

(1993) 07 PAT CK 0048

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 7203 and 8049 of 1992

Association of Civil Service Examinees and Amaresh Kumar
Singh

APPELLANT

Vs

The Bihar Public Service Commission and Others

Satish Chandra Pd. Sinha and Sunil Kumar Sinha Vs The
Bihar Public Service Commission

RESPONDENT

Date of Decision : 29-07-1993

Acts Referred:

Citation : (1993) 07 PAT CK 0048

Judgement

S.N. Mishra, J.—In these writ petitions, the result of the 38th Combined Competitive (Preliminary) Examination, 1992 (hereinafter referred to as "the Examination") published on 18th/24th July, is sought to be challenged and prayer is made for commanding the Respondents to publish fresh results after proper evaluation on various grounds.

2. These two writ petitions raise mainly common questions of fact and law and, accordingly, they were heard together and are being disposed of by a common judgment.

3. The writ petition No. 7203 of 1992 was filed on 3.8.92 by the Association of Civil Services Examinees through its Secretary and the Secretary himself in his personal capacity. Originally, it was directed against the Bihar Public Service Commission (hereinafter referred to as "the Commission") through its Secretary and the Chairman of the Commission only. From the order, dated the 8th February, 1993, it appears that Petitioner No. 2 in C.W.J.C. No. 7203 of 1992, namely, Amaresh Kumar Singh, himself was also an examinee in the Preliminary Test, 1992. His Roll No. was 75502 and his examination centre was High School, Sector XII, Bokaro Steel City. Subsequently, a letter, dated the 7th August, 1992 was issued by the Commission which showed that Petitioner No. 2 was declared as a successful candidate in the Preliminary Test, 1992, and, therefore, he was eligible to appear at the main Combined Competitive Examination, 1992. This letter was shown to Sri Ghose, learned Counsel, appearing on behalf of

Respondent No. 1 and 2 in this case, who does not dispute the same. In C.W.J.C. No. 8049 of 1992, the Petitioners are themselves the examinees of the Preliminary Test, 1992.

4. I shall take up the case of the Petitioners in one of the petitions. There is no difference in fact in substance. On the 19th January, 1992, the Respondent No. 1, the Bihar Public Service Commission published an advertisement in the Newspapers inviting applications from the eligible candidates in a prescribed proforma for the Preliminary Test, 1992 (Annexure-1). In the said advertisement, it was made clear that there were altogether thirty two optionals divided into four groups for the said examination and every candidate had to opt for only one optional group amongst the said groups, except Group-A and the General Studies, which were compulsory papers. It is very necessary to mention here that the Preliminary Test was introduced for the first time by the Commission in and from the 37th Main Examination. According to the Petitioners, no specific syllabus was prescribed for the Preliminary Test and the syllabus prescribed for the Main written Examination was supposed to be followed in the Preliminary Test as well. It is stated that the syllabus was vague. Copies of the syllabus of one of the optionals of both the Preliminary Test, 1992, as well as the Main written Examination are made Annexures 2 series to this writ application. The Preliminary Test, 1992, was conducted on the 24th of May, 1992, at different centres. In course of the said Preliminary Test, 1992, it is alleged that the candidates detected absurdities in the questions set, so much so, in certain optionals, it was found practically impossible for the candidates to answer the questions with any amount of certainty. Besides, the examinees also found several questions to be vague and wrong. A chart showing wrong and vague questions in optional "International Law" has been made Annexure-4 to the writ application by way of example. After the Preliminary Test, 1992 was over, when the Petitioners came to know that the Commission was not following the principle of rational basis of the proportional representation, they approached Respondent No. 2, the Chairman of the Commission and made a representation to the effect that the basis of the proportional representation should be followed and introduced on the footing of the guidelines laid down in the Kothari Commission's Report, which had already been adopted by the Union Public Service Commission. It is stated that the Respondent No. 2, the Chairman, verbally assured them to favourably consider their representation. It is further stated that the answer-sheets were sent as per the deliberation of the Commission, dated the 3rd July. 1992, outside the State but without coding, which were evaluated manually by incompetent persons. It is also stated that the answer-sheets were not printed on specific computer sheets and the serial numbers were also not serially printed thereon thereby making the same easily vulnerable to manipulations. It is again stated that the answer-sheets of Sociology was evaluated with Labour and Social Welfare resulting into "Zero" marking in Sociology optionals. It is also stated that roll numbers of those candidates, who did not even appear in the Preliminary Test, 1992 figure in the result-sheet.

According to the Petitioners, not a single candidate having science optional group and International Law optional group qualified for the main 38th Examination, 1992 and only from the History optional group, more than eleven thousand candidates qualified to the detriment of the candidates of the other optional groups. It is further alleged that the question papers were leaked out before commencement of the Preliminary Test, 1992, and were being sold at different places in the open market, which was also published in the "Nav Bharat Times" on the 17th July, 1992. The news item has been made Annexure-6 to the writ application. Before publication of the result, according to the Petitioners, other Members of the Commission requested the Chairman (Respondent No. 2) for a fresh evaluation of the answer-sheets, as at the time of random checking, they detected discrepancies in the evaluation of the answer-sheets attributable to the manual evaluation, whereupon, it is stated that, the Chairman, Respondent No. 2, assured them that he would take steps to correct/rectify the errors and, accordingly he called a meeting on the 18th July, 1992, to discuss ways and means to meet the situation. However, Respondent No. 2 postponed the said meeting for the 20th July, 1992, but in the meanwhile, on the 18th July, 1992 itself, published the result clandestinely in the office of the Commission in which Respondent No. 2 arbitrarily fixed the cut-off marks unilaterally without consulting the other Members of the Commission. The copy of the result published on the 18th July, 1992, is Annexure "7" to the writ application. It is further alleged that the aforesaid irregularities in publishing the results were brought to the notice of the Governor by the five Members of the Commission through a Memorandum, dated the 21st July, 1992. filed on account of the arbitrary action of the Chairman in conduct of the Preliminary Test, 1992, and in publishing the results thereof, which was also published in several Newspapers including a local Daily "The Hindustan Times" on the 25th July, 1992; a copy of culling of the said news item is Annexure-8 to the writ application. Lastly, it has been stated that the Preliminary Test. 1992, was not conducted in accordance with the directions and/or guidelines given and/or laid down in the judgment, dated the 11th June, 1992 passed by a Division Bench of this Court earlier in the writ application, namely, C.W. J.C. No. 1192 of 1992*.

5. Various counter and supplementary affidavits have been tiled in these proceedings.

(a) A counter-affidavit has been affirmed on behalf of the Commission through one Gopal Krishna Prasad, said to be the Under Secretary-in-charge of the Examination in the Commission, wherein, apart from the question of maintainability of the petition it was stated as follows: The prospectus prescribed for the Preliminary Test, 1992, was published in the beginning of the year 1992 and it was available for sale and objection, if any, to the said syllabus should have been raised by Petitioner No. 1, if not by the prospective candidates themselves before the 25th May, 1992, the examination in question itself having been held on the 24th May, 1992. Moreover, neither Petitioner No. 1 nor Petitioner No. 2 if he was a candidate, raised any objection to the question

papers soon after the 25th May, 1992. It is further stated that neither any representation was made to the Commission regarding the alleged defects in the question papers nor was it challenged before this Court until and unless the five Members of the Commission made the aforesaid representation to the Governor, which was also published in the Newspapers on the 25th July, 1992. As regards representation made before the Governor, it is said that three of the Members have concealed the fact that their sons had appeared in the Preliminary Test, 1992 and when the names of their sons did not appear in the result, they raised this question before the Governor as well as before the Commission. It is also stated that one of the Members, namely, Dr. S.J. Thakur, had also concealed the fact that earlier his wife was candidate in the 37th Combined Competitive Examination and when she did not succeed, he had started creating troubles in and against the Commission.

(b) In the counter affidavit filed on behalf of the Respondent Commission through Gopal Krishna Prasad, Under Secretary-in-charge of its Examinations, the deponent states that the Commission had appointed a 6 Members Sub-committee to determine the cut off marks, namely, the minimum marks, for qualifying in the Preliminary Test, 1992, for different categories of candidates, namely, general, Backwards, Most Backwards, Scheduled Castes, Scheduled Tribes, Economically Weak Class and Economically Weak Women. The Commission accepted the cut off (minimum) marks suggested by the Sub-Committee, as decided in its meeting held on the 17th July, 1992 and, accordingly, the result was published by a majority of 6 to 4, three of whom being those Members whose sons were examinees and had submitted a Memorandum to the Governor. It is then said that the Governor called for explanations from those members as to why they had suppressed the fact of their sons being examinees in the aforesaid Preliminary Test, 1992. It is also said that Dr. S.J. Thakur had started creating troubles in the Commission and against the present Chairman in collusion with some of the Members as well as through the Members since the time his wife had failed in the 37th Combined Competitive Examination. Regarding leakage of the question paper, it is said that the examination in question was held on the 24th May, 1992 and the aforesaid leakage was reported in the Daily Newspapers on the 17th July, 1992, and, as such, it has no relevancy. The question papers have not been correctly reproduced by the Petitioners in the writ petition, rather, on the contrary, it is a misrepresentation of the question paper for oblique motive. The Commission has considered the question of proportional representation as alleged by the Petitioners before coming to its final decision. In order to ascertain the correct position, pursuant to the objection raised, in this connection by some of the members, the Commission deputed one of Assistants of the Commission office to make enquiries from the Union Public Service Commission as to what Rules and/or Guidelines and norms are adopted in the matters of conduct of Combined Competitive Examinations by the Union Public Service Commission, but the Secretary of the said Commission refused to disclose the same on the ground of

official secrecy. Subsequently, however, the Joint Secretary of the Union Public Service Commission informed the Commission that the conduct of the examination is entrusted to one Member, who takes all necessary steps in consultation with the Chairman and no other Members has any concern with the same whatsoever. We further informed that the Union Public Service Commission does not have any Rules or Guidelines for the conduct of its examinations, which is being done in accordance with the administrative orders as well as on the basis of the precedents obtaining in the matter and/or in vogue.

