

A NORTH BENGAL UNIVERSITY & ORS.

v.

DILIP KUMAR SARKAR

(Civil Appeal Nos. 5702-5703 of 2015)

B

JULY 24, 2015.

**[T. S. THAKUR, R. K. AGRAWAL AND  
R. BANUMATHI, JJ.]**

C *North Bengal University Act, 1981 – s. 10(6) – Controller*  
*of Examination of University responsible for irregularities in*  
*University fund – Issuance of suspension order – Writ petition*  
*challenging suspension – Suspension order quashed by*  
*High Court since the Vice-Chancellor did not apply its mind*  
D *as to whether emergent situation arose for invocation of s.*  
*10(6) – Issuance of direction to the University to permit the*  
*Controller to resume his duty – Said order disposed of by*  
*the Division Bench – On appeal, held: High Court was wrong*  
*on both the counts – Question that fell for determination*  
E *before the Single Judge was whether the order of suspension*  
*issued by the Vice-Chancellor was legally valid – In appeal,*  
*the question that fell for consideration was whether the Single*  
*Judge was right in holding that the Vice-Chancellor’s order*  
*was bad for the reason indicated by Single Judge – Division*  
F *Bench did not advert to that question at all, instead opined*  
*that the appeal had become infructuous and was academic*  
*– Matter was not infructuous or academic – Further, the*  
*Division Bench made arrangement in substitution of the order*  
G *of Single Judge, issued conditional and contingent directions*  
*for the Chancellor, the Executive Council and the Vice-*  
*Chancellor of the University to follow – Division Bench*  
*appears to be making an interim arrangement subject to the*  
*final outcome of the writ petition which was heard by Single*  
H *Judge – High Court overlooked the fact that the order under*

*challenge was a final order by Single Judge – Order betrays the ignorance of the Division Bench about the true factual position of the case – Order of the Division Bench is totally dissatisfactory – Failure of the Division Bench to adopt a judicial approach in the matter is much too evident to be ignored, resulting in multiplicity of proceedings apart from delay and failure of justice – Matter remitted back to High Court – Judicial deprecation.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5702-5703 of 2015

From the Judgment and Order dated 25.08.2011 of the High Court of Calcutta in AST No. 182 of 2011 with C.O.T. No. 14 of 2011

Krishnan Venugopal, Kunal Chatterji, Maitrayee Banerjee for the Appellants.

Ranjan Mukherjee, A.K. Roy and Snehasish Mukherjee for the Respondent.

The Judgment of the Court was delivered by

**T. S. THAKUR, J. 1.** Leave granted.

2. These appeals arise out of an order dated 25<sup>th</sup> August, 2011, passed by a Division Bench of the High Court of Calcutta whereby AST 182 of 2011 and COT 14 of 2011 filed by the appellant-University have been disposed of with certain directions.

3. The factual matrix in which the disputes touching the validity of certain disciplinary proceedings initiated against the respondent arose has been elaborately set out in the order passed by the Single Judge of the High Court and that passed by the Division Bench in appeal. Recapitulation of the entire

A factual backdrop would, therefore be of little use. All that we need mention is that the respondent-Dilip Kumar Sarkar was working as Controller of Examinations, University of North Bengal. A special audit/investigation into certain irregularities appears to have been conducted and a report drawn-up which suggested that the respondent was responsible for the said irregularities involving huge amounts spent out of the University fund. The report quantified the financial loss caused to the University at a sum of Rs.1,04,44,716/-.

4. In February, 2009 the University appears to have engaged the services of M/s. Mitra Roy & Datta, Chartered Accountants, to undertake a fact finding exercise into the irregularities afore-mentioned. The report submitted by the said Chartered Accountants also suggested that irregularities had, indeed, been committed and that the University had suffered a financial loss. The loss was pegged at Rs.81,58,059/- by the auditors apart from several other irregularities referred to in their report.

5. In August, 2009 the Executive Council of the appellant-University appears to have appointed Mr. Arun Kumar Das, ICAS (Retired) to investigate, in depth, matters touching the expenses incurred out of University funds. Mr. Das also submitted a report indicating that the respondent had suppressed information and released amounts without the approval of the competent authority. He was, therefore, held responsible for the excess payments made and consequential loss suffered by the University. It was also alleged that respondent suppressed certain information in relation to instructions allegedly issued by the former Vice-Chancellor to the finance department for having an internal audit conducted.

6. On the basis of the above reports, the Vice-Chancellor of the appellant-University appears to have sought the opinion of the learned Advocate General. The reports and the opinion

of the learned Advocate General were then placed for consideration in the 254<sup>th</sup> meeting of the Executive Council of University of North Bengal on 8<sup>th</sup> March, 2010. The Vice-Chancellor of the University also, on the basis of the reports and the documentary evidence available with him, lodged an FIR before the local Matigara Police Station for initiating appropriate criminal action against those responsible. At the same time and in contemplation of disciplinary proceedings against respondent-Dilip Kumar Sarkar, the Vice-Chancellor issued an order placing the former under suspension.

7. Aggrieved by the order of suspension issued against him, the respondent filed Writ Petition No.7892(W) of 2010 which was heard and allowed by a Single Bench of the High Court of Calcutta by his judgment and order dated 2<sup>nd</sup> May, 2011. The High Court took the view that the Vice-Chancellor had not applied his mind to the question whether an emergent situation had indeed arisen which called for invocation of Section 10(6) of the North Bengal University Act, 1981. The High Court observed:

*"... .. In this case, in the order impugned, there is no indication that the respondent no. 3 had examined as to whether there was a situation of urgent or emergent nature before issuing the order of suspension... .."*

8. The High Court, accordingly, quashed the order of suspension and directed the University to permit the respondent to resume his duty with a further direction that the entire period during which the respondent had been forced to stay on leave shall be treated to be on duty. The High Court made it clear that the order shall not prevent the Executive Council from re-examining the matter and taking an appropriate decision having regard to all relevant factors nor would the same prevent the Vice-Chancellor from exercising his powers under Section 10(6) of the North Bengal University

A Act, if, in his opinion, there are grounds which give rise to an urgency warranting exercise of his emergency powers.

