10 SCOB [2018] HCD

HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 3319 of 2017

Farhana Akhter Liza and others
Vs.
The Islamic University, Bangladesh and others.

Mr. Md. Ruhul Quddus, Advocate with
Mr. Khaled Mahmudur Rahman,
Mr. Akter Rasul,
Ms. Nusrat Yeasmin,
Mr. Mossaddek Billah, Advocates
…. For the Petitioners

Mr. Mahbubey Alam, Senior Advocate with
Mr. Syed Quamrul Hossain, Advocate
…… For Respondent nos. 1-5

Mr. S.M. Maniruzzaman, DAG
….. For Respondent no. 6

Date of Hearing: 11.04.2017 and 12.04.2017
And
Date of Judgment: 17.04.2017

Present:
Zubayer Rahman Chowdhury, J:

Constitution of the People's Republic of Bangladesh, Article,102(2).
The concept of "due process of law" involves two distinct elements. The first element imposes a mandatory duty upon the Authority concerned to appraise the person of the charge or offence for which a proceeding is being initiated against him. Not only that, judicial pronouncements have gone to the extent to hold that even the proposed punishment must be indicated to the person concerned at the very initial stage. The second element requires that the person, who is so charged, should be afforded an opportunity to file a reply/representation to the Authority in respect of the said allegation or charge. Non-compliance or non-observance of the second element is bound to give a "telling blow" to any subsequent action of the Authority. … (Para 24)

In matters of disciplinary proceeding taken by the University against delinquent students, it has been unequivocally endorsed and upheld by the Courts that the principle of natural justice shall apply in each and every case. In other words, every student has a right to be heard and to make a representation to the authorities before any decision is taken against such student. … (Para 47)

Judgment

Zubayer Rahman Chowdhury, J:

1. The concept of "due process of law", which has found a place in our Constitution in Article 31 under the heading "Right to protection of law", has come up once again before this Court for consideration. From one perspective, the issue is quiet simple and straight forward; yet, from another perspective, it is rather complex, involving various dimensions, not just legal, but social and administrative as well.

2. 88 writ petitioners, all being students of 1st year in the Department of Mathematics and Department of Statistics, Islamic University, Kushtia have challenged the legality of Decision No. 196, taken at the 233rd Meeting of the Syndicate of Islamic University, Kushtia, held on 06.03.2017 cancelling the result of the admission test of the 1st year students of F Unit in respect of the academic session 2016-2017 and directing to hold the admission test, afresh, for the 1st year students of F Unit, as per circular contained in Memo No. 02/¢nr¡/C¢h-2017/616 dated 08.03.2017, issued by respondent no. 3, published in the daily Bangladesh Protidin on 10.03.2017, as evidenced by Annexure F.

3. At the time of issuance of the Rule on 13.03.2017, although a prayer was made in the writ petition itself and also by the learned Advocate appearing for the petitioners to postpone the re-admission test, this Court declined to grant the prayer. Rather, the respondents were directed to proceed with the admission test scheduled to be held on 16.03.2017 and the petitioners were also directed to take part in the admission test. It has to be brought on record that the learned Advocate appearing for the petitioners readily agreed to abide by the Court's directive upon the petitioners to take part in the re-admission test in order to demonstrate their bonafide.

4. Certain facts, which are undisputed, need to be recorded at the very outset.

5. The petitioners, who are the students of the Department of Statistics and the Department of Mathematics, The Islamic University, Jhenaidah, Kushtia (briefly, the University), appeared in the admission test of F Unit held on 07.12.2016. The result was published on the following day i.e. on 08.12.2016. Subsequently, the process of admission started on 16.01.2017 when the students, including the petitioners, who had qualified in the admission test, were directed by the University to pay the fees and other charges in order to complete the admission procedure. The 88 petitioners and the remaining 12 students, who are not before us (totaling 100), duly paid the fees and other charges through the Bank, as directed by the University. Thereafter, the classes of the 1st year students of both the departments namely, Mathematics and Statistics departments, commenced on and from 30.01.2016.

6. While the petitioners along with the other students were attending the classes regularly, the University authorities took a mock test of all the students on 14.02.2017. However, without any further steps or directive, the students of both the Departments were allowed to continue with their classes.

