
(2017) 02 PAT CK 0010

In the Patna High Court

Case No : 1779 of 2017

Nishant Kumar, Son of Sri Vimal Kumar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

Citation : (2017) 2 PLJR 70

Hon'ble Judges : Dr. Ravi Ranjan

Bench : SINGLE BENCH

Advocate : Shailendra Kumar Verma, ??Manoj Kumar, ??Suman Kumar Jha, ??
Lalit Kishore, ??Sanjay Pandey, ?? S.K. Verma, ??Vishwanath Prasad Singh, ??
Shree Kant Pandey, ??Mankeshwar Tiwary

Final Decision : Disposed off

Judgement

1. Since common questions have been raised in both the writ applications, they have been heard together with the consent of the parties and are being disposed of by this present order.
2. I have heard parties and have perused the records of the cases.
3. The Bihar Public Service Commission (hereinafter referred to as "the Commission") published an Advertisement on 15.09.2016 inviting applications from the suitable candidates for 60th to 62nd Common Combined (Preliminary) Competitive Examination. It is the first time when, with respect to this particular examination, online submission of the forms has been introduced by the Commission. The date for filling up online application forms was

declared from 27.09.2016 to 3.11.2016. However, this is admitted fact that the Commission had extended the aforesaid period thrice. First from 3.11.2016 to 14.11.2016, thereafter, from 14.11.2016 to 24.11.2016 and finally from 24.11.2016 to 5.12.2016. Various instructions were already notified in the advertisement. The same has been detailed in paragraph 6 of the counter affidavit filed by the Commission. From perusal of the aforesaid paragraph, it appears that first stage was online registration and downloading of challan for payment of examination fee. After filling up the application forms successfully for registration, candidates were required to pay requisite fee through challan or online payment as described in the instruction. After registration is confirmed, user name and password etc. was to be given for filling up the application forms which is stage III. Finally, after submitting online application forms, a PDS/soft copy would be generated and flashed on the dashboard. It is also stated that once payment was confirmed, the candidate automatically would get the link to application form. After successfully submitting the application form, candidates were required to obtain a printout of that and the hard copy was required to be safely kept for future reference which would disclose registration number submitted application number and bar code etc. Only after submission of final form successfully the process of filling up the form would be completed.

4. The grievance of the petitioners is that though they successfully filled up the registration forms and got the registration number and link after filled up form but finally when they pressed the tab for final submission, the curser only moved and moved. Some of them thought that they have been successfully submitted form and some of them reattempted. During the course of hearing, some papers were produced for perusal showing that some of them had informed to the Commission through E-mail, however, this is strongly denied by

the Commission by saying that no objection was ever received by it by any of the petitioner. It is further submitted that even after several attempts, the curser of their computer continued behave like that, some of them were under impression that they have actually submitted the forms and would get the admit cards.

5. In the I.A.No.794/2017, the intervenors have brought on record a notice published by the Commission on 28.01.2017 directing the candidates to download their E-Admit cards by 31.01.2017. However, when they could not download it as nothing was flashed on the dash board of their computer, a writ petition was filed after serving a copy upon the learned counsel for the Commission on 31.01.2017 itself. However, finally writ petition could be filed on 3.02.2017 only.

6. It is contended on behalf of the petitioners that due to the fault of server of the Commission, they were not able to successfully fill up the application forms, i.e., the third stage. However, they were under bonafide impression that they have done it though curser only showed moving. When they could not download their E-Admit cards, this writ petition was filed on 31.01.2017 but after removal of defects it could finally be re-filed on 3.02.2017.

7. Learned counsel appearing for the petitioners drew attention of this Court towards news published in various newspapers appended as Annexure-3 series in the writ petition. One of the news reports says that the candidates assembled at B.P.S.C. office with their grievance that they could not download the E-Admit Cards. However, according to the newspaper, the Secretary took stand that the candidates actually could not fill up the application forms correctly. Similarly, in the I.A. No.794/2017 also, a news item published in Hindi newspaper, namely, "Dainik Bhaskar" has been brought on record which indicates that in the opinion of the concerned,

Commission came up with online system without proper preparation for doing that.

8. At the strength of the aforesaid, learned counsel submits that the career of the petitioners stands jeopardized and whatever be the fault either with the server or the slow internet system, the petitioners cannot be held responsible for that as it is beyond imagination that a candidate would fill up the registration forms, deposit the requisite fee but would not submit his application form. There can be one or two such negligent candidates but all the petitioners claim that they have faced such situation. Learned counsel for the petitioners has submitted that there are 14,000/- such candidates but there is nothing on record to substantiate the aforesaid claim as the Commission vehemently denies that.