(c) A reply to the counter-affidavit has also been filed by the Petitioners reiterating the averments made in the writ petition as also controverting the statements made on behalf of the Commission in the aforesaid counter-affidavit. It is, however, further stated that the prospective candidates of the 38th Main Examination, 1992, represented to the Commission on the 29th February, 1992, for amendment in the syllabus of International Law. The Petitioners have sought for the production of the entire proceedings of the Commission regarding evaluation and publication of the results of the Preliminary Test, 1992, before this Court, so that the truth may come to light. Certain alleged vagueness and inaccuracies were given in details. Certain references were made to the question put in the examination to show that they were subjective and cannot be answered with any amount of certainty and" objectively. It is alleged that if divergence is there among jurists of repute mentioned above then the Petitioners can very much estimate the level of the question setter. It is stated that the Petitioner No. 2 is a law graduate, Campus Law Centre, University of Delhi, and figures in the list of successful candidates of the U.P.S.C. (P.T.) 1992 with law as optional. On the 27th August, 1992, two supplementary affidavits were filed on behalf of the Petitioners. In the first one, it has been stated five members of the Commission sent a Memorandum (Annexure-9 to the writ petition) to the Governor regarding the aforesaid irregularities committed by the Chairman of the Commission in the conduct of the Preliminary Test, 1992. It is also stated that some Members of the Commission namely, Sarbshree K.K. Tripathi, Bindeshwan Singh and Brahmndeo Ram, S.J. Thakur and Saryu Prasad raised objections regarding re-evaluation of all the answer-sheets jointly by their letter, dated the 10th August, 1992, which is Annexure-10 to this writ petition. It is further said that on the 10th August, 1992, the Respondent Commission revised the result of 2200 candidates, antedating the same as if it had been already published on the 7th August, 1992, in addition to the earlier publication of the result of more than 15000 candidates. In the next supplementary affidavit, as stated at the very outset, ten Members of the Commission enumerated under paragraph 2 thereof were sought to be added as Respondents 3 to 12 to the main writ petition, which was allowed by us vide order No. 3, dated the 27th August, 1992, and they have been, accordingly, joined as Respondents No. 3 to 12 in the writ petition.

(d) In reply to the aforesaid first supplementary affidavit, the Respondent Commission again reiterated the statements made in its counter-affidavit and further stated in paragraph 12 as follows:

12. That even in paragraph 5 of the affidavit, it has been stated that the statements made in paragraph 5 of the supplementary affidavit is based on "information derived from the records of the case." clearly this is a forged/fabricated records of the Petitioners" case created for the purpose.

It is further stated that in this case, there does not arise any question of re-evaluation, as on the basis of the preliminary report submitted by six (out of the ten members appointed by the Commission for checking of the results, the first List of the successful candidates was published without waiting for the completion of re-checking and upon completion of re-checking by them, in continuation the second list of the successful candidates was published and, as such, this cannot be said to be a re-evaluation or publication of a supplementary list, apart from the fact that there is no Rule even prohibiting re-evaluation if the situation so demands.

(c) Respondent No. 3 namely, K.K. Tripathi, one of the Members of the Commission (as he then was) has also filed a counter-affidavit fully supporting the stands taken by the writ Petitioners. It is however, not necessary to discuss all the averments made in his counter-affidavit in any detail. Suffice it to say that he has completely endorsed the stand points of the Petitioners in this case. He has also averred that the preliminary Test, 1992 was conducted in complete disregard of the directions given by this Court in its judgment, dated the 11th June, 1992, passed in C.W.J.C. No. 1192 of 1992. It is further said that the Commission, in its earlier meeting, took an unanimous decision to the effect that ten percent of the candidates appearing in the Preliminary Test, 1992 or ten times of the total number of vacancies advertised, whichever ever be higher, would be declared qualified for the 38th Main Examination, 1992. The total number of candidates, who appeared in the Preliminary Test, 1992, was 64,000 (Sixty four thousand) and since the total number of vacancies was not known to the Commission, but then as ten percent of the total candidates, who appeared in the Preliminary Test, 1992, which came to 6400 (Six thousand four hundred) only ought to have been declared qualified for the 38th Main Examination, 1992. Instead of doing so, according to Respondent No. 3, the Chairman, completely ignoring unanimous decision of the Commission, has declared qualified 15,400 (fifteen thousand four hundred) candidates by publishing their results, to appear in the Main Examination 1992, without taking approval of the Commission, He has also stated that the Respondent Chairman appointed the examiners without consulting the Commission in order to gain favour for his own candidates. It is also stated that the counter-affidavit and the supplementary counter-affidavit sworn in by Sri Gopal Krishna Prasad, Under Secretary in the office of the Commission have in fact, not been filed on behalf of the Commission since they were not placed before the Commission for approval. It is also stated that the said Gopal Krishna Prasad was never authorised by the Commission to swear the said counter and supplementary counter-affidavits.. It is next stated that the Bihar Conduct of Examination Act, 1981 is also applicable to the examinations conducted by the Commission and the Commission is supposed to follow the

existing Rules and Regulations strictly. It is also said that the Commission has not suggested for re-evaluation of the answer-sheets; rather the suggestion was for manual checking of the entire answer sheets in order to rectify the defects committed by the manual feeders. It is then stated that when the meeting of the Commission was called on the 18th July, 1992 for purposes of finalization of the results, the Respondent Chairman did not discuss the matter and abruptly deferred the meeting to the 20th July, 1992.

(f) A counter-affidavit has also been filed on behalf of Respondent No. 4, Sri Bindeshwari Singh, one of the Members of the Commission at the relevant point of time. He has fully supported in toto the stands taken by the Petitioners as also the statements made in the counter-affidavit filed on behalf of Respondent No. 3, Sri K.K. Tripathi. Apart from this, it is also stated that the three members, whose wards had appeared in the Preliminary Test, 1992, themselves dissociated from the random checking work and the fourth members, namely, Dr. S.J. Thakur also dissociated himself on account of his physical inability. Similarly, the other members, namely, Sri Saryu Prasad refused to participate in the random checking work.

(g) Respondent No. 8, Dr. Shiv Jatan Thakur, another Member of the Commission, has also filed a counter-affidavit in which besides supporting the statements of the Petitioners, in the writ application and the counter-affidavits filed on behalf of Respondents No. 3 and 4, he has stated that the result of the Preliminary Test, 1992, suffers from gross irregularities, legal infirmities and unilateral arbitrary act of the Chairman, Respondent No. 2, against which the five Members of the Commission submitted a Memorandum to the Governor. It is then said that as regards the fixation of cut off marks, the matter was put to vote in the meeting of the Commission held on the 17th July, 1992, which was subsequently passed by a majority of 6 to 4 and the aforesaid four members put their dissenting notes on the records of the proceedings of the Commission specifying the nature and the magnitude of the incurable errors, while this Respondent was not summoned to the meeting obviously with intent to reduce the number of opponents of the Respondent Chairman against his arbitrary commission of irregularities unilaterally. He has further stated that the Chairman arbitrarily published the supplementary result of over 2000 (two thousand) candidates on the 7th August, 1992, without approval of the Commission. He has then said that the counter-affidavit filed on behalf of the Commission has not been approved by the Commission as such. It is stated that the Chairman, Respondent No. 2, has arbitrarily and unlawfully appointed the examiners to suit his convenience without approval of the Commission and even by ignoring consultation with the High Court. He has also said that the Respondent-Chairman arbitrarily ordered for the centralised evaluation of the answer-sheets in complete disregard of the recruitment rules. As to the allegation against him to the effect that because his wife failed in the 37th Combined Competitive Examination, this Respondent launched tirade against the Chairman and the Commission, the reply is that the allegation is absolutely incorrect, misleading

and malicious.

(h) Similarly, in their counter-affidavits, Respondent No. 6, Dr. Karma Oraon and Respondent No. 7, Sri Brahamdeo Ram have almost supported the averments made in the writ petition as also the statements made by the other Respondents except Respondents No. 1 and 2 made in their counter-affidavits filed in this case.

(i) A counter-affidavit on behalf of Respondent No. 10, Sri Saryu Prasad, who joined as a Member of the Commission on the 10th of March, 1992, has also been filed more or less supporting the averments made in the writ application as also in the counter-affidavits filed on behalf of the other Respondents in exclusion of Respondents 1 and 2. He has stated that the issue of proportional representation or of sealing never came up for discussion in the meeting of the Commission. He has said that the advertisement etc. had already been published in the Newspapers before he joined as a Member of the Commission. It is also stated that no Rules, as directed by this Court have been framed by the Commission as yet. He has then said that as he had not associated with the other Members of the Commission for random checking work, he had no personal knowledge about the various subjects said to have been wrongly evaluated. He has further stated that only the issue on cut off marks came to be discussed in the meeting of the Commission held on the 17th July, 1992, which though objected to by some of the Members, but was ultimately decided by the majority and no decision in relation to any other matter was taken.

(j) A rejoinder to the counter-affidavit filed on behalf of Respondents 3, 4, and 7 has also been filed on behalf of the Commission, wherein the averments made in the counter-affidavit, filed on behalf of the Commission have been reiterated and those made contrary thereto have been denied.

(k) The Commission has also filed a rejoinder to the affidavit filed by the Petitioners in reply to the counter-affidavit of the Commission. Apart from pointing out certain typographical mistakes in the affidavit filed on the 20th August, 1992, the deponent Sri Gopal Krishna Prasad, Under Secretary to the Commission, has denied that any direction was issued by this Court in C.W.J.C. No. 1192 of 1992. It is further said that Respondent No. 2, the Chairman, has nowhere ever claimed to be the Commission within himself nay posed as such, and, it is in this context said by the deponent that rather, on the contrary, the Chairman has always acted in discharge of his official duties as a constitutional head of the Commission. It is then said that no representation raising any objection regarding amendment in the syllabus of the International Law paper, as alleged to have been filed by any prospective candidates has ever been received in the office of the Commission. The allegation of the Petitioners that the questions were vague and wrong has also been denied. In substance, the averments made in the affidavits filed earlier on behalf of the Commission have been reiterated.

(l) The Chairman, Respondent No. 2, has also filed an affidavit on the 22nd

November, 1992, sworn in by Sri Lal Babu Keshri, Senior Personal Assistant to the Chairman, wherein it has been stated that the Chairman did not receive any application, dated the 29th February, 1992, from any person.

