Rabindra Nath Ghosal vs University Of Calcutta & Others on 30 September, 2002

Equivalent citations: AIR 2002 SUPREME COURT 3560, 2002 (7) SCC 478, 2002 AIR SCW 4174, (2003) 1 ALLINDCAS 252 (SC), (2002) 4 ALLMR 857 (SC), (2002) 3 JCR 185 (SC), 2003 (1) ALLINDCAS 252, 2002 (5) SLT 510, 2002 (4) ALL MR 857, 2002 (7) SCALE 137, (2002) 7 JT 490 (SC), 2002 (9) SRJ 545, 2002 (2) UJ (SC) 1425, 2003 (1) ALL CJ 14, 2002 UJ(SC) 2 1425, (2002) 7 SUPREME 271, (2002) 3 GUJ LH 743, (2003) 1 RAJ LW 135, (2002) 4 SCT 442, (2002) 4 SCJ 505, (2003) 1 SERVLR 140, (2002) 7 SCALE 137, (2003) 1 WLC(SC)CVL 79, (2003) 1 ALL WC 220, (2003) 1 CAL HN 118, (2003) 1 CAL LJ 80, (2003) 1 CURLJ(CCR) 191

Author: S. N. Variava

Bench: S. N. Variava

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           CASE NO.:
Appeal (civil)  655 of 2002

PETITIONER:
Rabindra Nath Ghosal

RESPONDENT:
University of Calcutta & Others

DATE OF JUDGMENT: 30/09/2002

BENCH:
G. B. Pattanaik, Y. K. Sabharwal & S. N. Variava.

JUDGMENT:
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J U D G M E N T Variava, J.

This appeal is against the judgment dated 7th February, 2000. Briefly stated the facts are as follows:

> The Appellant appeared for M.A. Examination in Islamic History and Culture held by the Calcutta University in November, 1984. The result of the examination was announced on 6th June, 1985. However the result of the Appellant was not declared. The Appellant then took admission in the Law Course. On 9th December, 1990, the Appellant wrote to the Controller of Examinations and requested that his result, of the examination held in 1984, be declared. He also wrote to the Vice Chancellor on 14th February, 1991 and made the same request. He then filed a Writ Petition in the

High Court of Calcutta for issuance of Writ in the nature of Mandamus commanding publication of his result. On 12th July, 1991, the result of the Appellant was declared and he was found to have failed. The Appellant has not challenged the result of the examination and has accepted the fact that he has failed.

With the declaration of the result nothing really survived in the Writ Petition. However the learned Single Judge of the High Court appointed a Committee presided over by a retired High Court Judge to investigate why the result had not been declared for so many years. The Committee gave the following findings:

"1) The candidate knew that he was unsuccessful soon after the publication of the result.

2) In the absence of relevant papers it cannot be said that the Examiner put different marks on the 2 slips of the Tabulators.

3)(a) The scrutineer failed in his duty in not detecting the discrepancy and yet putting his signature signifying that the marks on the Tabulation sheets were correct.

(b) His conduct in not appearing before the Enquiry Committee does not speak well.

4) The Tabulators did not notice the discrepancy and even if they had noticed, they did not point out the same to the authority. They were under obligation to do so.

5) The dealing Assistant ought to have been more vigilant in pursuing this matter.

6) The Section-in-Charge of the Result Section ought to have made enquiry about incomplete result. The Section-in-

Charge of the Result Section or for the matter of that any officer in the Controller's department must have to see that a result does not remain incomplete for long years.

7) The Controller should find out ways and means and should take such steps so that in future result does not remain incomplete for years as in the present case.

8) I do not find any conspiracy between the candidate and any staff of the University."

The learned Single Judge thereafter held that the University of Calcutta and the Vice Chancellor should pay to the Appellant a sum of Rs. 60,000/- as monetary compensation and damages before 31st January, 1992. The learned Single Judge also directed the Vice Chancellor to take appropriate steps against the Scrutineer, tabulators, dealing assistant and Sequin-in-Charge and above all the Controller of Examination for defaulting in discharging their duties. The learned Single Judge also directed payment of cost fixed at Rs. 200 G.Ms. The Respondents filed an appeal. The Division Bench by the impugned judgment dated 7th February, 2000 agreed with the findings of the Single

Judge that the Respondents had been negligent. It was also noted that the Appellant had known that he had failed in the Examination and had not sought for issuance of the mark sheet for the long time. It was noted that the Appellant had not waited for his result but had pursued studies in the Law Course. It was held that it was not established by the Appellant as to what problems he had faced and to what extent he had suffered prejudice. It was held that this was not a fit case where the doctrine of public law should have been invoked. It was held that normally damages, under this doctrine, are awarded in the following cases:

> "(a) to the petitioners who suffered personal injuries at the hands of the Government and the causing of injuries which amounted to tortuous act;
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> (b) cases relating to custodial deaths; and
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> (c) cases where medical negligence has been proved.

