University for redressal of her grievance. But all her efforts were ultimately found to be in vain, because of fraudulent representation made by the Registrar of the said University to the said Chancellor. Mr. Mukherjee further contended that even the Chancellor was not allowed to intervene in this matter by the Registrar of the University who fraudulently informed the Chancellor that because of pendency of litigation, nothing could be done in this regard though in fact the petitioner never involved herself in any litigation with the University earlier.

5. Mr. Mukherjee submitted that when ultimately the petitioner found that there is hardly any chance of redressal of her grievances before the authorities concerned, the petitioner moved this writ petition before this Court, inter alia, praying for a direction upon the respondent authorities for production of the answer scripts of LL.B. Part-IV Final Examination before this Court and for submission of the report along with the answer scripts after thorough evaluation of the answer scripts by the

empanelled examiners so that the bad faith of the petitioner can be removed or declare the petitioner as passed in terms of the gazette publication.

6. Mr. Mukherjee submitted that under the extant Examination Regulation, the application for scrutiny is required to be submitted by the petitioner with the University authorities within one month from the date of publication of the result. The Regulation further prescribes that such an application for scrutiny must be forwarded by the Head of the Institution from where the candidate was sent up for appearing in the said examination.

7. Mr. Mukherjee further submitted that following the said Regulation, the petitioner made a sincere attempt for submission of the said application for scrutiny which was forwarded by the Head of the Institution to the University authorities within the specified time but unfortunately the University authorities illegally refused to accept the said application for scrutiny from the petitioner on the ground that the time for applying for scrutiny had long expired. Mr. Mukherjee further contended that under the Examination Regulation, a candidate can apply for scrutiny within 30 days from the date of publication for the result. According to Mr. Mukherjee since the result of the petitioner was not published along with the general publication of the result, the said period of 30 days cannot be computed from the date of general publication of the result. Mr. Mukherjee submitted that 30 days period should be computed from the date when the petitioner received the marksheet from the University concerned as the result of the petitioner was published subsequently. Mr. Mukherjee pointed out that if 30 days are computed from the date of issuance of the mark-sheet of the petitioner by the University concerned, then the petitioner was well within the time when the petitioner applied for scrutiny.

8. Accordingly, Mr. Mukherjee submitted that the University authority acted illegally and mala fide by not allowing the petitioner to avail of her legal remedies admissible to her under the extant Examination Regulation. In such view of the matter, Mr. Mukherjee contended that for dispelling the doubts from the minds of the petitioner and for projecting transparency in the process of evaluation of the answer scripts, the University authority should be directed to produce the answer scripts before this Court, so that the correctness of the evaluation of the answer scripts of the petitioner can be verified by this Court through any other competent empanelled examiner. But such production now becomes impossible in view of the admitted position that the answer scripts of the petitioner have since been destroyed.

9. By referring to Paragraph 12 of the affidavit-in-opposition filed on behalf of the respondent University, Mr. Mukherjee submitted that in view of the admitted fact that the answer scripts of the petitioner relating to the said Examination have since been destroyed by the University authorities, the respondent authority should be directed to declare the result of the petitioner by taking average marks of all the papers and by awarding the differential marks against the papers in which the petitioner could not even obtain the pass mark. To strengthen the said submission

of the petitioner, Mr. Mukherjee relied upon a decision of this Hon'ble Court in the case of University of Calcutta and Ors. v. Sk. Monir and Ors., reported in 2000 (1) CLT 205 .

10. Thus, by relying upon the said decision, Mr. Mukherjee submitted that here in this case also the result of the petitioner should be declared by following the procedure as laid down by the Division Bench of this Hon'ble Court in the case of University of Calcutta and Ors. v. Sk. Monir and Ors. (supra).

11. Mr. Bhattacharya, learned Advocate, appearing for the University authorities opposed the said prayer of the petitioner on various grounds including the ground of maintainability of this writ petition on the ground of delay and suppression of material facts.

12. Mr. Bhattacharya firstly submitted that the petitioner appeared in LL.B. Part-IV Final Examination, 1996 held in May, 1997. The result of the said Examination was published on 23rd September, 1997. It is, however, true that publication of the result of the petitioner was withheld of certain period but ultimately her result was published subsequently and the marksheet was also given to the petitioner on 17th April, 1998.

13. Mr. Bhattacharya, by referring to the pleadings of the writ petition, submitted that the petitioner never complained in the said writ petition that the University authorities refused to accept the application for scrutiny from the petitioner. On the contrary, Mr. Bhattacharya submitted that Paragraph 9 of the said writ petition shows that the petitioner submitted the said application for scrutiny to the University authorities within the time, but the University authorities did not take any action pursuant to the said application. Mr. Bhattacharya pointed out that the case of refusal to accept the application for scrutiny from the petitioner by the University authority is an introduction of a new plea in the affidavit-in-reply filed by the petitioner in connection with this writ petition. Thus, Mr. Bhattacharya submitted that since such a plea was not initially taken in the writ petition, the petitioner cannot be permitted to urge the said point for the first time in course of the hearing of this application.

