

(2014) 06 GAU CK 0036

Gauhati High Court

Case No: WA Nos. 216 and 222 of 2014

Kriti Hazarika

APPELLANT

Vs

Jishnu Nath
 Mrinmoy

RESPONDENT

Bhuyan Vs The State of Assam

Date of Decision: June 23, 2014

Citation: AIR 2015 Guw 22 : (2014) 2 GLD 161 : (2014) 4 GLT 968

Hon'ble Judges: Abhay Manohar Sapre, C.J; Ujjal Bhuyan, J

Bench: Division Bench

Advocate: D. Das, Senior Adv., assisted by Mr. R. Singha, Adv., Mr. A.C. Borbora, Senior Advocate assisted by Mr. R. Borbora, Advocate for the Appellant; D. Saikia, Addl. AG, Assam assisted by B. Gogoi, SC, Health, Mr. T.J. Mahanta and H. Buragohain, Advocate for the Respondent

Judgement

Abhay Manohar Sapre, C.J.

The decision rendered in this appeal (WA No. 222/2014) shall also govern the disposal of the other connected appeal being WA No. 216 of 2014 because both appeals arise out of common order passed by the Single Judge (writ court) in two writ petitions arising out of one controversy between the same parties.

2. This is an intra-court appeal filed by the writ petitioner of WP (C) No. 2613/2014 and respondent No. 6 of WP (C) No. 1627 of 2014 under Rule 2(3) of Chapter V-A of the Gauhati High Court Rules against the order dated 28.05.2014 passed by the Single Judge in abovementioned writ petitions.

3. By impugned order, the learned Single Judge, partly allowed one writ petition being WP(C)No. 1627/2014 and issued a writ of certiorari against the State and its authorities quashing the second result declared by the State on 14.3.2014 in relation to the entrance examination held for admission in MDS Course (Assam) in the Regional Dental College, Guwahati and further issued a mandamus directing the concerned State authorities to give effect to the first result declared on 13.2.2014 in relation to the aforesaid examination for giving admission and other ancillary

benefits relating thereto to the successful candidates as per their merit. It was also held that respondent No. 6 (Kriti Hazarika) did not use any unfair means in the examination while answering her answer script as complained by the two writ petitioners against her. As a result of the issuance of the writs and the aforementioned finding the connected Writ petition being WP (C) No. 2613/2014 was dismissed.

4. So the question which arises for consideration in these 2 appeals is whether learned Single Judge was justified in partly allowing WP (C) No. 1627/2014 by issuing writ of certiorari in quashing the second result of the entrance examination declared on 14.3.2014 for admission in MDS Course (Assam) in Regional Dental College, Guwahati and was further justified in issuing a mandamus against the State to give effect to the first result declared on 13.2.2014 for giving admission to candidates and lastly whether he was justified in holding that respondent No. 6 (Kriti Hazarika) did not use any unfair means in the examination while answering her answer script?

5. In order to appreciate the issue involved in the appeals, it is necessary to state the relevant facts, which lie in a narrow compass.

6. An educational notice was issued (Annexure - A) by the Controller of Examination, Shrimanta Sankaradeva University of Health Sciences, Guwahati inviting applications from Dental Graduate students belonging to State of Assam for admission to the MDS Course (Assam quota) of Regional Dental College,

7. Guwahati for the session 2014. Entrance test was to be held on 30.1.2014. In all, 56 candidates applied for the admission and appeared in the written test held on 30.1.2014. The results were declared on 13.2.2014. Three (3) candidates whose cases are subject matter of the two writ petitions out of which these two appeals arise secured marks in order of merit as under:

8. On 15.2.2014, one candidate-Mrinmoy Bhuyan, who secured 325 marks, filed a RTI application (Annexure-6) to the authorities demanding an information as to whether any kind of discrepancy or unfairness was noticed in the answer sheets of the candidate - Kriti Hazarika who secured 327 marks and Jishnu Nath who secured 336 marks and if so what kind of discrepancy and unfairness was noticed in their answer scripts?

