

(2003) 09 GAU CK 0058

In the Gauhati High Court

Case No : Writ Petition (C) No's. 5207, 5577, 5948, 5370, 5526, 5636, 5651, 5325, 5326, 5332, 5333, 5349, 5653, 5681, 5729, 5730, 5565, 5586, 5604, 5482, 5483, 5475, 5447, 5781, 6084, 5478, 5476, 5477, 5501, 6049, 6213, 6238, 6260, 6261, 6378, 6386, 6387, 6394, 64

Shazia Ahmed and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 29-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Medical College of Assam and Regional Dental College (Regulation of Admission of Under Graduate Students) Rules, 1996 — Rule 11, 3, 5, 6, 7(8)

Citation : (2003) 3 GLT 264

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : A.K. Bhattacharyya, G.K. Bhattacharjee, Y.K. Phukan, H.N. Sarma, T.C. Khetri, H.R.A. Choudhury, B.K. Sharma, D.C. Mahanta, K.N. Choudhury, B.D. Goswami, S.S. Dey, D.R. Gogoi, A.S. Choudhury, D. Choudhury, D.C.K. Hazarika, H.K. Das, A.R. Sikdar, S.K. Saha, M. Nath, S.C. Biswas, S.P. Roy, N. Borah, P. Sarma, B.D. Knowar, R.K. Paul, M.R. Barbhuyan, N. Choudhury, S.R. Rajbangshi, U.K. Nair, N. Saikia, R.C. Sansethi, A.M. Bazarbaruah, R.C. Saikia, M. Sarania, D. Bora, D.A. Kayam, A. Dasgupta, C. Bhattacharjee, M.K. Choyudhury, K.K. Phukan, D.C. Borah, P.K. Barman, U.R. Saikia, J.H. Saikia, A. Das, D.P. Borah, J.M. Knowswar, B. Buragohain, N. Barua, A.K. Choudhury, P.J. Saikia, F. Begum, J.N. Sarma, N. Uddin, A.K. Hossain, M.Z. Ahmed, B. Dutta, J. Singh, S. Hussain, S. Sarma, D. Baruah, D. Barman, H. Devi, S.B. Choudhury, S. Barthakur, J. Koch, D. Roy, I. Choudhury, A. Barua, R. Deka, D.K. Sarma, U. Rajkhowa, U. Bhuyan, P.R. Mahanta, T.J. Mahanta, P. Bhattacharjee, A. Matlib, D. Saha, D.P. Mandal, A. Shariff, N. Alam, R. Dhar, K. Islam, J. Sarma, J. Choudhury, P.P. Bairagi, A.J. Atia, P. Upadhaya, T. Das, A. Roy, R. Lal, N. Rahman, S.S. Baruah, E. Sharma, L. Wapang, S. Banik, S. Kataki, A.N. Choudhury, S.C. Kayel, J. Rajkumari, S. Kalita, J. Gogoi, J.H.K. Baishya, R. Dey, B. Hazarika, F. Ahmed, S.S. Faruque, I. Hussain, H. Deka, M.J. Barua, K. Lahkar, A. Maleque, F.U. Barbhuyan and A. Matin, for the Appellant; P.K. Mushahary and M. Ghani, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal J.

1. This batch of Writ Petitions are disposed of by this common order as identical issues are involved.

2. We have heard the learned Counsel for the Writ Petitioners, Mr. R. Mushahary, learned Sr. Govt. Advocate and the learned Counsel for the private Respondent.

3. A Joint Admission Test, was held for admission into the Undergraduate Courses in the Engineering Colleges, Medical Colleges, Regional Dental College and Ayurvedic College of the State of Assam. There were about 510 seats in the Engineering Colleges, 312 seats in the Medical Colleges, 35 seats in the Dental College and 44 seats in the Ayurvedic College. In the Joint Admission Test - 2003, hereinafter referred to as "JAT" there were 4 (four) papers of 100 marks each, namely, Mathematics, Physics, Chemistry and Biology. Physics and Chemistry were common, whereas Mathematics was meant for Engineering and Biology for Medical candidates. The Examinations were held on 16 and 17th May, 2003. A provisional Select List was published by the Respondent authorities which was put into the website and thereafter another list was published in the newspaper, Assam Tribune on 12.7.2003. The Petitioners before us, had all appeared for admission into the Medical Colleges and Dental Colleges. There is no challenge in respect of admission into the Engineering College/Ayurvedic College.

4. The allegations contained in the above writ petitions may be broadly summed up as below:

(A) Most of the Petitioners have claimed that they were all brilliant students and had secured high marks in their High School Leaving Certificate Examinations and Higher Secondary Examinations, the requisite qualification for appearing in the written test. They have claimed to have fared well in the written examination but their names did not appear in the final select list; whereas candidates who are otherwise less meritorious than the Petitioners, have been selected.

(B) The Provisional Select List was first published on 9th July, 2003 and thereafter it was modified on 10th July and the entire list was published on 12th July, 2003 in the Assam Tribune. This raises suspicion that all is not well in the matter of selection and publication of results.

(C) In the answer scripts the candidates were required to put their Roll Nos. only and at the time of evaluation of the answer scripts, the portion where the Roll No. is written, is taken out and Code No. was provided for the purpose of maintaining secrecy and confidentiality and to ensure that the Examiner will not know about the identity of the candidate by his Roll No. The Petitioners have alleged large scale anomalies in the matter of Coding and de-coding, stating that the Answer Scripts of one candidate has been credited to other candidate and thereby the actual candidate was deprived.

(D) The candidates appearing in JAT had used additional sheets, as usual, while

writing their answers and it is alleged that the additional sheets of one candidate were intentionally tagged with the answer scripts of other candidate to enable such candidate to get higher marks.

(E) Shri A.K. Dev Choudhury was the Controller of Examinations and his son had appeared in JAT, 2003 and his son's name appeared at the Merit List under S.I. No. 17 of the List although as alleged he was a second grade student. The propriety of alleged participation of Shri A.K. Dev Choudhury in the Selection process is also questioned.

