

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6139 of 2020

1. Pankaj Kumar Singh, aged about 42 years, Gender – Male, Son of Ram Lochan Singh , Resident of- Quarter No. 251/ABC, beside Ghanshyam Balika Sr. Sec School, New Colony, P.S.- Khagaul, District- Patna.
2. Prashant Shekhar, aged about 31 years, Gender – Male, Son of Ram Naresh Sharma , Resident of Village- Nagwa Parsa, P.S.- Naubatpur, District- Patna.
3. Neha , aged about 28 years, Gender – Female, daughter of Deo Girish Sharma Resident of A- 301, Sundari Enclave Dhirachak, P.S.- Gardanibagh, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Bihar School Examination Board, through its Chairman.
3. The Secretary, Bihar School Examination Board
4. Controller of Examination, Bihar School Examination Board
5. Dharmendra Kumar Yadav, aged about 26 years, Male, son of Dev Narayan Prasad Yadav, Resident of Mohalla + P.S. - Kankarbagh, District – Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6768 of 2020

Alok Kumar (Male), aged about 35 years, Son of Sri Awadh Bihari, Resident of Mirpur Bhual, Dighwara, PO + PS- Dighwara, District- Saran, Pin- 841207

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resource Development Department, Government of Bihar, Patna
2. The Director, Secondary Education, Education Department, Government of Bihar, Patna
3. The Chairman, Bihar School Examination Board, Bihar, Patna
4. The Secretary, Bihar School Examination Board, Bihar, Patna
5. The Controller (Misc.) STET Exam 2019, Bihar School Examination Board, Patna
6. Dharmendra Kumar Yadav, aged about 26 years, Male, son of Dev Narayan Prasad Yadav, Resident of Mohalla + P.S. - Kankarbagh, District – Patna
7. Amresh Rajak, aged about 31 years, Male, Son of Muneshwar Rajak, Resident of Village – Rajapur, P.O. - Rukundi, P.S. - Goh, District – Aurangabad

... .. Respondent/s



Appearance :

(In Civil Writ Jurisdiction Case No. 6139 of 2020)

For the Petitioner/s : **Mr. Satyavrat Verma, Advocate**
Mr. Shashank Chandra, Advocate
Mr. Shashank Shekhar, Advocate
For the Respondent/BSEB: **Mr. Lalit Kishore, Sr. Advocate (A.G.)**
Mr. Gyan Shankar, Advocate
Ms. Shilpa Singh, GA 12
For the intervenor : **Mr. Dinu Kumar, Advocate**
Ms. Ritika Rani, Advocate

(In Civil Writ Jurisdiction Case No. 6768 of 2020)

For the Petitioner/s : **Mr. Y.V. Giri, Sr. Advocate**
For the Respondent/BSEB : **Mr. Lalit Kishore , Sr. Advocate (A.G.)**
Mr. Manish Kumar, Advocate
Ms. Shilpa Singh, GA 12
For the intervenor : **Mr. Dinu Kumar, Advocate**
Ms. Ritika Rani, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 6 07-09-2020 1. The above writ petitions have been taken up together with the consent of the parties inasmuch as identical facts and issues are involved in both the writ petitions.
2. I have heard learned counsel for the petitioners and respondents along with intervenors - petitioners on 04.09.2020 and the matter was fixed under the heading “For Orders” for today.
3. For the sake of brevity the relevant facts are being taken from the 1st writ petition being CWJC No. 6139 of 2020.
4. CWJC No. 6139 of 2020 has been filed by the petitioners for quashing of the order / notice as contained in Memo No. 151 dated 16.05.2020 issued by Respondent No. 4 i.e. Controller of Examination, Bihar School Examination Board whereby the Secondary Teachers Eligibility Test - 2019 (for



short “STET 2019”) held on 28.01.2020 has been cancelled. The same order / notice has been challenged in the 2nd writ petition being CWJC No. 6768 of 2020 which is annexed as Annexure – 5 of the said writ petition.

5. The brief facts giving rise to the present two writ petitions are that large number of Teachers were required to be appointed within the state of Bihar, as such, the State Government delegated the power of appointment of Primary, Secondary and Higher Secondary Teachers to various Gram Panchayats, Nagar Parishads and Municipal Corporation in the State of Bihar. However, in order to ensure uniformity and that only efficient candidates are appointed on the said post, the State Govt. decided to conduct a common test through the Bihar School Examination Board (for short “BSEB”) for appointment of Primary Teachers which is Bihar Elementary Teachers Eligibility Test (for short “BETET”). Likewise, for appointment of Secondary (10th level) and Higher Secondary (+2 level) Teachers similar kind of combined test which is Secondary Teachers Eligibility Test (for short “STET”) is conducted by the BSEB. It is made clear that on the basis of marks obtained in the BETET or in the STET, merit list is prepared and the candidates securing highest marks are appointed as Primary Teachers or as



Secondary / Higher Secondary Teachers.

6. The present writ petitions involve the dispute relating to STET examination held on 28.01.2020 which has been cancelled by the BSEB on the ground of leakage of question papers, vandalism, disruption at various centres in the said examination and possibility of transmitting of question papers to other places through mobile phones and social media etc.

7. The BSEB in the month of September, 2019 published Advertisement No. PR 373 of 2019 for holding STET 2019 for appointment of Teachers in Secondary as well as Higher Secondary Govt. Schools within the State of Bihar. According to the writ petitioners the petitioners are Graduate and have also passed B.Ed. examination and are eligible for appointment as Secondary Teacher. Annexure - 1 to the writ petition is the advertisement issued by BSEB for appointment of Teachers. From perusal of Clause – 3 of the Advertisement it would be evident that examination was to be held for 2 Papers and Paper – 1 contained the subjects of Secondary Schools comprising of 7 subjects and Paper 2 was for Higher Secondary Schools which also comprised of 7 subjects. According to the writ petitioners they are eligible for



appointment as Teachers and accordingly applied for appointment against the aforesaid Advertisement for both Secondary and Higher Secondary Schools.

