

**Amitava Mukherjee Vs. Principal, Bengal Engineering College and ors.**

**Amitava Mukherjee Vs. Principal, Bengal Engineering College and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/854062](http://sooperkanoon.com/854062)

**Court :** Kolkata

**Decided On :** Jul-18-1961

**Reported in :** AIR1962Cal93,65CWN1014

**Judge :** B.N. Banerjee, J.

**Acts :** Calcutta University Regulations - Sections 3 and 9; [Constitution of India](#) - Article 226

**Appeal No. :** Civil Revn. Case No. 349 (W) of 1961

**Appellant :** Amitava Mukherjee

**Respondent :** Principal, Bengal Engineering College and ors.

**Advocate for Def. :** J. Majumdar, Addl. Govt. Pleader and ;Somendra Chandra Basu, Advs. for Opposite Parties Nos. 1 and 3, ;A.C. Mitter, ;N. Roy, ;Pratap Ch. Chunder, ;Benoy Kumar Sarkar and ;A.K. Ghosh, Advs. for Opposit

**Advocate for Pet/Ap. :** Prafulla Kumar Roy and ;Prodyat Kumar Banerjee, Advs.

**Judgement :**

**B.N. Banerjee, J.**

1. The petitioner was a student of the Bengal Engineering College, studying for the Bachelor of Engineering (B.E.) degree examination.

2. Under Chapter LI, Section 11 of the Regulations of the University of Calcutta, every candidate for the B. E. Part I Examination has to submit to an examination in the following subjects :

#### SUBJECTS FULL MARKS

'(i)English, Current Orientation and Civics. . .100(ii)Engineering Physics (Paper). . .100(iii) Do (Sessional & Practical). . .100(iv)Engineering Chemistry (Paper). . .100(v) Do (Sessional & Practical). . .100(vi)Mathematics, Paper I. . .150(vii)Mathematics, Paper II. . .100(viii)Surveying (Paper). . .100(ix) Do (Sessional & Practical). . .100(x)Details of Construction & Estimating. . .100(xi)Drawing (Paper). . .100(xii) Do (Sessional). . .100(xiii)Heat Engines, I (Paper). . .100(xiv) Do (Sessional). . .50(xv)Applied Mechanics, I and Graphics (Paper). . .100(xvi) Do (Sessional). . .50(xvii)Electro-Technology (Paper). . .100(xviii) Do (Sessional & Practical). . .50(xix)Sociology & Industrial Relations. . .100(xx)Workshops (Sessional). . .200

2,000'

3. Section 3 (b) of Chapter LI of the said Regulations is to the following effect :

'(b) A candidate may be permitted to appear in any or all of the subjects mentioned below at the end of the first year and/or approximately six months thereafter subject to his completing the courses in these subjects provided he is certified by the Principal to be fit to take the examination. Such a candidate will obtain credit for these subjects in which he passes when appearing at the B. E. Part I Examination. (i) English, Current Orientation and Civics (ii) Engineering Physics (Paper) (iii) Engineering Physics (Sessional & Practical) (iv) Engineering Chemistry (Paper) (v) Engineering Chemistry (Sessional and Practical) (vi) Mathematics (Paper I).'

4. Under Section 4 of the said Chapter, in order to pass the B. E. Part I Examination a candidate must obtain forty per cent of the full marks of each subject and half of the aggregate of total marks prescribed.

5. Section 5 of the said Chapter requires that a candidate must pass the B. E. Part I Examination within a period of four years from the date of his admission to the course and if he fails to do so, he will have to prosecute afresh the entire prescribed course of study in order to be eligible to appear again at the said examination.

6. Under Section 9 (a) of the said Chapter :

'A candidate who obtains in the B. E. Part I Examination 50 per cent of the marks more than two subjects may be allowed to appear, on the recommendation of the Principal of the College, in subsequent B. E. Part I Examination in the subject or subjects in which he has failed on payment of the like fee of Rs. 40 and he shall be deemed to have passed the B. E. Part I Examination if he passes in the subject or subjects within the time-limit prescribed in Section 5.'

7. Under Section 10 of the said Chapter, as soon as possible after the B. E. examination, the syndicate shall publish a list, in order of merit, of those who have passed the examination. The names of those candidates, who pass the examination under Section 9 (a) above shall be published separately arranged under alphabetical order, without giving any order of merit.