(m) Again on the 29th October, 1992, a supplementary counter-affidavit has been filed on behalf of Respondents No. 3, 4 and 7 virtually reiterating the stands taken by them in the counter-affidavit already filed on their behalf.

(n) A counter-affidavit has also been filed on behalf of Satyendra Singh, Respondent No. 9, on the 5th November, 1992, to some extent supporting the contentions of the Commission. According to him, to the best of his knowledge the Preliminary Test, 1992, was conducted fairly and impartially. He further says that the best attention was paid towards the discrepancies alleged to have taken place during the course of random checking and only after having been approved by the Commission, the results were published. It is also stated that the Preliminary Test, 1992, was conducted, as far as possible, on the basis and pattern of the Union Public Service Commission's Examination fully observing the reservation policy as prevalent in the State of Bihar.

(o) A counter-affidavit has also been filed on the 16th November, 1992 on behalf of one Sri Sachida Nand Singh No. 2, the then Deputy Secretary of the Commission. He states that the Governor has not appointed the Secretary to the Commission under Regulation 22 of the Bihar Public Service Commission (Condition of Service) Regulation, 1960, since the last incumbent vacated his office either substantively or on the ad hoc or officiating basis, but in view of the existing vacancy, the Chairman, in exercise of his administrative power, has directed him to hold current charge of such routine works of the Commission's Secretary as may be assigned to him. According to him, in such a situation, nobody was performing the duties of the Secretary to the Commission and, as such, he himself is neither functioning nor even working as such, and it is only the said Copal Krishna Prasad, Under Secretary, who looks after the affairs of the Commission. In this way, he says, said Sri Gopal Krishna Prasad has filed affidavits in the instant case after having been authorised by Respondent No. 2, the Chairman, as the administrative head of the Commission.

(p) A counter-affidavit has also been filed on behalf of the Commission, Respondent No. 1, on the 16th November, 1992, sworn in by Sri Lal Babu Keshri, Senior Personal Assistant to the Chairman of the Commission, mainly stating that Sri S.K. Ghose, Senior Advocate, has been appointed to represent the Commission as well as the Chairman, who is the administrative head of the Commission.

(q) Again on the 21st December, 1992, a counter-affidavit has been jointly filed on behalf of Respondents No. 3, 4, 7 and 10 sworn in by Sri K.K. Tripathi, Respondent No. 3, stating therein that the Commission, after due consideration, had "appointed Sri S.K. Katriar, as the retained Senior Advocate to represent and conduct cases on behalf of the Commission and on an unanimous decision, he

had been, accordingly, informed vide letter No. 332 dated the 5th September, 1990, who subsequently submitted his resignation, which was accepted with effect from the 15th February, 1992, after due consideration of the same by the Commission and the decision was again communicated to Sri Katriar vide letter No. 13, dated the 18th February, 1992. The deponent states that thereafter, Sri B.C. Chose was appointed only in C.W.J.C. No. 1192 of 1992, to represent the Commission and not in any other case, muchless in the instant case. It is also stated that Sri B.C. Ghose, Senior Advocate through Sri S.K. Ghose, Advocate, has not been appointed by the Commission to work on its behalf, but only by the Chairman without consulting the Commission. It is then stated that one Sri Sadanand Roy, Advocate, Standing counsel No. III, in the High Court Advocate-General's Office, was nominated, but his nomination was not approved by the Commission.

(r) Yet another affidavit has also been filed on the 17th December, 1992, on behalf of the Commission sworn in by Sri Uday Prakash Mathur, Deputy Secretary of the Commission, who also claims to look after the affairs of the Commission. He has stated that Sri Gopal Krishna Prasad, Under Secretary-in-charge of Examinations and Sri Sachida Nand Singh No. 2, the then Deputy Secretary of the Commission were the competent persons to swear affidavits on behalf of the Commission as also on his behalf and like Sri Sachida Nand Singh, the then Deputy Secretary of the Commission, aforesaid, (now a Member of the Commission), who had stated in his counter-affidavit filed in this case on the 16th November, 1992, that in view of the counter-affidavit filed by Sri Gopal Krishna Prasad, Under Secretary, he had nothing to add or state before this Court on behalf of the Commission, this deponent also states that the counter-affidavits filed by both of them be treated to have been filed on behalf of the Commission as well as on his own behalf.

(s) Again on the 21st December, 1992, a supplementary affidavit has been filed on behalf of Respondents No. 3, 4, and 7, in which it is stated that the Respondent Chairman filed SLP Nos. 15474 of 1992 and 15475 of 1992 before the Supreme Court against the orders, dated the 7th August, 1992 and the 3rd November, 1992, respectively, passed in the instant writ application without the approval of the Commission and a huge amount of money was spent from the funds of the Commission.

(t) On the same date, i.e., the 21st December, 1992, itself, a supplementary counter-affidavit on behalf of Respondent Nos. 2, 3, 4, 7 and 10 by way of rejoinder to the counter-affidavits sworn in by Sri Lal Babu Keshri, Senior Personal Assistant to the Chairman, Sri Sachida Nand Singh, Deputy Secretary and Sri Satya Narayan Mishra, Public Relation Officer of the Commission, purported to have been filed on behalf of the Respondent Chairman in which so-called appointment of Sachidu Nand Singh as Secretary to the Commission has been challenged. It is then stated that as Sri Lal Balm Keshri has not been appointed as Senior Personal Assistant to the Chairman by the Commission, the

counter-affidavit sworn in by him cannot be treated to have been legally filed on behalf of the Commission and its Chairman. The appointment of Sri B.C. Ghose as the Senior Counsel in this case has also been challenged on the ground that his appointment is not by the Commission.

(u) On the 4th January, 1993, again a supplementary counter affidavit has been filed on behalf of Respondents No. 3, 4, 7 and 10 by way of rejoinder to the affidavit sworn in by Sri Uday Prakash Mathur, Deputy Secretary to the Commission, on behalf of the Commission wherein the averments made in the said counter-affidavit have been controverted and the deponent has further reiterated the statements made in the affidavits filed by these Respondents in this case earlier.

(v) On the 5th January, 1993 again a supplementary affidavit has been filed on behalf of the Commission, Respondent No. 1, sworn in by Sri Copal Krishna Prasad, Under Secretary, stating therein that as the term of office of the two Members, namely, Sri S.A.A. Rizvi, Respondent No. 12, and Sri Bindeshwari Singh, Respondent No.4, expired on the 7th and the 8th October, 1992, respective, Sarbshree Sachida Nand Singh No. 2, and Syed Shafiuzzainan Mashadi, have since been appointed in their places and a notification to this effect has already been issued. In view of this affidavit, the two aforesaid newly appointed Members of the Commission have been joined as Respondents No. 13 and 14 to this writ application by order No.3, dated the 5th January, 1993.

(w) Again on the 5th January, 1993, Respondent No. 8, Dr. Shiv Jatan Thakur, filed a supplementary counter-affidavit in which he has set in facts somewhat synonymous to those stated by Respondents No. 3, 4, 7 and 10 in their counter-affidavit filed earlier in reply to the affidavits sworn in by several deponents filed on behalf of the Commission, who were not actually authorised by the Commission but they did so only at the behest of the Chairman, Respondent No. 2, and, as such, those affidavits should not be looked into and be therefore ignored from consideration.

(x) On the 7th January, 1993, the newly added Respondent No. 13, Sachchidanand Singh, No. 2, had filed his affidavit. It is stated therein that in the capacity of the Deputy Secretary to the Commission, he had already filed an affidavit on the 16th November, 1992, in this case and he has reiterated the averments made therein. He, however, adds that the statement made by the said Sri Gopal Krishna Prasad, Under Secretary to the Commission, be treated as having been filed on behalf of the Commission. In pith and substance, he has supported the stands of the Commission. He has further adopted the statement made by Sri Gopal Krishna Prasad, Under-Secretary to the Commission, made in his affidavit while placing the original records of the Commission before this Court and those made in the affidavits already filed by himself and Sri Prasad on behalf of the Commission.

6. It is relevant to mention here that on the 22nd January, 1993, the Petitioners

filed an application for amendment by way of substitution of Annexure-4 appended to the writ application by a new one annexed with the present amendment petition. It is said that some mistakes cropped in Annexure-4 originally filed with the writ petition since the question set out in it were produced by memory as the same was not allowed to be taken away by the examinees. According to the Petitioners, it was only when the question paper of the Preliminary Test, 1992, was produced by the Respondent Commission before this Court that the real mistakes were detected by them and, accordingly, the fresh Annexure-4 containing vague and wrong questions exactly set out therein was appended to the amendment petition with a prayer that the same be allowed and the original Annexure-4 to the main writ petition be ordered to be deemed to have been replaced by the present Annexure-4 annexed with this amendment petition. By order No. 11, dated 2.2.1993, this amendment was allowed by us subject to objection. On the other hand, however, a counter-affidavit has also, been filed on behalf of the Commission opposing the amendment sought for by the Petitioners which, as stated above, was allowed subject to objection.

7. Several developments took place during the hearing of these cases and certain interim orders were passed from time to time and we shall refer to some of them. By an order dated 27.8.92 this Court disposed of the application filed by the writ Petitioners for amendment of the writ application by impleading the individual Members of the Commission as party Respondent Nos. 3 to 12 in this writ application. We allowed this application in as much as we considered it fit and proper that this matter be disposed of finally in the presence of all the members of the Commission as it appeared to us that the "Commission" was a divided house and that there are rival groups of individual members fighting with each other. We may point out that five members of the Commission had addressed a letter to the Governor of Bihar making allegations regarding this examination.

