

(2013) 01 PAT CK 0043

In the Patna High Court

Case No : CWJC No's. 9747, 17943 and 21658 of 2011

Pankaj Kumar Roy

APPELLANT

Vs

The State of Bihar and Others
 Amit Kumar Vs The
State of Bihar
 Ranjit Kumar Vs The State of Bihar

RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 1 PLJR 916

Hon'ble Judges : R.M. Doshit, C.J.;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Hemendra Prasad Singh in CWJC No. 9747 of 2011, Birendra Kumar Sinha, Manish Kumar in CWJC No. 17943 of 2011 and Mr. Shiv Shankar Prasad Yadav in CWJC No. 21658 of 2011, for the Appellant; Lakmesh Marvind in CWJC No. 9747 and Mr. Sanjay Kumar Singh in CWJC No. 21658 of 2011 and Lalit Kishore and Vikas Kumar in CWJC Nos. 9747, 17943 and 21658 of 2011 for BCECEB, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, C.J.—This group of Petitions filed under Article 226 of the Constitution have been placed before us under the reference made by the learned single Judge under his order dated 6th January 2012 made on C.W.J.C. No. 9747 of 2011 Reported in Pankaj Kumar Roy Vs. The State of Bihar and Others, . The petitioner in C.W.J.C. No. 9747 of 2011 is a student for three years" diploma course in Polytechnic Engineering (P.E.) conducted by the New Government Polytechnic, Patna. The admission of the said petitioner in Diploma in Polytechnic Engineering has been cancelled by the respondent Controller of Examination, Bihar Combined Entrance Competitive Examination Board on the ground of impersonation at the admission test.

2. The petitioner in C.W.J.C. No. 17943 of 2011 is a student of M.B.B.S. course conducted by the Patna Medical College. His admission to the Medical College has been cancelled by the respondent Controller of Examination, Bihar Combined

Entrance Competitive Examination Board on the ground of impersonation at the admission test.

3. The petitioner in C.W.J.C. No. 21653 of 2011 is a student of Diploma in Polytechnic at Government Polytechnic College, Purnea. His admission to the Diploma in Polytechnic has been cancelled by the respondent Controller of Examination, Bihar Combined Entrance Competitive Examination Board on the ground of impersonation at the admission test.

4. It appears that at the time of examination, a specimen of handwriting of each student taking the examination was collected by the Bihar Combined Entrance Competitive Examination Board (hereinafter to be referred to as "the Board"). The said handwriting and the photograph of the student were compared with the writing taken at the time of interview. In respect of the students whose handwriting appeared to be doubtful, the two handwritings were sent to the Forensic Science Laboratory (hereinafter to be referred to as "the Laboratory") for verification. In case of the above referred three writ petitioners also, the Interview Board having some doubt, the aforesaid procedure was followed. The Laboratory opined that the specimen writing and the writing on the answer-sheet were in different hands. Pursuant to the said report, their admission to the concerned course has been cancelled on the ground of impersonation, i.e. the person taking examination was not the same as the person seeking admission.

5. Learned counsel Mr. Hemendra Prasad Singh has appeared for the petitioner in C.W.J.C. No. 9747 of 2011. Mr. Singh has submitted that the report of the Forensic Science Laboratory, Patna is not a reliable piece of evidence. He has submitted that the handwriting was sent to the Laboratory six months after the relevant date and the report was made after one year. Such a report cannot be relied upon. In support of his submissions he has relied upon the judgment of this Court in the matter of Amresh Kumar Vs. Principal, Bhagalpur Medical College, Bhagalpur and Another, and the judgment of the Hon'ble Supreme Court in the matter of State of Maharashtra Vs. Milind and Others, .

6. Learned counsel Mr. Birendra Kumar Sinha has appeared for the petitioner in C.W.J.C. No. 17943 of 2011. Mr. Sinha has taken us through the record. He has submitted that the Forensic Science Laboratory, Patna is not well equipped. The report made by the said Laboratory cannot be relied upon. In support thereof he has relied upon the judgment in the matter of Amresh Kumar Vs. Principal, Bhagalpur Medical College, Bhagalpur and Another, . He has further submitted that the opinion of the expert is not a gospel and is not beyond the scope of judicial review under Article 226 of the Constitution. In support thereof he has relied upon the judgment of the Hon'ble Supreme Court in the matters of State of Himachal Pradesh Vs. Jai Lal and Others, ; of Institute of Chartered Financial Analysts of India and Others Vs. Council of the Institute of Chartered Accountants of India and Others, ; and of Ramesh Chandra Agrawal Vs. Regency Hospital Ltd. and Others, .

7. Learned Advocate Mr. S.S.P. Yadav has appeared for the petitioner in C.W.J.C. No. 21658 of 2011. He has reiterated the submissions made by Mr. Hemendra Prasad Singh and Mr. Birendra Kumar Sinha.

8. Learned Advocate 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 expert's 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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 cancelling the admission of the appellant."

15. 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).

16. 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.

Ahsanuddin Amanullah, J.

I agree.