
(2010) 02 CAL CK 0024
In the Calcutta High Court
Case No : Writ Petition No. 2739 (W) of 2010

Ms. Sutapa Roy

APPELLANT

Vs

University of Calcutta and Others

RESPONDENT

Date of Decision : 24-02-2010

Acts Referred:

Citation : AIR 2010 Cal 109

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : P.K. Ray, P. Gupta, S.K. Daskar, Jayanta Mukherjee and S. Sarkar, for the Appellant; Soumay Majumdar, S.M. Obaidullah, Sutanu Kumar Patra and Rajib Kumar Basak, for the Respondent

Judgement

Biswanath Somadder, J.—Heard the learned advocates for the parties.

2. The instant writ petition has been filed by a student of a College named Shri Shikshayatan College, which is an affiliated College, being affiliated under the University of Calcutta. The case of the writ petitioner is that she has been prevented by the College authorities to fill-up her form for the purpose of appearing in the ensuing B.A. Part-III (honours) Examination, 2010, to be conducted by the University of Calcutta.

3. According to the learned Advocate for the writ petitioner, in terms of the University of Calcutta (Admission and Examination Regulations relating to Three-Year B.A./ B.Sc./B.Com./B.Mus. Degree Courses of Studies), Regulations 2009, (hereinafter referred to as the said Regulations) the College authorities cannot hold any elimination/ qualifying test in the midway for the students admitted to the Honours Courses of Studies at the degree level. In this regard he has referred to Clause 17 of the said Regulations, which reads as under:

Colleges will not hold any elimination/ qualifying test in the midway for students admitted to the Honours Courses of Studies at the degree level. However, College can hold test and examination according to the precedence in vogue.

4. He submits that having regard to the above, it was incumbent upon the College to allow the writ petitioner to fill-up her form to enable her to participate in the B.A. Part-III (Honours) Examination, 2010. He, thus, prays for issuance of necessary direction upon the College to enable the writ petitioner to participate in the aforesaid examination.

5. Learned advocate appearing on behalf of the respondent No. 4, being the Principal of Shri Shikshayatan College, submits that the concerned student has been unsuccessful in the selection test conducted by the College, which was a prelude to filling-up the form to enable her to participate in the B.A. Part-III (Honours) Examination, 2010. As such, she was not permitted to fill-up the requisite form by the College authorities. Moreover, he submits that the writ petitioner was also caught cheating while appearing in the 5th Paper under Group "A" in the Selection Test although she was permitted by the College authorities later to complete the said paper. In this regard, he relies on the affidavit- in-opposition affirmed on 19th February, 2010, by Anuradha Banerjee, being the Teacher-in-Charge of the concerned college. He submits in the said affidavit it has been categorically stated that the writ petitioner took admission in the College in the Academic Session 2007-2008. The College prospectus laid down the rules of promotion in Clause (h), wherein, the consequence of students found using "unfair means" have been spelt out. Referring to the said affidavit, he further submits that on 5th January 2010, when the writ petitioner Was taking the 5th Paper and writing her Group "A" answer script, the invigilator, Dr. Elizabeth Dey, caught the writ petitioner red-handed in the Examination Hall with written materials which were used for copying. The written materials were quite large in number. The invigilator, thereafter, asked the writ petitioner put her signature on each of the papers of the written materials found in her possession. The answer script which was written by the writ petitioner at that point of time (12r20 p.m.) was seized and the invigilator put her signature on the answer script. Thereafter, the seized answer script was placed before the Teacher-in-Charge. The seized answer script was replaced by a fresh answer script so that the writ petitioner could complete her examination on that day. The writ petitioner reportedly left the Examination Hall on 5th January, 2010 at about 3.00 p.m. although the examination was scheduled to conclude at 4.00 p.m.

6. Learned advocate for the respondent No. 4 also draws this Court's attention to the photo-copies of the written materials seized from the writ petitioner, which have been annexed to the affidavit. He submits that the signature of the writ petitioner, in each of the written material, would be evident therefrom. Learned advocate appearing on behalf of the respondent No 4 also submits that Regulation 17, as cited by the learned advocate for the petitioner, is wholly inapplicable. Drawing this Court's attention to the said Regulations, he submits that Regulation 17 pertains to "Admission Qualifications". He invites this Court's attention to the Examination Regulations, particularly Regulation 28, which reads as follows:

An affiliated College/Institution shall submit application forms duly filled-in by the intending to appear at the said examination(s) to the Controller of Examinations within the last date, fixed by the University.