7. On 06.03.2017, the University authorities issued the impugned order contained in Decision No. 196, taken at the 233rd Meeting of the Syndicate, cancelling the result of the 1st year admission test of F Unit and directing to hold a fresh admission test of 1st year students of 'F' unit. Being aggrieved thereby, the petitioners moved this Court and obtained the instant Rule.

8. The Rule is being opposed by respondent nos. 1-5 by filing an affidavit-in-opposition.

9. Mr. Md. Ruhul Quddus, the learned Advocate appears along with Mr. Khaled Mahmudur Rahman, Mr. Akter Rasul, Ms. Nusrat Yeasmin, and Mr. Mossaddek Billah, Advocates on behalf of the petitioners, while Mr. Mahbubey Alam, the learned Senior Advocate appears with Mr. Syed Quamrul Hossain, the learned Advocate on behalf of respondent nos. 1-5.

10. Having placed the instant application together with the Annexures, Mr. Md. Ruhul Quddus, the learned Advocate appearing on behalf of the petitioners submits that the impugned action of the respondents in cancelling the result of the 1st year admission test of F unit is not tenable in law for the simple reason that the same was passed in gross violation of Article 31 of the Constitution, which provides for the right to protection of law. Moreover, according to Mr. Quddus, the impugned decision was taken in utter disregard to the well-settled principle of natural justice. The learned Advocate submits that if a person is accused of a crime which carries "capital punishment", even in that case, the accused is dealt with in accordance with law. However, in the instant case, the petitioners were completely kept in the dark and no prior notice was served upon the petitioners and therefore, the impugned order was passed behind their back. He further submits that this is not a simple order cancelling the result of the admission test held on 07.12.2016, but an "administrative order", which has grave consequences for the students in as much as, they would be prevented from persuing their academic career in any public or private University. Therefore, according to Mr. Quddus, the impugned order had the effect of causing "academic death" of the petitioners.

11. The learned Advocate submits that even if it is accepted, but not conceded, that the allegation of leakage of question paper, as alleged by the University, is correct, that by itself cannot absolve the University from giving an opportunity to the petitioners to be heard before passing the impugned order. He submits forcefully that none of the petitioners had any involvement with the alleged leakage of question paper. Referring to the Inquiry Report filed by the University through the supplementary affidavit-in-opposition dated 12.04.2017, Mr. Quddus submits emphatically that it is evident from the said Report that as many as 4-5 teachers and staff of the University were involved in the said incident. However, not a single student belonging to the 1st year F Unit, in either Mathematics Department or the Statistics Department, was found to be involved with the incident in question.

12. Mr. Quddus contends that the students of "F" unit, who had qualified in the admission test held on 07.12.2016, were directed to pay the fees on the very same date on which the University formed an Inquiry Committee to inquire into the matter. Therefore, according to the learned Advocate, the University authorities came to know of the matter at a very early stage, only when the result had been published. Despite being fully aware of the matter and having initiated an inquiry into the same, but without waiting for its outcome, the University Authority directed the students to complete their admission process and also allowed them to start their respective classes from 30.01.2017.

13. The learned Advocate contends that by their own conduct, the University authorities are, at the least, guilty of waiver and acquiescence. Mr. Quddus concludes his submission by submitting that if the arbitrary and malafide decision of the University is allowed to stand, it would destroy the future prospect of the petitioners by causing "academic death" at the very early stage their career.

14. Mr. Mahbubey Alam, the learned Senior Advocate appears in his personal capacity, and not as the Attorney General, along with Mr. Syed Quamrul Hossain, the learned Advocate in opposition to the Rule.

15. Mr. Alam submits that the Inquiry Committee was formed on 16.01.2017 immediately after the University became aware of the matter, which first came to light through the newspaper report, published on 04.01.2017. Referring to the writ petition itself, Mr. Alam

submits that although the admission of 100 students was cancelled, only 88 have appeared before this Court, out of whom only 2 writ petitioners have filed necessary documents evidencing their admission in the University, while the rest have not annexed any documents to prove their standing. According to Mr. Alam, the petitioners have accepted the impugned decision by their own conduct by taking part in the subsequent re-admission test held on 16.03.2017.

