
Soumendra Nath Sarkar Vs State of West Bengal

Matter No. 4968 of 1987

Court: Calcutta High Court

Date of Decision: Sept. 12, 1990

Acts Referred:

Constitution of India, 1950 " Article 226#West Bengal College Teachers (Security of Service) Act, 1975 " Section 12(1), 9(1)

Citation: (1992) 1 ILR (Cal) 460

Hon'ble Judges: Bhagabati P. Banerjee, J

Bench: Single Bench

Advocate: Moni Bhusan Sarkar, for the Appellant;Samarendra Banerjee, for the Respondent

Judgement

Bhagabati P. Banerjee, J.

In this writ application the Petitioner challenged the initiation and continuation of the departmental proceedings

on the basis of the charge-sheet dated March 12, 1986, and August 29, 1986, issued by the President of the Governing Body of Maharaja Sris

Chandra College, Calcutta. It appears that such a departmental proceeding was initiated under the provisions of the West Bengal College

Teachers (Security of Service) Act, 1975. The Petitioner also challenged in this writ application the order of suspension for one year from the post

of Principal of the said College, The Petitioner Dr. Soumendra Nath Sarkar is the Principal of Maharaja Sris Chandra College who was appointed

on being selected and recommended by the College Service Commission.

2. The admitted position is that the relation between the Principal and the President of the Governing Body and some other members of the

Governing Body became very much strained and they could not see eye to eye each other and this disciplinary proceeding is as a result of dispute

and difference between the Principal on the one hand and the members of the Governing Body including the President of the Governing Body on

the other hand. The background in which the disciplinary proceeding was started, was with regard to filing of a writ application by the Petitioner.

3. Sometime in the year 1985 serious disputes and troubles arose between several groups of the members of the Students Union regarding

admission of students in various classes of the said College. The minority group of the students lodged a complaint to the Governing Body of the

College and the Governing Body proposed to hold an enquiry against the Petitioner on the basis of such complaints and at that stage the Petitioner

filed a writ application before this Court on October 7, 1985, against the decision of the Governing Body to hold investigation in its meeting dated

September 21, 1985. After the Petitioner moved a writ application before this Court on October 7, 1985, the Governing Body by its resolution

dated December 13, 1985, placed the Petitioner under suspension in contemplation of a departmental enquiry on the ground that the Petitioner had

turned down the request of the President and some members of the Governing Body to convene an emergency meeting of the Governing Body on

October 16, 1985, and also failed to convene a requisitioned meeting of the Governing Body on October 18, 1985, and the Petitioner failed to

give effect to the resolution of the Governing Body passed in the meeting on October 18, 1985. and had neither convened a Governing Body

meeting on November 20, 1985, nor handed over the rough and final Minute Book of the meetings of the Governing Body to the President to

defend the High Court case as per Governing Body resolutions dated October 18, 1985.

4. By the letter dated October 15, 1985 issued under the signature of Nalini Kanto Guha, President of the Governing Body, the Petitioner was

asked to convene an emergency meeting of the Governing Body on October 16, 1985, to consider the situation arising in the College including the

situation arising out of the filing of the case by the Petitioner against the President of the Governing Body of the College for taking necessary steps

in connection therewith. By the letter dated October 15, 1985, the Petitioner informed the President of the Governing Body that the Petitioner

served a notice of the writ application on October 4, 1985, at the time when the application was moved and that, thereafter, the Governing Body

failed to convene an emergency meeting and for the purpose of convening the meeting as directed, the Petitioner sent 15 copies of the notice of the

meeting for signature of the President.

5. In the said letter the Petitioner categorically pointed out that, as the agenda involved the Petitioner and the Petitioner's pending case, the

Petitioner should not be present at the said meeting, and the Petitioner requested that his absence might be excused under such circumstances. In

the said letter it was also pointed out that relevant proceedings of Calcutta University First Statute empowers the authority concerned to reduce the

period of notice, but that did not mean that even 24 hours time should not be given to the members for such a meeting and pointed out that such a

meeting giving only few hours time would be illegal. By the letter dated October 16, 1985, Nalini Kanto Guha, President of the Governing Body,

informed the Petitioner that the Secretary shall call a meeting if the President so directs him in writing or if at least fifty per cent of the members of

the Governing Body requisition a meeting. In the said letter the President of the Governing Body held that as the Petitioner did not carry out the

aforesaid direction, the same constitutes the violation of the provision of the Statute and that instead of complying with the same, number of notices

were signed by him for signature.

6. On the same date, may be October 16, 1985, seven members requested the Petitioner to convene an emergency meeting of the Governing

Body on October 18, 1985, to consider the situation of the College. By the letter dated October 16, 1985, the Petitioner informed the President

of the Governing Body that the Petitioner had to leave Calcutta on October 18, 1985, with his ailing wife as the physician advised that a change of

place was very much needed for her recovery. Under such circumstances, the Petitioner expressed his difficulties and inability to attend meeting.

By the letter dated October 17, 1985, the President of the Governing Body requested the Petitioner to send the Minute Books of the Governing

Body along with the rough Minute Book. On October 17, 1985, the Petitioner informed the President of the Governing Body that there was no

provision for sending the records to any other person or persons in contravention of the relevant provisions of Calcutta University First Statute.

7. It was also pointed out that there was no reason at all for convening any emergency meeting of the Governing Body over the issue. On October

17, 1985, a notice of requisition meeting of the Governing Body was served upon the Petitioner alleging that the Principal and the Secretary of the

said College having failed to convene an emergency requisition meeting on October 18, 1985, the President and some other members of the

Governing Body convened an emergency meeting to consider the present situation of the College on October 18, 1985. Accordingly, a meeting

was held, and in the said meeting it was decided that the case instituted by the Petitioner against the President of the Governing Body of the

College should be contested and certain other incidental things in connection with the case to be contested by filing affidavit on behalf of the

Governing Body. In the said meeting it was also decided that, as the Petitioner informed that he would leave Calcutta on October 18, 1985,

without submitting any leave application or formal application for leave of absence from College and station to the President and had not made any

arrangement in consultation with the President for looking after the College, another leacher-in-charge was appointed for the period of temporary

absence of the Principal with effect from October 18, 1985.

