

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10418 of 2017

Priyanka Singh daughter of Sri Rajeev Kumar Singh through her natural guardian/father namely Rajeev Kumar Singh son of Sri Raj Kumar Singh Resident of Village - Ganga Prasad, P.O. - Sitanabad, P.S. - Bakhtiyarpur, District - Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Principal Secretary cum Secretary to Government, Human Resources Development Department, Govt. of Bihar, New Secretariat Building, Bailey Road, Patna.
3. The Chairman, Bihar School School Examination Board, Patna.
4. The Secretary, Bihar School Examination Board, Patna.
5. Director, Bihar School Examination Board, Patna.
6. Examination Controller, Bihar School Examination Board, Patna.
7. Chief Vigilance Officer, Bihar School Examination Board, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ratan Kumar
For the Respondent/s : Mr. MADHAW PD. YADAV- GP23

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 18-10-2017

The facts of the present case are shocking to the Court's conscience, which are not at all in dispute.

2. The petitioner had appeared for matriculation examination held in the year, 2017 as a student of D.D. High School Sardiha under Simri Bakhtiyarpur Block, District- Saharsa conducted by the Bihar School Examination Board (*in short 'Board'*). The result of the said examination was published on 22.06.2017, in which she was declared 'Fail'. She was shown to have scored 09 marks out of 100 in



Sanskrit and 29 marks out of 80 in Science (Theory), on the website of the Board. She had, on the other hand, scored 78 marks in Hindi out of 100, 93 marks in Mathematics out of 100, 90 marks in SSC out of 100 and 78 marks in English out of 100.

3. Apparently, she had grievance against the marks awarded to her in the subjects, Sanskrit and Science, which according to her were much below her expectations being not proportionate to her scores in other papers. It appears that an application was made on her behalf before the competent authority under the Right to Information Act, 2005 demanding scanned copies of her answer-sheets of the aforesaid two papers. The requisite amount was deposited with the Board for supply of the answer-sheets. The answer-sheets were, however, not supplied. She had likewise, filed an application for scrutiny of the said answer-sheets, which also remained pending.

4. Finding no other way, the petitioner approached this Court by filing the present writ application on 24.07.2017, seeking following directions:-

“(i) For direction to the Respondents authorities to produce the scan(sic) copy of the petitioner who appeared in the Matriculation i.e. 10th Class



Examination conducted by the Bihar School Examination Board, Patna in 2017 from D.D.High School Sardiha under Simri Bakhtiyarpur Block, District-Saharsa of Sanskrit and Science Theory in which she has been given very lesser marks in the said examination.

(ii) For direction to the Respondents authorities to reexamine/reevaluation the copy of the petitioner of Sanskrit and Science Theory of 10th Matric Examination 2017 in which she appeared in the examination in the year. 2017”.

5. Considering the urgency of the matter, the case was taken up on priority basis by this Court on 04.08.2017. Learned Senior Counsel for the Board was allowed two weeks' time to seek instructions and inform this Court as to whether the scrutiny of the answer-sheets of the papers, for which she had filed application, had been done or not. On the next date fixed, i. e., 18.08.2017, when this matter was taken up, learned counsel appearing on behalf of the Board informed this Court on the basis of instructions, which he had received from the Board, that the scrutiny of the answer-sheets of the petitioner had been done and no change was found required in relation to the petitioner's answer-sheets, on the basis of report



submitted by the Superintendent of the scrutiny center. The Court directed the Board to file an affidavit to this effect by 22.08.2017.

6. Learned Counsel for the petitioner, as instructed by the petitioner made a submission before this Court that petitioner's answer-sheets had not been duly evaluated or might have been arbitrarily evaluated that would require interference by this Court in extraordinary writ jurisdiction. He submitted that the petitioner and her guardian were confident of petitioner's good performance in the examination; likewise in those subjects and that they were ready to deposit a sum of Rs. 40,000/- in the Court for the said purpose, to be forfeited if the petitioner's claim was found to be unfounded. Considering the definite and clear stand taken on behalf of the petitioner with all confidence, so as to obviate any chance of injustice, in the facts and circumstances of the case, the Court directed the Board to produce the original answer-sheets of the petitioner on 28.08.2017. The Court indicated in the said order, dated 28.08.2017, that if the stand taken on behalf of the petitioner was found to be incorrect, the said amount of Rs. 40,000/- shall stand



forfeited.

