
(2003) 02 OHC CK 0056
In the Orissa High Court
Case No : O.J.C. No. 5600 of 1999

Miss Samita Dev Sarkar

APPELLANT

Vs

Utkal University and Others

RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 95 CLT 416

Hon'ble Judges : P.K. Mohanty, J; L. Mohapatra, J

Bench : Division Bench

Advocate : J.K. Rath, A.K. Pattnaik, B.N. Sarangi, N.C. Das, J.P. Pati and P.K. Das, for the Appellant; Ranjib Das and T.N. Patnaik for the O.P. 2, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—The petitioner calls in question the result published by Utkal University declaring her to have failed in Master in Business

Administration (M.B.A.) Examination, 1998 having not passed in Paper-x practical examination.

2. The short fact of the petitioner's case is that she appeared at the M.B.A. Examination, 1998 from Regional College of Management in the final

year of two years course. She had secured more than 55 per cent of marks in aggregate; but has been illegally declared failed, since she had been

awarded ten marks in practical examination in Paper-X. According to the petitioner, both external as well as internal examiners had communicated

to Opp. Parties 1 and 2 that they were not aware, that the required pass mark was 12 and as such they had awarded 10 marks, thinking that to be

the pass mark. A further allegation is made that the internal examiners had no

experience and/or practice in the concerned subject and as such the marks awarded were not on proper evaluation of the performance of the petitioner or any other examinee.

3. It is submitted that the result of the M.B.A. Examination conducted in the year 1998 was published by the Opp. parties 1 and 2 on 23.9.1998

and the petitioner being surprised to see that she has failed in the examination, having secured only 10 marks in the practical part of Paper-X

Management Information System and Data Processing." made enquiry and the Opp. party No. 3 College also caused an enquiry and came to

know from the internal examiner that both internal and external examiners thought 33 per cent is the pass mark in the practical subject and on such

erroneous impression, the marks were awarded to the petitioner and some other candidates. The Director of the institute in his letter dated

23.9,1998, a copy whereof is Annexure-2, intimated the Controller of Examinations to that effect and requested the University to reconsider the

case and declare such students to have passed.

4. Sri J. Rath, learned counsel for the petitioner contends that in view of the letters of the internal examiners in practical papers that, they were

under the impression that 33 per cent of marks is the required pass mark, taking theory and practical together, the petitioner, who has secured 10

marks out of 30 full marks, which is 33 per cent of full marks in that paper, she ought to have been declared passed. Contention is also raised that

the internal examiners in their letter having clearly stated further that the petitioner and all other students who were awarded 10 marks in Paper-X

practical, did well in the paper and deserve a pass, the University ought to have reconsidered its decision and declared them pass. In para-6 of the

writ petition, it is specifically averred that the 10th paper of the examination is a computer based subject, but both the internal as well as the

external examiners for Regional College had no Computer Qualification to their credit so as to assess the practical work of the examinees and to

award marks in such papers. Further, both the internal and external examiners appointed by the University were lacking eligibility to function as

examiners. Contentions were also raised that the external examiner submitted separate marks, but the Examination Committee, decided to accept

the marks awarded by the external examiner as per the approval of the Vice-

chancellor as a result of which the matter was placed before the

Board of Conducting Examiners in its meeting held on 19.9.1998, which, on consideration, accepted the decision, which is not the accepted norms of the University.

5. The University, in its counter, while denying the allegations made has specifically asserted that it had appointed competent examiners who had

examined the papers of the petitioner and other such candidates. The External Examiner had examined the candidates in all the three centres

namely, P.G. Department of M.B.A., Utkal University, Vani Vihar, Regional College of Management, Chandrasekharpur, Bhubaneswar and

Bhubaneswar Institute of Management & Information Technology, Rasulgarh, Bhubaneswar. The petitioner having secured only 10 marks in MIS

Paper-X examination, out of a full mark of 30, whereas 12 was the required pass mark in accordance with the Regulations, she could not be

declared to have passed. It is asserted that the Controller of Examinations has never received any communication directly from the Practical

Examiners that they were not aware of the required pass marks in Paper-X, but he came to know for the first time from the representation of Sri

Rajat Kumar Rout and seven other candidates, dated 18.10.1998, addressed to the Vice-chancellor, wherein copy of the purported letters were

enclosed. The Vice-Chancellor, in turn, directed the Controller of Examination to process the matter and place it before the Syndicate. The matter

was placed before the Syndicate in its meeting held on 26.3.1999 and the Syndicate resolved on consideration that since the results have already

been published, the case cannot be reopened at that stage. The proposal for application of hard case rule was also negatived as it was only

applicable to the under-Graduate examinees.