8. Thereafter, several correspondences passed by and between the Principal and President of the Governing Body one alleging the other for

violation of relevant provisions of Calcutta University Statute. The President of the Governing Body in his letter dated November 22, 1985,

pointed out that You have yourself become the Governing Body by usurping the post, power and functions of the President and other members of

the Governing Body. You think that you are the sole authority under the Statute to decide the propriety or otherwise of convening any meeting of

the Governing Body and of the business to be transacted therein... The Secretary cannot shirk his responsibility to produce and hand over the

same to such person as the Governing Body may direct. By the said letter the President of the Governing Body requested the Petitioner to issue a

notice of meeting of the Governing Body fixing a date on December 1, 1985. Another requisition meeting was convened by 12 members of the

Governing Body addressed to the Petitioner for convening a meeting of the College on December 1, 1985. On November 28, 1985, the Petitioner

had convened a meeting of the Governing Body to be held on December 5, 1985, with agenda as suggested in the notice for requisition meeting

signed by 12 members. On December 5, 1985, the said 12 members again made a request to the Petitioner for holding a meeting on December

13, 1985, with the self-same agenda. On December 6, 1985 the said 12 members issued a notice of requisition meeting of the Governing Body

that the Petitioner having failed to convene a requisition meeting on or about December 1, 1985, as per request of the 12 members in their letter

dated November 22, 1985, the said 12 members of the Governing Body on December 13, 1985, to discuss the matter and take appropriate

decision on the same.

9. On March 13, 1986, the Petitioner was served with a charge-sheet containing the following charges:

Charge No. I - The President of the Governing Body of Maharaja Sris Chandra College by his letter dated October 15, 1985, directed Dr.

Soumendra Nath Sarkar, the Principal-Secretary of the said College now under suspension under Statute 98(3) and (4) of the Calcutta University

First Statutes, 1979, to convene the emergency meeting of the Governing Body of the said College on October 16, 1985, at 4 p.m. in the College

premises, on the following agenda:

to consider the situation arising in the College including the situation arising out of the filing of the case against the President and the Governing

Body of the College by Dr. Soumendra Nath Sarkar, Principal-Secretary of the College and taking of necessary steps in connection therewith. Dr.

Sarkar did not carry out such direction of the President and did not call such a meeting and instead, by his letter being Ref. No. SC. 44/91 dated

October 15, 1985, questioned the propriety of the aforesaid direction of the President and the necessity for convening the emergency meeting and

sent to the President of the Governing Body of the College 15 copies of the notices of the proposed emergency meeting for signature of the said

President on the allegation that he was requested by the said President to do so although no such request was made by the President, as alleged,

knowing well, that under Statute such notice also to be issued by the Principal-Secretary of the College. This fact, if proved, would mean that Dr.

Soumendra Nath Sarkar did the aforesaid act only with the intention to prevent the holding of the emergency meeting of the Governing Body of the

College and to create a deadlock in the administration of the College.

10. Charge No. II - As Dr. Soumendra Nath Sarkar did not convene the emergency meeting on October 16, 1985, in spite of the direction of the

President of the Governing Body of the said College contained in his letter dated October 15, 1985, the President of the Governing Body of the

College once again directed by his letter dated October 16, 1985, Dr. Sarkar to convene the emergency meeting on October 18, 1985, at 4 p.m.

in the premises of the College specifically drawing his attention to the fact that under Statute 98 (3) and (4) of the Calcutta University First Statute,

1979, it was imperative of Dr. Sarkar as the Secretary of the Governing Body to convene the emergency meeting on the direction of the President.

But Dr. Soumendra Nath Sarkar again did not carry out the aforesaid direction of the President of the Governing Body of the College and did not

call the meeting on October 18, 1985, on the plea as contained in his letter dated October 16, 1985, being Ref. No. S.C. 44/92 that he cannot

convene a meeting as it was impossible for him to attend.

11. Charge No. III - The President of the Governing Body of the College by his letter dated October 17, 1985, directed Dr. Sarkar, Principal-

Secretary of the College now under suspension, to make available to him the Minute Book of the Governing Body of the College along with the

rough Minute Book. The said Minute Book and the rough Minute Book were required by the President and the Governing Body of the College in

connection with drafting an affidavit-in-opposition to the writ application filed by Dr. Sarkar before the Hon'ble High Court being Matter No.

1436 of 1985, inter alia, against the Governing Body of the College. But in spite of such direction by the President, Dr. Sarkar did not comply with

such direction and did not make available the Minute Book and the rough Minute Book to the President as directed, on the plea as contained in his

letter dated October 17, 1985, being Ref No. S.C. 44/93, that there was no provision in the Calcutta University First Statute, 1979, for making

available such records to any person other than to the Syndicate under Statute 99 of the Calcutta University First Statute, 1979. That because of

the aforesaid refusal of Dr. Soumendra Nath Sarkar to make available of such Minute Books to the President as directed, the Governing Body of

the College faced serious difficulties in instructing their learned Advocates properly for drafting the aforesaid affidavit-in-opposition in the above-

mentioned case.

12. Charge No. IV-Dr. Soumendra Nath Sarkar, the Principal Secretary now under suspension, in his letter dated October 17, 1985, being Ref.

No. S.C. 44/94 written in reply to the letter dated October, 16, 1985, of the President of the Governing Body of the College relating to the

operation of the Students. Activities Fund Account as well as in his letter dated October 17, 1985 being Ref. No. S.C. 44/93 written in reply to

the letter dated October 17, 1985, of the President of the Governing Body of the College, directing Dr. Sarkar to make available to him the

Minute Books of the Governing Body of the College along with the rough Minute Book made uncalled for derogatory remarks against the

President of the Governing Body of the College by alleging that the said President was being caused to sign his letters only without apprising him

the relevant laws and/or records.

13. Charge No. V-On coming to the notice of the President of the Governing Body of the College that the resolution of the Governing Body of the

College regarding the operators of the Student Activities Fund Account of the College with Central Bank of India, Shyambazar Branch, which

authorised the Principal, the President of the Students Union and the General Secretary of the Students Union jointly to operate the said account,

was in violation of Statute 99(1) of the Calcutta University First Statute, 1979, which permits operation" of College Fund by the Secretary of the

Governing Body jointly with the President of any or any other member of the Governing Body excluding the teacher, employee or a student of the

College, the President by his letter dated October 16, 1985, directed Dr. Soumendra Nath Sarkar, the Principal and Secretary of the College

(now under suspension) not to operate the aforesaid Students Activities Fund Account of the College till the relevant resolution is modified in

accordance with the above students. In spite of the same Dr. Soumendra Nath Sarkar did not carry out such direction of the President and

instead, by his letter dated October 17, 1985, being Ref. No. S.C. 44/94 made wholly uncalled for, derogatory remarks against the President as

mentioned in Article of Charge No. IV above.

14. Charge No. VI-Out of the total 14 members of the Governing Body of the College, 7 members, thus constituting 50 % of the total members of

the Governing Body of the College made a written requisition dated October 14, 1985. to Dr. Soumendra Nath Sarkar, the Principal and

Secretary" of the Governing Body of the College (now under suspension) under Statute 98(4) of the Calcutta University First Statute, 1979, for

convening an emergency meeting of the Governing Body of the College on October 16, 1985, at 4 p.m, on the following agenda: ""to consider the

present emergency situation of the College."" In spite of the same Dr. Soumendra Nath Sarkar did not call the meeting as requisitioned.

