

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.805 of 2017
IN
Civil Writ Jurisdiction Case No. 781 of 2017**

- =====
1. Tannu Daughter of late Abhishek Kundan R/o Hajipur Road, Aghoria Bazar, Gannipur P.S. Kaji Mohammadpur, District Muzaffarpur

.... Appellant/s

Versus

1. The Bihar School Examination Board, Patna through its Secretary
2. The Secretary, the Bihar School Examination Board, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sandeep Kumar, Advocate
For the Respondent/s : Mr. Lalit Kishore, Sr. Advocate
Mr. Gyan Shankar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-07-2017

Seeking exception to an order dated 6.4.2017 passed by the learned Writ Court in C.W.J.C. No.781 of 2017 rejecting the claim of the petitioner with regard to cancellation of the Intermediate examination undertaken by the petitioner in the year 2016 and challenging the order dated 26.10.2016 passed by the Secretary, Bihar School Examination Board (for short Board), Annexure C to the writ petition, this appeal has been filed under Clause 10 of the Letters Patent.



As the order in question in the writ petition was based on an earlier order passed on 28.10.2016 in C.W.J.C. No.14759 of 2016 (Ratna Jha vs. State of Bihar through its Chairman, Bihar School Examination Board & Others) for making amendment at this stage in this appeal, the order passed on 28.10.2016 is also challenged.

Petitioner herein, claiming to be a brilliant student, got admitted in V.R. College, Kiratpur, Rajaram, Vaishali. She appeared in the Intermediate examination. She was declared pass and it is pointed out that after having qualified in the examination she has got further admission in KIIT University Bhubaneswar, Orissa in Computer Science and Communication Engineering.

Inter alia contending that only because in the case of three students of the Institute in question illegalities were found, the examination of the entire school has been cancelled by the Board which is an arbitrary and illegal decision, it is stated that merely because irregularities were committed or unfair means were adopted in the case of three students, cancelling the entire examination of the school, that also without notice to the petitioner and without hearing her, was a material illegality and irregularity committed by the Board and ignoring all these aspects as the learned Writ Court refused to interfere into the matter, challenge is made to the



impugned action and the order passed by the learned Writ Court. Reliance is placed on the Supreme Court judgments in the case of Joginder Pal & Ors. Vs. State of Punjab & Ors., (2014) 6 SCC 644, to say that in cases of mass illegality in a selection process, if the candidates who are responsible for the illegality and the genuine candidates can be segregated and the non-tainted and tainted students can be identified then in such cases the entire examination or selection process cannot be cancelled. It was emphasized based on the aforesaid judgment that in this case merely because three of the candidates had committed manipulation and in an interview given by them they had indicated the manipulation done by the Institute, it was not proper to cancel the entire examination and on this count interference into the matter is sought for and learned counsel for the petitioner had argued in detail that in this case the petitioner has been put to loss, injustice has been done to her and without any fault on her part, her examination has been cancelled even though there is no allegation of manipulation on her part.

Refuting the contention, learned counsel for the respondent invites our attention to the detailed order passed by the Board, impugned in the writ petition, Annexure C dated 26.10.2016, the reasons that weighed with the Board for cancelling the entire examination as the illegalities were glaring in nature which affected



the entire examination, the Board was correct in its decision of cancelling the examination.

Accordingly, learned Counsel submitted that even based on the judgment rendered by the Hon'ble Supreme Court in the case of Joginder Pal (supra) if the case in hand is analyzed, it is a case where the selection can be upheld and the cases of non-tainted and tainted segregated. That apart, reliance is placed on another judgment of the Hon'ble Supreme Court in the case of Nidhi Kaim v. State of Madhya Pradesh & Others, (2016) 7 SCC 615, in support of his contention.

We have heard learned Counsel for the parties at length and we have also considered the rival contentions. Suffice it to say that for considering the question involved in the matter, it is only required to evaluate the reasons that weighed with the Board for taking the impugned action and if the decision taken by the Board is found to be reasonable one adopting a prudent man approach. Meeting the *Wednesbury* theory of reasonableness. Accordingly, we propose to deal with the issues or materials that were considered by the Board which formed the basis for taking the impugned action and on a perusal of the detailed order, Annexure C, passed by the Board, we find that various illegalities in the examination conducted for the Institute, in the academic session in



question have been highlighted. Apart from the fact that three students of this Institute stood first in the merit list in the State and various illegalities in conduct of their examination are highlighted, which includes payment of Rs.1,00,000/- to 1,50,000/-, to these students and to the members and School Managing Committee of the Institute, we find that in para 6 of the impugned order, official of the Board has given various reasons for cancelling the examination. From para 6.1 to 6.15 reasons have been given by the Board for cancelling the examination and we find that these reasons do not pertain only to the three candidates who topped the examination and in whose cases complaints were received, but it pertains to various other irregularities which pertains to the manner in which the examination has been conducted. For example, in para 6.4 it is indicated that for the Institute in question a particular centre was notified by the Board, but in utter violation to the notification issued by the Board at the instance of the District Magistrate, Vaishali, the entire centre was changed and without approval of the Board in an unauthorized manner the examination for the Institute was held in this unauthorized centre. Similarly in para 6.5 it is indicated that the attendance of the candidates are not certified by the Centre In-charge and without proper certification, attendance of the candidates have been marked. In para 6.6 it is indicated that for evaluating the



answer books by a particular evaluators an Institute was earmarked and at the centre where evaluation of the answer books of the Institute in question were to be held, but the entire answer books were evaluated in a different centre, may be, by different evaluators. These were three reasons that weighed with the Board apart from various other reasons which may have been taken note of by the Board and after considering all these factors in para 10 of the order, the Board goes to hold that in view of the above the entire examination of the Institute is being cancelled.

In our considered view, if the reasons that were considered by the Board, as is detailed from para 6.1 to 6.15 of the impugned order are evaluated, they apart from the manipulation and fraud in the case of three meritorious students, speak a lot about large scale manipulation and illegality committed in the conduct of the entire examination for the Institute and with regard to some illegalities that were pointed out, F.I.R's. and criminal cases have been initiated against certain persons and if taking note of all these factors the Board has taken a decision, we see no reason to interfere into the matter as the action taken by the Board is a reasonable one based on due consideration of the materials relevant to the issue in question and there is no perversity, illegality or infirmity in the same. It is a case where the illegalities highlighted are such that the



manipulators and the genuine candidates cannot be segregated and if taking note of the illegalities committed for the Institute at large, the impugned action has been taken, we see no ground to interfere into the matter.

For the above reasons, finding no case for interference, the appeal is dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

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