

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1566 of 2017

In
Civil Writ Jurisdiction Case No.5134 of 2017

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Ideal Higher Secondary Public School Delha Gaya through the Principal
Shakti Kumar S/o Late Tarkeshwar Prasad, Resident of Mohalla- New
Colony, P.S.- Delha, District- Gaya.

... .. Respondent- Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, to the Government,
Human Resources Development Department (Secondary Education), Bihar,
Patna.
2. The Bihar School Examination Board, through its Chairman, Sinha Library
Road, Patna.
3. The Chairman, Bihar School Examination Board, through its Chairman, Sinha
Library Road, Patna.
4. The Secretary, Bihar School Examination Board
5. The Assistant Secretary, Bihar School Examination Board.

Respondents-Respondents 1st Set.

6. Suraj Kumar, S/o Sri Krishna Kant Sharma, Resident of Mohalla- New
Colony, Chhotki Delha, P.S.- Delha, District- Gaya.
7. Bharti Kumari, D/o Ramasharay Rajak, Resident at Mohalla- New Colony
Chhotki Delha, P.S.- Delha, District- Gaya.
8. Amrita Kumari, D/o Ramadhar Choowdhary, Resident at Mohalla- New
Colony Chhotki Delha, P.S.- Delha, District- Gaya.
9. Trisha Kumari, D/o Dileep Kumar Praja's, Resident at Mohalla- New Colony
Chhotki Delha, P.S.- Delha, District- Gaya.
10. Neha Sinha, D/o Sanjay Sinha, Resident at Mohalla- New Colony Chhotki
Delha, P.S.- Delha, District- Gaya.
11. Avinash Kumar, S/o Bisheshwar Prasad, Resident at Mohalla- New Colony
Chhotki Delha, P.S.- Delha, District- Gaya.
12. Chandan Kumar, S/o Sri Dilip Kumar, Resident at Mohalla- Keshru
Dharampur, P.S.- Chandauti, District- Gaya.
13. Prity Kumari, D/o Shambhu Sharma, Resident at Mohalla- Bhaluahi
Kharkhura, P.S.- Delha, District- Gaya.
14. Abhishek Kumar, S/o Jitendra Pandey, Resident at Mohalla- New Colony
Chhotki Delha, P.S.- Delha, District- Gaya.
15. Durgeshh Kumar, S/o Hansraj Singh, Resident at Mohalla- Bahadur Bigha
(Aurangabad), P.S.- Hashura, District- Gaya.
16. Sumitra Kumari, D/o Mahesh Chowdhary, Resident at Mohalla- New Colony
Chhotki Delha, P.S.- Delha, District- Gaya.

... .. -Respondents Respondent 2nd Set.

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with
Letters Patent Appeal No. 119 of 2018
In
Civil Writ Jurisdiction Case No.5134 of 2017

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1. The Bihar School Examination Board through its Chairman, Sinha Library Road, Patna.
2. The Chairman, Bihar School Examination Board, Sinha Library Road, Patna.
3. The Secretary, Bihar School Examination Board, Patna.
4. The Assistant Secretary, Bihar School Examination Board, Patna.

... .. Appellant/s

Versus

1. Suraj Kumar, S/o Sri Krishna Kant Sharma, Resident at Mohalla- New Colony, Chhotki Delha, P.S.- Delha, District- Gaya.
2. Bharti Kumari, D/o Ramasharay Rajak, Resident at Mohalla- New Colony, Chhotki Delha, P.S.- Delha, District- Gaya.
3. Amrita Kumari, D/o Ramadhar Chaudhary, Resident at Mohalla- New Colony, Chhotki Delha, P.S.- Delha, District- Gaya.
4. Trisha Kumari, D/o Dileep Kumar Praja's Resident at Mohalla- New Colony, Chhotki Delha, P.S.- Delha, District- Gaya.
5. Neha Sinha, D/o Sanjay Sinha, Resident at Mohalla- New Colony, Chhotki Delha, P.S.- Delha, District- Gaya.
6. Avinash Kumar, Son of Ishwar Prasad, Resident at Mohalla- New Colony, Chhotki Delha, P.S.- Delha, District- Gaya.
7. Chandan Kumar, Son of Sri Dilip Kumar, Resident at Mohalla- New Colony, Chhotki Delha, P.S.- Delha, District- Gaya.
8. Prity Kumari, D/o Shambhu Sharma, Resident at Mohalla- Bhaluahi Kharkhura, P.S.- Delha, District- Gaya.
9. Abhishek Kumar, Son of Jitendra Pandey, Resident at Mohalla- New Colony, Chhotki Delha, P.S.- Delha, District- Gaya.
10. Durgesh Kumar, S/o Hansraj Sinha, Resident at Mohalla- Bahadur Bigha (Aurangabad), P.S.- Hashura, District- Gaya.
11. Sumitra Kumari, D/o Mahesh Chaudhary, Resident at Mohalla- New Colony Chhotki Delha, P.S.- Delha, District- Gaya.