8. A question also arose at one point of time as to who was entitled to represent the Commission. Mr. B.C. Ghose, learned Senior Advocate, had stated that he was appearing for the Chairman of the Commission and also for the Commission. This was recorded in the order dated 29.10.92. It was pointed out by our order dated 3.11.92 that whenever there was some matter relating to the Commission, there were not only disputes regarding the merit of the case, but disputes amongst the individual members of the Commission also. This would appear from our order to the following effect:

This writ petition is a hotly debated one and a hotly contested one. It appears that whenever there is some matter relating to Bihar Public Service Commission (hereinafter referred to as B.P.S.C.) there are not only disputes regarding the merits of the case, but disputes amongst the members. Commission consists of several persons. It appears that the Chairman is supported by some members and he is opposed by some other members. Accordingly, it becomes difficult to ascertain the views of the "Commission" as such. Similar situation was there in

another matter which is now before the Supreme Court where it is being considered whether to have the matter transferred to Supreme Court. In this case similar steps may be taken. So far as the present case is concerned, in this case the writ Petitioners have challenged the result of 38th Combined Competitive Examination, 1992 published on 18/24th July, 1992 and asked for other consequential ancillary reliefs. Originally only the "B.P.S.C. through its Secretary" and "The Chairman" of the B.P.S.C. were made party Respondents and nobody else. Thereafter we passed orders on 7th August, 1992 and 27th of August, 1992 respectively which will speak for themselves. By the order dated 27th August, 1992 all the members of the Commission have been made party Respondents in this case. When this matter was taken up today at the outset, Mr. B.C. Chose learned Advocate stated that he was appearing on behalf of Respondent Nos. 1 and 2. However, upon objection being raised to that effect Mr. Chose admitted that no Vakalatnama has been filed on behalf of Respondent No. 1 that is, the Commission, but that it has been filed only on behalf of Respondent No. 2 who is the Chairman of B.P.S.C. There being no vakalatnama on behalf of B.P.S.C. no one can represent the same. Mr. Ghose has stated that there is no Secretary and as the B.P.S.C. is made a party through the Secretary no Vakalatnama has been filed on behalf of the Commission. So far as Respondent No. 8, who is one of the members of the Commission, is concerned, Mr. S.P. Verma appears. So far as Respondent No. 7, another member, is concerned, Mr. Anjani Kumar appears. So far as Respondent Nos. 3, 4, 6 and 10, some other members are concerned, Mr. S.K. Ghosh appears. It further appears that though originally Vakalatnama was filed on behalf of Respondent No. 6 through Mr. Akhileshwar Prasad Pandey, who is Junior to Mr. Shukla, and a counter affidavit was filed on behalf of Respondent No. 6 in that capacity, now Mr. S.K. Ghosh seeks to file another Vakalatnama on behalf of Respondent No. 6. Upon enquiry made to that effect Mr. Shukla states that Mr. Oraon, Respondent No. 6, signed Vakalatnama in favour of Mr. Pandey and he came to him on about ten occasions to give instructions for filing affidavit. Accordingly, power and counter affidavit has been filed on his behalf by Sri Pandey. Recently, a letter has been received stated to have been written by Mr. Oraon, which was brought to Mr. Shukla from the office of the Chairman of the Commission but Mr. Oraon did not meet him personally. He is not aware of anything else. Therefore, there seems to be a doubt as to by whom Mr. Oraon will be represented in Court-whether by Mr. Shukla or Mr. S.K. Ghose. According to Patna High Court Rules, second Vakalatnama cannot be filed unless no objection is given. Mr. Shukla states that he will raise no objection if Mr. Oraon himself states that he wants to change his lawyer but he is not aware whether Mr. Oraon himself wants to be represented by Mr. Shukla or wants to be represented by some other lawyer now.

In that view of the matter, we direct the Registrar of this Court to issue notice to Mr. Oraon, Respondent No. 6, by tomorrow informing him to appear in Court in person on Monday next, i.e., 9.11.92 at 10.30 A.M., so that the Court may ascertain the correct position regarding Respondent No. 6.

So far as objection raised by Mr. Ghose to the effect that there being no Secretary no one can file Vakalatnama on behalf of the Commission, which is Respondent No. 1, is concerned, it may be pointed out that the Respondent No. 1, the Commission, and not the Secretary has been made a party, and only the service is through the Secretary. In the earlier case, under similar circumstances it was stated by Mr. Ghose appearing for the Chairman that though there was no Secretary officially but some body also was performing the duties of the Secretary of the Commission. Accordingly, we would have expected that the person, who is performing the duties as the Secretary, would have filed power on behalf of the Commission but he has also chosen not to file Vakalatnama on behalf of Respondent No. 1. Accordingly, for the time being no one is representing B.P.S.C. as such. It appears that one Mr. S.N. Singh, Deputy Secretary of the Commission, is now performing the duties of the Secretary. Let a copy of this petition be served on Mr. S.N. Singh by tomorrow. Liberty is given to the Petitioners to serve a copy of the petition on Respondent No. 1 through its Chairman also.

This Court was ready to take up and dispose of this matter expeditiously but having regard to the complications raised this could not be done. We fix this matter for disposal on Monday next. We are not inclined to hear the stay application alone.

9. During the hearing the term of two of the members of the Commission namely, Mr. S.A. Rizvi and Mr. Bindeshwari Singh having expired, two other members, namely, Sri Sachchidanand Singh No. 2 and Mr. Syed Shafiuzama were nominated as members. It is to be pointed out that as recorded in our order dated 5.1.93, Mr. Ghose stated that he was appearing on behalf of the Chairman and the Commission both. During the course of hearing we passed an order on the 7th of January, 1993 to the following effect:

Pursuant to our enquiry Mr. Ghose has informed the Court that in compliance of the judgment and order dated 11th June, 1992, of the learned Judge passed in C.W.J.C. No. 1192 of 1992 there has been "more involvement" of the members of the Commission, as directed by the Court and in this connection he hands over the file which he states to be the relevant records of the proceedings of the Commission, which consists of "Noting" file consisting of 10 pages. Let our Bench clerk initial at the top of each page. Copies of the same be supplied to the learned advocates appearing for different parties and they shall also be entitled to inspect the original records which have been initialled by our Bench clerk. After initials they are to be returned back to Mr. Ghose, who shall keep the same in his custody.

Mr. B.C. Ghose has submitted that he has no objection to the Court looking into the records but he has objection to the records being shown to any other party or any copy being furnished to them. On being asked as to whether he is claiming "privilege" in respect of these records, he submits that what he is claiming is more and greater than privilege. We over-rule this objection. We do

not find any reason to uphold any such "claim". Any document, which is looked into and relied upon by this Court, is to be seen by other parties also. After perusal of the documents we do not find any prima facie case made out for such claim of privilege.

Mr. Tripalhi, one of the members of the Commission, is present in Court. He has also given a note in the file. Learned Advocate of Mr. Tripathi has stated that Mr. Tripathi wants to look into the records to find out whether these are the original records or not. We allow him to inspect the records in Court itself and he has raised no objection regarding the genuineness of the same.

The original records are being handed over to our Bench clerk for preparing photo copies. Mr. Ghose" Junior shall be entitled to accompany him, if he so desires.

Mr. S.K. Ghosh files a counter affidavit and vakalatnama on behalf of Sachchidanand Singh, one of the new members of the Commission, which we have referred to in our earlier order.

After the copies are furnished, the parties shall be entitled to file supplementary counter affidavit making comments confined to such records.

Let it be recorded that two copies of syllabus are produced before us by Mr. Ghose on behalf of the Commission which is accepted on behalf of the parties appearing that this is the relevant syllabus in question.

Let it be recorded that after preparing photo copies, the original records have been returned to Mr. Ghose. Let photo copies be supplied to each of the parties.

Put up again on 11th or 18th January, 1993.

10. Thereafter Udai Prakash Mathur, who was the Deputy Secretary of the Commission, had affirmed an affidavit stating that Kamla Kant Tripathi, a member of the Commission, who was added as Respondent No. 3 after filing of the writ petition, had superannuated and, accordingly, he had ceased to be a member of the Commission. This was admitted by the learned Advocate appearing on behalf of Mr. Tripathi.

11. Various interim orders were passed from time to time during the course of hearing. In C.W.J.C. No. 8049 of 92 we directed that the cause title of this petition be amended to the effect that in respect of Respondent No. 1, that is, the Bihar Public Service Commission, instead of "through its Secretary" it would be "through the Deputy Secretary" in view of the order of the Supreme Court dated 11th of December 1992 passed in Special Leave (Civil) Nos. 154 and 15475 of 1992 arising out of this case and C.W.J.C. No. 7203 of 1992. As already stated, in C.W.J.C. No. 7201 of 1992 Petitioner No. 1 is the Association of Civil Service Examinees through its Secretary Amresh Kumar Singh and Petitioner No. 2 is Amaresh Kumar Singh in his personal capacity. In C.W.J.C. No. 8049/92 the Petitioners; are themselves examinees of the said Examination. Petitioner No. 2

Amresh Kumar Singh in C.W.J.C. No. 7703/92 was himself an examinee in the preliminary test of 1992.

12. In C.W.J.C. No. 1192 of 1992 (*Sanjay Kumar and Ors. v. Bihar Public Service Commission and Ors.) a Division Bench of this Court had to deal with the question of the functioning of the Commission. The same related to the 37th combined competitive civil service examination conducted by the Commission. At the outset, in the judgment it was pointed out that the case brought into light some disturbing facts regarding the functioning of the Commission. The evaluation of the answer books of the 37th examination was challenged on various grounds. One of the grounds taken related to the role played by the Chairman. The question was regarding the competence of the Chairman to take on his own fundamental decisions relating to the examination, the conduct of which was the constitutional duty of the Commission. It was submitted on behalf of the Petitioners in that case that, in the conduct of the examination the Chairman had presumed to act as if he alone constituted the Commission and this aberration had completely vitiated the 37th examination. It was submitted that in view of the clear mandate by the Constitution in Article 320(1), no single member of the Commission, including the Chairman, could take upon himself the conduct of an examination under Article 320(1) of the Constitution. It was submitted that the decision regarding centralised evaluation and the selection and appointment of examiners (which was a departure from the procedure followed earlier) were so fundamentally related to the conduct of the examination that their enforcement by the Chairman on his own without any prior sanction by the Commission was clearly an infraction of Article 320(1).

After going into the merits of the case regarding irregularities in details, with which we are not concerned in the present case, ultimately the Court found, inter alia, as follows: After going through the contents of the counter-affidavit and the statements made at the bar it was observed as follows:

(a) Now I proceed to consider the question as to how far did the Chairman assume the conduct of the examination in his own hands and what would be the legal effect of the Chairman taking on his own some basic decision regarding the conduct of the examination. (Para 11).

