

GAHC010003782023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/3/2023

JYOTI MOHAN NATH AND 4 ORS.
/O KAMALESWAR NATH, R/O VILL- KHASSONAPUR, P.O.-
MARUWACHOWKI, DIST- DARRANG, ASSAM, PIN-784145

2: MEHDI HASAN CHOUDHURY
S/O FAIZUR RAHMAN CHOUDHURY
R/O HOJAI TOWN
P.O.
P.S. AND DIST- HOJAI
ASSAM
PIN-782435

3: MS SHIBANI PAUL
D/O HARAN CHANDRA PAUL
R/O LUMDING TOWN
P.O. AND P.S.-LUMDING
DIST- HOJAI
ASSAM
PIN-782435

4: SUBIR MAZUMDER
S/O SRI SANTOSH MAZUMDER
R/O SHITALABARI COLONY
WARD NO. 1
P.O. AND P.S.-LUMDING
DIST- HOJAI
ASSAM
PIN-782435

5: SAIDUL HAQUE
S/O IDRIS ALI
R/O NAUKHATI BAZAR
P.O.
P.S. AND DIST- HOJAI

ASSAM
PIN-78243

VERSUS

THE GAUHATI UNIVERSITY AND 2 ORS.
GOPINATH BORDOLOI NAGAR, JALUKBARI, GUWAHATI-781014, DIST-
KAMRUP (M) ASSAM, REPRESENTED BY ITS REGISTRAR

2:THE CONTROLLER OF EXAMINATIONS
GAUHATI UNIVERSITY
GOPINATH BORDOLOI NAGAR
JALUKBARI
GUWAHATI-781014
DIST- KAMRUP (M)
ASSAM

3:THE DIRECTOR
INSTITUTE OF DISTANCE AND OPEN LEARNING
GAUHATI UNIVERSITY (GUIDOL)
GOPINATH BORDOLOI NAGAR
JALUKBARI
GUWAHATI-781014
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. SAIENDRA DEKA

Advocate for the Respondent : SC, G U

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

For the Appellants : Mr. T. Chakraborty, Advocate

**For the Respondents : Mr. P. J. Phukan, Advocate
(For Respondents No. 1,2 & 3)**

Date of Judgment & Order: 16.02.2023

(Soumitra Saikia, J)

Heard Mr. T. Chakraborty, learned counsel for the appellants. Also heard Mr. P. J. Phukan, learned standing counsel for the respondent Nos. 2, 3 & 4.

2. This appeal is directed against the order dated 04.01.2023 passed in WP(C) No. 7211/2022 by the learned Single Judge. The appellants had taken admission in the Gauhati University, Institute of Distance and Open Learning (IDOL, in short) for the academic year 2016-17 for pursuing their M.A. and M.Sc degrees. The appellant No. 1 although cleared the 1st, 2nd and 3rd Semester Examinations, he could not appear in one paper of his 4th Semester Examination due to his illness. The appellants No. 2, 3, 4 & 5 cleared their 2nd, 3rd and 4th Semester Examination; however, the appellants No. 2 & 3 could not clear two papers in the 1st Semester Examination and the appellants No. 4 & 5 could not clear their 1st paper in 1st Semester. The appellants were required to clear their semester examinations within 2021 but due to COVID-19 Pandemic situation, no examination was held in the year 2020-2021 and as such they were entitled to complete their examinations on 2022. The University by notice dated 07.09.2022 asked all the candidates to appear for the betterment/back paper examinations for M.A., M.Sc., M.Com and to fill up their forms online for examinations within 30.09.2022 for the 1st and 4th semester examinations to be held in November-December, 2022. Subsequently, another notice was issued on 28.09.2022 extending date for filling up of examination forms till 14.10.2022. When the appellants tried to fill up their forms through online mode, it was found that there is no provision for filling up examination forms for back paper of 1st and 4th Semester of 2016-17 Batches. The appellants approached the University authorities requesting them to fill up their forms through offline mode

however the same was declined by the University authorities. The appellants approached this Court by filing writ petition being WP(C) No. 7211/2022 on the ground that they were not permitted to clear backlog papers and the five years period in respect of their batch i.e. 2016-17 batch had not been completed in view of the COVID-19 Pandemic situation. It was further urged that for batches 2014-2015 and 2015-16, the University authorities had granted the candidates seven years and six years respectively to complete their courses by considering the COVID-19 Pandemic situation. It was further urged that in respect of other Distance and Open Learning mode provided by Dibrugarh University, the prospectus clearly mentioned that all semester examination must be cleared within five years from the date of admission to the 1st semester to any programme. Similarly, the prospectus of Krishna Kanta Handique State Open University, the maximum period for completion of Master Degree through Distance and Open Learning Mode Programme is six years whereas no such stipulation is found in the prospectus of Gauhati University for the batch of 2016-17.

