
(2017) 10 PAT CK 0033

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5134 Of 2017

Suraj Kumar And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 06-10-2017

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2018) 2 PLJR 52

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Nivedita Nirvikar, Ashok Kumar, Ashutosh Ranjan Pandey, Lalit Kishore, Gyan Shankar, Rajiv Roy

Final Decision : Disposed Of

Judgement

1. The facts first, as they would divulge the sordid and disturbing state of affairs leaving the career of more than 2000 young students in the lurch.

2. Ideal Higher Secondary Public School, Delha, Gaya (hereinafter referred to as "the School") has been granted affiliation by the Bihar School

Examination Board (hereinafter referred to as "the Board") for conducting courses for Secondary School Examination with three sections, each

with 40 students, to prepare them for the Annual Secondary School Examination. As against the said sanctioned strength of 120 students at Secondary

level, the School sent up 2057 students for registration and appearance for the Examination, 2016 (hereinafter, the "Examination"). The students

so sent up were allowed to appear for the Examination by the Board. When this gross irregularity came to be detected by the Board, the Board put

the School on notice to show-cause why the result of the students of the School, who had appeared for the Examination, be not cancelled. The School

did not reply to the said show cause notice, dated 25.10.2016 and instead filed writ application before this Court giving rise to CWJC No.16911 of

2016 (Ideal Higher Secondary School, Delha Gaya Vs. the State of Bihar and others). It may be noted that a reminder was also sent to the School by

the Board through letter No. DP-5887/16, dated 05.12.2016 for furnishing its show cause. This Court, considering the evident fraud played by the

School, apparently with the connivance with the officials of the Board, dismissed the writ application by an order dated 22.12.2016 in the following

terms:-

“Writ application is dismissed for the simple reason that the institution cannot be law by itself, seek protection of law and not adjudication of the matter before the competent authority.

The equity is against the institution, because the additional number of students, who have been allowed to appear through the institution, are well

beyond the sanctioned limit and strength and the result had to be withheld when the fraud was detected, but at a delayed stage.

Writ application is dismissed as no direction can be issued since the institution cannot be rewarded for its wrong conduct.”

3. The School thereafter preferred Letters Patent Appeal against the said order dated 22.12.2016, passed in CWJC No. 16911 of 2016, Ideal Higher

Secondary School, Delha Gaya Vs. the State of Bihar and others (supra), before Division Bench, giving rise to LPA No. 81 of 2017. When the said

LPA No. 81 of 2017 was taken up by a Division Bench of this Court on 09.02.2017, the Court observed that it was, prima facie, of the view that by its

act of giving admissions much beyond the sanctioned strength, the School had cheated the students, under false representation. The Court,

accordingly, recorded, that before any equitable relief was to be considered for being granted, it would be proper to direct the appellant to deposit an

interim compensation at the rate of Rupees twenty thousand per student, in the Court. Learned counsel for the appellant sought sometime to seek

instructions and on his request, the matter was adjourned for ten days by the Division Bench. The order dated 09.02.2017 passed by Division Bench of

this Court is being quoted herein below:-

“As against the sanctioned strength of 120 students, the appellant has admitted more than 2057 students over and above the sanctioned strength.

The appellant claims declaration of result of such students.

Prima facie, we find that the act of the appellant in admitting students much beyond the sanctioned strength has cheated the students under false

representation. Therefore, before any equitable relief is considered or granted, it will be proper to direct the appellant to deposit an interim

compensation at the rate of rupees twenty thousand per student in Court.

Learned counsel for the appellant seeks sometime to seek instructions.

List after ten days.â??

4. It transpires from the record that on 01.03.2017, learned counsel for the appellant requested for withdrawal of the Letters Patent Appeal and

accordingly, by order dated 01.03.2017 passed by the Division Bench, the LPA NO. 81 of 2017 was dismissed as withdrawn. The said order dated

01.03.2017, is being also quoted herein below:-

â??Learned counsel for the appellant wishes to withdraw the present Letters Patent Appeal.

