

Bhawanipur Gujarati Education Society and Another Vs University of Calcutta and Others

Court: Calcutta High Court

Date of Decision: Sept. 23, 2008

Acts Referred: Calcutta University First Ordinance, 1979 &" Ordinance 65, Ordinance 65(1), Ordinance 65(2), Ordinance 66, Ordinance 67

Criminal Procedure Code, 1973 (CrPC) &" Section 164, 364

Societies Registration Act, 1860 &" Section 26, 5(3), 9(6)

Citation: (2009) 1 CALLT 43 : (2008) 4 CHN 821 : (2009) 2 SLR 669

Hon'ble Judges: Soumitra Pal, J

Bench: Single Bench

Advocate: J.K. Mitra, S. Chakraborty, H. Kundalia, Debal Banerjee, Kallol Bose, Vipul Kundalia, Sidharth Lahiry, Kushagra Shah and Sushil Sewak, Sukiran Biswas, for the Appellant; Sambuddha Chakraborty, Bishwarup Bhattacharya and P. Deb, for the Respondent

Judgement

Soumitra Pal, J.

In the writ petition the Bhawanipur Gujarati Education Society, a society registered under the Societies Registration Act, 1961, is the petitioner No. 1. The petitioner No. 2 is its Secretary. The facts of the case are that the petitioner No. 1 in order to impart

education, specially to Gujaratis in West Bengal had established, in the year 1966, an educational institution. The Bhawanipur Education Society

College (hereinafter referred to "the College") in Kolkata. The management of the college is vested by the petitioner No. 1 in a Governing Body.

The Governing Body had been constituted in pursuance of the deed of the Society and in accordance with law which have been approved by the

University of Calcutta. It has been stated that from time to time on the application of the petitioners, the University authorities granted affiliation to

the college in different subjects. On the basis of such affiliation petitioners have been conducting B.Com. and other courses. Every year the college

starts the process of admission to the first year B.Com and other courses by distributing forms as per the directions of the University. Admissions

are made on the basis of the criteria laid down by the University. List of students and other particulars of the admitted students are sent to the

University for registration. Till date, particularly from 1998 to 2007, the authorities of the University have granted registration to such students

without any demur or any objection of any kind whatsoever, thereby, in effect, approving, inter alia, the intake of students in the courses

particularly in B.Com, Part I. In the year 2000 the college applied for extension of affiliation of the college in the subjects B.BA., B.CA and B.Sc.

in fashion design. In the form of application particulars were provided including the performance of the students in the B.A., B.Com, B.Sc. Part I

and Part II (Honours and General). The number of students admitted by the college during the years 1998 to 2007 for the B.Com (Honours) Part

I, inclusive of morning and evening shifts, ranged between 1913 to 2564. The percentage of pass in B.Com final examinations during the period

2004-2007 varied between 96.76% to 98.04%. It has been stated that by a letter dated 22nd May, 2008, the Secretary, Council for

Undergraduate Studies of the University informed the Principals of all colleges affiliated to the B.A. B.Sc. B.Com., B.B.A., B. Music, Degree

Courses of the University to start admission process to the 1st year for the said courses including B.Com. (Honours/General/Major) for the

academic session 2008-09 on and from 2nd June, 2008 as per schedule/conditions contained therein and admission should be started from 23rd

June, 2008. Accordingly, the college started the admission process. Applications were received and processed and steps were taken for

publishing the list of successful students and for starting the admission on and from 23rd June, 2008. Incidentally on 23rd May, 2008 an inspection

team under the Inspector of Colleges, respondent No. 3 visited the college. By a letter dated 23rd May, 2008 the Deputy Inspector of Colleges,

University of Calcutta on behalf of Inspecting team requested the Principal of the College to submit certain information and documents. The

petitioner along with a letter dated 2nd June, 2008 submitted the documents. Thereafter, by letter dated 13th June, 2008 the Principal was

informed by the respondent No. 3 that under the order of the Pro-Vice-Chancellor (Academic), respondent No. 2 dated 12th June, 2008 an

inspection team of seven members would visit the college on 16th June, 2008 in connection with the fixation of intake capacity in B.Com (Honours

and General) course of the college and the Principal was requested to keep ready all the information and documents required for the purpose.