(F) There are mistakes in evaluation, addition/totaling the marks of answer scripts.

(G) The Inquiry conducted by Shri S.K. Nath, Joint Secretary to the Govt. of Assam is a mere eye wash and it supports the contention of the Petitioners regarding large scale anomalies in the conduct and publication of the Select List for admission into the Medical Colleges.

5. The Respondent State has filed an affidavit in opposition in W.P. (C) No. 5207/2003 and has prayed that the said affidavit be considered as Govt's stand in all the writ petitions. The Respondents have submitted that the written examinations in JAT was held on 16th and 17th May, 2003 and thereafter the Coding of Answer scripts were carried out under the supervision of the Coding In-charge. The Coded Answer Scripts were sent for evaluation to the two Zones along with the Model answers and instructions. After the evaluation the scrutiny was done and the Scrutinizers were selected from the Professors of Gauhati University, Cotton College and B. Baruah College. Thereafter the tabulation works were carried out under the supervision of the Principal of the Engineering Colleges and after the completion of the said process, final result sheet was placed before the JAT Committee and the JAT Committee approved the result sheet which was sent for publication. As regards the Inquiry conducted by Shri S.K. Nath, it was stated that the said one man Committee found only one mistake in respect of Roll No. 7120. The Respondents have denied the allegation of irregularities, malpractice or any illegalities in the matter of holding of examination or publication of the select list.

6. Respondent A.K. Dev Choudhury has filed a separate affidavit in opposition denying the allegations and stating that he was not involved in the selection process of JAT.

7. Pursuant to the interim directions, given by this Court, the Respondent authorities produced the answer scripts and the candidates were allowed to go through their answer scripts to find out whether they are the authors of the said answer scripts or not, whether the additional sheets written by them are available with the answer scripts and whether there are mistakes in addition or totaling of the marks. The Respondent authorities have submitted that in case any mistake in addition or the totaling is detected, the Respondents have no objection for upgrading the marks and if by such upgrading, any candidate

comes within the zone of successful candidate for admission, necessary direction may be passed by this Court. It may be mentioned here that vide an interim order dated 7.8.2003 this Court had provided that the State Govt. may proceed with the admission of the selected candidates, which shall however be subject to the final decision of this Court. The Respondent authorities were also directed to keep the following seats vacant to accommodate any Petitioners, if directed by this Court:

Medical 7 seats Engineering 2 seats Dental 2 seats.

8. The Petitioners have prayed that-

(i) Central Bureau of Investigation be directed to conduct an inquiry into the matter;

(ii) To direct re-evaluation of the answer scripts by experts drawn from Gauhati University and Cotton College by excluding the persons who are involved in the JAT, 2003;

(iii) To quash the entire selection process and direct the authorities to hold fresh selection.

9. Besides allowing the Petitioners to examine and verify their answer scripts, this Court selected the name of about 20 successful candidates at random and directed the Respondent authorities to produce their answer scripts to find out whether some undeserving candidates have been favoured at the cost of the desirable candidates or whether there was any anomaly in allotting marks to the successful candidates. The answer scripts were produced and verified by this Court with the help of the Model answers provided by the Respondents. The answer scripts of Sri Chandra Sekhar Dev Choudhury, the son of Shri A.K. Dev Choudhury was also directed to be produced.

10. On verification of the answer scripts this Court did not find any mistake in the matter of evaluation or totaling of marks and these answer scripts were subjected to scrutiny at two levels and marks were added or deducted as required or as has been done in other cases.

11. After scrutiny of the Answer Script some of the Petitioners have filed additional affidavits specifically stating the alleged anomalies found by them on scrutiny of the papers. We propose to consider the general allegations first and thereafter revert to individual/specific cases as and when required:

(A) JAT, 2003 was conducted pursuant to the advertisement and information brochure issued by the Director of Technical Education, Assam. Examinations, in accordance with the Medical Colleges of Assam and Regional Dental College (Regulation of Admission of Undergraduate Student) Rules, 1996, as amended in 1999, for short "the Rules". In this batch of Writ Petitions the power and jurisdiction of the Director of Technical Education in conducting the Joint Admission Test has not been questioned and no arguments were put forth in that

respect before this Court. The Rules, as amended, provides that Director of Technical Education shall have the authority to conduct Joint Admission Test. Further, Rule 3 provides that the candidates shall have to appear in the common Entrance Examination and the eligibility is passing of the qualifying examination, i.e. H.S.S.L.C. Rule 5 provides for Exemption From Common Entrance Examination and Rule 5(d) reads as follows:

(d) Candidates securing rank within first ten position in the H.S.S.L.C. (Science) Examination of the Assam Higher Secondary Education Council having Physics, Chemistry and Biology with not less than 75% marks in aggregate excluding the Additional Subject in the year in which they seek admission. Such candidates may apply for direct admission within 10 days of publication of their qualifying examination results to the Director of Medical Education, Assam.

Provided that any seat under the aforesaid categories from (a) to (d) which is not filled up for want of candidate shall be filled from amongst the candidates in the waiting list for general/S.C./S.T. categories only.

Thus we find that the result of the High School Leaving Examination or Higher Secondary Leaving Examination (Science Examination) is not at all relevant or material for the purpose of admission in the medical Colleges except as provided in Sub-rule (d), as quoted above. Further, there cannot be any presumption under the law that the candidates who had fared well in the qualifying examinations must be deemed to have fared well and secured higher marks in the JAT and the candidates who could not get better marks in the qualifying examination cannot get selected in the JAT, 2003. In view of the provisions of the Rule, we hold that the admission in the Medical Colleges/Dental College shall have to be on the basis of the marks secured in JAT, 2003.

