

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.276 of 2020

1. The Bihar Staff Selection Commission through its Secretary, Veterinary College, Patna- 800014.
2. The Chairman, Bihar Staff Selection Commission, Veterinary College, Patna- 800014.
3. The Secretary, Bihar Staff Selection Commission, Veterinary College, Patna- 800014.
4. The Controller of Examination, Bihar Staff Selection Commission, Veterinary College, Patna- 800014.

... .. Appellant/s

Versus

1. Anil Kumar Sharma, Son of Marchhu Sharma Resident of Village and P.O.- Fakharpur, P.S.- Arwal, Dist- Arwal, Bihar- 804401.
2. Sudhanshu Kumar, Son of Ganesh Ji Pathak Resident of at and P.O.- Satwar, P.S.- G.V. Nagar, District- Siwan, Bihar- 841439.
3. Bikas Kumar Jha, Son of Sharwan Kumar Jha Resident of at and P.O.- Shahpur, P.S.- Muffasil, Dist- Begusarai, Bihar- 851129.
4. Shakil Ahmed Khan, Son of Md. Wasim Khan Resident of Koshi Colony, Quarter No.- E/15, P.O. and P.S.- Birpur, Dist- Supaul, Bihar- 854340.
5. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
6. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Satyabir Bharti, Advocate
Mr. Abhishek Anand, Advocate
Ms. Kanu Priya, Advocate
Ms. Sushmita Sharma, Advocate

For the Respondent/s : Mr.Kumar Kaushik, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)



Date: 05-10-2023

The impugned judgment directed uploading of key answers on the *website* of the respondent-Bihar Staff Selection Commission (for brevity 'the Commission'), invitation of objections from the candidates with respect to the questions and answers, placing of it before a body of experts and revision of results of the preliminary examination, if any deletion or alteration is made in the questions or answers. It was also directed that again the model key answers after scrutiny by the expert body would be put in the website, in accordance with which the results would be reviewed and if no alteration or modification is required the results already declared of the preliminary test would be given effect to. There was a further direction to supply the marks obtained by the petitioners in the preliminary test.

2. The learned Single Judge, while issuing the said directions, emphasized the aspect of fairness and transparency in the process of selection based on the judgment of the Hon'ble Supreme Court in ***Kanpur University and Others vs. Samir Gupta and Others; (1983) 4 SCC 309*** and the consistent dismal track record of the Bihar Staff Selection Commission in its conduct of Multiple-Choice Objective Type



Tests.

3. We have heard Shri Kumar Kaushik, learned Counsel for the petitioners-respondents herein, and Shri Satyabir Bharti, for the respondents-appellants; the Commission and its officers.

4. Shri Kaushik has highlighted the decision in ***Samir Gupta (supra)***, as emphasized by the learned Single Judge, which took note of the fact that there was always an option to keep the answer key secret; which, however, would be a malady worse than the disease, a disclosure would endeavour to cure; which disease is the suffering of injustice by the candidates, in silence and without any remedy. Learned counsel also placed reliance on ***Rishal & Ors. v. Rajasthan Public Service Commission & Ors.; (2018) 8 SCC 81***; and ***Harkrit Singh Ghuman v. Punjab & Haryana High Court & Ors.; 2022 SCC OnLine SC 1111***.

5. Shri Bharti, learned counsel appearing for the appellant, on the other hand, highlighted, the caution expressed by the Hon'ble Supreme Court in ***Ran Vijay Singh & Ors. v. State of Uttar Pradesh & Ors.; (2018)2 SCC 357*** by reason of the evaluation made by the courts of the answers to an objective type test, thus creating a 'mess' (*sic*), which



could have been avoided by relying on the decision of expert bodies. Learned Counsel also relied on a decision of this Court in ***Bihar Police Subordinate Service Commission through its Secretary & Ors. Vs. Ramesh Kumar & Ors.; 2019(2) PLJR 416*** and a decision of the Hon'ble Supreme Court in ***Vikesh Kumar Gupta v. State of Rajasthan & Ors.; (2021) 2 SCC 309***.