Thereafter, as scheduled, an inspection team visited the college and inspected the documents and records. According to the petitioners though

during inspection the inspection team observed that they would be suggesting drastic reduction in the intake capacity for the B.Com Part I course,

however, no reason was disclosed for such suggestion. Thereafter, by letter dated 18th June, 2008 the petitioners highlighting the performance in

B.Com final examinations requested the University to allow the college to continue with the present average intake as it was impossible to reduce

the intake capacity since as a minority administered institution they had various commitments in different sectors of the society. A request was

made to allow the college with the present average intake in B.Com (Honours) first year course. Assurance was given to rectify any lacunae which

might be pointed out and the college was ready to carry out any infrastructure development, if recommended. However, on 20th June, 2008 the

Principal of the college received a letter dated 20th June, 2008 of the respondent No. 3 enclosing a copy of the Inspection report dated 20th June,

2008 with a request to see that the admission of students in B.Com (Honours and General) course of the college was made in accordance with the

intake of students as prescribed in the report which is the subject-matter of challenge. In terms of the said report, the total number of students for

B.Com (Honours) Part I course by the college had to be 300 students with 75 students per section which could be extended to 975 students in the

event 25 full time and 18 part time new teachers were appointed by the petitioners. No reason or basis has been shown for arriving at such a

conclusion although the respondents had all along approved the intake of students in the B.Com. (Honours). Yet the college was required to

reduce with immediate effect the student intake in B.Com (Honours) First Year Course by approximately 85 %. According to the petitioner the

letter by the Inspector of Colleges, the respondent No. 3 and the report dated 20th June, 2008 are arbitrary, illegal, mala fide, without and/or in

excess of jurisdiction, without authority of law, unreasonable and perverse. When the admission process had been initiated and admissions were to

start on or after 23rd June, 2008, the letter containing the decision and the report just one working day before the publication of the admission list

was with a mala fide motive and with the ulterior purpose to stop the college from admitting students in the current academic session. Moreover,

the order contained in the letter was passed in violation of principles of natural justice since it was passed without affording them an opportunity to

deal with the same. Submission was, there is no provision in the Calcutta University Act, 1979 (for short "the Act"). The Calcutta University First

Ordinances, 1979 (hereinafter referred to as the "First Ordinance") and the Calcutta University First Statutes, 1979 ("First Statute" for short)

which empower the respondents to act in the manner and pass order as has been done. Being aggrieved by the letter containing the order dated

20th June, 2008 and the report dated 20th June, 2008 this writ petition was filed.

2. The matter was moved on 3rd July, 2008 when after hearing the learned Advocates for the parties directions were issued for filing of affidavits.

Affidavits have since been exchanged and are on record. It is to be noted that on 22nd August, 2008 the learned Advocate on behalf of the

University suo motu furnished from the records of the University a handwritten draft note dated 19th June, 2008 which was not appended to the

opposition filed by the University. By an order dated 29th August, 2008 the respondent No. 3 was directed to file an affidavit by 2nd September,

2008 stating the reason as to why the note dated 19th June, 2008 was not made a part of the opposition affirmed by the said respondent on 8th

July, 2007. On 1st September, 2008 the said affidavit was affirmed and filed by the respondent No. 3. The petitioners have filed a written notes of

arguments and a written note containing the submission of the respondents and answers thereto which are on record.

3. Learned Senior Advocate appearing on behalf of the petitioner relying on the statements made in the writ petition submitted that the notice and

the report are incurably bad as the respondent No. 3 has no authority in fixing the intake capacity. Referring to Statute 72(2)(b)(v) of the First

Statutes, it was submitted that the total number of students in a class or a combination of two or more classes or sections of a class should not

exceed 150 or such other number as may from time to time be fixed by the Syndicate. As the Statute, a subordinate legislation, does not provide

for sub-delegation of power by the Syndicate to any person or authority, the inspection report fixing the maximum student strength of 75 in each

section and the impugned order are illegal as ultra vires the Statute 72. Moreover, though Statute 76 requires compliance with the orders of the