(B) It is not disputed that the results were first published on 9th July, 2003 and thereafter again on 10th July and the final list was published in the Assam Tribune dated 12th July, 2003. From the Inquiry Report of Mr. Nath, we find that there was some mistake in respect of five Code Nos. at the time of Coding and de-coding. The Code Nos. involved were Code No. 465, 467, 468 and 469. These were corrected and modified when the mistakes were detected. However, we find that instead of publishing a corrigendum in respect of the above mistakes, the authorities concerned published a modified fresh select list which raised the suspicion. During the course of hearing, the Petitioners have not been able to establish any difference in the two lists except in respect of the above Code Nos. There were another mistake in respect of the candidates bearing Roll Nos. 02577, 025777 and 08782, as stated by Mr. Nath in his Inquiry Report. The above candidates belong to ST (Plains), but due to the mistake, their Roll Nos. appeared both in the category of ST(Hills) and ST (Plains) and this mistake was corrected in the subsequent list. The Inquiry Officer Mr. Nath also did not find any variance in the two result sheets. Concerned authorities should have issued corrigendum only instead of publishing the modified select list and thereby raising unnecessary suspicion.

(C) and (D) At the initial stage the Petitioners/candidates alleged large scale anomalies in the matter of Coding and decoding and also expressed their apprehension as regards the additional sheets used by them in the answer scripts. However, after perusal of the answer scripts produced by the Respondent authorities, there was no allegation whatsoever regarding any mistake in coding and de-coding. The related answer scripts were produced and examined by the candidates/guardian/Counsel and these were confirmed to have been written by the concerned candidate only. The additional sheets used by the candidates were also tagged with the answer scripts. There were no allegation of missing of additional answer sheets at the time of verification. Learned Counsel for the Petitioners are also fair enough to submit that the apprehensions regarding the coding and de-coding was ill-founded. We, therefore, hold that there is no basis for the above allegations as proper answer scripts were produced on the basis of the coding and de-coding.

(E) It is not disputed that the Respondent Shri A.K. Dev Choudhury was the Controller of Examination under the Director of Technical Education, Assam. Some of the Writ Petitioners stated that Shri A.K. Dev Choudhury who was made a party Respondent by name, has filed his affidavit in opposition separately wherein the above statement is admitted. It is also not disputed before us that the son of said A.K. Dev Choudhury was a candidate in the JAT, 2003 and his name appears in the Merit List at S.I. No. 17. It was submitted that the said son of Shri A.K. Dev Choudhury, namely, Shri Chandra Sekhar Dev Choudhury, was a mediocre/average student and he did not deserve to be in the merit list. The allegation has been rebutted by the private Respondent by stating that his son was all along a brilliant student and had secured 76.83% marks in the H.S.L.C. and 81.4% marks in H.S.S.L.C. Further, it is stated that his son was never a candidate for admission into the Medical Colleges and he had appeared for admission into the Engineering Colleges only. Moreover, before the results were published the said Chandra Sekhar Dev Choudhury got admission in Engineering College of Delhi and subsequently in NERIST, Nagpur, which according to the learned Counsel for the private Respondent, is a reputed and highly placed Engineering Institution of the country. Shri Dev Choudhury has further submitted that in view of the participation of his son in the selection process he prayed for exemption and he was exempted as provided under the Rules and he did not participate in the entire process of selection starting from the setting of the question papers, evaluation of the answer scripts, scrutiny or tabulation of the result sheets. The fact that the select list was published under his signature is however not disputed and it is submitted that the select list, finalized by the concerned authority, was published under the signature of Shri A.K. Dev Choudhury, as required under the Rules, he being the Controller of Examination. The statement made has been supported by the Respondent State. On perusal of the documents furnished by the Private Respondent and considering all aspect of the matter, it is held that Shri A.K. Dev Choudhury's son did not participate and was not selected for admission into the Medical Colleges of Assam and that he

had secured the merit position in the select list on the basis of his performance in the written examination, we find no illegality or irregularity in the matter. The fact that Shri A.K. Dev Choudhury was exempted and that he did not participate in the selection process also stands well established. Deputy Controller of Examination was made the controlling officer and the entire selection process was conducted under his supervision only.

(F) As stated, the answer scripts were made available to the Petitioners for their perusal and verification and they were allowed to check up the addition or totaling of marks. Learned Counsel for the Respondent State has also fairly submitted that in case any mistake is detected in totaling of marks, the same may be rectified and the consequential benefits may be extended. Mr. Mushahary further submits that even Rule 11 provides for appeal against the decision of the Selection Board and only about 50 candidates had filed appeals which were disposed of as required under the Rules; whereas large number of Petitioners have approached this Court directly without resorting to the relief available under Rule 11. Some of the Petitioners have filed additional affidavits alleging specific mistakes in the matter of addition or totaling of the marks of the answer scripts and we will take up their cases. However, the cases of the Petitioners who alleged reduction of their marks by the Scrutinizers, will be taken up separately.

W.P. (c) No. 5447/2003

12. The Petitioner Kankan Sarma had appeared in the Examination under Roll No. 9112 and he was given the Code X584. He had secured the following marks:

Physics - 33 Chemistry - 39 Botany - 25 Zoology - 16 Mathematics 21.

13. For the purpose of admission into Medical Colleges marks in P.C.B., i.e. Physics, Chemistry and Biology, which includes Botany and Zoology are to be added/considered. The Petitioner had secured 113 marks in the above 3 papers. The Petitioner belongs to general category and the cut off marks for admission for general category is around 94. In the Tabulation Register the marks have been correctly entered except in case of Physics. The Petitioner had secured 33 marks as per the answer script; whereas in the Tabulation Registrar the marks have been shown as 8. Thus, there is a difference of 25 marks which is reflected in the total bringing it down to 88. The 33 marks for Roll No. 9112 seems to have been wrongly added in the case of the candidate bearing Roll No. 9113. Thus the Petitioner Kankan Sarma is held to have secured 113 marks and, as such, he is entitled for admission in the Medical course. Accordingly his Writ Petition, Writ Petition (c) No. 5447/2003 is allowed. The Respondents are directed to place Kankan Sarma at his proper place in the merit list having secured 113 marks in P.C.B. and thereafter provide him seat, to which he is eligible/entitled.