7. The said amount of Rs. 40,000/- was, accordingly, deposited by the petitioner in the High Court. Learned counsel for the Board produced before this Court the original answer-sheets on the basis of which the petitioner's marks had been shown in the said subjects, i.e., Sanskrit and Science (Theory) on the Board's website. In the answer-sheets, the petitioner was shown to have scored 07 marks in Science(Theory) out of 80 and 09 marks in Sanskrit out of 100. It is noteworthy, as has been mentioned hereinabove that as per the information available on the website of the Board, she was shown to have scored 29 out of 80 in Science(Theory) whereas in the answer-sheet of the said paper produced by the Board before this Court, which according to the Board was of this petitioner, only 07 marks was awarded. The Court, however, on perusal of the answer-sheets formed a tentative opinion that the answer-sheets had been duly evaluated. While forming this opinion, the Court was completely unaware and unable to comprehend that the answer-sheets, which were produced by the Board could be not of the petitioner, rather, of a different examinee



altogether. The Court had initially presumed that the Board must have done at its own level the desired exercise to ensure that everything was in order in respect of the evaluation of the petitioner's answer-sheet, in the background of the stand of the petitioner and in view of the fact this Court had allowed production of the answer-sheets on the condition of the petitioner depositing in the Court an amount of Rs. 40,000/-.

8. It was possibly a coincidence which one may call it to be providence that the petitioner was present in the Court when the matter was taken up. Learned counsel for the petitioner made a request to the Court that the petitioner be allowed to see the said answer-sheets herself in the ends of justice, which the Court allowed. She disputed the correctness of the stand taken on behalf of the Board and said that those were not her answer-sheets. She produced before this Court her sample handwriting, which appeared to be substantially different from the handwriting of the candidate available in the answer-sheets, which had been produced before this court. The Court, accordingly, directed the learned Counsel for the Board to make available to the learned counsel for the



petitioner, photostat copies of the answer-sheets with a liberty to him to file an affidavit taking the stand, which had been taken by the petitioner.

9. In the supplementary affidavit, the petitioner has made following statements:-

“4. That it is stated here that those copies of subjects Sanskrit and Science Theory which were produced before the Court are not the copy(sic) of the petitioner which was denied by the petitioner before the Court by herself during course of hearing of the matter on 28.09.2017.

5. That a hand written specimen writing of the petitioner of the answer-sheet of both subjects , i.e., Sanskrit and Science Theory had been produced by the petitioner before the Court during course of hearing on 28.08.2017 which has been kept on the record by this Hon'ble Court.”

10. The Court, after having seen the counter affidavit recorded in the order, dated 31.08.2017, that it would be a shocking state of affairs if the stand which has been taken on behalf of the petitioner was finally found to be correct. The Court, deviating from the normally accepted procedure for exercise of power of writ jurisdiction under Article 226 of the Constitution of India of adjudication based on statements of the parties on



affidavits passed the following order, dated 31.08.2017:-

“It will be shocking if the stand, which has been taken on behalf of the petitioner is found to be correct. Normally, exercising power of writ jurisdiction under Article 226 of the Constitution of India, the Court does not adopt a procedure, which I am going to adopt in the present case, considering it to be an exceptional circumstance. The Court asked the petitioner, who is personally present to write one paragraph just to be *prima facie* satisfied about her claim, which she has done. The said handwriting of the petitioner shall form part of the present proceeding.

Let a copy of the handwriting be handed over to the learned counsel for the Board so as to facilitate the Board to take specific stand in this regard.”

11. This is to be noted that on the other hand, the Board kept on resisting the claim of the petitioner and justifying what had been done by the Board. This Court must take note, at this stage, of certain averments made on behalf of the Board in its counter affidavit in this regard, filed on 12.09.2017, which are as follows:-

“7. that it is further that the petitioner through supplementary affidavit has contended that the photostat copies of the answer books of science and Sanskrit which have



been brought on record as Annexure 10 and 10/1 are not the answer books of the petitioner.