8. The writ petitioners were issued Admit Cards for appearing in STET 2019 schedule to be held on 28.01.2020 and as per the examination schedule the examination for Paper 1 was scheduled in the 1st sitting starting from 10.00 A.M. to 12.30 P.M. and examination for Paper 2 was scheduled in the 2nd sitting starting from 2.00 P.M. to 4.30 P.M.

9. As per the instructions the examinees were specifically directed to reach the examination centre at least one hour before the commencement of examination and occupy their seat according to their seat plan. According to the writ petitioners at the centre the last entry was at 9.30 A.M. for the 1st sitting and 1.30 P.M. for the 2nd sitting and no mobile or any other electronic devices were permitted to be carried inside the examination hall. It has also been stated by the writ petitioners that jammers were also installed at all the centres for preventing any kind of communication or copying through electronic devices. The writ petitioners in CWJC No. 6139 of 2020 have annexed Annexure – 3 which is letter no. 476 dated 19.12.2019 of the Controller of Examination, BSEB by which all the



District Magistrates were communicated regarding holding of STET 2019 and also regarding installation of Jammers by BSEB at the examination centres.

10. The writ petitioners further stated that examination at the centres of the petitioners were carried peacefully in fair and transparent manner and to the best of knowledge of the petitioners no copying / cheating was practiced during the examination. However, on 29.01.2020 the petitioners through various newspapers articles came to know that the examination at 5 centres i.e. A.N. College Patna (2nd sitting), L.P. Sahi Inter College, Muzaffarpur, Mahendra Mahila College, Gopalganj , R.M. College, Saharsa and Project Girls High School, Nawada were cancelled as candidates appearing in the said examination centres boycotted the exams.

11. Further, rumours were also being spread that the question paper got leaked prior to the commencement of the examination which was circulated through *whatsapp* but the petitioners or any of their known candidates who had appeared in the exam did not come across any kind of such circulation.

12. It has further been stated by the petitioners that since the examinations at the aforesaid 5 centres were cancelled, as such, the BSEB on 14.02.2020 published a notice for holding



fresh examination on the aforesaid 5 centres on 26.02.2020. The notice dated 14.02.2020 published by BSEB is at Annexure -5 of the 1st writ petition being CWJC No. 6139 of 2020. The writ petitioners also stated that holding re-examination only for 5 centres demonstrates that the BSEB found that the infirmities in holding the examination had taken place only at 5 centres and thus negated the rumours / allegations of circulation of question paper and also regarding questions being asked beyond the prescribed syllabus. The re-examination for the aforesaid 5 centres were held by BSEB on 26.02.2020 at the headquarters of the Board. In the meantime, CWJC No. 5650 of 2020 was filed by one Neeraj Kumar and others before this Court praying therein to cancel the STET 2019 examination and the said writ petition was taken up on 12.05.2020 when this court directed the BSEB to file counter affidavit in the matter and also fixed the matter for further hearing on 22.05.2020.

13. The writ petitioners contended that they had performed extremely well in the STET 2019 examination as such they were very sanguine of clearing the required cut-off and also securing high marks and thus were awaiting the final result of the examination, but the petitioners were taken aback when the BSEB all of a sudden under the signature of



Respondent No. 4 issued the impugned order dated 16.05.2020 cancelling STET 2019 examination which is annexed at Annexure- 6 to the writ application being CWJC No. 6139 of 2020 and Annexure- 5 to CWJC No. 6768 of 2020. The writ petitioners in CWJC No. 6139 of 2020 have annexed the press communique issued by BSEB on 16.05.2020 in which some details / reasons are assigned for cancellation of these examination by the Board. The photo copy of the press communique has been annexed at Annexure- 7 to the writ application being CWJC 6139 of 2020.

14. The contention of learned counsel for the petitioners in both the writ petitions is that the impugned order is cryptic , non -speaking and in absence of reasons assigned in the impugned order, the impugned order is arbitrary which renders it legally unsustainable. The petitioner no. 1 in CWJC No. 6139 of 2020 through e-mail dated 22.05.2020 represented before Respondent No. 3 and requested to review the decision of cancelling the STET 2019 examination but of no avail. The photo copy of the e-mail has been annexed at Annexure- 8 to the writ petition being CWJC No. 6139 of 2020.

15. The writ petitioners in CWJC No. 6139 of 2020 have filed an interlocutory application being I.A. No. 02 of 2020



stating therein that the respondent-BSEB published Advertisement No. PR- 181 of 2020 on 11.08.2020 in Prabhat Khabar newspaper [Patna edition] for holding re-examination of STET 2019 from 09.09.2020 to 21.09.2020 with instruction that Admit Cards for appearing in the examination shall be uploaded on the website of the Board from 25.08.2020. Accordingly, writ petitioners prayed for stay of the examination pursuant to advertisement dated 11.08.2020 during the pendency of the writ petition.

16. A common counter affidavit has been filed by respondent nos. 2 to 4 i.e. BSEB in both the writ petitions and a counter affidavit on behalf of intervenors- petitioners has also been filed in both the writ petitions.

17. The BSEB in its counter affidavit inter alia took a preliminary objection as to the very maintainability of the writ applications on the ground that the petitioners merely by participating in the STET 2019 examination do not acquire any indefeasible right to challenge the impugned decision dated 16.05.2020 whereby the said examination has been cancelled before publication of its result on the ground of malpractices / vandalism and that examination was contaminated. The respondent - BSEB further contended that the impugned



decision to cancel the STET 2019 examination had been arrived at after following the decision making process based on valid and cogent reasons by the Board, which may not be challenged under the extraordinary power of this Court of judicial review.

