

(2006) 06 PAT CK 0042
In the Patna High Court
Case No : Cr.W.J.C.No. 380 of 2006

Md. Farooquzzaman and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-06-2006

Acts Referred:

Citation : (2006) 06 PAT CK 0042

Judgement

Mridula Mishra, J.—Petitioners in the present writ applications are Class III employees of Bihar Government and their prayer is for protection from their arrest in Special Case No. 19 of 2005. They are successful candidates in Bihar Administrative Service, 1st Limited competitive Examination, 2003.

2. The ground for filing this writ applications is that there is no justification for the Vigilance police to arrest them as petitioners have absolutely played no role in the alleged conspiracy undertaken by the Chairman and Staff of Bihar Public Service Commission (hereinafter to be referred to as the B.P.S.C.) in the process of selection.

3. Brief facts of the case leading to the filing of the present writ application are as follows:

4. In the year 1951 Bihar Civil Services (Executive Branch) and Bihar Junior Civil Services Recruitment Rules, 1951 were framed for the appointment of Class II Gazetted Officers within the State of Bihar. As per Rule (2)(A) (B) and (C) Part II and Part III fixed category of persons were appointed by direct recruitment and certain percentage of persons were appointed by promotion or transfer. Notification No. 5857 dated 2.5.1980 was issued by the State Government whereby a provision was made for the appointment of Class II (Bihar Administrative services from Class III by nomination). The confidential report of the Government Servant to be promoted were the major criteria for consideration of promotion. Notification No. 3047 was issued by the State Government on 8.4.1992 whereby a provision was made for promotion to the post of Class-II. Bihar Administrative Services upto 25% of the vacancies

through promotion in each batch. In spite of this rule no vacancies were filled up from 35th batch to 41 batch. The State Government made amendment in column 12 of the provisions for filling up the vacancies from the year 1982 to 1998. By this amendment all those government servants who have eligibility for selection against vacancies generated between 1982 to 1998 shall have the right for appointment on becoming successful after participating in First Limited Examination, though the things are against the rules.

5. On 21.5.2003 an Advertisement was issued vide Advertisement No. 4 of 2003 for the recruitment of the posts of Bihar Administrative Services. The mode of recruitment is that 25% posts of Bihar Administrative Service for the period 1982 to 1998 would be for those persons who were Class III employees of the State Government of Bihar. On 28.9.2003 the BPSC published programme of examination. One of the condition for appearing in the examination was ten years continuous service in the State Government and the experience certificate should be sent directly through the department. The examination was held in pursuance of the advertisement and on 21.5.2005 the result of 184 successful candidates were published by the BPSC. The petitioners are the successful candidates of this examination. On 17.6.2005 an Advertisement was published by the Personnel and Administrative Department, Government of Bihar for verification of original certificates and documents of the successful candidates. The candidates were asked to bring all documents for final verification including 10 years service certificate. After verification 176 candidates were selected and found to be successful. Their names were sent to the Government for approval which was also duly approved. Appointment letters of the successful candidates could not be issued as the Election Commission of India enforced the Model Code of Conduct in view of the State Assembly Election. While the petitioners were waiting for issuance of their appointment letters C.W.J.C. No. 7725 of 2005 was filed by unsuccessful candidates alleging that there has been mass bungling in selection of candidates. The eligible and meritorious candidates have been left out but the names of those candidates have been recommended who are less meritorious. In the selection process conspiracy has been hatched up in which the Chairman, BPSC and others members and staff of the commission have duly participated. The Hon'ble High Court in C.W.J.C.No. 7725 of 2005 directed the BPSC to produce the answer books of the candidates for inspection and perusal by the petitioners counsel in the Judges Library of Patna High Court.

6. In the mean time the unsuccessful candidates represented before the newly appointed Chief Minister of the State of Bihar and requested for cancellation of examination results upon which the Hon'ble Chief Minister directed for Vigilance enquiry and accordingly the Chief Secretary directed to endorse the same to the Vigilance Department for investigation. High Court also directed the BPSC to extend full co-operation to the Vigilance Department for the purpose of investigation. The Vigilance Department armed with the direction of the High Court not only arrested the F.I.R. named accused persons but also made efforts to arrest 184 successful candidates. In the writ application a prayer was made on

behalf of successful candidates for some protection but the High Court refused to interfere with the process of investigation being done by the Vigilance, on the ground that the court has no jurisdiction to interfere with the investigation and the order of the court is only to facilitate proper investigation.