Petitioners/ Respondents 1st Set.

12. Ideal Higher Secondary Public School Delha Gaya through the Principal Sakti Kumar, S/o Late Tarkeshwar Prasad, Resident of Mohalla- New Colony Chhotki Delha, P.S.- Delha, District- Gaya.

... Respondent/ Respondent 2nd Set.

13. The State of Bihar, through the Principal Secretary, Human Resources Department (Secondary Education), Bihar, Patna.

... .. Respondents -Respondent 3rd Set.

Appearance :

(In Letters Patent Appeal No. 1566 of 2017)

For the Appellant/s : Mr. Rajiv Roy, Advocate
Mr. Shailendra Kumar Singh, Advocate

For the Respondent/s : Mr.

(In Letters Patent Appeal No. 119 of 2018)

For the Appellant/s : Mr. Lalit Kishore, Senior Advocate
Mr. Gyan Shankar, Advocate

For the Respondent/s : Mr. Ashutosh Ranjan Pandey -AAG15



**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 09-03-2018

Delay in filing of both the Letters Patent Appeals is condoned.

I.A. No.8623 of 2017 in LPA No.1566 of 2017 and I.A. No.532 of 2018 in LPA No.119 of 2018 stand allowed and disposed of.

As both these appeals arising out of a common order passed by the learned Writ Court on 06.10.2017 in CWJC No.5134 of 2017, they are being disposed of by this common order.

LPA No.1566 of 2017 has been fled by the Institute in question, namely Ideal Higher Secondary Public School Delha, Gaya, and LPA No.119 of 2018 has been filed by the Bihar School Examination Board through its Chairman (hereinafter referred to as 'the Board').

The writ petition in question was filed by the respondents-students, who were prosecuting their studies in the school in question and it was their grievance in the writ petition that even though they have been registered and appeared in the 2016 Board Examination conducted for the Secondary School Examination, their admission and examination has been cancelled and the writ



petition was filed seeking declaration of their result. On an examination of the matter, the learned Writ Court found that the school in question for academic year, against a sanctioned strength of 120 students at the secondary level, permitted registration of 2057 students and sent their forms for appearing in the examination and as the Board after finding the School to have committed fraud and illegality in admission, cancelled the admission, the writ petition in question was filed by the students.

The learned Writ Court examined various aspects of the matter in detail and finally in para 30 gave the following directions which are subject matter of challenge both by the Institute and the Examination Board:-

“30. In view of the above discussion, while refusing to issue direction for publication of result of the petitioners, I consider it proper in the interest of justice to make the following orders and issue directions as under:-

(i) (a) The School is directed to pay a sum of Rs.20,000/- by way of compensation to each of the petitioners and all other similarly circumstanced persons (total 2,057 students), who had appeared for Annual Examination, 2016 held by the Bihar School Examination Board as students of the School, within a period of three months from today.

(b) For the said purpose, the petitioners and other similarly situated persons will be individually required to make a claim before the Principal of the School by way of representation, enclosing necessary particulars including



Bank details, with copy to the District Magistrate, Gaya. Even in a case where no representation is filed by any such student(s), the school shall set aside the amount payable to them and deposit the same in any of the accounts of District Magistrate, Gaya as may directed by the District Magistrate, Gaya within two weeks thereafter for payment to remaining students on due verification, if they approach the District Magistrate or the school Administration thereafter. If, within six months from today no claim for payment is made by some of such students, neither before the Principal of the School nor before the District Magistrate, they cannot claim the amount any more. The remaining amount pending with the District Magistrate, Gaya, if any, shall be utilized at his discretion, for welfare of needy students of any other school, in an appropriate manner.

(c) The District Magistrate, Gaya, is directed to ensure proper documentation of copies of the representations filed by the persons, in the light of the above direction in (b).

(d) If the amount is not paid within the aforesaid period of three months, the same shall earn interest at the rate of 12% per annum, compoundable half-yearly.

I have in mind the fact while issuing the direction as above that the school administration must have charged fees from the students in the name of admission fee, tuition fee and other fees without providing any teaching facility to them and finally leaving their career in the lurch. It is impossible for the School to have provided teaching and facilities and other essential infrastructure for 2,057 students. Evidently the School charged fees from the students, just for enriching its own funds and nothing else.

(ii) (a) The Chairman of the Board is directed to refund to the petitioners and all other similarly circumstanced



persons the examination fees paid by them for the Examination within the aforesaid period of three months from today. The refund may be made through the District Education Officer, Gaya for convenience of the parties, after due publication of notice in print/electronic media at the cost of the Board. This direction I have issued, having noticed the conduct of Board in permitting students to fill up their forms and thereby omitting to acknowledge that students much beyond the sanctioned strength were being allowed to appear from one school. The Board thus failed to discharge its statutory function of supervision, reasonably.

(b) If the amount is not paid by the Board within the stipulated period of three months, the same shall earn interest at the rate of 12% per annum compoundable half-yearly.

