

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.135 of 2018

In
Civil Writ Jurisdiction Case No.7943 of 2017

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1. The Bihar School Examination Board, Patna Through Its Chairman
 2. The Secretary, Bihar School Examination Board, Patna
 3. The Examination Controller, Bihar School Examination Board, Patna.

... Respondents-Petitioner/s

Versus

1. Pt. Ujjwal Kumar Mishra, Senior Secondary School, Hajipur, Vaishali, through its Principal Umesh Mishra, son of Late Vedanand Mishra, Resident of Village- Gaddopur, P.S. Mathua, District Vaishali.

...Petitioner-Opposite Party

2. The State of Bihar through the District Magistrate, Vaishali at Hajipur.
3. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
4. The Director, Secondary Education, Bihar at Patna
5. The District Magistrate, Vaishali at Hajipur.
6. The District Education Officer, Vaishali at Hajipur.

... Respondents- Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Satyabir Bharti Mr. Alok Chandra
For Respondent no.1		Mr. Abhinav Shrivastava Mr. Mahendra Thakur
For the Opposite Party/s :		Mr.Ashutosh Ranjan Pandey Aag 15

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 16-05-2019 The Bihar School Examination Board (for short ‘the Board’) has filed the present review application, seeking review of the judgment dated 11.07.2017, passed in CWJC No. 7943 of 2017.

I have heard learned counsel, appearing on behalf of the Board and learned counsel, representing the private respondent.



It is evident from the judgment, under review, that the action of the Board, cancelling registration of some of the students of respondent no.1 and their results of matriculation examination was under challenge. After considering the pleadings on record, this Court in the judgment, under review, had held as follows:-

“15. I am unable to accept the submissions made on behalf of the Board. It is apparent from the reports submitted by the Sub-Divisional Officer, Mahnar and the District Education Officer, Mahnar that no exercise, worth enquiry was conducted. The opinion of the said Committee is apparently based on what the members could perceive on seeing some of the examinees. Further, nothing has been shown to this Court that admission of students on the basis of their self declaration in Class VII as regular students was *per se* illegal. Further, without reaching a definite conclusion that the students of the School had fudged their age at the time of admission, their registrations could not have been cancelled and results withheld. In no event, the Board could have taken such decision without giving the students an opportunity to explain.

16. The impugned action of the Board of cancelling the registration of the students of the petitioner's school as regular students and withholding of their results of



2017 matriculation examination are unsustainable, being illegal, arbitrary and in violation of principles of natural justice. No instrumentality of the State within the meaning of Article 12 of the Constitution of India has the authority to act arbitrarily in breach of law and principles of natural justice. For this reasoning, the action of the Board is unauthorized also.

17. I declare accordingly and set aside the impugned orders and decisions of the Board in this regard.

18. In the facts and circumstances of the case and in view of the controversy involved, I direct the Chairman of the Bihar School Examination Board, Patna to take a decision afresh on the question of cancellation of registration of the students of the School and withholding of their results of matriculation examination, 2017.

19. I also direct that for the purpose of determining the dispute/controversy as to whether all or some of the students of the School had fudged their age, a Medical Board shall be constituted for examining the students of the School, who were examinees of 2017 matriculation examination. Such Medical Board shall be constituted by the District Magistrate, Vaishali on a request made by the Chairman of the Board. The Board for the said purpose shall issue a public notice fixing date and venue for the said



enquiry by the Medical Board in coordination with the District Magistrate, Vaishali when and where the examinees of the School shall be required to present themselves.

20. The Medical Board shall give its opinion on the question of respective age of the examinees. If it is found by the Board that there is substantial difference (of two years or more) between the minimum possible age determined by the Medical Board and the age declared by such students and recorded in the school register, the Board after giving such students an opportunity of hearing by seeking explanation, shall take a final decision.

21. The students/examinees, who fail to present themselves before the Medical Board in pursuance of public notice to be issued by the Board in the light of the present order shall be treated to be having no case on the point of their age and in that case the Bihar School Examination Board shall be free to take decision in accordance with law.

22. If the Board is of the view that action of the petitioner's school in taking admission of the students on the basis of their self declaration, without transfer certificates in Class VIII was in breach of any statutory provision, guideline or instructions framed or issued by any competent authority, the Board shall be free to take decision but after giving the petitioner's school an opportunity to explain by way of notice and by passing a



reasoned order.

23. It is made clear that the Board shall be at liberty to initiate criminal action against any person, including functionaries of the petitioner-school, who are found to have committed any offence, in this process.”

Learned counsel, appearing on behalf of the Board, has submitted that certain statutory provisions could not be brought to the notice of this Court, when the judgment, under review, was being passed. He has referred to Section 5 of the Right of Children To Free and Compulsory Education Act, 2009, which confers upon a child a right to seek transfer from one school to another and prescribes the manner in which such transfer is to be allowed. According to him, since the students, whose registration and matriculation results have been cancelled, were admitted in the school, in question, without following the statutory norms, the decision of the Board to cancel their registration and results is legally permissible and valid.

The relevant extracts from the judgment under review, of this Court dated 11.07.2017 have been quoted hereinabove wherein it was noted that no exercise worth enquiry was conducted as regards the age of the students and nothing was brought to the notice of the Court that their admission on the



basis of their self-declaration in Class VII as regular students was *per se* illegal. The Court had also noted that without giving the students any opportunity to explain, such decision could not have been taken. It was in that background and with the aforesaid observation that the Chairman of the Board was directed to take a decision afresh “on the question of cancellation of registration of the students of the school, in question, and withholding of their results of matriculation examination”. I had directed for constitution of a Board in the wake of the allegation of fudging of their age by some of the students.

I fail to understand the purpose behind seeking the review of the judgment. The Board was directed to act, after complying with the principles of nature justice, giving the students an opportunity to explain, which was not done.

No case for review of the judgment is made. This review application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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