

SUPREME COURT OF INDIA

Pankaj Sharma

Vs.

State of Jammu and Kashmir

C.A.No.1997 of 2008

(C.K.Thakker and Altamas Kabir, JJ.)

14.03.2008

JUDGMENT

C.K.Thakker, J.

1. I.A. 1 of 2007 in and S.L.P. (C) No. CC No. 5233 of 2007 seeking permission to file SLP is allowed.

2. Leave granted in all the Special Leave Petitions

3. The present appeals are filed against the judgment and order passed by a Single Judge of the High Court of Jammu & Kashmir on November 10, 2006 in Original Writ Petition No. 442 of 2005 and cognate matters and confirmed by the Division Bench on December 28, 2006 in Letter Patent Appeal (OW) No. 70 of 2006. By the said order, the learned Single Judge partly allowed writ petitions filed by the petitioners and issued certain directions to Jammu & Kashmir Public Service Commission

4. To appreciate the controversy centered round the litigation, few relevant facts may be noted.

5. Selection process was initiated by the Jammu & Kashmir Public Service Commission ('Commission' for short) for filling up 132 posts of eighteen Gazetted Services as notified on April 1, 2005 by Jammu & Kashmir Combined Competitive Examination. The examination was held on July 3, 2005. The appellants-writ-petitioners appeared for the Preliminary Examination but were not successful for being considered eligible and qualified in the process of 'short listing' and could not appear at the Main Examination as also at Oral Interview. The selection process at the Preliminary Examination was challenged, inter alia, on the ground that it was defective inasmuch as there were spelling mistakes, printing errors, discrepancies, questions having doubtful answers and even wrong answers; etc., the course adopted by the Commission of deleting certain questions and adding those marks pro-rata to the remaining questions was not proper; the decision was also illegal and invalid as it was not taken by majority of Members of Commission; all the Members of the Commission did not

participate in the corrective process; only three Members over and above the Chairman were present; out of those three Members, two Members opposed the method sought to be suggested by the Commission and were against it. So far as the third Member is concerned, he was ineligible and disqualified to take part in the proceedings since his ward was one of the candidates/aspirants. He, therefore, could not have attended the Meeting and participated in the process, thus, leaving the decision to the Chairman alone. Such decision was wrongly described as the decision of the Commission. The entire process undertaken by the Commission was totally illegal, unlawful and arbitrary and was fraud on the Constitution and liable to be set aside by directing the Commission to hold Preliminary Examination afresh in accordance with law.

6. The Commission filed its counter- affidavit denying the averments made and allegations levelled. It admitted that there were certain errors in question papers but they were corrected by giving necessary instructions in time. It was also stated that in cases of errors of substantial nature in questions or wrong/doubtful answers, the Commission considered the matter, sought opinion of experts and decision was taken to drop those questions. It was also decided that the marks allotted to those questions would be added pro-rata to the remaining questions. It was not true that there were only three Members over and above the Chairman. In fact there were six Members (Chairman + five Members). The methodology was approved unanimously by all the Members and on that basis, the decisions were taken. Subsequently, however, two Members did not agree to certain decisions but even then the decisions were majority decisions and hence no fault can be found against final action taken by the Commission. It was also stated that so far as the Preliminary Examination is concerned, it was the first examination for considering eligibility of the candidates for Main Examination. It was thus limited for 'short listing' of candidates in the ratio of 1:13. So far as the final selection is concerned, it was to be made on the basis of Main Examination i.e. second examination which comprised of two phases; (i) Written Examination, and (ii) Oral Interview. Preliminary Examination, therefore, had no relevance and cannot cause prejudice or injustice to any candidate so far as the final selection is concerned. It was submitted that the Commission, by considering grievances of the candidates, salvaged the situation by ensuring that no injustice is done to any candidate. The petitions, therefore, were liable to be dismissed.

7. The learned Single Judge considered the rival contentions of the parties, perused the relevant record and the affidavit filed on behalf of the Commission as well as two separate affidavits filed by two Members of the Commission who dissented in the final process undertaken by the Commission and issued following directions:

"For the reasons stated above and in the facts and circumstances of the case, I allow all the writ petitions and direct the Public Service Commission as follows:

(a) To delete the following questions of each paper of "A" series and their corresponding questions in "B", "C" and "D" series and distribute their marks pro-rata to remaining questions of the papers:(i) to (xi)

(b) To separately redraw the merit of all the unselected candidates for the Main Examination in respect of compulsory paper of General Studies;

(c) To redraw the merit of all the unselected candidates for the Main Examination as per direction (a) in respect of said ten optional subjects;

(d) To separately redraw a combined merit list of such candidates who have appeared in the compulsory paper of General Studies and optional subject-papers, as mentioned in direction (a);

(e) Also to redraw a combined merit of compulsory paper of General Studies and optional papers of those candidates, in whose optional subject-papers there was no discrepancy, i.e., 12 remaining optional subjects, which include the subject-papers of Animal Husbandry, Botany, Indian History and Physics, and who have not been short-listed.

(f) To conduct the special Main Examination of all such candidates, whose such combined redrawn merit is equal to or more than the merit of last short-listed candidate, in accordance with the procedure prescribed by the Examination Rules;

(g) To complete the whole exercise within a period of six weeks;

(h) To pay an amount of rupees one lac and thirty thousands as costs to the writ petitioners, at the rate of rupees ten thousands in each writ petition, to be shared by them equally".

8. The order passed by the learned Single Judge came to be challenged by the aggrieved writ-petitioners by preferring intra-court appeals. The Division Bench in a brief order dismissed the appeals observing that it found 'no basis for any grievance' against the judgment of the learned Single Judge. The appellants have now approached this Court.

9. On February 2, 2007, the matter was placed for admission hearing and notice was issued. Parties were directed to file affidavits. On April 5, 2007, in I.A. No.2 of 2007 ad-interim relief was granted and though the proceedings were allowed to continue, it was ordered that no actual appointment should be made. The Registry was thereafter directed to place the matters for final hearing. That is how they are placed before us.