However, in Manju Bhatia & Anr. vs. New Delhi Municipal Council & Anr. reported in 1997 (^) SCC 370, the Apex Court in a case where a building which was constructed in violation of law was demolished after the flats were sold. Only in exceptional cases damages had been granted for tortuous liability."

It was held that on the facts of this case compensation should not have been awarded to the Appellant but the proper course would have been to leave the parties to agitate their grievances before a competent Civil Court. By the impugned judgment the award of damages in the sum of Rs. 60,000/- was set aside but the award of cost in favour of the Appellant was maintained.

Mr. Jaideep Gupta submitted that the Division Bench erred in concluding that this was not a fit case where damages should have been awarded in public law domain. He relied upon the authority in the case of Lucknow Development Authority vs. M.K. Gupta reported in 1994(1) SCC

243. This was the case where the Lucknow Development Authority had floated a scheme of construction of houses or flats. The Respondent therein had been allotted a flat under that scheme. The Respondent had made the entire payment for the flat. It was found that there was use of sub-standard material and delay in delivery of the flat. The question before the Court was whether a complaint under the Consumer Protection Act, 1986 was maintainable. This Court held that such a complaint was maintainable. It was also held that the society or the tax payer must have a remedy for oppressive and capricious acts of public officers. It was held that the administrative law of accountability of public authorities for their arbitrary and even ultra vires actions has taken so many strides. It was held that it has now been accepted by this Court that the State was liable to compensate for loss or injury suffered by a citizen due to arbitrary action of its employees. It was held that jurisdictional power of Court to indemnify for the injury suffered due to abuse of power by a public authority was founded on the principle that an award of exemplary damage can serve a useful purpose in vindicating the strength of law. It was held that such a power acts as a check on arbitrary and capricious exercise of power. It was held that the award of compensation for harassment by the public authority not only compensates the individual, satisfies him personally but

helps in curing a social evil. It was held that it may result in improving the work culture and help in changing the outlook. It was held that this development of law apart, from other factors, succeeds in keeping a salutary check on the functioning in the Government and semi-government offices by holding the officers personally responsible for their capricious or even ultra vires action resulting in injury or loss to a citizen by awarding damages against them.

Reliance was also placed on the case of Common Cause versus Union of India and others reported in 1999(6) SCC 667, wherein after considering a catena of decisions it has been held that this Court and the High Courts being the protectors of the civil liberties of the citizen have the power and jurisdiction and also an obligation to grant relief in exercise of jurisdiction under Articles 32 and 226 of the Constitution to victims or the heir of the victim whose fundamental rights under Article 21 of the Constitution have been infringed. It was held that this can be done by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen notwithstanding the right of the citizen to a remedy by way of a civil suit or criminal proceedings. It was held that such relief can be granted only when it is established that there has been infringement of the fundamental right of the citizen.

There can be no dispute with the proposition of law. A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution is undoubtedly an acknowledged remedy for protection and enforcement of such right and such a claim based on strict liability made by resorting to a constitutional remedy, provided for the enforcement of fundamental right is distinct from, and in addition to the remedy in private law for damages for the tort, as was held by this Court in Nilabati Behera. It is in fact an innovation of a new tool with the Court which are the protectors of the civil liberty of the citizens and the Court, in exercise of the same, would be in a position to grant compensation when it comes to the conclusion that there has been a violation of fundamental rights under Article 21. It is in this context, this Court has observed:

> "That the citizen complaining of the infringement of an indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life he cannot get any relief under the public law by the Courts exercising writ jurisdiction."

The Courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in a public law proceedings. Consequently when the Court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the Court to grant compensation in a petition under Articles 226 and 32 by applying the principle of public law proceeding. The Court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the

performance of the duties unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act. As set out above the report of the Committee clearly shows that the Appellant was aware, from the beginning, that he had failed. He did nothing for a number of years to have his result declared. The High Court is right when it holds that in this case it has not been shown what problem the Appellant faced and to what extent he has suffered prejudice. It is not shown how the Appellants future was affected by the results not being declared. This is not a case where because of non-disclosure of the results, the Appellant was prevented from undertaking future studies. In fact the Appellant took up law course. In our view the Division Bench was right in concluding that even though the Respondents were negligent in not declaring the result, this was not a fit case where compensation could or should have been awarded. We are also in agreement with the Division Bench that a case for compensation had not even been pleaded or proved. We, therefore, see no infirmity in the impugned judgment. We see no reason to interfere with the judgment of the High Court. The appeal stands dismissed. There shall be no order as to costs.