8. That with regard to said contention of the petitioner, the respondent Board would humbly submit, that in order to ascertain the veracity of such contention made by the petitioner, it would be appropriate to consider the method and procedure under which the said examination 2017 had been conducted and its answer books had been evaluated, which is as follows, and the same would go to show that the answer books which have been brought on record by the petitioner belongs to the petitioner herself.

9. That it is submitted that as a matter of procedure, candidates appearing at the said secondary examination were required to mark their attendance on each day of examination upon the prescribed format with specific column for subject, subject code, answer book no. and signature of the candidate, which is termed as attendance sheet.

So far the case of the petitioner is concerned she had put her signature on each day of the examination, against the columns prescribed in the attendance sheet wherein answer book no. and name of subject both stood entered.

10. That as per the said attendance sheet, the answer books of Science and Sanskrit subject of the petitioner had been numbered as



02939234 and 4541264 respectively.

11. That further it was after completion of the said Secondary Examination (2017) that the answer books were collected at the strong room created at the district level under the supervision and control of the concerned District Magistrates where the process of bar coding of answer books was conducted.

12. That under the said process of Bar coding, it was for each subject that a particular bar code was allotted to each candidate and the said bar code was fixed on the answer book of the concerned candidate, as well as upon half of the cover page of the answer book, which is termed as flying slip, upon which the number of the answer book of the said particular subject was also entered.

13. That it was accordingly that as per the aforesaid procedure, that upon the answer books of Science and Sanskrit the petitioner had been provided with the bar code of SCA/2035827/206964520 and SNA/2045442/208868922 respectively, and the same bar codes had also been fixed upon the half of the cover page of answer books i.e. upon the flying slips. In addition to this upon the said flying slips, the number of answer book of the concerned subject had also been recorded i.e., 02939234 (Science) and 4541264 (Sanskrit).

14. That the aforementioned attendance sheet and the fly slips were



maintained at the Board whereas the answer books were forwarded to the respective evaluation centers for its evaluation.

15. That upon examining and correlating the aforesaid details as it stood recorded in the attendance chart (Annexure-A) which bears the number of answer books i.e. 02939234 (Science) and 4541264(Sanskrit), as well as signature of the petitioner on different dates of examination, with the number of answer books marked upon the fly slips (Annexure-B) upon which bar code had also been fixed i.e. SCA/2035827/206964520 (Science) and SNA/2045442/208868922 (Sanskrit), as well as with the entries made in the answer books (Annexure- 10 and 10/1 of the supplementary affidavit) in which the bar codes had been fixed i.e. in SCA/2035827/2096420 (Science) and SNA/2045442/208868922 (Sanskrit) are out rightly indicative of the fact, that the details recorded at the said three stages, in the case of the petitioner are in linkage with each other i.e. number of answer books is linked with the number of answer books mentioned in flying slips, similarly the number of Bar code mentioned in the flying slips matches with the number of bar codes fixed upon the respective answer books.

16. That thus the Photostat copies of answer books (Annexure-10 and 10/1) which has been brought on



record by the petitioner through supplementary affidavit, in fact belongs to the petitioner herself.”

12. A rejoinder to the said counter affidavit was filed on behalf of the petitioner to establish her case that what had been stated in the counter affidavit filed on behalf of the Board was not correct. In the rejoinder affidavit, the petitioner took specific plea that the Court has been misled by the Board by presenting distorted facts. Though the petitioner was shown to have scored 29 marks in Science (Theory) paper in the mark-sheet given to her, on the basis of evaluation done in the answer-sheet treating to be her, she was found to have scored only 07 marks. The Court is even today, completely clueless as to how this could happen. The Board is relying on evaluation done with respect to the answers-sheets, showing 07 marks scored in Science (Theory) paper out of 80. How 29 marks have been shown as awarded to her on the website of the Board, is still a mystery. The petitioner in the said rejoinder affidavit again reiterated her claim alleging falsehood also, in the affidavit sworn on behalf of the Board.

