

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8387 of 2018

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Bhavya Kumari, Daughter of Sri Ram Prakash Singh, through her Natural Guardian/father Namely Ram Prakash Singh Son of Late Ramotar Singh, Resident of Mohalla-Sahjanand Nagar, Sita Sharan, Begusarai, P.S.-Muffasil, District-Begusarai.

... .. Petitioner

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 Examination Board, Patna.
4. The Secretary, Bihar School Examination Board, Bihar, Patna.
5. Director, Bihar School Examination Board, Patna.
6. Examination Controller, Bihar School Examination Board, Patna.

... .. Respondents

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Appearance :

For the Petitioner :	Mr. Ratan Kumar, Advocate
For the Respondent State:	Mr. Amit Bhushan, AC to GP-17
For the Respondent Board :	Mr. Lalit Kishore, Senior Advocate
	Mr. Satyabir Bharti, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date : 29-08-2018

The Bihar School Examination Board (hereinafter referred to as ‘the Board’), which has earned disrepute during the recent times for various controversies, including in the matter of evaluation of answer-sheets, has put a ‘strong principled resistance’ in this case to the admitted claim of the petitioner (an examinee of 10th Class examination of 2017, held by the Board) that she deserved ‘one mark’ more in the subject Hindi than what was awarded to her, the wrong committed on the part of the Board, though stands conceded.



I am dismayed for the vehement resistance put forth by the Board in the pleadings and in course of submissions refusing to correct a wrong, which is apparently of the Board, which is a 'State' within the meaning of Article 12 of the Constitution of India. If the petitioner's admitted claim of non-evaluation of one of her answers were to be accepted by the Board, she would have topped and equalled the score of the topper of Bihar School Examination Board 10th Examination-2017.

The facts for the present adjudication are admitted and not at all in dispute, which are as under: -

(i) The petitioner is a minor and the writ application has been filed through her father, being her natural guardian. The petitioner had appeared in Matriculation (Xth) Examination held by the Board in March, 2017 as a student of *Simultala Awasiya Vidyalaya, Jamui*, which is a residential school for girls, run by the State Government of Bihar.

(ii) The result of the said examination was published on 22.06.2017, in which, the petitioner, with 460 marks out of total 500, was declared pass with first division. She ranked second in the merit of all successful candidates in the State of Bihar.

(iii) An application was filed under the Right to Information Act, 2005, by the mother of the petitioner before the



Public Information Officer of the Board for supply of details of the State topper of the said examination and those of the petitioner on 15.07.2017. The informations were not supplied.

(iv) The petitioner's mother again filed an application under the Right to Information Act, 2005, on 18.11.2017, demanding certified copies of the details of the State topper as well as that of the petitioner. Since no information was made available to her, the petitioner's mother filed an appeal under the Right to Information Act, 2005.

(v) Responding to the application under the Right to Information Act, 2005, dated 18.11.2017, the Public Information Officer informed the petitioner's mother, through letter dated 16.12.2017, that since the information, so demanded, related to some other person, consent of the said person is essential. The Board also asked the petitioner's mother to make available the address for correspondence of the said person for the purpose of getting his consent in this regard.

(vi) In the background of the letter dated 16.12.2017, dealing with the appeal preferred under Right to Information Act, 2005, the Public Information Officer again wrote a letter dated 29.12.2017 to ensure compliance of the earlier letter dated 16.12.2017. In response, the petitioner's mother made available to



the Public Information Officer, the consent of the petitioner for supply of the said document.

(vii) It transpires that the answer-sheets of the subjects Hindi, Sanskrit and Social Science were made available to the petitioner subsequently under the Right to Information Act, 2005. The answer-sheet of Hindi paper has been brought on record by way of a supplementary affidavit filed on behalf of the petitioner through Annexure-10/1. It has been specifically stated in the supplementary affidavit that there is no marking against question No.1 (१). A statement has also been made in the supplementary affidavit that some of the answers have not been properly evaluated and less marks have been given than what the petitioner deserved.

