
(1982) 03 CAL CK 0046
In the Calcutta High Court
Case No : C.O. 9364 (W) of 1981

Dr. Miss Ruby Sett

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 15-03-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 226

Citation : AIR 1982 Cal 351

Hon'ble Judges : B.C. Ray, J

Bench : Single Bench

Advocate : S. Chatterjee, R.K. Roy and Alak Banerjee, for the Appellant; N.K. Roy and S. Parmar, for the Respondent

Judgement

B.C. Ray, J.—The petitioner who appeared in the admission test of M. D. Course in General Medicine under the University of Calcutta which was held on 14-7-81 at the Institute of Post Graduate Medical Education and Research has come up with this application with this grievance that though out of 75 questions she answered 74 questions correctly and though her academic career was all along brilliant and she was entitled to get the 20 marks set apart for good academic career was not properly considered, rather discriminated upon and as such her name was not included in the list of successful candidates for being admitted in the said M. D. Course in Medicine. It has also been stated in this petition that the examiners did not properly value and/ or assess the answer scripts of the petitioner vis-a-vis the answer scripts submitted by the other examinees and as a result the petitioner was not selected in the said admission test and her name was not enlisted as one of the successful candidates in order to get admission in the said M. D. Course in Medicine.

2. Mr. Roy, learned Advocate appearing on behalf of the Calcutta University, has filed an affidavit in opposition denying those allegations and stating, inter alia, that in accordance with the rules the answer papers of all the examinees including the petitioner were duly assessed by the examiners and there has been

no discrimination in the matter of assessment of the answer papers. It has been submitted that the marks were given on these answers after proper assessment of the same. It has also been submitted by Mr. Roy that in accordance with the rules for the answers which were not correct half marks have been deducted against each of the incorrect answers in accordance with the rules. Referring to the case of the petitioner Mr. Roy submitted that she secured 50 marks for having answered correctly 50 questions and for giving incorrect answers 12 marks were deducted in respect of 24 such incorrect answers. As such she secured only 38 marks and 4 marks were given i. e. $3 + 1$ on assessment of her academic career. In total the petitioner secured only 42 marks and as such she could not secure the qualifying marks for getting her name enlisted in the list of successful candidates.

3. Mr. Chatterjee, however, referring to Annexure A to the affidavit in opposition sworn on behalf of the University submitted in the first place that if the answer scripts of the examinees particularly two of the successful examinees i. e. Shri Apurba Kumar Mukherjee and Shri Roxy Senior whose names appeared in the list in order of merits as 2 and 1 respectively are produced before this Court it would be apparent from the assessment made that the answers that have been given by these examinees though do not tally with the model answers as referred to in Annexure B to the affidavit in opposition were taken into consideration and marks were given on such answers. It has been next commented upon by Mr. Chatterjee that the academic careers of Shri Roxy Senior and Shri Apurba Kumar Mukherjee are not so brilliant as that of the petitioner, still then about 14 marks have been awarded on this count whereas the petitioner has been given only 4 marks and on this count also the marks were not awarded to the petitioner in consideration of her academic career.

4. The whole question that comes up for, consideration in this writ application is whether there has been a fair assessment of marks in accordance with the provisions of the rules laid down in this respect. It is well settled that to assess marks on the answer scripts is exclusively the affair of the examiners appointed by the University and this Court will not intrude upon or it will not be just and proper for this Court to say on merits whether the answer scripts were properly assessed or not. But one thing still remains to be considered by this Court. If the rules for assessment of the answer scripts and the giving of marks on such assessment are done arbitrarily, in utter violation of the rules and also in a manner which smacks of discrimination on the face of it then certainly this Equity Court will interfere and will make appropriate orders so that such arbitrary and discriminatory acts and also acts in contravention of the rules and norms that have been set out by the University by setting them aside and/or by cancelling them and by directing the University by the issue of a mandate to exercise its discretion in accordance with the extant rules and procedure. The allegations that have been made in this case by Mr. Chatterjee that there has not been a proper observance of the rules and procedure for assessment of marks by the University, if correct, certainly this Court will interfere. But in view of the fact

that the classes of M. D. Course in Medicine have already commenced since September, 1981, and almost half of the session 1981-82 is over, considering this aspect of the matter it will not be fit and proper to enter into the merits and if it is found otherwise to interfere in this matter at this stage. But it appears curious to this Court that while ascertaining the merit test apart from the assessment of the answer scripts and giving marks thereon if is really something extraordinary that some candidates have been given marks by several lots in 2 or 3 lots on the ground of the brilliant academic careers whereas others were not given the same. There is no indication how the authorities considered the merits and why one candidate was given marks on assessment of his academic brilliance several times by several lots, not in one lot, this really creates some suspicion in the mind of the Court. It is really expected that those who aspire to sit for the admission test for the highest course in medicine are not students of ordinary intelligence but are students of some greater merit and brilliance so far as their academic careers are concerned. Therefore, in deciding such cases the University should proceed being fully conscious and aware of its duties and responsibilities in this regard and should see that they should not proceed in such a fashion that it will create disappointment or it will unnecessarily debar a brilliant student from getting admission in this highest course. It will be apropos to say in this connection that while selecting candidates for this highest course of study the only idea before the University should be to choose the best students in consideration of their academic achievements not being swayed away by any other influence, considerations and bias. This aspect should always be kept in mind and should always weigh with the examiners while assessing the merits as expressed in the answers given by the students in the written test.

5. With these observations, as I have said already that the session has already started and almost half of the session is already over, I am not inclined at this stage to interfere in this matter. However, if this petitioner appears in the next test for getting herself admitted in the M. D. Course in Medicine or in any other "discipline the authorities concerned will consider her answer scripts free from any bias and any prejudice and will consider impartially the merits of the answers to be given by this student and will also weigh the academic brilliance of this petitioner while assessing marks on her academic career.

6. The application is thus "disposed of.

7. Learned Advocates on both sides may take plain copies of this order, as prayed for.