18. It has further been contended by respondents -BSEB that the writ applications are bad on account of non-joinder of necessary party inasmuch as pursuant to the writ petition filed earlier by some of the examinees demanding cancellation of STET 2019 examination and that it was after a thorough enquiry into the matter the impugned decision of cancelling STET 2019 examination was taken, which has been challenged by the petitioners in the present writ petitions, without impleading the petitioners of the aforesaid earlier writ petitions who are necessary party to the lis. The respondent - BSEB in its counter affidavit further stated that pursuant to the direction issued by Director, Secondary Education, Bihar STET 2019 examination was conducted by the BSEB which was in the nature of a competitive examination for the purpose of preparation of merit list for appointment of Teachers in the Secondary and Higher Secondary Schools. The said examination was conducted on 28.01.2020 in between 10.00 A.M. to 12.30 P.M. (First sitting) and 2.00 P.M. to 4.30 P.M.



(Second sitting) at 317 examination centres situated under 38 districts of the state of Bihar. The STET 2019 examination was based on multiple choice question and was conducted under the supervision of the concerned District Magistrates and the District Education Officers.

19. After the said STET 2019 examination was conducted a writ petition bearing CWJC No. 5650 of 2020 was filed by some of the examiness complaining of leakage of question paper through *Whatsapp* at 10.23 A.M. on the date of the examination i.e. 28.01.2020 enclosing the photo copy of the question papers said to have been leaked demanding cancellation of STET 2019 examination in which after noticing the stand taken by the Board to cancel the STET 2019 examination, the writ petition was disposed of by this Court as having become infructuous by order dated 22.05.2020 . A copy of the writ petition of CWJC No. 5650 of 2020 as well as order dated 22.05.2020 are annexed as Annexures- A and A/1 to the counter affidavit.

20. The respondent – BSEB further stated that in order to enquire into the facts raised in the writ application being CWJC No. 5650 of 2020 it has been considered by BSEB to get the matter enquired by a four member enquiry



committee, which has been constituted by the Board vide Memo No. KB148/2020 dated 09.05.2020. The said four member enquiry committee was headed by Sri Neelkamal , I.A.S. (Retd.), Chief Vigilance Officer, BSEB. The other three members of the Enquiry Committee were Sri Sanjay Priyadarshi, Administrative Officer, BSEB, Sri Nikunj Prakash Narayan, Joint Secretary, BSEB and Sri Rajiv Kumar, Vigilance Officer, BSEB.

21. The said four member enquiry committee on the basis of records, evidences and materials received from different districts and other sources and the facts incorporated in CWJC No. 5650 of 2020 enquired into the matter and submitted its report vide letter no. NiSe 447 / 2020 dated 16.05.2020 (Annexure – C to counter affidavit).

22. The enquiry committee in its report has inter alia mentioned that the District Magistrate, Saharsa with regard to STET 2019 examination held at Rajendra Mishra College, Saharsa vide letter no. 46/GO dated 28.01.2020 reported that the Centre Superintendent and the Static Magistrate deputed at Rajendra Mishra College, Saharsa had informed that at the time of first sitting examination, female candidates in large numbers had come out of the examination centre and started vandalism



and rampage at the examination centre. With regard to the said incident a joint enquiry report was submitted by the SDO, Sadar, Saharsa and SDPO, Sadar, Saharsa and FIR vide PS Case No. 82 of 2020 dated 28.01.2020 was also instituted against the rampagers.

23. Similarly, the District Magistrate, Gaya vide letter no. 144 /C dated 29.01.2020 had reported that OMR answer sheets and Admit Cards were torn by the examinees at +2 Zila School, Gaya causing disruption in the examination and created hindrance in the examination process. It has also been informed that due to the said disorder and chaos created by the examinees out of total 248 number of examinees at that centre only 118 examinees could take the said examination. Hence, the D.M., Gaya requested for cancellation of examination of 106 examinees of the first sitting of the said examination. In this regard FIR bearing PS Case No. 88 of 2020 had also been instituted.

24. Likewise, District Magistrate, Muzaffarpur vide letter no. 511 dated 31.01.2020 had reported that ruckus at L.P. Sahi Inter College, Patahi, Muzaffarpur was created by the examinees and the examinees came out of the examination centre carrying question papers. Accordingly, there was



complete loss of confidentiality in the examination and accordingly, recommended for cancellation of the examination of the said centre.

25. The District Magistrate, Gopalganj vide letter no. 346/C dated 28.01.2020 had informed that disruption in the first sitting of the examination at Mahendra Mahila College, Gopalganj was created by the examinees and the examinees had come out of the examination hall and started creating disruption by tearing the answer sheets of other examinees who were taking their examination. It was amidst such disruption that the examinees had snatched question paper from one of the invigilators and also torn the question papers. All such vandalism by the examinees had caused a complete disorder and imbroglio at the examination centre.

26. With regard to examination centre at Patna district at A.N. College, Patna during the examination of second sitting of STET 2019, the examinees started tearing of the question papers and boycotted the examination and had come out of the examination centre and so the Zonal Magistrate and Examination Controller had jointly reported and recommended for cancellation of the second sitting examination of STET 2019 at the said examination centre at Patna.



27. Further upon considering the issue of question raised in CWJC No. 5650 of 2020 regarding questions asked for Social Science subject the candidates were compulsorily required to pass in any two subjects out of History, Geography, Political Science and Economics offered under subsidiary subject / Honours and also that out of the aforesaid two subjects, one of the subjects was necessarily required to be History or Geography. As per the advertisement issued by Board vide no. PR 373 / 2019 dated 08.09.2019 the questions were rightly asked comprising of all the four subjects. However, the question setter ought to have segregated the questions into four groups on subject wise basis to enable the examinees to answer any one subject out of History or Geography with the option to answer any one subject out of the remaining three subjects but the concerned question setter without segregating the said four subjects into separate groups had compositely placed all the questions of Social Science under one group which was not appropriate.

28. The said four member enquiry committee after looking at the issue at hand holistically has recommended for cancellation of both the sittings of STET 2019 examination earlier held on 28.01.2020. The photo copy of the four member



committee's enquiry report has been annexed at Annexure – C to the counter affidavit filed by respondent- BSEB.

29. The BSEB thus contended in its counter affidavit that in such attending situation particularly when the photo copy of the question paper said to have been leaked had been brought on record in CWJC No. 5650 of 2020 and also as the enquiry committee after a detailed consideration of the issue involved has arrived at the finding that in the backdrop of vandalism and disruption caused at different centres in the said examination the probability of transmitting of question papers to other places by the examinees through electronic mode cannot be ruled out.

30. The intervenors- petitioners in their counter affidavit have inter alia stated that the writ petitioners of CWJC No. 5650 of 2020 included intervenor petitioners total 35 in number had raised the issue of leakage of question papers during the course of examination held on 28.01.2020 with large scale malpractices and leakage of question papers on social media like *whatsapp* , *facebook* and the examination was not free from doubt and in support of this fact the intervenor-petitioners brought on record the viral question papers circulating in social media on 28.01.2020 i.e. the date of



examination at 10.08 A.M. (on *whatsapp*), 10.28 A.M. (on *facebook*) during the course of examination and also brought on record the photo copy of the FIR being Ara P.S. Case No. 48 of 2020 dated 28.01.2020 registered under Section 419, 420 and 34 of the IPC in support of the fact that there was leakage of question papers, tampering with the examination process and unfair examination. The photo copy of the FIR being Ara P.S. Case No. 48 of 2020 and viral question papers have been enclosed in the counter affidavit of the intervenor -petitioners at Annexures- A/3 and A/4.

31. The intervenor- petitioners further contended that the examination was cancelled on 16.05.2020 during the pendency of CWJC No. 5650 of 2020 and the writ petitioners were fully knowing the factual position and contents of CWJC No. 5650 of 2020 even then the present writ petitioners did not implead the writ petitioners of CWJC No. 5650 of 2020 as respondents and on this ground alone the present writ petition suffers from non -joinder of necessary parties.

32. Rejoinder to the counter affidavit filed by respondent nos. 2 to 4 and also to the counter affidavit of intervenor- petitioners have been filed by the writ petitioners denying and disputing the contentions and allegations of the



respondents in the counter affidavit.

33. Mr. Satyavrat Verma, learned counsel appearing for the petitioners in CWJC No. 6139 of 2020 submits that the impugned order dated 16.05.2020 is cryptic in nature inasmuch as no reason has been assigned by the respondent no. 4 for issuing the impugned order, on the contrary, the order merely records that for some unavoidable reasons the STET 2019 examination stands cancelled. Learned counsel further submits that the impugned order itself shows that the respondent authority has not applied his mind prior to issuance of the order and has acted in arbitrary and perfunctory manner. Learned counsel further submits that it is settled proposition of law that the order passed by a public authority exercising administrative / executive or statutory power must disclose due and proper application of mind by the person making the order by recording reasons which led the authority to pass the order in question. Learned counsel referring to Clause- 3 of the advertisement at Annexure – 1 submits that exam was to be held for 2 papers and the Paper 1 consisted of subjects of Secondary School comprising of 7 subjects and Paper 2 was for Higher Secondary School which also comprised of 7 subjects. The petitioners being eligible for appointment as Teachers applied



against the said advertisement and were issued admit cards for STET 2019 examination scheduled to be held on 28.01.2020 and the examination for Paper 1 was scheduled in the 1st sitting i.e. from 10.00 A.M. to 12.30 P.M and the examination for Paper 2 was scheduled in the 2nd sitting i.e. from 2.00 P.M. to 4.30 P.M. and the candidates were directed to reach to the examination centre at least one hour before the commencement of the examination and occupy their seat.

34. Learned counsel further submitted that petitioners in terms of the direction contained in the Admit Card reached their examination centre within the prescribed time and no mobile or any other electronic devices were permitted to be carried. Further apart from prohibition of carrying electronic gadgets , jammers were also installed at all the centres for preventing any kind of communications or copying. Thus, appropriate measures were taken by the BSEB to avoid use of any kind of malpractices during the examination.

35. Accordingly, the submission of learned counsel is that there was no possibility of transmitting the leaked question papers to the examinees in the examination hall through electronic modes inasmuch as admittedly jammers were installed at all the centres for preventing any kind of



communications or copying and further the examinees were not allowed and permitted to carry mobile phones / electronic gadgets in the examination hall.

36. Learned counsel further submitted that the examination for the 1st sitting commenced at 10.00 A.M. and any leakage of question papers from few examination centres as alleged cannot be transmitted to a large number of candidates taking the examination at about 317 examination centres through electronic mode once the examinees as per the instructions given in the Admit Card had entered into the examination hall fitted with mobile / electronic jammers.

37. Learned counsel further submits that as per the own case of the respondents that malpractices and vandalism at 5 examination centres were reported and accordingly respondent- BSEB cancelled the examination held at the aforesaid 5 centres only for which respondent -BSEB on 14.02.2020 published a notice (Annexure – 5 to the CWJC No. 6139 of 2020) for holding fresh examination on the aforesaid 5 centres on 26.02.2020 . According to the learned counsel for the petitioners holding of fresh examination only on five centres clearly demonstrates that respondent - BSEB found infirmities which were confined only to the 5 centres. Thus, the



respondents themselves negated the possibilities of circulation of question papers amongst the examinees of other centres.

38. Learned counsel also submits that BSEB on 15.02.2020 issued answer keys for the question papers of all subjects of STET 2019 held on 28.01.2020 and on 01.05.2020 answer keys of the re-examination was also published which would go to show that the respondent authorities on the basis of the reports submitted by the District Magistrates / Static Magistrate had earlier decided to cancel the examination at those 5 centres only but after filing of the CWJC No. 5650 of 2020 in which this court directed the BSEB to file counter affidavit, the respondent / BSEB in haste constituted four member enquiry committee and on the basis of recommendation of the four member enquiry committee cancelled the examination by the impugned order / notice which is arbitrary and smacks of mala fide exercise of power by the respondent-authorities.

