



GAHC010215292023

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

Case No. : WP(C)/5740/2023

DIPIKA DAS @ DIPIKA AHMED AND ANR
W/O- AKHLASUL AHMED D/O- JAYANTA DAS, RESIDENT OF VILLAGE-
KANAIMARA PART-I, P.O. KANAIMARA, POLICE STATION- SOUTH
SALMARA, DISTRICT- SOUTH SALMARA MANKACHAR, ASSAM, PIN-
783135

2: AKHLASUL AHMED
S/O- SULEMAN AHMED
RESIDENT OF VILLAGE- KANAIMARA PART-I
P.O. KANAIMARA
POLICE STATION- SOUTH SALMARA
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 78313

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, HIGHER
EDUCATION DEPARTMENT, DISPUR, GUWAHATI-06

2:THE CONTROLLER OF EXAMINATION
GAUHATI UNIVERSITY
GUWAHATI-14

3:THE PRINCIPAL
DISPUR LAW COLLEGE
DISPUR
GUWAHATI-0

Advocate for the Petitioner : MR H BEZBARUA

Advocate for the Respondent : SC, HIGHER EDU



**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

JUDGMENT & ORDER (ORAL)

Date : 28-11-2023

Heard Mr. H. Bezbarua, learned counsel for the petitioners. Also heard Mr. P.J. Phukan, learned counsel for the respondents in the Gauhati University and Mr. S. Bhuyan, learned counsel for the respondents in the Higher Education Department of Government of Assam.

2. Considering the nature of the grievance raised we are not required to hear the Principal of Dispur Law College for the time being.

3. The petitioner No. 1 is originally a student of LLB course in the Dispur Law College at Guwahati. While she was undergoing the course, she got married to the petitioner No. 2 namely Akhlaul Ahmed who is a resident of village Kanaimara Part-I under Police Station South Salmara in the South Salmara Mankachar district of Assam and after marriage she is residing in her marital home in the South Salmara Mankachar district.

4. The circumstance in which the petitioner married her husband is stated to be unacceptable to her family members and accordingly, an apprehension is raised that if the petitioner returns back to appear in her final law examination from Dispur Law College, there may be a serious threat to her from persons who were inimical to her marriage. Accordingly, this writ petition is instituted for a direction that the petitioner No. 1 be allowed to seat in the LLB final examination from any of the centers from South Salmara Mankachar district so

as to avoid the possibility of untoward situation if she comes back to appear in the final law examination from the Dispur Law College.

5. Mr. P.J. Phukan, learned counsel for the respondents in the Gauhati University after referring to all the relevant rules and regulations that are presently in force makes a submission that under the existing rules and regulations it is not permissible for a student of one law college to appear in the final law examination from another law college and therefore, there will be a technical inconvenience to accept the prayer of the petitioners.

6. We respect the submissions of Mr. P.J. Phukan, learned counsel for the Gauhati University and do not want to impose it on the respondents in the Gauhati University to do something which is impermissible under the rules and regulations. But however, it has been pointed that the Vice Chancellor of the University under Rule 8 B(1)(4) of the Gauhati University Act, 1947 has a discretionary power to pass any order in any emergency which in the opinion of the Vice Chancellor requires an immediate action to be taken and in such event the Vice Chancellor may take any such action as he deems necessary and thereupon, at the earliest opportunity report his action to the officer authority or other body which in ordinary course, would have dealt with the matter.

7. Reference is also made to the provisions of Section 23 of the Assam General Clauses Act, 1915 which is *para-materia* to Section 21 of the Central General Clauses Act which provides that wherever by any Act, a power to make or issue notifications, orders, schemes, rules, forms, or bye-laws is conferred, then that power also includes a power exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notification, orders, schemes, rules, forms or bye-laws to made. By referring to Section 23 of the General Clauses Act, a submission is made that

even though the rules and regulation presently in force do not permit a student to appear in the final year law examination from a center other than the college where the student had undertaken the course but Section 23 of the General Clauses Act also provides a power to the authorities to deviate from the existing rules and regulations if the peculiar facts and circumstances of a particular matter may require it to be done.

8. Section 23 of the General Clauses Act as well as the Section 8 B (1) (4) of the Gauhati University Act, 1947 are extracted as below:

“23. Power to make to include power to add to, amend, vary or rescind orders, rules or bye-laws.

Where, by an Act, a power to make or issue notifications, orders, schemes, rules, forms, or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notification, orders, schemes, rules, forms or bye-laws so made.

8 B.(4). In any emergency which, in the opinion of the Vice-Chancellor, requires that immediate action should be taken, the Vice- Chancellor shall take such action as he deems necessary, and shall at the earliest opportunity thereafter report his action to the officer, authority or other body who or which in the ordinary course , would have dealt with the matter.”

9. A reading of the power of the Vice Chancellor of the Gauhati University under Section 8 B (1) (4) conjointly read with Section 23 of the Assam General Clauses Act, both provisions which are extracted as above, we are of the view if it is a situation in the nature of an emergency or an extreme situation where there is no other remedy available, the petitioner No. 1 may submit a representation to the Vice Chancellor of the Gauhati University stating in detail all the attending and relevant facts pertaining to the matter also providing the materials that there may be a serious threat to the safety of the petitioner No. 1 if she comes back to appear the final law examination from the Dispur Law College and in the event of such representation being made and upon the Vice



Chancellor, if satisfied with the materials that may be produced may pass any reasoned order as may be advised in exercise of the power under Section 8 B (1) (4) of the Gauhati University Act, 1947 read with Section 23 of the General Clauses Act, 1915. We request the Vice Chancellor to pass the reasoned order within a period of seven days from the date on which the petitioner may submit the representation.

10. It is stated that South Salmara Mankachar district may not have a law college. If it is so, the Vice Chancellor may examine as to which other law colleges would be suitable for the purpose and accordingly, if so finds, may pass the order.

Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant