

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8120 of 2020

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1. Nitu Kumari Wife of Sujeet Kumar Resident of Village-Shivraha, Chaturbhuj, P.S.-Jhapaha, District-Muzaffarpur.
 2. Satish Kumar Son of Kishore Prasad Patel Resident of Village-Bankat, P.S.-Motipur, District-Muzaffarpur.
 3. Pinki Kumari Wife of Naveen Kumar Gaurav, Resident of Village-Majhulia, P.S.-Jhapaha, District-Muzaffarpur.
 4. Vineet Kumar Son of Ramesh Chandra Sharma, Resident of Swami Shajanand Nagar P.S.-Sadar, District-Muzaffarpur.
 5. Manoj Kumar Nirala, Son of Ramnath Thakur, Resident of Village-Ganghati Bishunpur, P.S.-Jhapaha, District-Muzaffarpur
 6. Pushpanjli Kumari Daughter of Dharikshan Sah Resident of Village-Hathauri P.S.- Hathauri, District-Muzaffarpur.
 7. Hajari Lal Prasad Son of Jawahar Sah Resident of Village-Muradpur, P.S.-Ahiyapur, District-Muzaffarpur
 8. Vandana Kumari Wife of Avanit Kumar Resident of Village-Ward No.-10, Chakdonai, P.S.-Runnisaidpur, District-Sitamarhi.
 9. Ram Pravesh Kumar @ Ram Pravesh Son of Kishori Sah, Resident of Village-Daud Chhapra, P.S.-Minapur, District-Muzaffarpur.
 10. Archana Kumari Wife of Ram Sujeet, Resident of Village-West of Akhara Ghat, P.S.-Akharaghat, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director Secondary Education, Department of Education, Government of Bihar, Patna.
4. The Secretary, Bihar School Examination Board, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Krishna Chandra
For the Respondent/s : Mr.Lalit Kishore (AG)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 06-10-2020

The petitioners had appeared for physical



education and health instructor ability test for Middle Schools, held by the Bihar School Examination Board on 16.12.2019. The test was *Multiple Choice Question* (MCQ) test. The result was published on 11.02.2020. The model answers of the questions were uploaded on the *website* of the Board so as to enable the candidates to make self assessment and to raise their objections, if any, in respect of the model key answers.

2. It is not stated in the writ application that the petitioners had raised any objection over the correctness of the model answers keys before the Board and as uploaded on the *website*. In the present writ application, it is their case that the petitioners have missed to clear the test by a small margin. It is, however, their case that the model answers prepared by the Board, in respect of some questions were incorrect whereas some of the questions were wrongly framed incapable of being correctly answered. Instances have been given of such discrepancies in the writ application. Though the petitioners have stated in their pleadings as to what should have been correct answers in respect of some of the questions according to them, they have not stated what were their respective answers in the



said examination. There is no specific pleading in the writ application as to how the model answers, which according to them, are incorrect have prejudiced their cases. In the Court's opinion, they could not have pleaded such prejudice in the absence of specific stand as to what were their answers in respect of such questions and because of wrong option suggested by the Board in the model answers, the petitioners suffered.

3. In my opinion, the case of the petitioners is squarely covered by a Division Bench decision of this Court in case of **Rabindra Kumar Singh Vs. High Court of Judicature at Patna** reported in **2016(1) PLJR 865**, paragraph 27 of which is reproduced herein below:-

“27. What follows from the above discussion is that the writ petitioners merely claim that the questions and the model answers are incorrect or erroneous; but it is not their pleaded case that they would have attempted the questions but for the fact that the questions were incorrect or that they had attempted the questions, but they did not receive marks, because of the fact that the model answers were incorrect. When



the writ petitioners have not been prejudiced, because of incorrect or erroneous questions and/or because of incorrect or erroneous answers, they cannot sustain the writ petition merely on the ground that the questions or the model answers are incorrect, even if any question or model answer is found to be incorrect or erroneous.”

4. Further, paragraphs 29 to 35 of the decision in case of **Rabindra Kumar Singh** (supra), read as under:-

“29. The question, which we are required to answer, in the present proceedings, in view of rival submissions made on behalf of the parties, is as to whether, while exercising power of judicial review in a proceeding under Article 226 of the Constitution of India, this Court should sit over the decision of the Selection and Appointment Committee on the aspect of framing of questions and preparation of model answers.

30. The answer to the question posed above is necessary in order to deal with the grievance of the petitioners of alleged violation of their right of fair selection in the competitive



examination in question. To put it a little differently, the question is as to whether the writ petitioners have been able to make out a case by making specific pleading that impugned action of wrong framing of questions/model answers had, in fact, adversely affected their right in any manner? In order to answer this question, it has to be kept in mind that the petitioners knew the questions. It is not their case that the question papers were not in their possession. They also knew as to what answers they had given to respective questions.