39. Accordingly, the submission of learned counsel for the petitioners is that the irregularities which were committed at aforesaid 5 centres were well within the knowledge of BSEB right from 28.01.2020 as a result of which the BSEB conducted re-examination for the said centres



inasmuch as the BSEB was satisfied that re-examination would rectify the irregularities whatever had taken place in the examination but subsequently, the respondent – BSEB turned around and cancelled the examination on the basis of similar set of facts. Learned counsel also submits that if the contention of the BSEB as recorded in the press communique regarding circulation of question papers are taken on its face value, then also the BSEB should have taken steps to find out the candidates to whom the alleged question papers were sent and also at what time and the mode and the respondent -BSEB could have segregated the tainted candidates from the untainted ones.

40. Mr. Verma, learned counsel for the petitioners further submitted that there was no evidence of malpractices in the examination except vandalism and leakage of question papers at 5 centres and the possibility of manipulating the social media by the vested interest cannot be ruled out. Thus, the decision to cancel the examination by the Board is based upon no evidence and the process adopted by the respondent -authority for arriving at the decision by re-appreciating on the same facts is alien to rule of law. Learned counsel relied upon a judgment reported in **(2006) 11 Supreme Court Cases 356**



INDERPREET SINGH KAHLON AND OTHERS *Versus*
STATE OF PUNJAB AND OTHERS to substantiate the proposition that tainted cases should have been separated from the non -tainted cases by the authority while taking a decision of cancellation of the examination. Learned counsel also relied upon a judgment reported in **(2010) 7 Supreme Court Cases 678 EAST COAST RAILWAY AND ANOTHER *Versus* MAHADEV APPA RAO AND OTHERS** for the proposition that even if the petitioners had passed the examination or their name had appeared in select list, the petitioners would not have an indefeasible right for appointment, yet appointment cannot be denied arbitrarily, nor can selection test be cancelled without giving proper justification. Learned counsel also submitted that contention raised in the writ application by the petitioners has not been controverted by the respondents thus the writ petition is fit to be allowed on the principle of Non-traverse.

41. Mr. Y.V. Giri, learned senior counsel appearing for the petitioners in CWJC No. 6768 of 2020 submitted that out of 317 centres in which examination were held on 28.01.2020 merely the process of examination was doubted in 5 centres and the respondent -BSEB decided to hold re-examination at those aforesaid 5 centres only and accordingly, on 26.02.2020 re-



examination was also held. Learned senior counsel further submitted that change of opinion by the authority to cancel the entire examination was not based on any fresh material and the respondent -BSEB has not acted as per the statutory regulation, which is **BIHAR SCHOOL EXAMINATION BOARD REGULATIONS 1964**. Learned senior counsel referring to Regulation 18 of Chapter V of BIHAR SCHOOL EXAMINATION BOARD REGULATIONS 1964 submits that BSEB being a statutory body cannot go beyond the provisions of Regulation 18 and cancel the examination inasmuch as Regulation 18 of Regulations 1964 clearly stipulates that:- ***“In any case where it is found that the examination has been violated by error, improper conduct, or other causes or where mal-practice, fraud or act of indiscipline or use of unfair means are reported to have been practised, the Board shall have the power to cancel the examination or to withhold or amend the result in such cases and to take such other action as it may deem fit.”***

42. Learned senior counsel submits that the BSEB has cancelled the examination without any evidence and in violation of the statutory Regulation 18 framed under the Bihar School Examination Board Act, 1952. Learned senior counsel relied



upon Annexure - 2 at page 29 of CWJC No. 6768 of 2020 which is the advertisement issued by the BSEB for holding STET - 2019 examination and referring to Clause 6 relating to Paper 1 Serial No. 7 having the subject of Social Science submits that no illegality was committed by the question setter in compositely / combinedly placing all the questions of Social Science under one group inasmuch as the advertisement does not say anything about segregating the questions into 4 groups on subject wise basis for Social Science subject.

43. Learned senior counsel thus submits that Clause 6, Serial No. 7 in the Advertisement refers to qualification of the candidate for Social Science subject but the decision of the BSEB to cancel the examination on the recommendation of the four member enquiry committee on the basis of discrepancy in the question papers relating to Social Science is completely without any basis.

44. Learned senior counsel further submits that cancellation of examination by the respondent / BSEB is based upon no evidence and any inference drawn by the four member committee cannot be termed as evidence. Learned senior counsel has relied upon following judgments of the Hon'ble Supreme Court as well as this High Court reported in **(2014) 6**



**Supreme Court Cases 644 JOGINDER PAL AND OTHERS
Versus STATE OF PUNJAB AND OTHERS , (2006) 11
Supreme Court Cases 356 INDERPREET SINGH
KAHLON AND OTHERS Versus STATE OF PUNJAB AND
OTHERS, (2003) 7 Supreme Court Cases 285 UNION OF
INDIA AND OTHERS Versus RAJESH P.U.,
PUTHUVALNIKATHU AND ANOTHER , 2000 (2) PLJR
(HC) 419 Ram Prit Rai vs. State of Bihar & others and
(2010) 13 Supreme Court Cases 427 (ORYX FISHERIES
PRIVATE LIMITED Versus UNION OF INDIA AND
OTHERS).**

45. On the other hand, Mr. Lalit Kishore, learned senior counsel appearing for respondent nos. 2 to 4 - BSEB submits that in the examination for recruitment of Teachers, the petitioners alongwith other eligible candidates applied and appeared and the Board based upon cogent evidence of leakage of question papers, vandalism, malpractices and other attending materials decided to cancel the examination inasmuch as the process of examination got polluted, contaminated and confidentiality of the examination was also tampered. The BSEB cancelled the examination before publication of result based upon the recommendation of the High Power Expert



Committee and the writ petitioners, by virtue of the fact that they had appeared in the examination, did not acquire any indefeasible right, which can legally be enforced in a writ application. Learned senior counsel further submits that it is well settled law that while exercising the power of judicial review this court may examine the decision making process and not the decision arrived at by the authority. This court may not exercise its extraordinary jurisdiction by interfering with the impugned order inasmuch as the impugned order is not suffering from any unreasonableness and arbitrariness.

