

CASE NO.:
Appeal (civil) 6946 of 1996

PETITIONER:
Bihar Public Service Commission & Anr.

RESPONDENT:
Vs.
Vinoy Kumar Singh & Anr.

DATE OF JUDGMENT: 04/08/2003

BENCH:
M. B. Shah & Dr. AR. Lakshmanan.

JUDGMENT:

JUDGMENT

Dr. AR. LAKSHMANAN, J.

This appeal was filed by the Bihar Public Service Commission (hereinafter referred to as "the Commission") against the judgment and order dated 05.12.1994 of the High Court of Judicature at Patna passed in Letters Patent Appeal No. 147 of 1988 whereby a Division Bench allowed the said appeal of respondent No.1/writ petitioner (Vinoy Kumar Singh) and consequently set aside the judgment and order dated 28.08.1988 of the learned Single Judge of the High Court dismissing the writ petition filed by the writ petitioner and came to the conclusion that the authorities of the Commission are not authorized to take any steps after publication of the result of the examination. The Court held that it is not open to the Authorities of the Commission to issue a show-cause notice and to take any action after the conclusion of the examination unless there is any specific rule permitting the Authorities to do so. The Bench also held that no action can be taken against the candidate for committing unfair means committed by him in the course of the examination. Thus the High Court came to the conclusion that in the absence of any rules or executive instructions, the entire exercise of the Commission is vitiated by illegality and procedural impropriety. The Division Bench further came to the conclusion that the principles of natural justice have also not been properly observed inasmuch as the respondent's request to inspect and examine the answer books of other candidates and the specimen signature of the Invigilator thereon was denied. The Division Bench finally came to the conclusion that the learned Single Judge of the High Court had himself tried to form an opinion about the alleged misconduct of the writ petitioner and hence the learned Single Judge has committed an error of law. In view of the aforesaid conclusion and findings, the Division Bench set aside the order dated 22.09.1986 of the Commission debarring respondent No.1/writ petitioner from the examination and directed the Commission to treat the candidate/writ petitioner as a successful candidate. However, it refrained from giving any direction to the Commission for appointing the writ petitioner to the post of Deputy Superintendent of Police or any other post as prayed for as they felt that such a direction was beyond the scope of the writ petition.

In order to appreciate the various contentions raised by the Commission in this appeal, it is necessary to recite the facts in brief.

The Commission invited applications in the prescribed proforma from eligible graduate candidates for appearing in the 31st Combined Competitive Examination conducted for filling up various Civil Posts. The written examination was to commence w.e.f. 12.02.1983. Respondent No.1, being a graduate, applied for the post of Deputy Superintendent of Police as also for Deputy Collector in the prescribed proforma. The Commission after

preliminary scrutiny and having found respondent No.1 eligible, allotted him Roll No. 16306 and also issued him an Admit Card in order to enable him to appear in the said written examination which was to commence from 12.02.1983. Respondent No.1 was required to appear in General Science, General Knowledge and General Hindi papers which were compulsory subjects. The result of the successful candidates was announced and published by the Commission and respondent No.1 was one of the successful candidates. Respondent No.1, being successful in the written examination, was called upon by the Commission to appear for an interview on 08.04.1985. Accordingly, respondent No.1 appeared in the viva voce test on 08.04.1985. On 12.08.1985, respondent No.1 was called upon to show cause by 30.08.1985 as he was accused of having committed unfair means in the General Knowledge Paper of the 31st Combined Competitive Examination and which the Commission after due consideration, had prima facie found correct.

"(A) The main answer-sheet as also additional answer-sheets of General Knowledge Paper contains forged signature of the Invigilator which is found corroborated by a comparison of the signature of the Invigilator on the answer-sheets of other candidates of that room/hall;

(B) From a perusal of the answer-sheet, it appears that the entire answer-sheet is based on materials smuggled from outside; and

(C) On the main page of the answer-sheet, there are ink marks which is different ink than one used in the answer-sheets.

It was further stated that in case, his show-cause to the aforesaid charges is not received by 30.8.85 through Registered Post, then it will be presumed that he has nothing to say in the matter. "

The final result was declared by the Commission on 13.08.1985. To the show-cause notice, respondent No.1 submitted his reply. The Commission, after considering the explanation to the show cause of respondent No.1 and the other materials, vide order dated 22.09.1986 decided to cancel the answer-sheet of the General Knowledge Paper of the said examination. The Commission also decided that respondent No.1 will stand debarred from the said examination.

