

Harijander Singh Vs. Selection Committee, Kakatiya Medical College, Warrangal and anr.

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Court : Andhra Pradesh

Decided On : Apr-17-1974

Reported in : AIR1975AP35

Judge : Gopalrao Ekbote, C.J., ;A.V. Krishna Rao and ;Chennakesav Reddy, JJ.

Acts : [Constitution of India](#) - Article 226; Osmania University Act, 1959 - Sections 44 and 44(3)

Appeal No. : Writ Petn. No. 6089 of 1973

Appellant : Harijander Singh

Respondent : Selection Committee, Kakatiya Medical College, Warrangal and anr.

Advocate for Def. : Govt. Pleader for Revenue and ;A. Raghuvir, Adv.

Advocate for Pet/Ap. : S.M. Hassan, Adv.

Disposition : Petition allowed

Judgement :

Ekbote, C.J.

1. This case first came before our learned brother K. Ramachandra Rao J. In view of conflict in certain decisions, he referred the matter to a Bench. When it came before a Bench, it was noticed that

'the case raises a very important question as to whether a writ petition under Article 226 lies against Kakatiya Medical College which though privately run is affiliated to the Osmania University and receives grants from the public exchequer from the State of Andhra Pradesh.'

The case therefore was referred to a Full Bench by an order dated 24-1-1974 for an authoritative judgment on this 'vexed question' and that is how this case has come to us.

2. Kakatiya Medical College was established in 1959 by some enthusiastic officials and non-officials. The then Chief Minister showed keen interest. A managing committee headed by the Collector, Warangal was formed. The Regional Medical Education Society was registered under the Societies Registration Act, The Medical College so started is affiliated to the Osmania University. The Government Hospital, Warangal is attached to this College. The State Government is giving grants to this Medical College. Sometimes it draws upon the bounty of the Central Government. Apart from receiving capitation fee from each student it receives the fees prescribed from the students. The University and the State Government have their representatives on the managing committee.

3. The Osmania University is governed by Act IX of 1959, the Osmania University Act. Section 2 (a) defines the affiliated College to mean 'a college within the University area affiliated to the University in accordance with the conditions prescribed.'

4. Section 2 (a) (i) defines the term 'aided college'. 'It means a college other than a Government College which receives aid out of the State Government funds.'

5. Section 2 (f) then defines the term 'Professional College' which means 'a college established and maintained by the University, or affiliated to the University for providing courses of study leading to the professional degrees of the University, in

accordance with, the Regulation prescribed.'

6. The term 'teacher' includes a teacher working in the affiliated professional college. Section 4 lays down the Powers, functions and objects of the University, one of which is to affiliate or recognise colleges and institutions and to withdraw such affiliation and recognition. The other is to supervise and control the conduct and discipline of the students of the University and its affiliated and recognised colleges and institutions and to make arrangements for promoting their health and general welfare.

7. Yet another is to inspect affiliated and recognised colleges and institutions and to take measures to ensure that proper standards of instruction are maintained in them. It is the function of the University to hold the examinations and to confer degrees on persons who have pursued a course of study in its affiliated or recognised colleges. It can take over and maintain colleges and hostels.

8. Under Section 18 of the Act, the Senate of the University has the power to prescribe general conditions of affiliation and recognition of colleges and institutions and to suspend or to withdraw affiliation or recognition, as the case may be on the recommendation of the Syndicate and after consultation with the Academic Council. It has also power to control in general all colleges and institutions in the University area in the manner prescribed by the statutes. It can enter into any agreement with a private management for ensuring the management of any institution and taking over its properties and liabilities or for any other purpose, not repugnant to the provisions of this Act.

9. The Syndicate under Section 21 of the Act has power to affiliate colleges to the University under conditions prescribed or recommend their suspension or withdrawal of such affiliation. It also has power to direct the inspection of affiliated colleges and to call for reports, returns and other information from affiliated colleges.

10. From these provisions of the Act it would be abundantly plain that not only the courses of studies are prescribed by the University but the appointment of teachers, admission of students, holding examinations and conferring degrees all

rest with the University. It can affiliate or withdraw such affiliation. It can inspect and call for reports from the affiliated colleges. There is thus an ample control of the University on the affiliated colleges. The affiliation and other things of the private aided colleges are regulated and controlled not only by the provisions of the Act but also by the statutes, ordinances, or Regulations made by the University in pursuance of the power conferred on it by the Act.

11. Thus the University as well as the affiliated colleges are bound not only by the provisions of the Act but also by the subordinate legislation in the form of statutes, ordinances or regulations made by the University.

12. Section 44 of the Act empowers the Senate to make statutes determining the condition of affiliation or recognition of colleges and institutions. It is in pursuance of this power that the Senate made the Regulations regarding the affiliation or its withdrawal of the private colleges.

13. Rule 1 authorises the Syndicate after consultation with the academic council to affiliate any college.

14. Rule 5 lays down the conditions which must be satisfied. Firstly that it is under the management of a regularly constituted governing body properly appointed by the Society duly registered. Such governing body shall have at least one representative of the University and one of the education department. It fixes the minimum and maximum number of members of such a governing body. It forbids exclusion from admission to the college on the ground of religion, caste, race, or sex place of birth or any of them. It also ensures the qualifications of the teachers and conditions governing their tenure of office.

15. Rule 15 empowers the Syndicate to appoint a commission once in five years to inspect the affiliated colleges.

16. Rule 17 authorises the Syndicate to suspend or withdraw the affiliation.

17. Rule 19 then enjoins that every college shall have a duly constituted Selection Committee for recruitment to the teaching staff. The Government and the University shall be represented on the Selection Committee.

18. Rule 20 then lays down the qualification for the teachers and the principals.

19. Rule 21 lays down the minimum pay scales for the teaching staff of the affiliated colleges.

20. Rule 22 authorises the college to frame rules which must be sent to the University relating to promotion, (sic) or retirement, leave, fixation of pay and provident fund. The University has retained the power to direct amendment of any rules so submitted to the University. It further declares that the teachers appointed permanently in the affiliated colleges shall be entitled to serve till they complete the age of 60 years. It can be extended with the permission of the University unto 65 years. It also enacts that an appeal shall lie with the Syndicate in case there is any dispute between the management and teaching staff.

21. Rule 26 then states that terms, vacations, conditions for admission of students attendance examination promotion and hours of work in the affiliated college shall be the same as those of the constituent colleges of the University.