Dismissed as withdrawn.â??

5. After dismissal of the Letters Patent Appeal as withdrawn, the Board came out with a communique, dated 07.04.2017, cancelling the result of 2057

examinees, who had appeared for the Examination as students of the School.

6. At this juncture, before dealing with the relief sought for in the present application, it would be apt to take note of filing of another writ application

under Article 226 of the Constitution of India, this time by the students of the School seeking direction to the Board to declare their results of the

Examination giving rise to CWJC No. 3354 of 2017 (Kumari Anu Sinha and ors. Vs. State of Bihar and ors). This Court, in the background that the

earlier writ application filed by the School was dismissed by an order dated 22.12.2016 (supra) and the LPA preferred by the School against the said

order dated 22.12.2016 was dismissed as withdrawn by an order dated 01.03.2017, dismissed the said writ application by an order dated 10.04.2017 in

following terms:-

â??The petitioners were students of Ideal Higher Secondary Public School, Delha, Gaya. They have filed this application seeking direction to the

respondents-Bihar School Examination Board, Patna (hereinafter referred to as the Board), to declare their Class-X results.

2. Heard the parties.

3. Learned counsel, appearing on behalf of the petitioners, has submitted that there cannot be any dispute that the petitioners had appeared in the examination held in the year 2016. Their results have been withheld by the Board without any valid reason.

4. Learned counsel, appearing on behalf of the Board, produced before me a web-copy of an order dated 22.12.2016, passed in CWJC No. 16911 of 2016, whereby, this Court has dismissed the said writ application filed against withholding of results of the students of the said School.

5. It seems from the order of this Court, dated 22.12.2016, that the School, in question, admitted more number of students than permissible and allowed them to appear in Class-X examination, held by the Board. This Court, in the order dated 22.12.2016, has observed that the result had to be withheld when the fraud was detected, though at a belated stage.

6. I do not find any reason to take a different view as the Court has found admission of students in the said school, beyond the sanctioned strength, to be an act of fraud.

7. The institution had preferred an appeal, under the Letters Patent of this Court, against the said order dated 22.12.2016, giving rise to LPA No. 81 of 2017. The said LPA NO. 81 of 2017 has been dismissed by a Division Bench of this Court, since the school elected to withdraw the appeal. In that background, no relief, as sought in the present application, can be granted.

8. This application is, accordingly, dismissed.â??

7. This writ application under Article 226 of the Constitution of India has also been filed by 11 students who claim that they had appeared for the Examination held by the Board in the year 2016 as the regular students of the School. They are seeking a direction to the Board to publish their results of the said examination as according to them, their career cannot be allowed to be spoiled and jeopardised because of fault of the School. The petitioners have also sought for a direction for payment of appropriate compensation, since, according to these students, they have been cheated by the School Administration in question. A direction for lodging of a criminal case has also been sought against those responsible for cheating the petitioners.

8. In the background of the facts as discussed above, the issues which have emerged to be pondered over and dealt with, are as under:-

(i) In view of dismissal of the writ application by this Court by order dated 22.12.2016, passed in CWJC No. 16911 of 2016 (Ideal High Secondary

Public School, Delha, Gaya Vs. State of Bihar and ors), filed by the School and subsequent dismissal of another writ application preferred by the

students of the School, being CWJC No. 3354 of 2017 (Kumari Anu Sinha and ors. Vs. State of Bihar and others) by order dated 10.04.2017, is it

permissible for this Court to allow similar relief to another batch of writ petitioners, who have approached this Court by filing the present writ

application?

(ii) Whether on the basis of the pleadings and materials on record in the present proceeding, this Court in writ jurisdiction can return a finding that the

petitioners are such students, who were first admitted in the School within the sanctioned strength of 120?

(iii) If the relief for publication of result cannot be granted, whether any other relief can be granted to the petitioners and other similarly circumstanced

persons who have apparently been cheated by the School, by allowing admissions much beyond the sanctioned strength and permitting them to appear

at the Examination?