W.P.(C) 5966/2003

14. Shri Jyotirmay Deka, Petitioner in W.P. (C) No. 5966/2003 under Roll No. 8723 had secured the following marks:

Physics 29 Chemistry 30 Botany 28 Zoology 19(181/2, to be read as 19)

15. The Petitioner has thus got the total marks 106 and, as such, he is entitled for admission in the Medical College. In the Tabulation Register the marks against biology have been wrongly shown initially but subsequently corrected and the Tabulation Register also shows that the Petitioner had secured 106 marks. We, therefore, allow his writ petition and direct the authorities concerned to place the Petitioner at the proper position in the merit list having secured 106 marks and allot a seat to which he is otherwise entitled. The writ petition stands allowed.

W.P. (C) 6684/2003

16. Shri Yuvraj Gogoi, Roll No. 2558. The allegation of mistake in totaling the addition was found to be not correct.

W.P. (c) 6736/2003

17. Nikunja Deka Roll No. 9010. The result sheet shows that the Petitioner had secured total 93 marks as below:

Physics 28 Chemistry 26 Biology 39

18. The Petitioner has alleged mistake in addition but on verification no such mistake was detected. The Petitioner is also aggrieved by reduction of 2 marks in the Physics paper by the scrutinizer but on perusal of the answer scripts, we find that the Scrutinizer has added 3 marks in his Chemistry paper, where the Examiner had given 23 marks only, which has been raised to 26 marks by the Scrutinizer. The Petitioner thus cannot have any grievance from the increase or decrease of marks by the Scrutinizer. The writ petition stands dismissed.

W.P. (C)5948/2003 (Nasiruddin Ahmed, Roll No. 5325)

19. The Petitioner has alleged in the additional affidavit that the total marks in Botany should have been 23, alleging mistake in totaling. We have checked up the answer scripts and find that the total was correct and the marks have been rightly added. The Writ Petition has got no merit.

W.P.(C) 6459/2003 (Atifa Ahmed, Roll No. 8454)

20. The Petitioner who had appeared under Roll No. 8454 had secured total 92 marks and in the additional affidavit it has been stated that there is mistake in calculation of the marks, which should have been 94. We have checked the calculation and find no mistake. The Petitioner had secured the following marks:

Physics 37 Chemistry 23 Biology 32

21. So far the scrutiny is concerned, we find that some marks were deducted by the Scrutinizer in the case of Physics paper, whereas in the case of Chemistry and Biology Papers, the marks were increased. We find no anomaly. The Writ petition stands disposed. The Writ Petitioner had secured 92 marks and on the

basis of that she is now in the Waiting list.

W.P. (C) 6856/2003 (Hridaydeep Phukan)

22. The Petitioner has alleged that there is a totaling mistake in Botany Paper which according to him should be 26 1/2, whereas he has been allotted 24 marks. We have checked the total and found that there is no mistake in totaling and the total marks awarded to him comes to 24 only in Botany paper.

W.P. (C) 6826/2003 (JimlyDowerah)

23. The Petitioner has secured total 88 marks:

Physics - 15 Chemistry - 21 Biology - 26 + 26 = 52

24. The Petitioner claims that she has received 25 1/2 marks in Chemistry. On totaling the marks in Chemistry paper we find no mistake. In Botany the Petitioner has got 26 marks and in Zoology, the total marks received by the Petitioner is 25 1/2, which is to be read as 26. Thus, we find no mistake in totaling.

W.P.(C) No. 6655/2003 (Alok Chandra Kalita)

25. The Petitioner's claims were in totaling of the marks in Chemistry and Physics. In Physics the Petitioner has got 22 marks, where he claims that it should be 23. On verification, we find no mistake in totaling. Likewise, in Chemistry Paper the Petitioner has got 36 marks, whereas he claims that it should be 38. On verification, we find no mistake in totaling and the total marks are 36 only.

SCRUTINY

26. When the answer scripts were produced for the purpose of evaluation by the candidates/Petitioners, it was seen that three different types of ink have been used to show checking and re-checking and by this process the marks were either added or deleted. A submission was also made that the above reductions have been made to deprive the eligible candidates and to help someone else. In their affidavit in opposition the Respondents have clarified the use of different inks by stating as below:

That the scrutiny was done in two steps. First, at the two zones, under the supervision of Zonal Officers of the two Zones viz., A.E.C. and J.E.C. to keep uniformity and marking and for further checking, second scrutiny was introduced for the first time in this year. The Scrutinisers were selected from Professors of Gauhati University, Cotton College and B. Barooah College. The Scrutinisers were provided with scrutiny slips to writ the marks already obtained, the new marks obtained in any paper and the reasons for increase/decrease of marks on the body of the answerscripts. The Scrutinisers and head examiners are provided with pens of different colours so as to be easily distinguished from one another. It is further stated that the Head Examiners in this scrutiny process were

eminent personalities in their own field. Head Examiners check about 10% of the total scrutinized answer scripts in each subject and have to put his signature in all answerscripts checked by him. Some answerscripts (packets) were sent for reexamination also by the Head Examiners if they feel necessity for it. In any matter regarding scrutiny, scrutinisers were to discuss with head examiners and under his instruction and guidance Scrutinisers do their work.