22. Rule 32 enjoins that every college affiliated to the University shall conform to and be bound by the Rules of the University now in force or framed from time to time.

23. It is in this background of these provisions that we have to examine whether judicial review is available in this case.

24. The question of availability of judicial review is the first question which must be answered by the Court in every case. This task is no more in controversy because of Article 226. The Constitution itself makes it available. That is what is meant by rule of law. It cannot be taken away or limited by any statute. Whether the power to review should be exercised in any given case is altogether a different question. Our administrative law like that of England is squarely founded on the doctrine of ultra vires i. e. jurisdiction. The courts approach a challenged administrative act on the footing that it is either lawful or unlawful, intra vires or ultra vires. In the former case they have no concern with it. In the latter case, they will quash it or declare it void. From this view point, it really becomes irrelevant that there may be parallel

jurisdiction in some other body or some alternative administrative remedy. The Courts are concerned only with the question whether there has been a breach of the law in the situation before them, and on those they must focus to the exclusion of everything else. In any case, where a Court has jurisdiction it must of necessity be ready to remedy illegalities of all kinds. It is of course understood that since the writs are discretionary remedies, the Courts may withhold them if there are special circumstances which deprive their application on merit. There have come into existence some self-imposed restrictions on the exercise of this very wide and extraordinary power of the High Court.

25. The question in this regard is often posed: against whom writs and orders can issue? It must however, be realised that the methods by which an administrative action can be removed by the courts include the issue of certiorari, mandamus, prohibition etc. etc. The question as to against whom such a writ can issue must therefore depend upon the nature of the writ asked for. We have in this case to consider the question relating to certiorari and mandamus. These are the reliefs asked for in the two writ petitions with which we are concerned.

26. In regard to certiorari Lord Atkin. L. J. made the following statement in *R. v. Electricity Commissioner*, (1924) 1 KB 171 at p. 204):

'Both writs are of great antiquity, forming part of the process by which the King's Courts restrained courts of inferior jurisdiction from exceeding their powers. Prohibition restrains the tribunal from proceeding further in excess of jurisdiction; certiorari requires the record or the order of the court to be sent up to the King's Bench Division, to have it legally inquired into, and if necessary to have the order quashed. It is to be noted that both writs deal with questions of excessive jurisdiction, and doubtless in their origin dealt almost exclusively with the jurisdiction of what is described in ordinary parlance as a Court of justice. But the operation of the writs has extended to control the proceedings of bodies which do not claim to be, and would not be recognised as, courts of justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division

exercised in these writs.'

27. From the above statement two questions arise: First, in respect of what acts is certiorari available; second, on what grounds i. e. in respect of what defects, will it issue?

28. If we take up the first question, it will be seen that Atkin. L. J.'s dictum extracted above shows that the availability of certiorari has extended historically from the courts in the strict sense to bodies which would not normally be regarded as courts. In England while it is available to quash the decisions of Courts of summary jurisdiction, of country courts, of Corroners' Courts, the National Insurance Commissioner. Rent and other Tribunals, it is also granted in respect of decisions given by bodies whose functions are normally considered as far removed from those of a court.

29. Although the proposition laid down by Lord Atkin, L. J. is neither uniquely authoritative nor self-explanatory and although in some situations it has offered a court uncertain guidance; in others it has appeared unduly restrictive, nevertheless one has necessarily to analyse the implications of the learned Lord's observation in order to appreciate the present state of law.

30. We have seen that according to the learned Lord 'Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially act in excess of their legal authority, certiorari may issue.' The words 'any body of persona' naturally give rise to question as to against whom a given writ can be issued. While we have noticed that certiorari will issue against the authorities mentioned above, it would be erroneous to confine its operation to only statutory bodies. Even a non-statutory body if it falls within the ambit of the abovesaid dictum a certiorari can go against such non-statutory body. The wording of Article 226 is sufficiently wide and according to it writ can be issued 'to any person or authority including any Government.'

31. Now the words 'any person' in Article 226 only mean any person to whom according to well-established principles a writ would lie. In Janardhan Reddy v.

State of Hyderabad. (: [1951]2SCR344):

'The power given to this Court under the provision is a large one. But it has to be exercised in accordance with the well-established principles.'

The above observations of the Supreme Court are applicable also to the wide powers of the High Court under Article 228 and they have, therefore, to be exercised in accordance with well-established principles.

32. Certiorari was for long dogged by the absurd verbal confusion which the Courts made out of the supposed requirement that it lay only to quash 'judicial' or 'quasi judicial' acts, when in fact it had, even in England, for centuries been, used to quash administrative acts. Fortunately a healthy reaction has now supervened and it is now clear that certiorari lies to control purely administrative decisions such as licensing, slum clearance and making of rating valuation lists. It may, here-after, therefore be capable of reaching beyond the area of legal power strictly so called.

33. The distinction between a Judicial or quasi-judicial action and an administrative act is now practically wiped out. It is now fairly settled that even an administrative act of any person or authority which affects the right or interest of a citizen can be challenged in a proceeding under Article 226.

34. The words 'having legal authority' were still recently taken to mean a statutory authority. Recently a strong Divisional Court held that a public body required to make determination affecting individual interests in a judicial manner was subject to review by certiorari despite the fact that it was neither constituted by a statute nor endowed with jurisdiction by statute.

35. In *R. v. Criminal Injuries Compensation Board*. ((1967) 2 All ER 770), this question has been thrashed out. In 1964, the Criminal Injuries compensation scheme was established by which compensation is payable to persons injured by crimes of violence. The scheme was set up under the executive power and not under a statutory one. The Parliament's approval of the necessary annual expenditure is however given annually. The scheme is administered by the Board. The principles it has to apply when awarding compensation and the procedure it

has to follow in determining applications are laid down by the Home Secretary. There is no enforceable legal right to compensation even if the Board makes an award. *Lain* applied for certiorari for error of law on the face of the record. The Board did not deny that it had a duty to act judicially but argued that it was not amenable to certiorari as, with reference to *Atkin L. J.*'s dictum, (a) it has no 'legal authority' and (b) it did not 'determine questions affecting the rights of the subjects'. The Court held (a) that the Board's authority was legal though it was not set up by statute (b) that the word 'rights' was not confined to legally enforceable rights; or more widely, that the words 'the rights' might be omitted from *Atkin, L. J.*'s dictum. *Lord Parker, C. J.* said at page 778 that certiorari will not issue to private or domestic tribunals which 'have always been outside the scope of certiorari since their authority is derived solely from contract, i. e. from the agreement of the parties concerned.'

