

**Deepak Kumar Vs. the Bihar School Examination Board and ors.**

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**Court :** Patna

**Decided On :** Mar-11-2005

**Judge :** S.K. Katriar, J.

**Acts :** Bihar School Examination Board Regulations

**Appeal No. :** CWJC No. 937 of 2004

**Appellant :** Deepak Kumar

**Respondent :** The Bihar School Examination Board and ors.

**Judgement :**

**S.K. Katriar, J.**

1. Heard Mr. Uma Shankar Singh No. II for the petitioner, Mr. J.P. Shukla for respondent Nos. 1 and 2 and Mr. Chandra Bhushan Prasad for respondent No. 4 (State of Bihar).

2. According to the writ petition, the petitioner had submitted his application dated 9.12.1998 through N.K. High School, Baharampur, Patna, as a private candidate to appear at the Matriculation Examination. The application was scrutinised by the Board and the admit card was issued whereby he was allotted Roll No. 1008, photocopy whereof is marked Annexure 1 to the writ petition. The examinations commenced on 9.2.1999, but the petitioner's result along with other private

candidates of this school has been withheld. On the basis of the enquiry, the Board issued the impugned order, vide letter No. 5415 dated 7.11.2001 (Annexure 3), addressed to the Headmaster of the school, cancelling the candidature of such private students including the petitioner. The writ petition has therefore, been preferred for a direction to the Board to publish the petitioner's result.

3. Learned counsel for the Board has placed his counter affidavit and opposes the writ petition.

4. I have perused the materials on record and considered the submissions of learned counsel for the parties. The Board has taken the stand in its counter affidavit that soon after the examinations were over, the Board received information that the private candidates of the school in question had not appeared at the sent-up examination notwithstanding which the school had forwarded their applications resorting to the provisions of Clause 3(c) read with Clauses 18 and 19 of the Bihar School Examination Board Regulations. The same are set out hereinbelow for the facility of quick reference :--

'3. Eligibility of Private candidate for Secondary School Examination,--

(a) A candidate who has not attended any recognised secondary school as pupil at any time during one year immediately preceding the examination in which he wants to appear may be admitted to the Board's Secondary School Examination as a private candidate.

(b) Such private candidates as have not been resident in the State for at least one year immediately prior to the Secondary School Examination will not be permitted to appear at the Board's Examination, unless they are the sons or wards of Government servant transferred from another State within that period.

(c) In order to be eligible for appearing at the Secondary School Examination, such private candidates shall have to pass a preliminary test examination held at any Government secondary school or other secondary school appointed by the Director of Public Instruction for the purpose.

(d) Such candidates shall also have to produce a certificate of good conduct from a respectable person of the locality to the satisfaction of the head of the institution concerned.

(e) the private candidate shall have to register himself in the Board under Article 22 of Chapter IV of this regulation.'

.....

'18. Mal-practice, indiscipline, etc.--In any case where it is found that the examination has been violated by error, improper conduct, or other causes or where mal-practice, fraud, or act of indiscipline or use of unfair-means are reported to have been rescried (sic) to the Board shall have the power to cancel the examination or to withhold or amend the result in which case and to take such other action as it may deem fit.

'19. In any case where the result of the examination has been ascertained and published and it is found that such result has been affected by error, mal-practice, fraud, or any other cause whereby an examinee has in the opinion of the Board been party to or privy to or connived at such mal-practice, fraud or improper conduct the Board shall have power at any time, notwithstanding the issue of the certificate to amend the result of such examinee and to make such declaration as it may consider necessary in that behalf.'

4. The situation is not free from difficulty. I, however, take the view that I have taken for the reasons indicated hereinafter. Clause 3 is part of Chapter IV of the Regulations which is headed 'Conditions under which students shall be admitted to the Secondary School Examination of the Board.' It is manifest from a plain reading of Clause 3(c) that the same is couched in almost mandatory terms and, therefore, it would be difficult to conclude that a private candidate can be allowed to appear at the final examination in a situation where he has not appeared at the preliminary test examination which is conducted by the school itself, and is known in common parlance as sent-up examination.