31. It is of immense importance to note that the model answers, prepared by the Selection and Appointment Committee of the High Court, as well as the revised model answers and deletion of certain questions were put on website of the Court. These writ petitioners could have, in all fairness, pleaded in their writ applications that they got less marks/0 (zero) mark/ negative marks as their correct answers did not tally with the so-called incorrect model answers prepared by the Selection and Appointment Committee of the High Court. They have maintained absolute silence. In their pleadings, on this aspect.



This aspect can be elaborated by way of illustration.

32. Let us assume, for a moment, that with respect to Question No.X, four choices, i.e., (a), (b), (c), and (d) were suggested as answers to the said question and (d), according to the model answer prepared by the Selection and Appointment Committee, was the correct answer; whereas, according to the petitioners, (c) would have been the correct answer. While considering this situation, we presume a situation, where there is no dispute over correctness of framing of the question. It could have been pleaded by the petitioners in their pleadings that they had answered the question correctly by marking (c); but because of wrong model answer, they got 0 (zero) mark/negative marks. In the absence of such a pleading, the petitioners cannot claim that their right to get selected got adversely affected, because of wrong model answer.

33. In our opinion, thus, in the absence of necessary pleadings and when the writ petitioners have failed to establish that any of their rights got adversely affected because of the impugned action, no interference is



possible by this Court in exercise of its power of judicial review under Article 226 of the Constitution of India.

34. There can be yet another situation as regards the questions, which, according to the petitioners, were wrongly framed. There is no doubt that in a given case, because of wrong framing of questions in a multiple-choice objective type test, it may become impossible to mark correct answer out of multiple-choice suggested in the test. Since all the informations are available with the participants as noted above, one can make out a case that he did not attempt the said question, because of its wrong framing or the candidates answered the question incorrectly, because of its being wrongly framed. He can make out a case, by specifically pleading that because of the lapse on the part of the Selection and Appointment Committee, his right gets adversely affected, because he could not attempt the question or he could not answer the question. In this situation also, the possibility that these petitioners got marks with respect to the questions, which, according to them, were wrongly framed, cannot be ruled out.



35. At any rate, when it is not the case of any of the writ petitioners that they could not attempt the questions, because of the fact that the questions were incorrectly framed and, similarly, in the absence of any pleading by the writ petitions that through they answered the questions, they have not been given mark, because of the model answer being incorrect, the petitioners cannot succeed merely by pointing out as to how many errors have crept in while publishing the questions or while drawing the attention of the candidates to the model answers. With all the informations available to them, the silence, which the writ petitioners have maintained about their respective performance with respect to various questions, is demonstrative of the fact that the controversy, in the present proceeding, is being raised on grounds, which are afterthought so that they may succeed in obtaining a chance once again, to appear in the screening/preliminary examination, and not on the basis that their rights of fair selection had, in fact, got adversely affected.”

5. Finally, the Division Bench in case of



Rabindra Kumar Singh (supra), held in paragraph 36 to 39 as under:-

“36. In order to claim issuance of prerogative writ under Article 226 of the Constitution of India, a person, seeking such a relief, will have to plead and establish that he has been prejudicially and adversely affected by an act or omission of the State or its instrumentality. The party will have to demonstrate sufficient interest in the adjudication of the issue on the ground that because of any act or omission on the part of the authority, his rights got adversely affected.

37. In the present case, the petitioners were required to plead, demonstrate and establish that they got less marks than what they deserved on the basis of their claim or wrong framing of questions/model answers. Unless a person is able to establish discrimination, this Court is not required to invoke its extraordinary writ jurisdiction under Article 226 of the Constitution of India merely on the pleadings of an erroneous act of omission on the part of an authority.

38. In deciding whether an



applicant for judicial review has sufficient interest in the matter to which the applicant relates, the Court exercising its power under Article 226 of the Constitution of India, is required to take into account the extent of the interest of the applicant in the issue raised.

39. In the present case, as has been discussed above, the main issue raised is that the questions/model answers were wrongly framed. The petitioners have not been able to show, on the basis of their pleadings, that they, in fact, suffered any injury, because of the alleged wrong framing of questions/model answers. They have just not been able to establish sufficient interest in the “*matter in issue*”. We need not reiterate the fundamental principles of judicial review that the existence of legal right of the petitioners, which is alleged to have been violated, is the foundation for invoking the jurisdiction of the High Court under Article 226 of the Constitution of India.”

6. Since in the Court’s opinion, the petitioners’ case



is squarely covered by the decision rendered in case of Rabindra Kumar Singh (supra), no interference by this Court in the present matter is required on the basis of what has been pleaded in the writ application.

7. This writ application is, accordingly, dismissed.

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(Chakradhari Sharan Singh, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23.10.2020
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