

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4935 of 2016

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Aamir @ Aamir Yasin, Son of Md. Yasin, resident of Mohalla- Masjid Road,
Rahika Tola, P.O.- Araria, P.S.- Araria, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Health, Government of Bihar, Patna.
3. The Chairman, Bihar Combined Entrance Competitive Examination Board,
Patna.
4. The Controller, Bihar Combined Entrance Competitive Examination Board,
Patna.
5. The OSD, Bihar Combined Entrance Competitive Examination Board, Patna.
6. The Director-in-Charge, FSL Police Laboratory, Crime Investigation
Department, Government of Bihar, Patna.
7. The Principal, Jawahar Lal Nehru Medical College, Bhagalpur.
8. The Director, Central Forensic Science Laboratory, Central Bureau of
Investigation, Block No. 4, CGO Campus, Lodhi Raod, New Delhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Patanjali Rishi, Adv.
For the State : Mr. Binod Kr. Yadav, SC-10
For the Respondent Nos. 3-5 : Mr. Prasoon Sinha, Adv.
For the CBI : Mr. Bipin Kr. Sinha, Adv.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT & ORDER

Date : 22-08-2017



The facts are not at all in dispute. The petitioner claims that he had appeared for Bihar Combined Entrance Competitive Examination, 2010, conducted by the Bihar Combined Entrance Competitive Examination Board, Patna (*hereinafter referred to as the 'BCECEB'*), for admission to MBBS course. His result was published and he was called for counselling on 10.07.2010 by the BCECEB. He did not attend the 1st counselling, but appeared for the 2nd counselling, held on 25.08.2010.

2. This is to be noted that in order to obviate any chance of impersonation in said competitive examination, the BCECEB had been following a practice, according to which, a candidate was made to write one passage each, in English and Deonagri, at prescribed space on the OMR answer-sheets at the time of competitive written examination. At the time of counselling of candidates, successful in the written examination, sample hand-writings of such candidates used to be taken again in the presence of the officials, holding counselling. The two samples of hand-writings, one taken on the OMR answer-sheets of the candidates on the date of examination, and the other taken at the time of counselling, were, thereafter, matched/compared by the officials of the BCECEB, so as to ensure that both the hand-writings are of a same person. In case, there appeared to be any doubt over the said



hand-writings, not matching, the BCECEB used to send the two samples of hand-writings to Forensic Science Laboratory (*hereinafter referred to as 'FSL'*) for comparison. On the request of such candidates, they were, in the meanwhile, allowed provisional admission in respective course, in view of probable delay in getting hand-writing verification report from the FSL; in order to maintain time schedule, as prescribed by the Medical Council of India (MCI), subject to an undertaking of the candidate that he would abide by the decision based on the said FSL report.

3. This is not in dispute that the petitioner was given provisional allotment order for admission in MBBS course at Jawahar Lal Nehru Medical College, Bhagalpur (*hereinafter referred to as the 'JLNM College, Bhagalpur'*), subject to condition, which was mentioned in the allotment order itself, to the following effect :

“The candidate has requested to release his blocked admit order submitting an affidavit stating there in on oath (i) that his sample handwriting in OMR sheet of his Roll number has been sent to FSL for verification, (ii) that his admission shall be provisional and fully covered by FSL report, and (iii) that if the FSL report goes against



him, his provisional admission and candidature shall automatically be cancelled and necessary legal action shall be initiated against him.”

4. Since the officials of the BCECEB had found the two samples of hand-writings, one taken at the time of written examination and other at the time of counselling, differing, the matter was sent to FSL. The petitioner was allowed provisional admission in the year 2010. The FSL submitted its report on 21.08.2014, opining that the two hand-writings were not of the same person. The said report was communicated to BCECEB through letter, dated 25.08.2014, issued by the In-charge Director of the FSL.

5. This is also not in dispute that the said report of the FSL was made available to the petitioner by the JLNM College, Bhagalpur, by way of show-cause notice, seeking his response.

6. It is the case of the petitioner that along with the said report, reasons were not supplied to him on which the FSL had recorded its conclusion that the two hand-writings differed. The petitioner does not dispute that the reasons were, thereafter, made available to him. The petitioner responded to the said show-cause notice, issued by the JLNM College, Bhagalpur.



