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**(2010) 11 GAU CK 0037**  
**In the Gauhati High Court**  
**Case No : Writ Appeal No. 138 of 2009**

Paramananda Taye

APPELLANT

Vs

Dibrugarh University & Ors.

RESPONDENT

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**Date of Decision :** 23-11-2010

**Acts Referred:**

Dibrugarh University Act, 1965 — Section 18(a), 18(a), 18(j), 18(j)

**Citation :** (2010) 5 GLT 284

**Hon'ble Judges :** Amitava Roy, J and C.R.Sarma, J

**Bench :** Division Bench

**Advocate :** Mr.R.Baruah, Mr.N.M.Dutta, Mr.R.Sharma& Ms.M.Basumatary,  
Advocates appeared for the Respondents: Mr.K.Agarwal, SC Dibrugarh University  
& Mr.R.G Baruah, Advocates appearing for Parties

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## Judgement

C.R. Sarma, J.—The judgment and order, dated 02.12.08, passed in W.P. (C) No. 1701 of 2008, is in challenge in this appeal.

2. The appellant Dr. Paramananda Taye, got admitted to the Post Graduate Course in Radiology in Assam Medical College, Dibrugarh in the year 2004 and in due course appeared in the final examination. The result of the final examination, which was held in the month of NovemberDecember, 2007 was published on 08.01.08, declaring that the appellant had passed the said examination. However, the provisional pass certificate was not issued in favour of the appellant, and the latter was informed by the Principal of the Assam Medical College, Dibrugarh, by his letter, dated 28.01.08, that the certificate would not be issued due to detection of some error in the printing of the result sheet. In view of refusal of the authority to issue the provisional certificate the appellant, as petitioner, approached this Court, by filing a writ petition being W.P. (C) No. 273/2008. By order, dated 21.02.08, passed in the said writ petition, a direction was issued to the authority concerned to issue the provisional certificate within ten days from the date of the said order. But due to failure of the authority to issue the provisional certificate, the appellant, as petitioner filed a Contempt

petition alleging violation of the Court's order and in the said Contempt petition, the respondents, by filing an affidavit on behalf of the Principal, Assam Medical College, Dibrugarh, stated, inter alia, that the result of the examination in respect of the Radio diagnosis was likely to be revised and that a decision would be taken in this regard. In view of the above, the Court declined to entertain the Contempt petition. Subsequently, on the basis of a decision of the examination committee, held on 08.02.08, the Controller of Examination issued a corrigendum, dated 18.02.08, thereby declaring the appellant to have failed the examination.

Being aggrieved, the appellant, as petitioner, approached this Court by filing a writ petition being W.P. (C) No. 1701 of 2008. According to the petitioner, there was no basis for altering the result of the petitioner. It was stated by the petitioner, that the Regulations, governing the post graduate medical education under the Dibrugarh University was not valid for want of approval by the Academic Council, which, under the Dibrugarh University Act, 1965, was the competent authority on the matter. It was also contended that the alteration of the result on the basis of the norms provided by the said Regulation was not tenable in the eye of law and that the Regulation, published by the University in 2006, having contemplated award of marks as per marking system, the evaluation of the performance of the petitioner, on the basis of the grading system, was not correct to justify the impugned alteration of the result of the petitioner.

3. The respondent University contested the petitioner's claim by filing affidavit as well as additional affidavit. According to the University, after the initial declaration of the result of the petitioner, on 08.01.08, the University authority received the letter dated 11.08.08, from the Principal of the Assam Medical College indicating therein, the petitioner, in fact, had failed in the examination. On receipt of such information, according to the respondent University the matter was enquired into and, a prima facie case in support of the alteration of the result having been found, the same was referred to the examination committee. The meeting of the examination committee held on 29.01.2008, after due deliberation, adopted a resolution requiring the Principal of the Medical College to furnish the committee the relevant papers relating to the an ination of the writ petitioner. The said requirement having been complied with, upon due scrutiny and detailed examination of the relevant materials, the examination committee, by its resolution, dated 08.02.08, found that the petitioner had failed to pass the examination and accordingly, the said committee took a decision that the result of the petitioner should be altered declaring him to have failed the examination. Thereafter, it is contended that, in view of the above position, the corrigendum dated 18.2.08 aforesaid was issued by the Controller of the examination.

