

(2011) 11 GAU CK 0020
In the Gauhati High Court
Case No : Writ Petition (C) No. 3563 of 2011

Sri Mritunjoy Bharadwaj

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 22-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 GLD 197

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : N. Dutta, Mr. B. Talukdar, Mr. M. Das and Mr. P. Mahanta, for the Appellant; A.D. Choudhary, SC, Education Department and Mr. T.C. Chutia, for the Respondent

Judgement

I.A. Ansari, J.—This writ petition, made under Article 226 of the Constitution of India, discloses a, somewhat, insensitive dealing with a student by those, who have not only been vested, but also entrusted with certain duties expecting that they would, being involved in improvement of the educational system, disclose a sense of fairness and total absence of any sense of revenge. The respondents/ authorities concerned appear to have dealt with the case at hand with single-minded conclusion from its inception that the fault lies with the petitioner and with none else though, strictly speaking, there is no such conclusive material and no such definite conclusion could have been reached without giving any effective opportunity to the petitioner to not only have his say in the matter, but also a right to cross-examine anyone; who might have been given a version of what had transpired at the examination hall, where the unfortunate incident, as revealed in the writ petition, had taken place. Even if, the writ petitioner was at fault, his fault could have been brought to fore by resorting to the principles of natural justice and not arbitrarily and by ignoring what he had to say. The impression, as depicted above, can be well-guessed by the facts as emerge from the pleadings of the parties and the materials on record.

2. I have heard Mr. N. Dutta, learned Senior counsel, appearing on behalf of the petitioner, and Mr. A.D. Choudhury, learned Standing Counsel, Education Department. I have also heard Mr. T.C. Chutia, learned Standing Counsel, SEBA.

3. On completion of his academic session of Class-X, in Disneyland 1 High School, Khanapara, Guwahati, the petitioner appeared, on 21.02.2011, in High School Leaving Examination (HSLC), 2011, which is conducted by the Board of Secondary Education, Assam (hereinafter referred to as "the respondent Board")- On 24.02.2011, the petitioner appeared for his General Mathematics paper. Since the respondent Board admits that the petitioner appeared for his examination in General Mathematics, on 24.02.2011, but did not submit his answer script to the invigilator concerned and that the petitioner denies this allegation, let me, first, take the petitioner's version as to what, according to him, transpired, on 24.02.2011, with regard to his answer script and, then, take into account the case of the respondent Board as to what, according to them, had happened.

PETITIONER'S VERSION:

4. The petitioner's version is, in brief, as follows:

(i) On completion of his examination in the subject of General Mathematics, the petitioner submitted his answer script to the invigilator present in the room on 24.02.2011 and left the examination hall with his mother at about 12.20 p.m. At around 1.30 p.m., five persons came to the official residence of the petitioner's father, where petitioner resides with his parents, and alleged before the petitioner's parents that the petitioner's answer script of Mathematics had not been found at the center, because the petitioner had left the examination center without submitting his answer script. The petitioner, however, immediately, recognized the person to whom he had handed over the answer script before leaving the examination center and, accordingly, identified the person concerned and a request was made by the petitioner and his parents to the persons to return to the center immediately and check and verify all the bundles of the answer scripts including the loose sheets of papers, because the petitioner and his parents were under bona fide belief that answer script might have been misplaced or tagged with some other bundles on account of human error on the part of someone.

(ii) However, on the same day, i.e., on 24.02.2011, the Officer-in-Charge of the said examination center, i.e., Principal, Ganesh Mandir Higher Secondary School, lodged, to the shock and disbelief of the petitioner, a First Information Report, at Dispur Police Station, against the petitioner for taking away the said answer script. Based on this First Information Report, Dispur Police Station Case No. 381/2011, was registered, wherein the Investigating Officer, eventually, submitted, on 05.07.2011, a final report on not finding any material substantiating the allegations made against the petitioner. As a reaction to the filing of the said FIR, the petitioner's mother too immediately filed a First

Information with the Dispur Police Station regarding the said incident.

