

(2013) 03 PAT CK 0013
In the Patna High Court
Case No : CWJC No. 1389 of 2013

Mantu Kumar

APPELLANT

Vs

The Secretary, Science and Technology Department, Bihar
and Others

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 PLJR 768

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Binod Kumar Mishra, for the Appellant; P.K. Verma, for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kr. Jha, J.—Heard counsel for the parties. In this writ application, the petitioner has prayed for the following reliefs:--

To quash the order bearing no. 2875 dated 13.10.2012, bearing order no. 2875/12 issued by the Controller of Examination, Bihar Combined Entrance Competitive Examination Board (B.C.E.C.E.B.), Patna, who has cancelled the admission of the petitioner (D.C.E.C.E.-2009 PE Roll No. 80105263 Merit SC-110) Mechanical of Naveen Rajkiya Polytechnic College, Patna on the grounds that the handwriting of the petitioner in the written test and counseling does not fully tally from Forensic Science Laboratory Test and in spite of the notices issued by the respondents on different dates the petitioner has not filed any show cause which is against the norms and Rules of the Act. Sec. (15C).

(ii) To allow the petitioner to appear in (sixth) last Semester Examination of final year in the light of the order passed by this Hon'ble High Court in C.W.J.C. No. 5353/2012 dated 27.8.2012.

(iii) To holds the provision contained in Rule 15 and sub-clause 15(1) of the

memorandum of Diploma Certificate Entrance Competitive Examination 2009 in which no any provision that respondents may have asked the petitioner to swear an affidavit and gave no undertaking the respondents may have taken any action in future after a long time for unfair in entrance examination, under clause 15 sub-clause (1) it is an statutory mandatory provision that at the time of the counseling the respondents can verified the documents then allotted the college as per choice for admission.

2. Learned counsel for the petitioner has submitted that the petitioner had appeared in Diploma Certificate Entry Competitive Examination 2009 conducted by B.C.E.C.E. Board and on 18.8.2009, the petitioner was issued a call letter for counseling.

3. According to the learned counsel. for the petitioner the petitioner was also allotted a College and he had taken admission in new Polytechnic College, Patna in Mechanical branch on 11.12.2009.

4. Learned counsel for the petitioner has also explained that the petitioner was continuing without any impediment and had cleared up to fifth semester without any backlog but all of a sudden on 26.5.2012, he was given a show cause notice to explain as to why his admission should not be cancelled on the ground that the handwriting of the petitioner in the answer-book of admission test was found to be totally different to the handwriting of the petitioner obtained from him in course of counseling which was reflective of the fact that someone had impersonated in place of the petitioner in course of admission test. It has been explained that the petitioner, however, could not file his show cause reply on account of belated receipt of the show cause notice and the authorities even without complying the principles of natural justice have passed the order dated 13.12.2012 canceling the admission of the petitioner. Learned counsel for the petitioner has also relied on some portion of the report of the FSL (Forensic Science Laboratory) to contend that there was no such clear report to hold the proof of charge of impersonation of the petitioner in course of admission test.

5. Learned counsel for the respondents on the other hand have placed before this Court not only the relevant facts noted at length in the show cause notice but also to the reasoned order which has been passed by the Examination Controller on 13.10.2012. According to the learned counsel for the respondents there were overwhelming materials to show that someone had impersonated the petitioner at the time of appearing in the written examination and when this aspect become fully clear from the report of the FSL, the admission of the petitioner was cancelled in view of his own undertaking given at the time of his counseling. In this context, he has also referred to an order dated 31.1.2013 passed in L.P.A. No. 576 of 2011, wherein, this Court had upheld similar impugned orders canceling the admission of the concerned candidate, the writ petitioner on exactly the same ground of impersonation which was proven on the basis of the report of the FSL.

6. In the considered opinion of this Court, the plea of violation of the principles of natural justice is absolutely uncalled for and must be rejected. The show cause notice dated 26.7.2012 was duly forwarded to the petitioner by the Principal of the College as would be evident from the perusal of Annexure-3, wherein, by letter no. 508 dated 26.5.2012, the petitioner was given opportunity to file his show cause reply. The relevant portion of the exhaustive show cause notice dated 26.7.2012 reads as follows:--

7. From the reading of the aforementioned show cause notice, it would be absolutely clear that there was a prima facie case found against the petitioner of his being impersonated by someone in course of appearance in the admission test. The petitioner was also given the copy of opinion of the report of the handwriting expert as also the copy of the OMR answer-sheet and the copy of the handwriting specimen of the petitioner obtained from him in counseling. If the petitioner, thereafter did not chose to file his show cause reply, he has to thank his own stars.