10. We have heard learned counsel for the parties.

11. The learned counsel for the appellants contended that the Commission in substance and in reality converted itself into a Single Member Commission and hence, all decisions taken by the Commission should be held to be without power, authority of law or jurisdiction. There were only three Members over and above the Chairman. Out of them, two were against the method suggested by the Chairman, and the third one was ineligible and disqualified leaving the matter only to the sweet will of the Chairman and as such the

decision was not of the 'Commission'. It was also submitted that there was no consensus on the part of the Members and hence exercise that has been undertaken by the Commission was not valid. The only alternate left to the Commission was to hold Preliminary Examination afresh and the High Court was in error in upholding the examination and in issuing certain directions. The Counsel contended that errors and mistakes in question papers were fundamental and essential. In compulsory as well as in optional subjects, questions were objective in nature. It was, therefore, obligatory on the Commission to ensure that the questions must be such having only one correct answer. Unfortunately, however, certain questions were totally incorrect, there were glaring mistakes, they were vague and ambiguous, there were more than one correct answer and they misled the candidates at the examination. Such examination cannot be said to be an examination in the eye of law and the High Court has seriously erred in upholding the examination even though it was satisfied that the errors were substantial which called for issuance of several directions. It was also urged that the entire process of examination by the Commission was from the very beginning illegal, discriminatory and violative of the rules framed by the Commission and on that ground also the examination was liable to be set aside. A grievance was made that no expert on the subject was ever consulted as stated by two dissenting members in their communication to the Commission as also in the affidavits-in-reply filed before the High Court. Results were prepared secretly as per the wishes of the Chairman under the so called label of 'secrecy of exams' and there was no element of transparency. Ch. Bashir Ahmed, one of the members of the Commission, could not have participated in the examination process or in considering methodology to be adopted, as his son was one of the candidates who was to appear in the examination. He should have abstained and secluded himself from attending meetings and expressing his opinion in the process undertaken by the Commission. According to the counsel, no timely action was taken by the Commission. It was asserted by the Commission that as soon as the complaints were made by the candidates about wrong/incorrect/vague/ doubtful/ambiguous questions and the attention of the Commission was invited by respective supervisors, instructions were issued immediately and clarifications were conveyed. But in fact, it was not done. Even the learned Single Judge recorded a finding that no such corrective steps appeared to have been taken as claimed by the Commission. In view of the said finding, the learned Single Judge was wholly wrong in upholding the process by adopting so called 'corrective measures'. Again, the professed 'pro-rata method' was applied only in case of those candidates who were not selected. The said process benefitted only 'unselected' candidates who could not secure 'cut off' marks. The action was discriminatory and amounted to adopting different yardsticks amongst similarly situated candidates inasmuch as the benefit was not extended to those candidates who got themselves selected thereby depriving them of the benefit of 'pro-rata' marks. In other words, according to the learned counsel, equals were treated unequally by giving advantage to some candidates and depriving the same advantage to others who were equally entitled to it. Thus, the entire process of conducting Preliminary Examination was illegal, unlawful, unreasonable, discriminatory and violative of Articles 14, 19 and 21 of the Constitution.

12. So far as the order passed by the Division Bench is concerned, it was submitted that though questions of constitutional importance having far-reaching consequences were raised before the Division Bench, the Bench did not consider them in their proper perspective and

by a cryptic and laconic order, dismissed Letters Patent Appeals observing that it did not find any reason to interfere with the order passed by the learned Single Judge. On all these grounds, it was submitted that the appeals deserve to be allowed by setting aside the order passed by the learned Single Judge and confirmed by the Division Bench of the High Court and by issuing direction to Commission to hold Preliminary Examination afresh in accordance with law.

13. The learned counsel for the Commission, on the other hand, supported the order passed by the High Court. The counsel submitted that the basic assumption of the aggrieved writ-petitioners was that the decision was taken only by Chairman of the Commission. According to the writ-petitioners, there were only three Members over and above the Chairman; out of them two were against the method suggested by the Commission to salvage the situation, one was ineligible or disqualified to participate in the proceedings which left the Commission with the Chairman alone, who as per his whims and sweet will undertook the exercise. The reality, however, was otherwise. According to the counsel, over and above Chairman, there were five members. Certain decisions were taken unanimously by the Commission. In some meetings, one of the Members was not available, but he also subsequently agreed. The device was approved, decisions were arrived at, grievances of candidates were redressed and their interests were protected. With regard to certain decisions, no doubt, there was no unanimity but there was majority and under the relevant rules, such action could have been taken. According to the counsel, as soon as the attention of the supervisors was invited to certain wrong, incorrect or doubtful questions and the Commission was informed by the supervisors, necessary instructions were given on behalf of the Commission to get the questions corrected or ignored and those instructions were duly communicated to the candidates. Though the learned Single Judge decided the point against the Commission and issued consequential directions, the Commission, in due deference to the Court and in the larger interest of student-community, accepted the finding and did not challenge that part of the order before the Division Bench. It, therefore, could not be said that any injustice had been done to any candidate. It was also submitted that when wrong, incorrect or doubtful questions were ordered to be deleted or ignored and marks of those questions were added pro-rata to the remaining correct, valid and legal questions, no complaint can be made against such step. The counsel submitted that no injustice was caused to selected candidates. It is an admitted fact that the first examination was Preliminary in nature and was only for short listing candidates in the ratio of 1:13. Once a candidate clears that examination, he stands qualified for the entry to the second stage i.e. Main Examination. For the purpose of actual selection, the marks obtained at the first examination (Preliminary Examination) had no relevance. Marks at the Main Examination (Written Test and Oral Interview) were material. Hence, it cannot be urged by those candidates who could not qualify at the Preliminary Examination that grant of pro-rata marks to unsuccessful candidates had caused injustice to successful candidates. The said contention had been advanced only with a view to prejudice the Court, though it is altogether irrelevant, immaterial and no grievance has been made by any successful candidate that he ought to have been given more marks in Preliminary Examination on the basis of pro-rata method adopted by the Commission. It was also submitted that the Commission is a 'constitutional functionary' and was expected to exercise its power in accordance with law. For that purpose, rules have been framed and in

accordance with those rules, examination was taken. The law neither provides for fresh examination nor revaluation of marks. After complaints were received by the Commission about incorrect/wrong/doubtful answers, experts were consulted, their suggestions were considered and decisions were taken. The entire record was placed before the learned Single Judge. The learned Single Judge, after perusing the record and hearing the parties, issued certain directions which the Commission gracefully accepted, undertook the exercise and redrew the merit-list which benefited certain candidates who were not selected earlier. Most of the writ-petitioners, however, were very much below in ranking and it was impossible for them to get qualified in 'short listing process' and, as such, they could not have legitimate ground to make any grievance. Their only attempt is to get the Preliminary Examination set aside and to appear at the fresh examination if so ordered by the Court. Such action would cause serious prejudice and grave injustice not only to the Commission but also to those who are declared eligible and qualified in the 'short listing process' at the Preliminary Examination. On all these grounds, it was submitted that the appeals deserve to be dismissed.

