

**(1985) 05 CAL CK 0027**

**Calcutta High Court**

**Case No:** C. R. No. 9693 (w) of 1982

Debabrata Banerjee

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** May 6, 1985

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** 89 CWN 968

**Hon'ble Judges:** Mukul Gopal Mukherjee, J

**Bench:** Single Bench

**Advocate:** Gopal Chandra Mukherjee, Tapendra Nath Basu and Anjan K. Mukherjee, for the Appellant; Amarnath Banerjee and Tapas K. Mukherjee for State, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Mukul Gopal Mukherjee, J.

In C. R. No. 9693(W) of 1982 Debabrata Banerjee and one Jayanta Kumar Banerjee filed an application" under Article 226 of the Constitution of India impugning a decision dated 1st September 1981 under memo No. 1403 (T)E issued by the Secretary State Council of Engineering and Technical Education, West Bengal conveying to them the decision of the Senior Board of Examination and Syllabus taken in their 92nd meeting held on 20.8.81 whereby the examination of all papers" of the Licentiate in Engineering Part-IV Examination of 14 Candidate"s including those of the petitioners, all belonging to kanyapur Polytechnic, Asanspl 4 was treated as cancelled and they were debarred from appearing at the two successive Part-IV Examination to be held on 1982 and 1983. This was on a finding that the said 14 candidates including the petitioners indulged in gross indiscipline including disturbance in Examination Hall, misbehaviour, threatening, copying and damage of Government properties while appearing at the Licenciate in Engineering Part-IV Examination held by the State Council for Engineering & Technical Education, West Bengal in May 1981 at Kanyapur Polytechnic Examination Centre. It is the contention

of the petitioners that on-21st May, 1981 they" sat for and completed the said examination and left the place after completing the examination on 22nd May, 1981. They got an information that on 21st May 1981 that there was some disturbance where some outsiders and some students of the institution participated. They further aver that oh those days the classes of 1st year, 2nd year and 3rd year were going on, They deny to have adopted any unfair practice in the said examination and they on the other hand contend that they all along obeyed the directions of the teacher who was incharge of the said examination centre and this fact was known to the Principal concerned and the Principal gave certificates on 26.6.81 and 22.7.81 in favour of the petitioners stating that they did bear a good moral character. On 15th September 1981 they received a notice where by they were given to understand that all the papers of the examination stood cancelled on the ground of gross indiscipline, misbehaviour and disturbance in examination hall and various other allegations. The petitioners referred to a G.D. Entry lodged on 21.5.81 where from it transpired that the said examination held on the same day passed off peacefully and just after the end of the examination, certain disturbance occurred and from the report it further revealed that other students caused mischief. The petitioners pleaded innocence. Their contention is that there were 71 candidates but the respondents arbitrarily packed up 14 candidates including the petitioners for cancellation of their examination. The petitioners never indulged in gross-discipline including disturbance in the examination hall, misbehaviour threatening, copying and damaging the government, properties and all the allegations against them were false and the petitioners left the examination hall after submitting their papers arid completed their Part-IV examination smoothly. The G.D. Entry No. 1245 dated 21.5.81 also revealed that the names of the petitioners did not transpire in the said report. The contention of the petitioners is that they have not been given any opportunity to meet the specific allegations against them They never participated in any indisciplinary practice as alleged and decision of the Senior Board of Examination and Syllabus was an arbitrary decision illegally made, behind the back of the petitioners, in a mechanical manner, picking up at random some students candidates including the petitioners who never indulged in gross-in-discipline or copying. The petitioners represented before the respondent no. 3 through the respondent no. 4 and the copies of the representation are marked as annexure D1 and D2 respectively. The petitioners were directed to attend before the Secretary of the Council at 1, Kiran Sankar Roy Road on 5.12.81 at 2 P.M. The said Secretary refused to hear their version and also refused to keep any evidence about their attendance. The petitioners stated that the attitude shown by the respondent no. 3 proved clearly a mala fide motive and biased attitude towards the petitioners since the said respondent refused to hear the petitioners. The very fact that the petitioners were deprived from appearing in the examination to be held in 1982 and 1983, showed the same to be a vindictive decision arbitrarily made. The petitioners thus lost three academic years which virtually ruined their career. In the other application filed by Sanjib Kumar Das and Naba Gopal Ghosh the self-same

contentions were raised and they also impugned the decision of cancellation Part-TV examination as also the further decision so as to debar the petitioners Sanjib Kumar Das and Naba Gopal Ghosh from appearing in the two successive part-IV examinations to be held in 1982 and 1983.