In this regard the contents of the counter-affidavit and the statements made at the bar give a distinct impression that the conduct of the examination has been a one man affair in the hands of the Chairman and the Commission's stamp was used at the end to put its seal on the result of the examination. (para 12).

In fact going through the contents of the counter-affidavit, I repeatedly wondered whether the counter-affidavit was prepared and filed at the behest of the Commission or at the instance of the Chairman alone. (Para 13)

(b) From the pleadings of the parties and the statements made at the bar, the following emerge as the admitted position:

(i) Since its inception the Commission never framed any rules or guidelines either statutory or administrative for carrying out its various duties and functions under the Constitution; no such rules or guidelines were framed either for the conduct of examinations under Article 320(1) of the Constitution.

(ii) There is not even a formal resolution by the Commission authorising the Chairman to act on behalf of the Commission in the conduct of the examination with a provision for post facto ratification of the Chairman's actions in this regard.

(iii) In the absence of any rules, guidelines or a formal resolution as aforesaid, the conduct of the examination remained all along in the hands of the successive Chairman of the Commission.

(iv) For the 37th examination, as in the past the selection of paper setters, examiners and printers etc. was made by the Chairman alone, professedly in order to maintain confidentiality.

(v) Basic and fundamental decisions relating to the conduct of examination were also taken by the Chairman usually after discussion with other Members of the Commission.

(vi) The list of qualified candidates, to be called for interview, on the basis of the written examination and the final result of the selected candidates were published only after these were placed before the Commission and were approved by it. This practice was followed in the 37th examination also and the list of the qualified candidates was approved by the Commission on 23.12.1992.

(vii) In the conduct of the 37th examination, therefore, the Chairman had not made any departure from the past practice followed by the previous Chairman and had only followed the earlier practice of his predecessors. None of the Members of the Commission, saving one, had raised any protest or objection to the manner in which the 37th examination was conducted. (para 14)

(c) Mr. B.C. Ghosh, learned Counsel appearing for the Commission did not resist the obvious and, therefore, it is not necessary here to go into the details of the argument advanced by Mr. Jha in this regard and it is to be accepted as a basic fact that the Chairman alone does not constitute the Commission which consists of a Chairman and ten others members. (Para 17).

(d) Mr. Ghosh, learned Counsel appearing for the Commission first sought to justify the non-existence of any rules for the transaction of business by the Commission and for carrying out its different constitutional duties and functions. Learned Counsel pointed out that the Constitution of India while creating different institutions, bodies and authorities had also made provisions for these institutions, bodies or authorities to make rule for the conduct of their business. The only exception, however was the Public Service Commission to which no such power was given to make rules relating to transaction of its business. With reference to Articles 77(3) (relating to rules for conduct of business of

Government of India, 118 (relating to rules for conduct of business of each house of Parliament), 145 (relating to practice and procedures of the Supreme Court), 166 (relating to rules for conduct of business of the State Government), 208 (relating to rules for conduct of business of the Legislature of a State), 225 (in relation to the High Court) and some other similar Articles. Mr. Ghosh submitted that there was no comparable provision in Chapter 2 of part XIV of the Constitution dealing with Public Service Commission. He stated that the only rule making powers were those contained in Article 318 and the proviso to Article 320. None of these gave power to frame rules for the transaction of business of the Commission. In view of this, he submitted that the Commission was quite helpless in the matter and it was not legally possible for the Commission to frame the rules like other constitutional agencies as any such exercise would be without any sanction in law. (Para 25).

I am unable to understand (his contention. In the absence of any rule making power conferred by the Constitution all that can be said is that the rules framed by the Commission will not be statutory in nature. The absence of any rule making power under the Constitution surely does not prohibit the Commission from framing rules, norms or guidelines for the transaction of its business and to carry out its different constitutional duties and functions. Such rules will be fully operational and binding irrespective of the fact that they may not be statutory but only administrative in nature, provided of course they satisfy the tests of fairness and reasonableness. These will be highly useful in providing the much needed guidelines in the functioning of the Commission and shall go a long way in saving it from any controversies of the present kind. (Para 26).

In fact, I find it difficult to understand how the Commission has been able to discharge its duties in the absence of such norms and guidelines. In the case of a constitutional agency consisting of more than one person, it is inevitable that there would be, at times, some differences of opinion. I do not know how these differences are resolved in the absence of any rules in this regard. I cannot imagine that for all these years (more than four decades) all the basic decisions in the Commission were taken unanimously. Such an unfailing unanimity over such a long period can be achieved only either by excluding the Members from the decision making process or by the Members surrendering their own discretion in favour of the Chairman. Neither of the two courses is very happy situation and the framers of the Constitution certainly did not envisage the Commission, consisting of more than one Member to function in such a manner. (Para 27).

(e) Dealing with the contention made on behalf of the Chairman that the office of the Chairman was different from that of an ordinary Member of the Commission, the Court observed as follows:

...I am unable to appreciate the application of this proposition to the controversy involved in this case. The Chairman may be, and indeed is, different from a Member of the Commission. He may shoulder additional responsibilities and may carry additional powers. Notwithstanding this, the Chairman alone is not the

Commission and the question for determination here is whether the Chairman alone can act as the Commission and for the Commission. The second proposition submitted by Mr. Ghosh thus does not advance the case of the Respondents. (Para 28)

Mr. Ghosh then took up the point that the Chairman was legally competent and justified in handling the conduct of the examination by himself. For this Mr. Ghosh devised an ingenious argument which consisted of two limbs. The first limb of the argument was that the conduct of an examination under Article 320(1) of the Constitution was an administrative function and the second limb of the argument was that all the administrative powers of the Commission were vested in the Chairman. (Para 29).

Mr. Ghosh argued that the Constitution had evolved three different functions to be performed by the different agencies and authorities created by the Constitution. These were (i) legislative, (ii) judicial which included quasi judicial functions also; and (iii) administrative or executive. Mr. Ghosh cited authorities including S.A. de Smith to contend that the functions of the public authorities may be roughly classified as:

- (i) Legislative,
- (ii) Administrative (or executive),
- (iii) Judicial or quasi judicial, and
- (iv) Ministerial.

He further argued that the conduct of an examination under Article 320(1) was neither legislative nor judicial or quasi judicial and could be classified only as an administrative function. (Para 30).

He then took up Regulation 8 of the Bihar Public Service Commission (Conditions of Service) Regulations, 1960 framed by the Governor under Article 318 of the Constitution. Regulation 8 reads as follows:

When the Chairman is absent on leave or otherwise, the seniormost member may hold current charge of the administrative duties of the Chairman and be allowed a special pay of Rs. 200/- per month during such period." From this, it is sought to be culled out that the Chairman has to perform some administrative duties and in him alone vest the administrative powers and functions of the Commission which in his absence can be exercised by the seniormost Member. Having thus made the Chairman the repository of all the administrative powers and functions of the Commission on the basis of the above quoted Regulation 8, it became easy to link up the two limbs of the argument and to suggest that the Chairman was empowered to carry out all the functions and duties of the Commission which were of an administrative nature. (Para 31)

The submission to my mind is riddled with fallacy. Regulation 8 does not vest the Chairman with powers to carry out all the duties and functions assigned to the

Commission which are of an administrative nature. It merely says that the internal administration of the Commission shall vest in the Chairman who shall be its office head. To read into Regulation 8 what is suggested by Mr. Ghosh will not only make the offices of the other Members of the Commission totally redundant but will also render meaningless several Articles of the Constitution. (Para 32)

I also do not know how for it is correct to argue that all the functions of all the constitutional agencies and authorities must be covered by the classification of functions into legislative, judicial and administrative and that no function can go beyond this classification. I wonder if the functions of the Election Commission, the Attorney General the Comptroller and Auditor General and the Advocate General can be said to be covered by this classification in the strict sense. In any event the conduct of examination is one of the primary functions of the Commission; so to say its *raison d'être*. And I am of the firm opinion that this constitutional duty of the Commission could not be taken over by the Chairman personally on the basis of Regulation 8.

For all these reasons, I find no substance in the submission of Mr. Ghosh that on the strength of Regulation 8, the Chairman could validly and justifiably conduct the examination on his own and I hereby reject the same. (Para 33).

It was then argued that it was only in order to maintain confidentiality that the selection and appointment of paper setters, Examiners and printers etc. were made by the Chairman exclusively. I do not understand this submission either. Who will decide, whether the Commission or the Chairman, that confidentiality demands that these appointments should be left in the hands of the Chairman alone? Is there such a decision by the Commission? Further, to my mind this insinuates that the other Members of the Commission are incapable of keeping the trust and the confidence of their office. If a person cannot keep his official secrets then he is apparently not fit to hold the responsible position of the Member of the Commission. However, when a person is duly appointed as a Member of the Commission by the constitutional authorities after following the constitutional procedure, it has to be *prima facie*, assumed that he is fit to hold the office and to keep the confidences and secrets of the office which is usually the normal demand of any responsible position. I am of the definite opinion that to exclude the Members of the Commission from basic decisions regarding the conduct of examination on this kind of a plea is *prima facie* unreasonable. (Para 34).

This brings me to the question of appointment of Co-examiners. The counter affidavit does not give any details regarding the respective functions of the Head Examiner and the Co-examiner. Nevertheless it states in para 12:

That as a part of administrative duties the Chairman has been appointing paper sellers and Head Examiners who in their turn appoint Co-examiners and then in para 33:

Answer books are mostly examined by the co-examiners under the guidance of Head examiners. Co-examiners are not necessarily of University Professors' rank.

It is thus clear that the Co-examiners are not doing any secretarial work but are engaged in the actual evaluation of answer books. And yet they are appointed neither by the Commission nor by the Chairman but by persons (Head Examiners) who are total outsiders to the Commission. This procedure does not have any prior sanction by the Commission, but is being followed at the instance of the Chairman alone. This makes it further indefensible. (Para 35).

It was then submitted that before taking the basic decisions including the one to introduce centralised evaluation scheme the Chairman discussed the matter with the senior and experienced Members of the Commission. In the words of Mr. Ghosh "the Chairman of the Commission who was new to the job had before taking the decision, consulted most of the senior Members of the Commission who were Members of the Commission from before and were competent to advise the Chairman in the matter."