13. It is only after the rejoinder affidavit was filed



on 14.09.2017 that the Board through Mr. Lalit Kishore, learned Advocate General, Bihar took stand before this Court on 15.09.2017, that the Board intended to get the matter enquired into by constituting a high level Committee. At the cost of repetition, it is being mentioned that till 14.09.2017, the Board had been consistently resisting the claim of the petitioner throughout in the present proceeding. Thereafter, the Board filed an affidavit on 10.10.2017, stating that the Board had constituted a six-member high level Committee to enquire into matter threadbare after calling for the relevant answer books of Sanskrit and Science subjects of all the candidates in relation to particular center at which the evaluation of the answer books of the said petitioner of the said subjects was done. There is statement in paragraph 12 of the said supplementary counter affidavit filed on behalf of the Board that the high level Committee so constituted detected manipulations done in the *bar coding* in the answer books of the petitioner in her Sanskrit and Science(Theory) answer books. There is statement in the counter affidavit that the said conclusion could be arrived at after the answer books of the Sanskrit



and Science subject of the petitioner were found/detected having *bar codes* specifically assigned to another candidate having Roll No. 1700162, Roll Code 41047. It is the stand of the Board, on the basis of enquiry report of the said Committee that the method was adopted for tampering with the *bar codes* of the answer books of the two subjects of the petitioner, to give undue favour to some other candidates with *mala fide* intention to cause 'damage' to the academic career of the petitioner. There is also the statement that based on the said enquiry report an FIR has been registered with Saharsha Sadar P.S. Case No. 1032 of 2017. It is the further stand of the Board that after original answer-books of the two subjects of the petitioner having been detected, the Board has now revised corresponding result of the petitioner and the other candidate. Consequently, fresh/corrected mark-sheet of the petitioner in accordance with the marks awarded to her in all subjects has been issued. It has been stated at the Bar that as a consequence of revision in marks of the said two subjects, the petitioner has been declared 'Pass' with first division. A revised mark-sheet and pass certificate have been issued by the Board, copies of which have been



produced before this Court.

14. The facts and developments as noted above, speak for themselves. It is not an easy task to fathom the injury, which the petitioner, a young girl child must have suffered because of patently illegal and negligent acts of the Board. More disturbing is the fact that despite firm stand having been taken by the petitioner of her performance in the examination, going to the extent of agreeing to depositing a substantial amount of Rs. 40,000/- in this Court with clear stipulation that if her claim was found to be incorrect, the amount shall stand forfeited, the Board, instead of verifying the correctness of result chose to contest the case raising a technical plea that as per procedure prescribed for the examination in question, only scrutiny of answer sheets was permissible and the scrutiny having been done result of which did not require any change in the marks of the petitioner, nothing more could be done, there being no provision for revaluation. The stand which the Board took in the counter affidavit has been extensively taken note of herein above. In that background, I have considered it fit to duly compensate the injury suffered by the petitioner and award



cost of litigation.

15. The Supreme Court, in case of *Hira Tikoo vs. The Union Territory, Chandigarh* reported in (2004) 6 SCC 765, posing a question whether the parties or individuals, who had suffered because of the mistake and negligence on the part of statutory public authorities would have the remedy for the loss suffered by them and thereafter answering it has held in paragraph 25 that the rules of fairness by which every public authority is bound, require them to compensate the loss occasioned to private parties or citizens who were misled in acting on such mistaken or negligent advice of the public authority. The situation in the present case is even worse, which is evident from the narration of admitted facts. The wrong of a gross nature was admittedly committed by the Board. Despite opportunity available to the Board to properly verify and take corrective and remedial measures, after filing of the writ petition, the Board ignored to do it and elected to contest the writ petition not only on technical grounds but on the merit of the claim of the petitioner. The stand of the petitioner has stood vindicated whereas Board's plea against the petitioner's claim has been found



to wrong and irresponsible. It is noteworthy that this Court had indicated in the order dated 28.08.2017, after the petitioner raised dispute over the answer-sheets, that it would consider directing a high level enquiry to be conducted by a top official of the State of Bihar. Apparently, in order to avoid any chance of adverse finding by an officer indicated to be appointed under the orders of this for holding enquiry, the Board, through Mr. Lalit Kishore, Learned Advocate General, Bihar expressed its intention to get the matter enquired into itself by constituting a high level committee, which is evident from the order dated 15.09.2017. The Board's attitude and approach in the present proceeding has to be looked into from that perspective.