14. Having heard the learned counsel for the parties and having given anxious consideration to the rival contentions raised by the counsel, in our opinion, no case has been made out by the appellants to interfere with the order passed by the learned Single Judge and confirmed by the Division Bench. As observed by the High Court, the Combined Services (Preliminary) Examination, 2005 was held by Jammu and Kashmir Public Service Commission for selecting 132 candidates of eighteen Gazetted Services as notified on April 1, 2005. For making selection of candidates for direct recruitment, the basis was Combined Competitive Examination. In exercise of power under sub-section (1) of Section 133 of the Constitution of Jammu and Kashmir, the Commission framed rules known as the Jammu and Kashmir Public Service Commission (Business and Procedure) Rules, 1980. They inter alia provide procedure for transaction of business, quorum, decision of the Commission, recording of minutes, etc. The procedure for conducting such examination was governed by the rules known as the Jammu and Kashmir Combined Competitive Examination Direct Recruitment Rules, 1995, issued and notified under SRO 161 of 1995, dated July 17, 1995. The Rules of 1995 envisaged Combined Competitive Examination in two successive stages;

“(i) Combined Services (Preliminary) Examination (Objective Type) for the selection of candidates for the Main Examination; ('Screening Test'); and

(ii) Combined Services (Main) Examination (Written and Interview) for selection of candidates for various services and posts ('Selection Test').”

15. The Preliminary Examination consisted of two papers(i) Compulsory Paper of General Studies; and (ii) one Optional Subject chosen by the candidate out of 22 specified optional subjects set out in Appendix-IX to the Rules. Preliminary Examination was meant to serve only as a 'screening test' and the marks obtained by the candidates at the Preliminary Examination were limited to get entry and to be treated as qualified for the Main Examination and were not to be counted for determining their final order of merit or selection. The number of candidates to be admitted to the Main Examination on the basis of Preliminary Examination was in the ratio of 1:13 total approximate number of vacancies to

be filled up in various services. It was also provided in the rules that only those short listed candidates who had obtained such marks in the Preliminary Examination as fixed by the Commission at its discretion and declared by the Commission as qualified in the Preliminary Examination were allowed to appear in the Main Examination provided they were otherwise eligible for admission to the said Examination.

16. The Main Examination again was in two phases; (i) Written Examination, and (ii) Oral Interview. Written Examination comprised of papers of conventional essay type, out of which one paper was to be of qualifying nature only, in the subjects set out in Appendix-IX as per the detailed syllabus in Appendix-IB. Candidates who obtained minimum qualifying marks in the Written Examination as fixed by the Commission were to be called for Oral Interview in the ratio of 1:3; i.e. three candidates as against one post.

17. The Commission vide its Notification dated April 1, 2005 invited applications from the candidates for Preliminary Examination, Jammu and Kashmir Combined Competitive Examination, 2005. In response to the advertisement, 17,116 candidates applied. Preliminary Examination was conducted by the Commission simultaneously at Jammu and Srinagar on July 3, 2005 at 24 Centres wherein 15,293 candidates appeared. The compulsory paper in the subject of General Studies carried 150 marks for 120 questions, each question containing 1.25 marks, whereas Optional Paper out of 22 subjects was of 300 marks for 120 questions, each question having 2.5 marks.

18. It appears that at the Preliminary Examination, a large number of complaints were made by the candidates that there were several errors, misprints, spelling mistakes, questions having doubtful, double and even wrong answers, etc. In the light of the complaints made by examinees on July 6, 2005, a Press Note was released in leading newspapers as well as on electronic media by the Commission assuring the candidates that their representations/complaints/grievances would be duly considered while preparing the result.

19. The text of the Press Note may be reproduced for ready reference;

"Some candidates who appeared in J&K Combined Competitive (Preliminary) Examination, 2005 on 03.07.2005, have brought to the notice of the Commission some instances of misprints/discrepancies relating to questions in certain disciplines. The Commission has taken note of these representations and also consulted experts in the relevant fields, wherever necessary. The Commission would like to assure the candidates that due consideration will be given to such representations; while evaluating their response sheets."

20. Immediately on the next day, i.e. July 7, 2005, a meeting of the Commission was held which was attended by its Chairman, Mr. M.S. Pandit, Mr. M.S. Khan, Mr. C.L. Bansal, Ch. Bashir Ahmad and Dr. N.A. Jan. Prof. B.K. Tiku (a member) was not available on that day and, hence, could remain present. The meeting discussed the issue in detail and devised a scheme in the light of representations. The Commission unanimously decided that such of the reported questions as were admittedly wrong should be deleted and the marks of deleted

questions be added pro-rata to the rest of the questions so that no prejudice would be caused to candidates. The relevant extract of the decision of the Commission, along with names of members who participated, reads thus;

S/Shri

1. M.S. Pandit
2. M.S. Khan
3. C.L. Banaal
4. Ch. Bashir Ahmad
5. Dr. N.A. Jan

"The KAS/ Combined Services Competitive Examination, 2005 was held at 24 centres and many more sub centres spread over cities of Jammu and Srinagar on 3rd July, 2005. During the course of examination a number of candidates/aspirants represented that both in General Studies paper as well as in optional papers there were a number of incorrections in the form of wrong questions, directionless questions, repetition of questions and so on. Through a press release the candidates for the aforesaid examination were assured that their representations will be considered in consultation with subject matter specialists and necessary adjustments will be made in the evaluation of response sheets and awards there. Accordingly, based on the representations received so far, experts/heads of the departments from various institutions/universities were requested to go through General Studies and Optional papers concerned. Based on their scrutiny and recommendations adjustments were made in the number of questions and consequential awards out of the permissible maximum marks of the question papers. The commission approved the modus operandi for making necessary adjustments based on such representations."