36. The dictum of *Lord Atkin L. J.* then requires that the authority must have to determine questions affecting the rights of subjects. The word 'right' is used in a very wide sense. It has therefore to be understood in a very broad sense and is not to be confined to the jurisprudential concept of rights to which relative legal duties are annexed. It comprises an extensive range of legally recognised interests, the categories of which have never been closed. In a number of cases the granting or refusal of a licence which analytically is a privilege or liberty has been held to be reviewable by certiorari.

37. Coming then to the last of the observations of *Lord Atkin L. J.* i. e., 'having the duty to act judicially', certiorari will not issue to quash the order of a body that has acted in a purely ministerial capacity. But it is not necessary that in every action there must be a *lis* between the parties. There are cases in which a duty to act judicially in accordance with the rules of natural justice has been held to arise by implication, from the nature of power and its impact upon the rights of individuals despite the absence of any express duty to follow a procedure analogous to the judicial. There are also cases in which certiorari has been issued to quash decisions made in excess of authority despite the fact that the body concerned was under no express or implied duty to afford a hearing to two contending parties. What follows therefore is that the duty to act judicially may exist in

situations other than those in which there is express statutory provision for the determination of an issue analogous to a *lis inter partes*. Thus the duty might arise in widely different circumstances which it would be impossible, and, indeed, inadvisable, to attempt to define exhaustively. The general approach in recently reported decisions, English and Indian, towards the permissible scope of certiorari has been very liberal. It is now clear that certiorari can issue to bodies exercising discretionary powers and having no duty 'to act judicially' in the sense of a duty to follow a judicial type procedure; some are tempted to assume baldly that certiorari will issue to *qua* purely administrative as well as judicial acts and decisions. The administrative decision, however, must be such as to affect the right or interest of a person.

38. It will thus be seen that the administrative law relating to certiorari has been in the slow process of evolution. The exact limits of certiorari, however, were never rigidly laid down. They have varied from time to time, with a view to meet the changing conditions. At one time the writ was issued to an inferior court. It was subsequently extended to statutory tribunals determining a *lis inter partes*. Later again it extended to cases where there was no *lis* in strict sense of the word but where rights or interests of citizen were affected. The only constant limits throughout have, however, been that it was performing a public duty. Thus certiorari may issue to inferior non-statutory tribunals discharging functions of a public nature. We have thus reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting the subjects provided always that it has a duty to act judicially. And the term 'judicially' would now include quasi judicially or fairly. It can sometimes even be implied. It is usually implied when the action affects in the broad sense rights or interests of the subjects. It would include administrative acts of such character which affect the rights or interests of citizens and in which they are in any base required to act, openly, fairly and impartially.

39. Halsbury's Laws of England. 4th Edition at page 104 says:--

'In order to establish that certiorari or prohibition will issue, it appears to be enough to show that the body in question was obliged to act in a judicial manner, in the sense that it was under an express duty to adopt a procedure analogous to a judicial procedure, or that it was required to determine questions of law and fact or otherwise to exercise a limited or judicial discretion, or that it was under an implied duty to act judicially in accordance with natural justice, or even under a more loosely formulated duty to act fairly. A duty to act judicially may be inferred from the severity of the impact made by the exercise of a power or duty on individual interests.'

40. One of the best features of our administrative law is the range and the effectiveness of the remedies provided in Article 226 of the Constitution. In our modern highly organised society where administrative acts and decisions intimately affect the well being and happiness of so many citizens, particularly those who are poor, life would be intolerable if there were no means of ensuring that interference by administrative action with the liberty or property of the individual did not exceed that which had been authorised by a representative legislature and also by the Constitution and that the administrative decisions so authorised were fairly made.

41. That it is the proper role of the High Court to ensure needs no urging. But unfortunately the methods of review provided are shrouded in the thicket of technicalities. If we once recognise the need to control administrative acts and decisions, then the courts should not be slow in devising the means but shake off the hesitancy to assume the role of doing so. The situation at present recognises it and the development of remedies justifies such an attitude.

42. Moreover, the important aspect of the writs enumerated in Article 226 is that they belong exclusively to public law with the exception of habeas corpus. Their primary object is to make the machinery of Government and administrative tribunals and bodies work properly rather than to enforce private rights. This introduces a valuable 'public interest' element. An application for certiorari, as the title of the case indicates, is a proceeding by a superior court to call some public body or authority to account for exceeding or abusing its power. Similarly in a proceeding for mandamus the superior court is calling for the proper discharge of

some public duty. Although private persons are of course the real applicants, the public character of the proceedings is more than a mere form. In reality, thus, the applicant may be an ordinary citizen but the fiction of a 'Crown suit' broadens the basis of the whole proceeding. As Lord Delvin once said :

'Orders of certiorari and prohibition are concerned principally with public order, it being part of the duty of the High Court to see that inferior courts confine themselves to their own limited sphere.'

A citizen who comes forward to point out defect of jurisdiction is in a sense public benefactor.

43. This then is the present position of law relating to certiorari.

44. When we come to the writ of mandamus, it is seen that it is writ which commands a public body to perform a public duty imposed on it by law. A distinction must therefore be made between a duty and a mere power. The distinction between the two is clear and obvious. Mandamus is not limited to judicial acts. It will issue at the instance of a person whose legal right is involved and a corresponding statutory obligation is also involved. The remedy of mandamus is discretionary. It is not issued as a matter of course. Nor it can be claimed as a matter of right. Thus there must be a legal right existing in the petitioner and a corresponding legal duty upon the public officer or authority in order to issue a mandamus.

45. It is in this background of prevalent position of law regarding certiorari and mandamus that we have to consider whether a writ of certiorari or mandamus can issue against a private aided college affiliated to the University.