4. The contesting respondent University, in its affidavit, further contended that the Medical Council of India framed a set of Regulations, governing the standard of post graduate medical education. From the said Regulations, 2000, it is found

that in the post graduate examination, candidates are required to appear in four theory papers and a practical test consisting of a clinical paper as well as a vivavoce test and under Regulation 14 aforesaid, the examinations are to be organized on the basis of grading or marking system to evaluate and certify the candidates level of knowledge, skill and competence at the end of the training. Under the said Regulation, it is mandatory to secure minimum fifty percent mark in theory as well as practical for passing the whole examination. In the additional affidavit, the contesting respondent further averred that till such time, the University did not have its own Regulation in the matter i.e. until 17.03.06, the University had been awarding marks on the basis of the grading system. The Regulations framed by the University, in the year 2006, however, specifically provided for awarding marks as per the marking system. In the circumstances, according to the University, a provision was provided in Regulations for awarding of marks on the basis of marking system to all the candidates, who were admitted in the post graduate courses after coming into force of the Regulation i.e. from the year 2006. It was also stated, in the affidavit in opposition, that in respect of the candidates admitted earlier i.e. before coming into force of the said Regulation grading system was applicable. In the additional affidavit aforesaid, at paragraph 5, it was stated by the University that all candidates, who were admitted to MD/MS Course prior to 2006, were evaluated by using grading system.

5. The learned counsel, appearing for the respondent University, placed before the learned Single Judge, the answer scripts of the petitioner in theory papers, the result in the clinical examination as well as the results of the petitioner's performance in the vivavoce test. The learned Single Judge, perusing the said answer scripts and the result sheet, noticed that the petitioner was awarded Grade "C" and that the performance of the writ petitioner in the practical/clinical test was dismal, as all the answers given by him, were found to be wrong. In the vivavoce test, it is found that, the petitioner was declared to have failed. On behalf of the University, the learned counsel also placed before this Court a resolution of the meeting of the members of "Board of Studies in Medical Science of Dibrugarh University", held on 07.06.05. The said meeting laid down the percentage of marks equivalent to the different grades that are awarded. As per the said resolution, Grade C was equivalent to 40 to 44 percent marks.

On behalf of the university, it was submitted before the learned Single Judge that the assessment of the petitioner's performance in the examination, in question, was made as per the practice in vogue, which was followed consistently and that in view of the grade secured by the petitioner, he was not entitled for a declaration of having passed the examination. According to the respondent, the declaration of the result (initial) could occur due to certain mistake committed by the tabulators and that immediately, after detecting the said defect followed by due verification, the result was corrected by issuing corrigendum dated 18.02.08.

The learned Single Judge was confronted with two short issues of importance to

be decided in the said writ petition. The first issue was whether the Regulation, governing the post graduate medical education, stated to be in force in the University could be understood to be legally valid, in absence of approval of such Regulation by the Academic Council. The second question was that if the said Regulations were followed, whether, in view of the prescriptions contained in Regulation 14 of the said Regulations for award of marks on the basis of the marking system, the decision of the University to follow the Regulation in respect of the candidates admitted after 2006 and not in respect of the examination held after 2006 was legally acceptable.

6. So far as the first question aforesaid was concerned no material was laid before the Court by the University to show that the Regulation, which was recommended by the Board of Studies in Medical Science, had been approved by the Academic Council of the University. The Court observed that even in the absence of such approval, the Regulation would still continue to lay down norms and guidelines in the University, inasmuch as, the said norms and guidelines were laid down for better and effective regulation of the academic standard in medical education and that the same was consistently followed. In view of the above, the Court found no good ground to declare the same to be ineffective or inoperative even though the formal approval of the Academic Council could not be placed before the Court.