Syndicate by an affiliated college, there is no material disclosed in the report or in the impugned order or in the affidavits filed on behalf of the

University to establish that the requirements of the said provisions have been satisfied. Further, the college was not given a specified period of time

to take action in respect of the matter arising out of the report. Besides the report is also in violation of Ordinance 69(1) of the First Ordinance as

there is no material to indicate that it was submitted to the Pro-Vice-Chancellor (Academic), respondent No. 2 for consideration and, thereafter,

the respondent No. 2 with his suggestion and recommendation had forwarded the report to the Syndicate. Though Syndicate is the ultimate

decision making authority, no material has been disclosed by the University in its affidavit that powers conferred upon the Syndicate under Statutes

72 and 76 or under Ordinance 69(1) can be delegated. Therefore, the action is a void act which cannot be cured by ratification, and ratification by

post decisional hearing cannot cure an ultra vires action. Regarding the report it was submitted that though it is stated to be in the final form, it is still

handwritten containing interpolation. Further the report and the order has to be judged on the face thereof and it cannot be supplemented by

reasons contained in the affidavit. With regard to the handwritten draft note dated 19th June, 2008 it was submitted that there is no explanation in

the supplementary affidavit why it was not annexed to the affidavit-in-opposition affirmed on 8th July, 2008. Submission was there is nothing in the

draft note to show that an urgent or an emergent situation existed and there was formation of opinion on appraisal of facts on subjective

satisfaction. The note in the draft note of the respondent No. 2 cannot be a prologue for taking emergency action. Further, there is nothing in the

affidavits to demonstrate that action was either under the provisions of Section 9(6) or under the provisions of the Act, Ordinance or Statute.

Moreover, in view of the provisions contained in the Calcutta University Act, 1979 and in the delegated legislations, the University Grants

Commission (the minimum standards of instructions for the grant of the first degree through formal education in the faculties of Arts, Humanities,

Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985 (hereinafter referred to as the UGC Regulations, 1985) are not

applicable to the facts of the case.

4. Learned Advocates appearing on behalf of the University submitted that it is evident from the writ petition that the students are admitted not on

the basis of merit but on donations. As the report was communicated on 20th June, 2008, that is, before admission on 23rd June, 2008 the

petitioner did not suffer any prejudice. From the petition it is evident that neither there was a board nor cut off marks for admission. Referring to

Ordinances 65, 66 and 67 of Chapter X of the Ordinance it was submitted that the University has the power to reduce the intake capacity. The

control and supervision over an inspection and investigation into the affairs of colleges is the exclusive right of the University. Submission was

Statutes 72(1)(b)(v) has nothing to do with the intake capacity. u/s 26(vii) and (xi) of the Act the college has to carry out the report as postulated

under Statute 76. Further, in order to maintain the academic atmosphere in a college, the Act and the subordinate legislation particularly Ordinance

65(1) give authority to the University to fix the intake capacity. Such being the position of law the question of invasion of the right of a college does

not arise and, the action being an administrative decision the college cannot plead for a right of hearing. Moreover, under Statute 76 the Council for

Undergraduate Studies is competent to take action independently. As the word Syndicate does not appear in Statute 76, the long title of the said

statute is unnecessary. Relying on the UGC Regulations, 1985 it was submitted that the college had violated the norms regarding admission.

Regarding the draft note dated 19th June, 2008 it was submitted that the same was suo motu furnished in Court by the respondents and the

mistake in not appending it to the affidavit-in-opposition was genuine. It is evident from the draft note dated 19th June, 2008 that as an emergent

situation existed, action u/s 9(6) of the Act was resorted to. The learned Advocate for the respondents relied on the judgements of the Supreme

Court in Managing Director, Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and in Narinder Mohan Arya Vs. United India

Insurance Co. Ltd. and Others, , in support of their submission.

5. The issues to be determined are a) whether there are materials on record to demonstrate that situation of an emergent nature existed which

called for taking action u/s 9(6) of the Act by the Vice-Chancellor, b) If not, whether the report of inspection was routed through the procedural

stages under Ordinance 69, c) If not, whether the inspector of Colleges has the jurisdiction to initiate action on the basis of the report of inspection,

d) Whether the entire action of the University authorities is just and proper.