9. On 17.2.2014, Mrinmoy Bhuyan and other candidates also filed an application (Annexure-7) to the Controller of Examination praying therein that revaluation of answer sheets of all candidates who had appeared in the examination be done. It was also prayed that one candidate - Kriti Hazarika was reported to have indulged in "unfair means" while answering her questions in the examination and hence the same should be probed and she be disqualified from the examination due to use of unfair means in the examination.

10. On 26.3.2014, another candidate by name-Anusmita Das filed a RTI application (Annexure-10). In her application, she wanted to know as to whether candidate-Kriti Hazarika used "whitener" while answering the questions in her answer script?

11. By letter dated 15.3.2014 and 29.3.2014, (Annexure-11), the Deputy Registrar informed the respective candidates against their query's that Kriti Hazarika used whitener in her answer script while answering the questions at one or two places. The marks obtained by the candidates were also informed to the applicants. It was also informed that no photocopies of answer sheets of other candidates can be supplied to them. It was also informed that no discrepancy/unfair means were noticed in the answer sheets of the candidates whose names were mentioned in their applications.

12. The authorities however in order to verify the genuineness of the complaint made by the candidates got the revaluation done of all the answer sheets of 56 candidates of their own. After the re-evaluation was done, the position of marks of the 2 candidates namely - Kriti Hazarika and Mrinmoy Bhuyan was changed as under:

13. It is with this background, the two writ petitions were filed out of which these two appeals arise. As mentioned above, one writ petition i.e. WP (C) No. 1627/2014 was filed by Jishnu Nath, who secured 336 marks and in the re-evaluation also secured 336 marks. In his petition, he challenged the re-evaluation done by the authorities, which disturbed his merit position because in the re-evaluation, Kriti Hazarika who was earlier shown to have secured 327 marks was declared to have secured after re-evaluation 337 marks thereby securing No. 1 position in order of merit whereas Jishnu Nath who was originally No. 1 in merit became No. 2 after re-evaluation.

14. According to him, there was no provision for undertaking any re-evaluation once the results were declared and hence the second result declared on the basis of re-evaluation was bad in law. He therefore prayed for quashing of second merit list issued on the basis of re-evaluation with a direction that the first result declared on 13.2.2014 in which he (Jishnu Nath) was shown at No. 1 in order of merit be given effect to for grant of admission and all other benefits arising therefrom to all successful candidates.

15. So far as WP (C) No. 2613/2014 was concerned, it was filed by Mrinmoy Bhuyan. In his petition, he complained that since Kriti Hazarika used "whitener" while answering her answer script and hence she be disqualified/debarred from the examination by canceling her results.

16. These two writ petitions were contested by the State and Kriti Hazarika. So far as State was concerned, their case was that use of whitener by the candidate in the examination did not amount to use of unfair means because firstly, it was not specified in the instructions issued in that behalf and secondly, like Kriti Hazarika,

there were several candidates who used the whitener while answering their answer script. The State also defended their action in undertaking re-evaluation of all the 56 candidates to show their bonafides and fairness in conducting the examination. It was contended that it was done with an objective that no one should suffer due to any mistake, if noticed. It was contended that regardless of the fact as to whether there was any provision or rule, the State considered in the larger interest of the candidates to do justice to all on receipt of the complaint received from some candidates. It was therefore contended that the action of the State be upheld as being reasonable and fair.

17. So far as Kriti Hazarika was concerned, she supported the stand of the State and contended that since use of whitener was not prohibited and secondly many candidates had freely used it like her, the grievance raised by writ petitioners against her was not well founded. She also defended the re-evaluation done because according to her, she having secured more marks in re-evaluation as compared to what was declared in the original result, she was rightly placed at a proper place in the order of merit as No. 1 position.

18. The learned Single Judge called for the original objective type answer script of Kriti Hazarika for perusal.

19. By impugned order, the learned Single Judge partly allowed WP (C) No. 1627/2014. It was held that use of whitener by Kriti Hazarika did not constitute any unfair means so as to disqualify her from the examination or/and to cancel her results. It was however held that direction to undertake re-evaluation by the State was not legal because there was no provision/rule to do such re-evaluation and secondly, no prayer was made by Kriti Hazarika who was the real beneficiary of the re-evaluation, she having secured highest marks in order of merit following re-evaluation which resulted in upgrading her position from second to first. It was with these two findings, the learned Single Judge quashed the re-evaluation results declared on 14.3.2014 and directed that admissions be given to the candidates only on the basis of marks declared in the original results on 13.2.2014. It is against this order these two appeals are filed by the two candidates named above.

