

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WP 441(W) of 2018
Ranju Gopal Mukherjee & Anr.
-Vs.-
State of West Bengal & Ors.

Coram : The Hon'ble The Acting Chief Justice Jyotirmay
Bhattacharya

&
The Hon'ble Justice Arijit Banerjee

For the petitioners : Mr. Bikash Ranjan Bhattacharjee, Sr.
Adv.

Mr. Shamim Ahamed, Adv.
Mr. Sabyasachi Chatterjee, Adv.
Mr. Sourav Mondal, Adv.
Mr. Firdous Samim, Adv.
Mr. Koustav Bagchi, Adv.
Mr. Argha Jena, Adv.
Mr. Dhilon Sengupta, Adv.
Mr. Utsav Dutta, Adv.
Mr. Nipesh Majhi, Adv.
Mr. Pintu Karar, Adv.

For the State : Mr. Kishore Dutta, Ld. A. G.
Mr. Abhratosh Majumdar, Ld. A.A.G.
Mr. T. M. Siddiqui, Adv.
Mr. Nilatpal Chatterjee, Adv.
Mr. Avra Majumdar, Adv.

For the Respondent no. 6: Mr. Barun Kumar Das, Adv.

For the University of Calcutta : Mr. Saktinath Mukherjee, Sr. Adv.
Mr. Nayan Chand Bihani, Adv.
Mr. Biswaroop Bhattacharjee, Adv.
Ms. Reshmi Ghosh, Adv.

Heard On : 10.01.2018, 11.01.2018, 12.01.2018

Judgment On : 25.01.2018

Arijit Banerjee, J.:-

(1) In this writ petition, filed as a Public Interest Litigation (in short 'PIL'), the petitioners have challenged the resolutions of the Calcutta University's Syndicate and Senate, both dated October 25, 2017 whereby it was decided to confer Honorary Degree of Doctor of Literature (in short 'D Litt') on the respondent no. 4 and to confer the award of Eminent Teacher on the respondent no. 5. Prayer has also been made in the writ petition for declaring Secs. 18 and 21 of the Calcutta University Act, 1979 as amended by the West Bengal University Laws (Amendment) Act, 2011 as *ultra vires*. However, no argument was advanced in respect of the said prayer.

(2) The writ petition was moved on 8 January, 2018 and was heard on 10 January, 11 January 2018 and 12 January, 2018. The petitioners prayed for an interim order restraining the respondents from conferring the Honorary Degree of D. Litt on the respondent no. 4 and from conferring the award of Eminent Teacher on the respondent no. 5 at the convocation of the Calcutta University (in short 'the CU') that was scheduled to be held on 11 January, 2018. We refused to pass any interim order *inter alia* because of the delay in filing of the writ petition. There is no explanation in the writ petition as to why the decisions of the Syndicate and Senate dated 25 October, 2017 were

sought to be challenged after two and half months. The other reason for declining to pass any interim order was that the respondents raised a preliminary issue of maintainability of the writ petition. We were of the opinion that without first deciding the issue of maintainability, no order should be passed. We understand that the convocation was duly held at the CU on 11 January, 2018 and the Honorary Degree of D. Litt was conferred on the respondent no. 4 and the award of Eminent Teacher was conferred on the respondent no. 5 at the said convocation. However, since the same was done during the pendency of this writ application, naturally, the validity of the same would abide by the result of this writ petition.

(3) We first propose to address the preliminary issues raised by the respondents. Appearing for the State, Learned Advocate General and appearing for the CU, Mr. Shaktinath Mukherjee, learned Senior Advocate submitted that the present writ petition is not maintainable as a PIL. Both the learned Advocates also took the point that the writ petition is not maintainable also for non-joinder of necessary parties. In addition, Mr. Mukherjee contended that even if technically speaking it is assumed for the sake of argument that the present writ petition is maintainable as a PIL, the issue involved in the writ petition is not justiciable. Only if these issues are decided in favour of the

petitioners, the question of considering the merits of the writ petition would arise.