6. The subject 'Objective Type Test' was the preliminary test in which 1st Inter Level Combined Competitive Examination was held for 38 posts, with numerous vacancies, by advertisement dated 01.09.2014. The examinations were first scheduled from 29.01.2017 to 05.02.2017; which were cancelled. A re-test was conducted from 8th to 10th December, 2018 in two sessions per day, totaling six sessions. There were 150 questions in each session and in total there were 900 questions in each of the sessions, which were different. A total of 18,57,000 candidates applied for the test and 8,82,899 appeared for it. The successful candidates numbered 63,739 against 13,120 vacancies.

7. The sole grievance of the petitioners was that the model answer key was not uploaded on the website, which



is required on the grounds of fairness and transparency. It was argued that by virtue of the directions issued in ***Md. Nafis Nawaz Khan & Anr. vs. The State of Bihar & Ors.; (2016) 1 PLJR 667***, it was mandatory for the Commission to publish the model answer key, given opportunity to the candidates to raise objections and then have the objections considered by an expert body. It was also averred that the petitioners had approached the Public Information Officer of the Commission under the Right to Information Act, 2005 (for brevity 'Act of 2005') and also filed an appeal under the said Act of 2005 for supply of OMR sheets, model answer key and the marks secured by the petitioners.

8. In the counter affidavit, it was specifically averred that the question of uploading of model answer key came up for consideration before the Commission, *suo moto*, and it was decided that it would be better that the answers supplied by the question setters be scrutinized by a team of experts, based on which an evaluation shall be done. Out of the 900 questions, the team of experts had come to the conclusion that 21 questions were either wrongly framed or had incorrect answers and there were printing mistakes in two questions. The Commission decided to delete these 23



questions and it was felt that this is a more comprehensive procedure since otherwise only the questions and answers objected to would be put to an expert body. It was also asserted by the Commission that there was no mandate that in every MCQ test there should be a publication of model answer keys and even the Union Public Service Commission does not carry out such a procedure. There was also a contention taken up by the Commission that this would ensure expeditious conclusion of recruitment process, which, otherwise, would lead to delay for reason of litigations initiated.

9. The learned Single Judge kept in mind the limited jurisdiction under Article 226 of the Constitution, especially in a judicial review wherein there can be no substitution of the opinion of an expert body, especially when it comes to testing the veracity or correctness of answers to questions from different subjects and areas. There should be a finality given to the opinion of such experts, but still there is also an obligation on the recruiting agency to maintain transparency and fairness in the process of selection, which would be furthered by the publication of the answer key, inviting of objections, verification of objections by an expert



body and re-evaluation based on the suggestions of the expert body, was the finding. A number of decisions were cited, from which copious extracts were made to find that the option chosen by the Commission to expedite the process of selection created a situation where the candidates did not have the opportunity to question the correctness of the results. The learned Single Judge also highlighted the explanation of the Commission in so far as the practice of uploading mark-lists giving rise to *unnecessary* litigations; which was the malady said to be worse than the disease in ***Samir Gupta*** (*supra*) thus bringing that contention itself within the teeth of the dictum of the Hon'ble Supreme Court.

10. Before we look at the merits of the matter, we have to notice that the main examinations scheduled were conducted by virtue of an interim order dated 08.12.2020 in the appeal. A Division Bench of this Court had stayed the impugned judgment finding *prima facie* no infraction of statutory rules or directions issued on the judicial side. The main examination, which was scheduled on 13.12.2020 was directed to be proceeded with; the candidates appearing in the examination to be notified; of the appearance or eventual selection not conferring any right upon them, which would be



subject to the result of the appeal. The selection is said to have concluded and the vacant posts filled up in the year 2021. The appointed persons have been continuing in service and it has to be observed that the appellant was directed to take out substituted service; which has been done, but none have appeared to contest the matter or defend the conduct of the preliminary test and thus, support the Commission. Be that as it may, it has also to be noticed that none, but the four writ petitioners in the case agitate the cause as of now.