46. A Bench of this Court consisting of Gopal Rao Ekbote J. (as he then was) and Ramachandra Raju J. held in *Kailash Pati v. Governing Council*, (1971) 2 An WR 352):

'There is no doubt that a College may not be a statutory body but in view of the fact that it is heavily aided under the Grant-in-aid code by the State Government from the State Exchequer which comes from the tax payers' money and is

affiliated to the University in accordance with the statutes made by the University in pursuance of the University Act passed by the State Legislature it is amenable to the jurisdiction of this Court under Article 226 of the Constitution. It is of course true that it must also satisfy the other requirements. Whatever may have been the view held in the past it can safely now be said that the recent factors favourable to the expansion of certiorari have been many including the factor that certiorari will issue to a non-statutory body exercising public functions. The Courts of late have readily held that those orders can lie to administrative tribunals deciding issues of law and facts between parties. Although they have usually said that only judicial or quasi-judicial acts could be supervised by them, at the same time, they have wished and have attempted to control as many forms of administrative action as possible. If this trend is to be taken as the basis, then it would not be difficult to hold that the said writ not only can be directed against the statutory bodies or authorities but also against bodies or authorities although non-statutory in their character, yet discharging public duties, provided of course that they have an authority to decide questions affecting the rights of others and have the duty express or implied to act judicially. If the body is constituted and is registered under the Societies Registration Act and if such body is receiving substantial grant out of public Exchequer and is affiliated to the University, since it discharged public obligation and is performing public duties, such a body surely comes, within the ambit of Article 226 of the Constitution. Such a body is amenable, therefore, to the jurisdiction of this Court under Article 226 of the Constitution.'

It was further observed:

'It would be patently clear that the college is a body of persons of a public character which has to determine sometimes matters affecting civil rights of the teachers and also students of the College. The college has to necessarily act judicially while determining the service of a teacher on disciplinary grounds or expelling students on grounds of indiscipline. Even in case where a non-statutory body like the college invades the civil rights of teachers or students and affects them economically or otherwise, the college owes a duty towards the teachers and students to observe the principles of natural justice wherever there are no specific rules made in that regard. Article 226 of the Constitution although qualifies the

word 'rights' by the words 'conferred by Part III' the words 'for any other purpose' are of wide amplitude. These words would include rights which are legally enforceable and created not only by the statute but Would also include rights created by common law.'

47. That was, however, a case terminating the services of a Principal of private aided and affiliated college. This case was cited before another Bench consisting of Obul Reddi and Ramachandra Raju JJ. in Subhadra Devi v. Andhra Girls College. ((1973) 1 An WR 94). The learned Judges felt that since the said decision was 'not in conformity with the de-clared law of the Supreme Court in Madan Gopal Rungta's case. : [1952]1SCR28 , they were not called upon to refer the question involved to a Full Bench. The learned Judges also referred to the fact that the earlier Bench decision had relied upon Regina v. Criminal Injuries Compensation Board, Ex parte Lain (1967) 2 QB 864. They also noted what the case has decided. They, however, recalled what Mukherjea, J. had said in T. C. Basappa v. T. Nagappa, : [1955]1SCR250 . They extracted the following passage:

'In view of the express provisions in our Constitution, the Court need not now look back to the early history of the procedural technicalities of these writs in English Law, nor feel oppressed by the difference or change of opinion expressed in particular cases by English Judges.'

48. Although they have not said so expressly but it is clearly that they held that the English Judgments on administrative law cannot be relied upon in Indian Courts.

49. Thus the earlier Bench decision was considered opposed to the decisions of the Supreme Court on two grounds. Firstly that the existence of the legal right said to have been infringed is a condition precedent for an application under Article 226 and secondly English cases ought not to have been relied upon.

50. In so far as the first ground is concerned, the question of the existence of the legal right in early days arose for consideration because of the language of Article 226. The Article says 'for the enforcement of any of the rights conferred by Part III and for any other purpose.' The High Court thus has wide power to issue directions and writs not only for the enforcement of fundamental rights but also for

'other purposes'. A conflict arose as to the true meaning of the expression 'and for any other purpose,' One view was that the principle of ejusdem generis writ apply in order to understand the meaning of this expression and accordingly it was held that the writ will issue only for the enforcement of fundamental rights and not for the purpose of enforcement of ordinary legal rights. The other view was that the rule of ejusdem generis does not apply and therefore the said expression will include the enforcement of ordinary legal rights which do not amount to Fundamental rights. The second view prevailed. What follows is that moral rights, obligations and matters, which just fall within the region of propriety and decency but all outside the region of law cannot be dealt with under Article 226. In other words, unless the breach of legal right or a provision of law or of the Constitution is alleged and proved or there is a violation of principles of natural justice, the High Court will not interfere. It is only in this context that the Supreme Court decisions in Madan Gopal Rungta's case, : [1952]1SCR28 and State of Orissa v. Ram Chandra, : AIR 1964 SC685 have always been understood.

51. It must, however, be noted that

it is not necessary for invoking the powers of the High Court under Article 226 that the applicant must, in every case, have suffered a 'personal injury' or must seek the enforcement of 'personal right'. Thus an application for habeas corpus may be made by a person other than the person under the detention. So also an application for a writ of quo warranto is maintainable although the applicant does not seek the enforcement of any of his personal rights. Surely it cannot be argued that the result of the Supreme Court decision is contrary to this position. No doubt the Supreme Court has said 'the existence of the right is the foundation for the exercise of jurisdiction of the Court under Article 226'. But if under the law an application can be made by a person although he has not suffered a personal injury and does not seek redress of a personal grievance or the enforcement of a duty personally in his favour or his benefit, there can be any objection to saying that such a person has a 'right' to make the application. Thus although Article 226 can only be invoked for the enforcement of legal right, such right need not be the personal right of the applicant in cases where the nature of the writ according to well-established principles does not require that the applicant must be personally

injured.

52. The development in this branch of law must be borne in mind if one is not to go wrong. The latest view is that the restrictive rules about 'standing' are in general considered inimical to a healthy system of administrative law. The rules about 'standing' are now extremely liberal. Indeed in the case of certiorari and prohibition, the two remedies so largely concern with the jurisdiction, it can almost be said that there are scarcely rules about 'standing' at all. The doctrine is that anyone, even a mere stranger may apply. If the applicant is a person aggrieved, the remedies lie *ex debito justitiae*. If he is mere stranger, they lie only in the discretion of the courts. See Bernard Schwartz and H. W. R. Wade on 'Legal Control of Government' page 293. If a person with a good case is turned away merely because he is not sufficiently affected personally, that means that some Government agency is left free to violate the law and that is contrary to the public interest. Litigants are unlikely to expend their time and money unless they have some real interest at stake. In the rare cases where they want to sue merely out of public spirit, why should they be discouraged? The said Supreme Court decision therefore should not be literally taken and mechanically followed. It has to be understood in the backdrop of various remedies and their scope and purpose in the administrative law. If they are literally taken and applied to all remedies and in all situations, then the tax or rate payers' cases challenging various actions of the local bodies or consumers' actions can never be justified. With due respect to the learned Judges, therefore, we do not think that that could have been a ground on which the earlier Bench decision could have been held opposed to Supreme Court decision.

