

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11897 of 2021**

1. Dolly Kumari, Daughter of Dinesh Kumar, Resident of Village-New Damaria, Near Kabristan Anisabad, P.S.-Gardanibagh, District-Patna, Bihar, Roll No. 305379.
2. Jagriti Kumari, Daughter of Anil Kumar, Resident of Mohalla- Ramkrishna Nagar (Near Pramod Bedding, Hanuman Mandir), P.O. New Jaganpura, P.S. Ramkrishna Nagar, District- Patna, Bihar, Roll No. 310008.
3. Sonu Kumar Gupta, Son of Devendra Gupta, Resident of Mohalla- Jhinhari Bagh, P.O. Madhav Mills, P.S. Malsalami, District- Patna, Bihar, Roll No. 310465.
4. Sarjun Kumar, Son of Baso Saw, Resident of Village- Gosaibigha, Bhanail, P.S. Akbarpur, District- Nawada, Bihar, Roll No. 300372.
5. Subhash Kumar, Son of Kailash Prasad, Resident of Mohalla- Kathal Tola, P.S.- Sohsarai, District- Nalanda, Bihar, Roll No. 306398.
6. Kanhaiya Kumar, Son of Arjun Prasad, Resident of Mohalla- Chhoti Patan Devi, Naya Tola, Jhauganj, P.S.- Chowk, District-Patna, Bihar, Roll No. 317454.
7. Ajeet Kumar, Son of Valmiki Bind, Resident of Village-Supasang, Murgiyachak, P.S.- Wena, District-Nalanda, Bihar, Roll No. 312932.
8. Sagar Kumar Aaryan @ Sagar Kumar, Son of Shankar Prasad, Resident of Mohalla- Kalyanpur, Station Road, P.S.- Bihar Sharif, District- Nalanda, Bihar, Roll No. 311867.
9. Kundan Kumar, Son of Ram Pratap Singh, Resident of Village-Mai, Nauroo, P.S. Kako, District- Jehanabad, Bihar, Roll No. 306799.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The State of Bihar through the Principal Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
3. The Bihar Staff Selection Commission, through its Chairman, Veterinary College Campus, Patna, Bihar.
4. The Chairman, Bihar Staff Selection Commission, Veterinary College Campus, Patna, Bihar.
5. The Secretary, Bihar Staff Selection Commission, Veterinary College Campus, Patna, Bihar.

... .. Respondent/s

**Appearance :**

|                    |   |                                                                                                         |
|--------------------|---|---------------------------------------------------------------------------------------------------------|
| For the Petitioner | : | Mr. Mrigank Mauli, Sr. Advocate<br>Mr. Prashant Kumar, Advocate<br>Mr. Shashank Shekhar Dubey, Advocate |
| For the State      | : | Mr. P.K. Verma, AAG-3<br>Dr. Mankeshwar Tiwari, AC to AAG-3                                             |



For the BSSC : Mr. Satyabir Bharti, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL JUDGMENT**

**Date : 20-12-2022**

The instant writ petition is at the instance of applicants, who participated in the process of selection of Stenographers under Advertisement dated 25.09.2016, subsequently revised on 01.08.2019.

2. The petitioners appeared at the written test on 24.11.2019 when they were subjected to biometric verification, digital record of which was stored. In between 25.11.2020 to 02.12.2020, skill test was conducted. The petitioners also participated in the skill test. Again biometric verification was done and the digital data was stored.

3. The last stage in this process, for those who had emerged successful, was the process of counselling, which was conducted on 06.04.2021. Biometric verification done at the time of counselling was to be compared with the digitally stored biometric data of the candidates collected/stored at the earlier two stages. On the day of counselling the respondents have alleged that biometrics of the instant petitioners were "not verified", and that there was a mismatch with biometric data collected and stored at the earlier two stages.



4. On detection of mismatch in the biometrics, Patna Airport P.S. Case No.87 of 2021 was instituted, alleging offences under Sections 419, 34 of the Indian Penal Code and Section 10 of the Bihar Conduct of Examinations Act, 1981. The petitioners were thus sent to custody.

5. The final result of 167 other candidates have been published on 09.04.2021, declaring them eligible for being appointed as Stenographers. The petitioners' name is not appearing in this list. Therefore they filed the instant writ petition for quashing of the final result; and direction upon the authorities to verify the identity of the petitioners with reference to the physical records available with the respondent-Commission and after proper verification, to issue appointment letters to the petitioners.