7. After considering the petitioner's show-cause notice, in the light of the undertaking which he had given at the time of his provisional admission, taking into account the FSL report, by the impugned order, dated 05.02.2016, issued by the BCECEB, the candidature of the petitioner, as an examinee of the said entrance test, has been cancelled. The said order, dated 05.02.2016, is being assailed in the present proceeding.

8. On 10.04.2017, when the matter was taken up, Mr. Y.V. Giri, learned Senior Counsel, appearing on behalf of the petitioner, had submitted that once the petitioner was allowed to complete his course, he should not be made to suffer because of delay of four years in submission of the report by the FSL. He has also contended that the BCECEB became *funtus officio* after the petitioner took admission under JLN College, Bhagalpur, and his candidature, as an examinee of the said entrance test, could not have been cancelled by the BCECEB, by the impugned order.

9. Another plea which was made by Mr. Giri, on 10.04.2017, was that the opinion recorded by the FSL is incorrect and the hand-writings in the answer script of the petitioner and his hand-writings taken at the time of counselling, by the counselling team, are of the petitioner and no one else. This specific plea was taken with all vehemence, based on opinions which the petitioner had



received privately from two retired officials, namely, Shri Keshav Prasad and Mr. Raj Ballabh Tiwary, both Retd. Director & Chief Document Examiner Police Lab., C.I.D., Govt. of Bihar, Patna. Mr. Giri contended that this dispute may be referred to any other credible FSL for re-verification and comparison of two hand-writings.

10. Learned counsel, appearing on behalf of the BCECEB, on 10.04.2017, had agreed that the two hand-writings of the petitioner can be sent for comparison and report to Central Forensic Science Laboratory (Document Division), Central Bureau of Investigation, New Delhi.

11. Considering the specific stand taken on behalf of the petitioner, nature of dispute and the serious consequences of cancellation of the petitioner's candidature by the impugned order, the Court considered it appropriate to refer the matter to Central Forensic Science Laboratory (Document Division), Central Bureau of Investigation, New Delhi, for submission of a report on two hand-writings, one taken at the time of written test and other taken in course of counselling. For the said purpose, the Secretary of the BCECEB was directed to send original papers to the Director of Central Forensic Science Laboratory (Document Division). The Central Forensic Science Laboratory (Document Division), while



comparing the two hand-writings, was required to take into account the documents, which had been relied upon, on behalf of the petitioner.

12. The Central Forensic Science Laboratory (Document Division), Central Bureau of Investigation, New Delhi, has submitted its report, dated 10.07.2017, with following conclusion :

“I. The authorship of the questioned signatures & writings marked X, X-1, X-2; Y and Y-1 to Y-5 could not be connected with the writer of the specimen signatures & writings marked A, A-1 to A-5; B and B-1 to B-6 attributed to Aamir Yasin.”

The reason for the said conclusion have been given in paragraph 7 of the said report.

13. It is apparent, thus, that the State Forensic Science Laboratory and the Central Forensic Science Laboratory are of the same view that the two hand-writings, one taken at the time of written examination of the candidate, who had appeared for the entrance test, and the other taken at the time of counselling, differ. The natural consequence of concurrent findings, recorded by the two laboratories, takes me to one and the only conclusion that the person, who had appeared for the entrance test, was not the same person, who presented himself for counselling.



14. Learned Counsel, appearing on behalf of the petitioner, however, has submitted that the report of the Central Forensic Science Laboratory (Document Division), Central Bureau of Investigation, New Delhi, should be rejected for the reason that it does not disclose that opinions, privately obtained by the petitioner from the Forensic experts, were considered in terms of specific direction of this Court. He has, accordingly, submitted that since it cannot be conclusively held that there was any act of impersonation for the purpose of taking entrance test, the petitioner's candidature itself cannot be held to be illegal.

15. I am not ready to accept such contention. The plea that since the petitioner was suffering from *Meningio-Encephalitis* immediately after he had written the entrance test, variation in the hand-writings were natural and this aspect having not been considered by the laboratories, the impugned action deserves interference, is not acceptable to me.

16. What is not in dispute, as has been discussed above, is that the petitioner was allowed provisional admission, on the basis of his own undertaking. The petitioner might not have been allowed admission to MBBS course, had he not given the undertaking that his provisional admission shall abide by the report to be received from the FSL. In this case, not only the State



Forensic Science Laboratory, but, at the instance of the petitioner, the Central Forensic Science Laboratory report has been obtained, which suggest that the two hand-writings differ and the differences are fundamental in nature.

17. I have occasion to consider similar issue in case of ***Manoj Kumar Vs. The State of Bihar & Ors.***, reported in ***2017 (3) PLJR 520***. The arguments, which are being advanced in the present case, were advanced in that case too. The Court rejected the plea as preposterous that after completion of course by the petitioner, admission cannot be cancelled on two grounds, firstly, because the admission of the petitioner was provisional, depending upon the report of the FSL, as per his own undertaking, and secondly, the cancellation of petitioner's admission was based on allegation of fraud committed at the time of entrance test. The same reasonings apply with full force in the present case. I may take note of Supreme Court's decision in case of ***Nidhi Kaim & Anr. Vs. State of Madhya Pradesh & Ors.***, reported in ***(2017) 2 SCALE 626***, which has also been taken note of in case of ***Manoj Kumar (supra)***, wherein, the Supreme Court refused to legitimize the MBBS degrees obtained by the candidates, who had been found indulging in unfair means at the time of entry into the college.



18. In view of what has emerged in the light of the facts available on record, which have been discussed herein-above, I hold that since the petitioner was not sure of his admission, on the basis of his own merit to MBBS course, he manipulated his admission to the said course by setting-up someone else in his place to appear for the entrance test. He is, therefore, not entitled for any relief in equitable jurisdiction, under Article 226 of the Constitution of India, on the plea that in the meanwhile he has completed substantial part of his course.

19. I can usefully quote paragraph 72 of Supreme Court's decision, in case of *Nidhi Kaim* (*supra*), which reads thus :

“72..... We may not be completely wrong in our understanding, if we conclude, that the appellants were quite sure, that they would not be able to gain admission to the MBBS course, on their own merit. That is why, they had to strategize their admission to the MBBS course. We, therefore, reject the contention advanced on behalf of the appellants, that the appellants were



meritorious students, and as such, their admission to the MBBS course, deserved to be preserved. If this is where the truth lies (which we are sure, it does), namely, that the appellants were quite sure that they would not be able to gain admission to the MBBS course on their own merit, surely the appellants are not entitled to any equitable consideration. And, in that view of the matter, it would not be proper to extent to the appellants, relief under Article 142 of the Constitution.”

20. Learned Counsel, appearing on behalf of the BCECEB, has rightly relied on a decision of this Court, dated 11.03.2010, passed in CWJC No. 4093 of 2010 (***Samant Kumar Vs. The State of Bihar & Ors.***), whereby, this Court, in view of report of the FSL, showing difference in two hand-writings, declined to interfere with the decision of the BCECEB to cancel the candidature.



21. While declining to interfere with the impugned action, in case of ***Samant Kumar (supra)***, this Court had observed that there being disputed questions of fact, that will not preclude the petitioner of that case for challenging the FSL report before the Court of competent jurisdiction.

22. However, in view of the developments, which have taken place, as has been noted above, by seeking report from the Central Forensic Science Laboratory, I decline to grant such liberty to the petitioner.

23. Reliance has also been placed on behalf of the petitioner on a decision of this Court in case of ***Amrish Kumar Vs. The State of Bihar & Ors.***, reported in ***2014 (2) PLJR 427***, whereby, this Court had interfered with the decision to cancel the candidature after having seen the C.D. of video recording. The said decision has been considered by this Court, in case of ***Manoj Kumar (supra)***, inasmuch as the petitioner of that case was found to be present for the entrance test.

24. As has been held in case of ***Manoj Kumar (supra)***, it is held that the said decision cannot be treated to be a binding precedent, since the said order was passed in peculiar facts and circumstances of that case.

25. This application is, accordingly, dismissed.



26. Let the reports of the experts, which were made available by learned Counsel, appearing on behalf of the petitioner, in support of his plea, be returned to learned Counsel for the petitioner.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
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