This also, to my mind, betrays a misconception regarding the role of the Members. Under the scheme of the constitution the Members along with the Chairman constitute the Commission. The Members are not there as advisors and consultants whom the Chairman may consult or from whom he may take advice before taking decisions. The process of decision making will be entirely different in the two situations and I wonder how the Members and the Chairman of the Commission have failed to realise this. (Para 36).

Mr. Ghosh finally argued that in the conduct of the 37th examination the Chairman had merely followed the practice which was prevailing in the Commission from the past; this left the matters regarding the details of the examinations in the hands of the Chairman and it was only the result of the examination which was placed before the Commission for its approval. Mr. Ghosh also said that even assuming, though not conceding, that there were some irregularities or lacunae in the conduct of the examination, the same were rectified and ratified when the Commission on 23.1.92 approved the list of the qualified candidates prepared on the basis of the written examination. He forcefully argued that it was quite erroneous to describe the conduct of the examination as void ab initio. He cited authorities setting forth the distinction between a void procedure and an irregular and voidable procedure. He contended that the procedure adopted for the 37th examination could be, at worst, described as irregular and all the alleged irregularities from which the examination might have suffered initially were wiped clean when the Commission as a body approved the list of the qualified candidates. (Para 37).

As noted earlier, Mr. Jha has submitted that there was no provision under which the Commission could delegate its duty to conduct the examination to the Chairman and hence the conduct of the examination by the Chairman was without any authority in law and, therefore, void ab initio. It, thus followed that

the examination could not be saved by any subsequent ratification by the Commission. In support of his contention, he has relied upon the case reported in AIR 1989 S.C. 1588. In the face of the law laid down by the Supreme Court in this judgment, it is indeed true that no plea of delegation and post facto ratification can be sustained in defence of the examination. In the aforementioned judgment the Supreme Court explained the law regarding delegation and ratification as follows:

It is a settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised Only by that body. It cannot be exercised by others unless it is delegated. The law must also provide for such delegation. Halsbury's Laws of England (Vol. I, 4th Ed. Page 32) summarises these principles as follows:

32.--Sub-delegation of powers.--In accordance with the maxim *delegatus non potest delegare*, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of power has been authorised by express words or necessary implication. There is a strong presumption against construing a grant of legislative, judicial or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind.

Then on the question of ratification this is what the Supreme Court has said:

These principles of ratification apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the powers conferred and any action without any power has no legal validity. It is *ab initio* void and cannot be ratified.

It is, thus, futile to try to defend the 37th examination on the plea of implied delegation and post facto ratification. (Para 38).

I however see the whole matter from a different point of view. The question of delegation and post facto ratification would arise only if the conduct of the 37th examination is seen in isolation. But it has come on record that the present Chairman was only following the practice and procedure which had been prevalent in the Commission for the conduct of examination. There was nothing new introduced by him in the manner of the conduct of the examination and the 37th examination was also conducted in the same manner as the earlier examinations. I may here clarify that on the face of it the 37th examination might have appeared slightly different from the past examinations (Central evaluation scheme being introduced for the first time) but on the basic level it only followed the past pattern as, like the past examinations, decisions were taken by the Chairman and only the result was presented before the Commission for its approval. It is evident from the record that since the inception of the Commission the decisions regarding the conduct of the examination were left in the hands of the Chairman and it was the result (in the first stage of the qualified candidates and in the final stage of the selected candidates) which was placed before the Commission for its approval; in this process there was no departure

so far as the examination in question is concerned; that is to say, the decisions were taken by the Chairman and the list of the qualified candidates was placed before the Commission for its approval. (Para 39).

As I see the events, the Commission at its inception went ahead with the holding of examination before it had framed any rules regarding the conduct of the examination. In the process, major and substantial role regarding taking of decisions was left in hands of the Chairman. The Commission to frame any formal rules in this regard led to the repetition of the same mode of examination over the years. With the passage of years this process crystalised into an accepted practice by the Commission for the conduct of examination. This is also evident from the fact that over the years no member ever objected to the conduct of examination in this manner. The same practice was also followed for the 37th examination and this time also no member, save one, raised any objection or made any protest regarding the manner and mode in which the decisions regarding the conduct of the examination were being taken by the Chairman. On a true interpretation of facts it must, therefore, be held that the Commission had adopted this as the mode of conduct of examinations and the Chairman only followed this mode adopted by the Commission for holding the 37th examinations. One can find fault with the procedure adopted by the Commission for the conduct of examinations and I have done so. Nevertheless, the examinations, including the 37th examination, must be held to have been conducted in a manner accepted by the Commission and hence these examinations were held by the Commission and not by the Chairman on behalf of the Commission as alleged by the Petitioners in this case. The examination having been held by the Commission cannot be said to be ab initio void and accordingly the result of this examination does not warrant any interference by this Court. (Para 40).

(f) Finally the Bench held as follows:

I accordingly find and hold that though the manner in which the 37th examination was held was unsatisfactory and left much to be desired yet it was an examination held by the Commission. (Para 42).

For this reason alone, I find it unwarranted and unjustified to interfere with the result and I find myself unable to give the relief as prayed for by the Petitioners. (Para 43).

I further find that in this case there is no indication of any prejudice having been caused to the Petitioners and any unjust favour accruing to the qualified candidates. Any interference with the result, therefore, will lead to an irreparable loss and injury to the qualified candidates and would be wholly inequitable and unjust to them for they would be made to suffer for no fault on their part. (Para 44).

Further as has been shown earlier Mr. Jha though characterising this examination as void ab initio wished that atleast a part of it should be saved in the larger

interest. I feel that no interference is required for that very reason. (Para 45).

To say that I do not find the Petitioners entitled to any relief is not to mean that I approve of the manner in which the Commission has been conducting examinations under Article 320(1) of the Constitution. I have already found that the procedure adopted by the Commission for the conduct of examinations is quite unsatisfactory, unreasonable and contrary to law. Consequently I direct the Commission to evolve a procedure for the conduct of examinations which must be both reasonable and in conformity with law. The first step in this direction is to frame "rules" or "guidelines" or "norms" or "instructions" ensuring complete and full participation of all the Members of the Commission in the decision making process on basic issues and policy matters. (Para 46).

In the light of the above the Commission is directed to frame "rules" ensuring that the entire body of the Commission fully participates in the decision making process on basic issues and policy matters. In framing its rules the Commission may seek guidance from similar rules framed by the Union Public Service Commission or the Public Service Commissions of the other States. (Para 47).

Such rules must be framed before the commencement of the 39th examination. The further conduct of the 38th examination must proceed with more and fuller involvement of all the Members of the Commission. (Para 48).

I am informed that a preliminary screening test has been introduced for the 38th examination. This would naturally reduce the number of candidates who will finally take the written examination and the number would once again come within manageable limits. Under this circumstance, the Commission will be well advised to once again consider the question of sending the answer books to the Examiners outside the State of Bihar as this process seems to evoke greater confidence and keeps the Commissions's examinations free from any controversy. (Para 49).

In the result, this application is dismissed with the aforementioned directions to the Bihar Public Service Commission. There shall be no order as to costs. (Para 50).

13. The scheme appears to be that a preliminary examination is to be held and after elimination process, a final examination is to be held. We are concerned with the validity of this preliminary examination itself and the result of the same would depend, as to who shall be entitled to appear at the final examination.

The grounds of challenge on behalf of the Petitioners would appear from a written note submitted on behalf of the Petitioner in the main writ petition which are as follows:

(i) The Chairman is not Commission as incompetent to take policy decision on behalf of the Commission unilaterally, including the question of modality of examination, mode of evaluation (computerised or manual/with or without

coding, fixation of cut-off marks, publication of results of more than twenty five percent of candidates appeared contrary to their own norms and resolution, decision regarding re-evaluation of unsuccessful candidates and publication of supplementary results of 2200 candidates.

(ii) The examination as well as the result of the 38th combined competitive examination suffers from irregularity and illegality and as such the result is not based on the merit but on extraneous consideration precisely for the reasons set out hereinafter:

(a) The preliminary examination was conducted in most unfair manner on experiment basis and even the question paper was on sale before examination.

(b) The objective test for screening for main examination was conducted with vague and subjective questions, rendering the whole competitive examination to a farce.

(c) The answer sheet was not printed on specific computer sheet rendering impossible for the optical mark reader to evaluate. The manual evaluation without coding by incompetent persons at the instance of their man is illegal and unreasonable.

(d) The members of the commission at random checking detected the indiscrepancies in the answer sheet and for the further re-evaluation by the commission and publication of revised results speaks of the volume of illegality in the examination in question.

(e) The answer sheet of sociology was evaluated on the basis of key answer of labour and social welfare altogether different subject.

(f) The result is against the concept of proportional representation based on rational basis. The heavy polarisation in favour of one optional paper, i.e., history to the detriment of other optional papers negates the idea of competitive examination. In fact, 11,000 candidates belong to history optional out of the result of 15,000 of 1st phase.

(iii) The constitutional authorities like B.P.S.C. is required to conduct its business in fair manner and according to the rule of reason and not according to the whim and caprices of individual including Chairman, conduct of examination without notifying vacancies in advance is against the known principles of law.

14. Mr. Ghose appearing on behalf of the Commission has firstly raised the question of maintainability of the writ petition. He has submitted that the Petitioners in C.W.J.C. No. 7203 of 1992 are incompetent to maintain this petition because they have no (sic) since they have neither any interest nor they are going to suffer and the persons, who are really interested in the preliminary test of 1992, have neither objected to the action taken by the Commission nor have they challenged the same. On merits it has been submitted on behalf of the Respondents that it was, in fact, the Members of the Commission, who had taken

decision regarding the same and only some preliminary work was done by the Chairman. What was done was so done in accordance with the judgment of the learned Single Judge and no action was taken in breach of the same. There was no irregularity or illegality and, in any event, the result of the same was not thereby vitiated. There is no merit in the contention that the question papers were on sale before the examination. There was nothing wrong in the objective test and others objections taken are not of such a nature which would invalidate the examination held.

