

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M. P. No. 45 of 2014

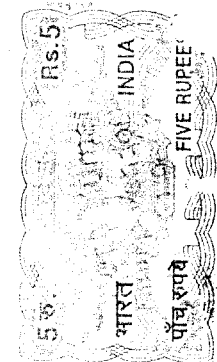
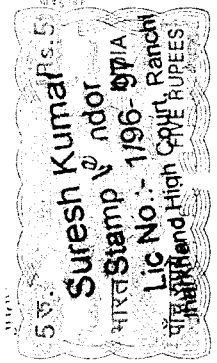
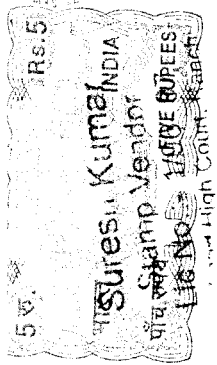
Jharkhand Public Service Commission, Ranchi Petitioner
Versus
The State of Jharkhand through S.P., CBI, Ranchi ... Opp. Party

CORAM: HON'BLE MR. JUSTICE R.R. PRASAD

For the Petitioner: M/s A.K. Sinha, Sr. Advocate & Sanjay Piprawal, Advocate
For the CBI : Mr. Mokhtar Khan, Advocate

6/07.03.2014 This application has been filed for quashing of the order dated 23.4.2013, passed in RC Case No. 06(A)/2012-AHD-R, by the Special Judge, CBI, Ranchi, whereby and whereunder the court did direct the Jharkhand Public Service Commission (for short JPSC) to re-evaluate the answer sheets of 2nd Combined Civil Service Examination and at the same time, the order dated 12.12.2013 has also been challenged, whereby the prayer made on behalf of JPSC to recall the order dated 23.4.2013 was rejected.

It appears that this Court vide its order dated 14.6.2012, passed in WP (PIL) No. 3594 of 2011 and other connected matters, directed the CBI to take up the investigation of Vigilance P.S. Case No. 23 of 2010, which had been instituted on the allegations that the then Chairman of JPSC as well as the members of JPSC as also the members of Interview Board for benefiting certain persons, who had appeared in 2nd Civil Service Examination, have committed offence of forgery, cheating, falsification of documents etc. Accordingly, the CBI took over the investigation of the said case lodged by the Vigilance. During course of investigation, when it got transpired that the marks sheets have been changed in the case of some persons and that some of the persons were not entitled to get that mark which had been given, an application was



candidates were subsequently increased which have been admitted by some of the evaluators and they have also admitted that in some cases marks have been increased and, therefore, it has become imperative to get the answer sheets re-evaluated by panel of special experts of JPSC who had evaluated answer sheet of 3rd and 4th Civil Services Examination and not the evaluators who had evaluated the answer sheets of 2nd Civil Service Examination so as to reach a just and logical conclusion in the matter.

In these circumstances, prayer was made to direct the Chairman, JPSC, Ranchi to get the answer sheets reevaluated according to the modalities set in under that application. That prayer was allowed by the court vide order dated 23.4.2013 directing the Chairman, JPSC to get the answer sheets of successful candidates reexamined. Subsequently, an application was filed on behalf of JPSC on 18.11.2013 praying therein to recall the said order, as it would not be permissible for the JPSC in view of Clause-13 of the Guidelines issued in the matter relating to main examination of Civil Services Examination approved by the Department of Personnel, Administrative Reforms & Rajbhasa, Government of Jharkhand to go for reevaluation, rather that provision only permits for retotaling. Further objection, which was taken on behalf of JPSC, is that any such order passed by the court would amount to interference with the investigation and hence that order is fit to be recalled. However, that prayer was rejected vide order dated 12.12.2013 holding therein that the court does not have power to recall its order. Those two orders have been challenged in this application.

Mr. A.K. Sinha, learned senior counsel appearing for the petitioner, submits that the JPSC is a constitutional body and it does have regulation under which examination is conducted. As per Clause 13 of the

In this regard, it was submitted that in one of the cases when this Court had passed an order for re-evaluation in a civil writ application, that order was challenged by way of intra court appeal. The Division Bench of this Court set aside that order after having regard of the fact no such provision is there under guideline/rule/circular for having re-evaluation of the marks. The same principle has been laid down by the Hon'ble Supreme Court in a case of **Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna and others** **{(2004)6 SCC 714}** holding therein that in absence of any provision being there for evaluation of answer sheet, examinees have no right to claim or demand the reevaluation.

The other limb of the submission is that the CBI does have ample power to go for investigation. In such situation, it was an overzealous act on the part of the CBI to approach to the court of Special Judge and to have this kind of order passed by the court and that even if the order has been passed by the court at the instance of the CBI, that would certainly amount interference in the investigation, whereas it has been well settled that the court cannot direct the investigating agency the manner and the way in which the investigation is to be done. In this respect, learned counsel has referred to a decision rendered in a case of **R. Sarala Vs. T.S. Velu and others (AIR 2000 SC 1731)**.

Thus, it was submitted that when there has been no provision for reevaluation of the answer sheet, the CBI should not have approached the court for a direction to get the answer sheet reevaluated and that the court by allowing the prayer of the CBI has committed illegality.

In this regard, learned counsel fairly submits that the JPSC would be cooperating the CBI in the matter of investigation fully. Whichever mode of investigation is adopted by the CBI, JPSC would be extending its

be produced to it and that JPSC would not be hiding any material which would be required by the CBI for its investigation and under the situation, the order impugned is fit to be quashed.