15. Charge No. VII- Out of the total 14 members of the Governing Body of the College, 8 members thus constituting more than 50 % of the total

members of the Governing Body of the College, made a requisition dated October 16, 1985, under Statute 89(4) of the Calcutta University First

Statute, 1979, to convene an emergency meeting of the Governing Body of the College on October 18, 1985, at 5 p.m. in the Principal's chamber

in the College on the following agenda: ""To consider the present situation of the College"". But Dr. Soumendra Nath Sarkar in spite of such

requisition again did not call the meeting as requisitioned.

16. Charge No. VIII-Dr. Soumendra Nath Sarkar, Principal and Secretary of the College (now under suspension) by his letter No. S.C. 44/92

dated October 16, 1985, in reply to the letter of the President of the College dated October 16, 1985, directing him to hold the emergency

meeting of the Governing Body of the College on October 18, 1985, at 4 p.m. in the College premises, informed the President that he would be

leaving Calcutta on October 18, 1985, at 7 a.m. with his ailing wife for a change under medical advice and he had booked the lodge and the bus a

month ago on September 18, 1985. Thereafter, Dr. Soumendra Nath Sarkar was absent from the College on October 18, 1985, which was the

last working day before the Puja Vacation of the College which started on and from October 19, 1985, without obtaining any leave from the

Governing Body of the College and without applying for such leave or without previous sanction of the President of the Governing Body of the

College for prefixing the aforesaid period of absence to the Puja Vacation of the College and without making arrangements in consultation with the

President of the College as to who would look after the College and the property during his period of absence.

17. Charge No. IX- As Dr. Soumendra Nath Sarkar, the, Principal Secretary of the College (now under suspension), did not call the emergency

meeting of the Governing Body of the College either on October 16, 1985, or on October 18, 1985, (i) as directed by the President of the

College by his letters dated October 15, 1985, and October 16, 1985, and (ii) as requisitioned by 50 % of the total members of the Governing

Body by their written requisition dated October 14, 1985, and October 16, 1985, the requisitionists of the aforesaid requisition by a notice dated

October 17, 1985, being duly served on all members of the Governing Body, convened an emergency meeting on October 18, 1985, at 5, p.m. in

the College premises. The said meeting which was held in class room No. 12 of the College, Dr. Soumendra Nath Sarkar having left the College

keeping the room of the Principal under lock and key was presided over by the President of the Governing Body of the College who approved the

holding of such meeting and also pending of a new and separate Minute Book, the existing Minute Book and the draft Minute Book of the

Governing Body of the College not having been made available to the President by Dr. Soumendra Nath Sarkar in spite of his discretion. The said

meeting by its resolution directed Dr. Soumendra Nath Sarkar, inter alia, to hand over the custody of all the Minute Books of the Governing Body

of the College and the documents relevant to the writ application filed by Dr. Sarkaar, inter alia, against the Governing Body of the College to

enable the learned Advocate of the Governing Body of the College to draft the affidavit - in - opposition to such a writ application. By such

resolution the Governing Body of the College also authorised the President to issue necessary direction to Dr. Soumendra Nath Sarkar, the

Principal and Secretary of the College for calling a meeting of the Governing Body of the College on the 3rd day following the re-opening of the

College after the Puja Vacation in the month of November 1985 to review the situation of the College and to take appropriate steps in the interest

of smooth running of the College. Thereafter, the President of the Governing Body of the College by his letter dated November 5, 1985, directed

Dr. Soumendra Nath Sarkar, the Principal and Secretary of the College (now under suspension) to issue notice to all the members of the

Governing Body for holding a meeting of the Governing Body of the College on November 20, 1985, at 5 p.m. in the College premises in terms of

resolution No. 8 of the Governing Body meeting held on October 18, 1985. Along with the said letter a copy of the proceedings of the meeting of

the Governing Body held on October 18, 1985, was enclosed. In spite of the same, Dr. Soumendra Nath Sarkar did not carry out such direction

of the President of the Governing Body of the College and did not call such meeting and did not hand over the Minute Books and instead

questioned the propriety and legality of the aforesaid requisition meeting and the resolution of the Governing Body and also aforesaid direction of

the President by his letter dated November 18, 1985, being ref. No. S.C. 44/97.

18. Charge No. X-As Dr. Soumendra Nath Sarkar, the Principal and Secretary of the College (now under suspension) did not call the meeting on

November 20, 1985, as directed by the President of the College, the President of the College by his letter dated November 22, 1985, once again

directed Dr. Soumendra Nath Sarkar to call a meeting of the Governing Body of the College on December 1, 1985, at 9 a.m. in the College

premises and in the meantime to hand over the Minute Books and the resolutions of the Governing Body and also the rough Minute Book to the

President of the College, but Dr. Soumendra Nath Sarkar did not carry out the direction and did not call the meeting on December 1, 1985. and

did not hand over the Minute Books of the meetings and resolutions of the Governing Body of the College and the rough Minute Book to the

President as directed.

19. Charge No. XI Out of the total 14 members of the Governing Body of the College 12 members, thus constituting more than 50% of the total

member"s of the Governing Body of the College made a written requisition dated November 22, 1985 to Dr. Soumendra Nath Sarkar the

Principal and Secretary of the Governing Body of the College (now under suspension) to convene a meeting of the Governing Body, under Statute

98(4) of the Calcutta University First Statutes, 1979, on December 1, 1985. in the college premises to consider the agenda as mentioned therein.

In spite of the same Dr. Soumendra Nath Sarkar did not convene such meeting on December 1, 1985. On the contrary, by a notice dated

November 28, 1985. Dr. Soumendra Nath Sarkar convened a meeting on December 5, 1985, at 5.30 p.m. in the Principal's room of the College,

altering the agenda suggested by the aforesaid requisition lists without holding discussion with the President of the College and with the said

requisitionists and without giving notice of such meeting to Prof. Siba Prasad Sinha one of the members of the Governing Body of the College.

20. Charge No. XII-In the meeting of the Governing Body held on December 5, 1985. which was attended by 11 members of the Governing

Body including Dr. Soumendra Nath Sarkar, the Principal and Secretary of the College (now under suspension) specific attention of Dr. Sarkar

was drawn to the fact that Professor Siba Prasad Sinha was not given notice of the aforesaid meeting by Dr. Sarkar although he was not restrained

in any way from attending meeting of the Governing Body and the meeting dated December 5, 1985, was held not either pursuant to the direction

of the President or to the requisition dated November 22, 1985, made by 12 members of the governing Body. In the said meeting the President

gave a ruling to the effect that status quo relating to the membership of aforesaid Shri Siba Prasad to be maintained whose matter was sub judice

and all the members except Dr. Soumendra Nath Sarkar agreed to the same. In the said meeting itself 10 members of the Governing Body made a

written requisition dated December 5, 1985, to Dr. Soumendra Nath Sarkar, Principal and Secretary of the Governing Body of the College (now

under suspension), to convene a meeting of the Governing Body of the College on December 13, 1985 at 5 p.m. in the College premises to

consider the agenda mentioned therein. Although Dr. Soumendra Nath Sarkar called a meeting on December 13, 1985, he again altered the

agenda suggested by the aforesaid requisitionists by the requisition dated December 5, 1985, and again did not issue notice of such meeting to

Professor Siba Prasad Sinha, member of the Governing Body.