Issue No.I

8. Dealing with the first issue first, I have no hesitation in recording my definite view that the prior decision of the coordinate Bench is binding on me.

In the same matter arising out of the same dispute with respect to the same School and the same Examination, this Court by an order dated

22.12.2016 has been pleased to dismiss the writ application filed by the School. Subsequently, another writ application filed by the students of the

School also came to the dismissed by an order dated 10.04.2017, which fact has been noted hereinabove. The order dated 10.04.2017 in CWJC No.

3354 of 2017, Kumari Anu Sinha and ors. Vs. State of Bihar and others has been passed by me. In such circumstance, I am unable to take a different

view from the view already taken in the same matter, in keeping with the principles laid down in Supreme Court's decisions in case of Union of

India Vs. S.K. Kapoor reported in (2011) 4 SCC 589 and P. Suseela Vs. University Grants Commission, reported in (2015) 8 SCC 129. I must further

record here that I do not find any reason for referring the matter to a larger Bench, moreso when no submission has been advanced in this behalf.

10. Mrs. Nivedita Nirvikar, learned counsel appearing on behalf of the petitioners has attempted to persuade this Court that since the present

petitioners are such students of the school who had been studying there right from the Primary level, they should be treated on a higher pedestal, they

being bona fide students of the School, admitted within the sanctioned limit. She has submitted that the nature of relief claimed in the present

application and facts pleaded distinguish the case of these petitioners from the cases earlier decided by this Court in CWJC No. 16911 of 2016(Ideal

Higher Secondary Public School Gaya) (supra).

11. She has submitted that the fraud played by the School while withdrawing the Letters Patent Appeal in the background of clear indication made by

this Court for payment of compensation at the rate of Rs. 20,000/- per student had gone unnoticed while disposing of the case of Kumari Anu Sinha

(supra), filed by the students of the School. She has submitted accordingly, that the Court should, in such circumstance, take a different view and

consider the case of these petitioners in the said particular perspective.

12. Binding nature of a prior decision of a coordinate Bench is a well settled principle and I am unable to accept any plea which is not consistent with

the said doctrine. I answer the first issue accordingly.

13. The submission so made on behalf of the petitioners, however, takes me to the second issue as formulated above.

Issue No.II.

14. In view of the submissions made on behalf of the petitioners, while issuing notice to the respondent School by order dated 10.5.2017, the Court had

also asked the Board to file a detailed affidavit stating the manner in which the Board, if possible, could filter out 120 students admitted in the School

within the sanctioned strength to distinguish their cases from those who were admitted beyond the sanctioned strength. Subsequent to orders passed

by this Court including direction to the Principal of the School to produce before this Court all admission registers of the School, right from the year

2010 for the purpose of scrutiny to be done by the Board, an exercise in this direction was undertaken. By order dated 12.08.2017, eleven (11)

admission registers, which were produced by the Principal of the School were

handed over to the learned counsel for the Board for the purpose of identifying those 120 students, who were admitted in the school within the sanctioned strength. The Principal was asked to visit the office of the Board with all necessary documents, as and when required by the Board for the said purpose. Order dated 20.07.2017 passed in this case is relevant, whereby the Principal of the School was specifically asked to present himself before the Chairman of the Board on 21.07.2017, for helping identify the 120 students who were admitted in the school within the sanctioned limit. The Court had made it clear in the said order dated 20.07.2017 that if in the opinion of the Board, on the basis of the documents and with the assistance of the Principal of the School, it was found impossible to identify those 120 students, who were admitted in the school within the sanctioned limit, or who were admitted in the School for the said course, it shall inform the Court accordingly.

15. An affidavit has been filed accordingly by the Board on 18.08.2017, sworn on 10.08.2017. In the said affidavit, it has been stated that the Board had constituted a Three Member Enquiry Committee for compliance of the said order. The said Committee submitted its report on 09.08.2017 recording findings to the following effect:-

â??(i) Neither the admission registers produced were authenticated nor the entries made therein were certified by any authority or any employee.

The basis on which admissions had been shown to be taken is not disclosed in the admission register. It has been said by the Headmaster that all admissions in class IX were taken on the basis of declaration given by the guardians.

(ii) Similarly in the attendance registers the entries made therein had not been signed by any teacher or the headmaster. In the whole of the academic session the said admission register had not been signed by any authority making it to be suspicious and as such it could not be relied.â??

16. It has been stated in the said affidavit that it was evident on perusal of the certified photocopies of the admission registers that the dates when the admissions were said to have been taken, had not been entered. The gist of the affidavit is that it could not be deciphered on the basis of the records produced by the School as to who were the students admitted first in the School within the sanctioned strength.

17. In the background of facts narrated and discussed above, this Court, while exercising the power of judicial review under Article 226 of the Constitution of India, cannot return a finding that all these petitioners or some of them were duly admitted by the School within the sanctioned strength, for the purpose of distinguishing their cases from others students whose writ application had been dismissed earlier by this Court. The fact, which learned counsel for the petitioners has attempted to establish in the present case, is a disputed question of fact, which cannot be decided in writ jurisdiction.

18. The Supreme court in case of Subashree Das @ Milli Vs. State of Orissa reported in (2012) 9 SCC 72 9has clearly held that in a proceeding under Article 226 of the Constitution of India, the High Court should not ordinarily adjudicate the matter where the foundational facts are disputed. In case of Hindustan Coca Cola Beverage Pvt. Limited Vs Sangali Miraz and Kupward Municipal Corporation reported in (2011) 7 SCC 60, 5the Apex Court has held that disputed question of fact could not be gone into by the High Court exercising the jurisdiction under Article 226 of the Constitution of India. Similar view has been taken by the Supreme Court in Food Corporation of India Vs. Pala Ram and ors. reported (2008) 14 SCC 3.2 There are series of Supreme Court's decisions reiterating the exposition of law that disputed question of facts should not be gone into by a writ Court. Reference can also be made to Supreme Court's decision in case of Jaipur Development Authority Vs Kailaswati Devi (Smt) (1997) 7 SCC 298 (Para 6), Union of India and others vs. Ghavs Mohammad (AIR 1961 SC 1526)and D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corporation and others (AIR 1976 SC 386)(Para 18).

19. Issue No.(ii) stands answered accordingly.

20. In view of the above discussions, no relief in the nature of direction to the Board to publish results of these petitioners of the Examination can be granted.

21. This takes me to the last question as to what other relief, if any, can be granted to these petitioners and other similarly situated persons, who are apparently victims of the misdeeds of the management of the School.

Issue No.III.

22. The facts over which there is absolutely no dispute are that the School allowed 2057 students to appear as regular students of the School against a sanctioned limit of 120 students. The School has offered to the Court no cogent justification in this regard. It is unimaginable for this Court and incomprehensible as to how there could be 2057 students studying in a school at Secondary level with the infrastructure available for only 120 students. In brazen disregard of all norms, the management of the School, apparently in tacit connivance with the officials of the Board managed to get registered and filled up examination forms of 2057 students. The bungling done by the management of the School and damage caused to the entire system is of mammoth, enormous and colossal proportions, which is condemnable in the strongest words.

23. A counter affidavit has been filed on behalf of respondent no.6 sworn by the Principal of the School. A shameless plea has been taken that under the bye-laws, regulating affiliation of a school, there is provision regarding lump sum affiliation fee to be deposited by the School which is Rs. 75,000/-, if number of students is 500 to 750 and Rs. 1,50,000/-, if number of students is above 751. It is, accordingly, the plea of the School that an institution which has deposited Rs. 1,50,000/- and has been granted affiliation is entitled to and is well within its rights to admit students above 751. The plea is mischievous and has been taken to mislead this Court. Regulation 12 of the Regulation refers to "enrolment of students from class/standard first and onwards". It apparently refers to total number of students admitted in a school from Class I to Senior Secondary level. It is not only preposterous but a mischievous plea too, which the school has taken to justify allowing 2057 students of one batch of Class (10th), to appear for the secondary examination.

