

(2016) 09 JH CK 0039

JHARKHAND HIGH COURT

Case No: Writ Petition (C) No. 3193 of 2016

Shagun

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Sept. 22, 2016

Citation: (2017) 2 AIRJharR 113 : (2016) 4 JCR 704

Hon'ble Judges: Mr. Aparesh Kumar Singh, J.

Bench: Single Bench

Advocate: M/s. Indrajit Sinha and Abhay Prakash, Advocates, for the Petitioners; M/s. Anoop Kr. Mehta and Amit Kumar Sinha, Advocates, for the Respondent-JCECEB; Ms Aprajita Bhardwaj, J.C to Mr. Ajit Kumar, AAG, for the Respondent/State

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

2. Certain candidates of the Jharkhand Combined Entrance Competitive Examination (in short CET Exam), 2016 held for entrance to the MBBS and other courses, have approached this Court in the present writ application alleging serious irregularity in the conduct of the CET, 2016 held on 12.6.2016 as the question papers of the Biology paper were allegedly leaked and circulated through mobile on "whatsapp" on same date 12.6.2016. As per the examination schedule, the Jharkhand CET Exam for MBBS courses were held between 9 a.m to 12.15 p.m. on 12.6.2016. They have enclosed the photo copy of the Biology paper of the said test, Annexure-7 series, said to be in circulation through "whatsapp". They duly represented before the higher authorities of the State Government like the Health Secretary, Government of Jharkhand, the Controller of Examination, JCECE Board, Ranchi, the Chief Secretary, Government of Jharkhand and the Principal Secretary to the Governor, Government of Jharkhand. However apprehending that serious irregularity and malpractices might vitiate the entire examination itself and no urgent corrective measure were being taken by the

respondent authorities, they have approached this Court in the present matter. They sought enquiry by independent agency in the irregularity alleged. They have also sought cancellation of CET Examination, 2016 and conduct of a fresh examination in fair and transparent manner.

3. The Respondents were asked to furnish their reply. JCECE Board also seem to have made communication through letter 28.6.2016 on that subject. During the proceedings of the case the Investigating Authorities i.e. Additional Director General of Police(CID), Cyber Cell, Ranchi and the Superintendent of Police(Cyber), Ranchi were impleaded as Respondents and asked to furnish their reply. Thereafter a criminal case was registered being Cyber Crime P.S. Case No. 08/2016 under Section 420/379/120B of the Indian Penal Code and Under Section 66(B) & (D) of the Information Technology Act against unknown accused persons. The Court was informed on 4.8.2016 that result of CET Examination, 2016 have been published relating to Physics, Chemistry and Biology. The concerned Officers were directed to submit a progress report of investigation in a sealed cover and also to be present to assist the Court.

4. It would not be out of place to mention herein that the Investigating Authorities pursued the leads available from Journalist, Pranay Kumar Singh on whose cell phone the images of the questions of Biology paper were sent from the cell phone of one Subhash Kumar bearing no. 08877824608, resident of Village Sari Tola Chak, Warisnagar Anchal, Samastipur. Enquiries from the said Subhash Kumar revealed that his cell phone was in possession of a candidate, Abhishek Anand whose roll number was 6514230010. The Investigating Authorities submitted investigation report on 9.8.2016 in sealed cover, which was opened in the presence of the Court. For better appreciation, order dated 9.8.2016 is quoted herein below:-

"Mr. Ajay Kumar Singh, ADG, CID; Mrs. Sampat Meena, I.G. Organised Crime and Dr. Jaya Roy, Superintendent of Police, CID (Cyber Crime Cell) are present in the Court pursuant to the previous order. A progress report has been submitted in a sealed cover and opened in presence of the Court for perusal. Submissions have been advanced by the learned counsel for the State in respect of the progress made in the investigation. The cell phones of two candidates Abhishek Anand who was carrying the cell no.08877824608 in the name of Subhash Kumar, resident of village Sari Tola, Chak Anchal, Warisnagar Anchal, Samastipur and that of one Chandni Kumari, also a candidate of Kamre School for the JCECEB Exam-2016 have been seized. They are being sent for forensic examination to the Forensic Science Laboratory at Gujarat.

