

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5495 of 2016

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1. Prabhakar Kumar Son of late Lala Prasad Singh, resident of Om Jagdambike, Jyotipuram Colony, Maurya Path, House No.89, P.O. Bihar Veterinary College, Khajpura, P.S. Airport, District Patna
 2. Prem Chand Kumar, Son of Binda Prasad Yadav, resident of Village- Babani, P.O. & P.S. Sirdala, District Nawadah (Bihar)
 3. Nandan Kumar son of Sakaldeep Prasad Singh, resident of Flat No.B-42, Eden Tower, Plot No.20, Sector-5, New Delhi, District South West Delhi (Delhi/ NCR) Pin- 110075
 4. Dinesh Nath Paswan, Son of Dwarika Paswan, resident of Village Nawadih, Post Nawadih, P.S. Rupow, District Nawadah
 5. Rajeev Ranjan, son of Doma Choudhary, Resident of Boudh Vihar Colony, P.S. Agamkuan, District Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
3. The Principal Secretary, Water Resources Department, Govt. of Bihar, Patna
4. The Bihar Staff Selection Commission, Patna through its Secretary
5. The Chairman, Bihar Staff Selection Commission, Patna
6. The Secretary, Bihar Staff Selection Commission, Patna
7. The Inspector General of Police, Economic Offence Unit, Patna
8. The Director, Forensic Science Laboratory, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vinod Kumar Kanth, Sr. Advocate Mr Bindhyachal Singh Mr Ashok Kumar Verma
For the State	:	Mr. Sharad Kumar Sinha, GP 15
For the Commission	:	Mr Kamla Kant Upadhyay Mr Chandra Bhushan Das
For E.O.U.	:	Mr Vishwanath pd. Sinha, Sr. Advocate Ms Soni Shrivastava
For the Pvt. Respondents:	:	Mr Dinu Kumar Mr Rajesh Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

CAV JUDGMENT

Date: 13-07-2016

Annexure- 12, dated 5.2.2016 is the decision of the Bihar Staff Selection Commission, by virtue of which the Commission has decided to cancel the result of the examination held for appointment



on the post of Junior Engineers, pursuant to advertisement no.0411 dated 8.6.2011. The petitioners not only want quashing of the said decision but even a direction upon the respondent Commission as well as the State to recommend their name and even appoint them on the post. Annexure-1 is the advertisement, which indicated vacancy of 2030 post of Junior Engineers which was required to be filled up by the Commission. Examination was held on 30.9.2012. While the process of evaluation etc. was still going on, a raid was conducted by a Special Task Force of Bihar Police on 19.10.2012 in the office of Staff Selection Commission on inputs that some persons were involved in entering the strong room of the Commission with the object of tampering with the OMR sheets of the candidates for a consideration.

2. The raid led to institution of an FIR (Annexure- 3) which was registered as Economic Offences PS Case No.23 of 2012.

3. The Commission published the result on 19.1.2013. Some of the candidates' names carried a star mark with a note that recommendation with regard to them will be subject to result of the Economic Offences PS Case No.23 of 2012. The above facts led to filing of a series of writ applications, some demanding cancellation of results where others for appointment based on the declaration of result.

4. In the present writ application, the petitioners have asserted that examination for the post of Auditors was also held, which also became a subject matter of controversy. This led to filing of CWJC No.5771 of 2013. The Court allowed the Commission to re-verify the OMR answer sheets of successful candidates to establish if there was some kind of discrepancy or not. The direction of the Court passed in CWJC No.5771 of 2013 is Annexure- 6.

5. The details of the dispute with regard to Auditors are not required to be gone into but to cut short the matter it seems that on the report of the Economic Offence wing as well as the Commission, a direction was issued for appointment of such candidates whose OMR sheets were found to be above board and unquestionable.

6. A similar kind of exercise was also carried out with regard to Junior Engineers. The report submitted before the Court which threw up the following facts have been crystallized in paragraph 14 of the writ application which reads as under :-

(i) Out of 1706 successful candidates, only 1478 presented themselves for verification in the office of the Commission.

(ii) Out of 1478 candidates, 96 candidates did not produce their carbon copies, as such, their OMR answer sheets could not be verified.

(iii) There were no discrepancies in the original and carbon copies of 1171 candidates.

(iv) 174 candidates were kept in the category of minor

discrepancies. The Commission categorized such candidates under the minor discrepancies in whose case, the differences between the carbon copy and the OMR answer sheets were up to four.

(v) 37 candidates were found with major discrepancies.”

7. It is also asserted that a kind of further scientific examination of the OMR sheets was conducted by the Forensic Science Laboratory, Patna by a Video Spectrum Methodology. The stand of the petitioners that even this examination indicated that 1171 OMR sheets were without any discrepancy, 174 OMRs were found with minor discrepancy and 371 OMRs were found with major discrepancies.

8. Learned senior counsel representing the petitioners take a stand that since so much of deliberation has been done and there does not seem to be any taint on 1171 OMR, the doubtful or OMR with major discrepancies should be segregated and recommendation should be made in favour of those candidates whose OMR were not found to be tampered with as per report of the Forensic Science Laboratory. If this is the position then there was no occasion for the Staff Selection Commission to take a decision in its meeting dated 5.2.2016 to cancel the entire results. In support of such proposition or relief instances have been brought to the notice of the Court by relying on some Supreme Court decisions, which are

reported in **(2014)6 SCC 644 (Joginder Pal v. State of Punjab)** and **(2015) 6 SCC 573 (Tanvi Sarwal v. CBSE)**.