(4) Learned Advocate General submitted that no public interest is involved in the present writ petition. He submitted that this is a politically motivated and publicity oriented writ petition. The petition does not disclose any harm that the public or any section of the public may suffer by reason of the decision of the CU which is under challenge. He referred to various sections of the Calcutta University Act, 1979 including Secs, 3, 4, 7, 17, 19, 21 and 22. He pointed out that Sec. 4(21) of the Act empowers the University to confer honorary degrees or other academic distinctions. Sec. 7(5) provides that every proposal to confer any honorary degree shall be subject to confirmation by the Chancellor. Sec. 22(xv) empowers the Syndicate of the University to recommend to the Senate the conferment of honorary degrees and other academic distinctions. Sec. 19(1)(viii) empowers the Senate to confer honorary degrees or other academic distinction. He submitted that the respondent no. 4 be offered the degree of D. Litt (Honoris Causa). Such resolution of the Syndicate was approved by the Senate at its meeting dated 25 October, 2017. The Chancellor of the University has also approved such decision. There is no illegality or infirmity in such decision. This

is not a *bona fide* writ petition but has been filed with oblique motive. Relying on the Hon'ble Apex Court's decision in **State of Uttaranchal-vs.-Balwant Singh Chaufal, (2010) 3 SCC 402**, learned Advocate General submitted that the Courts should effectively discourage and curb PILs filed for extraneous considerations. The Courts should be fully satisfied that substantial public interest is involved before entertaining a PIL and should ensure that the PIL is aimed at redressal of genuine public harm or public or public injury. The Court should ensure that there is no personal gain or private motive or oblique motive behind the PIL. PILs filed by busybodies for extraneous and ulterior motives must be nipped in the bud. Learned Adv. General also referred to Rule 56 of the Writ Rules framed by this Court which defines PIL, to which we will revert back later. He also relied on the decision of a Division Bench of the Karnataka High Court in the case of **Dr. K. Mahadev-vs.-Chancellor and His Excellency Governor of Karnataka, ILR 2007 KAR 863**. In that case, in similar facts a PIL filed challenging the decision of the University of Mysore to confer honorary doctorate degrees was dismissed, *inter alia*, on the ground that the petitioner had not succeeded in establishing any injury to public interest.

(5) Learned Advocate General further submitted that the Syndicate of the University is a necessary party to the writ petition since in paragraphs 10 and 11 of the writ petition allegations of nepotism and other allegations have been made against the Syndicate. Since the Syndicate has not been impleaded as a party the writ petition is liable to be dismissed for non-joinder of necessary party.

(6) Appearing for the University, Mr. Mukherjee adopted the submissions of Learned Advocate General. In addition, learned Senior Counsel submitted that the decision of the University to confer Honorary Doctorate Degree on the respondent no. 4 and award of Eminent Teacher on the respondent no. 5 are not justiciable. In this connection, learned Senior Counsel relied on the decision of the Hon'ble Apex Court in **A. K. Kaul-vs.-Union of India, AIR 1995 SC 1403**. At paragraph 12 of the said judgment, the Apex Court observed that justiciability relates to a particular field falling within the purview of the power of judicial review. On account of want of judicially manageable standards, there may be matters which are not susceptible to the judicial process. Such matters are regarded as non-justiciable. During the course of exercise of the power of judicial review it may be found that there are certain aspects of the exercise of that power which are not susceptible to judicial process on account of want of

judicially manageable standards and hence not justiciable. Mr. Mukherjee submitted that there are no guidelines on the basis of which the Court can sit on appeal over the decisions of the Syndicate and the Senate.

(7) Appearing for the petitioners, Mr. Bikash Ranjan Bhattacharjee, learned Senior Counsel submitted that the public interest involved is that every student/ex-student of CU will feel disturbed if an Honorary Degree is conferred on an underserving candidate. There is no basis or reason for honouring the respondent nos. 4 or 5. Their credentials are dubious and they do not deserve to be honoured in the manner proposed by the University.