11. We bow down to the proposition, as laid down in ***Samir Gupta*** (supra); half a century back. '*If the key answers were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence*' (sic) was the statement made by the learned Judges in that case; based on the facts of that case. The Hon'ble Supreme Court appreciably spoke of the measure of the University in having published the answer keys, which gave a sense of fairness and an opportunity to scrutinize the system of examinations. However, it has to be emphasized that publication of answer keys was not laid down as a rule, by neither the afore-cited decision nor in the various decisions cited before us.



12. In *M/s Nafis Navas Khan (supra)*, a Division Bench of this Court was considering the validity of a Teachers Eligibility Test (TET) in which on detection of incorrect answers, the Authority which conducted the test decided to grant one mark to all those questions found wrong by the expert body. In a writ petition, a learned Single Judge faulted the said decision on the ground that the candidates who marked incorrect answers would steal a march over the meritorious ones if such grace marks are allowed for incorrect answers. It was directed that there would be a re-evaluation after deletion of those questions found to be wrongly framed. The Division Bench approved the directions of the learned Single Judge and also issued general directions to maintain fairness and ensure transparency in the examination process. One of such directions was in the following manner:-

“40. (a) Immediately after a multiple choice question test is held, it shall be obligatory for the Committee or the Body, which conducts such a test, to undertake an exercise, before evaluating the answer-sheets, to ascertain whether the questions were correctly framed having definite answers. In case any objections are invited from the candidates and such objections are received, they must be looked into by a body of the experts, who would not only be required to ascertain whether the questions were correctly framed or not, but they would also be required to examine as to whether the model answers, prepared by the question-setter, are correct or not, for the purpose of correct evaluation of answer-sheets;



The Division Bench, it has to be emphasized, did not lay down publication of model answer key as an imperative rule, but merely spoke of such publication as one measure by which the authority could ascertain whether the questions are correctly framed and the answers too are correct.

13. ***Rishal*** (supra) was a case in which the answer keys were published and the objections invited, which gave rise to a number of litigations in which the revised answer key was directed to be published along with the report of the experts. The second round of litigation was dismissed by the learned Single Judge and the Division Bench also rejected the appeals. While directing to revise the results in accordance with the report of the expert committee appointed by the Hon'ble Supreme Court, it was reiterated that publication of key answers is a worthy step to achieve transparency and provide an opportunity to the candidates to assess the correctness of their answers.

14. ***Harkirat Singh Ghuman*** (supra) was one other case in which the Hon'ble Supreme Court interfered with the recruitment and opined that to ensure transparency, OMR sheets may be provided to the candidates and a provisional answer key uploaded inviting objections to ensure



fairness in the process of selection. While opining so, it was also stated in paragraph-26 that “*This is one of the mechanisms by which fairness and transparency which is a sine qua non in the public employment can be resorted to*” (sic).

15. We cannot but observe that the publication of answer keys, inviting of objections, putting the objections to an expert body and re-evaluation on the basis of any modifications suggested by the expert body, has been stated to be one of the methods to ensure transparency and fairness of the selection process; but not the only method or exercise.

16. In ***Bihar Police Subordinate Service Commission*** (supra), a Division Bench of this Court noticed the judgment in ***Central Board of Secondary Education v. Aditya Bandopadhyay; (2011) 8 SCC 497***, in which it was declared that the candidates could move an application for supply of answer books under the Right to Information Act in order to raise any grievance. There is a reference to the petitioners having filed an application under the Right to Information Act and a further appeal also, but there is nothing stated as to what transpired in the said proceedings. Even in the present proceedings, there is nothing produced as to any



wrong answers having come in the answer keys based on which evaluation was conducted, as discernible from a response to the RTI query.

17. ***Ran Vijay Singh*** (supra) summarized the principles regulating the scope of judicial review and emphasized that sympathy or compassion do not play any role in the matter of directing or not directing re-evaluation. The entire process of selection conducted by the U.P. Secondary Education Services Selection Board and the various litigation which ensued, were stated to have created a mess, especially when a learned Single Judge had entertained the batch of writ petitions when an earlier one was dismissed by a co-ordinate bench. The learned Judges had specifically referred to ***Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth; (1984) 4 SCC 27***, which reiterated the cardinal principle that it is not within the legitimate domain of the Courts to determine whether the purpose of a statute can be served better by adopting any policy different from what has been laid down by the legislature or its delegate and to strike down as unreasonable a bye-law, merely on the ground that the policy enunciated therein, does not meet with the approval of



the Courts in regard to its efficaciousness for implementation of the object and purposes of the Act. It was also declared that in the absence of specific provision conferring a right upon an examinee to have his answer books re-evaluated, no such direction can be issued.