2. Mr. Amar Nath Banerjee, learned advocate for the respondents in his fairness submitted, that those candidates who tendered their unqualified apology over the incidents relating to 21st May, 1981 were allowed to appear in the examination for the subsequent years and the petitioner no. 2 in the writ application of Debabrata Banerjee i.e. Jayanta Kumar Banerjee was such a candidate. I was also given to understand at the hearing that Jayanta Kumar Banerjee does not wish to proceed with the present writ application. Mr. Amar Nath Banerjee placed before me the proceedings of the Senior Board of Examination and Syllabus held on 20.8.81. On perusal of the same I find that the reports of the Observer and Officer-in-Charge of Kanyapur Polytechnic regarding the conduct of Licentiate in Part-IV Examination held in May, 1981 were considered. A finding was made that 14 candidates whose Roll Nos. were given out in the said meeting were found to have indulged in gross indiscipline including disturbance in examination hall, misbehaviour, threatening, copying and damaging the government properties while appearing at the said examination from Kanyapur Polytechnic. In consideration of such reports, it was decided that the results of these candidates were to be, cancelled and they would be debarred from appearing in the next two successive Part IV Examinations to be held in 1982 and 1983. The decision of the Senior Board was communicated by the State Council in its notification No. 1403 (T)E dated 1st September, 1981. This decision apparently was taken by the Senior Board without giving any opportunity whatsoever to all those 14 candidates. Mr. Banerjee could not satisfy me on production of relevant record that the said decision of Senior Board of Examination and Syllabus which was held on 20.8.31 conformed to the principles of natural justice and audi alterem partem.

3. After the notification was issued on 1.9.81, all the candidates applied for review of the decision of the Senior Board of Examination and Syllabus. The applications of the candidates along with the prayers of some of the guardians of the candidates were considered in the 93rd meeting of the Senior Board of Examination and Syllabus held on 2nd November, 1981. In the said meeting it was decided that the Secretary would give a hearing to the candidates. Accordingly, the candidates were called in the office of the State Council for Engineering and Technical Education at 1, Kiran Sankar Roy Road, Calcutta-1 on 5th December, 1981 at 2 p.m. All the candidates turned up. A memo was furnished to me showing the, gist of their, depositions. It is rather curious that instead of confronting, the candidates against whom disciplinary measures were taken with the reports and evidence bearing out their complicity, the candidates concerned were asked to depose and the gist of their deposition was recorded in the minutes of the proceedings. It reveals that Jayanta Kumar Banerjee, Naba Gopal Ghosh and Debabrata Banerjee neither

admitted their involvement nor expressed any regret for all that happened. Sanjit Kumar Das submitted that at the time of examination he was" suffering from Mumps with high fever and it was not possible for him to participate in such disturbance. He completely denied his involvement. His elder brother Sri Swapan Kr. Das also met the Secretary and provided the illness of his brother. The report of the Secretary of the Council was placed before the 94th meeting of the Senior Board of Examination and Syllabus held on 14.1.1982 and the ultimate decision taken was not to review the decision pertaining to the present petitioners in respect of 1981 examination. One candidate was allowed to appear in the examination for the year 1982 and rest 1-3 candidates including the petitioners were allowed to appear in the examination for the year 1983. The petitioners however did not avail of their chance to appear in the said examination for the year 1983. On 18.8.82 there was a report given by the Principal of Kanyapur Polytechnic against the petitioner Debabrata Banerjee alleging inter alia that he entered all on a sudden into the chamber of the Principal on 18.8.82 at 1.15 p.m. and threatened the Principal with dire consequences and this was a sequel to the cancellation of Part-IV Examination in 1981. The Principal duly apprised the President of the Governing Body i.e. Additional District Magistrate, Asansol about such treats and misbehaviour of the petitioner. Be that as it may, such incident is not the subject matter of the present decision.