9. Learned counsel for the petitioners has placed reliance upon an unreported decision of Rajasthan High Court dated 11.9.2012 in S.B.Civil Writ Petition No. 9170/2012 (Datar Singh v. State of Rajasthan & Anr and other analogous cases) at the time of hearing wherein it has been held that the respondents while making recruitment may avail assistance of technology but at the same time a human approach is also required to be kept in mind. The object of holding competitive test is to have best available hand and in this process merit should not be compromised just for the reason that the mechanical procedure adopted do not support the manual exercise. In the cases, if the human error is rectified with all diligence at earliest possible, a condonation of error is desirable. The total ignorance of such rectification results into hardship and arbitrariness only.

10. Per contra, Mr. Lalit Kishore, learned senior counsel appearing on behalf of the Commission submits that this is not a case in which no further chance was given to the candidates as admittedly the Board has thrice extended the date of submission of application

forms, however, if the petitioners still could not submit their respective application forms then they themselves are to be blamed.

11. Now, while considering the aforesaid, a question has arisen as to why the Commission had to thrice extend the time for submitting the Form? The reason assigned in the counter affidavit is that it was only for the purpose that no suitable candidates should be left out. Then another question would arise that why entertain only three times why not four times, five times and why not time granted to the candidates was found sufficient for that. Whether the Commission was not sure that the system which it has introduced was full proof and, therefore, it was going on extending the dates?

12. In my opinion, the newspaper reports cannot weigh for deciding the case in favour of the parties but at the same time publication of such news articles regularly in newspapers stating that the students are facing difficulty had not been denied by the Commission and their conduct that it itself thrice extended the dates shows that it was not sure that their system is up to mark and all the suitable candidates have submitted their forms.

13. Apart from the aforesaid decision of the Rajasthan High Court, few other High Courts have also dealt with the issue though not exactly identical one. One of such decisions is by Kerala High Court at Ernakulam in WP(C). No. 4140 of 2013(R) (Prakash P George Vs. High Court of Kerala & ors) in which the issue was for direct recruitment as District and Sessions Judge in the Kerala State Higher Judicial Service. In that case also, online applications were invited and registration was to be completed by 4.30 PM on 31st January, 2013. The writ application was allowed and the respondents were directed to register application of the petitioner online by making arrangements in that regard within three days.

14. In yet another decision of the Delhi High Court in W.P.

(C) 8393/2014, C.M. No. 19433 - 19434/2014 (Amit Pal Vs. Union Public Service Commission), the order passed by the Central Administrative Tribunal was assailed before the Division Bench. The Central Administrative Tribunal was approached by the petitioner on the ground that the credit entry made for online fee submission was reversed back and credited back into his account. It was claimed that the petitioner was completely unaware of later development and when he sought to proceed further for generation of admission ticket, he was denied the same. He consequently represented to the UPSC on 25.7.2014, but he was not treated a candidate in the examination. During the pendency of the proceeding before the CAT, the petitioner was allowed to appear in the preliminary test but his result was directed to be kept in a sealed cover and the CAT ultimately rejected his application by passing impugned order. The Delhi High Court has held finally that the UPSC neither intimated to the petitioner that the application accepted from him during the trial run process did not constitute a real time application and that he was not a candidate, nor, during the period concerned, he was informed that his application submitted online and the Registration ID issued to him, were invalid. Accordingly, the impugned order of CAT was set aside and petitioner was declared successful in preliminary examination.

15. In my considered view, since this was the first time in this competitive examination that online system was introduced by the Commission and there are not only one or two candidates but several of them have approached this Court who have successfully been registered and paid the examination fee but, despite several attempts, they could not fill up the application forms and though the news paper report cannot weigh as evidence or considered finally for taking this stand but it indicates that something wrong was going on and the Commission had thrice extended the dates for

filling up the forms. It gives impression that it was not a full proof system and claim of the petitioners that, after heavy influx of application forms, the servers of Commission became slow, cannot be ruled out. That apart, it would be in the benefit of the State and the Commission also that all the suitable candidates should get chance so that best of them could be selected in the examination concerned and this is also to be kept in mind that several students are coming from rural background where speed of internet may be slow or may be of course error with the server also and they might have been deprived on that count.

16. Considering all the facts and circumstances of these cases, this Court is of the opinion that a chance should be given to the petitioners and intervenors to appear at the examination.

17. Mr. Lalit Kishore, Sr. learned counsel has categorically stated at the time of hearing that preliminary examination is to be held on 12th February, 2017 itself and it is almost impossible to allow them now.

18. However, in my considered view, having such a long and continuous experience in conducting examinations successfully, the Commission, if it desires, can take some measure to allow them to appear in the examination. But the question would be the petitioners could not fill up the forms and the forms so submitted have to be scrutinized by the Commission and only those who are found qualified and eligible to appear at the examination can be allowed to sit in the examination. However, in the extraordinary facts and circumstances of this case, this Court *ex debito justitiae* directs the Commission to allow the petitioners and intervenors to appear at the examination. The Commission would further allow them to fill up form after the preliminary examinations are over and their forms would be scrutinized. Thereafter, the result of only such candidates

would be published who are found eligible for writing such preliminary examination after scrutiny of their application forms.

19. Accordingly, both the writ petitions as well as I.A. No. 794/2017 stand disposed of.