**(1992) 04 CAL CK 0045**

**Calcutta High Court**

**Case No:** F.M.A.T. No. 598 of 1990

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| University of Calcutta and others | | APPELLANT |
| | Vs | |
| Sm. Gopa Chakraborty and another | | RESPONDENT |

**Date of Decision:** April 27, 1992

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 226

**Citation:** AIR 1993 Cal 1

**Hon'ble Judges:** Bhagabati Prasad Benerjee, J; Abani Mohan Sinha, J

**Bench:** Division Bench

**Advocate:** Mr. S. Mukherjee and Mr. S.B. Majumdar, for the Appellant; Mr. Harasit Chakraborty and Mr. Bimal Chakraborty, for the Respondent

**Judgement**

@JUDGMENTTAG-ORDER

A.M. Sinha, J.
This appeal is directed against the judgment and order passed by the learned single Judge on a writ application being CO.

No. 12153 (W) of 1984. The Writ petitioner as a student appeared in B.A. II examination (1981-82) with Honours in English from the Scottish

Church College, conducted by the Calcutta University, appellant No. 1. The result of such examination was published in the Gazette of February

25, 1983 with a remark ""withheld"". She received the mark-sheet after 3 months from the said college which shows that she obtained in paper Nos.

V, VI, VII and VIII the Numbers 52, 30, 42 and 23 respectively totalling 147 which disqualified her from getting Honours. She was dissatisfied

with the result shown in the mark-sheet and tried to get permission from the Pro-Vice Chancellor for re-examination of the papers. Having failed in

her attempt in obtaining the same, she had to approach the Education Minister and obtain a form for re-examination which was ultimately submitted

before the respondent on May 27, 1983. Despite her repeated letters and reminders, she failed to obtain any result of the re-examination. So, she

was obliged to file the writ petition and she obtained a direction for immediate re-examination of all her answers scripts within six weeks from the

date of communication of the order."" She received the result of re-examination which shows that in English VI paper in which she obtained 30

marks was not at all changed and in respect of VIII paper the column of the marks was left blank. Thereupon she again approached the court for a

writ of Mandamus for proper examination of the answers scripts and also for writ of Certiorari directing the respondent No. 1 to produce the

answer scripts before the court and to declare her result. The court issued a direction accordingly on May 29, 1984. The matter was heard by the

court which made certain queries and issued certain directives upon the respondents. But the learned Judge, P. K. Mukherjee, released the matter

on the objection raised by the learned Advocate appearing for the respondents, the Calcutta University and ultimately the matter was heard by the

Learned Judge Sri D, K. Basu who by his order dated February 5, 1990 allowed the application with all the prayers made by the writ petitioners.

2. The learned Judge in allowing the writ application found that the appellant, University had lost the VI paper and they could not produce the

same and as such the university should take a compassionate view. He further found that the writ petitioner should be given the benefit of average

marks in paper VI and should get 47 marks instead of 30 which she was originally allotted and one mark should be added in paper VIII and all

told 18 marks should be added to the total marks of 147 which she obtained in Part II examination and thus, making it 165 and by adding up these

marks to the marks obtained by her in Part I examination which was 155 she should be allowed to get honours. The learned Judge also directed

the appellant, university to issue revised marksheet qualifying the writ petitioner to be declared as passed with Honours in English within 4 weeks

from the date of the orders. It was also directed that on compliance with the order within 4 weeks, the petitioner would be restrained from initiating

any action for damage or compensation against the university. Being aggrieved by and dissatisfied with such judgment and order, appellant-

university has come up in appeal before this court.

3. The only point that falls for determination in this appeal is if the judgment and order passed by the learned single Judge could be sustained in law

and in facts. Mr. S. Mukherjee, the learned Counsel representing the appellant, university of Calcutta, has urged that in terms of the resolution

adopted by the Syndicate on item No. 30 of the minutes of the meeting dt. 31-3-84/26-4-84 the Vice Chancellor awarded 9 marks to the

petitioner in which she originally obtained only 30 marks as such paper (Paper VI) was lost and that there was no ground for awarding marks to

paper VIII in which she obtained only 23 marks as such paper was found and not lost. It was further urged that there was no application from the

writ petitioner for scrutiny of her answer script and that she made no representation in respect of the marks obtained by her in papers VI and VIII.

According to him, the judgment of the learned single Judge is not based on reasons and it deserves a reversal.

4. Mr. Harasit Chakraborty, the learned Advocate for the respondent-writ petitioner, on the other hand, has contended that there is no rule

regarding the procedure to be followed for re-examination. It is done by the University according to practice. That the answer script which has to

be re-examined is sent to an examiner other than the original examiner. The admitted position in the present case, it is urged, is that Paper VI could

not be re-examined as it was lost and the marks in Paper VIII in which the respondent-writ petitioner got 23, on re-examination remained

unaltered, The student, the writ petitioner, was not certainly at fault for the toss of Paper VI. In various affidavits, sworn by the appellant-university

and its different officers filed by the Registrar of the university, it was disclosed that the writ petitioner candidate was given average marks in the

lost paper VI calculated on the basis of marks obtained by her in paper-V, paper-VII and Paper VIII in which she obtained 52, 42 and 23

respectively. By adding the average marks she got in all 156. It was further disclosed that she was given six marks on the basis of average marking

and 3 marks on the basis of general grace marks. This 9 (6+3) marks was added to her marks which she obtained in Paper VI, i.e. 30 marks. It

appears from the facts disclosed in the affidavits of the appellant and its officers that such average marks or extra 9 marks was given by the Vice