16. Referring to the re-admission test result, which has been annexed in the affidavit of compliance dated 23.03.2017, Mr. Alam submits that out of 88 petitioners before this Court, only 29 petitioners have been able to secure their names in the merit list of 100 successful students. Although the names of 11 other petitioners have appeared in the 1st waiting list containing 100 names, the names of the remaining 48 petitioners do not appear in the result published by the University.

17. Mr. Alam submits that admittedly the question papers were leaked before holding of the 1st admission test on 07.12.2016, as is evident from the Inquiry Report submitted to the Syndicate on 04.03.2017. Therefore, according to Mr. Alam, since the matter of leakage of question paper has been established by the University upon holding a full fledged inquiry, the petitioners, whose admission test result has been cancelled, cannot be allowed to benefit from a wrongful act, even though all of them may not have any link with such act. He submits that no person can claim to be benefitted from a wrongful act.

18. Mr. Alam next submits that merely by attending classes, the petitioners cannot be said to have been vested with a legal right. On the contrary, he contends that the students, who have taken part in the subsequent admission test and qualified, now have a legitimate expectation to pursue their academic career in the University. Mr. Alam submits that if the Rule is made absolute and the petitioners' admission result, test published on 08.12.2016, is held to be valid, that would create both academic and administrative complications as there are only 100 seats in the Statistics and Mathematics Departments, each having 50 seats. Therefore, any additional number of students cannot be accommodated in the present academic year without prior approval and sanction from the University Grants Commission (UGC).

19. Referring to paragraph 3 of the supplementary affidavit-in-opposition dated 12.03.2017, Mr. Alam submits that in the Admission Form given to the students at the time of admission, it has been clearly stated in the Form itself that the University Authority has every right to cancel the admission of any student at any moment and no question can be raised regarding such action.

20. Mr. Alam submits that since the factum of leakage of question paper has been established beyond any reasonable doubt by the Inquiry Committee, it cannot be said that the cancellation of the 1st year admission test of F Unit, held on 07.12.2016, by the Syndicate is without lawful authority and consequently the Rule is liable to be discharged.

21. As indicated at the very outset of this judgment, the concept of "due process of law", as enshrined in Article 31 of our Constitution, is central for determination of the issue before us.

22. Let us now refers to Article 31 of the Constitution, which reads as under :

> "31. To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."

23. From the language of Article 31, it is evident that the Constitution not only confers upon a person the right to protection of law, but seeks to ensure the same by prohibiting any action detrimental to one's life, liberty, reputation or property, save and except in accordance with law. This constitutional guarantees, as envisaged by Article 31, is referred to as "the due process of law".

24. The concept of "due process of law" involves two distinct elements. The first element imposes a mandatory duty upon the Authority concerned to appraise the person of the charge or offence for which a proceeding is being initiated against him. Not only that, judicial pronouncements have gone to the extent to hold that even the proposed punishment must be indicated to the person concerned at the very initial stage. The second element requires that the person, who is so charged, should be afforded an opportunity to file a reply/representation to the Authority in respect of the said allegation or charge. Non-compliance or non-observance of the second element is bound to give a "telling blow" to any subsequent action of the Authority.

25. Now, let us have an over view of the matter before us. The whole issue arose following the leakage of the question paper of the admission test of 'F' Unit. Admittedly, the question papers were leaked prior to holding of the admission test on 07.12.2016. The result was published on the following day. Even if it is accepted for the sake of argument that the University Authority had no knowledge about the matter prior to holding of the admission test, quite clearly, the University Authorities became fully aware of the matter, as early as 04.01.2017, when the newspaper report was published, as acknowledged by Mr. Alam himself. Thereafter, the Inquiry Committee was formed on 16.01.2017 to investigate into the matter. Being fully aware of the matter and having started an inquiry into the same, the University Authorities, on the very same date, i.e. on 16.01.2017, initiated the actual process of admission by directing the students to deposit their fees and other charges. The matter did not end there. The University authorities completed the admission procedure and allowed the students, including the present petitioners, to start their academic career in the University by holding the 1st year classes on and from 30.01.2017. It was not until 06.03.2017, i.e., after a period of two and half months, that the impugned order was passed. All this while, the University Authorities did not take any step to suspend the classes and prevent the petitioners from attending the classes. Rather, despite initiation and continuation of the inquiry, the University Authorities allowed the petitioners to attend their classes in their respective departments.

