

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6034 of 2023

Priya Kumari, Daughter of Sri Jagdish Das, Resident of Magistrate Colony,
Road No. 4, Phulwari Sharif, Police Station-Phulwari Sharif, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Main Secretariat, Patna 800015.
2. The Principal Secretary, General Administrative Department, Government of Bihar, Main Secretariat, Patna 800015.
3. The Bihar Staff Selection Commission, Veterinary College, Near Airport Sheikhpura, Patna 800014 through the Secretary.
4. The Chairman, Bihar Staff Selection Commission, Veterinary College, Near Airport, Sheikhpura, Patna 800014.
5. The Secretary, Bihar Staff Selection Commission, Veterinary College, Near Airport Sheikhpura, Patna 800014.
6. The Home Department, Economic Offences Wing, through Additional Director General of Police, Main Secretariat, Patna 800015.
7. The Economic Offences Unit through Deputy Inspector General of Police (DIG), Rajbanshi Nagar, Patna 800001.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 2376 of 2023

1. Ashwani Kumar Sinha, Son of Sri Kapildeo Narayan Prasad, Resident of 1/29, New Alkapuri, Police Station- Gardanibag, District- Patna.
2. Ravi Ranjan, Son of Sri Ganesh Prasad, Resident of Gardanibagh Magadh Bihar Beside D-7, Police Station- Gardanibag, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Bihar Staff Selection Commission through its Secretary having its office at Veterinary College Campus, Patna.
3. The Chairman, Bihar Staff Selection Commission, Patna.
4. The Additional Director, General of Police (E.O.U), Economic Offence Unit, Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 5802 of 2023



1. Saurav Kumar, S/O- Ashok Prasad Singh, Resident of village- Kiratpur, P.S.- Bhagwanpur, P.O- Bhagwanpur, District- Vaishali.
2. Sukant Pathak, Son of Satyendra Kumar Pathak, Resident of Mohalla- 18, S.K, Nagar, Rishra, P.S- Serampore, P.O- Provash Nagar, District- Hoogly.
3. Ajit Kumar Yadav, Son of Virendra Singh Yadav, Resident of village- Kanak Narayanpur, P.S- Buxar Musfil, P.O-Akhauri Gola, District- Buxar.
4. Sonu Kumar, S/o- Ganauri Singh, Resident of village- Mahadoi Nagar, P.S- Karaypravray, P.O- Berthu, District- Nalanda.
5. Md Subaktagen Ghazaniar, Son of Ralimuddin, P.S and P.O- Phulwari Sharif, District- Patna
6. Shyam Dev, Son of Shiv Shankar Thakur, Resident of village- Jamlapur, P.S- Nayagaon, P.O- Jamalpur, District- Munger.
7. Vinay Kumar, Son of Vinod Thakur, Resident of village- Parwara, P.S- Belsar, P.O- Sain, District- Vaishali.
8. Om Prakash Kumar, Son of Yogendra Baitha, Resident of village- Shahari, P.S and P.O- Chaudana, District-East Champaran.
9. Smriti Kumari, C/O- Sanjay Kumar Singh, Resident of House No. 11, Nepali Nagar Chandra Vihar Colony, P.S. Rajeev Nagar, P.O- Ashiana Nagar, District- Patna.
10. Suraj Kumar Singh Tomar, Son of Shiv Shankar Prasad Singh, Resident of Ward No. 5, Sukhasan Uttarwari, P.S- Madhepura, P.O- Sukhasan Chakla, District- Madhepura.
11. Ravi Kumar, Son of Lal Babu Sah, Resident of village- Berbas, P.S- Bakhari, P.O- Barbas, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The State of Bihar, through the Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Secondary Education Department, Government of Bihar, Patna.
4. The Bihar Staff Selection Commission, Patna through its Secretary, Veterinary College Campus, Patna- 800014.
5. The Chairman, Bihar Staff Selection Commission, Patna Veterinary College Campus, Patna- 800014.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 6034 of 2023)

