

(2002) 04 PAT CK 0070
In the Patna High Court
Case No : C.W.J.C. No. 16191 of 2001

Bhupendra Narain Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-04-2002

Acts Referred:

Bihar School Examination Board Act, 1952 — Section 10A, 4, 4(1), 4(2)

Citation : (2002) 2 PLJR 588

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Rajendra Pd. Singh, for the Appellant; S.A. Hussain, S.D. Yadav, for the Respondent

Judgement

1. This writ petition has been filed as a Public Interest Litigation. Basically, the main relief which is being sought is that the Bihar School Examination Board as referred to in. The Bihar School Examination Board Act, 1952 (Bihar Act 7 of 1952) be reconstituted so that it functions as a Board and not as a superseded Board, as at present under an Administrator.

2. Serious allegations have also been made of the manner in which results of public examinations have been tampered and engineered to suit result-seeking candidates shown as brilliant examinees, and yet these candidates have failed further examinations in other States. It is contended that this is giving a bad name to Bihar. Media reports on this have been appended. The explanation of the Respondent is not satisfactory. Setting up an inquiry and re-examination is in itself an acceptance of bungling and irregularities in public examinations conducted by the State. Further, Senior Advocate for the Petitioner contends that the virus of Section 10A has been challenged, as the law which prescribes suppression of corporate institutions is not democratic.

3. The law requires the constitution of a Board. Section 4 prescribes for it. Section 4 of the Act aforesaid is reproduced below:

4. Constitution of the Board-

(1) The Board shall consist of

(a) the Chairman;

(b) the Director of Public Instruction, Bihar Ex-Officio;

(c) one representative from each of the Universities in Bihar established by law, to be nominated by the State Government;

(d) One Principal of a Training College to be nominated by the State Government.

(2) The State Government may nominate for such period not exceeding the terms specified in Sub-section (4) as it may think fit, not more than two persons to be members of the Board on the ground that they, in the opinion of the State Government, possess expert knowledge of examination system.

(3) The names of the members of the Board nominated under Sub-sections (1) and (2) shall be published by the State Government in the Official Gazette.

(4) Subject to the provision of Sub-section (2), the term of office of the Chairman and the members other than the member shall be for a period of three years from the date of the publication of their names in the official Gazette and shall include any further period which may elapse between the expiration of the said three years and the date of the first meeting of the next succeeding Board.

(5) A person who holds office as Chairman shall, on the expiration of his term of office, be eligible for re-appointment to that office for further period not exceeding three years in aggregate.

4. The Court gets an impression that the State Government seems to be dragging its feet in constituting this Board prescribed by law and the Court was told in February last and is being told again, today, that the State Government will constitute the Board after 30 June, 2002 when the process of examination is over. The examinations, High School, in any case are over. In fact, in the affidavit of the Director, Secondary Education, it is accepted that the State Government is "contemplating" to constitute the Board. If the State Government is indeed serious then the Board should have been constituted by now. The fact that the Bihar School Examination Board should and ought to function as a constituted Board, as prescribed, is the normalcy of the situation. Not to have a constituted Board and to run it otherwise than prescribed is an abnormality and against the law.

5. Several members of the Legislative Assembly and the Legislative Council have written to the Chief Minister of the irregularities at the Board. A jointly signed representation dated 24/25 September 2001, is annexure "1" the writ petition. The Minister wrote to the Secretary of the Bihar School Examination Board by his letter dated 9 October, 2001 that irregularities be examined. This is annexure "2" to the counter affidavits of the Administrator. Malpractices are not denied. The

circumstance that first class topper students in Bihar who fail the plus-two examination at Delhi is accepted.

6. Thus, not different from the circumstances under which the Supreme Court had directed the State Governments to constitute the State Human Rights Commission, and when it was not done ad hoc arrangements were advised by requesting the Chief Justices of the High Court to make ad hoc bodies In the matter of D.K. Basu v. West Bengal Order dated October, 19, 2001. 2001 (7) SCALE 496 : 2002 (1) PLJR (SC) 117 similar steps need to be taken in the present matter. The time has come that this Court must constitute an ad hoc Board for a period of six months so that it functions with a semblance on a pattern which has been set and provided in the Act. The arrangements and processing of public examinations, the law has entrusted to an entity constituted as a Board, not in an individual.

7. Thus, the Court does not desire, at present to go into the aspects whether Section 10A is ultra virus or any other allegations against the Board. Section 10A permits the State Government to supersede the Board. Clearly, even if this suppression was permitted it was meant to be for a very short duration and the functions of the Board were temporarily given to a State functionary. In the present case it has over shot two terms of a Board. The Board was superseded in 1996 and for six years the Board, as has been prescribed by law, has been absent.

8. Thus, this Court directs that as an ad hoc arrangement for six months effective from 1 May, 2002, the Board shall be constituted thus:

(a) The Secretary, Secondary Education is to Act as the Chairman of the Board.

(b) The Director of Public Instruction, Bihar is to join the Board as an Ex-Officio Member. For the present, let the Director, Public Instruction, Secondary Education be the Ex-Officio Member.

(c) For one representative from each of the Universities of Bihar, 1st the Vice-Chancellor of each University be on the Board or he may depute the Senior Most Professor of the University to act as a member in lieu of the Vice-Chancellor.

(d) The Principal of the oldest Training College, Secondary Education, in the State of Bihar is to act as a Member.

(e) Re. Sub-section (2) of Section 4: Let the members who have been indicated by the Court in the context of Section 4(a), (b), (c) and (d) select the two persons to be members of the Board as possessing expert knowledge of the examinations system.

9. Let the present Administrator become an ad hoc member of the Board.

10. This Board will function for a period of six months from effective 1 May, 2002. At the end of five months the State Government will indicate the Board as it may constitute under the law. After expiration of six months with effect from 1

May, 2002 the Board indicated by the State Government will replace the present ad hoc Board. The State Government will have the option to continue the Board indicated by the High Court. The life of the Board as may be constituted in this context will be as prescribed under the Act.

11. For reporting to the Court on a functional Board as indicated by the Court, put up on 29 April, 2002.

12. Let a copy of this order be sent by the Registrar General, High Court, to the Chief Secretary, Bihar, the Law Secretary, Bihar and the Secretary, Secondary Education, Bihar.