21. The above-named Articles of Charges Nos. I, II, III, V, VI, VIII, IX, X, XI and XIII, if proved against Dr. Soumendra Nath Sarkar, would

amount to his gross violation of Statute 98(3) and (4) of the Calcutta University First Statutes, 1979, and to his gross misconduct, gross

insubordination and indisciplined conduct and also to his conduct unbecoming of a Principal of the College.

22. The above-mentioned Articles of Charge No. IV, if proved against Dr. Soumendra Nath Sarkar, would amount to his gross misconduct

unbecoming of the Principal of a College and detrimental to the dignity and prestige, of the College.

23. The above-mentioned Article of Charge No. VIII, if proved against Dr. Soumendra Nath Sarkar, would amount to his absence without leave

and. his gross misconduct in violation of Statute 116 of the Calcutta University First Statutes, 1979.

24. The above-mentioned Articles of Charges Nos. I to XII, if proved against Dr. Soumendra Nath Sarkar, would further amount to his wilful and

deliberate attempt to create an administrative deadlock in the College and to prevent the Governing Body of the College from holding meeting for

taking effective measure for properly defending the case filed by Dr. Soumendra Nath Sarkar in the Hon"ble High Court, inter alia, against the

Governing Body of the College.

25. In the second charge-sheet there were about 17 charges. The nature of the charges which were issued on August 29, 1986, were briefly as

follows:

(a) Charge No. I relates to payment of salaries to one Dr. Baikuntha Rai, a whole-time permanent Lecturer in course of 6 months and 24 days

between December 8, 1983, and June 30, 1984. It was alleged that the said Dr. Rai attended only 24 days and absented from a number of days

and that payment of such salaries to Dr. Rai amounts to gross misconduct and unbecoming of a Principal and it was a case of indiscipline conduct.

(b) Charge No. II also relates to Dr. Rai in which it was alleged that the Governing Body had not granted any leave to Dr. Rai for some days

between December 8, 1983, and April 28, 1984, that it was alleged that the Petitioner granted medical leave on half-pay for 14 days from April

29, 1984 to May 12, 1985 without sanction of the Governing Body. This was held to be an act of gross misconduct.

(c) Charge No. III also relates to Dr. Rai and it was alleged that the period from December 1, 1982 to May 14, 1984 was granted as earned

leave for full pay for 16 days and 65 days respectively without the proper authority which according to the College authority was indiscipline act.

(d) Charge No. IV also relates to Dr. Rai, who applied for leave for three months from July 1, 1984 to September 30, 1984, but the said leave

was granted knowing fully well that Dr. Rai would not join the College thereafter. This sanction of absence of Dr. Rai from July 1, 1984 was stated

to have been made without the sanction and knowledge of the Governing Body.

(e) Charge No. v. also relates to Dr. Rai who submitted 16 applications to the Principal since December 7, 1983, for various purposes and that it

was stated that Dr. Rai did not apply through proper channel. It was alleged that the Petitioner as Principal reported the matter to the Governing

Body but by suppressing the issue of "No Objection Certificate" and "Last Pay Drawn Certificate" for appointment of Dr. Rai as Principal of S.D.

College, Azamgarh, U.P. The issue of "No Objection Certificate" and "Last Pay Drawn Certificate" were not known to the Governing Body and

the name was held to be an act of gross negligence and indiscipline act.

(f) Charge No. VI also relates to Dr. Rai for not informing the office of the College to discontinue the name of Dr. Rai from the quarterly requisition

made by the College for Government Pay packet for teaching and non-teaching staff, when Dr. Rai had stated that he had joined as Principal of

S.D. College, Azamgarh, U.P., with effect from July 21, 1984. This was stated to be an act of fraudulent on the part of the Principal. Of course

there was no allegation that the Petitioner had got any advantages financial or otherwise in this behalf.

(g) Charge No. VII relates to payment of fees to the internal auditors for the years 1978-79 to 1981-82 and that inspite of request of the

Governing Body in its meenting since January 21, 1984, to place the Internal Audit Reports before the Governing Body, the Petitioner did not

place the said audit report which was held to be an net of cross misconduct.

(h) Charge No. VIII relates to payment of audit fees to the auditors without authority and sanction from the Governing Body.

(i) In Charge No. IX it was alleged that on March 21, 1981, the Governing Body passed a resolution for promotion of one R.N. Guin, Assistant

Librarian, and that the Petitioner reported that the said Sri Guin was qualified for the post of the College library and that a sum of Rs. 300 was not

refunded by the Petitioner which would amount to misappropriation of College funds by the Petitioner, which was alleged in Charge No. X.

(j) In Charge No. XI it was alleged that the Petitioner had drawn advances from the College either by cheques or by cash and that it was alleged

that he had refunded the whole amount in cash after some days and this was held to be a case of holding the College fund for his personal use.

(k) In Charge No. XII it was alleged that the Petitioner as Principal requisitioned in writing by a requisition slip dated May 5, 1983, the sum of Rs.

1000 from the College fund for purchase of books from the Calcutta University sales counter and the books were purchased by breaking the usual

practice of paying large amounts to suppliers by cheque. Here the payment was made by cash for a sum of Rs. 539 which was found to be

prejudicial to the financial interest of the College.

(l) In Charge No. XIII it was alleged that the Petitioner purchased assets on various dates between June 1981 and August 1983 at a total cost of

Rs. 27,378.39 against different bills or vouchers without the sanction from the Governing Body, which was held to be gross misconduct prejudicial

to the interest of the College and causing financial loss to the College,

(m) In Charge No. XIV it was alleged that the Principal got the toilet situated at the first floor converted into a store room for the College without

any authority and sanction of the Governing Body of the College by spending a sum of Rs. 401 which was held to be a case of gross indisciplined

conduct and it was case of unauthorised and unlawful alteration of the properly of the College prejudicial to the interest of the College with some

ulterior motive,

(n) In Charge No. XV it was alleged that the Petitioner had ordered for transfer of imprest cash fund from daily cash collection on different dates

between August 6, 1983, and August 19, 1983 depositing such collections with Banks on the following working day and this was held to be a

case of wilful violation of the norms and practices in this College in its financial administration.