For the Petitioner/s	:	Mr. Kundan Kumar Ojha, Advocate
For the State	:	Mr. P. K. Verma, AAG-3
		Mr. Sanjay Kumar Ghosarvey, AC to AAG-3
For the BSSC	:	Mr. P. K. Shahi, Senior Advocate
		Mr. S. S. Sundaram, Advocate



For the EOU : Mrs. Soni Shrivastava, Advocate
(In Civil Writ Jurisdiction Case No. 2376 of 2023)
For the Petitioner/s : Mr. Dinu Kumar, Advocate
Mr. Hriday Kant Mishra, Advocate
Mrs. Ritika Rani, Advocate
For the Respondent/s : Mr. Manoj Kumar, AC to GP-4
For the Commission : Mr. P. K. Shahi, Senior Advocate
Mr. Satyam Shivam Sundaram, Advocate
For the EOU : Mrs. Soni Shrivastava, Advocate
(In Civil Writ Jurisdiction Case No. 5802 of 2023)
For the Petitioner/s : Mr. Dinu Kumar, Advocate
Mrs. Ritika Rani, Advocate
For the State : Mr. P. K. Verma, AAG-3
Mr. Sanjay Kumar Ghosarvey, AC to AAG-3
For the BSSC : Mr. P. K. Shahi, Senior Advocate
Mr. Satyam Shivam Sundaram, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-09-2023

Sri P. K. Shahi, learned Senior Counsel appearing for the Bihar Staff Selection Commission (for brevity, ‘the Commission’) asserted that the PIL has been filed without any *locus standi* and two candidates who had appeared in the examination had moved writ petitions, which were pending before the Single Judge having roster. The writ petitions were kept pending since the PIL was pending before the Division Bench and the entire selection process is put on hold because of the pendency of the writ petitions, especially since the petitioners have sought for cancellation of the preliminary test conducted and a re-examination; when the final examination itself is over.



2. We specifically asked the public interest litigant, in the above circumstances whether the PIL can be withdrawn so that the matter can be agitated before the learned Single Judge. However, the petitioner insisted that the PIL be adjudicated, in which circumstance, to have a quietus to the issue, we called for the writ petitions and the learned counsel for the writ petitioners also consented to the matters being heard by us.

3. The dispute arises with regard to the 3rd Graduate Level Combined Competitive Examination-2022 conducted for recruitment to various posts numbering 2187 in six different services carried out by the Bihar Staff Selection Commission. The recruitment was commenced with an advertisement bearing No.1/22 dated 06.04.2022. The preliminary examinations were held on 23rd and 24th December, 2022 and the prayer is to cancel the entire preliminary examination so as to conduct a fresh one; alleging malpractices in the examination, specifically of leakage of question papers.

4. Learned Counsel Sri Dinu Kumar, appearing for the petitioners in the writ petitions called for, argued that due to the very same allegation of leakage of question paper, the preliminary examination conducted in the 1st session in the morning of 23.12.2022 was cancelled. However, the 2nd session



on the very same day and that on 24.12.2022 was proceeded with on the premise that there was no leakage of question papers with regard to the said two sessions. It is specifically pointed out that even the question paper of the examination on 24.12.2022 was similarly uploaded and had gone viral, thus, seriously affecting the credibility of the examination conducted. It is alleged that there is an 'Examination Managing Syndicate' in operation, with the active connivance of the respondent authorities. The Economic Offences Unit registered a first information report on a cooked up story that the question paper went viral only one minute before the time stipulated for the examination. When the 1st session on 23.12.2022 was cancelled, there is no reason why the entire preliminary test is not cancelled and a fresh one held; which would enhance the credibility of the selection process and also ensure transparency. It is pointed out from the FIR registered by the EOU produced as Annexure-C at page 172 and the report submitted produced as Annexure-F at page 246 (CWJC No.5802 of 2023), that, both of these, indicate collusion and connivance of the authorities also. The learned counsel would specifically rely on the decisions of the Hon'ble Supreme Court in ***Chairman, All India Railway Recruitment Board v. K. Shyam Kumar; (2010) 6 SCC 614***



and *Sachin Kumar v. Delhi Subordinate Service Selection Board (DSSSB); (2021) 4 SCC 631*, to emphasize that any recruitment to public office has to be fair, transparent and accountable and any allegation of irregularity, malpractices and illegality would seriously put in question the legitimacy of the examination and the very recruitment process itself. The petitioners would seek cancellation of the entire examination and a re-test to be conducted.