16. The mental agony of a bright young female child of having been declared 'Fail' because of; (a) feeling of her own failure in her efforts (b) sense of embarrassment experienced by her in the family (c) sense of embarrassment experienced by her in the family among the peer group and neighbours, relatives and other known members of the society can be easily perceived. Loss of studies is another significant aspect which cannot be lost



sight of. Had the petitioner be not having the courage and conviction and to crown it all, the resources to approach this Court to fight against injustice done at the hands of the Board, the matter would have been entirely different. She would have suffered and lived with stigma of having failed in the matriculation examination, despite her talent, efforts and good performance in the examination, for all times to come.

17. In that perspective, while considering the quantum of compensation this Court needs to keep in mind that the petitioner's request for production of the answer-sheets was acceded to on an undertaking on her behalf that she shall pay a sum of Rs. 40,000 as condition precedent for the production, liable to be forfeited, if her claim was found to be incorrect. If that could be the amount payable on failure of the claim of a minor girl child, this, coupled with injury suffered by her, this Court is of the view that a sum of Rs. 5,00,000/-(Five Lac) will be befitting in the ends of justice to be payable by the Board to the petitioner by way of compensation and cost of litigation.

18. This, in my view should not be the end of the



matter. The manner in which the Board, which is a statutory body, has conducted itself makes this Court understand that the petitioner might not be the only examinee made to suffer similar arbitrary action on the part of the Board, in respect of 2017 matriculation examination.

19. This Court in a recently decided matter on 18.09.2017 in case of Ugra Narayan Mandal Vs. State of Bihar and ors. (CWJC No. 9650 of 2017), in respect of evaluation done by the Board of “Teachers’ Efficiency Examination” has noticed that in one of the subjects, out of total 75 Model Key Answers, 59 were incorrect, on the basis of which the evaluation was done. This kind of conduct of the Board, which the Court has noticed on various occasions, compels it to direct that at least for the 2017 Secondary or Senior Secondary Examination, the Board shall not refuse an application for verification of answer-sheets, if made, subject to reasonable conditions and instructions as may be prescribed by the Board. Though there is no specific provision which permits the Board to take up re-evaluation of answer-sheets, in my view, after having noticed the facts and circumstances of



the case, it would be unsafe and unjust at the same time, to allow the Board to refuse to verify answer-sheets, if a specific case is made out for the same by an examinee. This is to be kept in mind that the process through which the fact whether marks of a candidate against various papers has been allotted on the basis of evaluation done of his/her answer-sheet can be known, is nothing but 'scrutiny' or 'verification'. Right of any examinee in any examination held by any statutory authority or body discharging public duties to demand such scrutiny or verification is his/her right of fair treatment which is so fundamental in nature that cannot be denied, if reasonably and promptly made.

20. The Court is of the further view that in an appropriate case, if the evaluation done is found to be grossly arbitrary and unjust, this Court in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India, may direct re-evaluation of answer-sheet, for, the arms of the Court in the said jurisdiction are long enough to reach injustice, wherever it is found.

21. So far as direction on the point of verification is concerned, it shall be confined to those candidates only



who have applied for scrutiny and are not satisfied with the outcome of the scrutiny. The Chairman of the Board shall be responsible to chalk out the plan and procedure for the same and the Court directs him to proceed accordingly.

22. This application is, accordingly, disposed of with a direction to the Chairman of the Bihar School Examination Board to pay the said sum of Rs. 5 Lac by way of compensation and cost of litigation to the petitioner within a period of three months from today.

23. Let the amount of Rs. 40,000/- deposited by the petitioner in the Court be returned to her, forthwith.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	30/10/2017
Transmission Date	