9. The order passed by the Single Judge was then assailed by the appellant-University in AST 182 of 2011 and  
B COT 14 of 2011 which came to be disposed of by the Division Bench of the High Court in terms of the order impugned before us. We have gone through the order under challenge over and over again with a view to understand the issues that fell for consideration and the view which the High Court has taken on  
C the same. We regret to say that our efforts have remained in vain. The order passed by the High Court does not formulate any question for determination leave alone examine the rival submissions made on in regard to the same or articulate the reasoning for accepting or rejecting the same. The order is to  
D say the least confused not only as to the points that were raised for consideration but also as to the determination of the said points by the court. It starts with the observation that the '*matter has become an academic one, if not infructuous,*' and yet  
E makes the order subject to any decision that may be rendered by the learned Trial Judge, who, according to the Division Bench, had heard and reserved the matter for pronouncement of orders. The High Court was, in our opinion, wrong on both  
F counts. We say so because the matter was not infructuous or academic as observed by the High Court. The question that fell for determination was whether the order of suspension issued by the Vice-Chancellor was legally valid having regard to the fact that according to the Single Judge the order did not  
G record the satisfaction of the Vice-Chancellor as to the existence of an emergent situation justifying resort to the powers vested in the Vice-Chancellor under Section 10(6) of the North Bengal University Act, 1981. Existence of an emergent situation and satisfaction of the Vice-Chancellor regarding the same were held by the Single Judge to be  
H essential pre-requisites for invocation of said provision. In the

appeal, preferred against that order, the question that fell for consideration was whether the Single Judge was right in holding that the Vice-Chancellor's order was bad for the reason indicated by the Single Judge. The Division Bench has not adverted to that question at all. The Division Bench instead opined that the appeal had become infructuous and was academic.

10. Secondly, because the Division Bench of the High Court appears to have made an arrangement in substitution of the order passed by the Single Judge, it has issued conditional and contingent directions for the worthy Chancellor, the Executive Council and the Vice-Chancellor of the appellant University to follow. This is evident from the operative portion of the impugned order which reads as under.

*"... .. Accordingly, we make it clear that in the event executive council is functioning lawfully as on today, the decision shall be taken on receipt of the enquiry report within a period of three weeks from the date of communication of this order. Such decision shall be taken in accordance with law and be communicated to the respondent forthwith. If the executive council is not functioning, then we request the Hon'ble Chancellor to see that executive council is allowed to function at least for this matter for taking decision. If for any reason such functioning of the executive council in the mind and decision of the Hon'ble Chancellor is not possible, then we think emergent situation would arise within the meaning of Section 10 of the said Act. In this situation only the Vice Chancellor is to take a decision on behalf of the executive council.*

*We request the Hon'ble Chancellor to take decision with regard to the functioning of the executive council within fortnight. If Vice Chancellor is required to take action*

A *in absence of the executive council in terms of this*  
*order, then decision must be taken within fortnight from*  
*date of taking decision by the Hon'ble Chancellor and*  
*such decision shall be communicated to the writ*  
B *petitioner/respondent forthwith. If adverse decision is*  
*taken by the Vice Chancellor, the effect of the same*  
*shall not be given for a period of ten days from the date*  
*of receipt of taking such decision and it would be open*  
*for the writ petitioner/respondent, if advised, to place*  
C *the entire matter before the Hon'ble trial Judge and seek*  
*for appropriate interim relief upon notice to the*  
*University. Till such time the interim arrangement*  
*made by this court, will continue and this arrangement*  
*shall not be construed by the learned Judge to be any*  
D *weightage in favour of either of the parties for taking*  
*independent decision in the wake of passing final order*  
*by the authority concerned. However, this order is*  
*subject to any decision which, might be rendered by*  
*the learned trial Judge who, we are told, has heard out*  
E *the matter and the judgment is awaiting.*

*The appeal and the cross objection are disposed of."*

11. If the appeal was indeed infructuous, as observed by  
the High Court, we fail to understand the rationale behind its  
F taking pains to make arrangements or to provide for different  
contingencies that may arise or issue directions that are in  
themselves vague to say the least. What is even more  
surprising is the fact that the Division Bench appears to be  
making an interim arrangement subject to the final outcome of  
G the Writ Petition which, according to the Division Bench, has  
been heard by the Single Judge and reserved for  
pronouncement of orders. The High Court appears to have  
completely overlooked the fact that the order under challenge  
H before it was a final order passed by the Single Judge and

that there was no question of the Single Judge pronouncing any further orders, after the matter stood disposed of. The last four lines of the order extracted above betray the ignorance of the Division Bench about the true factual position of the case. All told we are totally dissatisfied with the order of the Division Bench for we feel that the failure of the Division Bench to adopt a judicial approach in the matter is much too evident to be ignored, resulting in multiplicity of proceedings apart from delay and failure of justice. We accordingly allow these appeals, set aside the impugned order and remit the matter back to the High Court for hearing and disposal of AST No. 182 of 2011 and COT No. 14 of 2011 afresh. The parties shall appear before the High Court on 14<sup>th</sup> August, 2015. No costs.

Nidhi Jain

Appeals allowed & matter remitted back to High Court.