

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7943 of 2017

1. Pt. Ujjwal Kumar Mishra Senior Secondary School, Hajipur, Vaishali through its Principal Umesh Mishra, son of Late Vedanand Mishra, resident of Village-Gaddopur, P.S.- Mahua, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Vaishali at Hajipur.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Director, Secondary Education, Bihar at Patna.
4. The District Magistrate, Vaishali at Hajipur.
5. The District Education Officer, Vaishali at Hajipur.
6. The Bihar School Examination Board, Patna through its Chairman.
7. The Secretary, Bihar School Examination Board, Patna.
8. The Examination Controller, Bihar School Examination Board, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mahendra Thakur, Advocate
For the Respondent/s	:	Mr. Umesh Narayn Dubey, AC to GP-27
For the Board	:	Mr. Lalit Kishore, Senior Advocate Mr. Gyan Shankar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 11-07-2017

What has emerged from the facts pleaded and submissions advanced on behalf of the parties is that the impugned action of the Bihar School Examination Board, Patna (hereinafter referred to as the Board) is a backwash of revelation that a Class-12th examinee for an annual examination held by the Board, who was declared topper in science stream by the Board, had fudged his age, which led to suspension of his result for the said examination. A criminal case has been lodged in that regard. The incident had caused a lot of embarrassment to the Board and its officials.



2. Pt. Ujjwal Kumar Mishra, Senior Secondary School, Hajipur, Vaishali, is admittedly a school recognized by the Board and has been allotted School Code vide Code No. 53708 from Session 2013-2015. This application has been filed on behalf of the said School through its Principal and in the background of facts and circumstances they have sought for the following reliefs:-

"(i) For direction to the respondent authorities not to take any coercive steps against the school of the petitioner by suspension of its recognition given by the respondent Board.

(ii) For direction to the respondent authorities not to cancel the registration of the students of the school of the petitioner who has appeared in matriculation Board Examination on 2017.

(iii) For direction to the respondent authorities to publish the result within the schedule time of the student of the school of the petitioner who has appeared in the matriculation examination 2017.

(iv) For direction to the respondent authorities not institutes any criminal case either against the petitioner or any student who had appeared in matriculation examination 2017 from the school of the petitioner."



3. The facts over which there is no dispute are that nearly 400-500 students of the said School had appeared for annual matriculation examination, 2017. It is the case of the petitioner that based on newspaper report, he learnt that the Board had cancelled registration of all students of the petitioner-School, who had appeared for 2017 matriculation examination, suspended the School Code of the petitioner-school and directed for registration of criminal case. According to the petitioner, correctness of the news item was not known and he subsequently learnt from the website of the Board, the action taken by the Board in this regard, which has been brought on record by way of Annexure-P-2 to this application.

4. From the said annexure, it appears that the Board had proceeded to initiate action against the school since it came to the knowledge of the Board that based on self declaration, over-aged students were allowed admission as regular students in the School by showing their respective age, substantially lower than their actual age and allowed them to participate in the annual matriculation examination, 2017. From the said Annexure-P-2 it appears that the District Magistrate, Vaishali had constituted a Four- man Committee. Based on appearance of the students, the four-man Committee reported that their dates of birth ranged from year 2000 to 2002 but they appeared to be between 25-30 years of age. The four- Man Committee recommended for an enquiry to be held by the District Education Officer, in this regard. The



District Education Officer, Vaishali, in his report, recorded that the students were admitted on the basis of their self declaration and not on the basis of the transfer certificates, issued by any previous school, which they had attended. The District Education Officer opined in his report that on the basis of declaration made by respective students, the school allowed admission of over-aged students by showing their much lower age, than the actuals. The District Education Officer recommended for cancellation of registration of the students of the School and one another school and suspension of their school Codes. Acting on the report of the District Education Officer, the Chairman of the Board, decided to cancel the registration of such examinees, which had illegally got their admissions materialized in the school as regular students on the basis of declarations made by them. The Chairman of the Board also decided to suspend the affiliation of the school and to take further action after seeking explanation from them. The Chairman of the Board directed the District Education Officer, Vaishali to register criminal cases against the principal of this school and another school and all students who had got themselves admitted in the school and registered for the examination, on the basis of declaration made by them.

5. This gave the petitioner cause of action to approach this Court by filing present writ application, seeking the reliefs as quoted above on 24.05.2017.

6. Subsequent to filing of the writ application, the



Board in its meeting, dated 29.05.2017, has decided finally to cancel the registration of all such students, who had appeared from the petitioner-school as regular students after their admission in the school on the basis of self declaration as regards their age etc. The Board has decided not to publish the results of such students. The Board in its meeting has further, decided to seek explanation from the School after suspending their affiliations.

7. In the counter affidavit filed on behalf of the Board, the 'core issue' involved in the present controversy has described as the petitioner-school making over-aged students between the age group of 28-30 years, appear for the annual matriculation examination, 2017, fraudulently showing them to be regular students. On complete reading of stand taken on behalf of the Board in the counter affidavit and submissions advanced on its behalf, it is quite evincible that the Board has two points against the petitioner-school and its students:- (i) The school allowed admission of the students based on their self declaration as regards their age and other details without any verification and (ii) Respective age of the students which were declared and entered in the school register were much lower than their actual age.

8. I must indicate at this stage itself, before taking up the rival submissions on behalf of the parties that no Medical Board was admittedly constituted by the Board nor any expert Committee was asked to enquire into the allegation



that the students were over-aged. The decision of the Board that the students are over-aged is based on individual perception of the District Education Officer and the Members of the Committee. There is also no dispute about the fact that the students of the School were not noticed or asked to explain why their registrations be not cancelled or their results be not withheld.