26. On the other hand, the petitioners, having duly qualified in the admission test and having paid their admission fees and other charges and having completed the admission procedure, started their classes on and from 30.01.2017. It is not until the issuance of the impugned order on 06.03.2017 that the petitioners were officially intimated about the matter. There is not a single document on record nor is there any statement in the affidavit-in-opposition to the effect that on any date prior to 06.03.2017, the petitioners were notified about the proceeding or that they were issued show cause notice or that some explanation was sought from the petitioners. Therefore, upto 06.03.2017, the petitioners were totally kept in the dark and they had no prior notice about the proceeding or the inquiry, which culminated in the issuance of the impugned order.

27. The issue of leakage of question paper is undoubtedly a very serious matter which, in our view, cannot be condoned in any manner. The persons involved with such heinous act should be punished very severely, without any sympathy. Having said that, it has to be borne in mind that no person can be condemned unheard. In other words, a person against whom an action is proposed to be taken which is detrimental to his life, liberty and/or property, should be afforded an opportunity of stating his case before the concerned authority.

28. From Annexure 3 of the supplementary affidavit-in-opposition dated 12.04.2017, filed on behalf of respondent nos. 1-5, being the Report of the Inquiry Committee (তদন্ত কমিটির প্রতিবেদন), it appears that the Inquiry Committee did not find the involvement of any of the students of F Unit, who had appeared in the admission test on 06.12.2016. On the contrary, the Report discloses the complicity and involvement of some senior academic staff of the University. The only student, who has been named in the said report, appears to be a student of the Master Degree in the Department of Mathematics.

29. It is on record that the Inquiry Report has not been made available to any of the petitioner before us, although it is on the basis of this very report that the impugned Decision No. 196 was taken by the Syndicate on 06.03.2017 cancelling the admission test result of F unit, held on 06.12.2016.

30. During the course of his submission, the learned Advocate for the respondents has provided several official correspondences made by the University, although the same has not been filed by way of affidavit-in-opposition, despite a directive by this Court to do so. However, we take judicial notice of the same.

31. It appears from the letter dated 09.03.2017, issued vide প্রশাঃ/ইবি-২০১৭/১৩৫০, under the signature of the Registrar (Acting) and addressed to one Md. Saiful Islam, Senior Auditor, Finance and Accounts Department, Islami University, Kushtia, that pursuant to a written complaint filed by a student organization on 20.01.2017, the University Authorities constituted a Inquiry Committee. The letter reads as under :

> ‘‘নং প্রশাঃ/ইবি-২০১৭/১৩৫০ তারিখ ০৯/৩/২০১৭
> জনাব মোঃ সাইফুল ইসলাম
> সিনিয়র অডিটর
> অর্থ ও হিসাব বিভাগ
> ইসলামী বিশ্ববিদ্যালয়, কুষ্টিয়া।
>
> জনাব,
>
> ইসলামী বিশ্ববিদ্যালয়ের ২০১৬-২০১৭ শিক্ষাবর্ষের ১ম বর্ষ ভর্তি পরীক্ষায় ‘এফ’ ইউনিটের প্রশ্নপত্র ফাঁসের বিষয়ে ইসলামী বিশ্ববিদ্যালয়ের ছাত্র সংগঠনের ২০/০১/২০১৭ তারিখের লিখিত অভিযোগের পরিপ্রেক্ষিতে গঠিত তদন্ত কমিটির প্রতিবেদন গত ০৬-০৩-২০১৭ তারিখে অনুষ্ঠিত ২৩৩ তম সিন্ডিকেট সভায় সর্বসম্মতিক্রমে সিদ্ধান্ত হওয়ায় তদন্ত কমিটির সুপারিশ অনুযায়ী প্রশ্নপত্র ফাঁসের ঘটনার সাথে জড়িত থাকার অপরাধ প্রাথমিকভাবে প্রমানিণত হওয়ায় আপানাকে সিনিয়র অডিটর পদ থেকে সাময়িকভাবে বরখাস্ত করা হলো। অত্রসহ সংযুক্ত অভিযোগনামার প্রেক্ষিতে ইসলামী বিশ্ববিদ্যালয়ের কর্মচারী দক্ষতা ও শৃংখলা বিধির ৩ (ডি) উপধারার অপরাধ সংঘটেনের জন্য কেন আপনাকে চাকুরী থেকে চূড়ান্তভাবে বরখাস্ত করা হবে না তা পত্র প্রাপ্তির ০৭ (সাত) দিনের মধ্যে কারণ দর্শাতে বলা হলো। উল্লেখ্য, আপনি সাময়িকভাবে বরখাস্তকালীন সময়ে বিধি মোতাবেক জীবনধারণ ভাতা পাবেন।
>
> ধন্যবাদান্তে,
>
> আপানর বিশ্বস্ত,
> স্বাক্ষর, অস্পষ্ট
> (এস.এম. আব্দুল লতিফ)
> রেজিস্ট্রার (ভারপ্রাপ্ত)
> ইসলামী বিশ্ববিদ্যালয়’’