(iii) On coming to know that the invigilator had written, on 24.02.2011, a letter to the Controller of Examinations through the Officer-in-Charge, Khanapara Examination Center, the petitioner, with a reasonable apprehension, that he might not be allowed to appear in the remaining examinations without any fault on his part, made a representation, on 25.02.2011, to the Secretary, respondent Board, informing the respondent Board about the whole incident and requesting him to look into the matter and take necessary action so as to enable the petitioner to appear in the remaining examinations. The petitioner was, then, allowed to appear in the rest of the examinations and the petitioner duly completed the same. This was followed by a representation made by the petitioner's father, on 29.04.2011, to the Secretary, respondent Board, seeking a solution to "the vexed problem before the result of the petitioner is announced.

(iv) The result of the examination was announced on 27.05.2011; but the petitioner's result was shown in the list of those candidates, whose results had been kept withheld, whereupon the petitioner's parents contacted, on 28.05.2011, the Controller of Examinations, over phone, for finding out the reason for showing the petitioner's result as withheld. The Controller of Examinations advised the petitioner's father to submit an application to the respondent Board seeking declaration of the withheld result of the petitioner. The petitioner's father accordingly made representation, dated 30.05.2011, addressed to the Secretary of the respondent Board requesting for declaring the result of the petitioner.

(v) Thereafter, the respondent Board instructed the petitioner to obtain a letter of identification from the Principal, Disneyland High School, Khanapara, and the petitioner accordingly obtained a letter of identification and duly submitted to the respondent Board. The Controller of Examinations, then, issued a notice, on 30.06.2011, requiring the petitioner to attend the respondent Board's office, on 02.07.2011, for obtaining his (petitioner's) withheld result. When the petitioner went to the office of the respondent Board, on 02.07.2011, he was questioned there for about 1-1/2 hours and, then, he was asked to reply, in writing, to a questionnaire.

(vi) On 11.07.2011, the Controller of Examinations called the petitioner's father to receive a copy of the mark-sheet of the petitioner and handed over to him the petitioner's mark-sheet. The mark-sheet showed the petitioner as "absent" in the subject of General Mathematics. The petitioner's father, then, filed an application, on 12.07.2011, seeking some information under the Right to Information Act, 2005, (in short, "the RTI Act"), regarding minutes of the meeting of the respondent Board, the answers to the questionnaire, copy of the attendance register of the HSLC examination of General Mathematics on 24.02.2011, etc; but, till date, the same was not furnished to the petitioner's father by the respondent Board. The said application, made under the RTI Act, was followed by a representation made by the petitioner, on 15.07.2011, to the

Chairman of the respondent Board for review of the respondent Board's decision with regard to the result of the petitioner by looking into the matter on humanitarian ground, but no action was taken. Being aggrieved, the petitioner has filed this writ petition, on 20.07.2011, seeking various reliefs including an order for conducting fresh examination in General Mathematics for the petitioner.

5. Reacting to the writ petition, which was moved on 20.07.2011, the Secretary of the respondent Board sent a communication, on 16.07.2011, to the Head Mistress of Disneyland High School stating to the effect, inter alia that the petitioner's result of the HSLC examination had been cancelled. The said communication, dated 16.07.2011, has been received by the petitioner's father on 06.08.2011. By the said communication, it has been further directed that the previous mark-sheet, issued on 11.07.2011, be returned to the respondent Board.

RESPONDENT BOARD'S VERSION:

6. The version of the respondent Board reads, in brief, as under:

(i) The petitioner, who was sitting in the front row near the door of the examination hall, sneaked away from his seat along with the answer sheet leaving behind a pen in the seat, while the invigilator was visiting and collecting answer scripts from the candidates at the rear row. The matter, having been noticed, was reported to the Examination-in-Charge of the Examination Center by the invigilator. The Examination-in-Charge took immediate steps to pursue the petitioner, but he was found nowhere. This gives rise to the presumption that in this entire episode, the petitioner's parents were also a party, whereupon the matter was brought to the notice of the respondent Board by the Officer-in-Charge of the Examination Center, who reported that the answer script could not be recovered from the petitioner, because the petitioner vanished from the examination center, whereupon a group, consisting of the invigilator and teachers, went to the residence of the petitioner, but the petitioner's parents kept the petitioner away from the team and misbehaved with the invigilator and other teachers.