21. The Commission also received certain representations from aggrieved candidates thereafter. On July 11, 2005, an extra-ordinary meeting of the Commission was convened and a decision was taken that the result of all candidates who appeared in the Preliminary Examination be prepared indicating separately marks obtained in General Studies and Optional papers and the result to be brought formally for approval before the Commission. Thereafter, the candidates in various categories should be asked to appear in the Main Examination. The Chairman of the Commission and all the five members attended the meeting and took the following decision;

S/Shri

1. M.S. Pandit
2. M.S. Khan
3. C.L. Banaal
4. Prof. B.K. Tiku
5. Ch. Bashir Ahmad
6. Dr. N.A. Jan

"Item No.1:- J&K Combined Competitive (Preliminary) Examination, 2005 regarding thereof. More representations were received regarding irregularities observed in the

General Studies as well as optional papers in the recently held combined Services Competitive (Preliminary) Examination, 2005. The representations were scrutinized in consultation with the examiners of relevant subjects and subject expert. Necessary actions to be taken in the matter on the lines previously discussed in the Commission was approved.

It was also decided that the result for all the candidates who appeared at the examination be prepared indicating separately the marks obtained in General Studies and optional papers. The result will be brought formally for the approval by the Commission before the same is notified for general information. After this is done, the candidates in various categories to be called to appear at the Main Examination will be short listed."

22. From the above decisions, it is clear that though in the Meeting dated July 7, 2005, Prof. B.K. Tiku was not present, in next meeting which was convened on July 11, 2005, he was also present and unanimous decision was taken by the Commission.

23. On July 12, 2005, again a meeting was called which was attended by all the six Members, i.e. Chairman and five members. The Commission on that day formally approved the result of Jammu and Kashmir Combined Competitive (Preliminary) Examination, 2005 unanimously. The said decision reads as under;

"The Commission approved the result of the J&K Combined Competitive Examinations, 2005 held on 3rd July, 2005 and desired that the result be got published in print media as well be put on the Commission website. It was noted that while preparing the result the representations received from the candidates have been given due consideration."

24. The writ petitioners were unsuccessful in getting berth in the 'screening test' since they were not able to get the requisite marks. Being aggrieved by the exclusion from the competition and getting entry to the Main Examination, they approached the High Court by filing writ petitions.

25. For completion of record, it may be stated that on July 14, 2005, a meeting of the Commission was held wherein one of the members (Dr. N.A. Jan) stated that he had agreed to the deletion of various questions as per the decision dated July 7, 2005. He had, however, reservations as to the procedure followed for dealing with the representations received from candidates in respect of several papers set up by the Commission. He was joined in that regard by Prof. B.K. Tiku who also had raised objection against the procedure followed by the Commission. The relevant extract of the said meeting is as under;

"Item NO. 11.1:-Confirmation of minutes of 10th meeting of the Commission held on 07.07.2005. The minutes were confirmed with the observation from the Hon'ble Member Dr. N.A. Jan that although he had agreed to the deletions of various questions brought before the Commission, his reservations regarding the procedure

followed for dealing with the representations received from the candidates in respect of various papers set for the J&K Combined Services Competitive (Preliminary) Examination, 2005 be placed on record. He was joined in this regard by Prof. B.K. Tiku. The specific objection what they had to the procedure adopted was not mentioned by them.”

26. It was contended by the Commission that earlier both the members, i.e Prof. B.K. Tiku and Dr. N.A. Jan agreed to the methodology adopted by the Commission to cure the defects and accorded their approval. They, however, took 'U' turn to the earlier position and decided to disassociate from further process by the Commission. On July 26, 2005, the Chairman of the Commission received a Note submitted by Dr. Jan which read thus;

"Please refer to the minutes of the 10th meeting and 11th meeting held on 07.07.2005 and 14.07.2005 that the modus operandi for making necessary corrections/deletions in the question papers of both optional as well as General Studies of KAS (Preliminary examination), regarding wrong answers, wrong questions, directionless questions, repetition of questions and doubtful key of the relevant subjects was raised a number of times before declaration of results. I had raised these observations, from 3rd July 2005 regularly soon after examination were over at various centres and therefore, the entire process regarding the subject mentioned above was not in accordance with the laid down procedure/norms. The procedure adopted for corrections was not properly followed and standard procedure was not adopted. Therefore, I was not in agreement with the modus operandi adopted therein, during the process. In actual practice, those examiners, who have set these papers, should have been called, along with Local Senior Experts, in the subject not less than a Professor in the University and these should have been given a free hand, to go through these documents. No reference Books were provided, to the experts as you can not expect an expert to be well versed in all relevant disciplines in a particular subject. Without having a Text Book/Reference Books at his disposal, besides spelling mistakes, were not mostly taken into consideration and due to confused questions, a lot of time was wasted with the result candidates have complained regarding the loss of time and loss of concentration and most of the candidates suffered on this account, with no fault of their and have not been sufficiently compensated thereof. In view of the large scale complaints regarding most of the subjects including General Studies and Optional papers, misprints, wrong answers, defective key out of the syllabus questions, repetition of questions and confused questions with the result the candidates were not in a position to solve the questions in the manner it would have been done. Before finalization of the result I have several times pointed out that in view of large scale changes involved it would be appropriate to go for fresh examination for all those papers, which were defective in nature. I had also suggested that sufficient time; at least fifteen days from the date of examination i.e. 03.07.2005 be provided to those candidates who would like to put forth their grievances. I have also suggested that in those papers where no representation was received, they should also be checked, so that all doubts are cleared. But unfortunately all my suggestions were not only brushed aside but given a cold shoulder. Besides in view of amendments in the

Examination rules, there is no role of a member in the examination process, therefore declaration of result is a mere formality. My suggestion for improvement of examination system viz Maharashtra State Model was also brushed aside which I had been raising since February, 2005. In view of above, I do not associate myself with the process of KAS Examination except the recording of number of questions which were at random deleted.

Sd/-
(Dr.N.A.Jan)"

27. Meanwhile, minutes of the meeting dated July 14, 2005 were confirmed (by majority) by the Commission on July 26, 2005. On July 28, 2005, the Chairman of the Commission recorded observations on the Note submitted by Dr. Jan referred to above and stated;

"This obviously seems to be an after thought in view of the fact that the methodology for dealing with the representations regarding errors/ discrepancies in some papers of the (Prelims) Examination was discussed in detail by the Commission at its meetings held on 07.07.2005 and 11.07.2005, at which Dr. Jan was present. The errors pointed out by him with regard to certain papers (in hand written sheets) including Geography about which he had a long list were discussed at length and the concerned examiner and expert were consulted. Based on this exercise, the questions to be deleted were recorded in brief minutes, which were signed by the Hon'ble Member. The manner of giving relief to the candidates in respect of deleted questions stands reflected in the minutes of the said meetings, which were subsequently confirmed. The Hon'ble Member was also present at the meeting held on 12.07.05, at which the result of (Prelim) Exam were authorized for circulation. It was only 14.07.2005, when Dr. Jan, first mentioned his dissent. Even at that meeting, he was not specific with regard to his objections, and this stand reflected in the minutes of the said meeting. The note of dissent has been recorded on 20.07.2005, long after the declaration of results, and does not contain any specific points on which action can be taken at this stage, particularly all aspects of the issue, including the alternatives suggested by the Member have been taken into consideration. The alternative of holding fresh examination in some of the subjects ruled out for the reason that after making adjustment for certain questions, no inequality survived and therefore, holding fresh examination at great cost and effort would go against public interest. Incidentally, the note overleaf refers to 'defective key to questions'. I wonder how the Hon'ble member reached this conclusion, because no one in the Commission (except those authorized under the Examination Rules), and nobody outside the Commission, had any access, nor has any access, to the key. Therefore, any reference in this regard, seems to be based on some pre-conceived notion, which obviously is not valid. The point made by the Hon'ble Member with regard to Maharashtra State Model, had been taken into consideration by the Commission at its marathon sittings, at which the Examination Rules were finalized. Please keep these notes on record

Sd/-
Chairman"

28. On August 8, 2005, another member (Prof. B.K. Tiku) also sent a note the Chairman of the Commission which read thus;

"This has reference to the minutes of the 10th and 11th meeting held on 7th and 14th July, 2005 respectively, wherein the procedure adopted for making necessary corrections/deletions in the question papers of both optional as well as General Studies of KAS (Preliminary examination), regarding wrong answers, wrong questions, and doubtful key of the relevant subjects was discussed many times before declaration of results. I had raised these objections from 3rd July, 2005 regularly soon after examination were over and to me it appeared that the entire process regarding the subject mentioned above was not in accordance with the laid down procedure/norms. The procedure adopted for corrections was not properly followed. The Chairman arbitrarily adopted the criteria for deletion of questions for the reason best known to him. Therefore I was not in agreement with the modus operandi adopted therein, during the process. In actual practice those examiners, who have set the papers, would have been called along with local senior experts, in the subject not less than professor in the University and these should have been given a free hand to go through these documents. This is insisted every time whenever the discussion regarding the subject would take place. I was prompted to insist on this point keeping in view my experience of 35 years as a teacher and as an expert examiner for number of Universities in the country for nearly two decades. In view of the large scale complaints regarding most of the subjects including General Studies and Optional papers, mis-prints, wrong answers, defective key out of the syllabus questions and confused questions with the result the candidates may not have been in a position to solve the questions in the manner normally they would have done. Before finalization of the result I had several times emphasized that in view of large scale changes involved it would be appropriate to go for fresh examination for at least those papers, which were largely defective in nature. I have a genuine strong feeling that the procedure adopted for rectifying the mistakes is not fair at all and may be that it might have resulted in injustice to a large number of candidates for no fault of theirs. Today on 5th August, 2005 Commission meeting was held at 3.30 pm to give approval to the result of the Competitive Examination (KAS Prelim). A result copy was circulated among the members for giving approval for declaration of the result but I did not sign it as I have not approved the modus operandi, which to me appears the mistakes in the question papers as elaborated above in detail. My reasons for not approving and thus not signing the result copy is as per my inner conscience which has not permitted me to give my approval for declaration for the result of the said examination in view of the above mentioned facts. This may please be minuted in the proceedings of the Commission meeting held today the 5th of August, 2005.

Sd/-

(Prof. B.K. Tiku)"

29. The Chairman of the Commission made his observations to the said note thus;

"Hon'ble Member had for reasons best known to him, disassociated himself with the examination process for KAS (Prelim), without specifying any cogent reasons therefore. This finds mention in the minutes of the meeting of the Commission which already stand confirmed. It was only after he was requested to put in writing his objections that he wrote this note. In the present note, inter alia, he has mentioned that the question of 'doubtful key' of answers was also discussed. Nobody including the Hon'ble Members and the examinees had any access to the key prepared by the examiners of the relevant subjects. Any doubts raised in this regard, obviously show a prejudiced and preconceived mindset. In any case, it is the Commission, with the strength of four members and the Chairman which took a conscious decision to deal with the errors occurring in the question papers in accordance with a rational modus operandi, and finally adopted the results of the Prelim Exam. After having given due and just consideration to the representations submitted by the candidates up to 10th July, 2005. The note be kept on record.

Sd/-
Chairman

30. Since both the dissenting members wanted their dissenting views to be reflected in the objections/counter to be filed in the Court on behalf of the Commission, the matter was placed before the Commission in its extra-ordinary meeting held on September 12, 2005 in which over and above Chairman, three members were present including both the members who submitted dissenting note, namely, Prof. B.K. Tiku and Dr. N.A. Jan and decision was taken in the meeting which read thus;

“S/Shri

1. M.S. Pandit
2. Pro B.K. Tiku
3. Ch. Bashir Ahmad
4. Dr. N.A. Jan

The decision taken in the meeting is reproduced below:--

"Objections and affidavits filed in the High Court cases viz. Kuldeep Kumar & Others vs. State of J&K & others, Ravinder Singh Sahi v. State of J&K & Ors. and Shiv Gandotra Vs. State of J&K & others had also been circulated amongst the members of the Commission and were discussed during the meeting. The Hon'ble Members, Prof. B.K. Tiku and Dr. N. A. Jan reiterated their reservations in regard to the methodology adopted for dealing with the representations regarding errors/ discrepancies in some of the question papers. They wanted these reservations to be reflected in the objection/counter filed on behalf of the Commission. The Hon'ble Members were informed that while their observations had already been taken on record, the objections raised by individual Members cannot be given place in the affidavits filed/to be filed before the Hon'ble Court based on the decision taken by the Commission."

