

(2011) 05 RAJ CK 0084

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10866 of 2010

Tanuj Vaishnav and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226(3)

Criminal Procedure Code, 1973 (CrPC) — Section 173, 226(3)

Citation : (2011) 05 RAJ CK 0084

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Govind Mathur, J.—S.B. Civil Writ Petition No. 10866/2010 is preferred by 17 Petitioners seeking a direction to cancel the examination of Nursing Grade-II Competitive Examination, 2010 on the count that certain unsocial persons disclosed the question paper of the examination concerned prior to conduct of the examination and that vitiates the entire process of selection. In the petition for writ aforesaid, this Court on 24.11.2010 passed the following order:

On 20.10.2010, the Nurse Grade-II Competitive Examination, 2010 (Examination Code No. 23) was conducted by the Rajasthan Public Service Commission in pursuant to a Notification dated 2.6.2010. As per the Petitioners, the question paper of the examination concerned was disclosed by certain persons prior to 20.10.2010 and a criminal case in this regard was lodged. Certain arrest of accused-persons was also made on the same day, but despite discloser of question paper, the Respondent Commission proceeded with the examination and on basis of such examination is now conducting counseling on 29.11.2010, for recommending the names of selected persons to undergo requisite training. Learned Counsel for the Petitioner submits that discloser of the question paper makes the entire competitive examination bad and as such, that is required to be cancelled.

Issue notice to show cause as to why this petition for writ be not admitted. Issue notice of stay application also.

In the meanwhile and until further orders, the Respondents No. 1 and 2 are directed not to appoint any person as Nurse Gr. II on the basis of recommendations made by Rajasthan Public Service Commission as a consequent to Nurse Gr.II Competitive Examination, 2010 (Examination Code No. 23).

2. To get the interim order above mentioned vacated, an application under Article 226(3) of the Constitution of India is preferred on behalf of Rajasthan Public Service Commission (Respondent No. 3).

3. The writ petition bearing No. 791/2011 is a petition of similar nature wherein a stay application is also preferred in the term that no person should be appointed on the post of Nurse Grade-II on the basis of recommendation made by the Rajasthan Public Service Commission as a consequent to Nurse Grade-II Competitive Examination, 2010.

4. In both the petitions, the argument advanced is that the question paper of Nurse Grade-II Competitive Examination, 2010 was leaked and that vitiates the entire process of selection, as such, the same is required to be cancelled. It is asserted by learned Counsel for the Petitioners that the examination was conducted on 10.10.2010 and on the same day First Information Report was lodged at Police Station Kardhani, Jaipur by Shri Surendra Singh, Circle Inspector, Police Station Kardhani with the assertion that as per information of mukhbir, a raid was made at Kiran Balbharti Public School, Govindpura Kalwad Road, wherefrom some persons in two cars were caught with the question papers relating to Nurse Grade-II Competitive Examination, 2010. The raid was made at 10:30 a.m.

5. While pressing the application seeking vacation of the interim order and to reject the stay application filed on behalf of the Petitioners in both the writ petitions, it is submitted that the question paper of the examination concerned was not disclosed prior to commencement of the examination. An information was received at Police Station, Khardhani that some persons tried to obtain money by illegal means from the candidates appearing for the examination of Nursing Grade-II and they were also making attempt to help the candidates for using unfair means. On basis of information aforesaid at about 10: 30 a.m., police party intercepted two cars bearing No. RJ-14-CD-6303 and RJ-14-UB-9445 and on search of those being made photocopy of the question paper was recovered. The question paper was recovered at 10:30 a.m. that is after half an hour from the time of commencement of the examination. As per Rajasthan Public Service Commission, the accused-persons with an intention to deceive the candidates appearing in the examination obtained photocopy of question paper with an intention to help the candidates in copying the correct answers. While relying upon the police report filed before the competent court as per provisions

of Section 173 Criminal Procedure Code (CrPC), it is submitted by learned Counsel for the Commission that from investigation made, it reveals that the accused-persons named certain candidates, who used unfair means and the Commission by acting quite diligently debarred all those persons for five years from appearing in future examination conducted by the Rajasthan Public Service Commission beside cancellation of their appearance in the present examination. Learned Counsel has asserted that the question paper was not at all disclosed prior to examination. A copy of entire charge-sheet has been supplied by learned Counsel for the Commission and from a minute examination of that, it reveals that as a matter of fact, the entire case is of using unfair means.

6. An important aspect of the matter is that the present Petitioners appeared in the examination on 10.10.2010, they were aware of the fact about the criminal case lodged at Police Station Kardhani on 11.10.2010, but they did not choose to approach this Court to agitate their cause till declaration of result on 3.11.2010. The writ petition bearing No. 10866/2010 was filed on 20.11.2010 and writ petition No. 791/2011 was filed on 28.12.2010. If the Petitioners were having any grievance with regard to disclosure of the question papers and adverse effects of that, then they would have approach the Court as soon as possible after coming into knowledge about disclosure of the question papers. The Petitioners as a matter of fact, took a chance first and only after getting declared unsuccessful in the competitive examination concerned they approached this Court.

7. Having considered all the facts stated above, I am inclined to accept the application preferred u/s 226(3) seeking vacation of the interim order by the Commission and to reject the stay application preferred by the Petitioners. Accordingly, the ex-parte interim order dated 24.11.2010 is vacated. The stay applications preferred by the Petitioners in both the petitions are dismissed. The Respondents are at liberty to go ahead with the process of selection in pursuant to Nurse Grade-II Competitive Examination, 2010. However, the appointments made in pursuant thereto shall remain subject to final decision of these writ petitions.