46. Learned senior counsel for BSEB further submits that when the writ application being CWJC No. 5650 of 2020 (Annexure -A to the counter affidavit in CWJC No. 6139 of 2020) was filed alleging leakage of question papers through electronic mode, the BSEB constituted a four member high power enquiry committee and the enquiry committee based upon the materials produced before it revisited the entire material which had escaped the consideration of the BSEB earlier and recommended for cancellation of entire examination inasmuch as the sanctity and purity of the examination was vitiated. Learned senior counsel further submitted that all the case laws relied upon by the other side relates to unfair means



and are not applicable in the facts and circumstances of the present case.

47. Mr. Dinu Kumar, learned counsel appearing for the intervenors submitted written notes of argument stating therein that the intervenor- petitioners had challenged the process of examination in the earlier writ petition based upon the reason that question paper was leaked on social media viz. *facebook, whatsapp* on 28.01.2020 at 10.23 AM as contained in Annexure -A/4 page no. 13 of the counter affidavit in CWJC No. 6768 of 2020. Learned counsel further submitted that another writ petition being **CWJC No. 5670 of 2020 (Shiojee Chaurasia versus The State of Bihar and Ors.)** as contained in Annexure 2 page no. 20 was disposed of by Hon'ble the Chief Justice and Hon'ble Mr. Justice S. Kumar taking into account the decision of the Bihar School Examination Board to cancel the examination and stand of the Board that it has already taken steps for conducting the re-examination so the observation in the aforesaid writ application has binding effect upon all. Learned counsel relied upon a judgment of the Hon'ble Supreme Court reported in **1998 (9) SCC 236 Madhyamic Shiksha Mandal, M.P. vs. Abhilash Shiksha Prasar Samiti** for the proposition that decision taken by the Board in



cancelling the examination was not interfered in the case of Madhyamic Shiksha Mandal, M.P. vs. Abhilash Shiksha Prasar Samiti. Learned counsel also relied upon the decision of the Supreme Court on the point of locus standi of a candidate after cancellation of the examination reported in **2003 (11) SCC 768 Union of India & Ors Versus Tarun K Singh & Ors.** in which the Apex Court has held that *“the challenge to the order cancelling the test was legally untenable as no candidate had any legally enforceable right to any post until he was selected and an order of appointment issued in his favour. Cancellation of the selection process on the ground of malpractices could not therefore be subjected to judicial scrutiny before a Writ Court, at the instance of a candidate who had not even found a place in the select list.”* Learned counsel further relied upon a judgment of the Honble Supreme Court in **Tanvi Sarwal versus Central Board of Secondary Education & Ors. reported in 2015 (6) SCC 573** for proposition that on the ground of tampering, leakage of question papers by using electronic method have been considered as grounds for cancellation of examination.

48. Learned counsel also submitted that in the present writ applications only 4 candidates are aggrieved out of



2,47,000 candidates and the Board has already issued Admit Cards on 03.09.2020 for appearing in the examination starting from 09.09.2020 to 21.09.2020 as such, the present writ petitions are fit to be dismissed in the interest of justice.

49. I have heard learned counsel for the parties and have perused the materials available on record. The main issue involved in the present writ applications is as to whether the impugned decision of the Board to cancel the examination suffers from vice of unreasonableness, arbitrariness and non-application of mind and is based upon no evidence.

50. The contention of learned counsel for the petitioners in both the writ applications is that the impugned decision is not sustainable in the eye of law inasmuch as there was no fresh material before the respondent -BSEB to arrive at a decision to cancel the entire examination particularly when the BSEB on the same set of evidence had earlier decided to cancel the examination held at those 5 centres where vandalism, malpractices and irregularities were reported. On the other hand, the specific stand of the BSEB is that a four member enquiry committee was constituted to enquire into the leakage of question papers through electronic mode and the enquiry committee after thoroughly going into the facts available on



records and evidences, enquired into the matter and submitted a report specifically recommending for cancellation of entire examination primarily upon basis of the fact that at the examination centres large scale vandalism was resorted to, question papers were torn, the examination was boycotted, and as such, circulation of question papers through mobile phone cannot be ruled out and the BSEB taking into consideration the recommendation of the enquiry committee, based upon cogent evidence, decided to cancel the entire examination and re-examination is going to be held with effect from 9.9.2020 to 21.9.2020 for which Admit Cards have already been downloaded by a large number of candidates.

51. Mr. Satyavrat Verma , learned counsel as well as Mr. Y.V. Giri, learned senior counsel for the petitioners in the aforesaid two writ petitions have relied upon the judgment of the Hon'ble Supreme Court reported in **(2006) 11 Supreme Court Cases 356** and **(2010) 7 Supreme Court Cases 678** in support of their argument.

52. The basic facts involved in the judgment of the Hon'ble Supreme Court in (2006) 11 Supreme Court Case 356 in brief is that one Sri Ravinderpal Singh Sidhu was the Chairman of the Punjab Public Service Commission between



1996 to 2002 and allegations against him was that he got a large number of persons appointed on extraneous considerations including monetary consideration. Such appointments were said to have been made during the period 1998 to 2001 and raids were conducted in his house on more than one occasion and a large sum of money (about Rs. 16 crores) was recovered from his custody and from other relatives. Accordingly, the services of direct recruits in Executive Class I and Executive Class II were terminated by way of dismissal from services vide order dated 24.08.2002 who were appointed during the period Mr. Sidhu was the Chairman of the Punjab Public Service Commission. The facts of the judgment relied upon by learned counsel for the petitioners is entirely different and is not applicable in the facts and circumstances of the present case.