7. Thereafter, 91 successful candidates moved before the Hon''ble Supreme Court and filed writ petition (Crl) No. 22 of 2006 under Article 32 of the Constitution with a prayer for Stay of their arrest and fair investigation. The Hon''ble Supreme Court issued notice and stayed the execution of warrant of arrest but ultimately by order dated 21.4.2006 directed the petitioners to move before the appropriate forum for redressal of their grievances and the order of stay passed on 24.3.2006 was directed to be operating for another two weeks.

8. Now 119 successful candidates which also includes those who have filed the writ petition before the Supreme Court preferred this writ application for protection from their arrest and fair investigation.

9. Counsel for the petitioner submits that majority portion of the F.I.R. deals with the allegation in the procedural irregularities committed by the office of the BPSC after receipt of application forms from the applicants, there is no allegation in the entire F.I.R. that wrong persons who did not possess minimum qualification have been recommended for appointment. Allegations in the F.I.R. in contradictory and have been made without understanding the basic facts. One of the allegation as in the F.I.R. is that 43 candidates who have been selected, their applications do not have the name of the employer of the department concerned. In the entire application form there is no column for the name and designation of the department to be mentioned. Another allegation is that no certificate issued by the employer has been annexed along with the application form of many candidates, whereas this allegation is baseless since as the advertisement issued by the BPSC issued advertisement requiring concerning the experience certificate on 28.9.2003, whereas the last date for submission of the application form was 21.6.2003. In sum and substance the submissions made by the petitioners counsel is that the allegations which are there in the F.I.R. do not make out any offence against the petitioners. The Vigilance department has failed to understand the modus-operandi of filling of the form and in hurried manner has filed F.I.R. and started investigation.

10. Further it has been submitted that the petitioners who are citizens of India they have right under Article 21 of the Constitution to be safeguarded against the arbitrary acts of the respondents. The respondents are duty bound to investigate and do their duty fairly and properly but in the present case instead of doing their statutory duty the respondents are adamant to arrest the petitioners which is an example of malice in law. The act of the respondents is based upon observation of extrenuous facts and consideration as such they are not authorised to arrest the petitioners.

11. u/s 41(1)(a) of the Cr.P.C. any police officer may without an order from a

Magistrate and without a warrant, arrest any person. (a) who been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned. Sub-section b, c, d, e, f, g, h and i of Section 41 deals with different categories of persons who can be arrested by the police even without warrant or without order from a Magistrate.

12. Counsel for the petitioners submits that the petitioners do not belong to any of the category mentioned in Section 41 of the Cr.P.C. rather they are the responsible government servants working for more than ten years. There is no justification for the vigilance police to arrest the petitioners as till now there is no evidence that any how they are involved in so called procedural lapses if at all committed by the BPSC. There is no chance of petitioners absconding or tampering with evidence or evading the process of law, as such without thorough investigation arresting the petitioners is highly illegal.

13. Reliance has been placed by the petitioners on a decision reported in Association for Protection of Public Rights and Interest Vs. State of Bihar and Others, . as well as on a decision reported in Ram Lal Yadav and Others Vs. State of U.P. and Others, In 1990 Cri.LJ it has been held that "It cannot be said that the police have unfettered discretion to commence investigation u/s 157 of the Code. Their right of enquiry or investigation is conditioned by the existence of reason so to suspect the commission of a cognizable offence and they cannot reasonably, have reason so to suspect unless the first information report, prima facie, discloses the commission of such offence. The Court, has, once such decision is available, no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. But if the first information report does not disclose commission of a cognizable offence or allegations are devoid of consistency or appear to stem from malice or from admitted facts appear to be absurd and devoid of truth, High Court can interfere to do so exercising its power under Article 226 of the Constitution. True, investigation of an offence is the field exclusively, reserved for the executive through the police Department, but the executive which is charged with a duty a keep vigilance over law and order situation is obliged to prevent crime and if the offence has been alleged to have been committed it is its bounden duty to investigate into offence and bring the offender to book. This unfettered power to investigate all cases, however, is subject to the power of this Court under Article 226 of the Constitution. If the High Court is convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue writ of mandamus restraining the police officer from misusing its legal power.

14. In 1989 Cri.L J the Full Bench Allahabad High Court while dealing with the power of investigation has held "The High Court has no inherent power u/s 482 Cr.P.C. to interfere with the arrest of a person by a police officer even in violation of Section 41(1)(a), Cr.P.C. either when no offence is disclosed in the first

information report or when the investigation is mala fide as the inherent powers of the Court to prevent the abuse of the process of the Court or to otherwise secure the ends of justice come into play only after the charge sheet has been filed in Court and not during investigation which may even be illegal and unauthorised. If the High Court is convinced that the power of arrest by a police officer will be exercised wrongly or mala fide in violation of Section 41(1)(a), Cr.P.C. the High Court can always issue a writ of mandamus under Article 226 of the Constitution restraining the police officer from misusing his legal power."