(o) In Charge No. XVI it was alleged that a sum of Rs. 4050 was spent by the Petitioner during the months of August and September 1983

towards commercial museum of the College not against pucca bills. This was held to be a case of gross and indisciplined conduct.

(p) In Charge No. XVII it was alleged that from 1980-81 onwards the Petitioner had drawn travelling expenses from June 20, 1980 to October

15, 1985, on any average not exceeding twice or thrice in a month and such travelling allowances were drawn five times in the year 1980, 29 times

in the year 1981, 36 times in the year 1982, 65 times in the year 1983, two times in the year 1984, 35 times in the year 1985. The amount of

travelling allowances drawn on different dates was ranging from Rs. 10 to Rs. 144 and it was alleged that the travelling allowance was drawn

without submitting any tour diary for preparation of relevant vouchers, and it was also alleged that often charged "daily rates" of wide variance,

instead of charging actual expenses, with different rates with wide variance for going to the same place on different dates etc.

26. In substance, the first charge-sheet was confined and related to the Petitioner's functioning as Secretary of the Governing Body and that it was

a tussle between the Secretary of the Governing Body in one side and the Chairman and some other members of the Governing Body on the other

side. The second charge-sheet contains charges for granting leave or leave salary to Dr. Rai and spending money or doing something in the

capacity of a Principal of a College. On the basis of the first charge-sheet an enquiry was held in which it appears that the Petitioner did not

participate on (he ground that (he first writ application was pending. It is not necessary to go into the question in details, inasmuch as on the basis

of the charge-sheet the matter was decided ex parte and on the basis whereof the Governing Body decided to impose a punishment of suspension

for one year in its meeting held on October 3, 1986.

27. The Principal of the College had a dual role by virtue of his post. The Petitioner was also an ex officio member of the Governing Body and the

Secretary of the Governing Body of the College. The first charge-sheet related to the Petitioner's action and inaction, lapses or negligences, if any,

relating to his conduct as a member of the Governing Body and not as a Principal of a College.

28. On behalf of the Petitioner Mr. Mani Bhusan Sarkar, learned Advocate, contended in the first place that the Petitioner as a Principal of a

College could not be punished for anything done or omitted to have been done as member of the Governing Body and that the allegations per se

did not amount to misconduct in relation to the post of Principal which the Petitioner was holding. It was submitted that the conduct of the

Petitioner qua Secretary and Member of the Governing Body does not and cannot authorise the Respondents to penalise the Petitioner and punish

not as a member of the Governing Body and as a Principal of the College. Secondly, it was contended that from the charge-sheet it was clear that

it was a tussle between the President and some members of the Governing Body in one side and the Petitioner in other side. The Chairman and

other members of the Governing Body, it was submitted, acted as prosecutor, witness and judge. The complainant was the Chairman and other

members of the Governing Body, the witnesses were the Chairman and other members of the Governing Body and it is the Governing Body of the

College presided over by the Chairman of the Governing Body had decided the matter. This is in violation of principle or natural justice and hit by

the principle of bias. It was submitted that no person shall be the judge of his own cause. It was further submitted that a master could impose

punishment on the servant or an employer could punish an employee. But in case of members of the Governing Body, there was no master and

servant relationship and the disciplinary jurisdiction of the Governing Body could not be invoked against a servant or an employee in respect of this

which was not in course of employment but in course of members of the Governing Body, or in other words, the conduct of the Petitioner qua

members, of the Governing Body is governed by principle of law, where the Governing Body can take steps against, a member of the Governing

Body simply for removing from membership and, secondly, it was contended that word misconduct had a definite connotation, anything and

everything does not amount to misconduct. The allegation contained in the charge-sheet does not correct and docs not amount to misconduct on

the basis of the principle laid down by the Supreme Court in the case of Union of India v. J. Aluned AIR. 1979 S.C. 1020 and in the rase of A.L.

Kalra Vs. Project and Equipment Corporation of India Ltd.,

29. Mr. Samarcndra Banerjee, learned Advocate appearing on behalf of the Respondents College authority, submitted that all members of the

Governing Body have not been made parties and, as such, writ petition is not maintainable. The Governing Body is neither a Body Corporate nor a

Society registered under the Society"s Registration Act and, as such, all the members of the Governing Body are parties. It was further submitted

that the charge-sheet was issued under the provisions of Section 9(1)(iv) of the West Bengal College Teachers" (Security Service) Act, 1975, and

that u/s 12(1) of the said Act, an appeal lies against the said order of penalty and on the ground of availability of alternative remedy, this writ

petition should not be entertained. It was further submitted that as the Petitioner suffered the punishment of suspension for one year from October

13, 1986, no relief could be granted by the Court at this stage. It was further submitted that the order of suspension passed on December 13,

1985, which was passed in contemplation of disciplinary proceeding and that the same was challenged before this Court in C.O. No. 1200(W) of

1986, but no interim order was granted in the said Civil Order and, ultimately, the said Civil Order was dismissed on contest by judgment and

order dated May 19, 1987.

30. During the pendency of the writ application, the charge-sheet dated March 13, 1986, was issued and a disciplinary proceeding was initiated

thereon. It was further submitted that although in the said Civil Order the Governing Body of the College was never restrained by any interim

order from drawing up any disciplinary proceeding against the Petitioner or from proceeding with any disciplinary enquiry, the Petitioner failed and

reglected to proceed against any disciplinary proceeding and, as such, the Petitioner did not make any complaint with regard to the said enquiry. It

was submitted that the said enquiry was conducted after following the principle of natural justice and the requirements under the statute and, as

such, the Petitioner cannot challenge the validity of the same. It was further submitted with regard to the second charge-sheet which was issued on

August 29, 1986, is concerned, it contains certain alleged misconduct on the part of the Petitioner. It was pointed out that whether the charges

under the second charge-sheet were correct or not, are to be decided in the disciplinary proceeding by this Court and that, it is stated that this

Court directed the College authority to continue the disciplinary proceeding and passed final order with a direction that the final order should not

be communicated without the leave of the Court. Pursuant to the said direction the disciplinary proceeding was conducted against the Petitioner in

which the Petitioner participated and that the enquiry officer submitted a report, and after consideration of such report the disciplinary authority

being the Governing Body of the College issued a second show-cause notice to the writ Petitioner imposing a penalty for removal. It was further

submitted that before issue of the second charge-sheet dated August 29, 1986, a preliminary investigation report was submitted by Sri B.C. Guha

as also from the internal audit report submitted by Mr. Scngupta for the period from 1980-81 to 1984-85 and that this fact which was in the

second charge-sheet was placed before the Governing Body why they could not be incorporated with the first charge-sheet. It was lastly

submitted that this writ application is liable to be dismissed on the ground that on the self-same cause of action the Petitioner filed a suit before the

City Civil Court in Title Suit No. 2270 of 1986 and that, subsequently, the Petitioner made an application for withdrawal of the said suit and the

suit was dismissed for non-prosecution on the ground that due to unavoidable circumstances the Petitioner did not want to proceed with the said

suit. It was submitted that when the Petitioner filed a suit in respect of the disciplinary proceeding, even though the same was withdrawn. It

amounts to the principle of res judicata and estoppel. The writ application should also be dismissed.