The petitioner has grievance, also against underevaluation of her answer in respect of question No. 16 of the Social Science. Certain grievance has been made in respect of her answer-sheet of subject Sanskrit and underevaluation of the said papers by the examiner. The petitioner, in view of the assertions to the above effect, is seeking a direction to the respondents to re-examine/re-evaluate/re-verify the answer-sheets of her Hindi, Sanskrit and Social Science papers of the said examination. I need not, however, go into such aspect of the matter, following the well



accepted principles of judicial review that the Court exercising powers of judicial review should not enter into the correctness of the decision of the expert and substitute its own view.

In the background of nature of pleadings and relief being sought by the petitioner, when the matter was taken up on 08.05.2018, the Board was directed to file a counter affidavit dealing with the grievance of the petitioner particularly with reference to questions No.1 (ग), 12(i) and 12(ii) of the Hindi paper and question No. 16 of Social Science paper and question No.1 (ग) of the Sanskrit paper.

In compliance of the said order, a counter affidavit was filed by the Board, on examination of which, it has become an admitted fact that one answer of the petitioner in Hindi paper had not been evaluated. Keeping that in mind, the Court by an order dated 03.07.2018 had desired to know from the Board as to what would have been the petitioner's score in Hindi subject, had the said question been evaluated.

In pursuance of the order of this Court dated 03.07.2018, a supplementary counter affidavit has been filed on behalf of the respondents. Statements made in paragraphs 5 and 6 of the said supplementary counter affidavit clinch the issue, which read thus :

***“5. That in compliance of the order dated
03.07.2018 passed by this Hon'ble Court, the Board***



constituted a three member Expert Committee to evaluate Question No.1 (अ) of Hindi subject which upon evaluation of the said answer gave an opinion that the petitioner could have been awarded 1 (one) marks against the said answer.

6. That it is thus, submitted that had the petitioner applied for scrutiny of Hindi subject she would have got 86 marks instead of 85 marks. It is equally the admitted position that the petitioner had neither applied for scrutiny of answer book of Hindi subject, for which the prescribed period had been from 26.06.2017 to 06.07.2017, nor up till the said period any request had been made by the petitioner for being provided with the answer book of Hindi subject.”

(Emphasis Supplied)

The aforesaid statements, made in paragraph 5 and 6 of the supplementary counter affidavit, leave no scope of any different opinion other than the fact that though the petitioner was entitled for 86 marks, as admitted by the Board itself, she was awarded 85 marks. The resistance, which is being put forth by the Board, for correcting its own mistake is that though 06.07.2017 was the last date for scrutiny of answer-sheets, she for the first time through letter dated 15.07.2017, i.e. after expiry of the period of submission of application for scrutiny, made a request for supply of answer-sheet of Hindi subject. Their stand, which has been taken in paragraph 8 of the supplementary counter affidavit, is that ‘re-evaluation of answer-books is not admissible as under



the Bihar School Examination Board Regulations, 1964 (hereinafter referred to as 'the Regulations'), there is no provision for re-evaluation of answer-books'. Reliance has been placed on Regulation 20 under Chapter V of the Regulations, which reads thus: -

“20 (a) Candidates, who desire to get their answer books scrutinized may apply for the same within one month of date of publication of the Board's result. The application for scrutiny must be accompanied in such case by a fee of Rs. 120/- (One Hundred Twenty only) per Subject / Paper. No such application will be entertained unless the same is forwarded by the Head of the Institution from which the candidate appeared with a certificate to the effect that he is convinced that there is strong and sufficient ground for such scrutiny.

(b) Scrutiny will not imply re-examination of the answer-books of a candidate. It will merely be a check to ensure whether there has been any mistake in totaling the marks assigned to individual question or in carrying them over or any omission to mark a question or part thereof:-

(c) The result of scrutiny will be communicated to the Head of the Institution and the candidate concerned.

(d) The fee paid for scrutiny of answer books shall not be refunded.”

(Underlining for emphasis)

Mr. Lalit Kishore, learned Advocate General, Bihar, appearing on behalf of the Bihar School Examination Board, has, with full vehemence, argued that in no circumstance the claim of



the petitioner for award of one more marks in Hindi paper can be sustained since she failed to apply for scrutiny of her answer-book in accordance with the Regulations. He has submitted that if it is so done, it would not only be in blatant violation of the Rules and the Regulations, but it will also open a Pandora's box and would result in many anomalies and unwarranted situation in the entire result process.

