



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 8th SEPTEMBER, 2015

S.B. : HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

W.P. (C) No. 44 of 2015

Petitioner : Master Himanshu Upreti
S/o Shri Dilli Ram Upreti,
R/o Assamlinzey,
East Sikkim.
Represented by his father Shri. Dilli Ram Upreti.

versus

Respondents : 1. The State of Sikkim,
Through the Secretary,
Human Resource & Development Department,
Government of Sikkim,
Tashiling, Gangtok,
East Sikkim

2. The Technical Director,
Human Resource & Development Department,
Government of Sikkim,
Tashiling, Gangtok,
East Sikkim.

Application under Article 226/227 of the Constitution
of India, 1950.

Appearance

Mr. A. K. Upadhyaya, Senior Advocate with Ms. Binita Chettri, Advocate for the Petitioner.

Mr. J. B. Pradhan, Additional Advocate General with Mrs. Pollin Rai, Assistant Government Advocate and Mr. Bhusan Nepal, Legal Retainer, (HRDD), for the State-Respondents.

Mr. D.K. Pradhan, Director, Technical Education, in person.



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J U D G M E N T (O R A L)

Wangdi, J.

1. This Writ Petition has been preferred by the Petitioner being aggrieved by his non-selection in the Common Entrance Test, 2015 (CET) for nomination to one of the medical seats.

2. It is stated by the Petitioner that, not being satisfied with the results of the CET, the State-Respondents were approached by him with an application under the RTI Act seeking information regarding his personal answer sheets in respect of 9 (nine) answer keys of the Biology paper and 1 (one) of Physics, which as per him, were wrongly marked by the examiners.

3. That after receipt of the documents and answers to the application under the RTI Act, he had requested for re-evaluation of the answer keys but this request was rejected by the State-Respondents. The present Writ Petition has thus been filed seeking for a direction upon the State-Respondents, *inter alia*, to rectify the answer keys correctly by panel of Experts and to direct the State-



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Respondents to allot one of the MBBS seats to the Petitioner if found eligible after evaluation.

4. The State-Respondents in their affidavit have denied the contentions and in substance have stated that there is no scope for the inadequacies arising as alleged by the Petitioner as the entire exercise of evaluation of answer keys was computer generated. It is also their contention that the Petitioner belongs to the OBC Category in the State List and, in order to be eligible to be considered for a seat earmarked for such category, a candidate is required to secure at least 100 marks out of the total of 200. The Petitioner having secured only 94 marks was, therefore, found ineligible to fall within the zone of consideration. It is averred in their counter-affidavit that when the Petitioner approached the Respondents-Department with the representation alleging discrepancies in the answer keys in respect of 9 (nine) answers in Biology and one Physics paper, a meeting was convened by the Principal Secretary, HRD Department on 09.06.2015 with the Subject Experts who had checked the answer keys earlier. On re-examination of the answer papers, it was found that the allegation of the Petitioner



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was not correct and the Petitioner, who was awaiting the outcome of the meeting, was immediately informed of what had transpired.

5. It may be relevant to note that by order dated 21.08.2015 this Court had directed that the State-Respondents may examine the factual aspects set out by the Petitioner in the Writ Petition as well as in CM Appl. No. 229 of 2015 (earlier CM Appl No.228/2015).

6. When the matter was adjourned on 04.09.2015 after being heard in part, the State-Respondents had been asked to examine as to whether the Petitioner would fall within the consideration zone for any one of the seats available if he, as asserted by him, obtained 103 marks had he been given all 9 (nine) answers correctly as each question was for 1 (one) mark. It had also been conveyed to both the sides that in the event the Petitioner would get 103 marks, then only would this Court consider referring the 9 (nine) Biology answer keys pointed out by the Petitioner for examination by the Central Board of Secondary Education (CBSE) as prayed for by him.



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7. Today, Mr. J. B. Pradhan, Learned Additional Advocate General, has conveyed that the Petitioner would not be eligible to be considered for any of the seats even if he obtained 103 marks considering the fact that there were others who had obtained higher marks but could not be allotted seats as there were others who had performed even better.

8. It is also submitted that out of the 9 (nine) answer keys suggested by the Petitioner in CM Appl No.229 of 2015 (earlier CM Appl No. 228/2015), he would have been entitled to 5 (five) more marks even assuming that those had been answered by him correctly in the CET. That going by his own illustration in paragraph 7 (seven) of his application, he would not have obtained any marks for the 4 (four) remaining questions as those had been wrongly answered by him in the CET. Thus, even assuming the contention of the Petitioner to be correct, he would have been entitled to only 5 (five) more marks. This when added to the 94 marks actually obtained by him, would enhance his marks to 99 but still would fall outside the consideration zone of 100 marks and above.



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9. For the reasons aforesaid and, upon hearing the Learned Counsel for the parties and careful examination of the records, I find substance in the submission of the Learned Additional Advocate General and, therefore, am of the view that it would be futile to proceed further with the Writ Petition. In any case, this Court would loathe to enter into disputed questions of fact raised in the Writ Petition.

10. In the result, the Writ Petition is dismissed.

11. No order as to costs.

(S. P. Wangdi)
Judge
08-09-2015

Approved for reporting : **Yes**

Internet : **Yes**