3. The writ petition was contested by the University authorities. The learned Single Judge upon consideration of the entire matter dismissed the writ petition holding that the appellants as the petitioners therein had failed to establish that the action of the respondent authorities was arbitrary. The learned Single Judge held that the appellants/writ petitioners failed to place anything on record about existence of any special circumstances to grant them more time to appear in the examination notified by the respondent University by Notice dated 07.09.2022 and Notice dated 28.09.2022 to clear their back papers in the 1st and 4th Semesters examinations under the Gauhati University Institute of Distance and Open Learning (IDOL). The learned Single Judge held that there cannot be any

negative equality. Aggrieved the present writ appeal is preferred by the writ petitioners as the appellants on the following grounds:-

“1. For that the Learned Single Judge erred in law as well as on facts while dismissing the writ petition.

2. For that, the learned Single Judge failed to appreciate the issues that were required to be decided on the basis of records and passed the impugned order dated 04.01.2023 without considering the relevant facts, which resulted in failure of justice.

3. For that, the learned Single Judge failed to consider the fact that in prospectus issued by the respondent university for the session 2016-2017 for Open and Distance Learning, it was not mentioned about any time frame within which a candidate is required to complete the course. Further, no such time frame was ever communicated to the petitioners prior in point of time. Under such circumstances, the petitioners ought to have given one opportunity to appear in the examination to complete their degree courses. Under such circumstances, the impugned order dated 04.01.2023 ought not to have passed.

4. For that the learned Single Judge failed to consider the fact that the same University had given as many as 7 and 6 attempts to the 2014-2015 and 2015-2016 batches due to Covid-19 pandemic and the petitioners are also similarly situated, inasmuch as for the year 2020, no examination was held due to Covid-19 and as such, one final Opportunity ought to have granted to the petitioners to acquire their degree courses.

5. For that the learned Single Judge failed to appreciate the fact that

in the prospectus issued by other universities like Dibrugarh University and Krishna Kanta Handiqui State Open University specifically mentions about the duration of the courses but no such provision was made in the prospectus issued by the respondent university for the session 2016-2017. Moreover, to deny the petitioners from appearing in the examination, the respondent authorities relied on the prospectus issued by Gauhati University for the session 2016-2017 for regular course and the same was also considered by learned Single Judge while passing the impugned order dated 04.01.2023, which resulted in miscarriage of justice.

6. For that the Learned Single Judge failed to appreciate the fact the UGC (ODL Programmes & OL Programmes) Regulations 2020 as relied by the respondent university in support of their case could not have made retrospective application to the case of the petitioners who got admission in the year 2016-2017.

7. For that as an equitable relief, the petitioners ought to have given one opportunity to appear in the examination which is scheduled to be held from 08.01.2023 so that they can acquire their degree courses.

8. For that in any view of the matter the impugned order dated 04.01.2023 passed in WP(C) No.7211/2022 is liable to be set aside and quashed”.

4. The learned counsel for the appellants reiterated his submissions made before the learned Single Judge and urged that the appellants were admitted to the M.A. and M.Sc courses for the batch of 2016-17 under the Gauhati University Institute of Distance and Open Learning (IDOL). According to the

appellants, there is no specified time prescribed in the prospectus in the Gauhati University Institute of Distance and Open Learning (IDOL). It was urged that because of COVID-19 Pandemic situation, since the year 2020 no examinations were held. Further, for the batches of 2014-15 and 2015-16, the same University authorities had permitted seven years and six years respectively to the candidates enrolled thereunder to pursue their courses. Whereas, insofar as the appellants are concerned, although there is no time prescribed in the prospectus of M.A. and M.Sc courses under the Gauhati University Institute of Distance and Open Learning (IDOL) for the batch of 2016-17 and also that since 2020 no examinations were held because of COVID-19 Pandemic situation, the appellants cannot be debarred from clearing their semesters/back papers as similar opportunities have been offered to the candidates who had enrolled for similar courses for the year 2014-15 and 2015-16. The learned counsel for the appellant urged that although they approached the authorities for permitting them to submit their forms offline, their request was declined. It is further urged that similar courses under Dibrugarh University and Krishna Kanta Handique State Open University had prescribed time period in the prospectus offered. However, in respect of the courses enrolled by the appellants no such time period specified in the prospectus issued by the Gauhati University Institute of Distance and Open Learning (IDOL).