5. Sri P. K. Shahi, learned Senior Counsel appearing for the Commission specifically refers to the counter affidavit and points out that the Commission had considered the allegations raised, both regarding the 1st session of the examination conducted on 23.12.2022 and of the next date. The question paper of the first session was uploaded on 23.12.2022 at around 11.15 A.M. by a candidate participating in the written test. On the next session, on 24.12.2022, the Invigilators had handed over the mobile phones surrendered by the candidates, just a minute before the examination, which resulted in one of the candidates uploading the question paper in the third session on the social media. It was found that the said uploading was done only at 12.14 P.M.; when the examination time ended at 12.15 P.M. putting at rest any possibility of, even the candidate



who uploaded the question papers having committed any malpractice, leave alone the others. The FIR was registered immediately on the offence coming to the notice of the Commission and merely based on the FIR and also the report filed, there cannot be a knee jerk reaction to the allegation raised.

6. The Commission had deliberated upon the issue and taken a decision to cancel the first session but continue with the third session held on the next day; which in the totality of the circumstances is proper. It is pointed out that the examination was a massive exercise in which many persons applied and a re-examination would result in unnecessary financial burden on the State. It is specifically emphasized that financial liability was not the only consideration because the Commission had cancelled the preliminary test of the 1st session on 23.12.2022 on being satisfied that there could have been a malpractice conducted. As far as the third session on 24.12.2022, the Commission was convinced that there was no reason to conduct a further test, which, weighed in the balancing scales, would be unquestionable. The decision of the Commission cannot be questioned under judicial review, where the decision making process is alone under question and not the



decision itself, argues learned Senior Counsel.

7. Smt. Soni Srivastava, the learned counsel appearing for the Economic Offences Unit fully supports the contentions raised by the Commission and restrained herself from making any comment on the FIR filed at Annexure-C as also the report at Annexure-F specifically since the investigation is going on.

8. Sri Kundan Kumar Ojha, learned counsel appearing for the public interest litigant emphasized that the allegation was not with respect to one sender and that there was another uploading of question paper which had occurred from another person, against which also an FIR was filed. However, to the specific query as to the FIR number, the counsel was unable to answer. We queried the learned counsel as to how a public interest litigation is maintainable, especially when the two writ petitions are pending by the affected parties. The learned counsel would inform us that only on the request made by some candidates, the petitioner, a social activist, had moved the High Court, especially when there was an ongoing agitation by the candidates and there was also a *lathi charge* to quell such agitation. The learned counsel also referred to a supplementary affidavit filed; which we failed to find from the records.

9. At the outset, we have to notice that both the



decisions cited by Sri Dinu Kumar are instances where the recruitment agency cancelled the examination on allegation of malpractices which were overturned by the jurisdictional High Court; which interference was found by the Hon'ble Supreme Court to be not proper.

10. In *Chairman, All India Railway Recruitment Board* (supra), the allegations were of various malpractices of mass copying, leakage of question papers and impersonation. A vigilance report was placed on record wherein it was indicated that 100-200 candidates were suspected to have obtained answers for the questions, three hours before the examination through some middlemen. Impersonation was alleged in respect of 62 candidates and 06 candidates were found to have adopted unfair means on close scrutiny of the answer papers. The leakage of question paper was pre-planned and wide spread and there was a possibility of involvement of the recruitment agency and the officials of the Railways, as also outsiders. The Hon'ble Supreme Court noticed the *Wednesbury* principles, based on which the High Court had interfered with the cancellation; which was held to be improper. The Court also specifically applied the proportionality test, which is a mite higher in standards, since the Court would be entitled to examine the