32. Although the said letter has not been annexed by the University, Mr. Syed Quamrul Hossain, the learned Advocate appearing on behalf of the University, does not dispute the authenticity of the letter. It is, therefore, palpably clear that the University authorities became aware of the matter, at least on 20.01.2017, i.e. ten days prior to commencement of the 1st year classes.

33. Furthermore, from the letter dated 07.03.2017, bearing Memo No. প্রশাঃ ইবি/2017/1289, it appears that the Acting Registrar of the University wrote to the Officer-in-Charge, Islamic University Thana, Kushtia regarding filing of an FIR about the incident in question. On a perusal of the same, it appears that the persons named in the FIR are the teachers and staff of the University, including one Post-Graduate student pursuing a Master Decree in the Department of Mathematic. Apart from the aforesaid persons, not a single student from amongst the 100 students, who took part and qualified in the admission test of F Unit held on 07.12.2016, has been named in the FIR.

34. It has been strenuously argued by Mr. Mahbubey Alam that the petitioners, who took part in the admission test on 16.03.2017, did not fare well and out of 100 students, only 28 qualified and were placed in the merit list. Therefore, according to Mr. Alam, the cancellation of the admission test result held on 07.12.2016 was fully justified.

35. In view of the submission advanced by Mr. Alam, we are called upon to examine the backdrop which led to the holding of the subsequent admission test on 16.03.2017. Admittedly, the petitioners had been pursuing their 1st year studies in the Department of Mathematics and the Department of Statistics. While they were doing so, all of a sudden, without any prior notice, their admission was cancelled on 06.03.2017 and they were asked to take another admission test on 16.03.2017. The subsequent admission test, which comprised of 80 marks, was taken on two subjects namely, Mathematics and English. In all fairness, the petitioners, who are the students of Mathematics and Statistics Departments, were no longer studying English nor were they undertaking any preparation to appear for another admission test. Moreover, their earlier admission test having been cancelled, they were obviously under a tremendous amount of mental stress and pressure. Not only had their future academic career become uncertain owing to the arbitrary action of the Authorities, but they were also asked to appear in a fresh admission test within 10 days of such cancellation. By no stretch of imagination can it be presumed that upon receiving the news of the Syndicate's decision, the petitioners would merrily start to prepare for the re-admission test forthwith.

36. On the other hand, the remaining 71 students, who qualified in the subsequent admission test held on 16.03.2017, were not attending classes in the University, but were preparing for their next admission test. Obviously, they were better prepared than the petitioners. Therefore, it cannot be said that the petitioners were on a "level playing field", so far as the subsequent admission test was concerned. Given their tender age and the tremendous mental anxiety and stress which they were facing, coupled with the uncertainty about their academic career, it is not surprising that many of the petitioners did not perform well in the re-admission test held on 16.03.2017 and consequently could not find a place amongst the first 100 students.

37. During the course of submission, Mr. Quddus has referred to two celebrated decisions of the Apex Court.

38. In the case of Dhaka University vs. Zakir Ahmed, reported in 16 DLR (SC) 722 (733-734), the Court held:

> "Nevertheless, the general consensus of judicial opinion seems to be that, in order to ensure the "elementary and essential principles of fairness" as a matter of necessary implication, the person sought to be affected must at least be made aware of the nature of the allegations against him, he should be given a fair opportunity to make any relevant statement putting forward his own case and "to correct or controvert any relevant statement brought forward to his prejudice."