5. The learned counsel for the appellants submits that the Gauhati University Institute of Distance and Open Learning (IDOL) is a part of the Gauhati University and as such the Rules and Regulations followed by Gauhati University are also equally applicable to the Gauhati University Institute of Distance and Open Learning (IDOL) and the courses offered by it.

6. Per contra, Mr. Phukan, learned standing counsel for the department

disputes the contentions raised by the learned counsel for the appellants. The learned counsel for the University submits that in the prospectus for the batch of 2016-17, it is provided that a student must clear all semester examinations including "repeat" and "betterment" chances within a period of four years from the date of admission to the 1st Semester Course and a student will get a maximum of three chances to clear a particular Semester." It is submitted that the UGC (ODL Programs & OL Programs) Regulations, 2020 also provides that the "minimum duration" for completion of degree both at the Undergraduate and Post Graduate Levels in Open and Distance Learning (ODL) Mode and Online (OL) Mode shall be in accordance with the UGC Notification of Specification of Degrees 2014; where the maximum duration shall be doubled of the minimum duration of the respective programs". It is submitted that since "minimum duration" for completion of M.A./M.Sc. Degree under Gauhati University Institute of Distance and Open Learning (IDOL) is two years, as per the UGC's Notification, the maximum duration will be four years.

7. The learned counsel for the Department submits that besides the prescription of the period, there is a requirement of maximum number of chances available to a candidate to clear the semester exams. The learned counsel for the department submits that since it is the batch of 2016-17, the maximum period will be in the year 2020. That apart, a maximum of three chances are available to the candidates under this programme and the appellants have availed all the three chances. Accordingly, their request for allowing them to fill up their examinations form on offline basis pursuant to the notices dated 07.09.2022 and 28.09.2022 was not entertained.

8. The learned counsel for the respondent submits that the learned Single Judge upon consideration of the submissions made had correctly dismissed the

writ petition and there is no infirmity in the Judgment appealed against the appeal should be dismissed.

9. The learned counsels for the parties have been extensively heard and the pleadings on record as well as the impugned order dated 04.01.2023 passed by the learned Single Judge have been carefully perused.

10. It is seen that the primary ground urged by the learned counsel for the appellants before us is that there being no time period specified in the prospectus relating to the batch of M.A. and M.Sc. courses of 2016-17 under the Gauhati University Institute of Distance and Open Learning (IDOL) as compared to similar distance programme conducted under the Dibrugarh University and the Krishna Kanta Handique State Open University.

11. The learned counsel for the appellants, however, did not support his contentions by any University / UGC / Government Notification to contend that merely because that the prospectus does not specified any time period, the candidates who have enrolled for a particular courses can avail of any number of chances to clear their backlog/semesters exams. The prospectus of any particular course gives an overview of the course, the papers, the facilities offered by the University/Department, fees, the time scheduled for classes etc. It is not disputed by the appellants that UGC Regulations are equally applicable to Gauhati University Institute of Distance and Open Learning (IDOL). It is also not disputed that under the UGC Regulations, the maximum period for a Distance and Open Learning Programme for M.A./M.Sc course is four years. That apart, the respondents categorically averred in their affidavit to the writ petition, that a candidate will be permitted a maximum of three chances to clear the backlog/semesters examinations. The appellants have not denied such specific averments made by the University by referring to any

Rules/Regulations/Notification. The mere fact that prior batches were allowed extended time to complete/clear backlog papers/semesters examinations cannot be a ground to confer the same benefit to the appellants as the same are not permitted by the Rules/Regulations. The law is well settled that there can be no negative equality.

12. We have given our anxious thoughts to the contentions raised by the parties. We find that the appellants have not been able to make out any case calling for any interference to the Order dated 04.01.2023 passed by the learned Single Judge impugned in the present appeal. The learned Single Judge has considered the matter and has arrived at a finding, which in the facts and circumstances of the present case, we do not find any ground to disagree with the conclusions arrived at by the learned Single Judge in the impugned order dated 04.01.2023 passed in WP(C) No. 7211/2022. Accordingly, we hold that the appeal is bereft of any merit and deserves to be dismissed. The findings arrived at by the learned Single Judge of the impugned Order are sustained.

13. The Writ Appeal being devoid of any merit and the same is accordingly dismissed. No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant