

(1970) 09 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No"s. 95 and 455 of 1970

Satya Brat Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 28-09-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1971 Patna 265

Hon'ble Judges : S.N.P. Singh, J;Kanhaiyaji, J

Bench : Division Bench

Advocate : Narayan Singh, for the Appellant; Tara Kant Jha, for the Respondent

Final Decision : Dismissed

Judgement

1. These two applications under Articles 226 and 227 of the Constitution of India have been filed by four students who had appeared at the Annual Diploma Civil Engineering Examination, 1969, which began from the 14th of May, 1969. and ended on the 4th of June, 1969. The petitioners were regular students of Government Polytechnic, Barauni, situated at Mahana in the district of Monghyr. The result of the said examination was published on the 25th of July, 1969. but the names of the petitioners did not appear in the list of successful candidates. On the 8th of August, 1969, the petitioners of both the writ applications received letters dated the 4th of August, 1969, from the Controller of Examinations (respondent No. 3). By the said letters the four petitioners were informed that it had been reported against them that on the 21st of May. 1969, after the examination in Accounts Paper was over, they in complicity with some staff of Polytechnic opened the packet containing the answer books during transit from the Polytechnic to the Post Office, wrote answers to questions on answer books, got them re-sealed and sent to the Examiner. The petitioners, were, therefore, asked to show cause by the 20th of August, 1969, as to why actions should not be taken against them.

In reply to the letters sent to them, the petitioners of both the applications filed

their show cause. Annexure 5 to C.W.J.C. No. 455 of 1970 is said to be the copy of the show cause which was filed by Lalan Pd. Singh. I (petitioner No. 1 of that writ application) and Annexure 6 to C.W.J.C. No. 455 of 1970 is said to be the copy of the show cause which was filed by Lalan Pd. Singh II (petitioner No. 2 of that application). Annexure 7 to C.W.J.C. No. 95 of 1970 is said to be the copy of the show cause which was filed by Satya Brat Prasad Singh (petitioner No. 1 of that writ application) and Annexure 8 to C.W.J.C. No. 95 of 1970 is said to be the copy of the show cause which was filed by Ganga Ram Singh (petitioner No. 2 of that writ application). As stated in the two writ applications, all the petitioners received letters dated the 4th October, 1969 from respondent No. 3 informing them that they were declared to have failed at the said examination and further they were debarred from appearing at any examination till the Supplementary Examination of 1970. According to the petitioners, the order dated the 4th of October, 1969, passed by respondent No. 3 is illegal, ultra vires and inoperative in law and they have accordingly made a prayer for quashing the said order by an appropriate writ and for a direction to declare them successful.

2. A counter-affidavit has been filed on behalf of the respondents in which the circumstances under which the impugned order was passed have been explained. As stated in the counter-affidavit, during 1969 Annual Diploma Engineering Examination of the Board, the Principal of the Government Polytechnic, Barauni, who was also the Centre Superintendent for the examinations, came to know that a few students in connivance with the Polytechnic staff used to open the sealed packet containing the answer books after the day's examination while on way to the Post Office for despatch and used to write in their answer books and reseal them for despatch. Thereupon the Principal directed one of the Professors named Shri Subedar Singh. who was also the Hostel Superintendent, to be vigilant. On the 26th of May, 1969 it was found that after the examination six students including the four petitioners, who were residing in the hostel, were not present in the hostel. On their return they were asked by the Hostel Superintendent orally under the directive of the Principal to give in writing as to where they had been. The replies given by the students including the petitioners were not found to be convincing. On the 2nd of June, 1969, a letter dated the 30th of May, 1969, was received from the Principal, Government Polytechnic, Barauni, stating that he had received a report that Roll Nos. 105, 114, 121, 143, 144 and 147 had tampered with the answer books while on way to the Post Office on the 26th of May, 1969, with connivance of some of the members of the staff of the Polytechnic. According to the report, they broke open the packet containing answer books, wrote answers, re-sealed the packet and - delivered the same to the Post Office. On receipt of the letter, all the Head Examiners were requested to examine the answer books of Barauni Centre carefully, specially of those candidates who had been named in the letter of the Principal.

Professor K. K. Mitra, who was Co-Examiner in Accounts Paper, detected evidence of subsequent insertion from a book of Accounts and Book-keeping by Sri S. S. Sinha at the end of answer books of Roll Nos. 105, 114, 121, 143, 144

and 147. The Head Examiner, Sri J. N. Chatterjee, Principal, Government Polytechnic, Saharsa, agreed with the findings of the Co-Examiner and forwarded the answer books with the report of the Co-Examiner for necessary action. Professor M. K. Dutta, who was Head Examiner in Strength of Material and Theory of Structures Paper, found Lalan Pd. Singh II guilty of use of unfair means. After the report received from the Principal was supported by the reports from Examiners, the petitioners were asked to explain the charges. On receipt of the explanations of the candidates the Unfair Means Committee of the Board considered the reports of the Examiners and the explanation of the students. The Unfair Means Committee ultimately found that Roll Nos. 105, 143, 144 and 147 had copied answers from the book "Accounts and Book-keeping" by Sri S. S. Sinha as the last question attempted by them. Thus, there was evidence of copying from the book as reported by the Examiner. The case against Roll No. 114 could not be established beyond doubt. The report of the Unfair Means Committee was ultimately approved by the Examination Board.

3. Mr. Narayan Singh, learned counsel appearing for the petitioners in both the writ applications, submitted before us that the impugned order is bad having been passed illegally and in violation of the principles of natural justice. According to learned counsel, the petitioners were not personally heard and no proper opportunity to refute the charges was given to them. The sole point for determination, therefore, in the two applications is whether there has been a violation of the principles of natural justice and whether proper opportunity to refute the charges was given to the petitioners or not.

4. As already stated, all the four petitioners filed their show cause petitions in response to the letters sent to them. It appears that Lalan Pd. Singh (petitioner No. 2 of C.W.J.C. No. 455 of 1970) and Satya Brat Prasad Sirigh and Ganga Ram Singh (petitioners of C.W.J.C, No. 95 of 1970) in their show cause petitions had made a prayer for personal hearing and supply of relevant materials. Lalan Pd, Singh No. 1 had not made any such request in his show cause petition. We may state at once that in. the show cause filed by the petitioners other than Lalan Pd. Singh No. I they had not specifically stated as to what particulars they required and as such it is not possible to hold that the petitioners were denied adequate opportunity to defend themselves because papers were not supplied to them by the Controller of Examinations. In course of his argument Mr. Narayan Singh, learned counsel appearing for the petitioners, could not satisfy us that the non-supply of any particular document by the Controller of Examinations has caused prejudice to the petitioners. In the counter-affidavit regarding the non-supply of papers it has been stated that in view of the assault on Principals and Teachers and growing indiscipline among the students it was not possible for the Board to disclose the names of the persons who had reported against the petitioners. Regarding the personal hearing of the petitioners, it has been stated in the counter-affidavit that as the petitioners did not claim to examine any witness or document before the Board personal hearing was not given to them. Thus, as stated in the counter-affidavit, there was sufficient ground for not supplying the

petitioners with the report of the Examiners and allowing them personal hearing.

5. Mr. Narayan Singh submitted before us that it was incumbent upon the Controller of Examinations to have given personal hearing to the petitioners specially when three of them had asked for personal hearing in their show cause. In support of his contention that the authorities were duty-bound to hear personally the petitioners, learned counsel relied on a decision of the Supreme Court in the case of Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, . In C.W.J.C. No. 1719 of 1969 (Pat), Rameshwar Prasad Sinha v. The State of Bihar, decided on the 17th of April, 1970, a Division Bench of this Court after considering the ratio decided in the Supreme Court held that the authorities concerned while dealing with the case about examination are not duty bound to hear personally the candidates to test the respective cases made against them. The contention of Mr. Narayan Singh that the order of the Controller of Examinations is bad in law because the petitioners were not given personal hearing must therefore, be rejected.

6. As no other point has been raised, we find no alternative but to dismiss the two applications. There will be no order as to costs.