

M.A. No. 980/2019 in C.A. No. 6312/2014

PRAVEEN KUMAR PRAKASH & ORS.

Appellant(s)

VERSUS

THE STATE OF JHARKHAND & ORS.

Respondent(s)

O R D E R

This application is for recall of order dated 05.08.2019 wherein in respect of Case No. 10/2011 relating to the 1st Combined Civil Services Examination conducted by Jharkhand Public Service Commission (JPSC), the following observation has been made:

“Two cases being, Case Nos. 23 of 2010 and 10 of 2011, relating to 2nd Combined Civil Services Examination and 1st Combined Civil Services Examination respectively are stated to be still under investigation.”

The applicants who seek recall of this order are the candidates who were successful in the 1st Combined Civil Services Examination. The short background of the case is that the JPSC conducted the 1st Combined Civil Services Examination pursuant to advertisement issued in the year 2002-03. The applicants before us were successful in the said examination and appointed by JPSC in the month of July, 2006. It appears that no challenge was made to their selection at that stage. In the meanwhile, the 2nd Combined Civil Services Examination was also conducted by the JPSC and the successful candidates joined in the year 2008. A challenge was made to the second selection process whereby the candidates

were selected for the second examination and it was alleged that there were large scale mal-practices in selection of those involved in the second process and accordingly Vigilance Case No. 23/2010 was registered. Thereafter, a PIL (bearing WP (PIL) No. 3594/2011) was filed by one Shri Budh Deo Oraon. In this PIL, the candidates who were selected in the first selection were not made parties. However, the allegations were made that the first selection was also tainted and therefore the CBI should investigate in respect of both the selections. Pursuant thereto, the FIR was registered even with regard to first selection on 26.04.2011 as Case Crime No. 10/2011 on 14.06.2012.

It appears that in the meantime the State had terminated the services of 19 selected candidates from the second examination. The affected candidates moved the High Court and the High Court set aside the order of the State on 28.06.2011. This order of the Single Judge was challenged in LPA No. 254/2011. The LPA and PIL were heard together. In this LPA, on 14.06.2012, an order was passed that both the FIRs be investigated by the CBI. It was further directed that monitoring would be done by the High Court and stay was granted for re-instatement of those 19 candidates whose termination had been set aside by the Single Judge. The High Court not only set aside the order of the Single Judge with regard to re-instatement of 19 candidates but went on to hold that all the candidates in 2nd Combined Civil Services Examination selected pursuant to Advertisement No. 7 of 2005 would not be allowed to work and draw their salary till further orders of the

High Court. This order was challenged before this Court.

The special leave petition filed by the parties was disposed of vide judgment dated 11.07.2014 which order was finally corrected on 27.01.2017. The relevant portion of the order, as corrected, reads as follows:

“Having heard learned counsel for the parties, we direct that the said paragraph should be read as follows:- In pursuance of the aforesaid order certain employees had been employed and are working presently. The Division Bench of the High Court wherein direction has been given for CBI investigation is monitoring the same. The High Court may do needful in the matter as per law and we are only inclined to set aside the direction pertaining to monitoring of investigation by the High Court. Regard being had to the interim order passed we are inclined to direct that the direction passed by the Division Bench to the effect that the candidates selected in 2nd Combined Civil Services Examination held pursuant to Advertisement No. 07 of 2005 would not be allowed to work and draw their salary till further orders of the High Court is set aside. However, we may hasten to add that the persons who are working presently shall continue till the High Court finally decides the *lis*. Needless to emphasize, while deciding the controversy the High Court shall be guided by the decisions of this Court and the concept of service jurisprudence.”

The effect of the order of this Court is that this Court set aside the direction pertaining to monitoring of investigation by the High Court. It confirmed the order of the High Court in so far as the investigation into both these examinations was to be conducted by the CBI. This Court further directed that the candidates selected pursuant to the 2nd Combined Civil Services Examination be allowed to work. This Court made it clear that this would be subject to the final decision in the *lis* between the

parties.

The PIL petitioner filed MA No. 980 of 2019 in this Court which came up before this Court on 22.07.2019. The grievance of the PIL petitioner was that despite 2½ years having been lapsed, the CBI had not completed investigation. This Court passed the following order:

“Notice be served on the C.B.I. through the Central Agency, returnable within two weeks.

C.B.I. to submit a report on the status of the investigation.”

On the next date, the matter was listed before this Bench when a status report was filed by the CBI and we passed a detailed order with regard to 12 cases but we are mainly concerned with the following portion of the order which reads thus:

“Learned counsel for the C.B.I. states that delay has occurred because re-evaluation of the answer scripts to be carried out. He prays for direction in this regard.

We permit the C.B.I. to get the answer scripts reevaluated and grant four months time to do the needful.”

The main grievance by Mr. P.S. Patwalia, learned senior counsel appearing on behalf of some of the selected candidates of the 1st Combined Civil Services Examination is that this order was obtained by withholding certain facts from this Court and he has specifically made reference to the order of the High Court dated 07.03.2014, which according to him only allowed the CBI to again

approach the Magistrate for getting the answer scripts of the selected candidates re-evaluated. His argument is that this order was not brought to the notice of this Court. If that order had been brought to the notice of this Court, this Court may not have passed the directions in the manner in which they passed. He also contends that the CBI was bound to approach the Trial Court for obtaining necessary directions in this behalf. His final submission is that the selected candidates not being parties to these cases, such orders could not have been passed.