6. In order to answer the first issue whether there were sufficient materials on record to show that situation of an emergent nature existed which

called for taking action u/s 9(6) of the Act, it is appropriate to refer to the relevant provision of the said section which is as under:

Powers and duties of the Vice-Chancellor:

9(6) The Vice-Chancellor may take on behalf of the University such action as he may deem expedient in any matter which, in his opinion, is either

urgent nor of an emergent nature and shall report the same for confirmation at the next meeting to the authority or body which, in the ordinary

course, would have dealt with the matter: Provided that if the action taken by the Vice-Chancellor is not approved by the authority or body

concerned, the matter shall immediately be referred to the Chancellor whose decisions thereon shall be final.

(Emphasis supplied)

7. The powers and duties of Vice-Chancellor under the said sub-section has been interpreted and the law has been explained by this Court in

Sakila Begum v. State of West Bengal and Ors. reported in 2006 WBLR (Cal) 125, wherein the action of the Vice-Chancellor of the University of

Calcutta directing inspection was under challenge. The relevant portion of the said judgement is extracted hereunder:

15. From a perusal of Section 9(6) of the Act it is clear that power has been conferred upon the Vice-Chancellor to take action on behalf of the

University in any matter which "in his opinion" is either urgent or of an emergent nature calling for immediate attention. However, before initiating

such action there must be appraisal of facts and on subjective satisfaction there should be formation of belief for arriving at an opinion. Such

exercise of formation of opinion must be on the basis of facts so that, if called for, it can be demonstrated from the records that there was a definite

application of mind to justify that there indeed was an emergent or urgent situation necessitating action u/s 9(6) of the Act. The approach in such

circumstances must be judicious. That, in my view, is the purport of the words "in his opinion" so that one may know the reasons that had

prompted the Vice-Chancellor to initiate action in exercise of the emergency powers conferred under the Act. In the absence of any record of

formation of opinion, action in exercise of powers conferred under the said sub-section can hardly be justified. In fact, the legislature has

consciously used the words "in his opinion" to check possible misuse or abuse of power.

8. In this context it is appropriate to refer to the draft note dated 19th June, 2008 which according to the University, reveals that the Vice-

Chancellor, the respondent No. 1 had exercised his emergency powers. The draft note is as follows:

Submitted to Pro-V-C.(A)

The Inspection Reports on the Bhawanipur Education Society College, Kolkata and the Umesh Chandra College, Kolkata which will speak for

themselves may kindly be seen.

Necessary order solicited in the matter of onward action in this regard.

I/C. 19.6.2008

Submitted to V.C

For your kind perusal.

Sd/-

19/6/2008

Approved.

Inform the College immediately.

PL report the matter to UG

Council.

Sd/- 19/6/08

10. The note at the top is by the Inspector of Colleges (I.C) the respondent No. 3. Below it the note on the left is by the Pro-Vice-Chancellor

(Academic) the respondent No. 2 and on the right by the Vice-Chancellor, the respondent No. 1.

11. Keeping in mind the law as explained in Sakila Begum (supra) and perusing the draft note dated 19th June. 2008 prepared by the respondent

No. 3 it is clear that there is nothing on record to show that there was subjective satisfaction after appraisal of facts which led to the formation of

belief and that ultimately culminated in the formation of opinion by the respondent No. 1.. Rather the ingredients which warrant for exercise of

power under urgent or extraordinary circumstances as envisaged u/s 9(6) in the instant case are totally absent. It is clear that there has been a

failure on the part of the respondent No. 1 to comply with the mandatory provisions contained in Section 9(6). Therefore, as there was total

absence of formation of opinion as evident from the draft note dated 19th June, 2008, the action which is sought to be done by the respondent No.

1 in exercise of the emergency powers u/s 9(6) of the Act is illegal and, thus, cannot be sustained.

12. In order to address the second issue it is necessary to refer to the relevant provisions of the First Ordinances and First Statutes.

13 Relevant provisions of Ordinances 68 and 69 of the First Ordinances are as under:

Inspection.

68.(1) Every college shall be inspected on behalf of the University ordinarily once a year and more often when so directed by the Council for

Undergraduate Studies concerned.