8. In the considered opinion of this Court, once all the allegations with the corresponding documents were confronted to the petitioner by way of show cause notice, his remaining silent would only be indicative of his acceptance of the guilt.

9. As a matter of fact, the impugned order passed by the Examination Controller has taken into account each and every aspect and therefore, it would be also useful to quote the same for better appreciation of the case. The impugned order reads as follows:--

Govt. of Bihar

BIHAR COMBINED ENTRANCE COMPETITIVE EXAMINATION BOARD

IAS Association Building. Near Patna Airport, Patna-14

Tel.: 0612-2225387 Fax: 0612-2225387

The handwriting of the candidate written before does not match fully. The case me be refereed to FSL for further verification.

The Candidate has requested to release his blocked admit order submitting an affidavit stating there in on oath (i) that his sample handwriting obtained at the time of his counseling and handwriting on the OMR sheet of his Roll No. has been sent to FSL for verification (ii) that his admission shall be provisional and fully covered by FSL report, (iii) that if the report of the FSL goes against him, his provisional admission and candidature shall automatically be cancelled and necessary legal action shall be initiated against him.

On the basis of above, the admit order is being release PROVISIONALLY subject to the final report by the FSL. If the identity of the candidate is not established on the basis of FSL report, his admission will be treated as cancelled and suitable legal action shall be initiated against him.

Disputed writings and signatures in Deonagri Script, enclosed with red lines, stamped and marked "X" and "X", are not in the handwriting of the person who wrote the specimens of writing and signatures in Deonagri Script, similarly enclosed, stamped and marked "A" to "A2".

(2) Disputed signatures in English, enclosed with red lines, stamped and marked "Y" and "Y", are not in the handwriting of the person who wrote the specimens of signatures in English similarly enclosed, stamped and marked "B" to "B2" (Mantu Kumar).

10. From the reading of the impugned order, it would be absolutely clear that the handwriting of the petitioner on the answer-sheet of his admission test (omr sheet) was found to be written in the hand of someone else because it did not tally with the specimen handwriting obtained from the petitioner in course of his counseling. This has become clear from the report of the handwriting expert which has been annexed by the petitioner himself as part of Annexure-6 which reads as follows:--

(1) Disputed writings and signatures in Deonagri Script, enclosed with red lines, stamped and marked-"X" and "X1" are not in the handwriting of the person who wrote the specimens of writings and signatures in Deonagri Script similarly enclosed stamped and marked-"A" to "A2".

(2) Disputed signatures in English, enclosed with red lines, stamped and marked-"Y" and "Y1" are not in the handwriting of the person who wrote the specimens of signatures in English similarly enclosed, stamped and marked-"B" to "B2". (Mantu Kumar).

11. In view of the aforementioned clinching materials, this Court is not at all impressed with the rest of the submissions made by the learned counsel for the petitioner that the petitioner had already completed five semesters and therefore, his admission ought not been cancelled. It should be also taken into account that when the result was declared and there was some sort of inquiry already going with regard to impersonation not only by the petitioner but also by few other candidates, the authorities at the time of holding the counseling having obtained the specimen handwriting and signature of the petitioner had recommended for taking expert opinion. In the meantime, the petitioner was asked to give an undertaking and only after the petitioner had given an affidavit that his admission was allowed on following condition:--

The candidate has requested to release his blocked admit order submitting an affidavit stating there in on oath (i) that his sample handwriting obtained at the time of his counseling and handwriting on the OMR sheet of his Roll No. has been sent to FSL for verification, (ii) that his admission shall be provisional and fully covered by FSL report, (iii) that if the report of the FSL goes against him, his provisional admission and candidature shall automatically be cancelled and necessary legal action shall be initiated against him.

On the basis of above, the admit order is being released PROVISIONALLY subject to the final report by the FSL. If the identity of the candidate is not established on the basis of FSL report, his admission will be treated as cancelled and suitable legal action shall be initiated against him.