31. In reply Mr. Mani Bhusan Sarkar, learned Advocate appearing on behalf of the Petitioner, submitted that the plea of nonjoinder of the parties

had not been specifically pleaded and that in the absence of such a plea taken in the affidavit-in-opposition merely on the basis of the statement

from the Bar, the plea of non-joinder could not be taken by the Court at the final hearing stage. Mr. Sarkar also submitted that the allegation

contained in the second charge-sheet had been broken up with an ulterior and unholy end in view by the Chairman and the members of the

Governing Body. It was submitted that, in any event, the charges were stale and had been brought into existence. In the facts and circumstances, it

was suggested that it was mala fide, and as a matter of violence for moving the writ application by the High Court against the Governing Body and

as a result (hereof a tussle took place between the Petitioner and the members of the Governing Body which was holding the meeting which was

the subject-matter of the first charge-sheet.

32. At the very outset it is necessary to decide the preliminary question as to maintainability of the writ application. First, such preliminary objection

is with regard to the alternative remedy. In the instant case, the Petitioner had challenged the order of suspension, the initiation of first departmental

proceeding, order of punishment imposed on the first charge-sheet and the initiation of the second proceeding by the charge-sheet dated August

29, 1956. The appeal could be preferred only against the final order in respect of the second charge-sheet. Unless the final order was passed, the

question of preferring an appeal did not and could not arise at all and that the proceeding was continued on the strength of an order passed by this

Court. So, in respect of second charge-sheet, the alternative remedy could not be invoked at all. Secondly, with regard to the first chargesheet is

concerned, the same was challenged without jurisdiction. It is now well-settled principle that, if the writ application is entertained and heard on

merit, at the time of final hearing the Court cannot reject the petition on the ground of existence of alternative remedy. In the case of L. Hirday

Narain Vs. Income Tax Officer, Bareilly, it was held by the Supreme Court that In a case where the Petitioner filed a writ application instead of

availing of statutory remedy, High Court entertains petition and gives hearing on merits. Thereafter, it is not open to the High Court to reject the

writ application on the ground that the statutory remedy was not availed of.

The rules of exhaustion of alternative remedy does not take away the jurisdiction of the High Court to entertain the writ application. In appropriate

case the writ application could not be entertained on the ground of availability of alternative remedy, that means at a point of time when writ

application is moved, a remedy provided under a statute on the self-same cause of action should be made available to the party, and in that

circumstance, the Court should normally ask the party concerned to move the alternative forum where the statutory remedy is provided instead of

invoking the writ jurisdiction of the High Court. In a case where no alternative remedy is available at any point of time, the writ petition could not

be thrown out on the ground that a party could have moved the High Court for alternative remedy, even though the same was not available or the

Petitioner would be entitled to avail the alternative remedy in near future. Alternative remedy means that, when two remedies are open, High Court

will refuse to entertain the Petitioner and will ask the party to avail the alternative mode of remedy which was then available. In the instant case,

when the writ petition was moved, no remedy in law was available for which the Petitioner could be directed to avail that remedy. Alternative

remedy is a self-imposed restriction on the Court. Writ remedy is a discretionary remedy and it is a rule of practice and not of jurisdiction. In the

case of State of West Bengal Vs. North Adajai Coal Co. Ltd., it was held that in proper case High Court may entertain the Petitioner even if the

aggrieved party has not exhausted the remedy available under a statute before the departmental authorities. It is also firmly established principle

that when the authority has acted without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the

Constitution on the ground of alternative remedy. Accordingly, the objection with regard to the alternative remedy stands overruled.

33. With regard to non-joinder of parties is concerned, such a plea was not taken on behalf of the Respondent in the pleading. It was submitted by

Mr. Banerjee that all members of the Governing Body were not made parties and, as such, the writ petition is not maintainable. Reference was

made to a Division Bench judgment of this Court in F.M.A.T. No. 729 of 1987. But a copy of the said judgment had not been produced before

this Court, and that apart there was no pleading in the affidavit-in-opposition with regard to the nonjoinder of parties. The objection that was taken

that the writ petition should be dismissed on the ground of non-joinder of parties, even though no such plea has been taken in the affidavit-in-

opposition. Supreme Court in the case of Himansu Kumar Bose Vs. Jyoti Prokash Mitter, held, unless the plea regarding the non-joinder of parties

could be pleaded by the Respondents, the Court should not decide such question suo moto. In that case, in the absence of any pleading from the

Respondents, the Court rejected the petition on the ground of non-joinder of parties, that was deprecated by the Supreme Court. Such a plea is

required to be taken in the pleading so that other side may get an opportunity to rectify the mistake, if any. Such a plea could not be allowed to be

taken on the basis of oral submission. The pleading could have been amended, but nothing was done and, as such, in the facts and circumstances

of the case, it must be held that the Respondents never intended to take such plea on the proceeding.

34. The question is whether the writ lies against the Governing Body of the College or not, which is decided by the Supreme Court in the case of

Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others, . With regard to the first charge contained in the charge-sheet dated March 12,

1986, is concerned, the question that calls for determination at the very outset is whether the Governing Body can exercise the disciplinary control

power in respect of anything done or omitted to have been done or any negligence on the part of the Secretary of the Governing Body is concerned.

It cannot be said that there is a master and servant and/or employer and employee relationship between the President of the Governing Body and

the members of the Governing Body and the Secretary of the College. They are all members of the Governing Body and that the code of conduct

is governed by the relevant statutes which govern the rules of meeting of the Governing Body. If any member of the Governing Body violates any

of the procedures for holding meeting, in that event, the only remedy should be for suspending or removing a member from the membership of that

body according to the rules.

35. In the instant case, the Petitioner had a dual role, firstly, he was a Principal of the College and, Secondly, he was a member of the Governing

Body and he was appointed as Secretary of the Governing Body as because he was a member of the Governing Body. In my view, if the

Petitioner had done anything illegal in connection with the functioning of the Governing Body or in not convening the meeting of the Governing

Body, he has violated the rules of meeting, and for that purpose, the remedy provided for punishing the Principal could not be invoked. But in such

a case, the Chairman of the Governing Body of the College could not invoke the disciplinary jurisdiction which could only be invoked by a master

against the servant or by employer against the employee. Among the members of the Governing Body there could not be any master and servant

relationship. Unless there is a master and servant and/or employer and employee relationship, the disciplinary jurisdiction could not be invoked.