Unfortunately, however, he has failed to comment upon the conduct of the Board in its failure to evaluate correctly the answer-book of a minor appearing for her 10th examination. He would contend that the result of Annual Secondary Examination-2017 having been published long back, the same has gained permanency with the passage of time and hence it would not be feasible to unsettle things which have already been settled.

Learned counsel appearing for the petition in reply to the submissions advanced by Mr. Lalit Kishore has submitted that there appears to be a deliberate sinister design of the persons with vested interest to ensure that the petitioner got less marks than what she actually deserved. In support of this plea, he has drawn my attention to the marking done by the Examiner wherein by the apparent interpolation, the petitioner was shown to have scored 80 marks, though she had in fact scored 85.



I have perused closely the said score sheet of Hindi paper which is there on record as Annexure-10/1 to a supplementary affidavit filed on behalf of the petitioner, from which some act of interpolation aimed to lower down the petitioner's total marks in Hindi to 80 from 85 is manifest. The circumstance, in which the cuttings and interpolations are there, have not been explained satisfactorily despite this Court's order in this regard dated 08.05.2018. In the final result-sheet, the petitioner has, however, been shown to have scored 85 marks in Hindi. The explanation, which has been given in the counter affidavit filed on behalf of the Board, is that when marks-sheet for individual subjects of appeared candidates is in the process of being prepared, the personnel engaged in the said work have not only to look at the cover page of the answer-book, but also have to verify the same once again by totaling the marks awarded for the individual questions. Attempt to lower down the petitioner's score in Hindi paper by the examiner is apparent, however, on mere seeing the cover page of the answer book.

Even the high level enquiry committee, constituted under the order of this Court comprising six members, noted that in the column against question no. 6, the petitioner was shown to have scored '5' marks initially and thereafter, by cutting '5', '00'



was substituted. Curiously, there is no reason why the examiner had altered the petitioner's marks against question no. 6 since in the body of the answer book, her score for question no. 6 remained '5'.

For the benefit of the quick reference, the English translation of the findings recorded by the experts of the Board in respect of the allegation of interpolation, upon being translated into English, reads thus:-

“So far as the question of tampering with marks is concerned, the examiner, after awarding ‘05’ marks in question no. 06, had mentioned ‘85’ as total marks on the cover page of answer sheet, but the examiner wrote ‘00’ after cutting ‘05’ marks awarded in question no. 06, under column, prescribed on cover page of answer sheet and mentioned ‘80’ marks after cutting total marks ‘85’ from which it becomes evident that this error had been committed by the examiner himself. But marks were tallied in course of review of evaluated answer sheet by the expert of subject, before publication of result, and ‘05’ marks awarded by the examiner in question no. 06 and total marks ‘85’ was finally considered to be correct, after keeping ‘05’ marks awarded by the examiner in question no. 6 as it is and in the light of which result was published, giving benefit of ‘85’ marks in lieu of ‘80’ marks to the examinee. In this way, allegation with regard to tampering with marks levelled by the examinee is false and baseless.”

It can be easily discerned thus that where as the examiner had earlier entered '85' marks secured by the petitioner,



subsequently by cutting '5', he made the score '80'. It is a different matter that based on marks awarded against each questions, petitioner was found to have scored '85' marks, subsequently as reflected in her result. In the same paper, the examiner did not evaluate one of the questions i.e. 1 (ग), bearing 02 marks. Therefore, deliberate attempt of the examiner to downgrade the petitioner's score cannot be ruled out. Reasons why the examiner did so is unknown, but there is strong basis for suspicion that he did so deliberately.

In the rejoinder, filed by the petitioner to the counter affidavit filed on behalf of the respondents, it has been asserted that before publication of result, the Board had made the petitioner to face interview before a panel of 'special committee of scholars' of the concerned subjects from 18.06.2017 to 21.06.2017. It is surprising that when such in-depth scrutiny was being carried out by the Bihar School Examination Board, how the specialist committee of scholars could miss to notice that one of the answers of the petitioner had remained unevaluated.