(2) Such inspection shall be carried out through the Inspecting officers of the University and such other person or persons as may be appointed by

the respective Council for Undergraduate Studies for the purpose.

(3) Every college shall keep all books referred to in Ordinance 67 and all other records of the college, including reports of previous inspection,

open at all time in the college premises for inspection referred to in Paragraph (1).

69.(1) Any person carrying out an inspection referred to in Ordinance 68 shall prepare and submit to the Pro-Vice-Chancellor for Academic

Affairs a report of such inspection and the Pro-Vice-Chancellor for Academic Affairs shall, after considering the same, forward such report to the

Syndicate with his suggestion and recommendation, if any.

(Emphasis supplied)

14. Relevant portion of Statutes 72 and 76 of the First Statutes are as under:

Application for Affiliation and Terms and Conditions for Affiliation.

72.(1) An application for affiliation of a college to the University shall be made in writing by the promoters, or, where there is a Governing Body,

by the Governing Body, of the college concerned and shall be submitted to the Pro-Vice-Chancellor for Academic Affairs ordinarily not later than

the 31st day of August immediately preceding the academic year from which the affiliation is sought,:

(a) ...

(b) ...

(2) Every such application shall state the subject or subjects and the standards in which affiliation is sought and shall, on the face of the application,:

(a) ...

(b) contain stipulations to the effect that:

(i) ...

(ii) ...

(iii) ...

(iv) ...

(v) no member of the teaching staff of the college shall be allowed to lecture to a class or section of a class, or to a combination of two or more

classes or sections having on the rolls thereof a total number of students exceeding 150 or such other number as may, from time to time, be fixed

by the Syndicate: and

(vi) ...

(Emphasis supplied)

Affiliated Colleges to Comply with Certain Orders of Syndicate.

76. An affiliated college, into the affairs of which an inspection or investigation provided for by the Council for Undergraduate Studies concerned

has been carried out, shall take within such period such action in respect of any matter arising out of the report of the inspection or investigation as

may be specified in an order made by the Council for Undergraduate Studies concerned in this behalf.

(Emphasis supplied)

15. The power of inspection is in Ordinance 68. Ordinance 69 provides that any person carrying out an inspection referred to in Ordinance 68

shall prepare a report of such inspection. Thereafter, the said report shall be submitted to the Pro-Vice-Chancellor for Academic Affairs. The Pro-

Vice-Chancellor shall consider and after considering forward such report to the Syndicate with his suggestion and recommendation, if any. Now

the question is whether the report of such inspection by the Inspector of Colleges by the respondent No. 3 was filtered through the process as

envisaged under Ordinance 69. Surprisingly in this regard the affidavits of the University are silent. With regard to the instant issue it is also to be

considered other than a case where action is taken by the Vice-Chancellor in an emergent situation u/s 9(6), whether action can be taken on the

basis of the report of inspection bypassing the Syndicate. The answer can be found from a reading of Sections 22(xxxiv) and 26(1)(iii) and (xi) of

the Act, Ordinance 69 and Statute 76. Section 22(xxxiv) is as under:

22. Subject to the provisions of this Act, the Syndicate shall exercise the following powers and perform the following duties:

(xxxiv) to exercise general supervision over the Faculty Councils for Post-Graduate Studies and the Councils for Undergraduate Studies and give

such directions to these Councils for the due discharge of their respective duties as it may consider necessary.

(Emphasis supplied)

Section 26(1)(iii) and (xi) is as under:

Powers and Duties of the Councils for Undergraduate Studies:

26.(1) Subject to the provisions of this Act, and the Statutes, the Ordinances and the Regulations, a Council for Undergraduate Studies shall

exercise the following powers and perform the following duties: -

(iii) to exercise general supervision over the colleges to ensure that the conditions of affiliation are properly fulfilled, the standard of teaching is

uniformly maintained and syllabuses as prescribed are properly completed within the academic year;

(xi) to provide for the inspection or investigation into the affairs of undergraduate college or institutions recognised by the Council or affiliated to the

University and to exercise general supervision and control over them.

