

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12612 of 2018

Shiv Prakash Rai, son of late Nageshwar Rai, resident of Mohalla Gali No. 2
Dhobi Ghat, Charitravan, Buxar, Police Station Buxar, District Buxar (Bihar).

... .. Petitioner/s

Versus

1. Bihar School Examination Board through its Secretary, Budh Marg, Police Station Kotwali, District- Patna.
2. The Vigilance Investigation Bureau, Bihar, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
4. The State of Bihar through the Chief Secretary, Government of Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr. Dinu Kumar, Advocate
For the Respondent-State:	:	Mr. Bishwa Bibhuti Kumar Singh, Advocate
For the Vigilance	:	Mr. Anil Singh, Advocate
For the BSEB	:	Mr. Lalit Kishore, Senior Advocate with Mr. Gyan Shankar, Advocate
For the amicus curiae	:	Mr. Siddharth Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 26-07-2022

Heard Mr. Dinu Kumar, learned counsel for the petitioner, Mr. Bishwa Bibhuti Kumar Singh, learned counsel for the State, Mr. Anil Singh, learned counsel for the Vigilance and Mr. Gyan Shankar, learned counsel for the Bihar School Examination Board. We have also heard Mr. Siddharth Prasad, learned *amicus curiae* in the matter.

2. The petitioner has prayed for the following reliefs in the present writ petition, which has been filed as a public



interest litigation:-

“(i) For commanding the respondents including the Director General, Vigilance, Investigation Bureau, Bihar, Patna to enquire into the matter after lodging First Information Report with respect to the misappropriation, defalcation and misuse of public money more than 100 crores by Shri Anand Kishore, Chairman, Bihar School Examination Board and other concerned authorities of State of Bihar in constructing Building on the Zila School and Education Department land, encroachment of premises of the Government school, evaluation of the answer books of Class 10th and 12th by the teachers who have no occasion to teach the student of class 10th and 12th and also for demanding Rs.70/- for scrutinizing of OMR sheet from curious candidates the examination of Bihar Teachers Eligibility Test, 2017.

(ii) For directing the respondents to ensure that the public money be not misused in making unnecessary construction at the Divisional District Headquarter in G-4 and G-3 over the compound of Zila School and School of Education Department.

(iii) For commanding the respondents not to demolish the building constructed in the year 1993 in the premises of Bihar School



Examination Board.

(iv) For commanding the respondents to recover the misappropriated and defalcated money from the erring officials in order to compensate the loss of public money,

(v) For commanding the respondents to enquire into the role attributed by Shri Anand Kishore, Chairman, Bihar School Examination Board and persons concerned in appointing Class IV and Class III employee, Section Officer, Examination Controller, Vigilance Officer and others only on the basis of walk-in-interview which is in complete violation of Articles 14 and 16 of the Constitution of India.

(vi) For granting other relief/reliefs for which the petitioner is found entitled to.”

3. The petitioner claims himself to be a public spirited person. He has made several allegations of financial and administrative irregularities committed by Mr. Anand Kishore, an IAS Officer, who is the Chairman of the Bihar School Examination Board (for short ‘BSEB’). The petitioner seeks a direction from this Court to the respondents including the Director General, Vigilance Investigation Bureau, Bihar, Patna to enquire into the matter after lodging First Information Report (for short ‘FIR’) with respect to misappropriation, defalcation and misuse of public money committed by the Chairman,



BSEB.

4. Mr. Dinu Kumar, learned counsel appearing for the petitioner submitted that Mr. Anand Kishore, the Chairman, BSEB is responsible for committing financial irregularities, illegalities and criminal misconduct in examination relating to 10th and 12th Board and TET, 2017 with conspiracy of the other persons. He has misappropriated public money amounting to more than Rs.100 crore in constructing building on the zila schools and Education Department's land and evaluation of answer sheets. He submitted that he is liable to be criminally prosecuted for the alleged act of omission and commission while acting as the Chairman of the BSEB.

5. The respondent-State has filed the counter affidavit and opposed the writ petition. A contention has been raised that the writ petition is not in the nature of public interest. The petitioner had earlier also approached this Court vide CWJC No.15871 of 2017 wherein the action of the State in not appointing a regular Chairman to the BSEB and making *ad hoc* appointment of Sri Anand Kishore as Chairman was challenged. The said writ petition was disposed of by this Court holding therein that the State Government will take steps immediately and within a reasonable period of time ensure that the post of



Chairman of the BSEB be filled up on regular basis by an incumbent competent to hold the post. Thereafter, Sri Anand Kishore was appointed as a regular Chairman of the BSEB. It is stated in the counter affidavit that it would be apparent from perusal of the reliefs sought for in the present application that it is against the regular Chairman of the BSEB and several allegations have been made against him, but he has not been impleaded as a party respondent by name or in his official capacity.

