



GAHC010225812023

Page No.# 1/7



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

Case No. : WP(C)/5868/2023

GANGARAM SAPKOTA
SON OF SRI KAMAL SAPKOTA,
RESIDENT OF FLAT NO. 1B,
RAJANI APARTMENT,
BYE LANE NO. 9,
GUWAHATI- 781003, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
PERSONNEL (A) DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
PUBLIC WORKS DEPARTMENT (ROADS)
DISPUR
GUWAHATI-6.

3:THE ASSAM PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS CHAIRMAN

JAWAHARNAGAR
KHANAPARA

GUWAHATI-22.

4:THE SECRETARY
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR



KHANAPARA

GUWAHATI-22.

5:THE PRINCIPAL CONTROLLER OF EXAMINATION
ASSAM PUBLIC SERVICE COMMISSION
JAWAHARNAGAR
KHANAPARA

GUWAHATI-22

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocates for the petitioner: Shri U.K. Nair, Sr. Advocate

Advocates for respondents : Shri T.J. Mahanta, Senior Advocate.
Shri S.R. Baruah, State Counsel.

Date of hearing : 09.10.2023

Date of judgment : 09.10.2023

Heard Shri U.K. Nair, learned Senior Counsel for the petitioner. Also heard Shri T.J. Mahanta, learned Senior Counsel for the APSC who had also produced the instructions including the original OMR sheets of the petitioner.

2. Shri S.R. Baruah, the learned State Counsel is also present.



3. The petitioner was an aspirant for the post of Assistant Engineer (Civil) under the PWD which was notified vide an advertisement dated 15.03.2023 for filling up 244 nos. of posts. The examination had consisted of an OMR based Screening Test followed by a *viva-voce*. It is the case of the petitioner that in the written examination which was OMR based, he had done reasonably well and there were also certain questions which according to the petitioner had incorrect answers in the multiple choice. It is also the case of the petitioner that there were 6 questions which had more than one correct answer and for one question the answer was incorrect. As per the assessment of the petitioner, marks which should have been given to him is 136 and the cut off marks being 120 as per the petitioner, he has not been dealt fairly and transparently.

4. Shri Nair, the learned Senior Counsel submits that the petitioner should not be made to suffer because of certain errors made on behalf of the respondents in having certain questions with incorrect answers and also ambiguous answers.

5. On the other hand, Shri Mahanta, the learned Senior Counsel has placed before this Court the written instructions including the OMR sheet of the petitioner in sealed cover. It is submitted that the exclusion of the petitioner from the shortlisted candidates is not because of the projection made by the petitioner but because of the fact that the petitioner did not follow the guidelines meant for the candidates while filling up the OMR sheet. It is the specific case of the Commission that there is a requirement to darken the Roll No., Test Booklet No. and Series and so far as the Series is concerned, such guidelines were not followed by the petitioner as there is no darkening of the

Series. The aforesaid submission made on behalf of the Commission is also found substantiated by the original OMR sheet of the petitioner which has been placed on record.

6. Shri Mahanta, the learned Senior Counsel has also placed reliance upon the following case laws wherein it has been laid down that it is a mandatory requirement for following the guidelines by the candidates in an examination conducted on the basis of OMR sheet.

(i) State of Tamil Nadu & Ors. vs. G. Hemalathaa & Anr. reported in **(2020) 19 SCC 430.**

(ii) APSC & Anr. vs. Izaz Yusuf Ahmed & Anr. reported in **2019 (3) GLT 754.**

(iii) Aatreyee Sharma vs. State of Assam & Ors. [Order dated 27.06.2023 in WP(C) 3801/2023]

7. In the case of **G. Hemalathaa** (supra), the Hon'ble Supreme Court was considering a matter pertaining to instructions to be followed by a candidate appearing in a recruitment process. In the said case, though the High Court had come to a conclusion that there was infraction of the instructions, a sympathetic consideration was made on humanitarian grounds. However, the Hon'ble Supreme Court did not approve the said approach and has observed as follows:

“10. In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said that such exercise of

discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.