53. In the earlier case the termination of Principal's service was found to be in accordance with the law and as a result no writ was issued. In our judgment, however, the case rightly decides that a private aided and affiliated college is amenable to writ jurisdiction whenever it acts in excess of jurisdiction, commits an error of law or violates principles of natural justice.

54. In the later case under examination, the lecturer was temporarily appointed. She was not qualified to be appointed as Lecturer. She had thus no right to hold

the post. In these circumstances the termination of her temporary service was quite valid.

55. Let us then take the second round on the basis of which the earlier decision was considered as bad in law. We have noticed that the earlier case had relied upon the well-known and often cited case (1967) 2 QB 864. It is pertinent to note that this case has been cited with approval by Bernard Schwartz and H. W. R. Wade in their Book 'Legal Control of Government' at p. 104. Halsbury's Laws of England 4th Edition, at page 150 also quotes it with approval. It is a case which has opened up a new vista in the administrative law. The learned Judges, however, thought that the said judgment being an English case ought not to have been followed. We are not persuaded to agree with this view. First of all reliance on : [1955]1SCR250 to support the view which the learned Judges have taken was not quite apposite. The observations of Mukherjea J. merely invite us to take cognizance of Article 226 but do not preclude us from following the English and American cases on administrative law. Long back Banerjee, J. said in Union of India v. Elbridge Watson, : [1951]20ITR400(Cal) 'It is necessary to bear in mind the difference between the several writs and I would recommend to persons concerned a careful study of the nature of the writs from the English books'.

56. Article 226 accepts the remedies which have been invoked in England. Not only the nomenclature but their content, scope and purpose are also accepted. It therefore becomes necessary not only to know the nature of these writs but their scope and extent of operation also. Their growth and development in England must also be closely followed. The phraseology employed in Article 226 compels us to know the principles which are well established for the use of these remedies effectively. Even in a case which went from Ceylon the Privy Council said:--

'.....There can be no alternative to the view that when Section 42 gives power to issue those mandates 'According to law' it is the relevant rules of the English common law that must be resorted to in order to ascertain in what circumstances and under what conditions the court may be moved for a prerogative writ. These rules then must themselves guide the practice of the Supreme Court of Ceylon.'

57. In : [1951]2SCR344 ; Fazl Ali, J. in reference to Article 32 said:--

'The power given to the Court under this provision is a large one but it has to be exercised in accordance with well-established principles.'

58. In fact the case on which reliance has been placed by the learned Judges itself decides that in determining whether a particular writ, direction or order will issue, the High Court will take into consideration the historic background of the writ, direction or order and the general principles applicable to the prerogative writ. See T. G. Basappa v. T. Nagappa, : [1955]1SCR250 . See also Asiatic Engineering Co. v. Achhru Ram, : AIR1951 All746 ; R. C. Naidu & Sons v. I. T. Officer, : [1966]61ITR400(Mad) ; and Narasimha Setty v. Dy. C. T. Officer, : AIR1963 Mad166 .

59. It is true that these principles are not the foundation of the jurisdiction of the High Court. That foundation is provided by Article 226. Nevertheless the principles are the same. Thus the principles of the English law are applicable to the issue of the writs mentioned in Articles 32 and 226 of course in so far as they do not conflict with any provision of the Constitution or Indian law and subject to such conditions as the Court may deem it necessary to attach importance to in the exercise of its discretion in regard to the issue of the writs, in view of the special conditions in India That is why we find not only the Supreme Court but every High Court profusely and quite often relying upon English and American decisions wherever they are applicable. The administrative law is almost similar in these countries. In any case, we fail to see how the earlier decision of the Bench can be disregarded on the ground that it has preferred to rest its conclusions on an English case without holding that the principles laid down in the English case are not good law in India. We carefully considered the earlier Bench decision and we find ourselves in entire agreement with the views expressed therein.

60. The learned Judges then considered whether a private aided and affiliated college is a 'State' within the meaning of Article 12 of the Constitution. They held that it is not a State. Since no arguments were advanced to us in this behalf, we do not propose to express any opinion one way or the other.

61. The learned Judges next considered the question 'whether the extraordinary jurisdiction of this Court under Article 226 of the Constitution can be invoked by the Lecturer in such a private College.' They first held that the petitioner had no legal right which can be enforced under Article 226. If the reasoning is that she was temporarily appointed and therefore had no right to hold the post, and further she was not qualified and the University had not granted any exemption, then we agree with the view that her services were rightly terminated. The learned Judges, however, relied upon the *Praga Tools Corporation v. G. V. Imanuel*, : (1969)ILLJ479SC and *U. P. State Warehousing Corporation. Lucknow v. Chandra Kiran Tyagi*, : (1970)ILLJ32SC along with some other cases. They arrived at the conclusion on that basis that the writ can be issued only to a statutory body in a case where such a body has violated any provision of a statute. Accordingly they held that the appointment of the petitioner was not made under any statute. The appointment was only on a contract basis unconnected with any statutory provisions. They observed;--

'That being the case it cannot be said that the appellant has a legal right under any law, regulation or rules in force to enforce her non-fundamental rights.'

62. Since the complaint was made regarding termination of services arising out of breach of contract by a private body, it was held that such a dispute was cognisable by a civil court,

63. The question therefore is whether a writ of certiorari can issue against an affiliated college regarding the dismissal of a college lecturer.

64. In *P. R. Jodh v. A. L Pande* (1965) 2 SCR 713 writ was issued to a college affiliated to the Saugar University. The college was managed by a governing body. It was aided by the Government. The applicant was a lecturer. He was dismissed by the governing body on certain charges. In the writ petition his complaint was that his services were terminated in violation of the rules of natural justice.

65. The High Court rejected the writ petition. The High Court held that the conditions of service of the appellant were governed not by the 'college code' but by the contract made between the appellant and the governing body. The High

Court also took the view that the provisions of the 'College Code' were merely conditions prescribed for the affiliation of college and no legal right was created by the College Code in favour of the lecturers as against the general body.

66. The Supreme Court held that the 'College Code' was intra vires of the power of the University contained in Section 12 read with Section 4 (6) of the University Act. The provisions of Ordinance 20 known as 'College Code' have the force of law. It confers legal right on the teachers of the affiliated colleges and it is incorrect to contend that the college code merely regulates the relationship between the University and the affiliated colleges. The provisions of the College Code relating to the pay scale of teachers and their security of tenure properly fell within the statutory power of affiliation granted to the University under the Act.