15. Counter affidavit has been on behalf of officials of the Cabinet Vigilance Department. In the counter affidavit it has been stated that so far the investigation with regard to petitioners is concerned, it is still going on and soon it will to be completed. In course of enquiry many incriminating material with found against many of the petitioners. Chargesheet has already been submitted against the office bearers of the BPSC and also against four of the successful candidates, who were arrested. Many of the documents collected against many of the petitioners have already been incorporated in the first information report and the case diary. The warrant of arrest has been issued on the allegations made in the F.I.R. which specifically indicates the participation of the petitioners in the conspiracy resulting into the mass bungling in the selection process. The case of the petitioners have been dealt with in the F.I.R. making out a prima facie case against them. In the case diary also materials have come to indicate that the financial transactions have been made by the petitioners with the office bearers of the BPSC and that has affected the selection process as well as to final selection of the candidates. Submissions made by the petitioners counsel that there is nothing to show their involvement in the cognizable offence and their arrest is in violation of Section 41(1)(a) Cr.P.C. is unfounded.

16. Certainly allegations made in the F.I.R. as well as in the investigation has disclosed that all the petitioners are the part of the conspiracy and there are materials prima facie showing their involvement in the given circumstances if the petitioners are being arrested by the investigating agency it cannot be said that it suffers from malice and the investigating agency is not properly doing its statutory duty and arbitrarily they are arresting the successful candidates merely on suspicion.

17. Considering the submissions made by the parties and the material before me it is evident that earlier also similar prayer was made by the petitioners in C.W.J.C.No. 7725 of 2005 and this Court quoting the observations of the Privy Council in the Judgment of AIR 1945 18 (Privy Council) and the Judgment of the Hon"ble Supreme Court State of Bihar and Another Vs. J.A.C. Saldanha and Others, refused to interfere with the investigation.

18. This is well settled that the power of the investigating agency to investigate a cognizable case cannot be interfered with by the Court. The court can only order to facilitate proper investigation. The allegations made by the petitioner that the Vigilance Police is misusing its statutory powers just in order to make it

sensational is also not a fact. The counsel for Vigilance has pointed out several paragraphs from F.I.R. which indicates involvement of some of the petitioners of this writ application in the alleged conspiracy. Investigation is still going on and there is possibility that some more materials will come against the petitioners on completion of the investigation. Chargesheet has already been submitted against the office bearers of the BPSC as well as against some successful candidates. The investigating Agency at this juncture cannot be restrained from doing their statutory duty to investigate the case; I do not find any reason to hold that investigation is being done with any malice. But there is another aspect of the matter, i.e. whether all these petitioners, who have worked as Government servant for more than 15 years and are ready to co-operate with the investigating agency, must be arrested; during investigation, simply because they are accused of cognizable offence. In this respect, third report of National Police Commission, referred in *Joginder Kumar Vs. State of U.P. and others*, is very relevant, where guide line for arrest during investigation of cognizable offence has been mentioned in paragraph 20 of the judgment; this guidelines indicates that arrest of an accused of cognizable offence should be made, where;

(i) The case involves a grave offences like murder, dacoity, robbery, rape etc. and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror stricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offence unless his movements are brought under restraint.

(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

19. Similarly in *Joginder Kumar Vs. State of U.P. and others*, it has been held that "the above guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock up of a person can cause incalculable harm to the reputation and self esteem of a person. No arrest can be made in routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fide of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person

is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer affecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the station without permission would do so."

20. The present case is being disposed of on similar lines, considering the fact that petitioners are ready to give undertaking that they will co-operate with the investigating agency and will appear before the Vigilance police whenever asked by the I.O. to attend police station or on any appropriate place, and will not leave the police station without permission to do so. The I.O. is directed to issue notice to petitioners fixing dates to attend police station. Not to leave the territory of the police station without permission of the Investigating Officer, and properly co-operate in investigation.

21. Considering the aforementioned facts the warrant of arrest is stayed till submission of chargesheet. The investigation will proceed. Subsequent to submission of chargesheet court will take action in accordance with law. However, it is made clear that if the undertaking given by the petitioners is found to be misleading, the Investigating Officer will have liberty to execute the warrant of arrest.

22. This application is accordingly disposed of.