4. In the facts and circumstances of the present case following the decision of our Court in [Ram Narayan Keshori and Others Vs. University of Calcutta and Others](#) , I am of the view that since the petitioners were never allowed an opportunity to be present in the meeting of the Board when evidence against them was considered by the said Board prior to its decision to cancel the results and the petitioned were also given no opportunity to adduce evidence to confront the allegations which formed the basis of decision for cancellation of their examination, either before or after the decision taken by the Board on 21.8.81, the order of the Council cancelling the examination of the petitioners on the basis of resolution of the Board which found the fourteen candidates including the petitioners guilty of breach of discipline and other acts of misbehaviour was liable to be set aside on the ground of denial of natural justice.

5. Instead of giving the petitioners a proper opportunity to be heard before a decision as to cancellation of the examination was taken by the Senior Board of Examination and Syllabus, the Council decided to allow only a limited opportunity to the candidates concerned to give their depositions before the Secretary on their prayer for review and or reconsideration of the decision of the Board and that too after the decision was taken by the Board. Curiously enough in the said hearing given by the Secretary, about which serious allegations were made by the petitioners as to denial of a proper opportunity to represent their case, nothing positive is available from the records so as to clinch the issue that the petitioners were granted a proper opportunity to know what the specific allegations against them were and as to the persons who made such allegations. The petitioners were

also denied the opportunity to prove that there was no basis for such allegations or to prove that such allegations were contradictory to the G. D. Entry lodged before Police Station on that day. The, petitioners also did not have any opportunity to prove the untrustworthiness" of the evidence adduced against them which an accused has in a Court of law or a delinquent employee is entitled to have in a disciplinary proceeding or a person charged with any allegation gets before a quasi-judicial authority. Inasmuch as the decision of the Board and the ultimate decision of the Council based on the recommendation of the Board, had serious repercussion of the career of the petitioners, it can not be denied that the subject, feeling of the petitioners nurtured by them about a denial of proper justice to them, is really not unfounded. For all these reasons, I am compelled to hold that the decision so as to cancel all the papers of the petitioners in respect of Part IV examination cannot be allowed to stand.

7. The results of 1983 examination have also long been published. The examination of 1984 are also over. While hearing out the matter I have the petitioners an option to appear in 1985 examination without prejudice to their rights and contentions in the present two writ applications (which were heard analogously) but the learned advocates representing the petitioners gave me to understand that they were not ready and willing to appear at the 1985 examination at all. In so far as the bar to appear in Part-IV Examination is concerned for the year 1982, which is long over, the writ court cannot give any efficacious relief at the present stage because even if the prayers in that regard be allowed, the relief will be infructuous. I therefore, direct the State Council for Engineering and Technical Education, West Bengal to direct its Senior Board of Examination and Syllabus to consider the individual cases of the petitioners over again and grant them a proper opportunity to make their defence in accordance with law so as to review the entire matter over again. The decision taken by the State Council in debarring the petitioners from appearing in the examination for the year 1982 is quashed, the decision pertaining to the cancellation of all the papers of Part-IV examination pertaining to the petitioners, is also quashed and the matter is directed to be reviewed by the State Council for Engineering and Technical Education through its Senior Board of Examination and Syllabus within a period of 2 months, where a personal hearing is to be given to the petitioners and the petitioners must be given an efficacious opportunity to meet the allegations against them. With these directions C. R. No. 9693 (W) of 1982 is made absolute and the writ application of Sanjib Kumar Das and Naba Gopal Ghosh stands allowed. There would be however no order as to costs. Let appropriate writs in the nature of Mandamus and Certiorari issue accordingly.