(Emphasis supplied)

16. Section 22(xxxiv) of the Act postulates that the Syndicate has the power of general supervision over the.... Council for Undergraduate Studies

and can give such directions to the Council for due discharge of its duties as it may consider necessary. It is to be noted that in view of the word

shall appearing in Ordinance 69 it is mandatory on the part of the Pro-Vice-Chancellor for Academic Affairs to forward the report of inspection to

the Syndicate with his suggestion and recommendation, if any. The question is, thereafter, what is the role of the Syndicate, the highest decision

making body. In such a case, the provisions of general supervision u/s 22(xxxiv) come into play. The Syndicate in exercise of its power under the

said sub-section is to give such directions to the Council for the due discharge of its duties as it may consider necessary, which, as evident from

Section 26(iii) and (xi), the Council for Undergraduate Studies lacks. u/s 26(1)(iii) and (xi) though the Council for Undergraduate has the power of

general supervision and control over the colleges, it does not have the authority to issue directions which the legislature u/s 22(xxxiv) has conferred

on the Syndicate, the highest decision making body.

17. Now, as the body of the Statute 76 does not contain the words certain orders of Syndicate which appear in the long title of that particular

statute, whether the long title is relevant. In my view, if the entire scheme pertaining to carrying out of inspection, preparation of report by the

inspection team and forwarding the same to the Syndicate through the Pro-Vice-Chancellor for Academic Affairs as postulated in Ordinance 69

and the supervisory power of the Syndicate u/s 22(xxxiv) is borne in mind, then the words certain orders of Syndicate appearing in the long title of

Statute 76 cannot be said to be superfluous as it would make the vital part of Ordinance 69 the Pro-Vice-Chancellor for Academic affairs shall

after considering the same, forward such report to the Syndicate with his suggestion and recommendation, nugatory. It would mean a

recommendation to the Syndicate an idle and empty formality. Such an interpretation would mean giving Statute 76 of the Statute 1979, a

delegated legislation, an overriding effect over Section 22(xxxiv) an Act of Legislature which has not been contemplated by the framers of the Act

or the First Ordinances and the First Statutes. However, after directions are issued by the Syndicate in exercise of its supervisory jurisdiction, the

Council for Undergraduate Studies can pass an order arising out of the report of the inspection (Statute 76). This, in my view, is in tune with the

words in Ordinance 65, a subordinate legislation, whereunder the Council can issue directions so as to ensure that - (a) the provisions of the Act,

the Statutes, the Ordinances and the Regulations are regularly and faithfully implemented by the college or under Ordinance 65(2) where the

Council can issue such other directions relating to administrative, academic or financial matters, as it may, from time to time, consider necessary

and proper. The directions issued under Ordinance 65 by the Council is a follow up action pursuant to the directions u/s 22(xxxiv) of the Act. This

schematic interpretation of the Act and of the subordinate legislations - Ordinance and Statute has to be borne in mind. Further, even if orders are

passed by the Council, it should give time to the affiliated college to comply with the same. However, even assuming the Council for

Undergraduate Studies has the power to act independently in the instant case there is nothing on record to indicate that the Council has passed an

order which the college has to comply, it is to be noted that Statute 72(2)(b)(v) gives exclusive power to the Syndicate to fix the classes of a

teacher. These facts, as enumerated, go to show that the action under challenge was neither in accordance with the provisions of the Act nor with

the provisions of the First Ordinances or First Statutes. In this context it is appropriate to refer to law laid down in the judgement in Ramchandra

Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, , wherein it has been held as under.

A Century ago, in Taylor. M. R. adopted the rule that where a power is given to do a certain thing in a certain way. the thing must be done in that

way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy

Council, in Nazir Ahmed v. Emperor and later by this Court in several cases, to a Magistrate making a record under Sections 164 and 364 of the

Code of Criminal Procedure, 1898. This rule squarely applies ""where, indeed, the whole aim and object of the Legislature would be plainly

defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other."" ""The rule will be attracted with full

force. In the present case, because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision,

intention of the Legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions.

Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non eat for the purpose of Section 5(3)(b).