67. The Supreme Court also held that there was violation of Clause 8 (6) of the College Code and therefore the order terminating the services of the appellant was illegal and ultra vires and was therefore quashed by granting necessary relief.

68. In *Vidya Ram v. S. J. N. College*, : (1972)ILLJ442SC , a lecturer, appointed by the Managing Committee of a College affiliated to Lucknow University, was dismissed by the Managing Committee. This order was challenged in a writ petition filed before the High Court on the ground of violation of principles of natural justice. It was dismissed on the ground that the relationship between the lecturer and college was that of master and servant and even if his services were terminated in breach of natural justice the remedy lay in a suit for damages and not under Article 226.

69. The Supreme Court on appeal referred to the *U. P. State Warehousing Corporation Lucknow v. Chandra Kiran Tyagi*, : (1970)ILLJ32SC and *Indian Air Lines Corporation v. Sukhdeo Rai* : (1971)ILLJ496SC . Following them it was held that since the relationship was of a master and servant even if the master wrongfully dismissed the servant the employment is effectively terminated.

70. The Supreme Court also referred to *Vidyodaya University v. Silva*, ((1964) 3All ER 865) and following it held that a teacher appointed by a University constituted under a statute did not hold an office or status.

71. Referring to Statute 151 it was held that it only provides that the terms and conditions mentioned therein must be incorporated in the contract to be entered into between the College and the teacher. It does not say that it has legal force. The terms and conditions mentioned in statute 151 have proprio vigore no force of law.

72. It was further held that the College or the Managing Committee is not a statutory body and so the argument that the case will fall under the third exception cannot be accepted. It was necessary that the statutory body must violate statutory provision.

73. It is quite relevant to note that (1965) 2 SCR 713 was distinguished on the ground that the terms and conditions in Clause 8 (6) of the 'College Code' had the force of law and had conferred rights on the appellant.

74. is to the same effect.

75. The authority both of : (1966)ILLJ451SC and : (1972)ILLJ442SC has now considerably shaken. The two earlier decisions of the Supreme Court, i. e. : (1970)ILLJ32SC and : (1971)ILLJ496SC on the basis of which : (1972)ILLJ442SC was decided have now been distinguished in a way disapproved in Sirsi Municipality v. C. K. F. Tellis, : (1973)ILLJ226SC . The decision refers to the three categories of employment. The third category of cases with which we are concerned of master and servant arises in regard to the servant in employment 'of the State or of other public or local authorities or bodies created under the statute.'

76. In regard to this class of employment, it was held that:--

'When a Public body is empowered to terminate employment on specific grounds or when a public body does not observe the procedure laid down by the legislature, i. e. improperly delegates power of dismissal to another body the Courts have declared such dismissal from public employment to be invalid.'

77. It was also held that the dismissal or termination of the services of employees without complying with the provisions of Statute, scheme or order is invalid. The dismissal will be invalid if it is contrary to the bye-laws or to rules of natural justice.

78. This decision, if we may say so makes a notable break through and is an important landmark in the growth of the administrative law. It removes the effects of the above said two earlier decisions of the Supreme Court and revises the position of law as it existed before the said two Supreme Court decisions. Now the employees not only of the State but also of statutory bodies, public and local authorities can avail of the protection which Article 226 provides if they point out any violation of a delegated legislation or scheme or order or bye-law or breach of natural justice. A large number of employees who were denied access to the High Court for redressal of their grievance have now been again brought under the protective umbrella of Article 226.

79. Even in India at one time the writ only went to an inferior court. Later its ambit was extended to statutory tribunals determining a *lis inter partes*. Later again it, was extended to cases where there was no *lis* in the strict sense of the word but where immediate or subsequent rights of citizens were affected. It now stands extended to public bodies discharging public functions. The only constant limits throughout were that the body concerned was under a duty to act judicially or fairly and that it was doing a public duty.

80. It is also relevant to note that the English decision in ((1964) 3 All ER 865) on which reliance was placed in : (1972)ILLJ442SC is no more good law in view of *Malloch v. Aberdeen Corporation*, (1971) 1 WLR 1578. In that case, a lecturer in Scotland was dismissed by the Education Committee. It was challenged on the ground of being against natural justice. The House of Lords held that the lecturer had a right to be heard before being dismissed as he was holding an office. The House of Lords thus refused to follow the Privy Council decision in *Silva's case*, (1964) 3 All ER 365 where the University had dismissed a Professor without hearing him and the Privy Council refused to quash the order of dismissal. *Vidyaram's case* noted the fact that *Silva's case* was criticised by academic writers. Nevertheless observing that the decision may be correct or not in effect followed it.

81. The decision in *Silva's Case* (1964) 3 All ER 865 was also commented upon in *Malloch's case* (1971) 1 WLR 1578, Lord Wilberforce said:

'.....I must confess that I could not follow it (the Silva case) in this country in so far as it involves a denial of any remedy of administrative law to analogous employments. Statutory provisions similar to those on which the employment rested would tend to show to my mind, in England or in Scotland that it was one of a sufficiently public character, or one partaking sufficiently of the nature of an officer to attract appropriate remedies of administrative law.'

82. For the same reasons, the decision of this High Court in 1973-1 An WR 94 cannot be said to be good law. We find it difficult to agree with it.

83. What therefore follows is that now we have to bear in mind : [1965]2SCR713 and : (1973)ILLJ226SC . These decisions therefore call upon us to consider two questions :

1. 'Whether the college in question falls within the decision of : [1965]2SCR713
2. Whether a writ of certiorari will issue even if it is found that an affiliated college is not a statutory body but a public body discharging public duties and even if it is found that the rules of affiliation have no force of law. Whether a writ can issue if the administrative instructions in rules of an affiliation or admission rules made by the Government are violated or there is a breach of Rule of natural justice?"