It is thus clear that he was given a provisional admission which is fact is based on his own undertaking.

12. In view of the above, there would be no question of any estoppel because even at the time of his counseling and the consequential admission that if his answer-sheet of the admission test was found to be in the handwriting of someone else, proving the charge of impersonation his candidature and admission could be cancelled. As a matter of fact, this Court in view of the primary material being there has itself compared with the signature of the petitioner of the OMR Sheet (answer-sheet) at page 24 of the brief being part of Annexure-6 which was also sent to the police and if the signature of the petitioner in English on the OMR sheet at page 24 is compared with his signature on the Vakalatnama and the affidavit of this case they by themselves would make it absolutely clear that the same was not written by the same person. There can be also no doubt that the signature of the petitioner on Vakalatnama and affidavit is that of the petitioner and if that completely varies with his signature on the admission answer sheet (OMR sheet) at page 24 of this writ petition, there would be nothing left for speculation for holding that someone had impersonated the petitioner in the admission test.

13. Learned Counsel for the Respondents are also justified in placing reliance on an order of a Division Bench of this Court dated 21.1.2013 passed in L.P.A. No. 576 of 2011 (Controller of Examination vs. Arun Kumar) wherein the same issue in respect of same admission test was decided in the following terms:--

This Appeal under Clause 10 of the Letters Patent is preferred by the Controller of Examination, Bihar Combined Entrance Competitive Examination Board (hereinafter referred to as "the Board") against the judgment and order dated 20th January, 2011 passed by the learned single Judge in CWJC No. 19683 of 2010.

The respondent-writ petitioner was admitted to three years Diploma Course (Electronics Engineering) conducted by the Government Polytechnic, Gaya. The selection of the writ petitioner for admission was made through Common Entrance Test held by the Board. The admission of the writ petitioner has been cancelled on the ground of impersonation i.e., on the premise that it was not the writ petitioner who took the entrance test but somebody else took the test on behalf of the writ petitioner. The opinion is supported by the report of the Forensic Science Laboratory. The teamed single Judge has allowed the Writ Petition.

The learned single Judge has examined the handwritings of the writ petitioner and one on the answer sheet and has held that the report of the laboratory

cannot be accepted as a conclusive proof to hold that the petitioner had made forgery or he was impersonated by someone else. Therefore, this Appeal.

The matter at issue is whether the report of the Forensic Science Laboratory is binding to the writ petitioner or that whether the Court exercising power of judicial review can interfere with the report of the Forensic Science Laboratory.

The matter at issue is covered by our judgment and order dated 11th January, 2013 passed in CWJC No. 9747 of 2011 and other Writ Petitions. We have held that in absence of challenge to the report of the Forensic Science Laboratory, this Court cannot examine the correctness of such report. Further, the law of evidence or the strict standard of proof applicable in criminal trial do not apply to the enquiry in question.

For the reasons recorded in our judgment and order dated 11th January, 2013, the Appeal is allowed. The

impugned judgment and order dated 20th January, 2011 passed by the learned single Judge in CWJC No. 19683 of 2010 is set aside.

CWJC No. 19683 of 2010 is dismissed.

14. As would be found that the Division Bench in the case of Arun Kumar (supra) has referred to its earlier judgment dated 11.1.2013 passed in C.W.J.C. No. 9747 of 2011 Pankaj Kumar Roy Vs. The State of Bihar and Others, . From the perusal of the order dated 11.1.2013 passed in the case of Pankaj Kumar Roy (supra), it would also appear that the issue relating to same admission test and the impersonation at the time of admission was gone into at length, wherein, it was held as follows:--

Mr. Vikas Kumar has appeared for the respondent Board. He has contested the Petitions. Mr. Vikas Kumar has submitted that the writ petitioners were given provisional admission subject to verification of the handwriting. The handwriting having been prima facie found to be doubtful, was sent to the Laboratory for examination by an expert. On receipt of the report of the expert, the Board was constrained to take action against the erring student. He has submitted that the Board, having complied with the principles of natural justice and having relied upon the experts opinion, the decision of the Board need not be interfered with in exercise of power of judicial review. In support of his submission Mr. Vikas Kumar has relied upon the order of this Court in the matter of Ritik Raj vs. The State of Bihar & Ors. (L.P.A. No. 1589 of 2010, arising from C.W.J.C. No. 1095 of 2010 decided on 1st October 2010). He has submitted that admission granted to the writ petitioners was provisional subject to the result of the enquiry proposed to be made against each petitioner. No equity has been created in favour of the petitioners by such provisional admission.