Respondent No.1, being aggrieved, filed a writ petition before the High Court. The learned Single Judge of the High Court dismissed the same and came to the conclusion that the charges do disclose use of unfair means and respondent No.1 correctly understood the charges and furnished explanation therefor. The learned Single Judge after perusing the answer- book of respondent No.1 and other candidates and comparing the signature of the Invigilator came to the conclusion that they do not tally and that the difference is glaring to the bare eyes. However, the learned Single Judge came to the conclusion that the charge regarding use of smuggled materials has not been proved in the absence of any material relied upon or produced in the Court. However, in any event, the learned Single Judge held that the first charge levelled against respondent No.1 stands established.

Being aggrieved respondent No.1 filed Letters Patent Appeal No. 147 of 1988 before the Division Bench of the High Court and the Division Bench vide its impugned judgment allowed the same and as stated earlier, set aside the judgment and order dated 28.08.1988 of the learned Single Judge and quashed the order dated 22.09.1986 of the Commission debarring the candidature of the first respondent from the 31st Combined Competitive Examination and directed the Commission to treat respondent No.1 as a successful candidate. The Division Bench came to the conclusion that denial of inspection by the Commission of the specimen signatures of the Invigilator in question and the answer-books of the other candidates constitute a violation of the principles of natural justice. The Division Bench also came to the conclusion that the Commission is not authorized to take any steps after

publication of the result of the examination. The Division Bench also held that the application of the rules is confined to cases where detection of unfair means is done in the course of conducting of the examination in the examination hall and that there is no rule or executive instruction which empowers the Commission to issue show-cause notice after the result has been published of a successful candidate who has been interviewed and asked to submit his option in connection with a competitive examination. In conclusion, the Division Bench held that the entire exercise by the Commission in purporting to cancel the first respondent's examination in absence of any rule or executive instruction is vitiated by illegality and procedural impropriety. The Division Bench relying on Rule 15A of the Bihar Civil Services (Executive Branch) and the Bihar Junior Civil Service (Recruitment) Rules, 1951 came to the conclusion that the Commission being the constitutional functionaries have to act within the four corners of the rules in the matter of conducting the examination and in publication of the results and all other allied matters and that the authorities of the Commission are not authorized to take any steps after publication of the result of the examination. Aggrieved by the impugned judgment of the Division Bench, the above appeal has been filed in this Court.

We heard Dr. Rajeev Dhawan, learned senior counsel for the appellant -Commission and Mr. M.N. Rao, learned senior counsel for respondent No.1. Learned senior counsel for the appellant took us through the pleadings and the judgments rendered by the High Court and also all the Annexures and the rules. According to the learned senior counsel for the appellant, the interpretation put by the Division Bench will have devastating and startling effect if it is to be held that the Commission has no power to take action against a candidate who had committed unfair means in the examination after the conclusion of the examination or beyond premises of the examination hall. He would further submit that the Division Bench has failed to appreciate that the use of unfair means is not confined to copying or impersonating another candidate or being impersonated by any other person or communicating with any person for the purpose of getting help or for aiding any other candidate which are necessarily to be in the examination hall and at the time of examination. According to the learned senior counsel for the appellant, adoption of unfair means need not be necessarily confined in the examination hall alone but will include any unfair means adopted at any stage even after the conclusion of the examination such as getting his original answer-sheets substituted or addition or additional answer-sheets in collusion with the staff of the Commission which necessarily shall be after the conclusion of the examination but shall nevertheless be unfair means.

He invited our attention to the statutory rule i.e. the Bihar Civil Services (Executive Branch) and the Bihar Civil Services (Recruitment) Rules, 1951. He further submitted that the power of the Commission to conduct examinations is conferred under Article 320 of the Constitution and, therefore, the power of the Commission is not controlled by the limitations imposed, if any, by any statutory provisions.

Dr. Rajeev Dhawan further submitted that the Division Bench also failed to appreciate that the learned Single Judge in order to satisfy himself had himself seen the answer-sheet of respondent No.1 and compared the signatures of the Invigilator thereon with other answer-sheets and the difference in the signature of the Invigilator on the answer-sheet of respondent No.1 was so glaring that it came to the conclusion that the present answer-books were not at all written in the examination centre and this answer-book has been subsequently substituted for the one written in the examination centre and in that event, there will be no question of Invigilator's noticing the unfair means at the time of using the same in the examination hall which is also corroborated from the answers given which appears to be based on the smuggled materials. Dr. Rajeev Dhawan drew our attention to the grounds of appeal in Letters Patent Appeal No. 147 of 1988 filed in the Patna High Court by respondent No.1 and pointed out that it was not the case of respondent No.1 that the learned Judges of the Division Bench had not undertaken the exercise of perusal of the records by themselves as did by the

learned Single Judge. A perusal of the grounds of Letters Patent Appeal would show that respondent No.1 has not raised any grounds in that regard.

Per contra Mr. M.N. Rao, learned senior counsel for respondent No.1 submitted that the written examination was held on 12.02.1983 and the result was declared after the efflux of two years on 08.03.1985 and that respondent No.1 was a successful candidate and as a sequel to the publication of the result, respondent No.1 was asked to appear in the oral interview on 08.04.1985 and the respondent appeared for oral interview and gave his first choice for the post of Deputy Superintendent of Police and second choice for the post of Deputy Collector. He submitted that this sequence of events and lapse of over two years from the date of examination is not consistent with the statement that any complaint was made or was pending against the respondent as stated in paras 7 and 8 of the special leave petition. He submitted that on receipt of the charge-sheet, respondent No.1 filed an application before the Special Executive Officer of the Commission for allowing him to see certain records and to furnish him specimen signatures of Invigilator but the access of these documents was denied and no specimen signatures were furnished and, therefore, the principles of natural justice were violated and adequate opportunity was denied to the first respondent. He also denied that the answer-sheet was based on material smuggled from outside. He also submitted that no adverse inference can be drawn from the facts stated in the special leave petition that on the main page of the answer-sheet there are ink marks which are in different ink than the one used in the answer-sheets. According to the learned senior counsel for the respondent, the interpretation by the Division Bench of the High Court is consistent with the rules. He has further contended that respondent No.1 was never charged for adopting unfair means in the General Knowledge paper and, therefore, the impugned order is bad. He has further contended that after publication of the result of the written test, two years after the examination was held showing respondent No.1 was a successful candidate, the Commission was not justified in rejecting the answer papers of the General Knowledge. Mr. Rao relied upon a decision of this Court in the case of Haryana Urban Development Authority and Another vs. Roochira Ceramics and Another (1996) 6 SCC 584 (page 586 para 4) and submitted that the power under Article 226 is the power of judicial review and that the High Court can only examine the procedural correctness and cannot go into the merits of the controversy like an appellate authority. He also relied on a judgment of this Court in the case of Sterling Computers Limited vs. M/s M & N Publications Limited and Others etc. (1993) 1 SCC 445 at 458 and submitted that while exercising the power of judicial review, the Court is concerned primarily as to whether there has been any infirmity in the "decision making process" and by way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State and that the Court have inherent limitations on the scope of any such enquiry.

We have perused the records. In our opinion, the argument advanced by the learned counsel for the appellant merits acceptance. We are of the opinion that the Commission has jurisdiction to find out malpractices. In the instant case, the Chief Examiner reported to the Commission about the adoption of unfair means by the writ petitioner, respondent No.1 in the General Knowledge Paper. Therefore, the Commission vide its memo No. 56 dated 12.08.1985 called upon respondent No.1 to show cause by 30.08.1985 as he was accused of having committed unfair means in the General Knowledge paper. It is also seen from the records that the Commission on 13.08.1985 published and declared the final result of the examination and a request thereafter was made by respondent No.1 to the Special Executive Officer of the Commission requesting to allow him to see the answer-sheets of the other candidates who were appearing along with him in the said hall as also the specimen signatures of the Invigilators who were invigilating the said examination in the said hall. Accordingly, on 15.08.1985, respondent No.1 was allowed to see his answer-book of the General Knowledge paper. The Commission, after considering the explanation offered by respondent No.1 and other materials, vide memo No. 109 dated 22.09.1986 decided to cancel

the answer-sheet of the General Knowledge Paper of respondent No.1 of the said examination and also decided further to debar him from the said examination. It is also seen from the judgment and order of the learned Single Judge that the answer-books of the first respondent in General Knowledge along with few other answer-books of other candidates were produced for inspection of the Court during the course of hearing and that on 23.05.1988, after perusal of the answer-books, an order was recorded to the effect that some droppage of ink was found on the cover page of the answer-book and that the signature of the invigilator on the main answer book and the additional answer papers appears to be of one Mr. R.P. Sao and that the answer book number of other candidates, namely, 66452, 66453, 66454, 66455 and 66456 have been produced to show that the signature of Mr. R.P. Sao on those answer books are wholly different than R.P. Sao's signature on the answer-book of respondent No.1 and they do not appear to tally with those found in the answer-books of other candidates. The learned Single Judge has also rejected the explanation of respondent No.1 offered in this regard. The learned Judge has clearly found that the principal answer book and the additional answer book contain the signature of Mr. R.P. Sao but Mr. R.P. Sao's signature on the answer books of the other candidates who were sitting in the same room is wholly different and, therefore, it is crystal clear that the present answer book was not at all written in the examination centre and that the answer book had been subsequently substituted for the one written in the examination centre and in that event there would be no question of the invigilators noticing the use of unfair means at the time of using the same in the examination hall. In this background of facts, we are of the opinion that the decision of the Commission in cancelling the answer paper of respondent No.1 and the reasoning given by the learned Single Judge in this regard cannot at all be faulted with. In our view, it is true that there is some delay in issuing the show-cause notice. The delay also, in our opinion, cannot at all be faulted with. Things which may go unnoticed at one point of time may be noticed subsequently and the same delay in noticing the contumacious act at a later stage cannot at all be termed as illegal. The Commission is entrusted with the task of conducting examinations for the very many public services under the State and the Commission is conducting examinations and interviews for lakhs and lakhs of people every year. While undertaking this process, the delay may occur due to various unavoidable reasons and at the same time this Court cannot close its eyes for the actions initiated by the Commission of the grave charges levelled against respondent No.1 herein though belatedly. Respondent No.1 was given ample opportunity to submit his explanation and the Commission after considering the entire materials decided to cancel the answer-sheet of the General Knowledge Paper of the said examination and also to debar respondent No.1 from the said examination.