balancing considerations, so as to understand the intention of the decision maker and ensure whether the correct balance or equilibrium, has been struck. It was specifically noticed that in the examination under scrutiny, more than ten lakh applications were received out of which almost six lakhs were found to be eligible. More than three lakh candidates appeared in the written test out of which only 2690 were selected. The three options that were available to the recruiting agency in the wake of the allegation of serious infirmities were spelt out. The first of these alternatives was to cancel the entire written test and to conduct a fresh one, the next, to carry out a retest of 2690 candidates to ensure their credentials and the last, was to go ahead with the written test confining the investigation to the sixty-two candidates who were alleged with impersonation. On balancing considerations, it was held that the decision of the Board to accept the request of the candidates who had approached the Court, to conduct re-test of 2690 candidates, who had qualified in the preliminary test, was perfectly in order. There was no *Wednesbury* unreasonableness vitiating the decision and even on the principle of proportionality, the decision maker, the recruiting agency, had struck a correct balance in accepting the second alternative; was the categoric finding.



11. We specifically notice that even in the wake of wide spread allegations of malpractices and irregularities as also allegation of collusion of both the recruiting agency and the recruiting body, there was no cancellation of the entire examination and only re-test of the successful candidates was upheld by the Hon'ble Supreme Court. In the instant case, there is alleged a solitary uploading of question paper, at the last moment, without any possibility of a malpractice having occurred.

12. ***Sachin Kumar*** (supra) was also a case in which the recruiting agency had cancelled the examination on multifarious allegations of leakage, mass cheating, impersonation and allotment of common examination centers and rooms to members of the same family. The Tribunal interfered with the cancellation which was affirmed by the High Court. The Hon'ble Supreme Court reiterated that the decision of the recruiting body though open to judicial scrutiny, it was subject, of course, to the settled principle that the recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process. A fair and reasonable process of selection was found to be a fundamental requirement of not only



equality of opportunity, enshrined under Article 16(1) of the Constitution of India but also a mandate under Article 14. Deliberating on the issue, when a selection process can be held to be vitiated, it was held that on one end of the spectrum, are instances where there is a systemic fraud or irregularity alleged, rendering the entire process illegitimate and on the other end is the possibility of segregation of persons who have indulged in malpractices, to penalize them for their wrong doing; in which later circumstance it would be unfair to impose the burden of their wrong doing on those who are free from blame.

13. In the present case, there are two instances which have led to the allegations in two separate sessions, the first of such allegations was found to be one which could have systemic consequences upon which the examination was cancelled. However, on the third session, it was found to be a wrong doing which could have had no consequences touching upon the sanctity or legitimacy of the examination, since there could have been no misdeeds on the basis of the uploading of the question paper, just a minute before the conclusion of the session.

14. We have also looked at the counter affidavit of the State which was emphatically read over by Sri.P.K. Shahi. We queried the learned Senior Counsel as to how an uploading of



the question paper at 11:15 A.M., after the examination commenced, could result in the examination itself being cancelled. It was his reply that the Commission on inquiry, was satisfied that there could have been answers circulated to specified candidates, through mobile phones and though mobile phones were prohibited inside the examination halls, there could be instances where the candidates had smuggled in such instruments. Hence, to maintain transparency and ensure credibility to the test conducted, the first session on 23.12.2022 was cancelled and re-test conducted. It was pointed out that this specifically indicates that the Commission was not averse to conduct a re-test, if there was even a possibility of malpractice having been conducted in an examination. However, with respect to the session on 24.12.2022, it is asserted that there was absolutely no possibility of a malpractice since the question papers were uploaded at 12:14 P.M. and even the candidate who did that, could not have reaped any benefit out of the same; leave alone any others, having been supplied with answers, since it could only have occurred after the examination concluded; going by the time-line indicated.