24. The School has thereafter shifted the burden on the Board. It is the stand of the School that the Board, knowing well that such number of students had been sent up by the School for Annual Examination, 2016, accepted the registration fees, examination fees and forms etc. It is, accordingly, the plea of the school that the Board cannot now take a stand against the interest of the school and the students, who appeared for Examination.

25. The silence in the counter affidavit of the School with regard to the circumstances in which LPA No. 81 of 2017 had been withdrawn, itself

speaks volumes. The School has cleverly glossed over the order of the Division Bench of this Court dated 09.02.2017, which was passed in presence

of learned counsel for the School, recording that before any equitable relief was to be considered or granted, it would be appropriate to direct the

appellant to deposit an interim compensation at the rate of Rs. 20,000/- per student in Court. Reason for withdrawal of the Letters Patent Appeal is

obvious. The School was not ready and willing to deposit the said interim compensation at the rate of Rs. 20,000/- per students, as indicated in the said

order dated 09.02.2017 to make the Division Bench of this Court consider granting equitable relief. The Division Bench had recorded the prima facie

finding that because of the act of the School by admitting students much beyond the sanctioned strength, the students stood cheated under false

representation, which now stands vindicated and established in view of the pleadings and materials available on record discussed above.

26. The School management, including the Principal of the School thus, evidently cheated the students by admitting them in the school much beyond

the sanctioned strength, under false representation. The obvious motive for this was personal gain to the members of the School Administration,

including the Principal. The Court is of the view that in the name of running an Educational Institution, the members of the School Administration

indulged in illegal profiteering. Cupidity of the persons running the school was of such level that they made innocent young boys and girls the victims of

their ulterior and nefarious designs. They could surely not have accomplished their illegal objective without the direct or indirect support of the officials

of the Board.

27. Further, had the Board noticed huge number of examination forms being submitted from one school and refused to accept the examination forms

of students beyond sanctioned strength, possibly the matter would have met with a less tragic fate at the hands of the School and the Board.

28. In my view, the petitioners and other similarly situated persons, who appeared for the Examination held by the Board as students of the School,

have not been given fair treatment by the respondents amounting to infringement of their right to fair treatment, which is an important facet of Article

14 of the Constitution of India. Since they have suffered injury in terms of mental agony, loss of academic year and adverse impact on career

prospects, I consider it a fit case where they deserve to be compensated by those responsible for the loss suffered by them. I am conscious of the limitation of the writ Court while deciding the issues of awarding compensation to aggrieved persons. However, in the present case, in my view, not much exercise is needed in view of an observation already made by the Division Bench of this Court in its order dated 09.02.2017 wherein it was considered proper to direct the School to deposit an interim compensation at the rate of Rs. 20,000/- per student. This amount is being taken by me as a yardstick for determining the compensation payable to the individual students (petitioners) and other similarly circumstanced persons. The records of the case themselves speak eloquently about the damage wreaked by the School. The action of the Board in allowing, nay participating in, such illegality is a matter which needs to be inquired into.

I decide issue No.III accordingly.

29. Mr. Rajiv Roy, learned counsel appearing on behalf of the School, has submitted with reference to the statement made in the affidavit that other schools, namely, Raj Inter School, Tekari (Gaya), Rang Lal High School Sherghati, Agrawal High School, Belaganj and Janta High School, Dumaria had also sent up, for the same examination, students much beyond the sanctioned strength whose results the Board has published. It has been stated in the said affidavit, with reference to Annual Secondary Examination, 2017 that 17,42,034 students had appeared. If total number of 120 students in each schools only could be sent up for examination, there would be requirement of 14,517 affiliated schools in the State of Bihar, whereas there are only about 4,000 schools in the entire State of Bihar which are affiliated to the Board. The said submission cannot justify the conduct of the School.