31. On September 13, 2005, Prof. Tiku and Dr. Jan once again sent a note to the Secretary reiterating their dissent and insisting that their dissenting views should be reflected in the reply to be filed by the Commission. On September 15, 2005, the Commission again discussed and approved the affidavit-in-reply to be filed in the Court in which the above five members including Chairman were present and the following decision was taken;

"It was explained that the objections and affidavit in this case has been prepared on the lines of objections and affidavit prepared in similar type of writ petition cases and circulated to Members earlier and the same should be filed under the signatures of Secretary."

32. Before the learned Single Judge, broadly two questions were raised; (1) In two papers, namely (i) General Studies, and (ii) Optional Subjects, there were several mistakes and errors; certain questions were incorrect, some questions had wrong/vague/ambiguous answers or more than one correct answer, the candidates were not in a position to understand those questions which put them in disadvantageous position and they were made to suffer without there being any fault on their part. Such action could not be said to be in consonance with law and the examination was liable to be set aside. (2) The Commission failed to follow Examination Rules as also Procedural Rules and the decision taken by the Commission could not be said to be a decision of 'Commission' and the examination conducted by the Commission was not in consonance with law.

33. The stand of the Commission, on the other hand, was that in conducting the examination, relevant rules were strictly followed, wrong questions, questions having more than one answer or questions which were not sufficiently intelligible were totally excluded deleting the marks allotted to those questions by pro-rata adding them to the remaining questions. The said decision was taken by the Commission unanimously and that too after obtaining expert opinion. It was, therefore, not correct to say that the decision was not of the Commission. Regarding various decisions taken and methodology adopted, it was submitted that the procedure laid down by the Commission fewer than 1980 Rules was followed and even that contention was not well-founded. The petitions were, therefore, liable to be dismissed.

34. So far as the decision of the Commission is concerned, the learned Single Judge has considered the matter in detail. According to him, the basic premise on which the writ petitioners questioned the action of the Commission was not well-founded or factually correct. According to the writ-petitioners, all the decisions were taken by the Commission wherein only four members were present, i.e. Chairman and three members. According to them, two members did not agree to the method (described in various decisions as modus operandi) since they were against it. The third member, Ch. Bashir Ahmad, according to the writ petitioners, was not eligible and qualified to have attended the meeting and to have expressed his views inasmuch as his son was one of the candidates/aspirants at the Preliminary Examination leaving thereby the entire decision to only one individual, the Chairman of the Commission. Such a decision by no stretch of imagination can be described to be a decision of the 'Commission'.

35. The learned Single Judge considered the contention of the writ petitioners, perused the relevant record produced before the Court and came to the conclusion that the foundation on which the writ petitioners put forward the contention was ill-founded. In all, there were six members; Chairman and five members. Except at one occasion, they were present when relevant decisions were taken. We have extracted hereinabove the material parts of the minutes. From that also, it is clear that on July 7, 2005, when a decision was taken to adopt a particular method so as to 'reach injustice' said to have been caused because of mistakes, errors, ambiguities, etc., five members including the Chairman were present and a decision was taken. Prof. Tiku, according to the Commission, was out of station and could not remain present. The decision, however, was unanimous decision so far as five members who attended the meeting. It is also clear from the record and as per the finding by the learned single Judge that in subsequent meetings, Prof. Tiku was present and he also agreed to the earlier decision taken by the Commission on July 7, 2005. It is no doubt true that later on, two members dissented from earlier decisions. That, however, did not make the earlier action illegal, contrary to law or otherwise vulnerable.

36. In this connection, the learned single Judge referred to Rules 6 and 9 of 1980 Rules. The former relates to quorum and reads thus; Quorum - Where the number of members is even, one half of the number with the additional one shall constitute quorum for meeting. Where the number is odd the quorum shall be such number as may exceed half the total number of Members.

37. The latter provides for decision of Commission and reads as under; Decision of the Commission. Decision at the meeting of the Commission shall be taken in keeping with the views of the majority of thereof. The Chairman shall have casting vote in case of tie. Where a case is circulated and a difference of opinion exists, the case shall be again referred to be dissenting Member(s). In case the Member(s) stick(s) to the views already expressed by him/them, the case shall be put up at a meeting of the Commission for a final decision.

38. Rule 11 deals with recording of minutes and may be reproduced; Record of decisions. All decisions of the Commission taken at the meeting shall be recorded by Secretary. The draft of the minutes shall be put up by the Secretary to Chairman for approval; thereafter the minutes shall be circulated to Members subsequently brought up for formal confirmation at the next meeting of the Commission.

39. From the aforesaid provisions and the decisions referred to hereinabove, it is clear that the action taken by the Commission could not be said to be contrary to Rules. The decisions taken by the Commission were either 'unanimous' or by 'majority'. The learned Single Judge, in our opinion, was right that the assumption on which the writ petitioners based their claim and proceeded to convince the Court that there were only three members over and above the Chairman and the decisions were taken by one and the same person, i.e. Chairman of the Commission was totally ill-founded and without basis whatsoever. It is further clear that at the initial stage when the methodology was adopted, five members including the Chairman were present on July 7, 2005 and all of them agreed to the scheme suggested by the

Commission. Though on that day Prof. Tiku was not present, subsequently, he also agreed to the said action. Even thereafter, the decisions were either unanimous or by majority in consonance with Rules of the Commission.

40. As regards participation of Ch. Bashir Ahmad, the contention of the writ-petitioners was that he was disqualified and disabled himself because his son was appearing in the examination. He, therefore, should have secluded himself from attending and participating in the process. The contention has no merit. The learned Single Judge observed that the question of disability could arise only in case of his participation at the stage of selection where the merit of a candidate was to be adjudged. In our view, the learned single Judge was right. It is clarified by the Commission that the selection was not based on Preliminary Examination. It was relevant only for the purpose of qualifying and getting entry to the second examination, i.e. Main Examination. In other words, it was in the nature of 'screening test' and 'selection' or 'merit' was not to be based on the result of Preliminary Examination. Again, so far as the Commission is concerned, Commission had not taken any decision in favour of or against any 'individual candidate' but was in the nature of 'policy decision'. Keeping in view large scale complaints against question papers, general action was required to be taken. It was necessitated to ensure that no candidate should suffer when there was no fault on his/her part. In consideration of such a situation and to find out solution, if any, all the members of the Commission ought to participate and take an appropriate action. There is no question of showing 'bias' or exhibiting 'favour' towards any individual candidate. We are, therefore, in agreement with the High Court that Ch. Bashir Ahmad could not be said to be disqualified in attending meetings and in taking part in the proceedings.