(8) Mr. Bhattacharjee submitted that there must be some parameters on the basis whereof the Syndicate/Senate takes a decision to honour a particular person. The resolution of the Syndicate/Senate do not reflect that such parameters have been considered. The reason for resolving to honour the respondents 4 and 5 are not recorded in the decisions of the Syndicate and Senate. He further submitted that education itself is a matter of public interest.

(9) Learned Senior Counsel then submitted that not only the decisions of the Syndicate and the Senate are opaque and arbitrary, the decision of the Senate approving the recommendation of the

Syndicate was taken in hot haste and on the same date which also indicates non-application of mind on the part of the Senate. He then drew our attention to the Syndicate's notice of the meeting dated 25 October, 2017 and submitted that the agenda did not include the item of the proposal to honour the respondent nos. 4 and 5. Hence, the members of the Syndicate did not have time to really apply their mind and taken an informed decision in the matter. The meetings and the resolutions are only an eye-wash. The members of the Syndicate and the Senate are nominated by the Ruling Government and that is why they have decided to honour the respondent no. 4 to show their allegiance to her.

(10) Mr. Bhattacharjee referred to several decisions. He referred to the decision of the Hon'ble Apex Court in the case of **Union of India-vs.-Balbir Singh, (1998) 5 SCC 216**, in support of his submission that even the decision of the President of India is amenable to judicial review. He relied on the decision of the Hon'ble Apex Court in the case of **nabam Rebia and bamang Felix-vs.-Deputy Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1**, in support of his submission that the exercise of discretionary power by the Governor of a State is open to challenge before the Writ Court. Reliance was placed on the decision in the case of **Kihoto Hollohan-**

vs.-Zachillhu, (1992) Supp. (2) SCC 651, in support of the submission that the decision of the Speaker is not immune from judicial review. He also relied on the decisions of the Apex Court in the case of Dr. Meera Massey (Mrs.), Dr, Abha Malhotra, Dr. S.C. Bhadwal-vs.-Dr. S.R. Mehrotra, (1998) 3 SCC 88, and in State of Karnataka-vs.-All India Manufacturers Organisation, (2006) 4 SCC 683, in support of his submission that the petitioners have *locus standi* to challenge the impugned decisions of the Syndicate and the Senate of the University.

(11) Mr. Bhattacharyya then referred to Sec. 3 of the CU Act which provides that the University would be a Body Corporate. He submitted that the Syndicate and the Senate are limbs and organs of the University and have no independent legal entity or status. The functions that the Syndicate and the Senate discharge are on behalf of the University. Hence, the question of separately impleading the Syndicate or the Senate does not arise. He relied on the decision of a Division Bench of our Court in the case of University of Calcutta-vs.-Khagendra Nath Sen, (1976) 2 SLR 193 (DB), in support of his submission that in an action against the University challenging the resolution of the Syndicate, the Syndicate is not a necessary party and need not be impleaded. He also referred to the decision of the Apex Court in the case of The State of Kerala -vs.-The General Manager,

Southern Railway, Madras, (1976) 4 SCC 265 and submitted by way of analogy that when a case is to be filed against the Railways, the action is instituted against the Union of India. The railway administration is not a necessary party to such an action. He further submitted that the allegations made in paragraphs 10 and 11 of the writ petition are not against individuals but against a 'body'. The grievance of the petitioners is *mala fide* functioning of a 'body'.

(12) Regarding the criteria for awarding national Awards like Bharat Ratna and the Padma Awards, Mr. Bhattacharyya relied on the decision of the Apex Court in **Balaji Ragjavam-vs.-Union of India, (1996) 1 SCC 361**. He drew an analogy from the said decision and submitted that similar criteria should be taken into consideration for deciding whether a particular person deserves an Honorary Degree or Award. He also referred to Sec. 143 of the Calcutta University First Statutes, 1979 which lays down the procedure for conferment of Honorary Degrees on the recipients. He submitted that the said section contemplates that there must be some reason or basis for choosing a particular recipient of an Honorary Degree. However, in the present case, no such basis is disclosed in the impugned resolutions.