39. In that case, the Court also held :

> "In other word, "in order to act justly and to reach just ends by just means" the Courts insist that the person or authority should have adopted the above "elementary and essential principles" unless the same had been expressly excluded by the enactment empowering to so act."

40. In the case of Sk. Ali Ahmed vs. Secretary, Home, reported in 40 DLR (AD) 1988 170, the Apex Court, while endorsing the decision in Zakir Ahmed's case, held as under:

> "It must, however, he pointed out that there is a long line of decisions from the Pakistan Jurisdiction, (The University of Dhaka vs. Zakir Ahmed, PLD 1965 S.C. 90 = 16 DLR (SC) 1 722) which have consistently taken the view that in all proceedings by whomsoever held, whether judicial or administrative, the principles of natural justice have to be observed if the proceedings might result in consequences affecting "the person or property or other right of the parties concerned". This rule applies even though there may be no positive words in the statute or legal document whereby the power is vested to take such proceedings, for, in such cases this requirement is to be implied into it as the minimum requirement for fairness."

41. Although the matter before us is of some public importances, not to mention urgency, involving several issues, the learned Advocate for the petitioners has not referred to any other decisions. The respondents, on their part, have not troubled us by citing any decisions. However, since the matter involves several important issues, we do so at our own instance.

42. More than half a century ago, the issue of "adopting unfair means at an examination" came up for consideration in the case of Rajdendra Kumar vs. Vice Chancellor, Vikram University, reported in AIR 1966 Madhya Pradesh 136 (V 53 C32). While deciding the issue, the Court held:

> "The broad features of natural justice would be firstly the principle of "Audi Alteram Partem" which means that no person should be condemned behind his back. So far as, disciplinary action of any sort whether under the Service Rules or under the University or the School Education Board Acts is concerned, there can be no doubt that a charge of adopting unfair means in the examinations would be more or less of a quasi-criminal nature involving the reputation and career of the student. Therefore, it is all the more necessary that before a person is condemned, he must be given an opportunity to be heard. As to what is a sufficient or a reasonable opportunity will depend on the particular facts of a case."

43. Subsequent judicial pronouncements on the issue have endorsed, expanded and upheld the decision in Rajendra Kumar's case, referred to above.

44. In the case of Pradeep Singh and Lucknow University, reported in AIR 1983 Allahabad 427, the Court held :

> "No doubt the problem faced by the University in conducting the examinations has to be appreciated but it has also to be borne in mind by the University Authorities while inflicting punishment on a student which may adversely affect his future career as well that he should be given a reasonable opportunity to defend himself."

45. In the case of Pradip Kumar v. Utkal University, reported in AIR 1987 Orissa 98, the Court held:

> "... the petitioner had received no communication with regard to any charges leveled against him by the invigilator or the Superintendent of the Examination Centre. In a case of this nature, the person proceeded against must have due notice of the charges leveled against him and he must be asked to show cause as to why action should not be taken against him for adoption of malpractice."

46. In the case of Jayesh Bhupatrai Parikh v. University of Bombay, reported in AIR 1987 Bombay 332, the Court held as under:

> "True, bodies and institutions which conduct domestic enquiries are not expected to go by the book as is the expectation from the Courts of law. This however does not mean that the basic requirements of fairness can be dispensed with."

47. On a careful perusal of the decisions referred to above, starting from our own jurisdiction and that of our neighbouring jurisdictions in India and Pakistan, it is evident that in matters of disciplinary proceeding taken by the University against delinquent students, it has been unequivocally endorsed and upheld by the Courts that the principle of natural justice shall apply in each and every case. In other words, every student has a right to be heard and to make a representation to the authorities before any decision is taken against such student.

48. Regrettably, in the instant case, the University has given a clear go by to this aspect of due process of law. There is no document on record nor has any submission been made to the effect that the University Authorities gave any prior intimation to the petitioners about the inquiry that was being conducted, which would ultimately decide their fate. Even the Inquiry Report, which was submitted before this Court through a supplementary affidavit, was not made available to the petitioners. Therefore, by keeping them totally in the dark, the impugned order was passed by the University. Needless to say that this undoubtedly tantamounted to causing an "academic death" of the students, who were persuing the academic course in the 1st year of the Mathematics and Statistics Departments.