I will now be referring to certain dates in view of the plea taken on behalf of the Board. The Board had published the result of the said examination on 22.06.2017. It is their case that 06.07.2017 was the last date for submission of application for



scrutiny of answer books. The petitioner did not apply for scrutiny within the time stipulated by the Board and instead her mother invoked the Right to Information Act to procure the answer sheets of the petitioner so as to ascertain whether the answers have been duly evaluated or not. This also is a fact, however, that instead of supplying the answer sheets, the Board took initially some technical plea as ground for not supplying the answer sheets, which were supplied to her subsequently.

In the Court's view, the question of making application for scrutiny would have arisen had there been considerable gap between the marks awarded to the petitioner and her expectations. In the present case, the petitioner was awarded '85' marks in Hindi paper and upon having seen her answer sheet, she learned that the examiner missed to evaluate one of the answers.

There is yet another aspect, which is noteworthy. The petitioner has brought on record one of the appointment letters in relation to appointment of co-examiner of Annual Secondary Examination-2018 of the Bihar School Examination Board, which contains necessary guidelines for the co-examiners. From item 7 of the guidelines, it seems that there is policy of the Board for re-verification of the answer sheets for selection of top ten examinees of the Board. Since, the petitioner was the second topper, the



Court would presume that her answer sheet of Hindi paper was re-verified by the subject experts before publication of result. The subject experts of Hindi evidently failed to notice that answer to question no. 1 (गु) of the petitioner was not evaluated.

There is, therefore, no dispute about the fact that the examiner did not evaluate the petitioner's answer to question no. 1 (गु) and the subject experts, especially appointed for the purpose of re-verification of the answer sheets, also did not point out regarding non-evaluation of the said question no. 1 (गु). The Board, thus, miserably failed in its obligation to correctly evaluate the petitioner's answer book of Hindi paper. The Board does not dispute these facts. The Board concedes that the petitioner deserved one mark more in Hindi than what she has been awarded in the background of the report of the experts committee.

Does it behove the statutory body like Bihar School Examination Board, enjoined with the duty of assessing performance of minor children, most of whom are yet at the beginning of their adolescence, to resist her claim, instead of correcting its own mistake? Whether on the plea that the petitioner, having not approached the Board within the time prescribed of fifteen days from the publication of result for scrutiny of her answer sheet of Hindi paper, could not have raised



her grievance of her one of the questions having remained un-evaluated, even after acquiring knowledge in this regard upon information having been furnished under the Right to Information Act? Whether after having learnt about the flaw in evaluation of the petitioner's answer sheet, was it not incumbent upon the Bihar School Examination Board to have *suo motu* corrected the mistake? Whether this Court, after having learnt the admitted facts, as noticed above, should refrain from granting the petitioner the relief, which she was entitled to, on a hyper technical plea, exercising power of judicial review under Article 226 of the Constitution of India, in view of Regulation 20 under Chapter V of the Bihar School Examination Board Regulations, 1964? These are the questions which need to be pondered over in this case.

Before I take up the questions formulated above for discussion, I consider it apt to notice said Regulation which has been quoted herein above, sub-Regulation (a) of which permits the candidates to apply for scrutiny 'within one month of the date of publication of the Board's result'.

This is an admitted fact that the result, in question, was published on 22.06.2017 and the Board had fixed last date for submission of application for scrutiny of answer books as 06.07.2017, i.e., within 15 days from the date of publication of



result, as against the requirement of sub-Regulation (a) of Regulation 20, which permits the candidates to apply for scrutiny within one month from the date of publication of the Board's result. The decision of the Board of fix 06.07.2017 as the last date for submission of application for scrutiny is in blatant breach of the said Regulation 20 (a) of the Regulations. Here lies the irony. The Board is, on the one hand, blaming the petitioner for not having applied for scrutiny within the time prescribed by the Board, whereas such prescription itself is evidently contrary to the requirements of Regulation 20 (a) of the Regulations. The Board admits that the petitioner had, for the first time, on 15.07.2017, made a request to the Bihar School Examination Board for supply of answer book of Hindi subject. The said application was, admittedly, made within one month from the date of publication of result. In the present case, I do not find any laxity on the part of the petitioner, rather I find her to be prompt enough to have approached the Board for supply of her answer book of Hindi subject.

