
(2009) 12 GAU CK 0078
In the Gauhati High Court

S.R.R. Marak and Others

APPELLANT

Vs

North Eastern Hill University and Others

RESPONDENT

Date of Decision : 03-12-2009

Acts Referred:

North Eastern Hill University Ordinances — Ordinance 6

Citation : (2010) 2 GLR 646 : (2010) 1 GLT 316

Hon'ble Judges : C.R. Sharma, J

Bench : Single Bench

Judgement

C.R. Sarma, J.—Heard Mr. R.C. Saikia, learned Counsel for the petitioners and Mr. J. Roy, learned Counsel for the respondents.

2. In both the writ petitions aforesaid, the notification dated 23rd/28th July, 2008 issued by the North Eastern Hill University, Shillong, canceling the entire examination of 2008 of the petitioners and thereby debarring them from appearing in any university examination for a period of one year, i.e., 2009 examination is under challenge.

3. The petitioners in WP(C) No. 5330 of 2008/WP(C) No. 281(SH) of 2008 were the students of Bachelor of Computer Application (BCA), Hons. course of the Shillong Engineering and Management college, Jorabat under the North Eastern Hill University, Shillong, Meghalaya and after successfully qualifying the first year and second year examinations they appeared in the third year final examination of the BCA, 2008, held in the month of March 2008. As the petitioners were expecting good result of their third year final examination, were surprised to find the notification No. F.EX/EDC/CONF//2008-529 dated 23rd/28th July, 2008 whereby the petitioners' examination was cancelled debarring them from appearing in any university examination for one year, i.e., 2009. In the impugned order, it was mentioned that they were found to have committed the offence of unfair means under OD-6 Para 4, Sub-clause (n) in the "internet" and "web technology" papers. After receipt of the said orders, the petitioners submitted an application to the Controller of the Examination stating, therein, that they could

not understand the exact nature of unfair means alleged to be adopted by them. They further stated that they never committed any unfair means in the examination hall and that no examiner/invigilator had found them adopting the unfair means in the examination hall. In their representation aforesaid, the petitioners further stated that as they did not understand the exact nature of unfair means alleged to be adopted by them, it was difficult for them to explain their position. They further stated that there were only four students, in their batch of BCA final year and that they followed the same book as per recommendation of their subject teacher in the "internet" and "web technology" subject. They also stated that four months prior to the final examination they stayed in the same accommodation and prepared together with due consultation amongst themselves by following the same note given by their subject teacher. On receipt of the said representation, the Controller of the Examination by his order, dated 17.9.2008, informed the petitioners that the Examination Discipline Committee of the University reviewed the case and resolved to reiterate its earlier decision. It was further informed by the said order that the proceedings of the case of the malpractice was made as per the provisions under Ordinance OD 6, Para 6, Sub-clause (c). Being aggrieved, the petitioners have come up with the present writ petitions challenging the notifications aforesaid as illegal and violative of principle of natural justice.

4. The petitioners in WP(C) No. 5331 of 2008/WP(C) No. 280(SH) of 2008 were the students of Bachelor of Computer Application (BCA) Hons. of the Shillong Engineering and Management college, Jorabat under the North Eastern Hill University, Shillong and after successfully completing the first year course, they appeared in the second year final examination in BCA in the month of March 2008. By the impugned notification dated 23rd/28th July, 2008, the entire examination of 2008 was treated as cancelled debarring the petitioners from appearing in % any university examination for one year, i.e., 2009 on the ground of using unfair means in the computer system (arch.) paper under OD-6 Para 4, Sub-clause (n). After receipt of the said order, the petitioners submitted an appeal before the Vice-Chancellor, North Eastern Hill University stating that they were completely in the dark about the exact nature of the offence committed by them. They further stated that the petitioners followed the same note and same book and as such it was likely that their answers may appear identical with those of their colleagues. The said applications were disposed of, vide Notification No. F.EX/EDC/CONF/2008-680 dated 17.9.2008, informing the petitioners that the university reviewed their cases and resolved to reiterate its earlier decision as final. It was further informed that the proceedings of the case of malpractice was made as per provision under OD-6 Para 6, Sub-clause (c).

5. Being aggrieved by the said orders/notifications, the petitioners have come up with the present writ petitions invoking the writ jurisdiction for setting aside the impugned notifications. As the law points involved in both the writ petitions are similar and as agreed to by the learned Counsels for both the parties, this set of writ petitions was heard together and as such, for the sake of convenience, I

would like to dispose of both the writ petitions by this common judgment.

6. Mr. R.C. Saikia, learned Counsel appearing for the petitioners has submitted that the petitioners duly appeared in the examination aforesaid and that there was no complaint against them regarding their performance in the examination hall and that as the petitioners appeared in highly technical subject like computer science, it was not impossible that their answers could be similar. He further submitted that the petitioners contended, in the writ petition, as well as in their representations submitted before the university that they studied together under the guidance of the same teacher and consulting the same book. Mr. Saikia strenuously argued that similar answers, written by the candidates in technical subject cannot be the absolute reason for concluding that they adopted unfair means and as such the decision of the university for canceling the entire examination on the basis of the report of the examiner was illegal. He also submitted that as the impugned decision, against the petitioners, was taken without giving them any opportunity of being heard, the same was in violation of principle of natural justice and as such the impugned notifications were liable to be set aside.

7. Refuting the said argument advanced by the learned Counsel for the petitioner, Mr. J. Roy, learned Counsel appearing for the North Eastern Hill University submitted that the examiner, at the time of examining the answer scripts, opined that the petitioners adopted unfair means and as such he had referred the matter to the Controller of the Examination and that the Controller of the examination, as per provisions of the North Eastern Hill University "ordinance on discipline amongst students in relation to the university examination" referred the matter to the Examination Discipline Committee and the said committee unanimously held that the petitioners had adopted unfair means. Mr. Roy further submitted that the entire exercise was done as per the procedure prescribed by the ordinance and that there was no violation of the principle of natural justice.

8. Admittedly, the petitioners, in both the writ petitions, appeared in technical course like Bachelor of Computer Application (BCA). The impugned notifications in respect of the petitioners in WP(C) No. 5330 of 2008 (Gau.) indicates that the petitioners were found using unfair means in "internet" and "web technology" papers under OD-6 Para 4, Sub-clause (n). At Column 7 of the impugned notifications, it was mentioned "the entire examination of 2008 is treated as cancelled and debarred from appearing any university examination for a period of one year, i.e., 2009 examination as per provisions under Para 8, Sub-clause (4) of OD 6. In respect of the petitioners in WP(C) No. 5331 of 2008, the impugned notification at Column 6 reads as follows:

found using unfair means in computer system (arch.) under OD 6 Para 4, Sub-clause (n).

In Column No. 7, it was recommended as follows:

The entire examination of 2008 is treated as cancelled and debarred from appearing in University examination for a period of one year, i.e., 2009 examination as per provisions under Para 8, Sub-clause (4) of OD 6.

9. From the above, it appears that the petitioners were found guilty of using unfair means as mentioned in OD-6 Para 4, Sub-clause (n) in respect of the said papers. The OD-6, Clause 4(n) reads as follows:

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

In the impugned notification, except mentioning the word "unfair means" and the Clause (n), the respondent-authority did not indicate as to which of the various acts, mentioned in Clause (n) was committed by the petitioners. The petitioners also in their representations stated that they could not understand the exact nature of unfair means [as mentioned in Clause (n)] alleged to be committed by them and as such it was difficult for them to explain their position. After receipt of the said representation, the respondent-authority should have informed the petitioners indicating the particular act alleged to be committed by the petitioners so as to facilitate them to explain their position. This failure amounted to providing no opportunity of being heard. That apart, in their representation aforesaid, the petitioners stated that, being a small group of candidates, they consulted the same book and note given by the same teacher and that they prepared their answers by studying together in the same accommodation. From the impugned order, this aspect of the explanation made in their representation does not appear to be considered by the respondent-authority. After receipt of the said representations, the respondent-authority issued the following order dated 17.9.2008:

I am to refer to your representation dated 2nd August, 2008 seeking cancellation of the penalty imposed by the university as notified vide Notification No. EEX/EDC/CONF/2008-529 dated 28th July, 2008 for adopting unfair means during the University examination in 2008. The Examination Discipline Committee of this University reviewed the case and resolved to reiterate its decision as conveyed in the aforesaid Notification as final. Further you may please note that the proceedings of the case of malpractice has been made as per the provision under Ordinance - OD-6 Para 6, Sub-clause (c).

Therefore, failure of the respondent-authority to inform the petitioners the exact nature of unfair means adopted by the petitioners amounted to depriving them from the opportunity of representing their cases properly and thus, the principle of natural justice was violated. It is settled law that none should be condemned unheard. In the present case, no opportunity was given to the petitioners before handing down the penalty. Clause (7)(g) of the Ordinance which is extracted below provides the opportunity to the candidates to submit representation.

A candidate may, within seven days of the receipt of the decision of the Examination Discipline Committee, bring to the notice of the Vice-Chancellor, in writing, any fact or material which may both have been considered by the Examination Discipline Committee. If the Vice-Chancellor is satisfied that there is force in the representation of the candidate he may refer back the case to the Examination Discipline Committee for reconsideration.

10. In the affidavit-in-opposition filed on behalf of the respondent-authority, it was mentioned that the representation submitted by the petitioners were referred to the Examination Discipline Committee for consideration, that the matter was re-considered by the said committee and that the committee had unanimously upheld its earlier decision. It was further averred in their affidavit-in-opposition that the committee's decision was communicated to the petitioners vide letter dated 17.9.2008. Neither in the impugned notification dated 23rd/28th July, 2008s nor in the letter dated 17.9.2008, the exact nature of the act [as mentioned in Clause (n)] alleged to be committed by the petitioners was mentioned. Ends of natural justice demand that adequate opportunity should be given to a person to explain his case before imposing any penalty. In their representation, the petitioners clearly stated that they could not understand the exact nature of unfair means alleged to be committed by them. In the writ petition also, the petitioners stated that they did not understand the exact nature of unfair means alleged to be adopted by the petitioners. They further stated that they never adopted any unfair means in the examination hall and that no examiner/invigilator found them adopting any unfair means. Therefore, the basis of concluding that the petitioners had adopted unfair means should have been disclosed.

11. The respondent-authority should have indicated as to which one of the unfair means as mentioned in Clause 4(n) of GD-6 was adopted by the petitioners so that the petitioners could have submitted proper explanation/representation as contemplated by Clause 7(g). In view of the above, this Court is of the considered opinion that for the ends of justice, it would be appropriate to direct the respondent-authority to inform the petitioners regarding the type/nature of unfair means adopted by them so as to facilitate them to submit their explanation/representation as provided by Clause 7(g).

12. In the light of the above discussion, it is directed that the respondent-authority, within one month from the date of receipt of this order shall furnish to the petitioners detailed information, indicating therein, the specific act of unfair means allegedly committed by the petitioners. Thereafter, the petitioners may submit representation which shall be disposed of by the respondent-authority afresh after giving an opportunity of being heard within a period of one month from the date of receipt of such representation, if so filed by the petitioners under Clause 7(g) OD-6.

13. With the above observations and directions, both the writ petitions are disposed of. Return the concealed answer scripts submitted by the learned

Counsel for the respondents with the Registry.