27. Learned Govt. Advocate has submitted that different colours of ink, i.e. blue, black, red and green were used with a direction that where the Examiner has used one particular colour ink pen, the 1st Scrutiniser shall use different colour ink and the 2nd Scrutinizer shall use another ink, which has not been used either by the Examiner or the 1st Scrutinizer. The method adopted by the Scrutinizers as stated above, cannot be doubted or found fault with. Scrutiny of Answer scripts by qualified Scrutinizer is a part of the process by which mistakes are tried to be eliminated and proper evaluation of the answers given by the candidates is made. We have checked most of the answer scripts produced during the course of hearing and more particularly the answer scripts in respect of W.P.(c) Nos. 5325/2003, 6856/2003, 6655/2003, 6489/2003, 6344/2003, 6725/2003, 6283/2003, 6674/2003, 6676/ 2003, 6084/2003, 6740/2003, 6366/2003, 6744/2003, 6868/2003, 6869/2003, 5326/2003, 6675/2003, 6213/2003, 6695/2003, 5349/2003, 6238/2003, 5653/2003, 5871/2003, 6642/2003, 6643/2003, 5636/2003 and 6489/2003. The Writ Petitioners in the above Writ Petitions have filed additional affidavits alleging arbitrary reduction of their marks. However, on perusal of the answer scripts, we find that the Scrutinizers have not only deleted the marks in given cases but in some cases have also added marks, wherever required. Thus, the purpose of scrutiny was not to deduct marks but to make a proper evaluation of the answer scripts and do the needful as required in a given case. A uniform procedure for scrutiny was adopted and the directions were clearly unambiguous. The Head Examiner was required to put his signature only on 10% of the total scrutinized papers and we find that the initials of Head Examiner appears in some given cases. Petitioners/candidates whose marks have been deleted or added by such scrutiny cannot have any grievances in the matter.

RESERVATION

28. Some of the writ Petitioners, who belong to the reserved category, have filed additional affidavits alleging that some of the candidates belonging to the reserved category have received grace marks to be eligible for admission in the general category but they have been selected and placed under reserved category in violation of the law laid down by the Apex Court in the case of Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, The Apex Court upon consideration of the law laid down in Indra Sawhney v. Union of India 1992 Supl. (3) SCC 217 and R.K. Sabharwal and others Vs. State of Punjab and others, had observed:

In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the

basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.

29. In Ritesh Sah's case (Supra) the Apex Court was considering the provision of the Maharashtra Rules. Ritesh R. Sah (Supra) was decided by the Apex Court on 15th February, 1996 by a Bench of two Judges. The Apex Court had the occasion to re-examine the matter. In the case of State of Bihar and Others Vs. M. Neethi Chandra and Others, which was decided on September 10, 1996, the Apex Court held that any provision which operates against the reserved candidates for whom the protective discrimination has been devised cannot be sustained as the meritorious among them (reserved category) are denied the choice of college and subject which they can secure under the rule of reservation.

30. Learned Counsel for the Respondents, on the other hand, has placed reliance on a decision of the Apex Court in the case of Rajiv Mittal Vs. Maharshi Dayanand University and Others, which was decided by a Three Judge Bench. In Rajiv Mittal (Supra) one Sunit Yadav had secured position at S.I. No. 1 in the category of Backward Classes quota on the basis of the marks in the Entrance Examination, whereas in the general category he was placed at merit position No. 62. The 1st Counselling was held on 14.9.96 in the general category and the said Sunit Yadav was not considered as his position was 62. In the 1st Counselling for reserved seat the said Sunit Yadav took admission under the reserved category as he was placed at SI. No. 1. The Respondent No. 3 who belonged to reserved category and placed at lower position could not get any seat and he therefore approached the Court stating that Sunit Yadav should be adjusted in the general category and he should be adjusted against the reserved category seat occupied by Sunit Yadav. The High Court granted relief holding:

It is a settled principle of law that a candidate from the reserved class, if is entitled to get admission to a course of his own merit in the general list, he must be treated on his merit and not accommodated against the reserved vacancy.

The Apex Court while so considering the matter observed:

The system of Counselling for the purpose of granting admission to the various medical colleges in the State is now regarded as a most equitable one where options are given of various seats to the students in accordance with their overall merit position in the combined entrance examination, which examination is competitive in nature.

If as a result of first counseling, all the seats, which are available are filled then no further counseling takes place. Where however some seats become available, then it appears that second, third or if the need arises fourth counseling does take place but in such a manner that normally there should be no delay in the commencement of the course of study. Furthermore unless and until counseling takes place, no candidate who has been granted admission on the basis of the counselling, is allowed to change his college merely because a seat in another college has fallen vacant. The seats, if any, which fall vacant, can only be filled if and when counseling takes place where the candidates who have already been selected may have an option of shifting to another college. An appropriate analogy of this system is that of a booking chart for a dramatic performance which has to take place in the future. The people standing in the queue reserve or book their seats out of those which are available according to their preference. Once the chart fills up the booking closes. Only sometimes, if tickets are returned they may be reissued. But once the dramatic performance starts no one is allowed to enter. Similarly counseling for seats to medical colleges must stop once the courses of study commence.

31. The Rule which was applicable in the *Rajiv Mittal* (Supra) provided as follows:

A candidate who applies either for reserved category or for both reserved and open will be considered first in open category. In case he/she is not selected in open category, he/she will be considered for reserved category.

32. The Apex Court held that the above provision will arise only when the reserved category candidate is in a position to secure admission in the general category in the same counselling in which the seat is available to him in the reserved category. But in case he fails to secure admission to a seat in the general category in the first counselling but had secured admission to the reserved seat in the same counseling, the question of his being shifted or being regarded as a candidate to the general category seat which had become available only after he had secured admission, is not and could not arise.

33. In the present case the problem is somewhat otherwise. Some of the candidates belonging to reserved category have secured low position in the general category, whereas they were higher up in the reserved category and hence in the reserve category they have the choice of the college, whereas they have no such choice in the general category. In order to avoid going to a college of not their choice they opt for a seat in the reserved category. The question that arises is whether these candidates can be denied the above benefits or selection at the cost of less meritorious candidates for the same reserved category. In

view of the observations of the Apex Court in *Rajiv Mittal (Supra)* and *State of Bihar (Supra)*, we find no force in the submission of the learned Counsel for the Petitioner.