(13) Mr. Bhattacharyya finally submitted that any decision of any authority which is not supported by reason is bad in law. In support of

this he relied on the decision of the Hon'ble Apex Court in **Rajinder Kumar Kindra-vs.-Delhi Administration through Secretary (Labour), (1984) 4 SCC 635.**

(14) In reply, Mr. Mukherjee, learned Senior Counsel submitted that there is no question of giving reason in support of a decision to honour a particular member of the society. This is not a selection process. The recipients of the Honorary Degrees stand apart. Such degrees are conferred on them in recognition of their service to the society and their status. They already stand selected by the society as important persons.

(15) He further submitted that whenever malice in fact is alleged, the persons against whom such allegation is made must be impleaded as parties. Allegations have been made against the members of the Syndicate/Senate. Hence, the members of the Syndicate/Senate are necessary parties to the present proceeding. Since the petitioners have not impleaded them, the writ petition is liable to be dismissed in *limine*. In this connection, he relied on the decisions of the Hon'ble Apex Court in the cases of **All India State Bank Officers' Federation-vs.-Union of India, (1997) 9 SCC 151** and **State of Bihar-vs.-Shri P.P. Sharma, AIR 1991 SC 1260**. He also referred to the decision in the case of **S. Partap Singh-vs.-State of Punjab, AIR 1964 SC 72** to

explain the difference between malice in law and malice in fact. In this connection he also referred to the Hon'ble Apex Court's decision in **State of Maharashtra-vs.-Dr. Budhikota Subbarao, (1993) 3 SCC 71**, to bring out the distinction between legal *mala fides* and factual *mala fides* and also to the decision in the case of **Somesh Tiwari-vs.-Union of India, (2009) 2 SCC 592**, to demonstrate the difference between malice in fact and malice in law. Mr. Mukherjee submitted that the writ petition does not disclose that any public injury has been caused by the impugned decisions of the Syndicate and the Senate.

(16) Mr. Mukherjee then submitted that Sec. 143 of the Calcutta University First Statutes, 1979 lays down no guidelines as submitted by Mr. Bhattacharyya. The said section contemplates a post decisional situation and only lays down the manner in which the decision to honour a particular person is to be implemented. The Calcutta University Act also lays down no guidelines for deciding as to who should be honoured by conferment of an Honorary Degree. The discretion has been left entirely to the Syndicate and the Senate and ultimately to the Chancellor.

(17) Learned Sr. Counsel summed up his argument by submitting that the procedure followed by the University in deciding to honour the respondent nos. 4 and 5 is not under challenge in the present writ

petition. It is only the entitlement of the said respondents to receive the honour which is assailed. He reiterated that no parameters are available to the Court to decide whether or not a particular person deserves to receive an Honorary Degree. The Court cannot sit in appeal over the decisions of the University to honour the respondent nos. 4 and 5.

Court's View:-

(18) We have given our anxious consideration to the rival contentions of the parties on the preliminary issues raised by the respondents. We are of the considered view that the preliminary point of maintainability of this PIL, justiciability of the issue involved and non-joinder of necessary party must be decided against the petitioners for the reasons that follow.

(19) In the case of **State of Uttaranchal-vs.-Balwant Singh Chaufal (supra)**, in the penultimate paragraph of the judgment, the Apex Court observed as follows:-

"181 (2). Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules

prepared by the High Court is sent to the Secretary General of this Court immediately thereafter."

(20) Pursuant to such observation of the Apex Court the Rules of our High Court relating to applications under Art. 226 of the Constitution of India were amended and a chapter captioned 'public interest litigation' was introduced. Rule 56 defines public interest litigation as follows:-

"56. Definition of Public Interest Litigation:- Public Interest Litigation shall include a litigation the subject matter of which is a legal wrong or a legal injury caused to a person or to a determinate class of persons by reason of violation of a constitutional or legal right or any burden imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, and for redressal of which any member of the public not having any personal interest in the subject matter presents an application for an appropriate direction, order or writ in this Court under Article 226.