20. So far as WA No. 222/2014 is concerned, it is filed by a candidate-Mrinmoy Bhuyan contending inter alia that learned Single Judge committed an error in holding that Kriti Hazarika did not commit any unfair means though found to have used whitener in answering her answer script. It was contended that Kriti Hazarika should have been disqualified/debarred from examination and her results should have been cancelled due to she using unfair means in the examination.

21. So far as WA No. 216/2014 is concerned, it is filed by Kriti Hazarika. In her appeal, she challenged the finding of the learned Single Judge by which the re-evaluation process undertaken by the State was held bad in law. According to her, re-evaluation process and the result declared on the basis of re-evaluation should

have been held legal for giving benefit to all the candidates including her for deciding their inter se merit for giving admission and other benefits arising therefrom.

22. So far as the State is concerned, they have not filed any appeal against any part of the impugned order. So also writ petitioner of WP (C) No. 1627/2014.

23. Heard Mr. D. Das, learned senior counsel assisted by Mr. R. Singha, learned counsel and Mr. AC Borbora, learned senior counsel assisted by Mrs. R Borbora, learned counsel appearing for the appellants. Also heard Mr. D Saikia, learned Addl. Advocate General, Assam, Mr. B Gogoi, learned Standing Counsel, Health, Mr. TJ Mahanta and Mr. H Borgohain, learned counsel appearing for the respondents.

24. Having heard the learned Counsel for the parties at length and on perusal of the record of the case including perusing the original answer scripts produced by the State at the time of hearing, we are inclined to allow WA No. 216/2014 filed by Kriti Hazarika and dismiss WA No. 222/2014 filed by Mrinmoy Bhuyan for the reasons given below.

25. In our considered opinion, the challenge made by two writ petitioners against Kriti Hazarika that she while answering her answer script used "whitener" committed "unfair means" in the examination, was rightly rejected by the learned Single Judge.

26. Though learned Single Judge did not give reasons while rejecting this challenge (Para 20), yet, we are inclined to uphold the conclusion on this issue with our reasons infra.

27. We consider it apposite to reproduce instructions (Annexure-4) issued to the candidate.

ADMIT CARD Instructions to the Candidates MDSEE-2014

1. All candidates shall be present at the Examination Venue one hour before the scheduled examination time along with the Admit Card.

2. The doors of the Examination Hall shall be opened 20 minutes before the commencement of Examination. No

candidates shall be allowed to enter the Examination Hall 15 minutes after commencement of Examination.

3. A candidate must sit in his/her allotted seat only.

4. Temporary absence during the examination hours is generally not allowed. However, a candidate may leave the Examination Hall temporarily one hour after the commencement of Examination by keeping his/her Question Booklet and under the custody of the invigilator on duty.

5. During Examination candidates are required to put his/her full signature and affix Left Thumb Impression on the Admit Card in front of the invigilator.
6. Possession of any book, note, scribbling or objectionable materials in the Examination Hall will make the candidate liable for disqualification.
7. No cell phone/mobile phone is allowed inside the Examination Hall/premises of the Examination Centre.
8. No calculator/electronic gadgets is allowed inside the Examination Hall/premises of the Examination Centre. Presence of any such item shall make the candidate liable for disqualification.
9. A candidate shall not help/try to help or obtain help/try to obtain help from any other candidate while answering the questions at Examination Hall. However, in case of any need, a candidate may stand up to draw the attention of the invigilator.
10. Adoption of unfair means in the Examination Hall by any candidate shall automatically cancel his/her candidature of the entire examination.
11. Candidates are warned that any attempt to use unfair means in the examination or any breach or attempted breach in conduct or examination rules shall make them liable for expulsion.
12. Notwithstanding the issue of Admit Card the Officer-in-charge shall have the right for reasons which may appear to him sufficient to cancel the examination of any candidate before, during or after the examination.
13. The decision of the Srimanta Sankaradeva University of Health Sciences, Guwahati, authority with regard to the conduct of the examination shall be final binding to the candidate.
28. Mere perusal of the aforementioned instructions would go to show that firstly, the instructions did not mention much less in specific terms that use of "whitener" was prohibited in the examination. On the other hand, clauses 6, 7, and 8 specifically mentioned as to which articles/materials/objects were prohibited for use in the examination.
29. The candidate appearing in the examination therefore had a legitimate belief that since "whitener" was not mentioned along with specified prohibited category of articles/objects in clauses 6, 7 and 8 from being used, its use was permitted. Secondly, the State did not take action nor intended to take action against any candidate who used "whitener" while answering the answer script. Thirdly, many candidates used "whitener" alike Kriti Hazarika but no action was taken against any student. Fourthly, when State did not consider use of "whitener" as an unfair means for taking any penal action against any candidate and on the other hand allowed all candidates to use it then, in our view, the writ petitioners had no right to raise such grievance against other candidate. Fifthly, it is a settled principle of law that any