So far as the preliminary point is concerned, I am of the opinion that there is no merit in this contention of Mr. Ghose. The Petitioner No. 1 in C.W.J.C. No. 7203 of 1992 is the Association of the persons who are interested in the conduct of the Preliminary Test, 1992. So far as other Petitioners are concerned, they are the affected persons themselves. In this context, reference may be made to the observation made by the Supreme Court in *Shivajiram Nilangekar Patil v. Dr. Mahesh Madhav Gosavi and Ors.* AIR (1987) S.C. 394, Page, 36.

The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The Petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the court, it was the duty of the court to the public that the truth and the validity of the allegations made be enquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest if it is necessary and essential for the administration of justice.

Accordingly, I reject this preliminary objection raised and hold that the Petitioners in the writ petitions are entitled to maintain those writ petitions.

15. Strictly speaking, the main questions, which arise in these proceedings are as follows:

1) Whether the Chairman of the Commission alone can act as the Commission when something is required to be done by the Commission.

2)(a) In the present case, has the Commission taken the relevant decision or was it taken by the Chairman mainly and substantially.

(b) If the answer to (a) above is in the affirmative, whether the examination and publication of the results stand vitiated and are invalid or illegal.

3(a) Whether there has been any irregularity or illegality in conducting the examination and/or in publication of the results including evaluation of the answer papers.

(b) If the answer to (a) above is in the affirmative, whether such irregularity/illegality vitiates the whole examination and evaluation process and the results of

the examination become null and void.

16. It appears that 65,000 and odd candidates had appeared at the Preliminary Test of 1992 and the results thereof were prepared through computer. It was decided that in case, the results of ten percent of the total candidates, who took the said Preliminary Test, 1992, were allowed to be published, then the following would be the number of different categories of candidates:

1.

General candidates

3,250

2.

Scheduled Castes

910

3.

Scheduled Tribes

650

4.

Extremely Backward Class

780

5.

Backward Class

520

6.

Economically Weak Class

195

7.

Economically Weak Women

195

8.

6,500

The two members of the Commission, namely, Mr. S.A.A. Rizvi, Respondent" No. 12, and Smt. Chandra Bhanu Devi, Respondent No. 5, determined the total number of candidates found eligible to appear in the 1992 Main Examination, on

the strength of marks obtained by them in the results of the Preliminary Test, 1992:

Minimum Marks

No. of Candidates.

1.

General Candidate

219,

3304

2.

Scheduled Castes

219

949

3.

Scheduled Tribes

157

654

4.

Extremely Backward Class

197

791

5.

Backward Class

219

1059

6.

Economically Weak Class

219

496

7.

Economically Weak Women

171

203

On the basis of the note of the Examination Department, the Commission discussed the matter regarding the 1992 Preliminary Test, and decided to form a Committee with six members of the Commission, namely, Sri S.A.A. Rizvi, Smt. Chandra Bhanu Devi, Dr. Karma Oraon, Sri S. Singh, Dr. K.P. Singh and Sri S. Prasad, for random checking of the results already prepared, who, in token of acceptance of the assignment, put in their signatures. Thereafter, the Sub-committee submitted its report on the guideline of which the following numbers of candidates belonging to different categories were recommended and, accordingly, it was decided to lake approval of the Commission.

Minimum Marks

No. of Candidates.

1.

General Candidates

211

7543

2.

Scheduled Castes

145

2121

3.

Scheduled Tribes

128

1535

4.

Extremely Backward Class

155

1802

5.

Backward Class

192

1243

6.

Economically Weak Class

192

466

7.

Economically Weak Women (or 46)

126 459

One of the members of the Commission, Respondent No. 3, Sri K.K. Tripathi, gave his dissenting note, which was subsequently supported by other members, namely, Sarbshree Brahmadeo Ram, Bindeshwari Singh and Dr. Karma Oraon. It appears from page 7 of the proceedings that on the basis of the majority views, the results of the candidates belonging to the different categories were prepared as follows:

1.

General candidates

4789

2.

Scheduled Castes

2361

3.

Scheduled Tribes

1632

4.

Extremely Backward Class

2284

5.

Backward Class

2711

6.

Economically Weak Class

1140

7.

Economically Weak Women

509

8.

Total

15426

17. Learned Counsel, appearing in support of the petition, raised the following contentions. He firstly submitted in the light of the aforesaid facts that the Chairman alone is not the Commission within himself and, as such, he cannot take a policy decision unilaterally including the question on modality of examination, mode of evaluation, that is, computerised or manual, with or without Coding, fixation of cut off marks, publication of results of more than 25 percent of the candidates, who took the Preliminary Test, 1992, contrary to the norms as fixed and the resolutions taken by the Commission itself and the decision regarding re-evaluation of the answer-sheets of unsuccessful candidates and publication of the supplementary result of about 2200 (two thousand two hundred) candidates. Learned Counsel then submitted that the conduct of the Preliminary Test, 1992, and the publication of the results thereof suffer from the vice of various irregularities and illegalities and, as such, the results so published are not based upon merits but are very much tilted with extraneous considerations. It was also submitted that the Commission is a constitutional authority, which is required to conduct its business in a fair and impartial manner according to the rule of reason, but in the instant case, the Preliminary Test, 1992, was conducted entirely at the whim of only the Chairman, Respondent No. 2, without notifying the total number of existing vacancies, in advance, which is against the well known principle of law and in gross violation of the precedents being followed till before the conduction of the Preliminary Test, 1992.

It was further submitted that the entire process of the instant Preliminary Test, 1992, right from its very beginning had not been approved by the Commission. In this context, learned Counsel also submitted that in view of the decision taken by the Commission earlier to the effect that 10 percent of the total candidates, who had appeared in the Preliminary Examination, 1992, would be allowed to appear in the Main Examination 1992, the Commission approved the publication of the results of approximately 6500 candidates. The report of the 6-Members' Sub-committee, subsequently constituted, which is said to have been approved by the Commission, was, in fact not approved by the Commission, as would be apparent from the face of the aforesaid dissenting notes. The learned Counsel then contended that the Respondent Chairman subsequently increased the number of the successful candidates and a supplementary result of over 2000 candidates was again published after re-evaluation of the answer-sheets of the

unsuccessful candidates at the dictate of the Chairman, Respondent No. 2, without the valid approval of the Commission. In this connection, the learned Counsel for the Petitioners drew our attention to the note, dated the 18th July, 1992 at the foot of page 7 of the proceedings and submitted that after the Chairman, Respondent No. 2, had put in his signature to subserve his personal interests, he had subsequently improved upon the same by adding the expression "Re-checking should continue unabated and if necessary supplementary result will be published later on" with a mala fide intention to bring to his favourites undue prospects for their bright future career. The learned Counsel also contended that the Chairman, after having postponed the meeting of the Commission for the 20th July, 1992, unilaterally published the results in a surreptitious manner and, accordingly five Members of the Commission submitted a Memorandum to the Governor against the Chairman regarding the irregularities and illegalities committed in the conduct of the Preliminary Test, 1992. In this connection, he also submitted that the Respondent Chairman unilaterally decided to re-evaluate the answersheets of the unsuccessful candidates and in this process, he published the supplementary results of 2200 candidates in addition to the results of 15,426 candidates already published earlier, which was alleged to have been prepared on the basis of the majority view. In substance, the submission of the learned Counsels that everything in relation to the Preliminary Test, 1992, had been decided unilaterally by the Respondent Chairman in the instant case, in order to facilitate illegitimate success, advantage and/or benefit to his own favourites. He referred to the statements contained in the counter-affidavits filed on behalf of Respondents No. 3, 4, 7 and 10, who are none else but the Members of the Commission itself, wherein it is stated that all the decisions regarding the conduct of the Preliminary Test, 1992, right from its very beginning, for example, the evaluation of the answer-sheets, fixation of cut-off marks (qualifying marks) for various categories of candidates, publication of results, re-evaluation and publication of the supplementary result, had been taken by the Respondent Chairman alone and not by the Commission in its respectability.

18. On the second point, learned Counsel, appearing on behalf of the Petitioners, submitted that the Preliminary Test, 1992, was conducted in the most unfair manner and the question paper was on sale in the open market before commencement of the instant Preliminary Test, 1992. In support of his contention, the learned Counsel relied upon the press report, which is Annexure-S to the writ petition. It was also submitted that the Preliminary Test, 1992, was conducted with vague and subjective questions and the answer-sheets were not printed on the specified computer-sheets and the manual evaluation of the answer-sheets without coding, by incompetent persons at the instance of the Respondent-Chairman is wholly illegal and unreasonable. It was also contended that the members of the Commission, as would be apparent from the statements made in the counter-affidavits filed on behalf of some of the Members, who are Respondents in this case, that during the random checking, it came to light that

the answer- sheets of Sociology were evaluated on the basis of the Key Answers of Social Labour and Welfare sheets, which is an altogether a different subject. Learned Counsel, therefore, submitted that the results so published are completely against the Concept of proportional representation on rational basis. According to the learned Counsel, the heavy polarization in favour of one optional paper, that is, History, to the detriment of the other optional papers negatives the idea behind the competitive examinations. It was next submitted that, in fact, out of the results of the total 15,000 (fifteen thousand) candidates first published, 11,000 (eleven thousand) candidates belonged only to the History optional. In support of his contention, the learned Counsel relied upon the question paper, which is substituted Annexure-4 to the writ application, as also on the averments made in the counter-affidavit filed on behalf of Respondents 3, 4, 7 and 10, who are the Members of the Commission and further argued that various questions of International Law Paper being vague and incorrect, one could not give the correct answer to those questions in the Preliminary Test, 1992 and this, according to the learned Counsel, was phenomenally attributable to the incompetent persons appointed as question setters by the Respondent Chairman due to his sophisticated exercises in precedents.

19. In support of the third and the last point, learned Counsel for the Petitioners relied upon the various notes contained in the proceedings file of the Commission produced before us, in course of hearing of the writ petition, by Sri B.C. Chose, as also on the averments made in the counter-affidavits filed on behalf of the Members of the Commission, namely, Respondents 3, 4, 7 and 10 and submitted that the action of the Chairman Respondent No. 2 in conduct of the business of the Commission was not fair and impartial; rather from the very beginning to the end, everything pertaining to the Preliminary Test, 1992, had been done as per his personal whim and desire alone and not by the Commission which includes all its Members. The learned Counsel also contended that the entire process adopted in relation to the Preliminary Test, 1992, were in complete defiance of the directions issued by a Division Bench of this Court in its unreported judgment, dated the 11th June, 1992, passed in C.W.J.C. No. 1192 of 1992, referred to above in extenso.