34. Rule 6 of the "Rules" reads as follows:

6. RESERVATION OF SEATS:

(1) Available seats shall be reserved for the following categories of candidates of the State of Assam:

(a) Scheduled Caste : 7% of total available seats in MBBS and BDS course each. (b) Scheduled Tribes: 10% -do- (Plain) (c) Scheduled Tribes : 5% -do- (Hills) (d) Other Backward : 15%-do- Classes including More Other Backward Classes. (e) Sons and daughters,: 3 Seats in MBBS and dependent brother 1 seat in BDS and sister of ex- serviceman and serving Defence Personal from Assam only. (f) Sons/daughters,: 2 seats in MBBS brothers/sisters only and grandson/grand daughter of Freedom fighter of the State. (g) Sons/daughters/ : 2 seats in MBBS and 1 brothers/sisters of seat in BDS the Martyrs of Assam Movement. (h) Children of Tea : 2 seats in each of Garden Ex-Tea three Medical College Garden Communities/ for MBBS and 1 Tribes. seat in BDS. (i) Socially and : 2 seats in MBBS Education only. Backward persons ordinarily Residing in areas covered by The Assam State Char Areas Development authority and Not entitled to any other forms of reservation. (j) Sons/daughter/ : 2 seats in MBBS brothers/sisters and 1 seat in BDS. of persons killed in extremist violence in Assam.

Provided further that if any of the seats mentioned in this rule remaining unfilled for want of candidate, such seats shall be filled up by candidate of the general category whose names appear in the waiting list recommended by the Selection Board.

35. Rule 7(8) provides:

a candidate who desires to be considered in respect of a particular reserved category (ref. Rule 6) shall be considered in respect of that particular category only. Provided appropriate certificate is furnished in support thereof in the proform set out in Schedule-III along with the application.

36. The information Brochure published by the Director of Technical Education, Assam also provides that the candidates belonging to SC/ST/OBC or any other category also must appear in the Joint Admission Test but they will be selected against the quota reserved for them according to merit. Learned Govt. Advocate, therefore, submits that as per the existing Rules and the information Brochure, candidates of reserved category are considered for admission under the quota provided for such reserved category. The validity of the Rules have not been challenged by any of the Petitioners before us. Accordingly, we hold that selection of candidates was not violative of the Rules of reservation.

37. The Petitioner, Nasir-uddin Ahmed, W.P.(c) No. 5948/2003 and the Petitioner Kalyan Baruah in W.P.(c) 6730/2003 have not been awarded marks in some questions for the Physics paper on the plea that they have copied from the candidates bearing Code No. N 281 and N 289. The matter was considered by the Scrutinisers also and they have also come to the same decision and hence considering the marks secured by the candidates in other papers, we hold that no case for interference is made out.

RE-EVALUATION

38. It is submitted by the learned Counsel for the Petitioners that if anomalies are found in one case even, all evaluation should be thrown out and the answer scripts should be re-evaluated by experts to be nominated by the Court through Gauhati University etc. In support of their plea they have relied on a decision of this Court in the case of Rowshanara Ahmed v. State of Assam and Ors. 1997 (1) GLT 693, wherein this Court held:

Under the aforesaid rule, therefore, the Gauhati University is to arrange for evaluation of the script of each candidate and prepare thereafter a merit list based on total marks obtained by each of the candidates in all the subjects. Where, therefore, the Court finds on the basis of materials produced before it that there has been no true evaluation and the so called evaluation made by the Gauhati University does not at all reflect the merit of the candidate, it can always direct the authorities of the Gauhati University to arrange for a fresh evaluation of the answer script and correct the merit list accordingly in exercise of its powers under Article 226 of the Constitution.

39. In the case of Bhushan Uttam Khare Vs. The Dean, B.J. Medical College and others, the Apex Court observed:

We have considered all the materials placed before us in the light of arguments advanced keeping in mind the well accepted principle that in deciding the matters relating to orders passed by authorities of educational institutions, the Court should normally be very slow to pass orders in its jurisdiction because matters falling within the jurisdiction of educational authorities should normally be left to their decision and the Court should interfere with them only when it thinks it must do so in the interest of justice.

40. The Respondents in this case have submitted that the answer scripts were evaluated by the qualified personnel on the basis of the model answers provided by the authority concerned. A copy of the model answers was also made available to this Court. In the present case there is no allegation at the Bar that the model answers given by the concerned authority were found incorrect and it has led to irregularities and illegalities in the matter of evaluation.

NON CREDIT OF MARKS:

W.P. (C) 5653/2003(Siddharta Roy Baruah)

41. It is submitted that the answers to Question No. 1(d), 1(j) and 9(b) of Chemistry paper were correct but no marks were given. We have checked the answer scripts of the Petitioner and the answers given by the Petitioner do not tally with the Model answers prepared by the Respondent authorities in respect of the 3 answers in the Chemistry paper.

42. In Physics Paper the allegation is in respect of Question No. 2(a)(iii), 3(c), 2(b)(iii), 6(2) and 2(c)(1). Two of the answers in question No. 2 has been marked correct by the examiner. The answer to question No. 3(c) does not tally with the Model answer. The question paper/answer paper does not contain any Question under the Heading 6(2). Thus, the allegation made in the additional affidavit has got no basis.

W.P.(c) No. 6283/2003(Khusbu Agarwal.)

43. The allegation is that answers to question No. 1(a), 1(b), 1(c), 1(h), 5(a), 5(b), 5(f) and 5(h) in Physics paper were correct but no marks were given. The answer of the candidate against Question No. 1(a), 1(b), 1(c) and 1(h) were marked as incorrect by the examiner. The candidate was required to give reasons in support of the answers and the reasons given were found incorrect. Likewise, the answers against Question No. 5(a), 5(b), 5(f) and 5(h) were found incorrect by the examiner.

44. In the Zoology paper the correct answer against Question No. 1(d) (as per Model Answer) is Cephaline, whereas the candidate has written Plasmalogen and it was marked as incorrect. Question No. 11, 14 and 17 of Zoology are theoretical question and the answer given by the examiner were marked as incorrect. The answers also do not tally with the Model Answers.