(Emphasis supplied)

18. Therefore, as there is no statement in the affidavit-in-opposition or in the supplementary affidavit that the report impugned was filtered through

the procedure as enumerated in Ordinance 69, the answer to the second issue has to be in the negative.

19. Now the question is whether the Inspector of Colleges, the respondent No. 3 has the jurisdiction to initiate action on the basis of the report

impugned. In order to appreciate the issue it is necessary to refer to the intimation dated 20th June, 2008 issued by the respondent No. 3 the

relevant portion of which is extracted hereunder:

C/1322/164-Affl Dated-- the 20th June, 2008

No. ...

To

The Principal,

The Bhawanipur Education Society College,

5, Lala Lajpat Rai Sarani,

Kolkata 700 020.

Sir,

Enclosing herewith a copy of the inspection report dated 20.6.08 on your college, I am directed to request you to see that the admission of

students in B.Com. (Hons. & Gen.) course of the college is made strictly in accordance with the intake of students as prescribed in the abovesaid

report.

Yours faithfully,

Enclo. one.

Inspector of Colleges.

(Emphasis supplied)

20. Though it is evident from the letter dated 20th June, 2008 issued by the respondent No. 3 that he was directed to request the college to see

that the admission of the students in B.Com. (Honours and General) was made strictly in accordance with intake of students as prescribed in the

report enclosed, there is no mention who had issued the direction. The affidavit-in-opposition too is silent. No provision has been shown which

empowers the Inspector of Colleges to take independent or suo motu action. Rather I find from a reading of Section 22 of the Act, Ordinance 69

and Statute 76 that, except in an emergent or extraordinary situation, it is the Syndicate and Syndicate alone which can pass an order. Therefore,

the action of the respondent No. 3 in issuing the intimation dated 20th June, 2008 is without jurisdiction, arbitrary and illegal and, thus, cannot be

acted upon.

21. Now the ultimate issue which comes up for consideration whether the entire action of the authorities of the University is just and proper. It is to

be noted that the respondent No. 3 had affirmed the affidavit-in-opposition for self. It has been stated in paragraph 1 of the said affidavit that the

respondent No. 3 was duly authorized and empowered by the respondent Nos. 1 and 2 to swear the affidavit for and on their behalf. It is to be

noted that instead of supporting the action of the University authorities in issuing the letter and report under challenge, the University authorities had

relied on two complaints of some students lodged in the year 1999 and inspection reports dated 11th February, 1997 and 27th July, 2004 in

support of their contentions to highlight the fact that the college had committed serious irregularities regarding admission. The question is if the

irregularities were so serious and the proposal of such inspection could not be carried out owing to the non-cooperative attitude of the college

(paragraph 2(d)(ii) of the affidavit in opposition) what had prevented the University from taking action earlier on the basis of said complaints and

reports. The two complaints and reports cannot be the basis of taking action in the month of June, 2008. Moreover, the said paragraph of the

affidavit does not mention about the date on which the proposal for inspection was submitted to the then Pro-Vice-Chancellor. That the authority

has given a go by to the earlier complaints and reports and had approved the action of the college in admitting students in the past is evident from

the fact that the University had granted registration to the students which finds support from a statement in paragraph 15 of the affidavit-in-

opposition which states that The answering respondents having approved the intake of students in the past 10 years does not necessarily mean that

it can be compelled to commit the same wrong once again. (Emphasis supplied) Thus as it is clear from the action and the statement of the

respondents in their affidavit that the University without any demur in the past 10 years had approved the intake capacity as it had granted

registration to the students admitted in the college.

22. It is to be noted that during hearing the respondents had furnished a draft note dated 19th June, 2008 which was not appended to the affidavit-

in-opposition affirmed on 8th July, 2008. The respondents have tried to justify for not appending the draft note to the affidavit-in-opposition in the

supplementary affidavit. The explanation in the supplementary affidavit that the affidavit-in-opposition was strictly restricted to the case made out in

the writ application and was an answer to the allegations made therein and hence the occasion to deal with the allegation did not arise in my earlier

affidavit is not tenable. Nor is tenable the submission that there was no pleading in the writ application wherefrom the allegations levelled while

making oral submission as well as in the written notes of arguments could be reasonably discern as the petitioner has in the writ petition raised the

point of jurisdiction and the legality of the action under challenge. The explanation in the supplementary affidavit as noted for not annexing the draft

note is not at all convincing. It goes to show that as an Inspector of Colleges he was callous and negligent in appraising the Court about the true

and correct state of affairs. A stricter view for not annexing the draft note dated 19th June, 2008 to the affidavit-in-opposition could have been

taken but for fair submission by the learned Advocates appearing on behalf of the University who had suo motu furnished it before the Court.