15. It is stated in the counter affidavit that when the Commission received information of rumors of the question



papers of the second sitting on 23.12.2022 and the first sitting on 24.12.2022; having been made viral after three days of the examination; the Commission issued a notice dated 28.12.2022 calling for any evidence or proof regarding leakage of question papers of the aforesaid two sessions of the preliminary test. The Commission received certain complaints on the e-mail, to examine which a Committee was constituted on 31.12.2022. The Committee having scrutinized the materials/information received, was of the opinion that there was no chance of any malpractice having been conducted in the third session of the examinations. Therein, allegations arose only because of the photograph of question booklet bearing No. 2886850, allotted to one of the candidates at the B.S. College Centre in Danapur having gone viral. The candidate had captured the picture of his question booklet in his mobile phone at the last moment of the scheduled time of the examination and had forwarded it to another, after about an hour.

16. The Commission had lodged an F.I.R. at the Economic Offences Unit, Patna bearing Police Case No. 1/2023 dated 04.01.2023, a copy of which is annexed as Annexure-C. The report of the Economic Offences Unit extracted in Paragraph 13 of the counter affidavit indicates that the candidate



who clicked the picture of the examination paper, did it at 12:14 P.M. from his cell-phone which was handed over to him by the invigilator just before the completion of the examination. Noticing the fact that the stipulated time of the examination concluded at 12:15 P.M. and after a preliminary examination of the cell-phone, it was *prima facie* found that the candidate did not forward the captured picture to anyone during the course of the examination. The candidate had forwarded the same to one of his named friends at 1:10 P.M. after about 55 minutes from the conclusion of the third session of the examination; who subsequently forwarded the same to a student's group which became viral. It was categorically reported that the question paper in the third session of the examination conducted on 24.12.2022 went viral after the conclusion of the examination. It was also the opinion of the Economic Offences Unit that the leakage of question paper did not create any impact on the sanctity of the examination nor did it cause prejudice to the examinees.

17. The specific allegation regarding what occurred in Darbhanga, which led to the second FIR, has also been dealt with by the Economic Offences Unit. One another person had downloaded the photo uploaded at 12:14 P.M., to spread



misconception amongst students and the general public and also to enable cancellation of the third session of the examination. The claim made by the said person from Darbhanga was that the question paper was made viral at 09:09 A.M.; which was only by manipulating the time stamp of the picture in his gallery. The question paper which was downloaded at Darbhanga was the very same question paper uploaded by the candidate who appeared in Danapur, evidenced by the identical Roll Number seen in the question paper made viral from Darbhanga. The mobile phone instruments of both, the candidate who appeared at Danapur and the person who downloaded the question paper from Darbhanga, were seized and sent for forensic examination.

18. We do not think that the F.I.R. in any manner creates a doubt regarding the sanctity of the examination or provides sufficient ground to unsettle the decision of the Commission. The F.I.R. registered with respect to the uploading of the question paper, done from Danapur by a candidate, refers to the possibility of the invigilators deputed in the examination hall, other personnel working in the examination center and outsiders being involved in the conspiracy. This is only a first information and on such probabilities alone, there is no question of an examination of the scale in which it was conducted being



upset fully.

19. In this context, we specifically notice the report of the Superintendent of Police, Economic Offences Unit, submitted to the Secretary, Bihar Staff Selection Commission, Patna, a translation of which is extracted hereunder:-

*“To,
Secretary
Bihar Staff Selection Commission
Patna*

Dated 29.04.2023

*Context-Economic Offences Police Station Case
No.- 01/2023, dated-04.01.2023,
Section- 420/ 467/ 468/ 469/ 471/
120(B)/34 I.P.C, 66 I.T Act 2000 and
Section- 10 Bihar- Examination
Control Officer.*

*Subject-Regarding taking disciplinary action
against the invigilators deputed in
Room no.- 7 of B.S College, Danapur.*