The core issue, which the present application involves, is whether failure on the part of a candidate to apply for scrutiny of his answer book under Regulation 20(a) shall have such consequences that even in cases of glaring mistakes, the Board



shall refrain from correcting such mistakes of its own, by referring to the said Regulation 20 of Chapter V.

Be it noted that Bihar School Examination Board Regulations, 1964, has been framed in exercise of power under Section 17 of the Bihar School Examination Board Act, 1952, for the central purpose of holding and conducting examinations at the end of secondary school/senior secondary school education stage.

The Regulations have been framed to achieve objectives, and are procedural in character. Regulation 20 under Chapter V of the Regulations also prescribes the procedure for scrutiny of the answer books after publication of the Board's result. Times without number, the Courts have held that procedure law, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice by oppressive or punitive use. (See: **(2014) 4 SCC 704 (Haryana State Cooperative Supply and Marketing Federation Limited Vs. Jayam Textiles And Another)**). In case of ***Kunapareddy alias Nookala Shanka Balaji vs. Kunapareddy Swarna Kumari and Another, reported in (2016) 11 SCC 774***, the Supreme Court, in paragraph 16, in most unambiguous terms, has reiterated that procedure is handmaid of justice and is to come to the aid of justice rather than defeating it. The doctrine has been reiterated in a recent decision of Supreme



Court, in case of *Macquarie Bank Limited vs. Shilpi Cahle Technologies Limited*, reported in (2018) 2 SCC 674, holding that procedure is handmaid of justice and a procedural provision cannot be stretched and considered as mandatory, where it causes serious general inconvenience. The Supreme Court in case of *Macquarie Bank Limited* (supra) relied on an earlier decision in case of *Mahant Ram Das vs. Ganga Das* (AIR 1961 SC 882), taking special notice of paragraph 5, which can be usefully reproduced hereinbelow:

“5...Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians. Cases are known in which Courts have moulded their practice to meet a situation such as this and to have restored a suit or proceeding, even though a final order had been passed.”

Same view has been taken in case of *Uday Shankar Triyarvs. Ram Kelawar Prasad Singh and another*, reported in (2006) 1 SCC 75, where the Supreme Court stated the law that



with well recognised exceptions to the principle, procedure law, handmaiden to justice, should never be made a tool deny or perpetuate injustice, by any oppressive or punitive use. The Court stated the exceptions to this principle in paragraph 17, following three of which are relevant for the present purpose: -

(i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;

(ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;

(iii) where the non-compliance or violation is proved to be deliberate or mischievous;”

In my view, the case of the petitioner does not fall in either of the exceptions noted above from the decision in case of *Uday Shankar Triyar* (supra).

Upon analysis of the above noted decisions, I am of the considered view that the said provision under Regulation 20, being procedural law, cannot be used as a tool to deny the right of the petitioner to be credited with score to her answer to the question, which, admittedly, remained un-evaluated and for which she deserved one mark.

This is not in dispute that duty of the Bihar School Examination Board to conduct secondary examination is statutory in nature. It is the statutory obligation of the Bihar School



Examination Board to conduct examination and publish result in a fair manner. As a necessary corollary, a statutory obligation is cast upon the Board to ensure that answer-books of candidates are properly examined in a fair manner so that every candidate gets the score, which he deserves. This obligation, to be fair in the process of examination and evaluation, on the Board is to protect fundamental rights of the candidates of fair treatment, who participate in the examination. The facts noted above go to show that the Board failed in its duty to properly evaluate answer-book of Hindi paper of the petitioner. There is a finding to this effect recorded by a high level committee of experts, constituted under the orders of this Court. The Board failed to notice the discrepancy even in course of exercise of re-verification of answer-books of top ten scorers. The Board invited applications for scrutiny giving 15 days time for candidates as against the statutory requirement of one month under Regulation 20(a). After having committed these mistakes/wrongs, the Board is taking aid of Regulation 20 of Chapter V of the Regulations to deny the petitioner's right. The stand of the Board needs to be tested, in my view, on the touchstone of the well accepted principle enshrined in the legal maxim *commodum ex injuria sua nemo habere debet*, which



connotes that no party can take undue advantage of his own wrong.