49. Judicial pronouncements, starting from the late twentieth century, have tended to hold that the action of an Authority, be it administrative or quasi judicial, is required to be judged by the standard of "administrative fairness". Professor H.W. Wade, in his celebrated treaty "Administrative Law", 5th edition, commented that any administrative action, which has the effect of determining a person's right, be it propriety or personal or intellectual, must be made upon observing due process of law, which must be reflected by way of administrative fairness.

50. The concept of "administrative fairness" appears to have been endorsed and upheld in our own jurisdiction in the case of Chittagong Medical College vs. Shahrayar Murshed, reported in 48 DLR (AD) 1996 39, when the Apex Court held :

> "The first requirement of the rule of fairness, well- settled as it is, is that the person to be proceeded against must be made aware of the allegations against him- the right to have notice of the charges-as the House of Lords put it."

51. The concept of "Administrative Fairness" in being increasingly adopted by the English Court and the Courts in other developed countries. We see no reason as to why we should not adopt such principles in deciding similar matters, as the one presently before us.

52. As indicated earlier, the issue before us is both simple and complicated. The issue is simple because the impugned action of the University Authorities is, in our view, arbitrary, being violative of Article 31 of the Constitution and having been taken in utter disregard to the well-settled principles of "natural justice". Therefore, on that count, the Rule is liable to succeed.

53. On the other hand, the matter is complex since it involves various social and administrative issues. To start with, in the event of the Rule being made absolute, as we propose to do, what would happen to the fate of the other 71 students who had taken part in the subsequent admission test held on 16.03.2017 and qualified? Mr. Mahbubey Alam submitted that they have a legitimate expectation to be admitted to the University following publication of the result. We do not disagree with the contention of Mr. Alam. However, the legitimate expectation of the students, who have qualified in the second admission test held on 16.03.2017, must be weighed vis-à-vis the legitimate expectation as well as the legal right of the students who had earlier been admitted through the admission held on 07.12.2016. If the students, who had qualified in the subsequent admission test, can be said to have a legitimate expectation, as argued by Mr. Alam, the 100 students including the petitioners, not only have a legitimate expectation to be dealt with in accordance law, but they also have a legal right, which has been vested upon them by the conduct of the University itself in allowing them to get admitted and pursue their academic career for almost three months. Therefore, the rights of the 100 students including the petitioners are, by far, greater than the legitimate expectation of the students, who qualified in the admission test held on 16.03.2017.

54. Having said that, we are also mindful of the fact that the 71 students, who qualified in the subsequent admission test held on 16.03.2017, also deserve to be treated in accordance with law, although they are not being represented before us. It is at this juncture that we take note of Mr. Alam's contention that in the event of the Rule being made absolute, it would give rise to academic and administrative complexities in that the 71 students, who qualified subsequently on 16.03.2017, cannot be accommodated in the present academic year without increasing the number of seats, which, in turn, would require the approval and sanction of UGC.

55. The argument advanced by Mr. Alam is not novel. The Supreme Court of India had the occasion to address a similar issue in the case of Punjab Engineering College vs. Sanjay Gulati, reported in AIR 1983 SC, 580, Y.V. Chandrachud, C.J., while delivering the judgment, observed:

> "It is strange that in all such cases, the authorities who make admissions by ignoring the rules of admissions contend that the seats cannot correspondingly be increased, since the State Government cannot meet that additional expenditure which will be caused, by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students. An additional plea available in regard to Medical Colleges is that the Indian Medical Council will not sanction additional seats. We cannot entertain this submission. Those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made."