6. Learned counsel appearing for the State submitted that the work and functioning of the BSEB has improved a lot during the tenure of its present Chairman and with vested interest certain persons are bent upon to humiliate and harass him.

7. Mr. Siddharth Prasad, learned amicus curiae submitted that certain irregularities have been pointed out by the petitioner relating to evaluation of answer sheet of the candidates, who had appeared in the intermediate examination in the year 2017. He submitted that had the petitioner been interested in challenging the orders issued in the year 2017, he would have promptly filed a writ petition in the matter. However, the writ petition was filed after the result of the



examination was declared. He further contended that this Court may not direct for institution of a criminal proceeding against the Chairman of the BSEB on the basis of vague and baseless allegations made by the petitioner.

8. Mr. Anil Kumar, learned counsel for the Vigilance submitted that the Vigilance Investigation Bureau is a formal party in the case and in case any direction would be issued by this Court, it would readily carry out those directions.

9. Mr. Gyan Shankar, learned counsel for the BSEB has adopted the pleadings advanced on behalf of the respondent-State.

10. We have heard the parties and carefully perused the record.

11. It has rightly been pointed out by the learned counsel for the State that though several allegations have been made by the petitioner against the Chairman of the BSEB, he has neither been impleaded as a party in person nor in his official capacity. In that view of the matter, the writ petition is bad for non-joinder of a person who ought to have been joined as a party respondent.

12. Apart from that the prayer made in the present writ petition seeking direction to the respondent-Vigilance



Investigation Bureau, Bihar Patna to enquire into the matter and lodge the FIR cannot be allowed merely because the petitioner has made some sweeping and vague allegations of financial irregularity and defalcation against a public servant in discharge of his official duty by way of filing a public interest litigation against whose ad hoc appointment as Chairman, BSEB, he had earlier approached this Court.

13. It would be relevant to note here that in the instant case, the petitioner has neither approached the police nor the court for institution of an FIR or complaint against the person concerned. Every information relating to commission of a cognizable offence is required to be given to an Officer-in-Charge of the police station concerned in terms of Section 154(1) of the Code of Criminal Procedure (for short 'CrPC'). In case an information regarding commission of a cognizable offence is given to the Officer-in-Charge of a police station in terms of Section 154(1) of the CrPC and the Officer-in-Charge declines to register FIR, the person aggrieved may send the substance of such information, in writing and by post to the Superintendent of Police concerned in terms of Section 154(3) of the CrPC. In case the Superintendent of Police also fails to take any action, the aggrieved person may approach the superior officers of



police in this regard under Section 36 of the CrPC. Despite all these steps, if the FIR is not registered and investigation is not taken up, the person aggrieved can file a complaint under Section 190 read with Section 200 of the CrPC before the Magistrate concerned, who may either inquire into the complaint himself or direct the police to investigate the case in terms of Section 156(3) of the CrPC.

14. In ***Gangadhar Janardan Mhatre vs. State of Maharashtra & Ors.***, since reported in ***(2004) 7 SCC 768***, the Supreme Court observed in paragraph 13 as under :

“13. When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the



complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in All India Institute of Medical Sciences Employees' Union (Regd.) v. Union of India [(1996) 11 SCC 582:1997 SCC (Cri) 303]. It was specifically observed that a writ petition in such cases is not to be entertained.”

15. In the present case, the petitioner has not approached the police at any point of time and has directly come before this Court in public interest litigation seeking direction for institution of an FIR against Mr. Anand Kishore, the Chairman, BSEB.

16. In ***Sakiri Vasu vs. State of U.P. & Ors.***, since reported in ***(2008) 2 SCC 409***, the Supreme Court observed in paragraph 25 to 27 as under :-

“25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC.



We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(3) and Section 36 CrPC before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he



cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.

17. It would be evident from the observations made by the Supreme Court in the aforesaid decision that it is of the opinion that the High Court should discourage the practice of filing a writ petition or a petition under Section 482 of the CrPC simply because a person has the grievance that his FIR has not been registered by the police. Here is a case in which though the petitioner is making allegation of misconduct and defalcation against a public servant in discharge of his official duty, he has never ever approached the police in this regard.

18. Moreover, the reliefs sought for by the petitioner cannot be granted, as the allegations of misconduct and



defalcation made against Mr. Anand Kishore, the Chairman, BSEB would attract the ingredients of the offences under the Prevention of Corruption Act, 1988 and, in view of Section 17A of the aforesaid Act, which came into force on 26th July, 2018 there cannot be any enquiry or inquiry or investigation into any offence alleged to have been committed by the aforesaid Chairman, BSEB without the prior approval of the appropriate Government. It is not the case of the petitioner that he has obtained sanction from the concerned Government against the public servant concerned for initiating investigation against him.

19. For the reasons discussed, hereinabove, we are of the considered opinion that the reliefs prayed for by the petitioner in the present application cannot be allowed.

20. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

(Shailendra Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.07.2022
Transmission Date	NA