Notwithstanding anything contained above, in any appropriate case, though the petitioner might have moved a Court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest involved therein may treat the subject of litigation in the interest of justice as a public interest litigation."

(21) Going by the aforesaid definition, in order to qualify as a PIL a litigation must have the following ingredients:- (i) violation of constitutional or legal right; (ii) a legal wrong or legal injury caused to a person or to a determinate class of persons caused by such violation; (iii) such person or class of persons cannot approach the Court for relief by reason of poverty, helplessness or disability or socially or economically disadvantaged position; (iv) the petitioner must not have any person interest in the subject matter of the application.

(22) In exceptional cases even though the petitioner might have approached the Court in private interest for redressal of a personal grievance, if the Court finds that the application involves public interest, the Court may treat the application as a PIL for the ends of justice. In the present case, the petitioners have not made out any case of public injury. There is absolutely no pleading to that effect in the writ petition. It is not explained as to how the public at large or any appreciable section of the public would suffer any harm, injury or prejudice by reason of the impugned decisions of the Syndicate and the Senate of the respondent University to honour the respondent nos. 4 and 5. No constitutional or legal right of the petitioners or of any person or any determinate class of persons has been infringed.

(23) In *State of Uttaranchal (supra)*, the Apex Court observed that before entertaining a PIL the Courts should be fully satisfied that substantial public interest is involved and that the PIL is aimed at redressal of genuine public harm or public injury. We are afraid that we cannot find the existence of any public interest far less substantial public interest in this matter. No doubt, the Courts must encourage genuine and *bona fide* PILS as otherwise any harm or wrong caused to a determinate class of public who for diverse reasons are unable to approach Court, may remain un-redressed. However, we are unable to hold that the present PIL is such a case warranting admission and adjudication on merits by this Court. For the view that we have taken, we do not deem it necessary to go into the question of whether or not the writ petition is politically motivated or publicity oriented or has been filed with oblique motive or for extraneous reasons as argued by learned Advocate General. Even assuming that being a former Vice-Chancellor of the CU, the petitioner no. 1 is interested to see that the respondent University functions properly and in compliance with the statutory requirements, we are not inclined to entertain this writ petition as a PIL since the petitioners have not established any injury to public interest.

(24) Even if we were satisfied that this writ petition involves some degree of public interest, we would have dismissed the writ application since we are of the opinion that the issue involved in this litigation is not justiciable before a Court of Law.

(25) There are some decisions of public/statutory authorities which the Courts are ill-equipped to deal with; decisions that are not justiciable because they admit of no objective justification. As Lord Roskill put it in **The Council for the Civil Service Unions-vs.-Minister for the Civil Service**, [1985] 1 A.C. 374 (418), such decisions are "not amenable to the judicial process". In **R-vs.-Secretary of State for the Environment, ex. p. Hammersmith & Fulham L.B.C.**, [1991] A.C. 521 (593), Lord Bridge emphasised the need for an 'objective criterion' in order for a decision to be amenable to judicial review. In **Council of Civil Service Unions (supra)**, Lord Roskill observed: 'prerogative powers such as those relating to the making of treaties the defence of the realm, the prerogative of mercy, the grant of honours, the dissolution of Parliament and the appointment of Ministers as well as others are not, I think, susceptible to judicial review because their nature and subject matter is such as not to be amenable to judicial process.'

In the same case Lord Scarman was of the opinion that 'the controlling factor in determining whether the exercise of prerogative power is subjected to judicial review is not its source but its subject matter.'

(26) Thus, there are cases where the nature and subject matter of a decision is not amenable to the judicial process because the Courts are not competent or qualified to deal with the matter. The Courts should not intrude such questions because they are not equipped to do so. Such decisions/orders of the authorities are inherently non-justiciable.