6. The learned counsel for the Commission, relying upon the averments made in the counter affidavit, has submitted that the following discrepancies emerged in respect of the petitioners' candidature:

(i) The biometric thumb impression taken at the time of the written test of Petitioner No.1 Dolly Kumari, Petitioner No.3 Sonu Kumar Gupta and Petitioner No.4 Sarjun Kumar did not match with the



biometric thumb impression taken on the day of counselling;

(ii) The biometric thumb impression taken at the time of the skill test of Petitioner No.5 Subhash Kumar, Petitioner No.6 Kanhaiya Kumar, Petitioner No.8 Sagar Kumar Aaryan @ Sagar Kumar and Petitioner No.9 Kundan Kumar did not match with the biometric thumb impression taken on the day of counselling;

(iii) The biometric thumb impression taken at the time of the written test and the skill test of Petitioner No.2 Jagriti Kumari and Petitioner No.7 Ajeet Kumar did not match with the biometric thumb impression taken on the day of counselling.

7. The learned counsel for the Commissions, at the very outset submits that the petitioners' candidature has not been cancelled but has been made subject to final outcome of Patna Airport P.S. Case No.87 of 2021.

8. Mr. Mrigank Mauli, learned Senior Counsel appearing for the petitioner has submitted that the biometric mismatch, alleged to have occurred at the stage of counselling, even if accepted to be correct, cannot *per se* be made the basis to



conclude that their biometrics were "not verified". The mismatch may be on account of various reasons, including a technical glitch. The authorities had non-digital/hard evidence regarding the petitioners' identity by way of signatures/photographs etc. taken at the written as well as skill tests. On any biometric mismatch, as alleged, the authority, before lodging criminal case against the petitioners, only nine in number, should have verified the petitioners' candidature with reference to the non-digital records.

9. It is submitted that keeping the petitioners' candidature subject to final outcome of Patna Airport P.S. case, is likely to have severe adverse effect on the petitioners' career prospects. It is submitted that criminal proceedings is not likely to conclude very soon. As of today when the matter is being heard, already one and a half years have elapsed since the date of institution of Patna Airport P.S. Case No.87 of 2021, still there is no end in sight.

10. The learned Senior Counsel has referred to decision of this Court in the case of ***Ranjay Kumar Sharma & others Vs. The Bihar Staff Selection Commission & Ors.***, in CWJC No.2548 of 2022. It is submitted that in that case where the same Selection Body was a respondent, candidates similarly



situated as the petitioners whose biometric mismatch was alleged, have been directed to be selected provisionally.

11. The learned counsel for the Commission, on the other hand, has submitted that the facts in that case were different from the present case. In the case of *Ranjay Kumar Sharma* (supra), this Court had considered the fact that biometrics of two candidates other than the petitioners therein, in the same selection process were also "not verified". They, however, had been provisionally selected, whereas the petitioners' candidature had been kept subject to result of investigation in the police case.

12. In the instant case, candidature of all the applicants whose biometrics were "not verified", has been made, subject to final outcome of the police case, without any exception.

13. Having heard the rival submissions, this Court would consider the issue keeping in background the fact that without making any endeavour to verify the correctness of the biometric mismatch, which had occurred in respect of these nine petitioners only, they have been made accused in the criminal case. Merits of the allegations based on biometric mismatch on the day of counselling is still pending consideration in the criminal proceedings. The investigating agency and the trial court would be examining and considering the biometrics of the petitioners



collected at the three stages of the selection process. Various persons involved in the process of scrutiny, including biometric scrutiny at the three stages of the selection process may be examined. The candidate/accused, are also likely to be examined. The criminal proceedings of such a scale is not likely to conclude in the near future.

**14.** The petitioners, as of now are only accused persons. Therefore, the issue that arises for consideration, is whether they can be made to suffer deprivation of the fruits of their claimed performance in the process of selection, merely due to the fact that the respondent Commission, without even bothering to verify the correctness of biometric mismatch at the time of counseling have lodged criminal case against the petitioners. On this issue, the Court would observe that if on conclusion of the criminal proceedings, the petitioners are found not guilty, then they may be acquitted in the criminal trial, yet still suffer punishment in terms of social stigma, career uncertainty, as also deprivation on account of being kept out of select list, for the time being.

**15.** On the other hand, if the petitioners are selected provisionally and the petitioners are conclusively found guilty in the criminal case, then needless to mention, they would be liable



to the consequences thereof, including cancellation of their selection.

**16.** This Court acknowledges the factual submission on behalf of the respondent-Commission that in the instant case, no candidate similarly situated as the petitioners has been provisionally selected. The petitioners therefore are not in a position to allege discrimination with reference to any candidate in the same selection process. Having observed so, this Court finds that the respondent-Selection Body in at least one earlier process of selection in the case of *Ranjay Kumar Sharma* (supra) has allowed provisional selection to candidates similarly situated as the petitioners, whose biometrics were "not verified".

**17.** In the case of *Ranjay Kumar Sharma* (supra), a biometric mismatch was observed in respect of two candidates other than the writ petitioners. The respondent Commission without verifying the correctness of the reported biometric mismatch with the available data, as in the instant case, proceeded to make the two candidates accused in the F.I.R; along with the petitioners therein. For the other two candidates, however, a second verification was done and based on result of the second verification, they were declared provisionally selected.