penal provision which has the effect of disqualifying a candidate from the examination must be specific and clear. Such was not the case here. Sixthly, this was a case inter se where one candidate was accusing the other candidate of indulging in unfair practice, but the State which conducted the examination did not find any candidate indulging in any unfair practice. The writ petitioners did not make any allegation of extending or/and showing favouritism or malafides against any particular official to support Kriti Hazarika due to some extraneous consideration or close relations etc.

30. We were not impressed by the submission of the learned counsel for the appellant when he contended that the expressions "scribbling" and "objectionable material" used in clause 6 of the instructions would also include "whitener" and hence it was also prohibited.

31. In the first place, the dictionary meaning of the word scribbling in clear terms suggests that scribbling does not include "whitener". It means "to write quickly and carelessly, especially because you do not have much time" or "to draw marks that do not mean anything" and "careless and untidy writing". Secondly, "objectionable material" means any other articles/objects alike those specified in clause 6. Thirdly, it was not defined in the instructions so as to enable the candidate to know its exact meaning and lastly, in the case of any ambiguity or/and omission which may have a penal consequences against the candidate, the benefit must go to a candidate due to ambiguity/omission though in this case, even the State has supported the case of candidates using "whitener".

32. We were also not impressed by the argument of learned counsel for the appellant when he contended that since use of "whitener" was not allowed by other Universities and hence it should be held prohibited for its use in the examination in question. He invited our attention to a specific clause from the instructions issued by University of Karnataka.

33. This submission cannot be accepted for three reasons. First, no specific clause was inserted in the instructions applicable to the examination in question: second: a clause inserted by one University of one State in their instructions would not apply to examination conducted by a University of another State and third, nothing prevented the State to provide a specific clause in the instructions and making the candidates aware of the same.

34. In the light of aforesaid reasons, we concur with the conclusion arrived at by the learned Single Judge and hold that use of "whitener" by the candidate in the examination in question did not amount to use of unfair means - a fortiori-the State rightly did not take any penal action against Kriti Hazarika for use of "whitener" which she used at one or two places while answering her answer sheet.

35. Learned Counsel for the appellant also wanted to urge that this being an All India Entrance Examination and hence Dental Council of India be made party before

finally deciding the matter. He also placed reliance on certain rules/instructions issued by the Dental Council.

36. We find no merit in this submission. If the Dental Council was not made party in the original writ petition then, in our opinion, it is now too late for the appellant to urge this submission.

37. That apart, having regard to the nature of controversy, we do not consider it necessary to implead them at an appellate stage.

38. So far as reliance placed on some instructions issued by Dental Council are concerned, we on perusal find that they are of no relevance to decide the short issue raised in these appeals. They were also not relied upon before the writ court.

39. This takes us to the next question as to whether State was justified in doing revaluation of answer sheets of all the candidates. The learned Single Judge held that State was not justified in undertaking such re-evaluation in the absence of any regulation/provision/rule made in that behalf and accordingly set aside the re-evaluation done.