(27) On an analysis of the different provisions of the CU Act, 1979, we find that Sec. 17 specifies the different authorities of the University which include the Syndicate and the Senate. There are six other authorities specified in the said section. Each authority is a limb or organ of the University through which the University discharges its functions. Different powers and duties have been prescribed for the said authorities by different sections of the statute. The Syndicate has been empowered to recommend to the Senate the conferment of honorary degrees and other academic distinctions. The Senate has been empowered to approve such recommendation. While the Senate cannot exercise its powers and perform the duties regarding

conferment of honorary degrees of other academic distinctions except on the recommendation of the Syndicate, the Senate may send proposals in respect thereof to the Syndicate for its recommendation to the Senate. The decision of the Senate regarding conferment of such honour has to be approved by the Chancellor of the University before the same can be given effect to. The Parliament has in its wisdom not stipulated or prescribed any guidelines on the basis whereof the University may take a decision for conferring an honorary degree on a particular person. The entire thing has been left to the discretion of the Syndicate and the Senate. Sec. 18 of the CU Act lays down the manner in which the Senate shall be constituted. The Senate has 21 *ex-officio* members who are all distinguished academicians. It has several other members who represent various educational institutions. Similarly, Sec. 21 of the Act prescribes that the Syndicate shall consist of 8 *ex-officio* members who are all noted educationists and several other members from various colleges.

(28) The Syndicate and the Senate are both expert bodies consisting of academicians from various fields. The decision of such expert bodies to honour a particular person by way of conferment of an honorary degree or other academic distinction, in our view, cannot be subjected to judicial review, *inter alia*, because no judicially

manageable standard is available to the Court according to which the Court can decide the wisdom or otherwise of such a decision. This issue is such that it is inherently not justiciable. The Court cannot sit in judgment over such a decision of the Syndicate/Senate as there is no objective standard on the basis whereof the Court can do so. There are no parameters or criteria available before the Court by applying which the prudence of such decision can be assessed or evaluated. Such decisions are not susceptible to judicial process. We are in agreement with the submission of Mr. Mukherjee, learned Senior Counsel, that even if a writ application may be maintainable, the subject matter of the same may not be justiciable for want of judicially manageable standards and in our considered view, this is such a case.

(29) The other reason which also warrants dismissal of this writ application is that though allegations of nepotism etc. have been made against the Syndicate and the Senate, the members of the said two limbs of the University have not been impleaded as parties. To our mind they are necessary parties. It is trite law that if allegations are made against a person in a litigation but such person is not impleaded as a party, the litigation must fail on account of non-joinder of necessary party. It may be noted that O. 1 R. 9 of the CPC, 1908

provides that 'no suit shall be defeated by reason of mis-joinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it; provided that nothing in this rule shall apply to non-joinder of a necessary party.' Rule 53 of the Rules of our Court relating to applications under Art. 226 of the Constitution of India provides that save and except as provided by the said Rules and subject thereto, the provisions of the CPC, 1908, in regard to the suits shall be followed, as far as they can be made applicable, in all proceeding under Art. 226. Although the Syndicate and the Senate may not be independent entities and may not have separate legal status, in our view the members of the Syndicate and the Senate are necessary parties to this writ application and the writ petition must fail for non-impleadment of such persons. This is nothing but an extension of the principles of natural justice. If an allegation is made against a person in a litigation, he must be made a party to the litigation so that he can answer such allegations. This is a rule of fairness.

(30) We have noted the decisions cited by Mr. Bhattacharyya. None of the decisions help the petitioners in view of our opinion expressed above.

(31) For the reasons aforestated, we are unable to entertain this writ application as a PIL. Since we are not admitting the PIL, the question of dealing with the merits of the case does not arise.

(32) WP No. 441(W) of 2018 is accordingly dismissed, without, however, any order as to costs.

(33) Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

I Agree.

(Jyotirmay Bhattacharya, ACJ.)

Banerjee, J.)

(Arijit