

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4601 of 2020

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Kirtee Kumari D/o Kedar Kumar, Permanent Resident Addi Bunglow, Near Durga Mandap, Jhumri Telaiya, Koderma, Jharkhand, presently residing in the house of MD. Alam C/o-MD. Faiyaz Alam, Zee Communication, Ashok Rajpath (Opposite Darbhanga House), Patna-800004.

... .. Petitioner/s

Versus

1. The Bar Council of India through the Chairman, New Delhi.
2. The Examination Controller, Bar Council of India, New Delhi.
3. The Bihar State Bar Council through the Chairman, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Akshay Lal Pandit
For the Respondent/s : Mr.Vishwajeet Kumar Mishra

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 21-07-2020 The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

Heard Shri S. Azeem, the learned counsel for the petitioner and Shri Vishwajeet Kumar Mishra, the learned counsel for the Bar Council of India.

The present writ petition has been filed for quashing the order dated 06.02.2020 issued by the respondents, to the extent, the petitioner has been disqualified in the All India Bar Examination-XIV (herein after referred to as the “AIBE-



XIV”), held on 15th September, 2019. The petitioner has further prayed for making available a copy of the OMR sheet, which has not been provided to the petitioner despite her having made an application under the Right to Information Act.

The brief facts of the case are that the petitioner had applied for the All India Bar Examination to be held on 15.09.2019, whereafter she had also appeared in the said examination for the purposes of being enrolled as an Advocate. It is stated on behalf of the petitioner that the examination was conducted for total 100 marks, however, subsequently 9 questions were deleted and the marking was done on the basis of 91 questions. The respondents had subsequently published the model answer and as per model answer, the petitioner is stated to have got 49 marks and the cut-off/ qualifying marks for general/ OBC candidates has been declared to be 40%, as such it is the case of the petitioner that she is a successful candidate. Nonetheless, the respondents have withheld the result of the petitioner. It is stated that a notification dated 3rd of February, 2020 was issued on the Website of the All India Bar Examination, whereby a list of candidates, whose set Code was missing or there was mismatch, was published and such candidates were asked to e-mail the first page (front cover) of



the question paper for verification, on or before 18th February, 2020 whereupon the petitioner had immediately sent the first page (front cover) along with her details, which has admittedly been received by the All India Bar Examination, Bar Council of India. Ultimately the petitioner, to her utter shock and surprise, found a notification dated 06.02.2020 on the aforesaid Website stating therein as follows:-

“This is to notify that all the candidates falling under the category of missing/ mismatch set-code, also, show-caused to furnish an explanation for the same stand disqualified for AIBE-XIV held on 15th September, 2019.”

The petitioner is stated to have also sought for a copy of OMR sheet by making application under Right to Information Act, but to no avail.

The learned counsel for the petitioner has submitted that the case of the petitioner has been rejected without any rhyme or reason and the fact is that though the petitioner had appeared in the examination, however, on account of inadvertence she could not fill-up the Set-Code-C, resulting in her result being categorised under the “withheld category”, nonetheless, as per the instructions of the respondents, she had immediately sent the first page (front cover) of the question



paper (Set Code-C), but still the respondents have cancelled her candidature by notifying that her candidature falls under the category of missing set code. In this regard the learned counsel for the petitioner has submitted that a bare perusal of the answer sheet of the petitioner herein sent by the BCI, in response to her Right to Information application shows that firstly the petitioner has secured 57% and secondly the answer sheet contains instructions to the Invigilator as well, in the following words:-

“ Important Instructions for Invigilator- Before signing please check that the candidate has filled his/ her Name, AIBE Roll No., Question Booklet Set Code and Language.”

It is thus the submission of the learned counsel for the petitioner that it was incumbent upon the Invigilator to check as to whether the question booklet Set Code has or has not been mentioned on the answer sheets. It is however, not disputed that the instructions for the candidates also prescribe that candidates should check the question Booklet Set Code before signing the answer sheet and that the candidate i.e. the petitioner herein has also given a declaration that in case she does not fill up the Set code etc. on the answer sheet, her candidature would be liable to be rejected. Notwithstanding the aforesaid facts, it is submitted that at best the present case can



be said to be a case of contributory negligence of both the respondents as also the petitioner herein, hence an equitable view is required to be taken and interest of justice demands that the result of the petitioner should be published.

Per contra, the learned counsel for the Bar Council of India Shri Mishra has submitted that the All India Bar Examination is being conducted by an outside agency under the supervision of High Power Monitoring Committee. It is submitted that the petitioner had not filled in the question Booklet Set Code on the OMR sheet, hence her answer sheet could not be evaluated and the petitioner has herself given a declaration to the effect that her candidature shall be liable to be rejected in case the set code is not filled, nonetheless the learned counsel for the respondents has not denied the fact that it was incumbent upon the Invigilator as well to check as to whether the candidate has filled in the question Booklet Set Code or not? It is submitted that the matter regarding candidates who have not filled their Set Code on their answer sheets was placed before the Monitoring Committee in its meeting held on 14.11.2019, whereafter the said Committee had sought for an explanation from the candidates as to why they have not filled in the Set Code on OMR sheet and as to why they should not be



disqualified from the Bar Examination in question. Accordingly, an e-mail was sent to all candidates on 22.11.2019 and thereafter, the candidates had submitted their reply/ explanation/ representation to the aforesaid show cause notice dated 22.11.2019, which had been placed before the Monitoring Committee of All India Bar Examination of the Bar Council of India and the Monitoring Committee in its meeting held on 21.01.2020, rejected the request of all such candidates who had failed to furnish their Set Code in the answer sheets. It is thus the submission of the learned counsel for the respondents that since the petitioner has given a declaration that her candidature would be liable to be rejected in case the set code etc. are not filled in the answer sheet, the case of the petitioner has been rejected since she had defaulted in mentioning the set code in the answer sheet. Nonetheless, upon instructions, the learned counsel for the Bar Council of India has submitted that pursuant to the observations of this Court made on an earlier occasion, he had sought instructions from the respondents and he has been instructed that in case the petitioner files appropriate representation before the Chairman, Bar Council of India, her case would be considered sympathetically.

Having regard to the facts and circumstances of the



case, I deem it fit and proper to dispose of the present writ petition with liberty to the petitioner to approach the Chairman, Bar Council of India by filing appropriate representation within a period of four weeks from today, with a copy to the learned counsel appearing for the respondent BCI to enable him to transmit a copy of the representation of the petitioner to the Chairman, Bar Council of India whereupon the said representation of the petitioner shall be considered sympathetically and a final decision shall be taken by the Chairman, Bar Council of India within a period of four weeks from the date of receipt of such representation, especially considering the fact that default has also been committed by the Invigilator appointed by the Monitoring Committee of the All India Board Examination of the Bar Council of India, who has also been made responsible to check as to whether the question Booklet, Set Code etc. have been mentioned by the candidate or not, before signing the answer sheet, thus it cannot be said that the petitioner is solely to be blamed for the lapses but the respondents are also equally liable to be blamed, thus the case of the petitioner requires to be considered sympathetically in an equitable manner.

The writ petition stands disposed of with the aforesaid



observations/ directions.

(Mohit Kumar Shah, J)

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