41. We are also not impressed by the argument of the learned counsel for the writ-petitioners that by conferring benefit to those candidates who were unsuccessful, and by not extending similar benefit to successful candidates, any injustice had been caused to the latter class. Firstly, the candidates who were successful at the Preliminary Examination have not raised this plea and we are surprised as to how such contention could be raised by unsuccessful candidates that though they (unsuccessful candidates) got the benefit of additional marks, similar benefit had not been given to successful candidates. But even otherwise, the contention is not well-taken. As already noted, Preliminary Examination was the first step and was limited to the process of 'short-listing' of candidates in the ratio of 1:13 and was not relevant for final selection of candidates and preparation of Merit List/Select List. The marks obtained at the Preliminary Examination were not to be counted for final selection and preparation of merit list. It was limited to getting entry in the Main Examination. It, therefore, cannot be said that by not granting benefit of additional marks to 'selected' candidates who were given to 'unselected' candidates, injustice had been done to 'selected' candidates.

42. As to the second question, the learned single Judge has held that there were mistakes in questions in compulsory subjects as well as in optional subjects. Learned Single Judge also held that it could not be believed that necessary instructions were issued by the Commission to Supervisors in time and they were announced and corrections were carried out in the examination centres. In our opinion, the learned Single Judge could not be said to be wrong

in recording such finding. From the record it appears that complaints were made as to mistakes, errors, vague answers, wrong answers, etc. by the candidates to supervisors. Supervisors in turn informed the Control Room specially set up by the Commission to receive such complaints. According to the affidavit of the Commission, the Commission considered the complaints, opened original manuscripts, tallied the questions with the printed questions, informed the supervisors about necessary corrections and thereafter those corrections were made. Learned Single Judge has observed that there was no evidence to show that the time was extended by the Commission. According to him, therefore, it was not possible that at all the centres such corrections were conveyed and they were brought to the notice of the candidates within the examination period.

43. The learned single Judge in this connection observed as under;

"In this behalf, I have perused the record of Commission. From the record nothing is available to point out as to which were those questions, the spellings of which were sought to be clarified by the supervisory staff of any Examination Centre, and which were the questions actually verified by the Commission and conveyed to the respective Supervisors for making the announcements. In the absence of such record, it cannot be accepted that the printing errors/spelling mistakes in the question papers were duly rectified by actual announcements in the Examination Centres. Therefore, all the questions, which have wrong spellings of the words used therein have to be treated as wrong questions. In all, there are 12 such questions in Sociology paper, i.e., Q. Nos. 17, 37, 46, 53, 60, 72, 73, 83, 93, 97, 98 and 113 with printing errors/spelling mistakes. Out of these questions, the Commission itself has deleted Q. No. 113. In Q. No. 113 there was printing error in the word 'Kwekiuti'. The stand of Commission that the questions having only major printing errors or those which had not been corrected by announcements were deleted is equally unacceptable. There is no record available to show the questions which were actually corrected by announcements. Therefore, neither it can be said nor it has been shown by the Commission which were those questions having printing errors and deserved correction, but had not been corrected through announcements in the Examination Centres. Moreover, there is no policy decision shown to have been taken by the Commission for defining which printing errors would be considered as major printing errors and which printing errors would be deemed to be minor printing errors. In the absence of such policy decision, the Commission could not have validly made any distinction between the questions with major printing errors and the questions with minor printing errors for the purposes of making deletion of questions from the question papers. If the Commission in its wisdom deleted Q. No. 113 from the question paper because of printing error, then on the same principle the Commission ought to have deleted all the questions which were having printing errors in the paper of Sociology. The action of Commission regarding deletion of only one question out of the questions having printing errors/spellings mistakes suffers from the vice of arbitrariness and unreasonableness. Therefore, all the said 11 questions also deserved deletion on the analogy of Q. No. 113 from the question paper of Sociology. Further, let us assume that announcements were made in the examination centres for correcting the spellings of wrong questions.

For instance, take the paper of Sociology, in which admittedly there were 12 questions with spelling mistakes/printing errors. Some time must have been consumed by the Supervisors of the concerned centres to register the objections of the candidates, then for conveying the same to the Control Room set up by the Commission. In the Control Room also some time must have been consumed by the Chairman and the Controller of Examination to verify the correct spellings from the original manuscripts of the said questions and, thereafter, conveying the same to the supervisory staff. Thereafter, the supervisory staff would also have taken some time for making the announcements for correcting the spellings of 12 mis-spelled questions. In all probability, each question must have taken at least one minute for being corrected. In this way, atleast 12 minutes out of total two hours must have been wasted. It is not the case of Commission that the time fixed for completion of such papers was ever extended. The non-extension of time also suggests that in the examination centres announcements for correction of spelling mistakes may not have been actually made at all. From whatever angle we look at the issue, only one conclusion we can reasonably reach is that all the questions, which have spelling errors, must be treated as wrong questions and, therefore, should also be deleted. Likewise, the petitioners objected 8 questions of Zoology subject-paper; 11 questions of Geology; 9 questions of Geography; 8 questions of Chemistry; 6 questions of Agriculture; 6 questions of Mathematics; 2 questions of Mechanical Engineering and 1 question of Law, on the ground of being invalid because of spelling mistakes/printing errors, According to the Commission, these 55 questions of above-said eight subjects have not been deleted, as the same were also got corrected through announcements made in the Examination Halls and the mistakes were intelligible to the candidates having knowledge of the subject. For the reasons already given, the stand of Commission in this regard cannot be accepted and, therefore, the above-referred 55 questions, in addition to 11 pointed out questions of Sociology subject-paper, in all also deserved to be deleted, besides the already deleted questions".

44. The learned Single Judge is right in making above observations.

45. But there is an additional factor also which supports this view. It is clear from the fact that after the receipt of the complaints, the Commission had issued Press Note on July 6, 2005 and assured the candidates that the Commission would look into the matter and no injustice would be caused to them. The Commission also obtained expert advice and thereafter suo motu decided to delete certain questions by allotting those marks pro-rata to remaining questions. It is, therefore, clear that even according to the Commission, some action was necessary, after the examination was over.