With regard to the second question aforesaid, the learned Single Judge considered the stand taken by the University, in its additional affidavit, dated 30.10.05, at paragraph 5, wherein it was stated "all candidates admitted to MD/MS course prior to 2006 were evaluated on the grading system". The said stand taken by the University was found to be reflective of a consistent policy, adopted by the University, in respect of the candidates including the petitioner and the petitioner having failed to clear the examination, on due application of the said norms, which was applied to other candidates also, the Court declined to invalidate the exercise, performed by the University on a plausible interpretation of the provisions of the Regulation. With the above observation, considering the matter in its entirety, the learned Single Judge came to the conclusion that the grade, secured by the petitioner, was not sufficient for declaring him to have passed the examination and that as the petitioner failed to secure the required grade, which could have entitled him for a declaration to have passed the examination, there was no conceivable reason for the Court to find fault with the subsequent decision of the University, in issuing the corrigendum, dated 18.02.08. With the above observation, the learned Single Judge dismissed the writ petition, without cost, giving rise to this appeal.

7. We have heard Mr. R. Baruah, learned counsel, appearing for the appellant and Mr. K. Agarwal, learned Standing Counsel, Dibrugarh University, appearing for the respondents.

8. Mr. Baruah, assailing the correctness of the impugned judgment and order, passed by the learned Single Judge, has submitted that the authority violated

the principles of natural justice as embodied in Articles 14 and 16 of the Constitution of India by issuing the corrigendum and reversing the result of the petitioner without issuing any notice and refusing opportunity of being heard. On behalf of the appellant, it is further submitted that the corrigendum, dated 18.02.08, was issued by the Controller of the Dibrugarh University, without authority inasmuch as under Section 18 (a) of the Dibrugarh University Act, 1965 (hereinafter called "the Act") only executive council was empowered to confer or withdraw any degree/title or diploma, certificate or other academic distinctions previously conferred after considering the recommendations made by the Post Graduate Board and the under Graduate Board, as the case may be. Referring to the said Section, Mr. Baruah has strenuously urged that the corrigendum, issued by the Controller of the University, who was not the authorised person to withdraw the degree already conferred, was without any authority of law that too, being done without the recommendation of the Post Graduate Board. Referring to the letter, dated 11.01.08, issued by the Principal, Assam Medical College, Dibrugarh to the Controller of Examination, Dibrugarh University, Mr. Baruah contended that the retention of the examination papers by the Head of the Department was unauthorised, because under Section 13 (a) of the Act, the Registrar of the University was the custodian of the records. In view of keeping of all the examination papers in the custody of the Head of the Department, the learned counsel, appearing for the appellant has submitted that subsequent alteration of the result was not lawful.

Drawing our attention to the examination system, Mr. Baruah has submitted that two systems, for evaluation, cannot be applied in respect of a candidate appearing in a particular examination. According to Mr. Baruah both grading and marking system having been applied in respect of the petitioner, the issuance of corrigendum, declaring him to have failed the examination was illegal, unjustified and in violation of established principles of natural justice. The thrust of the argument, advanced by the learned counsel appearing on behalf of the appellant, is that the corrigendum, having been issued by the Controller of Examination, declaring the petitioner to have failed the examination, being without authority of law is liable to be set aside and quashed.

9. Refuting the said argument, advanced on behalf of the appellant, Mr. K. Agarwal, learned counsel for the respondents, has submitted that by issuing the corrigendum aforesaid the result of the petitioner, which was, earlier, wrongly declared, due to certain bona fide printing mistake was corrected and that the said communication i.e. corrigendum was issued under the hand and seal of the Controller of the Examination on the basis of the decision taken by the examination committee, which was the appropriate authority to hold and conduct the examination and publish the results. In support of the contention, the learned counsel has referred to Section 18 (j) of the Act. Denying the appellant's contention regarding withdrawal of degree and certificate, Mr. Agarwal, learned counsel for the respondent, referring to Section 18, has submitted that, at any point of time, no degree or title or certificate was conferred on the petitioner and