8. The petitioner appeared in an examination of the subjects in Section 3 (b) hereinbefore mentioned and duly passed. He appeared, thereafter, in the examination of the remaining subjects, mentioned in Section 11 above, once in May 1959 and again in May, 1960 but failed on both the occasions.

9. In August, 1960, the petitioner appeared in the College Examination and was certified by the College Principal, respondent No. 1, as fit to take the examination in the remaining subjects in B. E. Part I Examination.

10. At the B. E. Part I Examination, held in November, 1960, the petitioner passed in all the subjects securing 50 per cent of the marks in the aggregate except in one, namely, Electro-Technology, in which he failed to secure the pass marks.

11. The result of the B. E. Part I Examination published by the University (Annexure B to the affidavit-in-opposition filed by respondent No. 1) on January

20, 1961 and so far as the petitioner was concerned his Roll number (Roll Cal P No. 14) along with the Roll numbers of certain others was published under the following heading :

'vii The undermentioned candidates who have failed in the B.E. Part I Examination held in November, 1960, in one or two subjects only, are eligible under Section 9 (a) of Chapter LI of the Regulations, to appear at the subsequent B. E. Part I Examination in the subject or subjects in which they have failed, within the time limit as specified in Section 5 of that Chapter : Roll Cal P Nos. xxx 14'

12. On March 15, 1961, the petitioner went to the Cashier of his College to deposit the fee, prescribed under Section 9 (a), so as to be able to appear at the subsequent B. E. Part I Examination, to be held in May, 1961, in the subject in which he had failed. The deposit, however, was not accepted on the plea that inasmuch as the petitioner had not appeared at the Annual Test Examination, held by the College on March 1, 1961, the Principal was unable to recommend him. Thereupon, on March 17, 1961, the petitioner wrote, through the Principal of his College, to the Controller of Examination of the respondent University as hereinafter set out (Anhex-ure A to the petition) :

' \* \* As I got compartmental in one subject, I was under the impression that I would be allowed to appear in the Examination, to be held in May 1961, provided the requisite fee only is deposited in due time. On enquiring from the office of the Principal B. E. College, I now learn that the Principal cannot recommend me as a candidate for the May Examination as I have not appeared in the Test Examination of the College, which was held for the candidates to be sent up for the May, 1961 Examination. As I did not appear in the Test Examination due to my honest conviction that no Test Examination is necessary for a compartmental candidate, I pray that the syndicate may consider my case sympathetically and permit me to appear at the May Examination as a compartmental candidate, on my depositing the necessary fees etc. I may mention here that if I am not permitted to appear in the May Examination, I shall not be able to complete the B. E. Part I Examination within four years from the date of my admission to the course, as per Regulations, in which cases I have to start afresh again.'

The respondent Principal forwarded the letter to the Controller. A Standing Committee of the Syndicate considered the letter of the petitioner and, on March 29, 1961, passed the following order (Annexure C to the affidavit-in-opposition by the respondent University).

'Ordered : (i) that the Principal Bengal Engineering College, be informed that under the Regulations Sri Amitava Mukherjee need not pass the College Test Examination and he be requested to take necessary action according to Section 9 of Ch. LI of the Regulations.'

The above order was communicated to the Principal on March 30, 1961. On April 10, 1961, the respondent Principal sent the following reply to the Registrar of the Respondent University (Annexure C to the petition) :

' I am to inform you that the College Test Examination is held for the purposes of ascertaining suitability or otherwise of candidates for appearing at the University Examination. The candidate concerned having not sat for the College Test Examination, the question of 'taking necessary action according to Section 9 of Ch. LI of the Regulations' does not arise.'

All efforts by the petitioner to induce the respondent Principal to allow him to appear at the ensuing examination having failed, he moved this Court under Article 226 of the Constitution and obtained the present Rule, on April 19, 1961.

13. Since the examination was due to be held on May 1, 1961, Sinha, J. passed the following interim order, in the Rule, on April 26, 1961 :

'Without prejudice to the contentions of the parties, the petitioner shall be allowed to appear, at the ensuing B. E. Examination, which will be held on the 1st May, 1961, but the result of the examination, so far as the petitioner alone is concerned, shall not be published and that the said result will be subject to the orders to be made in the proceeding. The petitioner shall deposit his fees. The University will accept the fees if deposited by the petitioner by the 29th April, 1961. The University has agreed to accept the fees. This order as regards the deposit of fees and the permission to the petitioner to sit in the examination is by consent of the

petitioner and the respondent University, As regards other respondents, this will be an order of Court.'