As far as the last objection is concerned, we find no merit in the same because according to us a person who is an accused has no business in challenging the manner of investigation unless it invades his personal liberties or rights.

We, however, do feel that it would have been better if the PIL petitioner or CBI had brought the order dated 07.03.2014 to the notice of this Court. Having held so, we do not feel that our order is such that it runs counter to the order of the High Court dated 07.03.2014.

The background of the order of 07.03.2014 is that the CBI filed an application before the Special Judge, CBI, Ranchi praying that the answer scripts of the selected candidates be got re-evaluated from the JPSC. It appears that this application was allowed by the Special Judge. The answer scripts in some subjects were re-evaluated by JPSC but thereafter JPSC stopped re-evaluating

the same and approached the High Court challenging the order of the Special Judge dated 23.04.2013 permitting such re-evaluation by the JPSC on the ground that the rules did not allow re-evaluation of the answer scripts by JPSC.

The High Court held that though the CBI had the power to investigate the matter in the manner which it felt like but in view of the regulations pertaining to the Public Service Commission, which do not permit re-evaluation of the answer scripts, such direction for re-evaluation could not have been given by the Special Judge.

Shri P.S. Patwalia, learned senior counsel has made specific reference to certain observations of the High Court which read as follows:

"I may agree to the proposition that the prosecuting agency may not have any bar or barrier to go for reevaluation. It is well within the power 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."

The contention is that these observations of the High Court clearly indicate that the CBI should again approach the Magistrate for directions to get the answer scripts re-evaluated. We are not in agreement with this submission because in the final direction, the High Court held as follows:

"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 23.04.2013 certainly suffers from illegality."

We are of the view that the manner in which investigation is to be carried out must be decided by the Investigating Agency. Further it is for the Magistrate exercising power under Section 156, CrPC to see whether the investigation is properly conducted or not. It is for the Investigating Agency to investigate a crime in the manner which it feels is the best. It can approach the Magistrate for assistance or specific orders when there is something beyond the scope of investigating agency for which orders of the Magistrate are required but the investigating agency can carry out the investigation, without orders of the Magistrate. It

is not necessary that for every facet of investigation, orders from the Magistrate are required. That is not the purpose of the CrPC.

In the status report filed in a sealed cover, the CBI had made following observations (since this observation has no secrecy involved in it, we are quoting this portion of the report):-

“The field investigation in this case is almost complete. Re-evaluation of answer sheets of all successful candidates by independent panel of examiners remains to be done and thereafter decision would be taken with regard to filing of the chargesheet.”

As already observed by us, it would have been better that the CBI or the PIL petitioner had brought to our notice. Having held so, we feel that the CBI in its report did not ask for a direction of re-evaluation but was only asking for time to complete the re-evaluation process. We would like to clarify that our order should not be read as a direction to the CBI to conduct re-evaluation but only to be read as extending time to complete the investigation including re-evaluation of the answer scripts.

Shri P.S. Patwalia, learned senior counsel has raised doubts with regard to the veracity of investigation process of the answer scripts. It is for the trial Court to decide whether re-evaluation is proper or improper. It is for the trial Court to decide what is the evidentiary value of such re-evaluation. We make it clear that the trial Court shall not be influenced by any observations in the previous orders of this Court where we have extended time

permitting the CBI to carry out re-evaluation process. Needless to say that during the course of trial or at the time of framing of charges, it is open to the applicants before us to raise all grounds available to them. Our observations should not be read to mean that we have given our approval to the re-evaluation process.

The Miscellaneous application stands disposed of in view of the fact that this Court is not monitoring the investigation.

.....J.
[DEEPAK GUPTA]

.....J.
[ANIRUDDHA BOSE]

NEW DELHI;
OCTOBER 17, 2019.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

M.A. No. 980/2019 in C.A. No. 6312/2014

PRAVEEN KUMAR PRAKASH & ORS.

Petitioner(s)

VERSUS

THE STATE OF JHARKHAND & ORS.

Respondent(s)

(FOR IA No.79738/2019-CLARIFICATION/DIRECTION and IA No. 124558/2019 - APPLICATION FOR PERMISSION and IA No. 124561/2019 - INTERVENTION/IMPLEADMENT and IA No. 124681/2019 - RECALLING THE COURTS ORDER and IA No. 124563/2019 - RECALLING THE COURTS ORDER)

Date : 17-10-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Parties

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Mr. Jamnesh Kumar, Adv.
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Mr. Nirmal Kumar Ambastha, AOR
Ms. Ashmita Bisarya, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The miscellaneous application stands disposed of in terms of the signed order. Pending applications stand disposed of.

(MEENAKSHI KOHLI)
COURT MASTER

(RENU KAPOOR)
COURT MASTER

[Signed order is placed on the file]