As against this, Mr. Mokhtar Khan, learned counsel for the CBI, submits that so far the submission, relating to bar, put under the guidelines for reevaluation of the answer sheets, is there, that is not the matter relating to criminal proceeding, rather that may be operative so far civil proceeding is concerned and, therefore, whatever submission has been advanced on behalf of the petitioner, that is not worth acceptable.

Further submission, what was advanced on behalf of the CBI, is that the investigating agency in pursuit of coming to truth of the matter can take step which has not been spelt out specifically in the Code and if that step is taken or power is exercised, it can never be said to be illegal. In this respect, learned counsel has referred to observation made in paragraph-22 of the case of **Arabinda Das Vs. State of Assam {AIR 1981 Gau 18 (FB)}**. Under the situation, if the CBI has approached to the court for having necessary assistance in the matter of investigation for coming to truth, the CBI did not commit any illegality.

Further submission is that it is the stand of the other side that the order, passed by the Magistrate, amounts to interference in the investigation but it can never be assumed like that as the court by its order has simply assisted the CBI in his pursuit to come to truth and, therefore, whatever decision has been referred to above, that is not applicable in this case.

Learned counsel further submits that the power, which the Magistrate has exercised, can be said to have been exercised in terms of the provision as contained in Section 156 (3) Cr.P.C., as the Magistrate

proper investigation, as only in that event when the CBI would go for evaluation of the answer sheets, culpability of the accused persons would be found.

Learned counsel in this respect has referred to a decision rendered in a case of **Sakiri Vasu Vs. State of Uttar Pradesh and others** {(2008) 2 SCC 409}. Thus, it was submitted that whatever order has been passed by the Magistrate, that is absolutely in accordance with law and hence it never warrants to be interfered with.

Thus, the question does arise as to whether in the facts and circumstances the order passed by the Magistrate suffers from any illegality?

For conducting preliminary/main examination, a syllabus has been issued by the JPSC, Part-B of it relates to the main examination. Clause-13 does stipulate that the candidate who has appeared in the examination within 60 days of the declaration of the result can file an application for retotaling of the marks.

It has been stated on behalf of the petitioner that there has been no provision for reevaluation of the answer sheets. This fact has not been controverted on behalf of the CBI. In view of such provision being there, any order passed for evaluation of the answer book would not be in consonance with the said provision.

In this respect, I may refer to a decision rendered in a case of **Pramod Kumar Srivastava** (supra) holding therein that in absence of any provision being there, examinees have no right to claim or demand the reevaluation.

However, the argument, which has been advanced on behalf of the CBI, is that the bar would lie in the case of civil proceeding but not in the case of criminal proceeding.

of the investigating agency to find out the culpability of the accused persons to go even for reevaluation, though under regulation it is bar but any order passed by the court either in civil proceeding or in criminal proceeding would not be permissible, as has been held by the Hon'ble Supreme Court in a case referred to above though it was never related to criminal proceeding.

Since I have already held that it was not permissible on the part of the court to pass such order directing the Chairman, JPSC to reevaluate the answer sheets, it would not be necessary for me to go to other aspect of the matter as to whether the order passed by the Special Judge amounts to interference or not. Nevertheless, I may refer to a decision rendered in a case of **Sakiri Vasu** (supra), wherein Their Lordships have observed that the Magistrate does have enough power to pass such order which appears to be just and proper for investigation and that if it appears to the court that the proper investigation has not been made, he can pass such order.

There has been no dispute to the proposition that the Magistrate if feels that the investigation has not been made properly, he may pass such order which he deems fit and proper so that proper investigation be made.

Here in the instant case the Special Judge has not come to the conclusion that until and unless there would be evaluation of the copies, there may not be proper investigation rather it was the opinion of the CBI.

Further, I may refer to a decision rendered in a case of **Arabinda Das** (supra), wherein at paragraph-22 His Lordships has observed as follows:-

"We are of firm opinion that where a statute gives a power, such power implies that all legitimate steps may be taken to

intermediate steps in order to give effect to the exercise of the power in its final step, otherwise the ultimate power would become illusory, ridiculous and inoperative which could not be the intention of the rule-making authority.

In determining whether a power claimed by the statutory authority can be held to be incidental or ancillary to the powers expressly conferred by the statute, the court must not only see whether the power may be derived by reasonable implication from the provisions of the statute, but also whether such powers are necessary for carrying out the purpose of the provisions of the statute which confers powers on the authority in its exercise of such power."

From its reading, it does appear that even if the statute is silent, legitimate step very well be taken for achieving the objective.

Here the situation appears to be something different. There has been no dispute over the power of the CBI that for coming to just and logical conclusion it can go for evaluation but such order passed by the court directing the Chairman, JPSC to get the answer book evaluated can be said to be against the guidelines issued by the JPSC. Under the circumstances, the court by passing such order has committed illegality and thereby the order dated 23.4.2013 certainly suffers from illegality.

Accordingly, the order dated 23.4.2013 passed in RC Case No. 06(A)/2012-AHD-R by the Special Judge, CBI, Ranchi, is hereby set aside.

However, the JPSC as per commitment made in the Court would be fully cooperating the CBI by providing it all the necessary documents which would be required by it and also to furnish the list by evaluators which the CBI would be intending to have and such other information or materials which would be required by the CBI.

In the result, this application stands allowed.

AKT

sell (R.R. Prasad, J.)

certified to be true copy

Bimal Ranjan
2013