18. In *Ran Vijay Singh* (supra), the High Court had itself ascertained the corrections of the key answers to seven questions, which was held to be beyond its jurisdiction. The Hon'ble Supreme Court, in the medley of facts, which led to the observation that it created a mess, postulated for itself three options; (i) to nullify the entire re-evaluation, (ii) to go by the third set of results; (iii) or cancellation of the examination itself; which third option was categorically found to be not at all feasible. Only considering the massive exercise undertaken by the Board, pursuant to the directions of the High Court, the middle path was chosen to direct declaration of the third set of results, however, protecting those candidates who may be declared unsuccessful, who were also appointed as trained graduate teachers as a result of the first and the second declaration of results.

19. We are faced with a like situation, where a number of candidates who turned out successful in the main



examination have been appointed and the petitioners herein are those who did not turn out successful in the preliminary examination itself.

20. **Vikesh Kumar Gupta** (supra) also held that re-evaluation is an option only if the rules permitted it and the High Court cannot examine the question papers and answer sheets by itself, particularly, when the Commission had assessed the *inter se* merit of the candidates. It was opined that the Court should show deference and regard to the recommendations of an expert committee.

21. In the background of the above declarations of law applicable to the facts of each case, we have to look at the present controversy agitated in the above case. We cannot, with all the respect at our command, agree with the learned Single Judge that the Commission while adopting one option had only kept in mind the aspect of the ensuing litigation, for reason of which alone, the publication of the answer key was not permitted. We have to notice the specific contention taken in the counter affidavit that the Commission had considered the issue and had decided to have the questions and answers examined by a committee of experts. It has also come out that 23 questions were deleted from consideration out of a total of



900 questions. Though the expediency in making recruitments would have been one of the considerations, we cannot find it to be the sole and reigning consideration in deciding the matter. As has been held, there was a method chosen for ensuring transparency and fairness, which was to put the questions and answers through an expert committee constituted, and comprising of experts in different subjects. As has been pointed out in the various decisions, there are various options available and this was one of the option available to the Commission; the choice of which cannot be faulted.

22. *All India Railway Recruitment Board v. K. Shyam Kumar; (2010) 6 SCC 614*, examined a similar issue, both under the principles of *Wednesbury* unreasonableness and the test of proportionality. The *Wednesbury* principles, apply to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards, that no sensible person who applies his mind to the issue to be decided could have arrived at the subject decision, as observed by the Hon'ble Supreme Court. Proportionality, on the other hand, is a test which is capable of more precise and fastidious examination of the issue, requiring an intrusive



review of a decision made by a public authority, wherein the courts venture to “*assess the balance or equation*” struck by the decision-maker. In that case also, the learned Judges found the Board, which cancelled the examination to have had three options, out of which one was chosen. The choice was found to be reasonable and also satisfying the proportionality test.

23. We find that in the present case also, the decision of the Commission to carry out an exercise of the entire answers to the 900 questions and also the questions, being verified by an expert authority based on which 23 questions and answers were deleted was definitely a reasonable option. It has to be observed that definitely there could have been a publication of the model answers in which event, as has been stated by the Commission itself, the examination would have been confined to those questions and answers on which an objection was raised. A more comprehensive examination was done by an expert body in the present case and it can be definitely said that this struck a correct balance. Here also, the action of the Commission satisfies the test of reasonableness and also of proportionality. It has to be reiterated that at no point, any of the decisions cited; right from the ***Samir Gupta*** (supra), held that the



publication of answer sheets and calling for objections would be the only procedure by which transparency and fairness can be ensured.

24. On the above reasoning, we allow the appeal setting aside the judgment of the learned Single Judge.

25. Interlocutory application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Sujit/-

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