9. It is of importance to note that earlier a CWJC No.2355 of 2013 was also filed by one Manoj Kumar and others, which was heard by a learned Single Judge and after much deliberation and exercise the learned Single Judge referred the matter to Division Bench in the following terms:

“ I would deem expedient in the interest of justice to refer all these cases to the Division Bench for an authoritative pronouncement on the issue as to whether if the entire examination process becomes vitiated on account of fraud/ irregularity, is the Commission still bound to make recommendation and the Government also liable to appoint persons of such tainted transaction.”

10. The Division Bench vide its order dated 26.2.2016 disposed of the writ applications with an observation that since a decision dated 29.12.2015 has been taken to cancel the advertisement no.0411, there was no occasion for the Division Bench to render any opinion but allowed opportunity to the successful candidates to move the Court and it was in this background that the present writ application has come to be filed.

11. The stand of the Commission is that in the review meeting held by the Hon'ble Chief Minister, Government of Bihar, the



Commission was advised to annul the entire examination in view of the controversy and taint involved in the said examination, the Commission decided to cancel the results. The Commission has no independent role on such matters since the Government is the requisitioning authority. The impugned order contained in Annexure-12 was taken by the Commission as a whole and they abide by the wisdom of the State Government.

12. A counter affidavit has also been filed on behalf of respondent no.7 i.e. Inspector General of Police, Economic Offences Unit, Patna. A reading of the said affidavit does certify the position that the sanctity of the examination was violated because certain people managed to gain access to the strong room and tampered with the OMR sheets to the extent they had a free run. This is not a matter of arguments or dispute any further because charge-sheets have also been filed not only against some persons, who were involved in this nefarious activity, but even against certain officers of the Staff Selection Commission whose complicity did emerge during the course of investigation. This aspect is not being disputed even on behalf of the petitioners as such because the position has come to be established not only in the previous proceedings which was the case of Manoj Kumar but the plethora of documents which were produced in the various affidavits exchanged either in the previous writ

application or the present writ application.

13. After going through the materials and evidence there is also variance with regard to the number of OMR which could be treated as un-violated and those which were doubtful or were tampered etc. etc. The Court has to, therefore, decide whether the matter should be judged in the light of what has been proposed on behalf of successful candidates by giving a direction to the Commission and the State to appoint such candidates whose OMR were not tainted or whether to restore faith and sanctity into such exercise for appointment on a public post, the decision of the State Government and the Commission should be supported.

14. During the course of arguments the Court was informed that almost 42% of the OMR sheets were violated/ tampered in one form or the other which, in the opinion of the Court, is a significant figure. The Court opines that faith in such examination has to be restored and by segregating the so-called untainted from the tainted will always leave a lurking doubt in the mind of the candidates about fairness in evaluation so made.

15. Appointment on a public post is a vital constitutional right guaranteed under Articles 14 and 16 of the Constitution of India and any recruitment and recommendation especially conducted by a public body of the State must be above all suspicion and allegation, if not

insinuation.

16. Even otherwise a conscious decision has been taken by the State Government after getting all the inputs at the highest level, on review since the controversies created a lot of disquiet in the society and brought a bad name. Faith in the system can only be restored by not interfering with the decision to cancel the examination in entirety and go for a fresh exercise.

17. It is not that in every situation the modality adopted⁹⁰- by the Hon'ble Apex court in the case of Joginder Pal and Tanvi Sarwal (supra) could be adopted as a general yardstick. We have other instances as well which has been relied upon by the State, which are ***(1994) 4 SCC 165 (Krishan Yadav v. State of Haryana) and (2002) 3 SCC 146 (Union of India v. O.Chakradhar)*** where the Hon'ble Supreme Court in the given facts has taken a contrary view.

18. In the present set of facts too much of churning has already been done. The factum of breaking into the strong room and tampering with OMR sheets is a concluded fact. Even the scientific opinions of different kinds have thrown up different figures. The fairness of evaluation has been violated and the variable figures even by different forensic evaluation does not help the situation because any candidate, who is placed in the category of suspects or tampered kind, will always be a dissatisfied soul especially when they can take

a plea that the said tampering cannot be linked with their conduct.

19. It is to quell any kind of speculation and heart burning that the Court would not like to interfere with Annexure- 12. A free and fair examination afresh can only restore the faith in the system.

20. The Court is further not impressed or persuaded that since in the case of Auditors a particular view point was adopted, even in the present case for appointment of Junior Engineers the same yardstick should be adopted. The Court cannot comment upon the deliberation which weighed in the matter of Auditors but the magnitude of tampering and violation of the sanctity of the examination does not enthuse this Court to interfere with the impugned order and the decision of the Commission or the State.

21. Writ application, therefore, is dismissed.

22. I.A. No.3661 of 2016 filed for impleading the two applicants as respondents is allowed.

(Ajay Kumar Tripathi, J)

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