The principle has been applied by the Supreme Court in the case of *Mritunjay Pani v. Narmada Bala* (AIR 1961 SC 1353) in a private dispute between the parties recognising that convenience cannot accrue to a party from his own wrong, that is to say, no one can be allowed to benefit from his own wrongful act.

The Supreme Court recorded following statement of law on this principle, in case of *Kusheshwar Prasad Singh vs. State of Bihar*, reported in (2017) 11 SCC 447, in paragraph 16, which reads thus :

“It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrong doer ought not to be permitted to make a profit out of his own wrong".”

In case of *Kusheshwar Prasad Singh* (supra), the Supreme Court accepting the contention of the appellant in that case that there was default in discharge of statutory duty by the State respondents authorities held that they could not be allowed to



take undue advantage of their own default in failure to act in accordance with law.

In the present case, there is default in discharge of statutory duty by the Board of due evaluation of the answer-book of the petitioner, which is an admitted fact.

It would be significant to notice another Supreme Court's decision in case of *Union of India and Others vs. Shantiranjana Sarkar*, reported in (2009) 3 SCC 90 on this line. In case of *Union of India and Others vs. Shantiranjana Sarkar* (supra), the Central Administrative Tribunal, Calcutta had dismissed the respondent's original application on the ground of limitation as also on merits. The Apex Court noticed that certain facts were admitted and the respondents of that case was not appointed because of a mistake committed on the part of the authorities of the Union of India. In such circumstances, the Court held that the authorities could not be permitted to take advantage of the same. The Apex Court categorically held that in such circumstance, delay in filing of original application should not have been held to be a bar for granting him an equitable relief. The Apex Court reiterated that the Union of India, as a benevolent litigant, cannot be permitted to take advantage of its own wrong.



The principle enunciated in case of *Shantiranjana Sarkar* (supra) applies with full force in the present case inasmuch as, in view of the admitted facts as noticed above, the Bihar School Examination Board being a statutory body, a 'State' within the meaning of Article 12 of the Constitution of India, as a benevolent litigant cannot be permitted to take advantage of its own chain of follies, which are in chain, as have been noticed above. The Supreme Court had dismissed the appeal of the Union of India with cost assessing counsels fee at Rs. One lakh.

In view of the above discussions with reference to the Supreme Court's decisions, I am of the considered view that the Board, at the first place, ought to have corrected its wrong once the same came to the knowledge of the authorities of the Board. In any view of the matter, the Board cannot be allowed to take advantage of its own wrong. The Board, in the present case, instead of correcting its own wrong at its own level has put resistance raising issue of this Court's jurisdiction to undo injustice meted out to the petitioner, which is evident from the language of the counter affidavit and the submissions advanced by Mr. Lalit Kishore, learned Advocate General, Bihar.

Based on the above noted discussions with reference to the facts of the case and the legal principles enunciated by the



Supreme Court in various decisions, following are the irresistible conclusions reached by me;

(I) There are interpolations made by the examiner or any other person on the cover page of the petitioner's answer-book of Hindi subject, which is evidently deliberate, which were subsequently rectified. This is because she had been awarded '5' marks against answer No.6, which score appears to have been initially shown on the cover page, but by an act of overwriting, the same was altered to "00". Grand total in the said paper was '85', which was accordingly made '80', through the petitioner had actually scored '85'. There is no clue as to how such overwriting is there on the cover page; at whose instance, by whom and for what purpose, though the petitioner has been shown to have secured '85' marks as was awarded by the examiner. The Board appears to have not even initiated any enquiry into such gross act of interpolation and fraud.

(II) There is no dispute that petitioner's answer to question No.1 (गु) was not evaluated, which fact has been admitted by the Board and it is the case of the Board also that the petitioner would have been awarded one mark had, the said answer been evaluated.



(III) It is because of the failure of the Board that the petitioner's answer to question No.1 (ग) have remained un-evaluated.

