

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.112 of 2019

In
Civil Writ Jurisdiction Case No.8387 of 2018

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1. The Chairman, Bihar School Examination Board, Patna.
 2. The Secretary, Bihar School Examination Board, Patna
 3. Director, Bihar School Examination Board, Patna
 4. Examination Controller, Bihar School Examination Board, Patna

... .. Petitioners

Versus

1. Bhavya Kumari D/o 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
2. The State of Bihar
3. Principal Secretary cum Secretary to Government, Human Resources Development Department, Govt. of Bihar, New Secretariat Building, Bailey Road, Patna

... .. Opposite Parties

Appearance :

For the Petitioner (BSEB)	: Mr. Satyabir Bharti, Advocate Mr. Ratan Kumar, Advocate
For the Opposite Party/s	: Mr. Ashutosh Ranjan Pandey, AAG-15 Mr. Rakesh Narayan Singh, Advocate Mr. Prabhat Ranjan Singh, AC to AAG-13

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 03-08-2022

This review application has been filed seeking review of the judgment and order dated 29.08.2018 passed by this Court in CWJC No. 8387 of 2018 to the extent this Court had directed the petitioner-Bihar School Examination Board to place on the *web-site* of the Board the answer-sheets of all the top ten scorers of X and XII examinations, to be held by the Board in



future, immediately after publication of result.

2. The said order was passed to minimise scope of recurrence of similar controversies as had been noticed while deciding the writ petition filed by opposite party No. 1. Relevant portion of the order sought to be reviewed reads as under:

“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 (गण) 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.”

3. It has been brought to the Court's notice that all the directions issued by this Court in the order dated 29.08.2018 have been implemented except for the direction, whereby, the Board has been directed to place on the *web-site* of the Board, the answer-sheets of all top ten scorers of X and XII examinations to be held in future.

4. The Board, in order to seek review of the part of the order, as noted above, has relied on a Supreme Court's decision rendered in the case of **CBSE v. Aditya Bandopadhyay** reported in **(2011) 8 SCC 497** with particular reference to paragraphs No. 44 and 45 thereof.

5. This review application was taken up on 24.11.2021. Noticing substance in submission made on behalf of the Board, notice was issued to opposite party No. 1 and it was further directed that the aforementioned last direction contained



in the order dated 29.08.2018 passed in CWJC No. 8387 of 2018 shall remain in abeyance, in the meanwhile.

6. Upon service of notice, opposite party No. 1, who was the writ petitioner in CWJC No. 8387 of 2018, has entered appearance through *vakalatnama*. A counter affidavit has also been filed on behalf of the opposite party No. 1.

7. I have heard Mr. Satyabir Bharti, learned counsel appearing on behalf of petitioners and Mr. Ratan Kumar, learned counsel appearing on behalf of the opposite party No.1.

8. Mr. Satyabir Bharti, learned counsel appearing on behalf of petitioners has reiterated reliance on the Supreme Court's decision in case of *Aditya Bandopadhyay* (supra) and has submitted that, there being fiduciary relationship between the Board and the examinees, it may not be appropriate for the Board to place on its *web-site*, their answer-sheets after publication of result.

9. Per contra, learned counsel appearing on behalf of the opposite party No. 1 has made two fold submissions. He has firstly submitted that this review application deserves to be dismissed on the ground of delay for the reason that this Court's order was passed on 29.08.2018, whereas, the present review application has been filed on 15.03.2019. In support of his



submission, he has relied on Supreme Court's decision in case of ***Postmaster General v. Living Media India Ltd.*** reported in ***(2012) 3 SCC 563*** with particular reference to paragraphs 25 and 29 thereof. He has secondly submitted that, this Court in a proceeding for review of an order may not go into the correctness of the order under review as if sitting in appeal. He has relied on Supreme Court's decision in case of ***Parsion Devi v. Sumitri Devi*** reported in ***(1997) 8 SCC 715*** in support of his submission.

10. After having perused the order under review and records of CWJC No. 8387 of 2018, the Court is of the opinion that the order under review was passed apparently in ignorance of the law laid down by the Supreme Court in case of ***Aditya Bandopadhyay*** (supra). Learned counsel for the petitioner has laid emphasis on paragraph Nos. 44 and 45 of the said decision of the Supreme Court, which is being reproduced hereinbelow:

“44. We may next consider whether an examining body would be entitled to claim exemption under Section 8(1)(e) of the RTI Act, even assuming that it is in a fiduciary relationship with the examinee. That section provides that notwithstanding anything contained in the Act, there shall be no obligation to give any citizen information available to a person in his fiduciary relationship. This would only mean that even if the relationship is fiduciary, the exemption would operate in regard to giving access to the information



held in fiduciary relationship, to third parties. There is no question of the fiduciary withholding information relating to the beneficiary, from the beneficiary himself.

45. One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated answer books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8(1)(e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it.”

11. The Supreme Court in case of ***Aditya Bandopadhyay*** (supra) has clearly laid down that if a relationship of a fiduciary and beneficiary is assumed between the examining body and examinee with reference to the answer book, Section 8(1)(e) of the Right to Information Act, 2005 would operate as an exemption to prevent access to any third party and will operate as a bar for the very person who wrote the



answer book, seeking inspection or disclosure of it.

12. In the Court's opinion, in the light of Supreme Court's decision in case of *Aditya Bandopadhyay* (supra), since it has been held to be impermissible for an examining body to make disclosure to any third party of evaluated answer books by invoking Right to Information Act, learned counsel appearing on behalf of the Board is correct in his submission that the Court should review the order, whereby, the Board has been directed to place on the *web-site* of the Board, answer-sheets of all top ten scorers of X and XII examinations, as that would amount to disclosure of their answer-sheets to everyone by putting the same in public domain.

13. The objection taken on behalf of the opposite party No. 1, on the ground of delay, is not acceptable for the reason that the procedures prescribed under the Code of Civil Procedure are not strictly applicable to a writ proceeding under Article 226 of the Constitution of India. Further, I do not find any merit in the submission made on behalf of the opposite party No. 1 with reference to the Supreme Court's decision in case of *Parsion Devi* (supra). It is true that review jurisdiction cannot be used as an appellate jurisdiction. The facts and circumstances of the present case are entirely different from that



of the case of ***Parsion Devi*** (supra). The order, which is sought to be recalled in the present review application, does not concern opposite party No. 1. The said direction was issued to the Board as the Court was of the view that disclosure of answer-sheets would minimise scope of recurrence of controversies as had arisen in that case.

14. In view of the Supreme Court's decision in case of ***Aditya Bandopadhyay*** (supra), I find merit in the present review application. The review application is accordingly allowed.

15. Consequently, the part of the order, whereby, the Board has been directed to place on the *web-site* of the Board, the answer-sheets of all top 10 scorers of X and XII examinations to be held by the Board in future, immediately after publication of the result is hereby recalled.

(Chakradhari Sharan Singh, J)

K.K.RAO/-

AFR/NAFR	N/A
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