Sir,

In relation to the above-mentioned context and subject, it is to be informed that B.S College, Danapur was marked as centre of 3rd Graduate Level Combined (Preliminary) Competitive examination- 2022. 1. Trivendra Kumar, 2. Poonam Verma, 3. Raju Kumar, 4. Ramesh Kumar were deputed as invigilators in room no.- 7 of B.S College, Danapur. On the fixed date- 24.12.2022 the first shift of the examination started in room no.- 7 of B.S College, Danapur. Shortly before the conclusion of the examination, at about 12:13 O' clock the peon brought the deposited mobile to room no.- 7 and the mobiles of all the candidates were distributed in the presence of the said invigilators before the



conclusion of the examination, at that very time, an examinee named Prashant Kumar took the opportunity and clicked photo of the pages of his question paper no- 2886850 and went out. Later on it was revealed that the same question paper which was clicked became viral the photo of which was clicked by the said examinee. Whereas, according to the rules, Mobile and other deposited objects are returned only after conclusion of the examination or submission of the Question paper and O.M.R, but this was not done by the deputed invigilators. Thereafter the Economic Offences Unit got the information. After receiving the information investigation was made and F.I.R was registered.

Had the permission been given by the invigilators deputed in room no. 7 of B.S College, Danapur, namely 1. Trivendra Kumar, 2. Poonam Verma, 3. Raju Kumar, 4. Ramesh Kumar performing their duty honestly for handing over the deposited mobiles to the candidates after the conclusion of the exam or after submission of question paper and OMR sheets, the question paper would not have been viral and the said examination would have been concluded properly. From this, it is clear that the invigilator have done negligence and indiscipline in their duties due to which the question papers of the Third Graduate Level Combined (Preliminary) Competitive Exam-2022 got viral.

Hence, action to be taken against the invigilators deputed in room no.- 7 of B.S College, Danapur namely 1. Trivendra Kumar, 2. Poonam Verma, 3. Raju Kumar, 4. Ramesh Kumar.

Sincerely

*Sd/- (Illegible)
Superintendent of Police
Economic Offence Unit
Bihar, Patna”*



The said report is urged by the petitioners to challenge the sanctity of the examination on the allegation that there is collusion and connivance by the authorities also.

20. What we understand from the above extract is that in that specific examination center at Danapur, prior to the conclusion of the stipulated time of the examination; just two minutes before that, the peon brought the mobile phones surrendered by the candidates, to the hall and distributed it to the candidates. This resulted in one of the candidates taking a picture of his question paper and uploading it, which was at 12:14 P.M. What is asserted in the report is that the invigilators were not authorized to hand over the deposited mobiles to the candidates prior to the conclusion of the examination and prior to the submission of the question papers and OMR Sheets, to the invigilators. It was opined that there should be action taken against the invigilators whose negligence and indiscipline resulted in the question paper of the examination going viral. This is not to say that there was possibility of a malpractice in the examination or a collusion or connivance of the invigilators. In fact, the report of the Economic Offences Unit, as extracted in the counter affidavit, is to the contrary. It has been asserted that there is no impact on the sanctity of the examination. But,



the negligence of the invigilators led to such allegations being raised and the recruitment process itself being kept on hold for long. Hence, appropriate action was recommended against this negligence and there is no whisper of a connivance or collusion.

21. The mere fact that there was negligence on the part of the invigilators in handing over the mobile phone before conclusion of the examination cannot lead to cancellation of the entire examination; unless such action leading to uploading of a question paper, a direct result of the negligence, resulted in malpractices being conducted. As is pointed out by the Commission, on the mere possibility of a malpractice having occurred, for reason of the question paper having been uploaded after the examination commenced, but an hour before its conclusion; the Commission cancelled the first session of the examination on 23.12.2022 and conducted a fresh test. Hence, the Commission was not concerned only with the financial implications and we are of the opinion that as has been held in ***Sachin Kumar*** (supra), the Commission balanced the two competing considerations highlighted therein, of “*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” (sic).

22. A mere allegation cannot lead to cancellation of an examination unless it raises a reasonable doubt in the mind of the authority as to the possibility of the allegation being true and established. We also pertinently notice the principle as stated in ***Chairman, All India Railway Recruitment Board*** (supra).