(ii) The matter was, then, reported to the respondent Board by the Officer-in-Charge of the examination center. The parents of the petitioner, instead of co-operating with the in-Charge of the examination center, came to the Board's office and requested them not to expel their son and further requested the Secretary of the respondent Board from debarring their son from appearing in the remaining examinations, Though allowed to appear in the remaining examinations, it had been recorded in the dispatch register and other materials by the Board that the candidate, i.e., the petitioner, had not submitted his answer script of the subject of General Mathematics to the invigilator. The Board in its meeting, held on 05.07.2011, thoroughly examined the matter and resolved to cancel the examination of the candidate. The letter, dated 16.07.2011, cancelling the examination of the candidate was accordingly issued.

(iii) In course of enquiry, it has come to the notice of the respondent Board that the petitioner was weak in General Mathematics and his performance was very poor. It is, therefore, quite possible, on the part of the petitioner, to create this type of drama in the examination hall just to cover up his poor performance in the subject of General Mathematics. Moreover, the fact of not submitting the answer script to the invigilator, on duty, is clear from the statement of Ratan Kalita, who sat with the petitioner in the same bench, because Ratan Kalita has claimed that the petitioner left the room opening the door himself before the invigilator reached them to collect the answer script. The petitioner, thus, had left the examination hall without submitting the answer script to the invigilator.

7. At the time of hearing of the present writ petition, Mr. Chutia, learned counsel, appearing on behalf of the respondent Board, resisted the writ petition by pointing out that while the petitioner insists that he had handed over the answer script, in question, to the invigilator, the invigilator insisted that the petitioner had sneaked away from the room without handing over the answer script. Thus, the question as to whether the petitioner had or had not handed over the answer script to the invigilator concerned is, points out Mr. Chutia, a disputed question of fact and such a disputed question of fact cannot be decided in a writ proceeding and the remedy of the writ petitioner lies in instituting a civil suit and not in filing the present writ petition.

8. Appearing on behalf of the petitioner, Mr. Dutta, learned Senior counsel, submits that though the question as to whether the petitioner had or had not handed over the answer script to the invigilator concerned may be a disputed question of fact, yet there are overwhelming materials to show that the respondent Board has chosen to believe the invigilator concerned and disbelieve the petitioner by holding an enquiry, which was wholly unfair and cannot be sustained in law inasmuch as no opportunity was given to the petitioner to cross-examine those, who are claimed to have made statements against the petitioner, so that the truth could have surfaced. Mr. Dutta also submits that the present petition is not to be treated in ordinary "manner inasmuch as it relates to the career of a student at his prime age and the petitioner, having not been given a fair and effective opportunity to controvert the allegations made against him by those, whose statements had been recorded, there is no time left now and the ends of justice would be met if a direction is issued by this Court, in exercise of its powers under Article 226, to the respondent Board to hold an examination for the subject of General Mathematics so that the petitioner can appear there and a proper result is published. Mr. Dutta also submits that there is not a complete bar on this Court's power to determine even disputed question of fact, though it is ordinarily appropriate, on the part of the Court, while exercising power under Article 226, not to enter into determination of disputed question of fact. Mr. Dutta, therefore, submits that had the present one not" been a case of a student, the Court would have, perhaps, been justified in asking the petitioner to go to the Civil Court, but the inordinate delay and the time, which would be consumed by the Civil Court, would not help the petitioner even if he is found not

to be responsible for disappearance of the answer script.