(iii) The Senior Superintendent of Police, Gaya is directed to ensure registration of FIR/FIRs in view of admission of students by the School much beyond the sanctioned strength for illegal gains by cheating them under misrepresentation. The FIR must be registered forthwith without any delay and effective investigation should be undertaken under the supervision of the Senior Superintendent of Police, himself.

(iv) The Court directs Chairman of the Board to examine the claim of the School that the Board has published the results in respect of other schools, which too had sent up students much more than the sanctioned strength, by causing enquiry.”

As far as the Board is concerned, they are only aggrieved by direction No.30 (ii) (a) directing the Chairman of the Board to refund to the students examination fees paid by them and direction



no.30 (iv), i.e. the direction to the Chairman of the Board to examine the claim of the school in question to the effect that the Board has published the results in respect of other schools also which had sent up students much more than the sanctioned strength. It is the case of the Board that the direction for refund of the examination fees and examine the claim of the other schools which had sent up more students is not tenable and is not permissible in law.

As far as the Institute in question is concerned it is their contention that as the Board itself, which is the sanctioning and authorizing authority, had permitted and accepted the form of 2057 candidates and had permitted to appear in the examination, the school cannot be held responsible for any illegality and, therefore, the direction issued by the learned Writ Court is unsustainable.

We have considered the contentions advanced and we have gone through various aspects of the matter which have come on record.

As far as the appeal of the Institute in question is concerned, we find that admittedly the Institute for the academic session and for the course in question was granted permission to admit only 120 students and in total disregard to and in contravention to the same, 2057 students were registered and their forms sent for



participating in the examination. This act of the Institute is clearly unsustainable.

That apart, initially when the Board took this action, the Institute filed a writ petition before this Court i.e. Civil Writ Jurisdiction Case No.16911 of 2016 and vide order, Annexure-2, dated 22.12.2016 available in the record of LPA No.119 of 2018, the Writ Court dismissed the writ petition and against this order of dismissal, an LPA was filed by the appellant-Institute and vide order, Annexure-3, dated 09.02.2017 passed in Letters Patent Appeal No.81 of 2017, (Ideal High Secondary Public School, Delha, Gaya Vs The State of Bihar & Ors.), the Division Bench rejected the prayer made by the Institute for declaration of the result of the 2057 candidates.

After dismissal of the writ petition and the LPA filed by the Institute, we find that certain students also filed writ petition being Civil Writ Jurisdiction Case No.3354 of 2017 and the said writ petition was also dismissed by the Writ Court on 10.04.2017. It is after dismissal of both these writ petitions by the Institute and some of the students that certain other students filed the present writ petition and the impugned order was passed.

As the direction issued by the learned Writ Court is after detailed analysis of the illegalities committed in the matter and as



the Institute in question is found responsible for admitting the students beyond the sanctioned strength, we see no error in the various directions issued by the learned Writ Court so far as the appellant institute is concerned. The appeal filed by the appellant-Institute, in our considered view, is wholly misconceived. There is no illegality in the order passed by the learned Writ Court so far as it pertains to the directions issued with regard to the Institute is concerned, warranting consideration. Accordingly, Letters Patent Appeal No.1566 of 2017 filed by the appellant- Ideal Higher Schondary Public School, Delha, Gaya, stands dismissed.

As far as the appeal filed by the Board being Letters Patent Appeal No.119 of 2018 is concerned, we find that the directions contained in para 30(ii) (a) to the Chairman of the Board to refund the examination fee of the students is a reasonable order which needs no interference. The Board very well knew or supposed to have taken note of the fact that the Institute is only permitted to admit 120 students and if the Institute sent applications of 2057 candidates for registration, the Board at the very outset should have rejected it. This having not been done, there is no error in the order passed by the learned Writ Court directing for return of the examination fees of the students once their examinations were cancelled and their results also cancelled.



That being so, with regard to the prayer made for interfering with the para 30(ii) (a), i.e. return/refund of the examination fee to the students or other students are concerned, we see no reason to make any indulgence into the matter.

However, the direction contained in para 30(iv) directing the Chairman to examine the claim of the petitioners with respect to other schools was not called for at the instance of the Institute in question in this writ petition. General enquiry of the nature without any notice to the institute or their students at the instance of the institute which itself was a defaulter, was not permissible. The discretion has to be exercised by the Chairman looking to the facts and circumstances of the case and if the Chairman feels that any other school has also committed any illegality, it is for the Board to take a decision in the matter. A direction at the instance of the Institute in question, in our considered view, was not called for that also behind the back of the Institute and the students who would be adversely affected by such an order.

In view of the above, appeal being LPA No.119 of 2018 filed by the Board is allowed in part. The prayer made for interfering with the order of returning of examination fee, i.e. direction contained in para 30(ii) (a) is rejected. However, the direction



contained in para 30 (iv) for causing an enquiry with respect to other school is set aside.

With the aforesaid, the appeals are disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.03.2018
Transmission Date	