The Petitioner might have acted illegally and wrongfully by raising any objection and by not convening the meeting, but that was done by the

Petitioner in the capacity of the Secretary of the Governing Body and not as a Principal of the College. As a Principal of the College he is

answerable to the Governing Body or to the Chairman of the Governing Body as an employee to an employer. But as Secretary of the Governing

Body he is not answerable in that sense. There cannot be any privity of contract between the Petitioner and the Governing Body as a master and

servant while acting as a member of the Governing Body. There may be privity of contract between the Petitioner and the Governing Body in

respect of anything done by the employee which must be an act in connection with duties and responsibilities of a teacher or a Principal.

36. In my view, the employer and/or the master has a disciplinary control over the employee or the servant and the disciplinary control could be

exercised as terms and conditions of the employment. The Principal was employed, but the member of the Governing Body or a Secretary of the

Governing Body is not an employee and his status cannot be equated with that of an employee. The Principal is elected or selected as a member of

the Governing Body, and if he does anything wrong in connection with duties as member of the Governing Body, he could be removed from the

membership, but that does not confer any jurisdiction upon the Governing Body to exercise disciplinary control and punish him as an employee,

inasmuch as the allegations contained in the first charge-sheet are relating to the function of the Principal and Secretary of the Governing Body.

Accordingly, in my view, the disciplinary power of the management could not be invoked against the Secretary of the Governing Body, while

acting as Secretary of the Governing Body on the plea that Secretary was also an employee under the Governing Body. In the present day, in the

Governing Body of schools and colleges, teaching and non-teaching staff representatives are sometimes elected as members of the Governing

Body or the Management Committee. If any omission or commission committed by a member of the Governing Body, that lapse must be dealt

with under the law and the disciplinary power of the management could not be invoked to punish that member simply because he was incidentally an

employee.

37. It is firmly established principle that now that the age when management could "hire and fire" at will has gone, it is possible to assert that the

employer has a legal duty to treat his employees with due respect and consideration, mindful of their needs and problems, sympathetic with their

difficulties. It is no longer possible to treat an employee as an expendable chattel or as an object without feeling and emotions. The disciplinary

power of the management could only be invoked in connection with omission or commission committed by an employee in course of his

employment and not outside his employment. One of the basic structures of law of discipline is procedural fairness. Every employee has a right not

to be unfairly dismissed or punished.

38. In the instant case, in my view, the Governing Body had no jurisdiction to issue such a charge-sheet for punishing the Petitioner as a Principal

of a College. Firstly, on the ground that the punishment could not be imposed upon the Petitioner in relation to his function as Principal when he has

done something right or wrong in relation to his duty as Secretary of the Governing Body. That apart there are serious infirmities in this case for

which the entire proceeding initiated on the basis of the first charge-sheet, must fall. Admittedly, it was a dispute and difference between the

President of the Governing Body and some members of the Governing Body on one side and the Principal as Secretary of the Governing Body on

other side. Admittedly, the complainant, witnesses and Judges are the Chairman and 12 members of the Governing Body. Law is well-settled that

a prosecutor and witness cannot play the role of a Judge. If it is allowed to be done, then there would be end of justice. The principle of bias and

natural justice have to be given a go-bye if such a thing is allowed to be continued. In the instant case, on this ground alone, the first charge-sheet

dated March 12, 1986, and the punishment that was imposed upon the Petitioner by way of suspension for one year by the resolution dated

October 3, 1986, must be held to be illegal without jurisdiction and is liable to be set aside.

39. With regard to the second charge-sheet the allegations contained in the second charge-sheet dated August 29, 1986, are concerned, it has to

be established that the same should disclose an act of misconduct which entails the punishment. Anything and everything do not and cannot

constitute misconduct. What constitutes misconduct has been considered by the Supreme Court in the case of Union of India v. J. Ahmed (Supra)

and the Supreme Court categorically held that

Misconduct must arise out of ill motive, acts of negligence, errors of judgment, or innocent mistake, do not and cannot constitute such misconduct.

There may be negligence in performance of duty, and a lapse in performance of duty or error of judgment in evaluating the developing situation

may be negligence in discharge of duty, but that would not constitute misconduct unless the consequences directly attributable to negligence would

be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.

40. In another case of Supreme Court in A.L. Kalra v. Project and Equipment Coorporation of India Ltd. (Supra) it was held that failure to keep to

such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the

specific conduct falls in any of (he enumerated misconduct in Rule 5. any attempt to telescope Rule 4 into Rule 5 must be looked upon with

apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose

employees to vagaries of subjective evaluation.

41. Applying these principles laid down in the aforesaid decisions of the Supreme Court if the charges which are the subject-matter of the second

charge-sheet, are examined, in that event, it would be clear that none of the charges satisfy the test laid down by the Supreme Court for bringing

within the scope of "misconduct" which entails the punishment. The second charge-sheet was issued on August 29, 1986, and it is on record that

for the purpose of bringing the existence of these charges another person was appointed to hunt up the old files and records to find out the

allegations. The incidents alleged were of 1983-84 and that, admittedly, this was hunted up and brought into existence after the first charge-sheet

was issued in October 1986. Mr. Sarkar, learned Advocate for the Petitioner, was right in his contention that it was an act of retaliation and an act

of victimisation by the President and members of the Governing Body when the dispute and trouble started after filing of a writ application. The

background of. the case clearly indicates that it was done so after the Petitioner had filed a writ application in the High Court against the Chairman

and member of the Governing Body and subsequently refusal of the Petitioner to convene the meeting of the Governing Body on some plea or

other whether right or wrong but suffice to say that had created some malice in the mind of Chairman and the members of the Governing Body as

alleged by Mr. Sarkar. In my view, in the exercise of disciplinary jurisdiction or disciplinary function bias and malice play a very important role. The

natural justice "bias" rule looks to external appearance rather than to proof of actual improper exercise of power. If the reasonable observer would

have the requisite degree of suspicion of bias in the decision-maker, then that decision can be challenged. It is a matter of the courts ensuring that

"justice is seen to be done". (See Garner's Administrative Law, 6th ed., p. 138)

42. In this case, from the first charge-sheet it is crystal clear that the Chairman and the members of the Governing Body were become very much

hostile towards the Petitioner for not convening the meeting or the emergency meeting which was asked to be convened, and as a matter of fact for

this the Petitioner was sought to be punished at that point of time earlier writ application was pending. Under such circumstances, the Governing