40. With respect, we do not agree to this view of the learned Single Judge.

41. In three Judges Bench decision, this very issue came up for consideration before the Supreme Court in a case reported in Sahiti and Others Vs. The Chancellor, Dr. N.T.R. University of Health Sciences and Others, . Justice Panchal, speaking for the bench expressly negatived this plea and held in para 32 as under:

32. The plea that there is absence of specific provision enabling the Vice-Chancellor to order re-evaluation of the answer scripts and, therefore, the judgment impugned should not be interfered with, cannot be accepted. Re-evaluation of answer scripts in the absence of specific provision is perfectly legal and permissible. In such cases, what the court should consider is whether the decision of the educational authority is arbitrary, unreasonable, mala fide and whether the decision contravenes any statutory or binding rule or ordinance and in doing so, the court should show due regard to the opinion expressed by the authority.

42. In the light of aforesaid authoritative pronouncement of the Supreme Court on the issue in question, we have no hesitation in holding that even though there was no specific rule/regulation made in that behalf, yet in our considered opinion, the decision of the State to do revaluation was just, legal and fair and could not be assailed successfully only on the ground of absence of power with the State. It was much more so when the action was not assailed by the writ petitioners on the ground of arbitrariness, or unreasonableness, or on the plea of malafides or/and any extraneous consideration.

43. It is not in dispute that the State re-evaluated the answer sheets of all the candidates uniformly with a view to find out as to whether any injustice was done to

any candidate in the first result and in this process, found that two candidates namely Kriti Hazarika and Mrinmoy Bhuyan got more marks as against what was originally declared. Though it was a blessing in disguise to these two candidates as it resulted in upgrading their merit position, but certainly it was to the misfortune of another candidate - Jishnu Nath who was at No. 1 in merit but had to become No. 2 due to the candidate who was at No. 2 securing more marks in re-evaluation than him. This court can only say that it was to his misfortune and nothing more.

44. The State was therefore in our view justified in doing the re-evaluation of all the answer sheets and hence second merit list dated 14.3.2014 issued on the basis of the re-evaluation done should be made the basis for giving admission to the candidates according to merit of each candidate.

45. In the light of foregoing discussion, we are of the considered view that the learned Single Judge erred in allowing in part WP (C) No. 1627/2014. Both the writ petitions should have been dismissed.

46. Before parting with the case, we consider it apposite to observe that every examination and specially the one to secure admission in higher studies is becoming more and more competitive amongst the students. Every student work very hard in studies with one objective to achieve his best and come out with flying colours in the examination. Every student has a dream to excel in his career and so has legitimate expectation to have his dream fulfilled which eventually takes him to crest in career and make him a good human being in the society worthy of recognition. In this process of challenge, some succeed and some do not. It is indeed an inevitable phenomena in every examination, which many have to suffer. Those who do not achieve success for some reason prepare for the next and eventually get success due to their hard work. Those who work hard, success can never leave them. The only question is of time. It only needs tolerance and patience in them.

47. It is therefore the duty of the State and its authorities to be more careful, sincere and sensible to the need, wishes and aspirations of the students while conducting the examination. Involving the students in litigation for building their future in academics" cannot be encouraged by the courts. No student would like to approach the court for securing more marks because that is not the job of courts. If the officials do their duties assigned in letter and spirit, there would be no need for any litigation between the candidates and the State. All instructions must be therefore circulated with clarity making known to the candidates. No error be committed while examining the answer script. It is only then the sanctity of the examination would be maintained and students will repose faith in the system.

48. We hope and trust that our observations though general in nature would be kept in view in letter and spirit by all those responsible for conducting examinations.

49. We however make it clear that we have decided the issue arising in this case on the basis of peculiar undisputed facts pleaded in the petitions, stand taken by the parties and the instructions (Annexure- 4) governing the issue. It is now for the State to decide whether they need to introduce any amendment in the regulation in the light of our observations and also keeping in view the regulations made by other Universities/Councils for conducting the examinations in future.

50. In the light of foregoing discussion, WA No. 216/2014 filed by Kriti Hazarika succeeds and is allowed whereas WA No. 222/2014 is dismissed. The impugned judgment is set aside and in consequence, both the writ petitions i.e. WP (C) No. 1627/2014 and WP (C) No. 2613/2014 out of which these two writ appeals arise are dismissed.

51. No cost.