(IV) Regulation 20 of the Regulations allows the candidates to apply for scrutiny within 30 days, whereas the Board acting against the Regulations allowed only 15 days for making applications for scrutiny.

(V) Even in course of re-verification of the answer-books of the ten toppers of the said examination, the committee of experts failed to notice that the said answer of the petitioner had remained un-evaluated. This exercise by the experts supposedly was done prior to publication of the result. The Board again failed in its duty to correctly verify the answer-books of even 'Ten Toppers' of the examination.

(VI) After having defaulted in series, the Board cannot take advantage of its own wrong of leaving the petitioner's answer un-evaluated.

(VII) Regulation 20 of Chapter V of the Regulations cannot put a complete bar to correct wrongs/mistakes, which are glaring and apparent, the said provision being of procedural character. It will be rather statutory obligation on the Board to



correct its mistakes/wrongs in appropriate cases once such mistakes/wrongs come to the knowledge of the authorities.

(VIII) The Board instead of correcting its mistake has resisted the claim of the petitioner in its pleadings. The stand of the Board has been found in this case to be stubborn and obstinate, while dealing with a case of girl child, in denying her rightful claim on technical plea of failure on her part to apply for scrutiny within the time specified in the notice.

It is noteworthy that this Court, in the present proceeding, is dealing with a case brought by the petitioner, who is a female child, through her father. She has a grievance against none other than the Bihar School Examination Board, which has been assigned statutory duty to evaluate her performance in the examination. Her grievance is genuine, to which there is no dispute. Since her attempts to get the grievance redressed by the Board failed, she has knocked the doors of this Court to allow her what she deserved, based on her performance in the examination. It would be, in my view, travesty of justice if the Court refuses to grant her what she admittedly deserved based on technical plea, which has been taken on behalf of the Board. It is a matter of rather shame for the system where in the very beginning of a child's career she has been made to litigate before the High Court



that too for something, which could have been seen by the examiners while evaluating her answer-book and subsequently by a committee of experts in course of re-verification of the answer-books of the ten toppers. The Board has shamelessly not blamed the examiner for not evaluating the petitioner's answer nor the committee of so-called experts especially appointed by the Board for the purpose of re-verification of the answer-books of ten toppers. Though there is abject failure on the part of the Board and its officials, but the Board, a statutory Body, conferred with the power of holding examination, is putting blame on the child for not applying for scrutiny of her answer-books.

The Board, in my view, as a statutory Body, has acted in most irresponsible manner while contesting the case of the petitioner in the present proceeding.

In such view of the matter, this application deserves to be allowed with exemplary cost.

Accordingly, this application is allowed. The Chairman, Bihar School Examination Board, is directed to revise the petitioner's score in Hindi paper by adding one mark against question No.1 (ग) and publish her result accordingly within two weeks from today. This direction is being issued in view of the admitted fact as stated in the supplementary counter affidavit of



the Board that had the said answer of the petitioner being evaluated, she would have been given one more mark. Consequences of publication of revised result under this order shall follow.

In the facts and circumstances of the case, I impose a cost of Rs. 5,00,000.00 (Five Lakhs) on the Bihar School Examination Board to be paid in favour of *Simultala Awasiya Vidyalaya, Jamui*, through its Principal, where the petitioner had pursued her studies up to Class X. The Principal of the School shall be required to utilise the said fund exclusively for the purpose of purchase of books and computers/software for improvement of library of the school.

It will be the responsibility of the Chairman of the Board to ensure that the cost amount is paid, as directed, within three months from today.

I have imposed exemplary cost in the present case considering the conduct of Board, which, instead of fairly accepting the claim of petitioner has chosen to invite a verdict from the Court, placing reliance on the provision of the Regulations, which even the Board did not adhere to.

Before I part with this present judgment and order, I consider it appropriate to direct the Bihar School Examination



Board to place on the *web-site* of the Board the answer-sheets of all top ten scorers of Xth and XIIth examinations to be held by the Bihar School Examination Board in future, immediately after publication of result in order to minimise the scope of recurrence of such controversies in future, as have arisen in the present proceeding.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	29.08.2018
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