as such the question of withdrawing such degree or certificate, under the provision of Section 18 of the Act does not arise. Mr. Agarwal has submitted that, immediately after declaring the result, certain defects were detected and accordingly, by his letter, dated 11.01.08, the Principal of the Assam Medical College, brought the matter to the notice of the Controller of the University and accordingly, by letter dated 28.01.08, the petitioner was also informed by the Principal of the Assam Medical College, Dibrugarh that his provisional certificate could not be issued due to certain error in the printing of the result sheet. According to the learned counsel, there was certain bona fide mistake in printing the result sheet and as such, after due scrutiny, made by the examination committee, which was authorised by Section 18 (j) of the Act to publish the results, had corrected the said mistake by declaring the petitioner to have failed the examination and accordingly, the Controller of Examination had issued the corrigendum as follow up action. Referring to the Medical Council of India, Post Graduate Medical Education Regulation 2000, the learned counsel for the respondents has submitted that notwithstanding the grading system, a candidate for passing the whole examination is required to obtain a minimum of fifty percent of marks in theory as well as practical separately and that as per the grading adopted for evaluation for MD/MS Examination in Assam Medical College, Dibrugarh, candidates securing marks 40 to 44% were given "C" grade. In view of the above, the learned counsel has submitted that as the petitioner secured "C" grade i.e. less than fifty percent, he, in fact, as per record, failed to pass the examination and as such by the corrigendum aforesaid the printing mistake, committed in declaring the result wrongly, was corrected by issuing the said corrigendum. According to the learned counsel as the petitioner had failed to pass the examination the issuance of said corrigendum was not in any way violation of any statutory provision and existing procedure.

10. The short question which confronts us is whether the issuance of the impugned corrigendum by the Controller was unauthorised and illegal and if so, whether the subsequent declaration that the petitioner failed to have passed the examination was unlawful and without any authority of law.

As contended by Mr. Baruah, learned counsel appearing for the petitioner, under the Act, only the Executive Council has the power to withdraw degree, title etc., conferred by the University and no other authority has been conferred with such power. Section 18 of the Act provides the power and duties of the Executive Council. Clause (a) of Section 18 reads as follows:

"(a) to institute and confer degrees, titles, diplomas, certificates and other academic distinctions to be conferred on the basis of Examinations and to withdraw any such degree, title, diploma, certificate or other academic distinctions previously conferred, after considering the recommendations, of the PostGraduate Board, and the UnderGraduate Board, as the case may be."

The said provision prescribes the power of the Executive Council to confer degrees, titles, diplomas etc and also to withdraw the same if previously

conferred, after considering the recommendation of the Post Graduate Board and the Under Graduate Board as the case may be.

11. Mr. Baruah, learned counsel appearing for the appellant, in support of his contention that the issue of the corrigendum, reversing the result already published by the University was illegal, relied on the decision held in the case of Nripendra Nath Goswami Vs. Registrar, Gauhati University, reported in AIR 1967 Assam and Nagaland 5. In the above referred case, Sri Nripendra Nath Goswami was conferred a degree of Bachelor of Arts by the Gauhati University in the Convocation, which was held in April, 1965. In November, 1964, he got admitted into the post graduate classes in the Department of Political Science of the University. Some disturbances were alleged to have taken place in the University campus on 4th May, 1965, whereupon the Vice Chancellor tendered his resignation and the matter was placed before the emergent meeting of the Executive Council of the Gauhati University. The Executive Council decided that the degree of the petitioner should be cancelled and that he should be expelled from the University for taking active part himself and for instigating others to take part in the disturbances leading to the outbreak of violence on the part of the students. The resolution aforesaid was challenged by filing a petition under Article 226 of the Constitution. A Division Bench of this Court, while allowing the petition, observed that the power of punishment does not carry with it the power to give punishment arbitrarily without affording an opportunity to the person, who is held to be guilty, to give an explanation for his conduct. In the above referred case, the degree already conferred on the petitioner in the Convocation was cancelled by the University as a punishment for his alleged involvement in the disturbances, leading to outbreak of violence in the University. But, in our present case, no action was taken by the University as penalty against the petitioner. That apart, in the case in hand, no degree was conferred on the petitioner. What the University did, was making a correction in the printing/publication of the result of the examination, that too immediately after detecting some printing mistake in respect of the said result. The facts and circumstances of the case of Nripendra Nath Goswami (supra) and the case in hand being different, the decision rendered in the said case will not help the present appellant. Admittedly, the appellant failed to secure 50% mark in the said examination, which was the minimum mark required for passing the examination.