14. Mr. Bhattacharya further submitted that the writ petition is not maintainable on the ground of delay alone. Mr. Bhattacharya pointed out that when the petitioner admittedly received the marksheet of the said Examination on 17th April, 1998 and her prayer for scrutiny of the answer scripts was also allegedly not adhered to by the University since April, 1998, the petitioner ought not to have waited till 1st April, 2004 for ventilating her grievances by filing this writ petition before this Court.

15. Mr. Bhattacharya further submitted that writing repeated letters and/ or submission of the repeated representations cannot be accepted as a reasonable explanation for such long delay in approaching this Court for the relief as prayed for herein.

16. Mr. Bhattacharya further submitted that this long unexplained delay stands in the way of even entertaining this writ petition. This Court being a Court of equity should not assist the petitioner who is found to be tardy and indolent or acquiescent and lethargic. In support of his said submission, Mr. Bhattacharya relied upon the decision of the Hon"ble Supreme Court in the case of [State of M.P. and Others Vs. Nandlal Jaiswal and Others](#), .

17. Mr. Bhattacharya further submitted that under the Examination Regulation, the answer scripts are preserved by the University for a period of six months from the date of publication of the result. Mr. Bhattacharya further submitted that these six months period long expired and the answer scripts were also destroyed by the University concerned. Thus, Mr. Bhattacharya submitted that when the petitioner approached this Court after the expiry of more than five and half years from the date of receipt of the marksheet by the petitioner, no relief can be granted to the petitioner as prayed for herein.

18. In support of the aforesaid contention, Mr. Bhattacharya further relied upon another decision of the Hon"ble Supreme Court in the case of [Jagdish Narain Maltiar Vs. The State of Bihar and Others](#), . By referring to Paragraph 8 of the said decision, Mr. Bhattacharya submitted that such long delay in approaching this Court for the relief as prayed for herein, in fact, has disabled this Court from exercising its extraordinary power in favour of the petitioner.

19. Mr. Bhattacharya further submitted that sending representations repeatedly and by giving memorials to different authorities of the University were nothing but in the nature of mercy petition. Thus, when the petitioner pursued remedy which was not duly appointed under the law, she put a peril over her right of high value and significance.

20. Accordingly, Mr. Bhattacharya submitted that this writ petition should be dismissed on the ground of delay alone.

21. Mr. Mukherjee, however in reply, tried to impress upon the Court that delay alone cannot be a ground for rejection of this writ petition, particularly when it is apparent from the records that a statutory authority did not function within the frame of the statute.

22. After hearing the learned Advocates of the respective parties and after considering the materials on record, I feel that the objection regarding the maintainability of this writ petition on the ground of delay, should get the prime consideration in the facts of the instant case.

23. Admittedly, the petitioner appeared in the Final Year LL.B. Part-IV Examination, 1996 held in May, 1997. It is also an admitted fact that the petitioner received the mark sheet of her said Examination on 17th April, 1998. Even if, I proceed by taking that the plea of refusal to accept the application for scrutiny by the University

authorities is correct, still then it appears from the Annexure "R-1" at page 15 of the affidavit-in-reply that the University authorities refused to receive the fees for scrutiny from the petitioner on 27th May, 1998. If that be so, then in my opinion, the petitioner ought to have approached this Court instantly, as her right to apply for scrutiny was denied by the University authorities on the said date.

24. I have considered the decisions cited by Mr. Bhattacharya as referred to above and I hold that the principles laid down therein are squarely applicable in the facts of the instant case.

25. Thus, following the principles laid down in the said citations, I hold that this Court being a Court of equity cannot render any assistance to the petitioner who is found to be not only tardy and indolent but also acquiescent and lethargic.

26. I also hold that repeated writing of letters to various authorities without approaching the proper forum at the appropriate time, the petitioner dug her own peril.

27. Under the Examination Regulation, the University is required to preserve the answer scripts for a period of six months from the date of publication of the result. These six months period long expired before the petitioner filed this writ petition before this Court. As such, the decision which was cited by Mr. Mukherjee in this case of *University of Calcutta v. Sk. Monir* (supra) has no application in the facts of the instant case, as I find that in the said case, the examinee applied for review within the prescribed date but since the University authority could not produce the answer scripts, this Hon"ble Court directed the University authorities to award marks on average basis to the writ petitioner therein. I also find that under the extant Examination Regulation, the University authority cannot destroy the answer scripts before publication of the review result. As such, as per the said Regulation, it is the duty of the University to preserve the answer scripts upto the date of publication of the review result once a candidate applies for review within the stipulated time. But since in the instant case nothing could be shown before this Court that the petitioner applied for review within the prescribed time, the University had no obligation to preserve the answer scripts beyond the period of six months from the date of publication of her result.

28. Thus, in the aforesaid circumstances and particularly upon considering the pass academic career of the petitioner, I do not find that any interference is necessary in the facts of the instant case. I fully agree with the submission of Mr. Bhattacharya that this writ petitioner cannot be entertained on the ground of long unexplained delay when the petitioner's right for redressal of her grievance has been defeated by such long delay. I also do not find any reasonable acceptable explanation from the side of the petitioner for such a long delay in filing this writ petition.

29. Accordingly, I find no merit in this application. The application, thus, stands rejected.

30. There will be, however, no order as to costs.

31. Urgent xerox certified copy of this order, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the requisite formalities.