In the case of Amresh Kumar (supra), this Court set aside the decision to cancel the admission of the writ petitioner to M.B.B.S. course on the ground that the State Government had acquiesced with the infirmities in the admission granted

to the said writ petitioner and that no forgery or fraud was alleged to have been committed by the said writ petitioner. In the present case, there is no question of acquiescence and the allegation is that of impersonation. The aforesaid judgment, therefore, will not provide succor to the petitioners.

None of the other judgments relied upon on behalf of the petitioners involves the question of impersonation. The question of credibility or the probative value of the expert opinion (Laboratory report) would arise had the petitioners challenged the legality of such report. In absence of challenge to the legality to the Laboratory report, this Court is not called upon to examine the credibility of such report.

We may note that in none of the above writ Petitions, the petitioner has challenged the genuineness or the legality of the report of the Forensic Science Laboratory. In absence of challenge to such report, this Court exercising power of judicial review conferred by Article 226 of the Constitution will not ordinarily question the veracity of such report. We may further note that the Evidence Act or the principle of proof beyond doubt or the strict standard of proof required in a criminal case will not apply to the cases before us. The nature of enquiry conducted by the Board is a summary enquiry and not a criminal trial. The principle of preponderance of probability will apply. If there is a prima facie evidence of impersonation supported by the opinion of the expert, if the principle of natural justice has been adequately complied with, the Court exercising power of judicial review under Article 226 of the Constitution will not interfere with the order made by the Board in exercise of its power to regulate admission to professional courses.

In the above circumstances, the provisional admission granted to the petitioners or the passage of time will not create equity in favour of the petitioners. Admission secured by fraud cannot be sustained by a Court of law.

In the present case, the authority of the Board to cancel the admission has not been questioned. The opinion of the expert has not been questioned. The Court has no reason to doubt the opinion of the expert or to interfere with the decision of the Board. In the matter of Ritik Raj (*supra*) this Court (one of us, the Chief Justice was party to the decision) has taken a view, "once there was a doubt that it was a case of impersonation and that doubt was strengthened by the opinion of the handwriting expert, the respondents were justified in canceling the admission of the appellant." The same view was taken by a Bench of this Court (coram: Nagendra Rai, A.C.J. and Rekha Kumari, J.) in the matter of Md. Motiur Rahman vs. The State of Bihar & Ors., (L.P.A. No. 69 of 2005 decided on 24th January, 2005).

In above view of the matters, we are of the opinion that the impugned decision of the Board to cancel the admission of the petitioners to the concerned courses cannot be said to be unjustified. The challenge to the impugned orders is rejected.

The Petitions are dismissed.

15. In the present case also as noted above there is no specific challenge to the FSL report save and except that the counsel for the petitioner has submitted that the report is vague. As noted above, when this Court has itself compared the signature of the petitioner at Vakalatnama and affidavit vis-?-vis the signature of the petitioner at the OMR answer-sheet of the admission test of the petitioner and has found obvious and glaring difference in the handwriting of the petitioner it has to be necessarily held that the opinion given by the FSL in respect of the petitioner is absolutely correct and justified.

16. The reliance placed by learned counsel for the petitioner on an order of the learned single Judge in the case of Madhuri Kumari vs. State of Bihar dated 17.4.2012 passed in C.W.J.C. No. 4872 of 2005 is wholly misplaced, inasmuch as, in that case there was no FSL report for comparison of the two handwritings of the petitioner Madhuri Kumari. Thus, whatever was said in the case of Madhuri Kumari (supra) by the learned single Judge cannot be made applicable to the facts of the present case. It has to be also borne in mind that right from the admission stage of the petitioner, the issue relating to impersonation was in existence and that is how the petitioner was provisionally and conditionally admitted on her own undertaking and thus when it ultimately got the seal on approval in view of the report of the FSL the admission of the petitioner had to be cancelled. Thus for the reasons indicated above, this Court does not find any merit in this application and the same is, accordingly, dismissed.