Counsel for the respondent-State submits that Cyber Cell Investigating Team may be permitted to obtain the FSL report from any authorised Central Forensic Laboratory in the country. It is at liberty to do so, but within the next date. He further submits that leads have been properly investigated and till now the leak of question paper has not been found to have an effect of vitiating the exam itself as it

is found to be taken out after the exams were over. However, final opinion is reserved awaiting the FSL report.

The Cyber Cell Investigating Team shall take steps and ensure that the FSL report in respect of the articles/cell phone seized is obtained from the concerned FSL Laboratory within a period of one week from today and report to that effect be submitted before this Court by the next date.

Counsel for the respondent-Board would also file an affidavit showing the inquiry done and the action taken for the incidence of the missing question paper from the exam centre at Shradhanand Bal Mandir Sr. Secondary School, Kamre on the date of the examination i.e. 12.06.2016, by the next date.

Let the progress report submitted today be kept in sealed cover again with the office of Registrar General of the Court to be produced on the next date.

On the next date, presence of ADG, CID is dispensed with. However, I.G. Organised Crime and Superintendent of Police, CID (Cyber Crime Cell) be present for assistance to the Court.

List the case accordingly on 19th August, 2016.

Let a copy of this order be handed over to learned counsel for the State today itself".

5. By the said order the Investigating Authorities were directed to take steps to obtain report of the concerned FSL laboratory within period of one week. The progress report also revealed that Chandni Kumari, another candidate bearing roll no. 6514231442 along with said Abhishek Anand in the CET, 2016 at centre Shradhanand Bal Mandir Senior Secondary School, Kamre were involved in the said incidence. Both were also interrogated by the Investigating Authorities. On the next date 19.8.2016 further progress report was submitted in sealed cover and opened for perusal of the Court. It was informed by learned A.A.G that no other incriminating material was found in the investigation and the two candidates, Chandni Kumar and Abhishek Anand have not been found to have obtained any extra ordinary marks in the answer sheet. Chandni Kumari fetched 10.5 marks in aggregate out of total marks of 150 in the three subjects of Physics, Chemistry and Biology and Abhishek Anand fetched 49 marks in aggregate out of total 150 marks. The report of the C.F.S.L, Kolkata, however could not be obtained on 19.8.2016 when the matter was taken up. The matter was accordingly adjourned for 23.8.2016 to appraise the Court about the progress in the investigation. However, interim report of the C.F.S.L, Kolkata along with progress report in sealed cover was furnished before this Court on 23.8.2016 which indicated that analysis of the retrieved information from the cell phone would take some more time. When the final report was not submitted on 30.8.2016, this Court made it clear that if by the next date i.e. 6.9.2016, opinion on the analysis of the retrieved information is not furnished by the authorities of the C.F.S.L, Kolkata, the concerned officers will be summoned on the

next date. The Respondent-JCECE Board was directed to file an affidavit as to the outcome of the enquiry conducted by the Deputy Commissioner, Ranchi in respect of the lapses in the examination centre at Shradhanand Bal Mandir Senior Secondary School, Kamre. Thereafter the final report of the C.F.S.L, Kolkata was obtained by the Investigating Authorities and produced before this Court on 7.9.2016 along with the progress report. The opinion of the C.F.S.L, Kolkata was perused by the Court on the said date and following order was passed:-

"The final report and exhibits in two different sealed covers have been obtained from CFSL, Kolkata by the Investigating Authority of the Cyber Crime Cell in connection with Cyber Crime P.S. Case No. 08/2016 and produced before the Court today.

Only the final report has been opened in presence of the Court and also perused. It is again being kept in sealed cover to be submitted before the learned Judicial

Commissioner-II-cum-Special Judge, Ranchi where the matter arising out of the instant Cyber Crime Case is pending.

The Investigating Authority after obtaining permission of the Special Trial Court would study the final report and as required may proceed in the matter of investigation any further. They would also submit their view on the content of the report and the answers which it conveys to the questions posed before the CFSL, authorities by the next date.

The exhibits have not been opened before this Court. Both final report and the exhibits with sealed cover is returned to the counsel for the State and the Officers of the Cyber Crime Cell, Ranchi present in Court today.