9. Having heard learned counsel for the parties and keeping in view the averments, made in the writ petition, it is clear that the present writ petition cannot be treated in a routine manner inasmuch as it relates to the career and future of a young student. Even if one per cent of what the petitioner says is true and correct, there is no justification in refusing to hold an examination in the subject of General Mathematics, wherein the petitioner could have appeared and the result could have been published. Though the respondent Board claims to have held an inquiry, the fact of the matter remains that no proper and effective opportunity was given to the petitioner to cross-examine any witness, who have given statements against the petitioner. This is not only denial of the principles of natural justice, but a wholly inappropriate and insensitive approach to the whole episode by the respondent Board. The kind of promptness and care, which the respondent Board, as the guardian of the educational system of the young students, ought to have taken and exhibited, has not been taken and exhibited. Why the respondent Board has chosen to believe the invigilator and the other witnesses and disbelieve, completely, the petitioner without giving him any opportunity to cross-examine those witnesses, who gave statements against the petitioner, has not been explained by the respondent Board. In fact, even to a pointed query it made by this Court, Mr. Chutia, learned counsel for the respondent Board, could give no answer in this regard.

10. Situated thus, it is clear that the finding of the enquiry, which the respondent claims to have relied upon, cannot be allowed to stand good on record and could not have become a basis for withholding or calling the result of this petitioner. As time is precious in the present case and so precious that it is immeasurable, equity demands that in a situation, such as, the present one, this Court, in exercise of its powers under Article 226, steps in, set aside and quash the cancellation of the examination of the petitioner and direct the respondent Board to conduct an examination in the subject of General Mathematics and allow the petitioner to appear therein so that ends of justice are met.

11. Before parting with this writ petition, it is imperative to note that while the respondent Board relies upon the statement of Ratan Kalita, a student, who claims to have been occupying the seat near the petitioner, and who is also claimed by the respondent to have seen opening of the door of the examination hall by the petitioner and sneaking away the petitioner has filed additional affidavits, wherein averments have been made by class-mates of the petitioner, that the petitioner had, indeed, handed over" the answer script to the invigilator of the room. If the respondent Board has chosen to rely on the statement of Ratan Kalita, there is no reason as to why the statements of the classmates of the petitioner, who have given evidence by making statement or note, shall be record. This apart, according to the invigilator's report, the doors of the examination room had been closed 15 minutes before the final bell of the examination was struck. There was, admittedly, police personnel at the entry

gate of the examination center and various parts of the examination center. It is not understandable as to how the petitioner could have gone away with the answer script. This apart if the petitioner had really opened the door and sneaked away the failure was of the invigilator. There is nothing on record to show that any action has been taken against the invigilator for his failure of being vigilant and his inability to perform duty of collecting answer script nor has action been taken against the Officer-in-Charge of the examination center for his failure in managing, organizing and holding of the, examination in such a manner that at the time, when the invigilator was collecting the answer script from the backside of the examination room no one could get away with the answer scripter any other material without handing over the same to the invigilator in the room. There is no explanation as to why the invigilator, instead of collecting the answer script from the side of the front door, started collecting the answer script from the backside. If there was any apprehension that the candidates from backside ought sneak away, it was equally possible for the candidates, sitting in the front run sneaking away. Why the front door was ignored, and the backside door was taken care of, has not been explained by the respondents. For the complete failure, on the part of the invigilator and the Officer-in-Charge of the examination center, there is no explanation by the respondent Board.

12. Situated thus, it is clear that the respondent Board's enquiry has not been fair. Apart from the fact that holding of the enquiry suffers from complete denial of the principles of natural justice, the findings, reached on the basis of such an enquiry, cannot, otherwise, be sustained.

13. Because of what have been discussed and pointed out above, this writ petition is allowed. The petitioner's result, as announced on 11.07.2011, is hereby set aside and quashed. The respondent Board is hereby directed to conduct the examination, in the subject of General Mathematics, afresh for the petitioner within a week from today, evaluate his answer and, then, taking the same into account, announce the result of the petitioner's examination.

14. With the above observations and directions, this writ petition shall stand disposed of. There shall, however, be no order as to costs.