

GAHC010228332022



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

Case No. : WP(C)/7211/2022

JYOTI MOHAN NATH AND 4 ORS
S/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. SAILENDRA DEKA
Advocate for the Respondent : SC, G U

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

04-01-2023

Heard Mr. T. Chakroborty, learned counsel for the petitioners and Mr. P J Phukan, learned Standing counsel, Gauhati University for the respondent Nos. 1 to 3.

2) In the year 2016-17, the petitioners took admission in the Gauhati University Institute of Distance and Open Learning (IDOL, in short) to pursue their Post Graduation from the said University through the process of Distance and Open Learning.

- 3)** Petitioner No. 1 took admission for M.A. in History, petitioner No. 2 took admission for M.A. in English, petitioner Nos. 3 and 4 took admission for M.Sc. in Mathematics and petitioner No. 5 took admission for M.A. in Assamese.
- 4)** The petitioner No. 1 cleared his 1st, 2nd and 3rd Semester Examinations but could not pass in one paper of his 4th Semester Examination and also could not appear in the examination held in October, 2021 because of his illness.
- 5)** The petitioner Nos. 2 & 3 cleared their 2nd, 3rd and 4th Semester Examination; however, they could not pass two papers in the 1st Semester Examination.
- 6)** Similarly, the petitioner Nos. 4 & 5 also cleared their 2nd, 3rd and 4th Semester Examination; but they are yet to pass one paper in the 1st Semester Examination.
- 7)** The respondent in the Gauhati University on 07.09.2022 issued a notice informing the candidates that betterment/back paper examinations for the M.A., M.Sc., M.Com. 1st and 4th Semester as well as M.Sc. IT/B.Sc. IT/BCA/MCA 1st, 4th, 6th Semester and the previous examinations under Gauhati University IDOL shall be held in November-December, 2022. By the said notice dated 07.09.2022 the respondent University also informed the appearing candidates to fill up their Online Examination Form specifying that 30.09.2022 as the last date for filling up of such form, informing further that there will be no provisions for Offline Examination Form fill up.
- 8)** On 14.09.2022, the respondent University issued an addendum in addition to the said notice dated 07.09.2022, noted above, notifying that (i) no learner can apply offline, (ii) all payments have to be made by the learners online and (iii) no learner can deposit any offline form or pay any offline fee to the approved study centers.
- 9)** Later, by another notice dated 28.09.2022, the respondent University extended the date of filling up of such Online Examination Form upto 14.10.2022.
- 10)** Petitioners stated that pursuant to the said notice dated 07.09.2022 of the respondent University when they tried to fill up their Examination Form through Online mode for their back papers in the concerned website of the said University, they did not find any provisions

for filling up of such Examination Form for the batch of 2016-2017 in respect of 1st and 4th Semester back papers and as such, they could not fill up their examination form for the ensuing 1st and 4th Semester Examination of M.A. and M.Sc. of the previous examinations under Gauhati University IDOL.

11) It is stated that since in the year 2020, no examinations were held and the petitioners are yet to complete the five years period for completing the course, which is yet to expire, they approached the respondents in the Gauhati University, but they refused to consider their case. In that regard, when they approached the authorities in the UGC, they have been informed that they had no role in the matter and it is the University concerned with whom they should pursue the matter.

12) Petitioners contended that the respondent University had given seven years time to the 2014-2015 batches and six years time to the 2015-2016 batches enabling the candidates to clear their back papers as evident from the results declared on 09.09.2021 and 13.09.2021 by the respondent University.

13) Since the respondent University had given seven years and six years time to its students pertaining to the batches of 2014-15 and 2015-16 respectively, therefore, the petitioners submitted that they cannot be treated differently, as the period of five years was to expire only in the year 2022, where last date of filling up of application form for the said examination was extended up to 14.10.2022 and as no examinations were held for the academic year 2020 due to the outbreak of Pandemic Covid 19, the petitioners lost one academic calendar and therefore, they are entitled to complete their back papers in the ensuing examinations likely to be held in November-December, 2022.

14) Petitioners submitted that in the prospectus for the year 2016-17 the respondent University did not mention regarding any time frame within which a candidate is required to complete his/her course and as such, the respondent University cannot debar the petitioners to submit their Examination Form, more particularly without any prior notice to them.

15) Petitioners stated that the Directorate of Open and Distance Learning, Dibrugarh University as well as the Krishna Kanta Handique State Open University in their prospectus

clearly mentioned that the maximum time period for completion of Master Degree is five years and six years respectively.

16) Petitioners stated that entire action of the respondent University giving them only four years period to complete their Semester examinations is arbitrary.

17) Being aggrieved with such action on the part of the respondent University, the petitioners have filed this writ petition on 10.11.2022 praying amongst others for a direction to the authorities in the respondent University to allow them to fill up their examination form for their back papers of 1st and 4th Semester of Master Degree for the examinations to be held in November-December, 2022 and to direct the respondent University to accept their Examination Form for the said examinations to be held in November-December, 2022 with regard to their back papers of 1st and 4th Semester of Master Degree.

18) The respondent University has filed its affidavit in the matter on 29.11.2022 stating that Gauhati University Institute of Distance and Open Learning (IDOL) is an integral part of the Gauhati University and its examinations are conducted as per Rules and Regulations of the Gauhati University as provided in the GU IDOL's Prospectus of 2016-17, wherein the Gauhati University's Prospectus of 2016-17 (regarding Semester System and Credit Grading System) it is clearly stipulated that –

“A student must pass all his Semester Examination 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.”

19) The respondent University also stated that the UGC (ODL Programs & OL Programs) Regulations, 2020 also provides that the “minimum duration” for completion an award of degrees 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 of same “shall be double the minimum duration of the respective programs”.

20) Respondent University submitted that since the “maximum duration” shall be of four years for the M.A./M.Sc. Degree concerning the petitioners, as the “minimum duration” is of two years for the said M.A./M.Sc. Degree as per the UGC's Notification of Specification of

Degrees 2014, published in the Gazette of India on 05.07.2014, therefore, the respondent University complied with the specifications provided by the UGC. It is stated by the respondents that following the same, the learners, like the petitioners of the batch of 2016-17 should clear their respective examinations within the "maximum duration" by the year 2020.

21) Respondent University submitted that since the "maximum duration" of "four years" and also the "maximum of three chances" with regard to the petitioners have already expired, therefore, their request to allow them to fill up examination forms pursuant to the notices dated 07.09.2022 and 28.09.2022 neither can be entertained and nor can be considered. Respondents also stated that "illness" cannot be a ground to allow any learners, who have another special chance to appear in an examination held subsequently.

22) With regard to granting of opportunities to appear in the examinations for the learners of 2016-17 batch, the respondent University submitted that the learners of said 2016-17 batch have been considered under certain special circumstances due to outbreak of pandemic Covid 19 as their four years maximum duration was over by the year 2020 and as such, a special chance was given to the learners of the said batch of 2016-17.

23) Regarding the prospectus of Dibrugarh University and the Krishna Kanta Handique State Open University, the respondent University stated that those have no bearing with the Gauhati University and further stated that the prospectus of the two Universities mentioned and annexed by the petitioners are of the year 2020-2021.

24) Perused the provisions of UGC (ODL Programs & OL Programs) Regulations, 2020 placed before the Court by Mr. Phukan, learned Standing counsel, Gauhati University.

25) On perusal of the Gauhati University Institute of Distance and Open Learning Prospectus of the year 2016-17, annexed by the petitioners with their writ petition, it is seen that at Clause 3 of the said Prospectus that relates to "Programmes of Study", the duration of Master Degree Programmes for the subjects of History, English, Mathematics and Assamese are of two years each and the mode are of four Semester in each of such subjects.

26) Clause 7 of the said Prospectus that relates to "Examination & Evaluation" reads as follows –

“The GU IDOL is an integral part of the Gauhati University. All Examinations for GU IDOL Learners are conducted as per Rules and Regulations of the Gauhati University by the Controller of Examinations, G.U. Any query related to the examinations may be made to the Controller of Examinations, G.U. through the Director, GU IDOL.”

27) On perusing the Gauhati University Prospectus of the year 2016-17, pertaining to the Semester System and Credit Grading System annexed by the respondent University along with its affidavit filed on 29.11.2022, it is seen that Clause 12 under “Evaluation under Semester System” specifies that –

“A student must pass all his Semester Examinations, including ‘repeat’ and ‘betterment’ chances, within four years from the date of admission to the First Semester Course. A student will get a maximum of three chances to clear a particular Semester”.

28) It is seen that petitioner Nos. 2, 3 and 4 have exhausted the 3rd chance of their respective First Semester Examination held in January, 2021, which they could not clear. Similarly, the petitioner Nos. 1 and 5 exhausted the 3rd chance of their respective Fourth Semester Examination held in November, 2019, which they failed to clear.

29) Moreover, the petitioners took admission in the Gauhati University Institute of Distance and Open Learning for their Post Graduation in the year 2016-17 and they have completed four years period in the Session 2020-21.

30) Furthermore, the petitioner No. 1 though stated that he could not appear in the examination held in October, 2021 because of his illness, but he did not place any document in the writ petition to support his said submission.

31) It is seen from the Annexures annexed by the petitioners that 14th October, 2022 was the last date for filling up of the Online Examination Form for the previous examinations under Gauhati University IDOL to be held in November-December, 2022, where there was no provision for filling up of Offline Examination Form for the said examination. The said last date of filling up of Online Examination Form of the said examination was not extended beyond 14.10.2022 by the respondent University.

32) It is well settled that the last date/cut off date of submission of form/application cannot be extended by the Court in exercise of the power under Article 226 of the

Constitution of India as it is for the concerned authority to decide as a part of its executive policy as to which date and time should be considered for submission of filled up form and/or application, unless such decision is arbitrary.

33) But in the case in hand the petitioners have filed this writ petition only on 10.11.2022, after 26 days of expiry of last date of filling up of Examination Form for the said Examination on 14.10.2022.

34) As specified in Clause 7 of the GU IDOL Prospectus 2016-17, the academic year in which the petitioners have taken their admission in the GU IDOL, that relates to "Examination & Evaluation"; the petitioners have failed to place anything on record before the Court regarding their query submitted before the Controller of Examinations, Gauhati University through the Director, GU IDOL pertaining to the previous examinations under Gauhati University IDOL, notified by the respondent University on 07.09.2022. In the writ petition petitioners have made only statements on the basis of their knowledge in that regard but failed to place the same on records, as required under said Clause 7.

35) Petitioners have claimed that some candidates from the batches of 2014-2015 and 2015-2016 considered by the respondent University giving them more than five years period to complete their Master Degree. But as there was no examination in the year 2020 due to outbreak of pandemic Covid 19 and because of said special circumstances the respondent University considered the cases of the students of those batches. However, petitioners have failed to place anything before the Court about existence of any such special circumstances to grant them more time to appear in the examination notified by the respondent University on 07.09.2022 to clear their back papers in the first and fourth Semester and the previous examinations under Gauhati University IDOL. It is well settled that there cannot be any negative equality.

36) Petitioners relied on a decision of this Court decided on 10.07.2017 in WP(C) No. 5548/2012 in the case of *Moyan Uddin Ahmed -Vs- The Gauhati University and 3 others*. But the same is not applicable in the present case. In said case of *Moyan Uddin Ahmed* the Court in the interim on 23.11.2012 allowed the petitioner to submit his form for LL.B. Final Examination, as he approached in time and placed on record a notification of the respondent

University that LL.B. Degree can be obtained within six years from the date when the 1st LL.B. Preliminary Examination was due and in that case said petitioner appeared in the 1st LL.B. Preliminary Examination in March 2007. Accordingly, he appeared in the LL.B. Final Examination 2012, held in January 2013. But later the University did not declare his result. As such the Court by order dated 10.07.2017 directed the University to declare the result of the concerned examination of the said petitioner, since the University did not challenge the said Order of the Court dated 23.11.2012 and rather allowed the petitioner to appear in the said examination.

37) After hearing the learned counsels for the parties and considering the entire aspect of the matter, the Court is of the opinion that the petitioners have failed to establish the action of the respondent University as arbitrary. Rather, petitioners failed to place on record about the compliance of the relevant provisions following the specifications provided in the Gauhati University Institute of Distance and Open Learning Prospectus of the year 2016-17, the relevant year in which the petitioners took admission for their Master Degree in GU IDOL.

38) For the reasons above, this writ petition being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant