

125 14-12-2022
AKG
Ct. 238

**WPA 10725 of 2022
With
IA No. CAN 1 of 2022**

**G. M. Fariduddin Hasan
Vs.
State of West Bengal & Ors.**

Mr. Samim Ahammed,
...for the Petitioner
Mr. Raghunath Chakraborty,
Ms. Amrita De
...for Aliah University
Mr. Souradeep Banerjee,
Mr. Abhidipto Tarafder,
Ms. Gargi Mukherjee
...for the petitioner no. 5.
Mr. Ritoban Sarkar,
Mr. Rajib Ghosh
...for added Respondents
Mr. Tapan Kr. Mukherjee,
Mr. Somnath Naskar
...for the State

The petitioner applied for admission to the Ph.D. programme in Islamic Theology for the academic year 2021-2022 pursuant to an advertisement dated November 3, 2021 issued by Aliah University.

The petitioner was not successful in the selection process. He has filed this writ petition alleging, inter alia, that the admission process was not in conformity with the extant UGC Regulations and the Regulations of the University. The entire examination has been conducted in an unfair manner. The question paper was leaked and the favoured candidates of the selection committee have been admitted to the Ph.D. programme.

Mr. Samim Ahammed, learned advocate appearing for the petitioner places reliance upon Clause 5.4 of the University Grant Commission Notification dated May 5, 2016.

Clause 5.4 provides as follows :-

“HEIs as mentioned in Clause 1.2 shall admit candidates by a two stage process through:

5.4.1 An Entrance Test shall be qualifying with qualifying marks as 50%. The syllabus of the Entrance Test shall consist of 50% of research methodology and 50% shall be subject specific. The Entrance Test shall be conducted at the Centre(s) notified in advance (changes of Centres, if any, also to be notified well in advance) at the level of the individual HEI as mentioned in clause 1.2; and

5.4.2 An interview/viva – voce to be organized by the HEI as mentioned in clause 1.2 when the candidates are required to discuss their research interest/area through a presentation before a duly constituted Department Research Committee.”

He further refers to the “Regulations for the Award of Degree of Doctor of Philosophy (Ph.D.), Doctor of Litt., Doctor of SC. and Doctor of Law-2017” framed under the Aliah University Act, 2007 to suggest that Clause 5.6 of the said Regulations also provides that the syllabus of the entrance test shall

consist of 50 per cent of research methodology and 50 per cent shall be the subject-specific.

Mr. Ahammed submits that in the advertisement also, it was mentioned that the University will follow the U.G.C. notification as well as the Regulations of the University. He submits that at the time of examination, the petitioner found that 70 marks were allotted for research methodology and 30 marks were allotted for the subject. Mr. Ahammed submits that the University has acted in violation of statutory notification issued by the U.G.C. as well as its own Regulations.

Mr. Ahammed argues that such a violation in conducting the examination has vitiated the entire selection process. He also argues that rules were infringed intentionally only to favour some particular candidates.

Mr. Ahammed contends that the selection process was initiated by way of an advertisement indicating that U.G.C. notification would be followed for the selection. The rules of the game could not be changed during the selection process to favour some particular candidates.

Mr. Ahammed submits that different complaints were lodged by the students and also by the staff of the University before the Vice-chancellor alleging various illegalities including leakage of the question paper. He further submits that a complaint before the

officer-in-charge of Techno City Police Station was also lodged, but no steps have been taken by anybody.

Mr. Ahammed prays for the cancellation of the selection process and for a direction upon the University to carry out the recruitment strictly in accordance with the U.G.C notification and Regulations of the University.

Mr. Ritoban Sarkar, learned advocate appearing for the added respondents submits that it cannot be said that the petitioner or any of the candidates have been prejudiced due to the alleged violation of rules. The mere distribution of marks in a different pattern could not have prejudiced the candidates. He further submits that it was known to the petitioner at the time of examination that the marks for the subject and research methodology had been distributed in the ratio of 70:30.

He submits that the examination was conducted on March 12, 2022, and the result of the same was published on March 30, 2022. The petitioner did not approach this Court immediately after the examination. He approached this Court on June 14, 2022, only when he came to know that he was not successful. Therefore, this writ petition should not be entertained. In support of his submission, Mr. Sarkar places reliance upon the judgment reported at **(2001) 6 SCC 392 (State of U.P. Vs. Harendra Arora)**.

He further relies upon paragraph 19 of the judgment reported at **(2017) 4 SCC 357 (*Ashok Kumar Vs. State of Bihar*)** to argue that because of the alleged violation of the rules with regard to the distribution of marks, no prejudice has been suffered by the petitioner and therefore, simply because there was some procedural aberration, the selection process is not liable to be interfered with.

Mr. Souradeep Banerjee, learned advocate appearing on behalf of respondent no. 5 submits that after participation in the selection process and after being declared an unsuccessful candidate, petitioner is estopped from questioning the propriety of the selection procedure. Mr. Banerjee places reliance upon the judgment reported at **(2016) 1 Cal LT 299 (*Debabrata Mishra Vs. Union of India*)**.

Mr. Raghunath Chakraborty, learned advocate appearing on behalf of Aliah University does not deny the allegation with regard to the distribution of marks. He submits that on the date of the examination, an instruction-sheet was circulated amongst the candidates, which indicated that the written examination would be of 100 marks divided into two sections, 30 marks on the research of methodology and 70 marks on the subject.

Mr. Chakraborty also argues that the petitioner has not been prejudiced due to such distribution of marks since equal treatment has been meted out to

all the candidates.

Mr. Chakraborty further argues that the allegations with regard to the corrupt practice in conducting the examination are bereft of any material particulars. Some vague allegations have been made by the petitioner for which no judicial interdiction is called for.

Mr. Ahammed, in reply, submits that the petitioner was not aware of the violation of statutory rules in distribution of marks before he participated in the examination. It was known to him only at the time of examination and therefore, it cannot be said that the petitioner was estopped from challenging the selection process by participating in the examination.

I am of the view that the challenge of the petitioner with regard to the selection process in question cannot be sustained.

The facts involved in this case are somewhat similar to the facts involved in **Ashok Kumar (supra)**.

Paragraph 19 of the said judgment is quoted below :-

“19. In the present case, regard must be had to the fact that the appellants were clearly on notice, when the fresh selection process took place that written examination would carry ninety marks and the interview, ten marks. The appellants participated in the selection process. Moreover, two other considerations weigh in balance. The High Court noted in the

impugned judgment that the interpretation of Rule 6 was not free from vagueness. There was, in other words, no glaring or patent illegality in the process adopted by the High Court. There was an element of vagueness about whether Rule 6 which dealt with promotion merely incorporated the requirement of an examination provided in Rule 5 for direct recruitment to Class III posts or whether the marks and qualifying marks were also incorporated. Moreover, no prejudice was established to have been caused to the appellants by the 90 : 10 allocation.”

I am of the view that unless a substantial prejudice is demonstrated by the petitioner due to the alleged infraction of statutory rules, the petitioner cannot sustain the challenge.

The petitioner, like any other candidate, was expected to prepare for the research methodology and the subject namely, Islamic Theology. There was a distribution in the 30:70 ratio under the said two heads instead of the 50:50 ratio. It is not conceivable as to how the petitioner suffered any kind of prejudice due to such distribution of marks. The other examinees also wrote the said examination with the same distribution of marks. The selection process is not liable to be interfered with simply because there is

some departure from the regulation in the distribution of marks in absence of any prejudice being suffered by the petitioner.

With regard to the conduct of the petitioner, I find substance in the argument of Mr. Ahammed that the alleged violation or departure from the U.G.C. notification or the University regulations was not known to the petitioner before he participated in the examination. Therefore, he could not challenge the selection process before appearing in the examination. The petitioner was, therefore, not estopped from challenging the selection process. The fact, however, remains that the petitioner approached this Court after three months from the date of the declaration of result. He should have challenged the selection process immediately after the examination without waiting for the result to be out.

In view of the above discussion, I do not find any merit in the writ petition.

It is, however, expected that the officer-in-charge of the relevant police station will take necessary action on the basis of the complaint already lodged before it relating to leakage of question papers and other corrupt practices in conducting the examination provided the complaint discloses commission of any cognizable offences.

With this observation, WPA 10725 of 2022 along with IA No. CAN 1 of 2022 is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously in compliance with usual legal formalities.

(Kausik Chanda, J.)