

27.09.2022
Item No.1&2
Ct. No.17
S.A.

WPA 2005 of 2022

Santanu Sit & Ors.

-vs-

The State of West Bengal & Ors.

With

WPA 15010 of 2022

Rahul Chakraborty & Ors.

-vs-

The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Dibyendu Chatterjee
Ms. Jhuma Chakraborty
Ms. Reshmi Ghosh
Ms. Piyali Paul

...for the petitioners
in WPA 2005 of 2022

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Sudipta Dasgupta
Mr. Arka Nandi
Ms. Dipa Acharyya
Mr. Sutirtha Nayek

...for the petitioners
in WPA 15010 of 2022

Mr. Supriyo Chattopadhyay
Ms. Iti Dutta

...for the State
for both the matters

Mr. Saikat Banerjee
Mr. Ratul Biswas
Mr. Kaushik Chowdhury

...for the Board
for both the matters

Mr. Sauvik Nandy

...for NCTE
in WPA 2005 of 2022

By my order dated 09.09.2022 I directed the West Bengal Board of Primary Education to file one report in the form of an affidavit disclosing some dates

and facts. Today such a report in the form of an affidavit has been filed by the said Board. From the said report it is found that the decision of recycling all OMR sheets were taken in the meeting of the West Bengal Board of Primary Education on 03.04.2017.

When another matter (WPA 15010 of 2022) was taken up along with this matter as the other matter was a similar matter, a supplementary affidavit was filed by the petitioner therein (in WPA 15010 of 2022) wherefrom it appears that even after so called recycling of the OMR sheets, a copy of one OMR sheet was supplied to a candidate.

The report which has been filed today by the Board does not show the mode of destruction or recycling of OMR sheets and it never shows sending the same to a paper mill. So, mode of destruction is not here. In respect of the names of witness officials of the Board before whom the OMR sheets were destroyed, it is stated that there was no official witness of the Board present when the OMR sheets were put in bags and such bagging was done by the confidential processors' staff and their other officials. Therefore, the Board cannot say with responsibility that it was the OMR sheets of TET 2014 which were bagged for sending those to the paper mill. Even in respect of how many OMR sheets were destroyed it has been stated that approximately 12.95 lakhs OMR

sheets were scrapped; but it is not known when there were 20 lakhs candidates in the TET (even if any OMR sheet was destroyed/recycled at all) whose OMR sheets was destroyed/recycled. In respect of the question of real method of destruction of the OMR sheet the confidential processor's report has been quoted by the Board by saying that OMR sheets were sent directly to the paper mill after those were bagged. So the Board also does not know how it was destroyed or recycled at all. It is clear from the report that there was no floating of tender for destruction or recycling of the OMR sheets. Therefore, the performance of the Board in respect of, be it destruction, be it recycling, of the OMR sheets is extremely casual, doubtful and not according to the standard expected from a statutory authority.

In course of the argument, Mr. Banerjee, learned advocate for the Board has relied upon two judgements. One reported in (2011) 8 SCC page 497 (CBSE vs. Aditya Banerjee) and he has relied upon paragraphs 53 to 55 of the said judgement. In paragraph 54 of the said judgement I have noticed that Supreme Court held that if there were rules and regulations of the public authority for destruction of the answer scripts, then it can be destroyed in accordance with the said rules and regulations.

But in this matter, no rules or regulations of the Board have been shown to me to substantiate that following the said rules and regulations the OMR sheets were destroyed/sent for recycling.

Mr. Banerjee has also relied upon one judgement of our High Court in MAT 79 of 2016 (Biswajit Ghosh vs. The State of West Bengal & Others) dated 11.03.2016 reported in 2016 SCC online Cal 6889. In the said judgement, the Division Bench of this court though followed the above case decided by Supreme Court (CBSE vs. Aditya Banerjee) and particularly referred to paragraphs 54 and 55 thereof but deviating from the law declared by the Supreme Court the said Division Bench held that the answer scripts could be destroyed otherwise also which, in my view, is per incurium.

Learned advocate Mr. Bhattacharya has submitted that this judgement of our High Court did not at all deal with the issue presently before us and the judgment never decided any of such issues and, therefore, it was a judgement sub silentio.

Therefore, I cannot accept the submissions made by Mr. Banerjee on behalf of the Board. Mr. Banerjee also submitted based on page 90 of the writ application being WPA 2005 of 2022 that the petitioners themselves wanted OMR sheets (digitalised data). This submission is also not

accepted by this court as it is not stated in the order that the petitioners wanted “OMR sheet’s digitalised data”. The court held that the petitioners demanded OMR sheets (digitalised data) which not only means digitalised data but also the OMR sheets. However, the petitioners of the other writ application being WPA 15010 of 2022 wanted copy of OMR sheets and not digitalized data.