14. The petitioner did thereafter deposit the fee and appear at the examination but the result of his examination, which is ready, has not been published.

15. Mr. Prafulla Kumar Roy, learned Advocate for the petitioner, submitted that, on the basis of the interim order passed by this court, the petitioner was able to deposit the examination fee and to sit at the examination--all that remained was to publish the result of the petitioner's examination. He, therefore, submitted that if an order was made for the publication of the result of the petitioner's examination, it would not be necessary to make any other order on the prayers made in the petition.

16. The attitude taken up by Mr. A.C. Mitra, learned counsel for the respondent University was, to quote the language used by him, that 'the University would love to publish the result, if the want of recommendation by the Principal, under Section 9 (a), was no bar.' The aforesaid attitude was taken up by Mr. Mitra notwithstanding a somewhat fencing affidavit-in-opposition filed by the University.

17. Mr. Jajneswar Mazumder, learned Advocate for the respondent Principal and the respondent: State, alone contested the Rule and was unyielding in his opposition.

18. It is necessary for me to determine whether the respondent Principal was light in refusing to recommend the petitioner for being allowed to appear at the examination. The reason which induced the Principal not to recommend the petitioner is to be found in paragraph 10 of his affidavit-in-opposition, which I set out below :

'It is the standard practice that before recommending students to the Calcutta University in University Examination a College test is always held to assess whether a student had reasonable chance of passing the University Examination. By circular No. 19, dated 28-1-1961, it was announced that the Annual Test Examination of all regular students of all classes and of eligible private candidates

would be held on and from March 1, 1961. A test examination fee of Rs. 12/- would have to be deposited by the private candidates to the cashier on February 24, 1961 between 10 A.M. and 2 P.M. The said announcement was also published in the weekly bulletin 'College News', dated February 4, 1961. True copies of the said circular and the weekly bulletin are annexed herewith and collectively marked 'C'. Pursuant to the said announcement forty candidates deposited test fees and appeared in the Test Examination: held on and from 1st March, 1961. Out of the said 40 candidates, 36 candidates were recommended for the University Examination, out of which 27 candidates were of the category of Section 9 (a) similar to the category of the petitioner. The result of the test examination was announced on 20th March, 1961 by circular No. 57, dated 20-3-1961, which is annexed herewith and marked 'D'. On the tests I was satisfied that they were fit for such recommendation. The petitioner being a private student did not register himself with the College as prescribed in Circular No. 19, dated 28-1-1961, and did not deposit test fees. In absence of any materials upon which I could have based my recommendation and because the petitioner did not appear in the test examination either, the petitioner's application for permission to deposit fees was not entertained.'

19. In my opinion the reasons which weighed with the Principal were faulty and he overlooked the difference in language used in Section 3 (b) and Section 9 (a) of Chapter LI of the Regulations. Under Section 3 (b) the Principal is required to certify that the candidate 'is fit to take the examination'. Under Section 9 (a) the candidate may be allowed to appear at the examination merely 'on the recommendation of the Principal'. That recommendation need not be a recommendation as to the academic fitness of the candidate to appear at the examination. The University itself took that view and passed an order (Annexure C to the affidavit-in-opposition of the University) informing the respondent Principal that the petitioner was not required to pass the College Test Examination in order to qualify himself, under Section 9(a) of Chapter LI, to appear at the examination. Even then the Principal made the non-appearance of the petitioner at the College Test Examination a point against him and refused to recommend.

20. The petitioner had passed one College Test Examination and was certified by the Principal as fit to appear at the B. E. Part I Examination, held in November, 1960. At that examination he did not qualify to pass the examination but put in a performance, which qualified him to appear only in one subject, (namely, the subject in which he had failed) in the subsequent examination. Nevertheless, the Regulations required that the petitioner would have to obtain the recommendation of the Principal in order to be allowed to sit at the examination. That recommendation, I have already observed, need not be and need not have been as to the fitness of the petitioner. That fitness he acquired under Section 9 (a) itself. If by reason of any subsequent moral turpitude of the petitioner or by reason of his being guilty of breach of the College discipline or some other similar cause, the Principal had refused to recommend the petitioner, I could have appreciated him. But he did nothing of the sort. He insisted upon a second fitness test of the petitioner, not required by the Regulations, and in the absence of that, refused to recommend the petitioner, even though the University had asked him so to do, by its order dated March 29, 1961.