23. A few words about the draft note on which strong reliance was placed by the University to highlight the fact that an emergent situation existed.

Draft note means a note in the preliminary stage and not in final form. Unless it is in final form no recommendation cannot be made on it. This is the

rudimentary or elementary principle of the rules of administration which the authorities of the University should have been aware. Moreover, the

draft note prepared by the Inspector of Colleges is absolutely vague as it does not mention about the date and year of inspection. Yet, surprisingly

the Pro-Vice-Chancellor and the -Vice-Chancellor had issued directions on the said draft note. In such facts and circumstances, the draft note

dated 19th June, 2008 is non est in fact and in law and no notice should be taken of the same.

24. Regarding the Inspection report dated 20th June, 2008 it is to be noted that it contains the signatures of the members of the Inspection team

including the respondent No. 3 who had inspected the college. Though it is overwhelmingly typewritten there are corrections or additions of some

of the figures or parts of it and some of the words too are handwritten with no initials or signatures of the members of the Inspection team to

sanctify those corrections or additions. Corrections or additions without being initialled by all the signatories make the report non est in fact and in

law and, hence, cannot be acted upon. The law laid down in the judgements of the Apex Court in Managing Director, ECIL Hyderabad v. B.

Karunakar (supra) and in Narinder Mohan Arya (supra), relied on by the respondents are not applicable to the facts of the case in view of the

specific provisions contained in the Act, First Ordinances and the First Statutes as discussed. This also makes the UGC Regulations, 1985

inapplicable.

25. Does it mean that the University has no power or authority to take action for reducing the intake capacity of the students in a college? The

answer is in the affirmative provided, it is in accordance with provisions of the Act, the First Ordinances and the First Statutes.

26. My endeavour to refer to the provisions of law, its interpretations and the facts is to highlight the fact that all the respondents, the Vice-

Chancellor, the Pro-Vice-Chancellor for Academic Affairs and the Inspector of Colleges had acted in a cavalier manner and in utter and total

disregard of the provisions contained in the Calcutta University Act, 1979, the Calcutta University First Ordinances, 1979 and the Calcutta

University First Statutes, 1979. It is a pointer to the fact that the administration of the University are not carried on according to the tenets of law.

27. Thus, the writ petition is allowed. The letter dated 20th June, 2008 issued by the Inspector of Colleges, Calcutta University, the respondent

No. 3 and the Inspection report dated 20th June, 2008 cannot be sustained and are set aside and quashed.

28. In the facts and circumstances the petitioners are entitled to the costs of Rs. 10,200/- to be paid by the respondent No. 3.

29. Urgent xerox certified copy of this judgement and order, if applied for, be furnished to the appearing parties on priority basis.

Later:

30. Mr. Kundalia, learned Advocate appearing on behalf of the petitioner submits that as the last date of admission of students of B.Com.

(Honours) has expired on 23rd August, 2008 and the last date of submission of registration form has expired on 1st September, 2008, dates may

be extended for admission of the students, for commencement of the classes and for submission of registration form of the students to the

University.

31. Considered the prayer of the learned Advocate for the petitioner. Considering the facts and in view of the judgement delivered, the last date

for admission of students is extended till 26th September, 2008. So far commencement of classes is concerned the college authorities are at liberty

to start classes as early as possible. So far registrations of students of the college are concerned since orders have been passed for admitting the

students by 26th September, 2008, I trust and hope that the University authorities shall act accordingly.

Later further:

32. After the judgement is delivered learned Advocate for the University prays for stay of operation of the judgement and order. Considered the

prayer. Prayer for stay is refused.

Urgent xerox certified copy of the judgement and order, if applied for be furnished to the appearing parties on priority basis.