12. From the contentions canvassed by the learned counsels appearing for both the parties, it transpires that at the time of declaring the result the petitioner was shown to have passed the examination. From the letter dated 11.01.08 issued by the Principal, Assam Medical College as indicated above, it is found that the authority concerned had detected certain defects in the result and accordingly, the Principal of Assam Medical College by his letter dated 28.08.08, had duly informed the petitioner/appellant that the provisional certificate could not be issued to him due to detection of some error in the printing of the result sheet. Therefore, it is found that detection of certain error in the printing of the result sheet, immediately after its discovery, was brought to the notice of the

petitioner. As contended in the affidavit in opposition, submitted on behalf of the respondents, the Controller of Examination brought the matter to the notice of the Registrar and the Vice Chancellor of the University and the Vice Chancellor directed to take necessary steps to correct the result as per the marks obtained. Accordingly, all the relevant papers in respect of the said examination were placed before the meeting of the examination committee, held on 09.02.08 and the committee after scrutinising the materials and deliberation resolved as follows:

"Resolution No. 1 Resolved that the result of the Medical PG Degree Examination, 2007 held in November/December, 2007 be revised in respect of the subject Radiodiagnosis and a corrigendum be issued declaring the candidate who was earlier declared to have passed as failed."

In view of the said resolution of the Examination Committee the corrigendum was issued by the Controller. Therefore, it is found that the said committee decided to correct the mistake appearing in the publication of the result, immediately after noticing such mistake. The committee did not take any steps to withdraw any degree or title conferred on the petitioner. In fact, no degree/title was conferred by the University. Even no provisional certificate was issued. The decision of correcting the result and declaring the petitioner to have failed to pass the examination was not the decision taken by the Controller of Examination, but the same was a decision taken by the Examination Committee and the said decision was communicated/published by the Controller under his hand and signature as the officer of the University.

Clause (j) of Section 18 of the Act, which confers power on the Examination Committee, reads as follows:

"to constitute an Examination Committee and to arrange for holding of, conducting and publishing the results of University Examinations. The constitution, powers and duties of the Examination Committee will be determined by an Ordinance."

In view of the above, it is found that the Examination Committee stood constituted by the Executive Council for holding, conducting and publishing the result of the examination.

Therefore, conduct of examination and publishing the result of the University was the duties and functions of the Examination Committee.

13. In view of the above discussion and considering the entire facts and circumstances of this case, we find sufficient force in the contention of the learned counsel, for the respondent University, that University never conferred any degree or title to the petitioner under Section 18 (a) of the Act and that the University authority after detecting certain defects, in the printing of the result sheet, referred the matter to the Examination Committee, which was empowered to hold examination and publish the result. As there were certain defects i.e. the



error in printing of the result, it was within the jurisdiction of the committee aforesaid to correct the said mistake/error on the basis of the record.

14. In the light of the above discussion, we are constrained to hold that the Controller of the Examination did not exercise any power of withdrawing degree or title conferred on the petitioner and as such did not act unauthorisedly by issuing the said corrigendum. In fact, the corrigendum aforesaid was the follow up action taken on the basis of the resolution of the committee which was the authorised committee to publish the result.

Having answered the said question as indicated above, we are required to examine if any illegality or procedural mistake/error was committed in declaring the petitioner to have failed the examination aforesaid.