The School has apparently attempted to give a twisted picture inasmuch as there may be cases where those who failed in one annual examination might have appeared in the next. At the same time, the Board cannot be allowed to ignore the stand so taken on behalf of the School in the affidavit.

30. In view of the above discussion, while refusing to issue direction for publication of result of the petitioners, I consider it proper in the interest of justice to make the following orders and issue directions as under:-

(i) (a) The School is directed to pay a sum of Rs. 20,000/- by way of compensation to each of the petitioners and all other similarly circumstanced

persons (total 2,057 students), who had appeared for Annual Examination, 2016 held by the Bihar School Examination Board as students of the School, within a period of three months from today.

(b) For the said purpose, the petitioners and other similarly situated persons will be individually required to make a claim before the Principal of the

School by way of representation, enclosing necessary particulars including Bank details, with copy to the District Magistrate, Gaya. Even in a case

where no representation is filed by any such student(s), the school shall set aside the amount payable to them and deposit the same in any of the

accounts of District Magistrate, Gaya as may directed by the District Magistrate, Gaya within two weeks thereafter for payment to remaining

students on due verification, if they approach the District Magistrate or the school Administration thereafter. If, within six months from today no claim

for payment is made by some of such students, neither before the Principal of the School nor before the District Magistrate, they cannot claim the

amount any more. The remaining amount pending with the District Magistrate, Gaya, if any, shall be utilized at his discretion, for welfare of needy

students of any other school, in an appropriate manner.

(c) The District Magistrate, Gaya, is directed to ensure proper documentation of copies of the representations filed by the persons, in the light of the

above direction in (b).

(d) If the amount is not paid within the aforesaid period of three months, the same shall earn interest at the rate of 12% per annum, compoundable

half-yearly.

I have in mind the fact while issuing the direction as above that the school administration must have charged fees from the students in the name of

admission fee, tuition fee and other fees without providing any teaching facility to them and finally leaving their career in the lurch. It is impossible for

the School to have provided teaching and facilities and other essential infrastructure for 2,057 students. Evidently the School charged fees from the

students, just for enriching its own funds and nothing else.

(ii) (a) The Chairman of the Board is directed to refund to the petitioners and all other similarly circumstanced persons the examination fees paid by

them for the Examination within the aforesaid period of three months from today. The refund may be made through the District Education Officer,

Gaya for convenience of the parties, after due publication of notice in print/electronic media at the cost of the Board. This direction I have issued,

having noticed the conduct of Board in permitting students to fill up their forms and thereby omitting to acknowledge that students much beyond the

sanctioned strength were being allowed to appear from one school. The Board thus failed to discharge its statutory function of supervision, reasonably.

(b) If the amount is not paid by the Board within the stipulated period of three months, the same shall earn interest at the rate of 12% per annum

compoundable half-yearly.

(iii) The Senior Superintendent of Police, Gaya is directed to ensure registration of FIR/FIRs in view of admission of students by the School much

beyond the sanctioned strength for illegal gains by cheating them under misrepresentation. The FIR must be registered forthwith without any delay and

effective investigation should be undertaken under the supervision of the Senior Superintendent of Police, himself.

(iv) The Court directs Chairman of the Board to examine the claim of the School that the Board has published the results in respect of other schools,

which too had sent up students much more than the sanctioned strength, by causing enquiry.

31. Parties shall be at liberty to approach this court for clarification of this order, if any. It is indicated here that any breach of this order shall be

viewed seriously and concerned parties shall be liable to stern action for willful disobedience of this order.

32. This application stands disposed of accordingly in terms of the observations made and directions issued as above.

33. Let this order be communicated to the District Magistrate, Gaya and the Senior Superintendent of Police, Gaya, forthwith.

34. List the matter on 08.01.2018 under the heading 'To be mentioned', to report compliance of this order.