6. One Pratima Jaiswal and three other examinees of this very examination approached this Court in O.J.C. No. 3374 of 1999 questioning the

result in the practical examination for having secured also 10 marks. The Court did not interfere in the matter; but disposed of the writ petition with

the observation that the Syndicate may consider the matter in its next meeting. Pursuant to the observation of this Court, the Syndicate considered

the matter and resolved to reiterate its earlier decision and to initiate action against the internal examiners who had given in writing in the annexed

letters that they were ignorant of the pass mark. It is, therefore, contended by the Opp. Party-University that since in the earlier writ petition this

very question was raised and the Court did not like to intervene but only directed the Syndicate to consider, the present writ application, on the

self-same plea should not be allowed to be re-agitated. By order dated 12.11.2002 on the submission of the learned counsel for the petitioner that

the Board of Conducting Examiners as well as the Examination Committee had taken certain favourable decisions with regard to publication of

result, we called upon the University to produce the relevant file and accordingly the relevant file has been produced. On perusal of the file, it

appears that the Board of Conducting Examiners in its meeting held on 19.9.1998 observed that the over-all performance of the candidates except

Paper-X has been satisfactory. Eight candidates have been awarded less than 12 marks out of 30 and perhaps the examiners were under the

impression that the pass mark is determined taking into practical and theory together. A suggestion was made for awarding 4 marks to those

securing less than 15 marks, 3 marks to those securing less than 16 to 22 marks and 2 marks to those securing 21 to 22 marks and one mark to

those securing more than 22 marks. However, the suggestion was not accepted by the Vice-Chancellor and the result was published. Ultimately

the Syndicate which was the final authority in the examination matter, considered the same and decided not to reopen the result.

7. In view of the pleadings of the parties, the moot question that arises for consideration, is whether in view of the letters of the practical examiners

that they were not aware of the pass mark in the practical paper and that the petitioner and other such examinees did well in the examination, the

University was right in not reopening the result declaring the petitioner to have passed.

8. Undisputedly the prescribed pass mark in Paper-X practical was 12 out of a full mark of 30. The result of M.B.A. Examination was declared

by the University on 23.9.98. The petitioner and some other examinees who had secured 10 marks in MIS practical, having failed in the practical

examination in terms of the regulation of the University, they became unsuccessful in the entire examination. The petitioner along with such other

unsuccessful examinees and the Director of the Institute made enquiry from the internal examiner who informed them that he was not aware of the

separate pass mark in the practical. The petitioner relies on the letters dated 26.9.98 of the internal examiner, forwarded by the Director of the

institute and addressed to the University, copies of which have been annexed to this writ petition as Annexure-3 and Annexure-4. The relevant

portion of the said letters may be extracted herein below :

Anexure-3

Department of Business Administration,

Utkal University, Bhubaneswar - 751004.

Memo No. MBA/407/98 dt. 26.9.98.

From

B. B. Mishra, Lecturer

To

The Controller of Examination,

Utkal University, Vani Vihar

(Through proper channel)

Respected sir,

With due respect, I state that I was under impression that there was no pass mark of M.I.S. Practical and the pass mark includes both theory and

practical taken together. Now three of our students failed due to the M.I.S. Practical where the pass mark is 12. But, all these students deserve

pass mark and their performance was satisfactory.

I, therefore, request you to consider their practical marks as 12 instead of 10 which has been awarded to them.

With regards,

Forwarded Sd/-

Sd/- B. B. Mishra,

26.9.98 Internal Examiner for MIS Practical

Annexure-4

To

The Controller of Examinations.

Utkal University, Bhubaneswar.

(Through the Central Superintendent MBA(FT) Programme)

Sir,

I did not know that 12 is the pass mark for MIS practical in M.B.A. programme. I had given 10 to three of our students who eventually failed in this years M.B.A. examination.

I, therefore, request you to consider the marks of those three students as 12 so that they can pass their M.B.A. examination.

Yours faithfully,

Sd/-

26.9.98. Anup Kumar Samantaray

Bhubaneswar Internal Examiner MIS Practical

Forwarded Regional College of Management

Sd/-26.9.98.

Director,

Regional College of Management,

Bhubanewar.