5. The first and the foremost aspect of the matter which comes to my mind is that can the students be allowed to suffer for the fault of the school and/or the Board in a situation where no fraud, misrepresentation or the like, as the situation obtains in the present case, is attributable to the candidate? The second aspect of the matter which comes to my mind which, in fact, is another facet of the same proposition, was it not above all the duty of the Board to scrutinize the application carefully before issuance of the admit card on the strength of which the candidate appeared and is awaiting his result? Can the Board be allowed to punish the petitioner in order to cover up its own mistake and inaction? Another aspect of the matter is as to at which stage the Regulations could have been applied. Another aspect of the matter is, does this defect go to the root of the matter, and is condonable or not. I am equally mindful of the contention so seriously and solemnly advanced on behalf of the Board that a large number of cases are being reported where the candidates are appearing at such examination in violation of the Regulations. Learned counsel for the Board has relied on the judgment of the Supreme Court reported in AIR 1986 Supreme Court 1490, A.P. Christians Medical Educational Society v. Govt. of Andhra Pradesh, wherein it has been held that the Court should desist from directing the statutory bodies like the Board to act in derogation of the Regulations.

6. But a different considerations weigh in my mind in the present case. In so far as the present case is concerned, there is no escape from the reality that the petitioner appeared at the final examination without appearing at the preliminary examination which ought to have been held by the school. However, the over-borne reality in the present proceeding is that there is no material on record to suggest that the petitioner was guilty of fraud, misrepresentation or the like. The school and the Headmaster, as well as the Board, are surely responsible for the same. I would, therefore, refrain from punishing the petitioner for the Acts of omission or inaction of the school and the Board. I am in this connection supported by the judgment of the Supreme Court, reported in AIR 1976 SC 376, Shri Krishna v. Kurukshetra University. That was a case where the petitioner had passed the Part-I examination of L.L.B., whereafter he passed Part-II examination also. Thereafter the result of Part-I was cancelled on the ground that the petitioner had not attended the minimum number of lectures during Part-I course. I must state

that the judgment dealt with the interpretation of Clause 2 of the ordinance, but in principle supports the petitioner's case. The relevant portion of the judgment is set out hereinbelow :--

'6. ....The last part of this statute clearly shows that the university could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the university to withdraw the candidature of the applicant has worked itself . out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving the applicant permission to appear.'

'7. ....It is well settled that where a person on whom fraud is committed is in a position to discover the truth by due diligence, fraud is not proved. It was neither a case of suggestio falsi, or suppressio veri. The appellant never wrote to the university authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the university authorities to have found out the defect. In these circumstances, therefore, if the university authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part-1 examination in April, 1972, then by force of the university statute the university had no power to withdraw the candidature of the appellant.....'.

Thus the judgment of the Supreme Court is to the effect that the university had every opportunity, nay its duty, to find out the defect in the appellant's candidature upto the stage of examination whereafter it was estopped from doing so in a situation where no fraud, misrepresentation or the like was attributable to the petitioner. I have myself taken the same view allowing the following writ petitions :--

(i) CWJC No. 11561 of 2003, Ajit Kumar and Anr. v. State of Bihar and Ors., disposed of the 7.3.2005.

(ii) CWJC No. 1846 of 2004, Rajesh Kumar v. Bihar School Examination Board, disposed of on 10.3.2005.

6. In that view of the matter, I am constrained to set aside the impugned order bearing letter No. 5415, dated 7.11.2001 (Annexure 3), in so far as it concerns the petitioner. The respondent Board is hereby directed to publish the petitioner's result and ensure follow-up action in accordance with law promptly.

7. Before I part with this judgment, I must record my feeling of concern in the manner the Board seems to be acting. Learned counsel for the Board submitted before me that a large number of such cases are being reported to the Board therefore, stern action has become imperative to ensure purity of examination and academic excellence, which is manifest from the large number of writ petitions coming up before this Court in this connection. Therefore, the Board should revise its Regulations to keep pace with the changing times and the different nature of problems that are now coming up which may not have been envisaged when the same were framed in 1964, and also to make necessary alterations in the proforma. Very strict scrutiny should be done before issuance of the admit card.

8. The writ petition is accordingly disposed of.

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