

(2003) 02 GAU CK 0033
In the Gauhati High Court
Case No : Writ Appeal No. 632 of 2002

North Eastern Hills University and Others	APPELLANT
Vs	
Miss Yoowanka Lynhgдох	RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226
North Eastern Hill University Act, 1973 — Section 2

Citation : AIR 2004 Guw 47 : (2003) 2 GLT 196

Hon'ble Judges : P.P. Naolekar, C.J; Ranjan Gogoi, J

Bench : Division Bench

Advocate : S.R. Sen, V.M. Thomas and P.D. Buzarbaruah, for the Appellant; H.N. Sarma, B.P. Katakey, S.P. Mahanta and P.P. Baruah, for the Respondent

Judgement

Naolekar, C. J.

1. The respondent Yoowanka Lyngдох, appeared in B.Sc. Part II Examination held on 12-2-2002. Notification dated 8-5-2002 and corrigendum dated 10-6-2002 were issued whereby the petitioner's entire examination of 2002 was cancelled under Ordinance 6 Clause 4(n) of the North Eastern Hill University Ordinances (hereinafter referred to as "OD-6") and she was also barred from appearing in any Examination of 2003.

2. The respondent challenged the action taken by the University by filing a writ petition (WP(C) No. 216(SH)/2002) and prayed for relief to appear in the examination to be conducted by the University in the year 2003. The respondent's examination was cancelled as she was found indulging unfair means during her examination.

3. The learned Single Judge accepted the contentions raised by the counsel for the respondent/writ petitioner and held that the notification imposing punishment has not been issued by the appropriate authority. The learned single Judge held that the imposition of punishment on the petitioner is an action taken

under OD-6(5)(b) and thus it is the Executive Council which is authorised under the Ordinance to take action against the candidates, whereas the action has been taken on the basis of the recommendation made by the Examination Discipline Committee treating the act of the petitioner/respondent to be falling under Clause OD-6 (4)(n).

4. To appreciate the reasoning adopted by the learned single Judge it would be fruitful to reproduce relevant clauses of the Ordinance 6:

"(4)(n) Copying, attempting to copy, taking assistance or help from any book, notes, paper or any other material or device or from any other candidate, to do any of these things or facilitating or rendering any assistance to any other candidate to do any of these things."

"5(b) If the Executive Council is satisfied that there has been copying or use of unfair means in mass scale at a particular centre(s) it may cancel the examination of the candidates concerned and order re-examinations.

OR

Disqualify the candidate from appearing at such examination of the University for a period not exceeding three years, in case disqualification is to be imposed then such action may be taken on the report/recommendations of the Examination Discipline Committee, or the Executive Council may take such action suo motu after giving the affected candidates reasonable opportunity of being heard. The Executive Council may take one or both the actions i.e. ordering re-examination or disqualifying them from appearing at such examination as stated above."

5. It is apparent from the OD-6 (5)(b) that the Executive Council if it is satisfied that there has been mass scale copying or use of unfair means at a particular centre(s) can cancel the examination of the candidate concerned and order re-examinations. Clause 5(b) also authorises disqualification of the candidate from appearing at such examination of the University for a period not exceeding three years on the recommendation of the Examinations Discipline Committee or by the Executive Council after giving the affected candidate a reasonable opportunity of being heard. Clause 5(b) contemplates adoption of mass copying or use of unfair means in mass scale at a particular centre(s). Clause 5(b) applies when the action is being taken on account of the fact that there has been copying or use of unfair means in mass scale. The individual case of copying does not fall within the purview of Clause (5)(b) of the Ordinance.

6. The petitioner/respondent's case clearly falls within OD-6 (4)(n). She has been found to have copying from the answer scripts of other candidates. Clause (4)(n) covers the unfair means, wherein the candidate was copying and or attempting to copy or taking assistance in the examination of any material or help from other candidate or facilitating or rendering any assistance to another candidate to do any of the things.

The charge against the petitioner-respondent was that she was found copying

from the answer scripts of other candidate appearing in the same examination. It is found that they have copied from each other's answer papers. Thus the petitioner/respondent's act of copying or taking or giving assistance or help to any other candidate will fall within Clause (n) of the Ordinance. Thus, the notification issued by the University imposing punishment on the recommendation of the Examination Discipline Committee is in accordance with the law and it cannot be said that the University was not right in taking the action under the said provision. The learned single Judge has thus committed an error in holding that the act of the candidate falls within OD-6 (5)(b) of the Ordinance.

7. However, we find that before taking action against the petitioner/respondent imposing the punishment under OD-G(4)(n) and under OD-6(8) (iv) of the Ordinance, no notice or opportunity of hearing was given to her. It is the settled principle of law that whenever an action is taken against an individual involving the element of punishment as provided under the Statute, Rule or Regulation, it shall embodied in itself the principle of natural justice, whether specifically provided or not. Before taking any action and imposing punishment, it was incumbent on the part of the University to give, the respondent an opportunity to defend herself, who has been charged with using the unfair means in the examination, and that having not been done the notification imposing punishment does not stand the test of law.

8. That apart the imposition of punishment by the University debarring a candidate from appearing in any of the Examination of the University in the year 2003 is beyond the powers conferred for imposition of punishment under OD-6(8) (iv) of the Ordinance. The punishment provided under OD-6(8)(iv) of the Ordinance could be the cancellation of the entire examination of the candidate in which he or she has been found to be used unfair means specified therein. Clause 8(iv) further authorises the University to debar and disqualify the candidate from appearing at any University examination for a period of one year. The period of one year cannot be construed to be for a further academic calendar year. Whenever the punishment is provided under the Statute, the rule of interpretation requires strict construction of the provision authorizing the punishment. Clause 8(iv) provides that a candidate can be disqualified from appearing at any University examination for a period of one year from the date the examination in which the candidate was found using the unfair means. The period of one year has to be counted from the date of the examination in which the candidate is found to have used unfair means it cannot be mean to be the next academic calendar year. Had it been so it would have been very easy to have specifically stated so in Clause 8 (iv) of the Ordinance. The ordinance makers having not used the phrase "next academic calendar year and have chosen to use the phrase "for a period of one year" for disqualifying the candidate from appearing at any University examination. The phrase used cannot be read as "next academic calendar year". The respondent was found using unfair means in the Examination held on 12-2-2002 and thus her disqualification

would only continue upto 11-2-2003 and not beyond that imposition of punishment by the University whereby the respondent has been debarred to appear in the examination in the academic calendar year of 2003 is not inconformity with any authority of imposition of punishment as provided under Clause 8(iv) of the ordinance. The period having already been expired the respondent/petitioner is entitled to appear in the examination to be conducted by the University after 11-2-2003.

9. Considering the aforesaid factors, both the counsel appearing for the respective parties submit that the writ petition and the appeal may be disposed of together as it has become infructuous. We order accordingly. There shall be no order as to costs.