45. Likewise, in Botany paper, the question is, Fasciculated roots formed for storage of food are found in -(four options were given as (i), (ii), (iii) and (iv)) and the candidate is to fill up the blank by writing the correct answer. The Petitioner has written the answer as "sweet potato", whereas, as per the Model Answers the right answer is "Dahlia". Likewise, the answers against Question No. 1(b), 1(c) and 1(e) given by the candidate were marked as not correct and they do not tally with the Model Answers. We, therefore, find no basis in the allegations made in the additional affidavit by the Writ Petitioner.

W.P.(C) No. 6489/2003 (Dhiraj Nath)

46. There is no specific allegation against non-giving of marks. The Petitioner seems to be aggrieved by reduction of marks in Physics paper where the Examiner had given 18 marks which was reduced to 12 on scrutiny. On the other hand, we find that in the Chemistry Paper the Examiner had given 27 marks but it was subsequently increased to 32 marks by the Scrutiniser. We have examined the Physics paper wherein the marks were reduced by the Scrutiniser. The Scrutiniser has found the answers incorrect and accordingly the number given by the earlier Examiner were struck off. The Petitioner has got total 83 marks.

W.P.(c) No. 6344/2003 (Kasturi Devi)

47. The allegation in the additional affidavit is regarding non awarding of marks against the question No. 2(a), 2(c), 2(d), 7 and 8 in Botany paper. The answers given by the Petitioner were found to be incorrect by the Examiner and no marks were given. The answers do not tally with the Model answers. In Zoology paper, the allegation was in respect of Question No. 4, 5(a) and 10. So far the Question No. 4 is concerned, the candidate has been awarded 1/2 marks for the answer, whereas in respect of 5(a) the answer was found incorrect and no mark was awarded. On the other hand, in respect of Question No. 10, 1 1/2 mark has been awarded to the candidate. In Physics paper, against the Question No. 1(d), the candidate was required to state whether the statement is true or false and then give reasons. The candidate has not stated anything and has not given any reasons and hence, he was rightly not given any mark.

48. The Petitioner has secured total 52 marks in P.C.B. and she is nowhere near the zone of consideration.

W.P.(C) 6725/2003 (Shabnam Rahman)

49. In Physics paper there is no specific allegation except a general allegation that the Petitioner should have secured more marks.

50. The allegation is in respect of Question No. 2(e) and 11(b) in Chemistry. The answers given by the Petitioner were marked as incorrect and we find that the answers do not tally with the Model Answers. In Botany the allegation is in respect of Question No. 5, the candidate was asked to enumerate the causes of variation but the Petitioner did not mention any causes of variations and wrote a general answer for which 1 mark was allotted to her. As regards the non-awarding of marks against the Question No. 16 of Zoology Paper, the answer scripts shows that the Petitioner was given 5 marks, which is the total marks allotted to the said question. We, therefore, find no basis in the allegation made in the additional affidavit.

W.P.(C)(Kuladeep Gogoi)

51. It is alleged that in Botany Paper, no marks have been allotted against Question No. 5, 6 and 8 although the Answers were correct. Against Question No. 5, the Petitioner has been awarded 1 mark, whereas the answer to Question No. 6 has been found to be incorrect and 0 mark was allotted. Likewise, against the Question No. 8, the answer was found incorrect and 0 mark was given. In Zoology paper the allegation is in respect of Question No. 11 but we find that 1 mark was allotted to the Petitioner against his answer. In respect of Question No. 2(b) in chemistry, the answer was found incorrect and 0 mark was given. The answer does not tally with the Model answer. We find no force in the statements made in the additional affidavit.

W.P.(C) No. 6676/2003 (Silpi Jalan)

52. So far the reduction of mark is concerned, we find that these were done on scrutiny of the answer papers by the Scrutiniser and even the signature of the Scrutiniser also appears in the Khatas in this case.

53. As regards non-awarding of marks, the allegation is in respect of Question No. 8, 10,11 and 16 of Zoology paper and 2(3) of the Botany. The Petitioner has been awarded 1/2 marks for Question No. 8 and 1 mark for question No. 10 and 3 marks for Question No. 11 and 1 mark for Question No. 16. Hence, the allegation that no marks were allotted against the above question in Zoology is not correct. As regards the Question No. 2(e) of Botany, the answers were found incorrect and they do not tally with the Model answers. We, therefore, find no merit in the allegations.

W.P.(C) No. 6084/2003 (Khusbu-E-Jahan)

54. The allegation of non-awarding of marks against Question No. 1(f) and 5(c) in Chemistry. The answer to Question No. 1(f) is incorrect and does not tally with the Model answer. Likewise, the answer to Question No. 5(c) also does not tally with the Model answer. The other allegation is in respect of reduction of marks on scrutiny. In case of Physics paper the marks were reduced to 23 after scrutiny and the signature of the Scrutiniser appears in Khatas. The marks were reduced because of wrong answers. On the other hand, we find that in the Zoology paper the Scrutiniser has increased the marks from 18 to 20. The Petitioner, therefore, cannot have any grievance in the addition or deletion of marks by the Scrutiniser.

W.P.(C) No. 6740/2003 (Pankaj Jyoti Barman)

55. The allegation relates to Physics Paper against Question No. 1(b), 1(d), 1(g), 1(h) and 1(j), 2(b)(ii), 2(d) and 3(j). There is no allegation in respect of other papers. On verification we do find some force in the statements made in the additional affidavit and direct that the Physics paper needs to be rechecked. The Petitioner had secured a total marks of 81 and he belongs to OBC category. We, therefore, direct the Director of Technical Education, Assam to get his answer paper in Physics re-examined and re-evaluated and on the basis of such re-evaluation the marks may be upgraded, as required. This may be done immediately. His Writ Petition stands disposed of with the above direction. The Petitioner be given the benefits of additional marks.