53. The facts involved in the judgment relied upon by learned counsel for the petitioners reported in **(2010) 7 Supreme Court Cases 678** is that the Senior Divisional Personnel Officer, East Coast Railway, Visakhapatnam had issued a notification proposing to conduct a written / practical typewriting test for filling up the vacant posts of Chief Typists and in response to the same as many as 12 candidates appeared in the test held on 30.10.2006 and the result whereof was



announced on 22.11.2006. Some of the candidates who failed to qualify made a representation complaining about the manner in which the test was conducted alleging that defective typewriting machines provided to them placed them at disadvantage vis- a- vis candidates declared successful. Accordingly, the Railway issued an order cancelling the typewriting test conducted on 30.10.2006 and issued another notification for holding a fresh typewriting test for all the 12 in- service candidates who had appeared in the earlier test.

54. By an interim order passed by the Tribunal the Railways authorities were allowed to conduct the proposed second test in which the applicant before the Tribunal could also appear. The Tribunal held that the test earlier conducted was rightly cancelled and the matter travelled upto the High Court of Andhra Pradesh which by the order impugned in the appeal before the Hon'ble High Court allowed the writ petition and set aside the order passed by the Tribunal and also the order by which the earlier test was cancelled. The High Court further directed the respondent to proceed with the selection process pursuant to the first notification dated 18.10.2006. The Hon'ble Supreme Court held that there is no quarrel that the well settled proposition of law is that an order passed by a public authority



exercising administrative / executive or statutory power must be judged by the reasons stated in the order or any record or file contemporaneously maintained. In paragraph- 28 of the judgment Hon'ble Supreme Court has observed as follows:

“28. That is not, however, the position in the instant case. The order of cancellation passed by the competent authority was not preceded even by a prima facie satisfaction about the correctness of the allegations made by the unsuccessful candidates leave alone an inquiry into the same. The minimum that was expected of the authority was a due and proper application of mind to the allegations made before it and formulation and recording of reasons in support of the view that the competent authority was taking.”

55. Accordingly, in paragraph- 29 Hon'ble Supreme Court held that:-

“ But we find it difficult to sustain an order that is neither based on an enquiry nor even a prima facie view taken upon a due and proper application of mind to the relevant facts. Judged by that standard the order of cancellation



passed by the competent authority falls short of the legal requirement and was rightly quashed by the High Court.”

56. From close reading of the judgment it is evident that the facts involved in the said judgment is different from that of the facts involved in the present case. The Hon’ble Supreme Court while entertaining the plea of the successful candidates despite the objection by the Railways that no indefeasible right was created in their favour has observed that the well settled proposition of law that order passed by public authority exercising administrative / executive powers must be judged by the reasons stated in the order or any record or file contemporaneously maintained. In the present case the record suggests that reasons for cancellation of the examination by the respondent – BSEB was maintained on record inasmuch as on the same date when the notice / order for cancellation of examination was published, a press communique giving reasons for the decision was also issued by the respondent and the recommendation of the four member enquiry committee was also available on record before the respondent – BSEB and as such in my considered view this judgment also relied upon by learned counsel for the petitioners will not be of any help to the



writ petitioners.

57. Mr. Y.V. Giri, learned senior counsel relied upon another judgment reported in **(2003) 7 Supreme Court Cases 285** in support of his argument that the cancellation of the entire examination is bad which prejudiced the rights of the untainted candidates like the petitioners. The brief facts involved in the case relied upon by learned senior counsel for the petitioners is that applications were invited for filling up 134 posts of Constables by CBI. The selection process consisted of a written examination and interview followed by a physical fitness test. However, the selected candidates including the respondents were informed that the selection list had been cancelled by the Special Committee constituted to enquire into the allegations of favouritism and nepotism on the part of the Officers in conducting the Physical Efficiency Test and irregularities committed during the written exam. The matter travelled before the High Court through CAT and the Division Bench of the High Court after perusal of the Committee's report and review of the entire process categorically rejected the allegations of nepotism / favouritism and came to the conclusion that there was no justification to cancel the entire selection when the impact of irregularities which crept into evaluation on merits



could be identified specifically and found that on a reconsideration of the entire records, to have resulted in about 31 specific number of candidates being selected undeservedly to the detriment of similar such number of candidates.

58. Repelling the plea that a person in the select list has no vested right to get appointed and finding the cancellation of entire selection arbitrary and unreasonable, allowed the writ petition filed by the candidates and accordingly, appeal was preferred by the Union of India before the Hon'ble Supreme Court and the Hon'ble Apex Court held that **“there seems to be no serious grievance of any malpractices as such in the process of the written examination - either by the candidates or by those who actually conducted them”**. We do not find any infirmity in the judgment of the High Court. The appeal filed by the Union of India is dismissed. It appears that the facts of the case relied upon by learned counsel for the petitioner is entirely different from the facts involved in the present writ applications as such, the present judgment relied upon by learned counsel for the petitioners is not applicable in the facts and circumstances of the present case.

59. Mr. Y.V. Giri, learned senior counsel further relied upon a judgment of the Hon'ble Supreme Court reported in



(2014) 6 Supreme Court Cases 644 on the proposition that if some of the candidates were untainted and entered into service by virtue of their merit and not because of any extraneous consideration and as such candidates could be segregated from tainted candidates, the cancellation of entire selection process on ground that the process smacks of mala fide and malpractices was not justified. The fact of the case relied upon by the learned senior counsel for the petitioners is almost similar to the facts of the case relied upon by him in judgment reported in **(2006) 11 SCC 356** and is also not applicable in the facts and circumstances of the present case.