9. The Board has brought on record a report submitted by the Sub-Divisional Officer, Mahnar, dated 03.03.2017, based on an enquiry conducted by a team consisting of:-

- (i) Sub-Divisional Officer, Mahnar
- (ii) Sub-Divisional Police Officer, Mahnar
- (iii) Land Reforms Deputy Collector, Mahnar
- (iv) Block Education Officer, Mahnar.

10. The said report has been prepared on the basis of a random check done by the said Committee, where 40 examinees out of 400 of Kendriya Rajeshwari Ucha Vidyalaya, Hazipur and 368 examinees from petitioner-school, taken together, were questioned. Those 40 students, as would appear from the said report, dated 03.03.2017, could not disclose correctly the names of the Schools and the Principals. They disclosed their age to be 20 years, 24 years, 28 years and 30 years. They were residents of Patna, Saran and Hazipur and they appeared not to be the regular students of



the Schools.

11. The District Magistrate, Vaishali, thereafter, asked the District Education Officer, Vaishali to enquire into the matter in the light of report submitted by the four-man Committee. The District Education Officer, Vaishali, constituted a three member enquiry committee and submitted its report to the Board on 27.04.2017, which has been brought on record by way of Annexure-D to the counter affidavit. He too, reported the same as was reported by the Sub-Divisional Officer, Mahnar. It has been mentioned in the report, dated 27.04.2017 that the examinees appeared to be 'between 25 to 30 years of age'. In addition, the District Education Officer, Vaishali reported that 440 students were admitted in Class VIII on the basis of declaration and no student was admitted on the basis of transfer certificate.

12. The report submitted by the Sub-Divisional Officer, Mahnar and the District Education Officer, Mahnar are the two materials which are the basis for impugned action of the Board.

13. Learned counsel appearing on behalf of the petitioner has submitted that there is no illegality in taking admission as regular students in Class VIII on the basis of declaration. He has submitted that there is no statutory provision or guideline or instructions issued by the Board or any competent authority, requiring the Schools to take admission only on the basis of transfer certificates. It is his



contention that the materials relied on by the Board could not have formed the basis for a declaration that all the students who had appeared for 2017 matriculation examination from the petitioner's school were over-aged and their admissions were illegal, the same being based on declaration made by them.

14. Mr. Lalit Kishore, learned Senior counsel appearing on behalf of the Board, justifying the action of the Board, has submitted that the irregularity and illegality in admitting the students by the petitioner's school and allowing them to fill up forms for matriculation examination being writ large, no in-depth enquiry was required as that would have been a mere formality. He contends that since the students, who had appeared for the examination in their appearance seemed much more in age than they had declared, the Board rightly cancelled their registrations and decided to withhold their results. He has submitted that what is obvious needs no proof.

15. I am unable to accept the submissions made on behalf of the Board. It is apparent from the reports submitted by the Sub-Divisional Officer, Mahnar and the District Education Officer, Mahnar that no exercise, worth enquiry was conducted. The opinion of the said Committee is apparently based on what the members could perceive on seeing some of the examinees. Further, nothing has been shown to this Court that admission of students on the basis of their self declaration



in Class VIII as regular students was *per se* illegal. Further, without reaching a definite conclusion that the students of the School had fudged their age at the time of admission, their registrations could not have been cancelled and results withheld. In no event, the Board could have taken such decision without giving the students an opportunity to explain.

16. The impugned action of the Board of cancelling the registration of the students of the petitioner's school as regular students and withholding of their results of 2017 matriculation examination are unsustainable, being illegal, arbitrary and in violation of principles of natural justice. No instrumentality of the State within the meaning of Article 12 of the Constitution of India has the authority to act arbitrarily in breach of law and principles of natural justice. For this reasoning, the action of the Board is unauthorized also.

17. I declare accordingly and set aside the impugned orders and decisions of the Board in this regard.

18. In the facts and circumstances of the case and in view of the controversy involved, I direct the Chairman of the Bihar School Examination Board, Patna to take a decision afresh on the question of cancellation of registration of the students of the School and withholding of their results of matriculation examination, 2017.

19. I also direct that for the purpose of determining the dispute/controversy as to whether all or some of the students of the School had fudged their age, a Medical Board



shall be constituted for examining the students of the School, who were examinees of 2017 matriculation examination. Such Medical Board shall be constituted by the District Magistrate, Vaishali on a request made by the Chairman of the Board. The Board for the said purpose shall issue a public notice fixing date and venue for the said enquiry by the Medical Board in coordination with the District Magistrate, Vaishali when and where the examinees of the School shall be required to present themselves.

20. The Medical Board shall give its opinion on the question of respective age of the examinees. If it is found by the Board that there is substantial difference (of two years or more) between the minimum possible age determined by the Medical Board and the age declared by such students and recorded in the school register, the Board after giving such students an opportunity of hearing by seeking explanation, shall take a final decision.

21. The students/examinees, who fail to present themselves before the Medical Board in pursuance of public notice to be issued by the Board in the light of the present order shall be treated to be having no case on the point of their age and in that case the Bihar School Examination Board shall be free to take decision in accordance with law.

22. If the Board is of the view that action of the petitioner's school in taking admission of the students on the basis of their self declaration, without transfer certificates in



Class VIII was in breach of any statutory provision, guideline or instructions framed or issued by any competent authority, the Board shall be free to take decision but after giving the petitioner’s school an opportunity to explain by way of notice and by passing a reasoned order.

23. It is made clear that the Board shall be at liberty to initiate criminal action against any person, including functionaries of the petitioner-school, who are found to have committed any offence, in this process.

24. This application is allowed, but with the observations and directions, as above.

(Chakradhari Sharan Singh, J.)

ArunKumar/-

AFR/NAFR	AFR
CAV DATE	N/A
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