Chancellor on 28-5-84 in terms of the resolution adopted by the Syndicate in its minutes of the proceeding against the item Nos. 30 and 31 dated

31-3-83 and 26-4-83 respectively. It would further appear that even this revised marks, i.e. 30 marks in the lost paper VI was not quoted in the

letter sent to the candidate. It is the case of the university that it was not done (through oversight. Mr. Chakraborty has strenuously urged that the

appellant could not produce any rules or disclose any modality for awarding average marks or grace marks and whatever they did, they did

according to their discretion. He has further objected to the stand taken by the appellant that the writ petitioner candidate made no grievance as to

her marks obtained in Papers VI and VIII and made no representation with regard to marks obtained in such papers. Her specific case, it is

submitted by Mr. Chakraborty, in the writ petition that she had to move even the Minister of Education having failed to obtain the form for re-

examination in respect of Papers VI and VIII in B.A. II examination. According to him, the stand taken by the university in this regard is wholly

unfounded. He finally submits that the learned trial Judge in the facts and circumstances of the case rightly held that the average marks should be

calculated on the basis of undisputed marks in paper VI and Paper VII which were 52 and 42 respectively. If calculation is done on the basis of

the marks obtained in the undisputed paper V and VII then average marks would be 47. He has further proceeded to submit that if ""general grace

marks theory"" of awarding 3 marks by the university be accepted, this extra 3 marks if added to the total of 164 it would come to 167. This marks

if added to the marks the writ petitioner obtained in Part I examination which was 155 would make a total of 322. The learned Trial Judge instead

of going by this calculation took the mean and awarded 1 mark in Paper VIII and thus came to the conclusion that the candidate would get by this

process 165 and if this mark be added to the marks obtained by her in Part I examination it would bring the total marks 320 which is the minimum

marks for obtaining honours in total eight honours papers at the rate of 40% marks in each of the papers. According to him, there is no ground for

interference with the finding of the learned trial Judge in this appeal.

5. On examination of the respective case of the parties as disclosed by the pleadings and affidavits and the materials on record in the shape of

minutes of the proceedings of the Syndicate and the correspondence that passed internally between the different departments of the university and

between the writ petitioner and also the appellant, the university, it is clear that the appellant, university acted after discussion and deliberations in

the meeting of the Syndicate and in the exercise of their discretion instead of following any rules or procedure. The discretion, according to well

established principles means that when something is to be done according to discretion it must be done according to rules of reasons and justice

and not private opinion and humour. It is to be not arbitrary, vague and fanciful but legal and regular. It must be exercised within the limit to which

an honest man is competent to the discharge of his office ought to confine himself Sharp v. Wakefield 1891 AC 173. ""If people, who have to

exercise a public duty by exercising their discretion, taken into account the matter which should the court consider not to be proper for their

guidance of their discretion, then in the eye of law they have not exercised that discretion"" -- (Maxwell on the Interpretation of Statutes 11th

Edition page 118). ""It is well settled that a public body invested with statutory powers .....may take care not to exceed or abuse out of the power.

It must keep within limits of the authority committed to do it must act to good faith and it must act reasonably Mayor etc. v. N.W. Railway

Company 1905 AC 426 See Maxwell on the Interpretation of Statutes 12th Edition 146. This approach to construction has two consequences :

The statutory discretion must be truly exercised and when exercised it must be exercised reasonably (Maxwell 146). See also Johnson v. Buttress

(1936) 56 CLR 113 : ""When a man is occupying a position involving ascendency or influence over another or a dependence or trust on his part it

is his duty to use his position of influence in the interest of no one but the man who is governed by his judgment."" The court, as in the present case,

examined the propriety of use of discretion by dominant authority like the university in which the examinees, candidates, guardians and the people

at large usually repose their trust and confidence, should follow the tests contained in the principles stated above. The learned trial Judge while

considering the pros and cons of the matter after examining the relevant materials on record came to the conclusion that the university acted

arbitrarily and did not do justice to the writ petitioner. In order to do justice to the writ petitioner, the learned trial Judge took a fair and just view of

the matter and awarded minimum of the marks in order to enable the writ petitioner to get honours in the examination in which she appeared. The

Supreme Court in the decision of Madan Gopal Kanodia Vs. Mamraj Maniram and Others, held that there is no particular ritualistic formula in

which the order of the court has to the passed when it used its own discretion. See also S.G. Jaisinghani Vs. Union of India (UOI) and Others, . It

lays down that discretion when conferred upon executive authorities, must be found within clearly defined limits. It means sound discretion guided

by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful. It is also the law that the court in appeal should

only examine whether the discretion by trial court has been properly exercised and it would not substitute its own discretion in place of the

discretion exercised by the trial court. Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another, . If the discretion has

been exercised by the trial court reasonably and in a judicial manner, the fact that the appellate court would have taken a different view may not

justify interference with the trial court's exercise of discretion Uttar Pradesh Co-operative Federation Ltd. Vs. Sunder Brothers of Delhi, . The trial

Judge, in our view, has used his discretion very fairly and reasonably in the facts and circumstances of the case. We are of the view that no

interference is called for with the order passed by the learned trial Judge in this regard.

6. The learned trial Judge also considered the sufferings, anxiety and harassment of the writ petitioner who appeared in B.A. Part II examination

sometime in February, 1983 and moved the court more than once in writ petition for getting justice and held that the university which had lost the

answer scripts in paper VI should take a compassionate view as to the grievances of the writ petitioner. We are in agreement with the view taken

by the learned trial Judge. After struggling for 7 years she could get the judgment in her favour only in February, 1990. We find no infirmity in the

said judgment.

7. We find no merits in this appeal which stands dismissed.