Mr. Bhattacharya, learned advocate for the petitioners has relied upon one Supreme Court judgement reported in (2012)6 SCC 596 (Punam Rani vs. State of Haryana) to satisfy this court that the OMR sheets in this particular case were required to be preserved and there was no rules or regulations on the basis of which those could be sent for recycling. He also submitted that recycling does not mean destruction.

Mr. Bhattacharya further submitted that in Rule 12 of the West Bengal Primary School Teachers Recruitment Rules, 2016 the validity of the panel was for one year and it could be extended twice for six months i.e. for further one year. But the Board did not say anything that the panel would not be extended and, therefore, destruction/recycling of the OMR sheets have been done even before the statutory period expired. In this regard Mr. Banerjee submitted that when his client being the Board did not say

anything about the extension of the panel it is required to be held that the panel was not to be extended.

After hearing the parties I find that the report in the form of affidavit filed on behalf of the Board affirmed on 27.09.2022 shows tremendous irresponsibility and a clear culpable intention and criminal motive to show outwardly that the OMR sheets were sent for recycling. Nobody knew whether it were the OMR sheets which were destroyed/recycled. That report on the basis of a hand picked agency (no tender was called for this purpose) is not at all acceptable to this court though the name of the said agency has been given in the said report. This hand picking of one particular agency for recycling, according to the Board, of OMR sheets raises a serious doubt in the mind of this court as to the bona fide of the then officials of the Board who took the decision in the meeting dated 03.04.2017, minutes whereof has been annexed to the said report. In the report in the form of affidavit affirmed by the Secretary of the Board it has been made clear that the deponent (Secretary of the Board) was not a member of the said ad hoc committee which took the decision of recycling of the OMR sheets through one hand picked agency.

After considering the entire situation as appears from the report of the Board and from the supplementary affidavit (affirmed on 20.09.2022) filed in WPA 15010 of 2022 (vide pages 11 and 12) it is found that even after so called recycling of all the OMR sheets one OMR sheet was given to one Hemanta Chakraborty by the Board through the covering letter dated 10.07.2019 whereas the decision for recycling the OMR sheets were taken in the meeting dated 03.04.2017 and the purported bagging process for recycling the OMR sheets were done in December, 2017 to January, 2018. But nobody knows for the Board whether in those bags the OMR sheets were put or not or in the bag some other papers were put for destruction/recycling.

In such view of the matter, I direct the Central Bureau of Investigation (CBI) to start a case in respect of this purported recycling of OMR sheets by the earlier ad hoc committee of the West Bengal Board of Primary Education whose President was one Mr. Manik Bhattacharya and CBI should immediately start interrogating Sri Bhattacharya and if he does not cooperate, the said agency (CBI) shall have every authority to take him in custody. CBI shall also investigate in respect of the engagement of the agency to whom such job was given and it has been submitted from the Bar today that this agency does all

the work of the confidential section of the Board and it is not known how this agency was handpicked by the Board or its ad hoc committee. Therefore, all the actions of this agency shall also come under the scanner of CBI investigation.

I direct both the petitioners to supply immediately the copies of the writ application and the supplementary affidavit to the CBI in course of the day and I direct Mr. Manik Bhattacharya to attend CBI office today by 8 p.m.

The writ petitioners at the fag end of the hearing has submitted that CBI is to be added as party respondent in this matter. I direct them to add CBI as party respondent in course of the day and hand over all the papers to the Regional Joint Director of CBI, Anti Corruption Branch in Kolkata in course of the day. CBI is given one month time to file a comprehensive report after investigating this matter (CBI shall have the power and authority to interrogate any person they find proper and if any such person non-co-operates with CBI, it can interrogate him after taking such person into custody) before this court on 1st November, 2022 when this matter will be taken up at 2 p.m.

It is expected that the Joint Director will not engage any officer of CBI for investigating this matter

who failed to interrogate the persons in custody of CBI.

This court hopes and expects that CBI will perform its duty as is expected not only by this court but also a large number of citizens of this country.

(Abhijit Gangopadhyay, J.)

Later.

I also direct the Registrar General of this Court to communicate that Mr. Manik Bhattacharya has to attend CBI office by 8 p.m. today through the Assistant Commissioner of Police, High Court, Calcutta who is supposed to know the address and phone number of Mr. Manik Bhattacharya as Mr. Bhattacharya is a member of the Legislative Assembly of West Bengal.

(Abhijit Gangopadhyay, J.)