60. Learned senior counsel also relied upon the judgment reported in 2000 (2) PLJR (HC) 419 in support of his argument that cancellation of result of the examination is based upon no evidence. It appears that the facts of the case involved in the said judgment was different from the facts available in the present case inasmuch according to the writ petitioner the examination in question in which the petitioner participated was held at the examination centre of respondent no.- 4 along with some other examinations conducted by the respondent no. 2. It is further case of the petitioner that the said examination was held as per direction of the respondent no. - 2 which had



deputed an observer for the examination centre in question and there was no adverse report regarding the conduct of the said examination either by the observer or by the centre Superintendent. The Hon'ble High Court in paragraph no. – 7 of the judgment observed that:-

“ Had the District Magistrate referred to any specific material and had he come to an opinion that the examination had not been conducted in accordance with law, the matter could have been different. But in spite of abundant opportunities no enquiry report or any material has been produced before the Court by any of the respondents.”

61. Accordingly in paragraph no. 11 of the aforesaid judgment this court declared the impugned order as bad in law based on no evidence. But in the present case the enquiry report of four member enquiry committee is on record and the decision to cancel the examination by the Board has been taken based upon the recommendation of the four member enquiry committee as such the judgment relied upon by learned senior counsel for the petitioners is not applicable in the facts and



circumstances of the present case.

62. Learned counsel for the petitioners vehemently argued that the impugned order is cryptic, non-speaking and does not disclose any reason for cancellation of the examination.

63. I have gone through the submissions of the parties and the materials available on record. It appears that the reasons for cancellation of examination was issued in a press communique issued by the BSEB on the same date when the notice / order for cancellation of examination was issued by the respondent i.e. 16.05.2020 and writ petitioners of CWJC No. 6139 of 2020 has already brought on record the press communique giving the reasons for cancellation by way of Annexure- 7 to the writ petition. Further more, the recommendation of the four member enquiry committee has also been brought on record which enquired into the matter on the basis of available records, evidences and materials received from different districts and other sources recommended for cancellation of the examination. The enquiry committee after a detailed consideration of the issue involved has arrived at the finding that in the backdrop of vandalism and disruption caused at different centres in the said examination, the probability of transmitting of question papers to other places by the examinees



through mobile phone cannot be ruled out. The Hon'ble Supreme Court in the judgment reported in **(2010) 6 Supreme Court Cases 614** in paragraph no. 45 has held as follows:-

“45. We are of the view that the decision -maker can always rely upon subsequent materials to support the decision already taken when larger public interest is involved. This Court in Madhyamic Shiksha Mandal, M.P. v. Abhilash Shiksha Prasar Samiti found no irregularity in placing reliance on a subsequent report to sustain the cancellation of the examination conducted where there were serious allegations of mass copying. The principle laid down in Mohinder Singh Gill case is not applicable where larger public interest is involved and in such situations, additional grounds can be looked into to examine the validity of an order. The finding recorded by the High Court that the report of CBI cannot be looked into to examine the validity of the order dated 4-6-2004, cannot be sustained.”

64. Accordingly, the contention of the learned counsel appearing for the petitioners that the impugned order is cryptic and does not disclose any reason is not acceptable by this court because contemporaneous document like the press



communique and the enquiry report submitted by four member enquiry committee in support of the impugned order clearly do disclose cogent and sufficient reasons for cancellation of the examination. The further contention of the learned counsel appearing for the petitioners that there is no evidence to show as to whether leaked question paper was communicated to the other examinees at various centres and in absence of definite evidence to that effect, the decision to cancel the examination by the respondent- BSEB merely on the recommendation of the four member enquiry committee based upon mere possibility of transmitting the question papers through mobile phone to other examinees is not sustainable on facts and law inasmuch the impugned order is based upon no evidence.

65. I have carefully gone through the detailed report of the four member enquiry committee in which the enquiry committee has discussed and has taken into consideration the materials and evidences placed before it and has arrived at a conclusion that in the backdrop of vandalism, disruption and leakage of question papers the probability of transmitting the question paper to other places by examinees cannot be ruled out.

66. I find the findings of the four member enquiry committee as reasonable inasmuch as it cannot also be said



with certainty that the leaked question papers would remain confined to the precinct of the particular centre in this age of use of electronic media by a large number of population where a document can travel within a few seconds / minutes. It is also unthinkable to conceive that a leaked question paper would have remained confined to the precinct of a particular centre. The Hon'ble Supreme Court in paragraph no. 50 of the judgment reported in **(2010) 6 Supreme Court Cases 614** has held as follows: -

“ 50. We are also of the view that the High Court was in error in holding that the materials available relating to leakage of question papers were limited and had no reasonable nexus to the alleged large- scale irregularity. Even a minute leakage of question paper would be sufficient to besmirch the written test and to go for a retest so as to achieve the ultimate object of fair selection.”

67. This Court while exercising its jurisdiction under Article 226 of Constitution of India can not sit in appeal upon the decision of the administrative authority by going into the sufficiency of evidence and / or by reappreciating the same.



68. Accordingly, the contention of the writ petitioners is fit to be rejected. There is no quarrel amongst the parties that purity of examination process, whether such examination pertains to assessment of academics accomplishment or suitability of candidates for employment under the State is an unquestionable requirement of the rationality of any examination process. The State and its instrumentalities are obliged to take appropriate measures to maintain the purity of examination process. In the present case admittedly there are allegation of malpractices, leakage of question papers and other irregularities and the four member enquiry committee upon consideration of the materials and evidences produced before it has come to the conclusion that the process of examination has vitiated and has recommended for cancellation of the same. I find no infirmity in the order of cancellation based upon the recommendation of the four member enquiry committee issued by the respondent – BSEB.

69. In view of the discussions made hereinabove and the materials available on record and after hearing the arguments advanced by the parties, I come to the conclusion that the impugned order passed by respondent no. 4 at Annexures- 6 and 5 in the aforesaid two writ petitions cannot be said to be



arbitrary, irrational, unjustified and violative of statutory regulation. As such, I am of the considered opinion that the impugned order does not warrant any interference by this court under its power of judicial review.

70. The aforesaid writ applications are accordingly dismissed.

(Anil Kumar Sinha, J)

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