Admit Card for an examination shall not be issued to the college concerned in favour of a candidate unless his/her application is duly filled up to all respects and particularly in regard to : (a) date of admission to the first year class, (b) year of first appearance in the examination of the part concerned and (c) year(s) of appearance in the Part I, Part II and Part III Examinations as the case may be together with the results thereof and such other information as may be required from time to time and duly endorsed by the Principal testifying his/her a) good conduct, (b) satisfactory performance at the Tests and Mid-terms Tests and requisite attendance record in theoretical and practical classes in each of the subjects in which he/she intends to appear.

7. According to the learned advocate for the respondent No. 4, the criteria for filling up the form to enable the writ petitioner to participate in the ensuing B.A. Part-III (Honours) Examination, 2010, are specified in the above-quoted regulation. In conclusion, he submits that in the facts and circumstances of the instant case the writ petitioner has not fulfilled the required criteria and as such, the writ petitioner is ineligible to participate in the University examination and the writ petition is liable to be dismissed.

8. Learned advocate appearing on behalf of the University of Calcutta submits that unless the eligible criteria are fulfilled, the authorities of the University of Calcutta cannot allow participation of any candidate in the ensuing B.A. Part-III (Honours) Examination, 2010.

9. After considering the submissions made by the learned advocates appearing on behalf of the parties and upon perusing the instant writ petition and the affidavits filed in connection thereto, it is beyond a shadow of doubt that the writ petitioner is essentially seeking a direction of this Court upon the College authorities to send her name to the University of Calcutta to enable her to participate in the ensuing B.A. Part-III (Honours) Examination, 2010. The Supreme Court of India, in the case of Central Board of Secondary Education Vs. Nikhil Gulati and Another, in no uncertain terms, have deprecated the practice of the High Courts issuing directions in the nature as prayed for in the instant case. In a recent judgment delivered by this Court on 3rd February, 2010, in W.P. No. 250(W) of 2010 (Sri. Sudhansu Kumar Ghosh v. The State of West Bengal), this Court had an occasion to consider a case of an unsuccessful student who had appeared in a Test Examination conducted by another educational institution. He thereafter approached the writ Court seeking directions upon that educational institution to send up his name to enable him to participate in the Higher Secondary examination to be conducted by the West Bengal Council of Higher Secondary Education. This Court, while dismissing the said writ petition followed, inter alia, the judgment of the Supreme Court in Central Board of Secondary Education's case (supra). I am of the opinion that this judgment is squarely

applicable in the facts of the instant case. That apart, the Regulation 17, which has been relied on by the learned advocate for the petitioner, is wholly inapplicable, since it is apparent that the said Regulation is with regard to the "Admission Qualifications" only. As rightly pointed out by the learned advocate appearing on behalf of the respondent No. 4, the applicable regulation is Regulation 2, which falls under the heading, "Examination Regulations". The said regulation clearly provides that no Admit Card for an examination conducted by the University of Calcutta shall be issued by the University to the college concerned in favour of a candidate unless his/ her application is duly filled up in all respects and particularly with regard to a) the date of admission to the first year class, b) year of first appearance in the examination of the part concerned and c) year(s) of appearance in the Part-I, Part-II and Part-III Examinations, as the case may be, together with the results thereof and such other information as may be required from time to time and duly endorsed by the Principal Testifying his/her a) good conduct, b) satisfactory performance at the Tests and Mid-terms Tests and requisite attendance record in theoretical and practical classes in each of the subjects in which he/she intends to appear (Emphasis supplied by Court).

10. In the instant case, neither the conduct of the writ petitioner is good, by any stretch of imagination, nor has she performed satisfactorily in the test examination.

11. For all the reasons stated above, the writ petition is liable to be dismissed with exemplary costs. However, I refrain from imposing such costs, since it concerns the career of a young student. The instant writ petition is therefore dismissed, without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocate for the parties.