46. It was then contended that once the High Court found that the Preliminary Examination was not conducted as required by law, it ought to have set aside the examination and issued direction to hold fresh examination. No third course was permissible. In this connection, our attention was invited by the learned counsel to a decision of this Court in *Vijay Singh Charak v. Union of India & Ors*¹., wherein it was held that once the select list is challenged in the

High Court, the Court can either quash the list, if it finds to be invalid or may uphold the validity thereof. No other option was open. In our view, the ratio laid down in Vijay Singh has no application to the case on hand. In that case, the High Court while disposing the writ petition, observed;

"In case the petitioners withdraw the writ petitions, Government shall refer the proposed select list of IFS of 1991 back to the Selection Committee where the points raised by the petitioners and respondents will be considered under rules by the said Selection Committee. The final list approved by the Selection Committee shall be final and binding on the parties. In view of the above assurance, learned counsel for the petitioners submit that they do not want to press the writ petitions and the same be dismissed as withdrawn. We order accordingly."

47. From the above extracted portion, it is clear that what was done in that case was that the High Court allowed the petitioners to withdraw the writ-petition and directed the Government to refer the proposed selection list back to the Selection Committee where the points raised by the petitioners and respondents would be considered. Obviously this Court did not approve the above method and the decision and held that such a course could not have been taken by the High Court.

48. In the present case, certain corrective steps were taken by the Commission suo motu on the basis of expert-opinions. Again, when the High Court felt that some more actions were required and issued certain directions, the Commission accepted the order passed and directions issued by the learned Single Judge and did not challenge it. In our opinion, the approach adopted by the Commission cannot be said to be unreasonable or irrational. In fact, in such a situation, appropriate remedial measures can always be taken by a Court of Law.

49. In *Kanpur University v. Samir Gupta*², Combined Pre-medical Test was taken by the University for admission to medical course. Objective type of questions were set up and four options were indicated, three being wrong. It was held by this Court that the Court will presume key answers to be correct and proceed to examine accordingly. But if any of the key answers is proved to be 'demonstrably wrong' or is such that 'no reasonable body well-versed in the subject would regard as correct', it would be unfair to penalize students for not giving an answer that accords the key answer. In such a situation, a Court of law can issue an appropriate direction.

50. Speaking for the Court, Chandrachud, C.J. said;

"If the State Government wants to avoid a recurrence of such lapses, it should compile under its own auspices a text-book which should be prescribed for students desirous of appearing for the combined Pre-Medical Test. Education has more than its fair share of politics, which is the bane of our Universities. Numerous problem are bound to arise in the compilation of such a text-book for, various applicants will come forward for doing the job and forces and counter-forces will wage a battle on the question as to who should be commissioned to do the work. If the State can succeed

in overcoming those difficulties, the argument will not be open to the students that the answer contained in the text-book which is prescribed for the test is not the correct answer. Secondly, a system should be devised by the State Government for moderating the key answers furnished by the paper setters. Thirdly, if English questions have to be translated into Hindi, it is not enough to appoint an expert in the Hindi language as a translator. The translator must know the meaning of the scientific terminology and the art of translation. Fourthly, in a system of 'Multiple Choice Objective-type test', care must be taken to see that questions having an ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answer, It leaves no scope for reasoning or argument. The answer is 'yes' or 'no'. That is why the questions have to be clear and unequivocal. Lastly, if the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it"

51. The Court further stated;

"Twenty-seven students in all were concerned with these proceedings, out of whom 8 were admitted to the B.D.S. course, 3 were admitted to the M.B.B.S. course last year itself in place of the students who dropped out and 5 have succeeded in getting admission this year. Omitting 8 of the respondents who have been already admitted to the M.B.B.S. course, the remaining 19 shall have to be given admission as directed by the High Court. If the key answer was not wrong as it has turned out to be, they would have succeeded in getting admission. In view of the findings of the High Court, -the question naturally arose as to how the marks were to be allotted to the respondents for the three questions answered by them and which were wrongly assessed by the University. The High Court has held that the respondents would be entitled to be given 3 marks for each of the questions correctly ticked by them, and in addition they would be entitled to 1 mark for those very questions, since 1 mark was deducted from their total for each of the questions wrongly answered by them. Putting it briefly, such of the respondents as are found to have attempted the three questions or any of them would be entitled to an addition of 4 marks per question. If the answer-books are reassessed in accordance with this formula, the respondents would be entitled to be admitted to the M.B.B.S. course, about which there is no dispute. Accordingly, we confirm the directions given by the High Court in regard to the reassessment of the particular questions and the admission of the respondents to the M.B.B.S. course".

52. In *Abhijit Sen v. State of U.P.*³, the principle laid down in *Samir Gupta* was reiterated and was extended to 'tricky questions' also.

53. In our judgment, the learned single Judge considered the controversy in its proper perspective, and in the light of mistakes/ errors/ inaccuracies, issued certain directions which benefited the student-community. As mentioned by us in the earlier part of the judgment, the said exercise had been undertaken by the Commission and merit list was redrawn. Some

candidates who had earlier been declared disqualified were held to be qualified and notification to that effect was also issued. To us, no exception can be taken against such action.

54. It is true, as contended by the learned counsel for the writ-petitioners that the Division Bench did not consider all the contentions raised in the writ-petitions and decided by the learned Single Judge. It is also true that the order is very brief. But keeping in view the importance of question and its far-reaching effect, we have considered the matter at length, went through the relevant record and once again examined the points raised by the parties since we thought it appropriate to finally conclude the matter instead of sending it again to the Division Bench of the High Court which would have resulted in further delay and we are convinced that the learned Single Judge was right in not setting aside Preliminary Examination and directing fresh examination to be conducted by the Commission. On the basis of relevant record, the learned Single Judge issued necessary directions which were in the interest of candidates as also in the larger interest of administration. We see no infirmity in the order passed by the learned Single Judge and the directions issued and no interference, therefore, is called for.

55. For the foregoing reasons, we hold that the order passed by the High Court cannot be said to be illegal, unlawful or otherwise objectionable. All the appeals deserve to be dismissed and are hereby dismissed, however, with no order as to costs.

Judgment Referred.

¹(2007) 3 Scale 0503

²(1983) 4 SCC 0309

³(1984) 2 SCC 0319