84. In so far as the first question is concerned, it could not be disputed that the affiliation rules noted above are made in pursuance of the power conferred on the University by Section 44 (3) of the University Act. The rules therefore have force of law. It cannot be said that they constitute power of management only. The rules requiring the governing body to be a registered body and that it should have on it representatives of the Government and the University and the qualifications of the teaching staff and the conditions governing their tenure of office all lend support to a tripartite contract between the governing body, the teacher and the approving authority i. e. the University and the Government. The teachers in such colleges have status under the rules and in any case they hold office. Apart from the express rules, the security of their tenure of office can easily be spelt out from the various provisions of the rules of the University as well as the grant-in-aid code of the Government. The Rules relating to the pay scales of the teachers and their

security of tenure properly fall within the statutory power of affiliation granted to the University under the Act. We have no manner of doubt that these rules create certain 'rights' in the teachers of the affiliated colleges. They are not mere servants of the college employee purely on contract by the managing committee of the college. They have a 'status' although they enter into a contract and in any case they hold office. We are therefore satisfied that such cases are clearly governed by the decision in : [1965]2SCR713 .

85. Even otherwise, we think in an appropriate case a writ of certiorari can go against a private College although it is not a statutory body. The rules of affiliation, even if taken to be non-statutory but mere administrative instructions issued by the University or the grant-in-aid code by the Government they would not come in the way of issuance of such a writ. We thus come to consider the second question.

86. We have seen that : (1973)ILLJ226SC laid down that writ can issue against a public body or authority or bodies created under statute apart from the State. We have also seen that violation of any statutory provision, rule, regulation, scheme, order or bye-law or principles of natural justice can be a ground for the issue of such a writ. The logical next step from this premise is that a writ can issue against a non-statutory body even if it violates administrative or executive directions or instructions or acts in violation of principles of natural justice. This logical sequence finds sufficient support from the two Supreme Court decisions.

87. : [1965]2SCR713 has issued a writ against a private college which was a non-statutory body. It is true that in that case a preliminary objection was raised that mandamus will not go against a non-statutory body but it was disregarded on the ground that it was not raised at appropriate time. But there could not be any difficulty in so far as writs of certiorari, prohibition or declaration are concerned.

88. In AIR 1973 SC 355 = (1973 Lab IC 453) their Lordships have referred to the decision of the House of Lords in McClelland v. Northern Ireland General Health Services Board. ((1957) 1 WLR 594). It was held in that case that the dismissal of the plaintiff by the Board on the ground of redundancy of staff was not one of the grounds specified in the terms and conditions of service. It was found that the dismissal could be on specified grounds, i. e. gross misconduct. A declaration was

granted in favour of McClelland on an originating summons as to whether the agreement of service was validity terminated. It is quite important to note that it was not a case of Government servant. There was no question of breach of statutory provisions. The employment was based on contract. The court found that the express power of the Board did not include reduction on the ground of redundancy. The most important aspect which lends support to the view we are taking is that the court spelt out security of status in employment.

89. In *R. v. Criminal Injuries Compensation Board. Ex parte Schofield*. ((1971) 1 WLR 926) a lady made a claim to the Criminal Injuries Compensation Board, a body established in 1964 for compensating victims of violent crime. Neither the Board, nor the compensation scheme were statutory. They were set up merely administratively, the Government explaining the details to Parliament and Parliament voting the money. The applicant claimed that she was entitled to an award under the published rules of the scheme which covered personal injury directly attributed either to a criminal offence or to an arrest or attempted arrest. She had been knocked down while a suspected thief was being chased, and the Board held that since she was a mere bystander she could not qualify. The Court quashed that decision for error of law on its face. This decision enforced non-legal and non-statutory rules against the non-statutory body and enforced a right which was not legally enforceable before. The classic formula under which certiorari issues to bodies deciding question affecting the rights of subjects has therefore now become too narrow.

90. Bernard Schwartz and H. W. R. Wade in their book on 'Legal Control of Government' at page 104 regarding this case say:

'This move may open an important new territory. The Government may sometimes be tempted to establish administrative schemes on a non-legal basis in order to give themselves an entirely free hand and exclude judicial interference. The new decision shows that the Courts may not held themselves barred by that expedient and that their arm may be long enough to reach into the regions of non-statutory discretion.'

91. The abovesaid decision followed an earlier important case (1967) 2 QB 864. This is the case on which reliance was placed by the earlier bench decision of this court referred to above.

92. In that case, a strong Divisional Court held that a public body required to make determinations affecting individual interests in a judicial manner was subject to review by certiorari despite the fact that it was neither constituted by the statute nor endowed with jurisdiction by a statute. In that case, the Board was set up by purely administrative action for the purpose of determining in accordance with clearly formulated rules, claims to 'ex gratia payment' to be made from finances supplied by parliament by virtue of criminal violence, was not allowed to escape the judicial superintendence merely because it did not rest on a formal statutory basis.

53. Lord Parker. C. J., while considering the question whether the Board was a body of persons amenable to the supervisory jurisdiction of the Court, considered (1924) 1 KB 171, particularly the observation which we have extracted above. The learned Chief Justice then said :

'I can see no reason either in principle or in authority why a Board set up as this Board was set up, is not a body of persons amenable to the jurisdiction of this Court. True, it is not set up by a statute. But the fact that it is set up by executive Government under the prerogative does not render its acts any the less lawful. Indeed the writ of certiorari has issued not only to courts set up by statute but to courts whose authority is derived, inter alia from the prerogative. Once the jurisdiction is extended, as it clearly has been, to tribunals as opposed to Courts, there is no reason why the remedy by way of certiorari cannot be invoked to a body of persons set up under the prerogative. Moreover, the Board though set up under the prerogative and not by statute and in fact the recognition of Parliament in debate and parliament provided the money to satisfy its awards.' The learned Chief Justice at page 882 further observed :

'The position as I see it is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have carried from time to time being extended to meet changing conditions. At one time

the writ only went to inferior Court. Later its ambit was extended to statutory tribunals determining a *lis inter partes*. Later again it extended to cases where there was no *lis* in the strict sense of the word but where immediate or subsequent rights of a citizen were affected. The only constant limits throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is, from the agreement of the parties concerned.'

The learned Chief Justice finally observed at the same page :

'We have as it seems to me reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a Public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially.'

94. In *Hannam v. Bradford City Council*, (1970) 2 All ER 690, the plaintiff, a school master at an aided voluntary school maintained by the Council, absented himself and refused to return to the duties in the school. His appointment was terminated at a meeting of the school governors and he was given notice. Thereafter a sub-committee of the Council met and held an enquiry whether the council should exercise its power to prohibit the dismissal of the plaintiff. This power was crystallised in the school's Articles of Government and the council's conditions of service of teachers which included a right to have a hearing. Three of the ten members of the sub-committee were governors of the school, none of them, however, had attended the meeting of the governors of the school. The staff sub-committee resolved not to prohibit the plaintiff's dismissal and this decision was later approved by the full council. It was held that the decision of the staff sub-committee which was a quasi-judicial decision could not stand because the fact that the three governors of the school sat on the sub-committee gave rise to the possibility of bias.