15. According to the University under the provisions of Regulation, framed by the University in the year 2006, marking system has been applied to all candidates, who were admitted in the post graduate course after coming into force of the Regulations i.e. from the year 2006 and in respect of the candidates, admitted earlier to that i.e. before coming into force of the said Regulations, marks were awarded on the basis of the grading system. In paragraph 5 of the additional affidavit, the University has categorically stated "all candidates, who were admitted to MD/MS Course prior to 2006 were evaluated on grading system". There is no dispute to the said contention raised by the respondent. However, Mr. Baruah, learned counsel appearing for the appellant has submitted that as the petitioner was admitted in 2004, his performance, in the examination should have been followed the grading system. Therefore, it is submitted that for determining the grade, obtained by the petitioner, his answer scripts were required to be evaluated applying grading system only. On behalf of the University, it is submitted that as the petitioner obtained "C" grade, he failed to secure the pass mark i.e. fifty percent, which was the minimum pass mark and as such the University authority committed no error by declaring him to have failed the examination. The grading adopted for evaluation in MD/MS Examination in the Assam Medical College, Dibrugarh and published vide notification dated 7.6.05 reads as follows:

"Grading adopted for evaluation in MD/MS Examination in Assam Medical College, Dibrugarh.

A+ = 76 to 80%

A = 66 to 75%

A (Minus) = 60 to 65%

B+ = 55 to 59%

B 50 to 54%

B (Minus) = 45 to 49%

C = 40 to 44%"

There is no challenge to the correctness of the said decision. Provision 14 of the Medical Council of India reads as follows:

"14. Examinations The examinations shall be organized on the basis of marking system to evaluate and certify candidates level of knowledge, skill and competence at the end of the training and obtaining a minimum of 50% marks in theory as well as practical separately shall be mandatory for passing the whole examination. The results will be announced in order of merit."

16. In view of the above, a combined reading of the notification, dated 07.06.05, and the Provision 14 aforesaid, lead to the conclusion that in the examination, organised on the basis of the grading or marking system, a candidate, for passing the whole examination, is required to secure a minimum of fifty percent marks in theory as well as practical. As observed by the learned Single Judge, after perusing the answer scripts and the performance in the practical/clinical test, the petitioner obtained "C" grade and he was declared to have failed in the vivavoce test also. It was also observed that the performance of the petitioner in practical/clinical test was dismal. The learned Single Judge further noted that the Grade "C" was equivalent to 40 to 44% of marks. There is no challenge to the said observation and the finding of the learned Single Judge which is in conformity with the notification dated 07.06.05 and the Regulation 14 aforesaid.

17. In view of the above, we find no difficulty in concluding that the petitioner, who obtained "C" grade, failed to secure the minimum pass mark i.e. fifty percent and he was found to have failed in the vivavoce test. Therefore, in view of Provision 14 of the Medical Council of India Regulation, the petitioner, in fact, failed to pass the examination and the initial result published by the University, declaring him to have passed the examination, was apparently not based on record, rather as contended by the University, it was an error in printing the result sheet. As there was an error in printing the result, the University, after coming to know about such error, committed no illegality in correctly publishing the result by issuing the corrigendum on the basis of the decision of the Examination Committee aforesaid.

18. Considering the entire facts and circumstances of the case, we are of the considered opinion that, the Examination Committee, having the authority to conduct the examination and publish the results, acted within its jurisdiction in correcting the said mistake. In view of the above, we are not inclined to accept the argument, advanced on behalf of the appellant, that by the corrigendum aforesaid, the degree already conferred was withdrawn.

19. In the light of the above discussion as the petitioner failed to obtain the minimum pass mark, the declaration that he failed to pass the examination suffers from no illegality requiring interference, in exercise of writ jurisdiction.

20. Consequently, we find no sufficient merit in this appeal warranting

interference with the impugned judgment and order, passed by the learned Single Judge. The appeal stands dismissed. No costs.