21. By refusing to comply with the order of the University, dated March 29, 1961, for the reasons given by him, the Principal merely exhibited hyper-criticism. Of a man too much critically minded the English essayist, Sir Richard Stcple very pertinently observed that by 'inuring himself to examine all things, whether they are of consequence or not, he never looks upon anything but with a design of passing sentence upon it: by which means he is never a companion but always a censor.'

22. In my opinion the recommendation contemplated by Section 9 (a) of Chapter LI of the Regulations is not a recommendation of fitness but more or less a routine recommendation, impliedly to the effect that apart from academic fitness to appear at the examination, which the candidate has already earned by reason of his performance at the last examination, he is otherwise eligible, say by his character and disciplined conduct, to appear at the next examination. I further hold that the respondent Principal was clearly wrong in refusing to recommend the petitioner, under Section 9 (a), in the facts and circumstances of the instant case.

23. Mr. Jajneswar Mazumder strongly argued that in a constitutional writ petition I should not substitute my opinion as to the eligibility of the petitioner, as opposed to that of the Principal. This argument is clearly misconceived. I have no intention of myself deciding the eligibility of the petitioner to appear at the B. E. Part I Examination and were I required to do so, I would have refused. All that I need do, in this case is to interpret Sections 3 (b) and 9 (a) of Chapter LI of the Regulations and find out therefrom whether under those sections the petitioner becomes qualified for recommendation of the Principal to appear at the examination, without undergoing a second College Test Examination. In my interpretation of the sections, the petitioner was not liable to undergo a second academic fitness test Examination in order to qualify himself for the recommendation of the Principal. This I hold regard being had to the difference in language used in the two sections and the Scheme of Chapter LI of the Regulations already discussed. Since the Principal refused to recommend the petitioner to appear at the examination, not on the ground of moral turpitude or indiscipline or any other similar ground, which might have been good grounds for refusing recommendation, but on the ground that the petitioner had not submitted to a second fitness test, I hold that the Principal acted illegally and with material irregularity in the exercise of his academic jurisdiction in refusing recommendation.

24. When an academic body or authority goes legally wrong in its decision, this Court, in exercise of its power under Article 226 of the Constitution, may set aside its illegal decision and direct it or him to act according to law, although this Court cannot go to the length of usurping its or his statutory authority and obligation. The proposition is much too well-established to require any authority but even then I refer to a recent Bench decision on the point reported in *State Medical Faculty v. Kshiti Bhusan Dutt*, : AIR 1961 Cal 31. On the undisputed facts of this case, I find that the withholding of the recommendation by the Principal was an act of illegality and of material irregularity in the exercise of his academic jurisdiction. If the examination had not been over, in the meantime, I would have directed him to act according to the provisions of Section 9 (a) of Chapter LI of the Regulations and to recommend the petitioner for the examination. That stage is now past. The examination, has been held and under the interim order passed by Sinha, J. (hereinbefore quoted), the petitioner has appeared at the examination. All that now

remains is to publish the result of his examination.

25. I hold that inasmuch as the Principal illegally withheld the recommendation, under Section 9 (a) of Chap. LI, that need not necessarily debar the University from publishing the result of the examination of the petitioner. The petitioner was entitled to the recommendation, as a matter of course, in the undisputed facts and circumstances of this case. Because that recommendation was unlawfully withheld, the petitioner must not be deprived of the publication of the result of his examination, to which he is otherwise entitled. One wrong does not justify another. Since the petitioner was once wronged by the unlawful withholding of the recommendation by the Principal, that should not result in another wrong to him, namely, the withholding of the result of his examination.

26. In the result I make this Rule absolute to this extent that I command the University to publish the result of the examination of the petitioner at once. Save as to that no other order is necessary to be made in this Rule, regard being had to the changed circumstances, after the issue of this Rule.

27. Let a writ of mandamus issue commanding the respondent University to publish the result of the petitioner's examination at once.

28. I make no order as to costs.