W.P.(C) 6366/2003 (Sahil Mehboob)

56. The Petitioner claims that his answer to question No. 1(j) was correct but we find that on scrutiny the answer was found to be not correct and 1 mark which was originally allotted was scratched and 0 mark was given. In respect of Chemistry and Botany the Petitioner has made a general allegation that no marks were given against the right answers. The other grievance is in respect of reduction of marks in Zoology paper. Some marks were reduced by Scrutiniser in the Zoology paper. On the other hand, in Chemistry and Botany the marks of the Petitioner were increased by the Scrutiniser. The increase or decrease of marks

by the Scrutiniser is a normal process and hence the Petitioner cannot have any grievance on that count.

W.P.(C) No. 6744/2003 (Farha Sultana)

57. The Petitioner has secured total 88 marks. The allegation is in respect of Zoology paper against Question No. 6, 14 and 16. In question No. 6, originally 1 mark was given but on scrutiny the answer was found incorrect and the mark was cancelled. The answer given by the Petitioner also does not tally with the Model answer. Likewise, the answer to Question No. 14 was found incorrect on scrutiny. As regards the answer to question No. 16, the Petitioner has been awarded 2 marks. The Petitioner also cannot have any grievance for induction or deduction of marks by the Scrutiniser as we find that in Chemistry the total marks of the Petitioner has been increased by 7 on Scrutiny.

W.P.(C) No. 6213/2003 (Kamal Nath)

58. The Petitioner has got a total 79 marks. The allegation relates to Botany Paper against Question No. 2(b) and 3(b). Answer to Question No. 2(b) was found incorrect and 0 mark was awarded. Likewise, the answer No. 3(b) was also found to be incorrect.

59. As stated above, a submission was made that in case of anomalies found only in one case the entire selection process should be quashed. It has also been submitted that under Article 226 of the Constitution there is no fetter on the power and jurisdiction of the Court to give necessary directions in an given case. The law is well settled that Court may pass required directions in exercise of power under Article 226 of the Constitution of India to redress injustice and the only restraint is self imposed by the Courts.

60. In the present case, we find altogether 14,166 Nos. of candidates appeared in JAT, 2003, out of which, in the present batch of Writ Petitions, 121 are before us. The answer scripts of all these candidates were produced and were allowed to be examined by the candidates and their Counsel. Except in cases, where additional affidavits were filed as discussed above, the other majority Writ Petitioners did not find any error in evaluation. As stated above, only in two cases, we find some mistakes in totaling, out of which 1 was corrected by the authority concerned. We also find that only in one paper there was some mistakes in awarding proper marks. In the circumstances, does it call for throwing out the entire selection process lock, stock and barrel? Few hundreds of candidates have been given admission in the Engineering and Medical Colleges of the State and the entire process will have to be re-started, disturbing the entire academic calendar. Moreover, considering the nature of mistakes, we find that these are all usual human errors which are bound to crept in when such large-scale exercises are undertaken. No exercise, at such scale, can be entirely full proof or blemish less, the human factor is bound to crop up. Going through the records we find absolutely no case of any mala fide or arbitrary action or any intention to deprive one at the costs of others. It is, therefore, proposed that

relief in given case shall be granted (as done in) and the cases in which there is no merit shall stand dismissed, as in most of the cases evaluation of marks are found to be correct.

61. A submission was also made at the Bar that the entire matter should be investigated through C.B.I. The general principle of law, as well as the circumstances under which the matter is required to be referred to C.B.I. were laid down by the Apex Court in the case of Vineet Narain and others Vs. Union of India and another, and in the case of State of Karnataka Vs. Arun Kumar Agarwal and Others, in the light of the above, let us examine whether the facts alleged, as a result of the verification and the circumstances brought to our notice are prima facie sufficient to warrant a direction for investigation by the C.B.I. As stated above, there is no serious irregularity in the matter of coding and decoding and there is no allegation even that the Model answers prepared by the concerned authorities are not correct. There is no mala fide and Shri A.K. Dev Choudhury, the Controller of Examination, had not participated in the selection process as his son had appeared. From the examination of answer scripts of the selected candidates also, we do not find any irregularity and the marks were allotted to them on merit and on the basis of the Model answers. At this stage, we may re-capitulate the observations of the Apex Court in the case of Arun Kr. Agarwal (Supra):

The law, in fact, is otherwise. The acts of persons will not be the subject of criminal investigation unless a crime is reported to have been committed or reasonable suspicion thereto arises. On mere conjecture or surmise as a flight of fancy that some crime might have been committed, somewhere, by somebody but the crime is not known, the persons involved in it or the place of crime unknown, cannot be termed to be a reasonable basis at all for starting a criminal investigation. However, condemnable be the nature or extent of corruption in the country, not all acts could be said to fall in that category.

62. in view of what has been stated above, we hold that no case for issuing a direction to make further investigation in the matter is made out. In this batch of Writ Petitions, we find that some of the Petitioners before us, who were in the Waiting List or otherwise, have not been accommodated or given admission in the Counselling that took place during the pendency of the Writ petition. This order will not disturb their admissions unless they are to make way to the candidates, as directed by this Court specifically.

W.P.(C) 7065/2003 (Debalok Chakraborty)

63. The Petitioner was a selected candidate but he was not given admission in view of the stay order granted by this Court. The Petitioner has prayed for vacation of the stay order. The stay order granted by this Court stands vacated subject to the direction issued in this order and connected batch of writ petitions.

64. In the case of Nikunja Das, (Writ Petition (C) No. 6736/2003) the Petitioner has been awarded total marks 93, which has been found correct. However, the

Petitioner claims that he falls in the category of the "Son/Daughter/Brother/Sister Of Persons Killed In Extremist Violence In Assam" and that although candidates getting total 41/42 marks in that category have been admitted, his case has not been considered. We direct the Respondent authority to examine the claim of the Petitioner and if he falls under the said category and if the claim is found to be correct, necessary follow up action be taken.

65. Except for the Writ Petitions, for which specific directions have been given, as above, the other Writ Petitions stand dismissed. There will be no order as to costs.