18. In such a case where biometric mismatch has been observed for a very few candidates, experience from the case of ***Ranjay Kumar Sharma*** (supra) shows that on second verification, the same respondent-Commission itself found two of such candidates to be worthy of provisional selection, rather than keeping their result pending, subject to the criminal case. The second biometric verification was done with reference to biometrics from the earlier two stages, since the records with respect to the two candidates were found to be available/preserved. Such an exercise revealed that result of the first biometric verification was wrong.

19. In the aforesaid facts, this Court directed in the case of ***Ranjay Kumar Sharma*** (supra) that the writ petitioners therein be treated at par with the other two candidates, who were subjected to second biometric verification. The reason for such direction was that unlike the said two candidates, the writ petitioners' biometric data/records of the earlier biometric verification process, had not been preserved/was not available.

20. In the instant case also, biometric mismatch has been found in the first verification process for very few (nine) candidates. Had the respondent-Commission learnt from its experience in the case of ***Ranjay Kumar Sharma*** (supra), they



could have conducted a second biometric verification, based on the existing digital/physical biometric data of the petitioners. Had the same been done, it is possible that few of the petitioner's biometrics may have been found to be verified. Otherwise, if mismatch was observed even in the second biometric verification, then the same would be based on a process exercising due care, giving rise to a reasonably reliable opinion regarding biometric mismatch, for the purposes of keeping the result pending, or for lodging F.I.R. against the candidates. While observing so, this Court would consider it appropriate to take note of the settled legal position arising out of recent judgment of the Apex Court in the case of ***Sachin Kumar Vs. Delhi Subordinate Service Selection Board***, reported in ***(2021) 4 SCC 631***, wherein the Apex Court has laid down the law as regards the scope of judicial review.

**21.** The Apex Court has held that recruiting authority must have discretion to take decision in accordance with law, which is best suited to preserve the sanctity of the process. The Apex Court has also held that the requirement from a public body to act in fair and reasonable terms animates the entire selection process.

**22.** The Apex Court has considered the law and emphasized that the integrity of the selection process cannot be



lightly disregarded by a High Court substituting its own subjective opinion on the sufficiency of the material which has been taken into account by the decision making authority. At the same time, it has held that undoubtedly, fairness to the candidates who participate in the process is an important consideration. If the candidates who have indulged in irregularities can be identified, then it is possible for the authority to segregate the tainted from the untainted candidates.

**23.** This Court would also consider it apposite to quote a few lines from paragraph 2 of the judgment in the case of ***Sachin Kumar*** (supra), wherein the apex Court has summarised the scope of judicial scrutiny with reference to the two competing considerations in such matters, in the following words:

*".....the need to preserve public confidence in and the sanctity of selection to public posts and the requirement of observing fairness to candidates who invest time and resources in attempting to clear through a selection. Both these considerations have a constitutional foundation going beyond service and administrative law principles."*

**24.** In the instant case, there are only nine candidates (petitioners) whose biometrics allegedly were not verified at the stage of counselling. The Commission, therefore, should have



reverified their biometrics/identity, based on the digital data/physical records collected in the earlier process, including the applications and their photographs and signatures collected earlier at the time of written test and skill test. Had the same been done, as in the case of ***Ranjay Kumar Sharma*** (supra), some of the candidates (petitioners) may or may not have succeeded in the second biometric verification. By doing so, the respondent-Commission could have complied with the requirement of observing fairness to the candidates, as the number of candidates who suffered a finding of mismatch, in the instant case, were few (nine).

**25.** In the instant case, no attempt has been made to verify the reported biometric mismatch of the instant petitioners at the time of counselling with the physical data available with the authorities. Under similar circumstances, in the case of ***Ranjay Kumar Sharma*** (supra), this Court has allowed the petitioners therein, to be provisionally selected. In fact, the respondent-Commission themselves on a re-look of the alleged biometrics mismatch of two candidates in the case of ***Ranjay Kumar Sharma*** (supra) found at least two candidates to be worthy of provisional selection, rather than keeping their selection, subject to result of the outcome of the criminal trial.



26. In the above noted facts and circumstances and after considering the rival submissions, including the petitioners' claim for parity with the petitioners in the case of **Ranjay Kumar Sharma** (supra), this Court is of the opinion that the petitioners' are entitled to similar treatment/ parity. Interest of justice would thus be served by moulding the relief so as to allow the petitioners' also to be provisionally selected, subject to fulfillment of all other requirements, as has been done in the case of **Ranjay Kumar Sharma** (supra). This Court thus directs the authorities to allow the petitioners' to be provisionally selected, subject to fulfillment of all other requirements.

27. The petitioners' provisional selection/ recommendation, needless to say, would be subject to final outcome of the criminal proceedings arising out of Patna Airport P.S. Case No.87 of 2021.

28. The authorities are directed to take steps accordingly.

29. The writ petition is allowed.

(**Madhuresh Prasad, J**)

PNM

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