Body appointed an ex pane body to hunt up the files and records and also appointed an auditor to find out financial irregularities. Ultimately, this

gigantic charge-sheet was issued. In the said charge-sheet Charges Nos. 1 to 6 relate to granting of leave or sanction of pay to Dr. Baikuntha Rai

and granting of no-objection certificate and last pay drawn certificate are concerned, these are acts of innocent nature which were performed by

the Principal of the College. These allegations had been characterised as gross misconduct and unbecoming Principal of College, indiscipline of

conduct. Granting leave or sanctioning leave to one of his subordinates may be an act of remedy that does not mean to misconduct. After all the

Principal of a College is entitled to some powers and privileges as he is the head of the College. The Governing Body of the College has to be

remembered that the dignity and the authority of a Principal has to be maintained by at all costs. He cannot be treated as a domestic servant or a

mere clerk. Even assuming the charges are correct, on the basis of the same, the Petitioner cannot be proceeded with on the ground that he has

committed act of gross misconduct. With regard to the charges of conversion of latrine into a store-room, which was characterised as gross

misconduct and unauthorised construction, is concerned, this charge is mala fide. Such an act by any stretch of imagination cannot be characterised

as act of misconduct on the part of the Principal. Purchasing of articles for the College without any sanction from the Governing Body, in my view,

cannot be turned as act of misconduct, inasmuch as the money was sanctioned and purchases were made for the purpose of running a college, it

cannot held to be an act of misconduct. Certainly, if purchase was made for any other purchase other than College or purchase was made for

personal use of the Principal, the Principal could be charged for causing loss to the College. The Petitioner was also charged for drawing travelling

allowances. Number of days had been indicated earlier. Travelling allowances had been drawn in several years. The allegation is also peculiar that

the travelling allowances were drawn without submitting any tour diary for preparation of relevant vouchers. It is unthinkable that if the Principal of

the College who has to attend University or other place in connection with affairs of the College, being the head of the College he has to submit

tour diary or tour programmes. The Principal has not undertaken any tour but he has to attend occasionally University or other places. If there was

any tour in that event there would be allowances for stay, any food, not merely conveyances charges. He has not drawn this money for any tour

and the submission of tour programme before making this voucher does not and cannot arise at all. Travelling expenses for several past years

which was drawn was in existence but have been brought into light not bona fide and no other conclusion is to be made except that this was done

not bona fide, and the same was stale, This cannot be said by any stretch of imagination that it was fair. The manner in which the members of the

Governing Body had acted, clearly indicates that they were actuated by malice in fact and in law.

43. I have no hesitation in holding from the facts and circumstances of the case that with a definite motive of victimizing the Petitioner, these matters

had been dug up. The charges on the face of it cannot be maintainable and the charges do not disclose any act of misconduct. The Chairman and

the members of the Governing Body had acted the role of prosecutor, witness and judge and that thereafter brought this second set of charges.

This is a case of actual bias. If the Respondents are allowed to proceed with the charge-sheet, in that event, justice would not be seem to be done

and it would be a case of end of justice.

44. The basic structure of law of disciplinary proceeding is that there will be a procedural fairness. The disciplinary authority must be free from bias

and hostility. The charges on the face of it must disclose some misconduct, but it is well-established principle that stale matters cannot be allowed

to dug up for victimising an employee. Ture, the employer had a right to dismiss and/or to punish the employee, but that has to be done in fair and

proper manner. In this case, it is established that the President and the members of the Governing Body were biased and had admitted malice in

their mind. It was an act of retaliation for moving the writ application and for not convening the meeting. In this case, it is clearly established that the

Petitioner has been unfairly dealt with biased and closed mind. In this circumstance, it is also crystal clear that the Respondents cannot act

impartially.

45. In Re Godden (1971) 3 All E.R. 20 Lord Denning M.R. held that as Dr. Crosbie Brown had initially put Chief Inspector Godden on sick

leave on the ground of mental disorder and, thereafter, Dr. Crosbie Brown sat as a member of the Medical Board who had decided the fate of the

then Chief Inspector Godden, in that connection it was held that

Was it proper for the Kent Police authorities to refer decision this question to Dr. Crosbie Brown ? I must say I think it was not. Dr. Crosbie

Brown was disqualified from acting. He had already expressed an opinion adverse to Chief Inspector Godden. As early as 23rd July, 1970, Dr.

Crosbie Brown had said that the Chief Inspector was suffering from a mental disorder. Dr. Crosbie Brown acted on that opinion by putting him on

sick leave. He has put his opinion on affidavit. He has committed himself to a view in advance of the enquiry. I think it would be impossible for Dr.

Crosbie Brown who is just a general medical practitioner and not a consultant to bring a completely impartial mind to bear on the matter. In any

event, to the person affected by it, Chief Inspector Godden, it must inevitably appear that Dr. Crosbie Brown cannot bring an impartial judgment

to bear on the matter, if he was to decide the matter, justice would not be seen to be done.

46. If this was the view of the Court of Appeal in a case of that nature, in my view, the case before this Court is of worst nature. Here, it is a case

of open fight between one group against the Principal. That was the reason for which the second charge-sheet was brought into existence, and the

Petitioner cannot get any justice and cannot be dealt with fairly and justice would not be seen to be done, if the punishment is allowed to be

imposed upon the Petitioner on the basis of the proceedings of this nature. The members of the Governing Body had disqualified themselves as

being biased. In my view, the charges are all stale and had been dug up for the purpose of victimising the Petitioner. That apart the second charge-

sheet does not disclose any misconduct on the basis of the principle laid down by the Supreme Court as mentioned above.

47. It has to be remembered that while issuing the charges, the approach of the Governing Body was clearly indicative of the fact that the

Chairman and members of the Governing Body were out to finish the career of the Petitioner as a Principal of the College. These things cannot be

allowed to be done, inasmuch as, the Governing Body have the power of disciplinary control, but in this case the Governing Body has acted

beyond in all sense of proportion. The status of a Principal of a College has to be remembered and his position could not be converted as a mere

clerk or a domestic servant. It is firmly established principle that exercise of statutory power is invalid unless the repository of the power has acted

honestly in good faith. The deliberate promotion of a purpose be it public or private alien to that for which the power was conferred is to be

regarded as an act of bad faith. Where a prima facie case of misuse has been made out, it is open to the Court to draw the inference that

unauthorised purpose have been pursued if the competent authority fails to adduce any grounds supporting the validity of its conduct. The

proceedings are mala fide and are not maintainable at all.

48. Considering the facts and circumstances of the case on the foregoing reasons the writ petition succeeds. The first charge-sheet dated March

12, 1986, and the second charge-sheet dated August 29, 1986, and the order of punishment imposed on the basis of the resolution dated October

3, 1986, and the enquiry report in the second charge-sheet are quashed. The Petitioner should be reinstated forthwith with all benefits including all

arrears of pay.

49. The writ Petitioner succeeds. There will be no order as to costs.