...

...

13. *After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us."*

8. In the case of ***Izaz Yusuf Ahmed*** (supra), a Division Bench of this Court was considering a matter of identical nature wherein the answer sheets were in the OMR format and the series was also required to be darkened which was not done. The learned Single Judge though opined that the mistake was of the candidates, the same was unintentional and was a *bona fide* mistake and further that the candidates could not gain anything by such non-darkening. The said view was however disapproved by the Hon'ble Division Bench and by relying upon a decision of the Hon'ble Supreme Court, the following has been laid down:

“12. *A similar question had fallen for consideration before the Hon'ble Supreme Court in Civil Appeal No. 3899/2019 [SLP (C) No. 35187/2017] in the case of State of Uttar Pradesh & Ors. Vs. Upendra Nath Yadav. In the aforesaid case, the candidate had appeared for Uttar Pradesh Civil Police and Platoon Commander Direct Recruitment Examination and he was given a Booklet having Code SPU-02 No. 795933 of the Series-C, but he did not fill up the Booklet Series in the prescribed box of OMR Sheet. The candidate was not selected as he did not fill in the details in the prescribed box and his result was not declared on account of the said default. A writ petition having been filed by the candidate, a Single Judge of the High Court of Uttar Pradesh directed the respondents therein to evaluate the OMR Sheet of the candidate and the said decision was affirmed by the Division Bench. The State of Uttar Pradesh filed Special Leave Petition before the Hon'ble Supreme Court. It was contended on*

behalf of the State of Uttar Pradesh that it had been specifically provided in the instructions given to the candidates that the candidate must fill up his Roll number and Question Paper Series in the Answer Sheet at the specified place failing which the Answer Sheet would not be evaluated and zero mark would be awarded. As the required box for Question Booklet Series was not filled up by the candidate, the OMR Sheet of the writ petitioner was not evaluated by the computer machine. Accepting the arguments in the above background of facts, the Hon'ble Supreme Court set aside the judgements of the High Court.

***13.** The ratio of the aforesaid case applies with all force to the present factual matrix. The entire examination process was designed on evaluation of the OMR Answer Sheets by computer and, therefore, in such a scenario, human intervention is not permissible.*

***14.** In view of the above discussion, we are of the considered opinion that the impugned judgement of the learned Single Judge cannot be sustained and, accordingly, the same is set aside and quashed."*

9. In the case of **Aatreyee Sharma** (supra), this Court was again considering a similar situation involving darkening in the OMR sheet. By relying upon the case of **G. Hemalathaa** (supra) and also the case of **Izaz Yusuf Ahmed** (supra), relief was denied to the petitioner in that case.

10. Shri Nair, the learned Senior Counsel for the petitioner however has made an attempt to contend that even if the Series is not darkened, the candidature of a particular incumbent is still discernible and for that a deserving candidate should not be made to suffer. However, this Court has noticed that the Hon'ble Division Bench in the case of **Izaz Yusuf Ahmed** (supra) has categorically laid down that when the examination process was designed on evaluation of the OMR answer sheets by computer, human intervention is not permissible. Therefore, following the principles laid down by various judicial pronouncement, this Court is not able to accept the said submission, more so as the same may



lead to a floodgate. Furthermore, the requirement for correctly filling up the OMR sheet being mandatory in nature, that aspect cannot be gone into by this Court. It is to be kept in mind that all such verification and evaluation are done through the computer and therefore, the requirement of darkening of the relevant circles is mandatory. Further, when such verification is done through the computer, the identity of the candidate would not be discernible in absence of such darkening of any of the boxes containing various aspects of a candidate and the answer script.

11. In view of the above, this Court is of the opinion that no case for interference is made out and accordingly, the writ petition is dismissed.

12. The written instructions dated 04.10.2023 is made part of the records.

13. The OMR sheet, in original is returned back to the learned counsel for the Commission.

JUDGE

Comparing Assistant