Let such report be submitted to the Court by the investigating authority of the Cyber Crime Cell, Ranchi by 22.9.2016".

6. Thereafter the progress report has been submitted today by the Investigating Authorities after the study of the opinion of the C.F.S.L, Kolkata by the Chief Technical Officer, Cyber Crime, Police Station, Ranchi after taking permission from the learned Court of Additional Judicial Commissioner-II-cum-Special Judge, Ranchi. The analysis of the retrieved materials by the C.F.S.L, Kolkata have revealed capture of images of the question paper by cell phone (marked as exhibit m-1) used by Abhishek Anand of make "Samsung" in two files created on 12.6.2016 between 12:49 hrs to 12:52 hrs. The cell phone of Chandni Kumari, which is marked as exhibit m-2 before the C.F.S.L, Kolkata indicated that it is not a smart phone and not compatible to available tools. The transmission of images from the cell phone used by Abhishek Anand has been found to be done on 5.8.2016. The Deputy Superintendent of Police-cum-Officer Incharge, Cyber Crime, Police Station, Ranchi through his letter no. 497 dated 21.9.2016 addressed to Mini Rani Sharma, the Chief Technical Officer, Cyber Crime Police Station, Ranchi therefore also asked her

opinion as to how transmission of images prior to 5.8.2016 from the cell phone of Abhishek Anand have not been noticed in the analysis. This was replied by the Chief Technical Officer through her letter dated 21.9.2016 stating that investigation with Mr. Abhishek Anand had revealed that his Samsung mobile used to hang quite often and was formatted number of times after 12.6.2016. As per technical knowhow, formatting the device and overwriting it many a times leaves least chances of recovering the application files. Hence, that would be the reason why the images shown in sent file before 5.8.2016 could not be retrieved by the C.F.S.L, Kolkata.

7. Learned counsel for the respondent-State submits that the outcome of the investigation, though a subject matter of trial before the learned Trial Court below, however, at this stage, does not give an impression that the irregularity found have vitiated the examination process. The images were created for the first time after the examination was over at 12.15 p.m. The images captured in the cell phone camera used by Abhishek Anand are between 12:49 hrs to 12:52 hrs i.e. after the examination. The results of these two candidates Abhishek Anand and Chandni Kumari also do not give rise to any suspicion of having benefited by use of any unfair means. There has been no instances either reported of unusual inflated marks in the paper of Biology having been obtained by any other candidates. The matter also been enquired by the Deputy Commissioner, Ranchi and the said school has been blacklisted.

8. Learned counsel for the JCECE Board on the basis of their affidavit including the second supplementary counter affidavit dated 14.9.2016 submits that the Principal of the School in his communication dated 16.8.2016 to the Examination Controller of the Board has also referred to distribution of separate question booklet bearing no. 504734 to the candidate having roll no. 65114231442, whose question paper booklet originally allotted was 504502. It is stated therein that because of repetition of certain questions in the original booklet protests were raised where after the second question booklet was supplied to her. One of the question booklet was not collected. The Invigilator also failed to mention the question booklet number in the attendance sheet. One of the question booklet therefore escaped along with the candidate from the examination center after the examination was over which is the genesis of the images being captured and transmitted through "whatsapp". Learned counsel for the respondent-Board therefore submits that the allegation of irregularity has not been established to come to a conclusion that it has vitiated the examination itself warranting any interference by this Court.

9. Learned counsel for the petitioners has through out accorded due assistance to the Court in the matter. The discussion made above and consideration of the progress reports submitted time to time before this Court by the Investigating Authority and the opinion of the Chief Technical Officer, Cyber Crime Police Station submitted on analysis of the report of C.F.S.L, Kolkata do not lead to a conclusion that the capture of images of the question paper of Biology on 12.6.2012 between

12:49 hrs to 12:52 hrs after the CET 2016 for MBBS and other Courses was over and its transmission thereafter have resulted in any vitiation of the examination itself. In that view of the matter, no occasion arises for exercise of the writ jurisdiction by this Court as prayed for. The trial may however continue to its logical conclusion before the Trial Court.

10. The writ petition is disposed of accordingly. The progress reports furnished before this Court be kept in sealed cover along with the records of the case.