

(1954) 01 PAT CK 0021

In the Patna High Court

Case No : Misc. Judicial Case No. 517 of 1953

Benimadho Lal and Others

APPELLANT

Vs

Bihar School Examination Board and Others

RESPONDENT

Date of Decision : 06-01-1954

Acts Referred:

Bihar and Orissa Education Code — Article 211, 214, 215, 290
Constitution of India, 1950 — Article 226

Citation : AIR 1954 Patna 405 : (1954) 2 BLJR 224

Hon'ble Judges : Ramaswami, J;Choudhary, J

Bench : Division Bench

Advocate : K. Rai and Sheekumar Singh, for the Appellant; Govt. Pleader, for the Respondent

Judgement

1. In this case the petitioners have moved this Court for a writ in the nature of "certiorari" for calling up and quashing an order of the Inspector of School, Patna Division, Patna, rustivating three ex-students of the Patna High School, namely, Suraj Singh, Birendra Pratap Sinha and Sudhakar Prasad Sinha. There is also a prayer made on behalf of the petitioners for a writ in the nature of "mandamus" commanding the Bihar School Examination Board, Patna, to publish the results of the Secondary School Examination with reference to the three ex-students whose names have been given.

2. It appears that on 20-2-1953, one Sri Satish Narain Taterway, was assaulted by certain persons in the premises of the Patna High School. Information to the police was lodged and on 21-3-1953, charge sheet was submitted against the three ex-students for their trial under Sections 323 and 448 of the Penal Code. The case was heard by Mr. J. N. Prasad, Munsif-Magistrate, Patna, who acquitted the three ex-students by his judgment dated 29-8-1953. The learned Magistrate found that the prosecution was started on mere suspicion and hearsay information and that the three ex-students were innocent of the charges framed against them. It is alleged on behalf of the petitioners who are the parents of the

three ex-students that the action of the Inspector of Schools in making an order of rustication was an order beyond his jurisdiction and "ultra vires" and ought to be quashed by the High Court. It was also stated in the application that the three ex-students had appeared in the Secondary School Examination held in February, 1953, but the results had been wrongfully withheld by the Bihar School Examination Board. It was, therefore, prayed on behalf of the petitioners that a direction should be issued to the opposite party Nos. 1 to 3 to publish the result of the Secondary School Examination so far as the petitioners' sons were concerned.

3. A counter-affidavit has been filed on behalf of opposite party Nos. 1 to 3 stating that the results of the three ex-students had been published on 16-11-1953, after the application had been filed. Mr. Kailash Rai submitted that in view of the counter-affidavit, his clients would not press the application so far as opposite party Nos. 1 to 3 are concerned.

4. On the question whether the Inspector of Schools had jurisdiction to pass an order of rustication, Mr. Kailash Rai referred to Article 211 at page 139 of the Bihar and Orissa Education Code and also Articles 290 (e) and 214. The argument of Mr. Kailash Rai is that the order of rustication could be passed only by the Managing Committee and not by the Inspector of Schools. Counsel further submitted that an order of rustication could be made only as against a pupil on the roll of the High School and not against an ex-pupil. Counsel based his argument upon the language of Article 211 which states :

"The following are some standard forms of punishment : (i) Impositions, (ii) Detention, including extra drill, (iii) Fines, (iv) Corporal punishment, (v) Rustication, (vi) Expulsion.

Note : (1) The first three of these punishments should be referred by the master who inflicts them to the Head Master for confirmation; corporal punishment should be imposed only by the Head Master and only in exceptional cases. Rustication or expulsion may be imposed only by the Managing Committee. (2) Inspectors should see that the power of giving corporal punishment is not abused."

Article 214 deals with appeals against an order of rustication or expulsion, and the procedure for dealing with these appeals by the appellate authorities mentioned in that article. Article 290 deals with the duties and powers of the Managing Committee and Clause (e) of this article states that "no pupil may be expelled without an order of the Committee recorded in writing." Reading all these rules together, it is clear that an order of rustication may be imposed only by the Managing Committee and not by the Head Master or by the Inspector of Schools. The authority to impose punishment is expressly vested under Article 211 in the Managing Committee of the High Schools. There is nothing in Article 214 or Article 215 to indicate that the Inspector of Schools may on his own initiative make an order of rustication even though the Managing Committee of

the High School considers that no such order should be passed. It is also clear that an order of rustication may be made only as against a pupil whose name is borne on the roll of the High School and not against an ex-student who is under no obligation to attend any school.

For these reasons, we are of opinion that the order of the Inspector of Schools rusticating the three ex-students; Suraj Singh, Birendra Pratap Sinha and Sudhakar Prasad Sinha, made on 12-5-1953, is an order made without jurisdiction and "ultra vires".

5. For these reasons we think that this application must be allowed as against opposite party Nos. 5, "6 and 7, and a writ in the nature of "certiorari" should be issued quashing the order of the Inspector of Schools dated 12-5-1953, rusticating the three ex-students.

6. As regards opposite party Nos. 1 to 4, the application is dismissed.