Rule 15 A of the Bihar Civil Services (Executive Branch) and Bihar Junior Civil Service (Recruitment) Rules, 1951 is set out below:

"15A. If any candidate is found guilty of â\200\223

- (i) resorting to any irregular or improper means for obtaining admission to the examination; or
- (ii) impersonating another candidate or being impersonated by any person at the written or viva voce examination; or
- (iii) submitting fabricated document or documents which have been tampered with; or
- (iv) making statements which are incorrect or false; or suppressing material information; or
- (v) communication with any person for the purpose of getting help or for aiding any other candidate; or
- (vi) using any other unfair means in the examination hall; or
- (vii) unruly behaviour in the examination hall or violating any instruction issued by the Commission;

he may be expelled from the examination hall by the Commission or by any person authorised by them in this behalf. In such cases, the Commission may also invalidate his answer books or deduct such marks as they consider fit and in addition to rendering himself liable to

criminal prosecution, the candidate may be debarred either permanently or for a specified period

(a) by the Commission from admission to any examination or appearance at any interview held by the Commission for selection of candidates; and

(b) by the State Government from employment under Government."

It is clear from the perusal of the said rule that the Commission is entitled to initiate action against any candidate if the candidate is found guilty of resorting to any irregular or improper means for obtaining admission to the examination or using any other unfair means in the examination hall (clause vi) if any candidate is found guilty he may be expelled from the examination hall or the Commission may also invalidate his answer-books or may debar the said candidate either permanently or for a specified period. The Division Bench in their judgment while interpreting the above rule has observed that there was no allegation against respondent No.1 of adoption of any unfair means in the course of examination and the Commission after two years of publication of the result initiated action against respondent No.1. The interpretation given by the Division Bench of the rule is not correct. Clause (iii) of the Rules specifically provides that if a candidate is found guilty of submitting fabricated document or documents, which have been tampered with or as provided in Clause (vi) found to have used any other unfair means in the examination hall, he can be dealt with appropriately under the Rules.

A perusal of the show cause notice issued to respondent No.1 in Memo No. 56/P.S.C./C.C.E. dated 12.08.1985 clearly go to show that the charge against respondent No. 1 was for adoption of unfair means in the 31st Combined Competitive Examination. We have already extracted the charges against respondent No.1. By issuing the said show-cause notice an opportunity was given to respondent No.1 to offer his explanation with regard to the charges. The proceedings dated 22.09.1986 (annexure-2) clearly reveal that the explanation offered by respondent No.1 dated 15.04.1986 with regard to the charges had been considered in detail by the Commission and the Commission after due consideration has decided to cancel the answer-sheet of the General Knowledge Paper and also decided to treat respondent No.1 as debarred from the said examination. The Authorities of the Commission have, in our opinion, acted within the four corners of the rules, regulations and executive instructions. They have adhered to the rule of law. The Division Bench has characterized the entire exercise by the Commission in cancelling the respondent's examination as vitiated by illegality and procedural impropriety. We are unable to appreciate the above observation made by the Division Bench. In our opinion, the Courts can certainly examine whether the decision making process was reasonable, rationale and not arbitrary on the facts and circumstances in each case. There has been no infirmity in the decision making process by the Commission. We, therefore, hold that the impugned action initiated by the Commission in cancelling the examination of respondent No.1 and debarring him is well-founded and calls for no interference. The grievance of respondent No.1 that he was not allowed to see the answer-books of other candidates in the concerned subject nor the specimen signature of the Invigilators of that centre were produced before the Court are shown to the first respondent. In this regard, respondent No.1 has miserably failed to request the Division Bench to see the answer-books by themselves and also permit him to peruse the same. Such a request made by Mr. M.N. Rao before us at this distance of time cannot at all be countenanced.

The appeal filed by the Commission stands allowed and the order of the Division Bench is set aside. However, there will be no order as to costs.