56. Similarly, in the case of Arti Sapru v. State of Jammu and Kashmir and Ors, reported in AIR 1981 SC 1009, after allowing the writ petitions of the candidates who were wrongly denied admission to the Medical College, the Court held :

> "The candidates who will be displaced in consequence have already completed a few months of study and in order to avoid serious prejudice and detriment to their careers it is hoped that the state Government will deal sympathetically with their cases so that while effect is given to the judgment of this Court the rules may be suitably relaxed, if possible by a temporary increase in the number of seats, in order to accommodate the displaced candidates."
>
> Per Pathak, J, (as he then was)

57. The Syndicate ought to have been more cautious and prudent before taking the impugned decision as it involved the future of one hundred students. It was not merely an administrative decision deferring or postponing a course or an examination which would be rescheduled at a future date. It was an administrative order which had far reaching consequences involving not only the academic career but also the future of the young students. On one hand, the impugned action of the Syndicate cast an uncertainty over the academic career of the students who were perusing their 1st year classes in the Statistics and Mathematics Departments. On the other hand, the decision to retake the admission test gave rise to several complex issues. Needless to state that having created such a complex scenario, albeit by their own action, the University Authority have now left it to this Court to attempt to solve this intricate problem and outline a solution for the parties concerned.

58. We are reminded of the pronouncement made by A.T.M. Afzal, CJ, one of the finest legal minds to have graced the Bench, in the case of Chittagong Medical College vs. Shahrayar Murshed, reported in 48 DLR (AD) 1996 39, in the following terms:

> "The bare minimum was to notify the students that disciplinary action would be taken against them in view of the evidence which was forthcoming regarding their involvement in the incident. However much the pressure was, it was expected of the College authority to show that much of care for the respondents as, it is said, they stand *loco parentis* to the students."

59. A similar view had earlier been expressed by the Supreme Court of India, in the case of Punjub Engineering College, Chandigarh vs. Sanjay Gulati and ors., reported in AIR 1983 (SC) 580, Chandrachud, C.J., while delivering the Court's verdict, stated :

> "... the conduct of the authorities charged with the duty of making admissions to educational institutions has to be above suspicion. They cannot play with the lives and careers of the young aspirants who, standing at the threshold of life, look to the future with hope and expectations."

60. The term "arbitrary" denotes the absence of "reasonableness" and "fairness" in the decision making process. The conduct of the University, more particularly the Syndicate, in dealing with such a serious and sensitive issue, leaves much to be desired. Not only did the concerned Authority act arbitrarily, thereby failing to observe "due process of law", but they also acted in gross violation of the well settled principles of natural justice. Needless to state that their impugned action and decision fail to stand the test of "administrative fairness".

61. Be that as it may, having given our anxious consideration to the facts and circumstances of the case, we are inclined to hold that the impugned Decision No. 196 dated 06.03.2016, taken at the 233rd Meeting of the Syndicate of the University, is not tenable in law and the same is liable to be set aside.

62. In the result, the Rule is made absolute.

63. The cancellation of the result of the admission test of the 1st year students under F Unit, for the academic year 2016-2017, as contained in the impugned Decision No. 196, taken on 06.03.2017 at the 233rd Meeting of the Syndicate of Islamic University, Kushtia, as evidenced by Annexure E, is declared to be without lawful authority and to be of no legal effect.

64. The University authority is directed to allow all the students, including the 88 petitioners, who qualified in the 1st year admission test of F Unit, held on 07.12.2016 and thereafter obtained admission and had commenced their classes, to continue and pursue their academic career as 1st year students in their respective Departments namely, Department of Mathematics and the Department Statistics of the University.

65. With regard to the remaining 71 students, who qualified in the admission test held on 16.03.2017, the University authorities are directed to either make provision for their admission in the present 1st year, subject to obtaining approval from the University Grants Commission (UGC). However, if the University Authorities are unable to obtain the required approval from UGC and accommodate them in the current academic session, the aforesaid 71 students shall have the right to be admitted to the Islamic University under F Unit in the next academic year i.e. 2017-2018. In that event, the University Authorities will only publish notice and take admission test in F Unit for the remaining 29 seats only in the next academic year. However, should any of the 71 students decline to take admission in the University in the following academic year, the University Authority will be at liberty to fill up those seats from amongst the new applicants.

66. Furthermore, we direct the University Authority to carry out a thorough investigation into the matter and identify the persons involved with the leakage of question papers and take severe punitive action against each of them.

67. Let it be made very clear that if any of the students, including any of the petitioners, are found guilty of being involved with the incident in question, the University Authority shall be at liberty to proceed against them in accordance with law and impose the severest punishment under the law, if necessary.

68. There will be no order as to cost.

69. The office is directed to communicate the order.