9. The aforesaid two letters appear to have been forwarded by the Director, Regional College of Management, Bhubaneswar, copies whereof

were sent along with the letter of the Director as well as the examinees addressed to the Controller of Examinations, Utkal University. However,

according to the University none of these letters purported to be written by the practical examiner, were ever received by it but came to the

knowledge since copies thereof were annexed to the representation of unsuccessful examinees. Even if these letters are taken to have been written

to the University, it reflects that these examiners did not know the exact pass mark and the examinees' performance at the practical was

satisfactory. None of these letters purportedly written by the examiner disclose that they did not award 10 marks on assessment and evaluation of

the performance of the examinees. It is a matter of concern that responsible lecturers in Post Graduate Management institute and appointed as

examiners by the University who had conducted several examinations, came out with statement that either they did not know the pass mark or

were under the impression that there was no separate pass mark after the

results of such examination was published. These examiners, however, nowhere disputed that they had not awarded 10 marks on proper assessment and evaluation of the examinees' performance during the practical examinations. This clearly in our considered opinion, is an after-thought, may be when they were either approached or contacted by the examinees or the Director of the institute. But since the receipt of the letters directly by the University is disputed and as such its genuineness is not admitted, we would not like to comment on propriety or otherwise of such letters.

10. In a public examination under the regulations of the concerned examining body experienced examiners in the concerned subject are appointed to assess and evaluate the performance of the candidates in either written or practical examinations. They award marks, reflect such marks in the mark foil, sign them and submit it to the Examining Body. Examining Body in turn basing on the marks so reflected, consider the same at different levels like Board of Conducting Examiners, Examination Committee and the Syndicate and then the result is published. In the present case, the University which conducted the examination, did the same thing. After the results were published, these examiners purportedly have written the aforesaid letters to the Controller of Examinations, which were forwarded by the Director of the institute and annexed to the representation of the students as well as the letter written by the Director.

11. We are not able to appreciate as to how responsible teacher of professional colleges like the College of Management Studies could if at all parted with the confidential letter addressed by them to the Controller of Examinations which in turn was forwarded by the Director of the Institute and annexed to the representation of the examinees and of the Director, after publication of results. If such letters are entertained by the Examining Bodies like the University, after publication of the results and reopen the results on such letters, it would lead to academic indiscipline, uncertainty chaos and deterioration of standard of examinations. Whether such letters were in fact emanated from the teachers suo motu, or otherwise if at all, cannot be definitely said nor we are inclined to delve into that question and hence we do not like to comment. When the result of public examination after following the due procedure laid down in the regulations are published, such results ought not to be interfered with unless an

exceptional case is made out and in the ends of justice, it is so required Sanctity of the public examinations has to be maintained since on

publication of results, the examinations attended finality.

12. In the earlier writ petition, i.e., O.J.C. No. 3374/99 by order dated 22.4.2002 filed by some other examinees of the very same examination,

this Court upon hearing did not like to interfere in the matter and disposed of the same with the observation that the Syndicate may consider the

same afresh. The Syndicate appears to have considered the matter and in its decision dt. 26.3.99 reiterated its decision not to reopen the results on

such grounds. The results of the examinations have since been published in the year 1998.

13. The Supreme Court in *The Chancellor and Another Vs. Dr Bijayananda Kar and Others*, while considering a case where some of the experts

in a Selection Committee after the selection was over raised some doubts about the selection made, have observed :

8. Even on the merits of the controversy we are of the view that the High Court fell into patent error in setting aside the selection on the basis of

the "two letters." The function of the Selection Committee comes to an end when the process of selection is completed and the proceedings are

drawn. Every member of the Selection Committee has a right to give his independent, unbiased and considered opinion in respect of each

candidate appearing before the committee. Normally, it would not be considered a bona fide act on the part of a member of the Selection

Committee to say after the selection is over and he has signed the proceedings, that he "overlooked" certain qualifications in respect of a candidate.

The sanctity of the process of selection has to be maintained. It would be travesty of the selection process if the candidates are encouraged to meet

members of the Selection Committee after the selection is over and to obtain letters from them attempting to renege the selection made. The High

Court in the facts of the present case, grossly erred in setting aside the selection and appointment of Dr, Mohapatra.

14. In such view of the matter and in view of the ratio of the decision of the Apex Court (*supra*) which is squarely applicable to the facts of the

present case, we find that there is no merit in the writ petition which is accordingly dismissed. However, there shall be no order as to costs.

L. Mohapatra, J.

15. I agree.