Paragraphs 36 and 37 thereof are extracted hereunder:-

“36. *Wednesbury* [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to “assess the balance or equation” struck by the decision-maker. Proportionality test in some jurisdictions is also described as the “least injurious means” or “minimal impairment” test so as to safeguard the fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice it to say that



there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalise or lay down a straitjacket formula and to say that Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] has met with its death knell is too tall a statement. Let us, however, recognise the fact that the current trend seems to favour proportionality test but Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] has not met with its judicial burial and a State burial, with full honours is surely not to happen in the near future.

37. Proportionality requires the court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. The court entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate i.e. well balanced and harmonious, to this extent the court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if



it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere.”

23. With the above principle in mind, we look at the decision of the Commission to cancel the first session of the test on 23.12.2022 and the decision to proceed with the evaluation of the test conducted on 24.12.2022. It cannot be said that the refusal to cancel the test on 24.12.2022 is unreasonable going by the facts disclosed in so far as the allegation of uploading of the question paper occurred, only one minute before the conclusion of the stipulated time. There was no possibility of any candidate being supplied with the answers or even the candidate who uploaded it, having marked the answer paper in accordance with such a malpractice. Even applying the test of proportionality, we find no fault in the aim and intention of the decision maker and we are of the opinion that the decision maker, the Commission, who is the recruiting agency, had struck the correct balance and equilibrium. The decision is well balanced and harmonious, especially considering the fact that the earlier session, on the mere possibility of a malpractice having occurred, was cancelled. The decision of the Commission to conduct a re-test of the examination held on 23.12.2022 more than reveal the



bonafides of the Commission and its endeavor to maintain the sanctity and legitimacy of the examination conducted. This cannot be considered in isolation and merely because one of the sessions was cancelled, without anything otherwise substantial, there cannot be any cancellation sought of the two other sessions. We find absolutely no reason to interfere with the decision of the Commission and we reject the writ petitions.

24. Before parting with the cases, we have to deal with the objection raised against the Public Interest Litigation filed. As has been held by the Hon'ble Supreme Court in ***Fertilizer Corporation Kamgar Union (Regd.), Sindri and others v. Union of India and others; (1981) 1 SCC 568***, on Public Interest Litigations “*If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him*” (sic).

25. In the present case, we find that the petitioner in the Public Interest Litigation has absolutely no cause of action since she is not a candidate in the examination. Her averments in the writ petition are that, she is a social activist, has neither personal interest nor personal gain nor private motive or oblique reason in filing the writ petition. But for this there is nothing



stated as to any request made by candidates in the examination or even her righteousness having been awakened by the agitation resulting in police action; which was stated before us, by the learned counsel, on a specific query put by us, to him. The petitioner also avers in Paragraph 17 that she knew from the news and media that the 4th respondent, the Chairman, had visited the examination center at Motihari and inspected it and the officials of the Economic Offences Unit also carried out an inspection; which is quite natural in the wake of the allegations regarding the malpractice occurred in the examination. In fact, the writ petitions filed by the individual candidates were kept pending only because of the Public Interest Litigation. We sought for instructions from the party, through the learned counsel, as to whether she would like to pursue the matter, especially since the question is alive before the learned Single Judge having roster, who could consider it. The petitioner, however, adamantly pushed for her Public Interest Litigation to be considered. We found that the allegations are not sustainable and in the totality of the circumstances, we find that the petitioner was not agitating a Public Interest and was merely agitating a '*publicity interest*'; '*being an officious intervener, wayfarer and busy body*'. We hence dismiss the writ petitions on



the reasoning stated above and the Public Interest Litigation, also on the ground of abuse of process of Court with cost of Rs. 50,000/- (fifty thousand) imposed on the petitioner in the Public Interest Litigation, payable to the Bihar State Legal Services Authority, which shall be recovered by the Authority resorting to procedure for recovery of arrears due on land revenue.

26. The writ petitions stand dismissed with cost imposed only on one of the petitioners.

(K. Vinod Chandran, CJ)

Partha Sarthy, J. I agree.

Sunil/PKP

(Partha Sarthy, J)

AFR/NAFR	AFR
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