95. In *Herring v. Templeman*, (1973) 3 All ER 569, the plaintiff was a student at a teacher training college, a charity constituted by a trust deed. The plaintiff brought an action against three representative members of the governing body in which he sought a declaration that the resolution of the governing body and the

recommendation of the Academic Board were ultra vires null and void, and an order that he be readmitted as student. The defendants moved for an order that the plaintiff's statement of claim be struck out and the action dismissed as disclosing no reasonable cause of action. It was held that the allegations in the statements of claim would be struck out as there has been no breach of the rules of natural justice.

96. In *Regina v. Aston University Senate*, (1969) 2 WLR 1418, the applicants were University students. They failed in subsidiary subjects. The marks of all students who had failed were considered in the light of their Academic and personal histories. As a consequence, the applicants were asked to withdraw from their course. The students applied for a certiorari to quash the decision asking them to withdraw and the mandamus requiring the University to determine according to law whether they should re-sit for examination or be asked to withdraw.

97. It is relevant for our purpose to note that the University of Aston was incorporated by Royal Charter in 1966, the Charter giving power to make ordinances and regulations. Regulations duly provided that candidates who failed in examination might be required to withdraw. A Royal Charter confers the powers of a natural person only and this results in a sharp distinction between chartered and statutory bodies. Having no statutory force the regulations were administrative only. In spite of these facts, the petition was entertained and although it was held that the students should have been given an opportunity of being heard and since it was not given, there had been a breach of natural justice, the petition, however, was dismissed on the ground that prerogative remedies 'should not be available to those who sleep upon their rights.'

98. In this connection it is quite relevant to refer to Halsbury's Laws of England, IV Edition, page 150, where it is said:

'Certiorari may issue to inferior statutory tribunals such as the Patents Appeal Tribunal and to inferior non-statutory tribunals discharging functions of public nature.'

99. These decisions make it abundantly plain that the earlier Bench decision in (1971) 2 An WR 352 was rightly decided. The jurisdiction to supervise the exercise of their jurisdiction by inferior tribunals has never been dependent upon the source of the tribunal's authority to decide issues submitted to its determination except where such authority is derived solely and exclusively from agreement of the parties to the determination. This latter case falls within the field of private contract and is within the jurisdiction either of an arbitrator or the civil court. In so far as certiorari prohibition and declaration are concerned, these writs can be issued against a non-statutory body discharging public duties. More so when these public bodies receive grants from the Government as voted in the Legislature and are affiliated to the University which is a statutory body and controlled by it. Public bodies such as affiliated colleges placed as they are cannot be called as pure private bodies discharging purely private duties. Nor they can be characterised as domestic tribunals in the strict sense of that word. The relationship of teachers with such colleges is based on a tripartite arrangement and contract. Their appointment is made by a committee constituted under the statute as above, The appointment is to be approved by the University. There can be an appeal against any order in any dispute between the teacher and the college to the University as well as to the Director of Public Instruction. The University can direct the teacher to be reinstated: so also the Director of Public Instruction can. The teachers' salaries are fixed. The tenure of office assured. In some cases their salaries can directly be paid to them by the Director of Public Instruction. All these and other features clearly and unmistakably point out that the teachers of affiliated colleges have a status apart from their contractual relationship and in any case they hold office.

100. We think that a pure 'master and servant case' must be distinguished from the case of a teacher in an affiliated college. A 'pure master and servant case' may mean a case in which there is no element of public employment or service, no support by statute, nothing in the nature of an office or a status which is capable of protection. If any of these elements exist, as many of them exist in the instant case, then, in our opinion, whatever the terminology used, and even though in some inter partes aspects the relationship may be called that of master and servant, there may be essential procedural requirements to be observed, and failure to observe them may result in a dismissal being declared to be void. (See

Malloch v. Aberdeen Corporation (1971) 2 All ER 1278 at p. 1294).

101. Similar is the position with regard to students. Their admissions are governed by the University Rules and regulations. Government also has made certain rules relating to the admission to medical colleges. The affiliated colleges and the teachers and students of those colleges are all bound by these rules and regulations. Any administrative action which adversely affects the student must be taken after observing the rules of natural justice.

102. Thus whether it is a lecturer of an affiliated college or its student everyone of them can take advantage of the remedies provided in Article 226 of the Constitution.

103. Let us in this background examine the instant case. The petitioner applied on 27-10-1973 for admission to the First Year Integrated M. B. B. S. Course in Kakatiya Medical College. He filed along with the application a domicile or Mulki certificate. The College authorities can verify the certificates so filed. Since in 1971 an application made by the petitioner was rejected on the ground not very clear, the college authorities wanted to verify the certificate. The petitioner was therefore directed to appear before the authorities on 10-9-1973 for verification of the domicile certificate along with this father or guardian. Accordingly the petitioner appeared but his father could not. He asked the authorities to postpone the consideration. A later date 14-9-1973 was therefore fixed orally. It is contended by the petitioner that it was 15th and not 14th. According to the College authorities since the petitioner did not appear along with his father on 14-9-1973, his admission was rejected and he was informed accordingly. On the other hand, the petitioner contends that he was present on 15-9-1973 with his father but no one cared to call them. It is conceded that the petitioner had passed the Entrance Test and was put in the list of admitted candidates. Since the necessity of Mulki certificate in the present context has lost significance, we do not propose nor are we called upon by the parties to decide the conflict between them with regard to the date of the petitioner's appearance. It is not held that the domicile certificate was bogus be forged one. In fact no enquiry was made. The admission of the petitioner therefore could not have been rejected without observing the rules of

natural justice. In view of the breach of natural justice, the petitioner, in our judgment is entitled to the relief he has asked. It is of course open to the college authorities even now to verify the authority of the domicile certificate. The petitioner and his father will therefore appear before such college authorities as they are asked in writing to appear. If the authorities are satisfied about the domicile certificate after due enquiry, it is plain that the admission which has been given shall continue. It is understood that till such enquiry is concluded, the petitioner shall continue his studies in the college.

104. The writ petition is accordingly allowed, the impugned order quashed by the issue of a writ of certiorari and a direction as above is issued. In the circumstances of the case, however, we make no order as to costs. Advocate's fee Rs. 100/-

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