

(2000) 08 PAT CK 0116

Patna High Court

Case No: C.W.J.C. No"s. 7629, 7674, 7630 of 2000

Md. Syed Ali Mohammad (in
7629), Umesh Kr. Singh and
Others (in 7674), Md. Riyazuddin
(in 7630)

APPELLANT

Vs

Bihar School Examination Board
and Others

RESPONDENT

Date of Decision: Aug. 24, 2000

Citation: (2000) 4 PLJR 615

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: Rajendra Prasad Singh, A.K. Singh, for the Appellant; Sadanand Jha for Board,
for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.J. Mukhopadhaya, J.

All these cases relate to Matriculation/Secondary School Examination, 2001 held by the Bihar Examination Board Patna (Board for short). The petitioners appeared as private students from one or other school in the examination. Result was published in the middle of 2000, but subsequently certain results were cancelled and in certain cases results were withheld.

2. The petitioners of C.W.J.C. Nos 7629/2000 and 7630/2000 have challenged the cancellation of their result; made, vide impugned order dated 3rd August, 2000. In the other case i e C.W.J.C. No. 7674/2000, the petitioners have challenged the order dated 4th August, 2000.

3. According to the petitioners, they passed the sent up test/preliminary test for appearance in the matriculation/secondary school examination 2000. Of deposition

of fees and forms as private candidates, they were provided with Admit Cards and appeared in the examination results were also published, but subsequently cancelled, vide impugned orders dated 3rd August/4th August, 2000.

4. The Secretary of the Board was asked to appear in person, who appeared on 21st August, 2000, filed counter affidavit in C.W.J.C. No. 7629/2000 and explained the reason for cancellation.

5. Dr. S.N. Jha, learned Senior counsel while appearing for the Secretary of the Board, submitting that the results have been cancelled, the private students having not submitted Resident Certificate in terms with Regulation 3(a) of the Bihar School Examination Board Regulation, 1964, which reads as follows:

(a) That a candidate who has not attended any recognized secondary school as pupil at any time during one year immediately preceding the examination in which he wants to appear may be admitted to the Boards Secondary School Examination as a private candidate.

(b) Such private candidate as have not been resident in the State for at least one year immediately prior to the Secondary School Examination will not be permitted to appear at the Board's Examination unless they are the sons or wards of Government Servant transferred from another State within that period.

(c) In order to be eligible for appearing at the Secondary School Examination, such private candidates which have to pass a Preliminary Test Examination held at any Government Secondary School or other Secondary School appointed by the Director of Public institution for the purpose.

(d) Such candidates shall also have to produce a certificate of good candidate from a respectable person of the locality to the satisfaction of the head of the institution concerned.

6. The counsel for the petitioners relied on enclosures attached to the writ petitions, including the registration forms, application forms, admit cards, notices, as shown therein etc. It was pointed out that no such stipulation made by the Board for deposition of any residential certificate. The petitioners having found passed in the sent up Test/Preliminary Test, were provided with Admit Cards on deposition of requisite fees, forwarded by the schools, wherein after, the results were also declared.

7. It was contended that the Respondents having made no such stipulation, at the time of calling for applications; handing over the forms, acceptance of the forms; and having allowed the students to appear in the examination, there was no occasion to cancel the results on the ground of non-deposition of Resident Certificate.

8. Dr. Jha, as also Mr. S.D. Yadav, the counsel for the Board while accepted that no such stipulation was made in any of the forms, nor such notice was given till Annual Secondary Examination held in the year 2000, also accepted that such stipulation has been made, for the first time, when notice published in the news paper on 12th August, 2000 for appearance in the supplementary Secondary Examination 2000.

9. A similar case fell for consideration before the Supreme Court in the case of [Shri Krishnan Vs. The Kurukshetra University, Kurukshetra](#), wherein the result was subsequently cancelled for certain infirmities like failure to attend the prescribed course of lectures. The Supreme Court while held that the statute stipulates such attendance of prescribed course of lectures, held that the same could be taken into consideration before allowing the students to take part in the examination. Once the candidate is allowed to take part in the examination, rightly or wrongly, then the Statute which empowers the authority to withdraw the candidature, having worked itself out, cannot be refused admission subsequently for any infirmity, which should have been looked into while giving the candidate the permission to appear.

10. In the present cases, as none of the candidates were made known or asked to submit Resident Certificate for one year prior to the commencement of such examination, the Respondents could not have cancelled their examination, already declared.

11. The students who have already appeared, the Board was liable to publish their results, except in the case of other infirmities like malpractice etc.

12. I have taken into consideration the fact that no allegation has been made by the Board against any individual student nor any specific finding has been given that they were not residing in the State for a period of one year prior to the examination.

13. For the reasons aforesaid, I set aside the impugned orders dated 3rd August/4th August, 2000, with directions to the Respondents to provide the petitioners with their mark-sheets and certificates. However, if any one or other candidate is found to be unsuccessful and wants to take part in the Supplementary Examination, he is to submit forms in terms with the stipulation, as made in the advertisement dated 12th August, 2000.

16. All the writ petitions are allowed with the aforesaid observations and directions.