20. Sri J.P. Shukla, learned Senior Counsel has appeared on behalf of Respondents 3, 4, 7 and 10 in this case. While supporting the argument of Sri Rajendra Prasad Singh, learned Senior Counsel, appearing on behalf of the Petitioners, Sri Shukla submitted that though Respondents No. 3 and 4 had since retired, but they had also filed their affidavits within their tenure. He submitted that out of one lac nineteen thousand candidates, who had applied for appearing in the Preliminary Test, 1992, only sixty thousand of them appeared therein. It was further submitted that the answer-sheets were not numbered, which left enough scope for manipulation. He also submitted with reference to Annexure-A to the counter-affidavit filed on behalf of Respondents No. 3, 4, 7 and 10 that though the answer- sheets were sent to the Computer, yet, in fact, the compilation of the result was done manually. It was then submitted that the

examiners were appointed without the consultation with the Chief Justice as required by law. Learned Counsel further submitted that the examiners were appointed by the Respondent-Chairman arbitrarily without approval of the Commission. Sri Shukla, learned Senior Counsel, lastly submitted with reference to Annexure-C to the counter-affidavit filed on behalf of Respondents No. 3, 4, 7 and 10 that there is no rule for re-evaluation of the answer-sheets and that too at the instance of the Respondent Chairman alone. Sri Shukla, in support of his assertion, relied upon the decision in *Jaswant Singh Nerwal Vs. State of Punjab and Others*, in relation to the bar placed on the participation of a Member of the Public Service Commission which begins to operate from the stage of the interview for selection for appointment to certain post in which the merit of his close relative being an applicant is to be judged. In the context, I feel it gainsaid that this point having received the judicial endorsement by the apex Court of the land indubitably bears the impress of finality and, therefore, it has been accordingly, answered by me in the affirmative above.

21. Sri V.P. Verma, learned Counsel, appearing on behalf of Respondent No. 8, has adopted the arguments of the learned Counsel for the Petitioners as also that of the learned Counsel for Respondents No. 3, 4, 7 and 10 and referred to the news item published in "Nav Bharat Times" a Newspaper published from Delhi, Annexure-6 to the writ petition wherefrom it appears that the question papers of the Preliminary Test, 1992 were leaked out prior to the commencement of the said Preliminary Test. Sri Verma further submitted that the Respondent Chairman committed several omissions and commissions with regard to the functioning of the Commission including the conduct of the Preliminary Test, 1992 and in relation to the publication of its first and the supplementary results and as a result of which Respondent No. 8 and other five Members of the Commission submitted a Memorandum to the Governor pertaining to his misdeeds. In this connection, he also referred to the news items published from Patna in a local Daily "Hindustan Times" on the 25th July, 1992 with respect to the various omission and commissions of the Respondent Chairman with regard to the functioning of the Commission including the conduct of the Preliminary Test, 1992, etc. Sri Verma then referred to Article 320(1) of the Constitution and submitted that the Respondent Chairman acted arbitrarily and unilaterally ignoring the advice of the Commission, which constitutes not only with the Chairman, but inclusive of all the Members of the Commission, too. In this connection, Sri Verma referred to paragraphs No. 33, 34, 37, 38, 46 and 48 of the Division Bench judgment of this Court, in C.W.J.C. No. 1192 of 1992. He also referred to the various notes in the proceedings of the Commission and submitted that the several orders were passed by the Chairman without placing the same before the Commission, which were acted upon. According to Sri Verma, the results were published without the same having been ever placed before the Commission, as a result of which the whole process of the Preliminary Test, 1992, right from its very beginning up to the end is vitiated because of the unilateral decision of the Chairman without being approved by the Commission.

He contends that the matter relating to the constitution of the 6-Members' Sub-committee for doing the random checking of the answer-sheets was only discussed and regarding cut-off marks, four Members of the Commission put in their dissenting notes and the aforesaid Sub-committee was never authorised to decide and fix the cut-off marks and, as such, the recommendation of the subcommittee regarding cut-off marks is also wholly without jurisdiction. Sri Verma, in support of his submission, referred to the proceedings of the Commission. He then contended that the Respondent-Chairman while conducting the Preliminary Test, 1992, deliberately flouted and disobeyed the directions of this Court issued in C.W.J.C. No. 1192 of 1992 (Supra) and, in this connection, he referred to paragraph 48 of the judgment wherein it was directed that the "conduct of the 38th Examination must proceed with more and fuller involvement of all the Members of the Commission". He further submitted that Respondent No. 8 was prevented from attending the meeting of the Commission on the 17th July, 1992, inspite of the specific order/direction of this Court passed in C.W.J.C. No. 1898 of 1992. Sri Verma next submitted that the counter-affidavits sworn in and filed in this case by Sri Gopal Krishna Prasad, Under-Secretary, was never approved by the Commission. According to Sri Verma, those counter-affidavits cannot be considered for want of due authorisation by the Commission. In the context, it is pertinent to pinpoint that on receipt of the orders, dated 11th December, 1992, passed by the Supreme Court of India in SLP (Civil) Nos. 15474-75 of 1992 arising from the orders, dated 7.8.92/3.11.92 of this Court in C.W.J.C. No. 7203/92 If was placed before us on 5.1.1993, when we directed the Deputy Secretary concerned, who had affirmed an affidavit, to produce a copy of the SLP to this Court, filed before the Supreme Court, by the next Friday. We further observed that "Let it be recorded that Gopal Krishna Prasad Under Secretary Incharge, who has affirmed the affidavit, is present in Court and in his presence this order is being passed and he is directed accordingly." It appears from the records of this case that copy of the SLP filed by Sri Gopal Krishna Prasad is placed on the record. Thus, it is apparent from the copy of the SLP that it is Sri Gopal Krishna Prasad, Under-Secretary Incharge, who had sworn affidavit before the Supreme Court on behalf of the Commission on which the aforesaid order has been passed by the Supreme Court. Hence, it is, in my view, as referred to above, to raise any objection to the entertainability of the affidavits, in any form, is not sustainable and the objections to this effect already raised and is to be raised, but yet to be dealt with in this case, stand over-ruled.

Sri Verma yet proceeds ahead and in the sequence of his argument, he further contended that the entire process in relation to the Preliminary Test, 1992, suffers from grave illegality on three counts, firstly, the answer-sheets were neither numbered nor serial numbers were assigned to them; no code numbers were affixed on them before evaluation, secondly, the answer-sheets were not sent outside the State of Bihar as before, which is violative of Section 6 of the Bihar Conduct of Examination Act, 1981, and thirdly, the answer-sheets of the objective questions were not evaluated by the authorised competent persons.

According to" him the Preliminary Test, 1992, so held at the whims of the Respondent-Chairman is fit to be declared null and void.

22. Sri Banwari Sharma, learned Counsel appearing on behalf of the Intervenor Respondent, who are none else but the successful candidates in the Preliminary Test, 1992, refuted the contentions of the Petitioners in this case and submitted that the Petitioners have not come to this Court with a clean hand. In substance, his argument was that no irregularities or illegalities had been at all committed either by the Chairman or by the Commission in holding the Preliminary Test, 1992. In course of his arguments, he relied upon a judgment of this Court passed in C.W.J.C. No. 12597 and its analogous cases disposed of on the 22nd December, 1992. In the case cited by Sri Sharma, the result had already been published and when it had been detected that there had occurred some apparent errors somewhere in programming the data processing in the Computer manually, detrimental to the prospect of selection of some candidates, a second merit list was made out free from the error. This Court, in conformity with the dictum of the decision of the Supreme Court in Kumari Anamica Mishra and another, Vs. U.P. Public Service Commission, Allahabad and others, , held that the mistake in the result first published having been rectified, the action of the State Government in cancelling the examination as a whole was unwarranted and unsustainable and resultantly the notice issued by the Respondent State brought under challenge in that writ application was quashed. This decision is not applicable to the case in hand, because in the aforesaid admittedly there was no allegation as to any irregularities or illegalities committed in the conduct of the examination and the only complaint was about the incorrect publication of the result, which had been regularised by publication of the second list after removing the defects/errors, whereas in the instant case, the allegations are with regard to irregularities and illegalities committed in the conduct of the Preliminary Test, 1992 and publication of a supplementary result.

23. Sri Ghose learned senior Counsel, appearing on behalf of the Commission and the Chairman, Respondent No. 1 and 2 submitted that the Preliminary Test, 1992, was conducted in terms of the guidelines laid down by this Court in C.W.J.C. No. 1192 of 1992, to the effect that:

The further conduct of the 38th examination must proceed with more and fuller involvement of all the Members of the Commission.

As regards the allegations of the Petitioners and Respondents No. 3, 4, 7, 8 and 10 respecting omissions and commissions of the Respondent Chairman in conduct of the Preliminary Test, 1992, Leakage of the question-papers before commencement of the said Preliminary Test, setting out of the wrong and vague questions, adoption of illegal mode and manner of evaluation and re-evaluation of the answer-sheets and lastly the publication of result and the supplementary result, learned Counsel Sri Ghose contended that they are baseless and untenable. He further contended that all the processes pressed into service in relation to the Preliminary Test, 1992, had been adopted by the Commission and/

or by majority of the Members and not by the Respondent Chairman alone and it is in this context that Sri Ghose produced the entire proceedings of the Commission, in original, before this Court for easily ascertaining the truth and otherwise, so that this Court may arrive at its definite conclusion in such a diverse and complex situation in dispensation of justice on the basis of the vital and clinching issue involved in the instant case. He further submitted that in view of the real state of affairs apparent on the face of the proceedings of the different dales, there could not be entertained any doubt that all the decisions with regard to the Preliminary Test, 1992, were not taken by the Commission, but by the Respondent-Chairman unilaterally.

As regards the allegation of leakage of question papers and the sale thereof in the open market prior to the commencement of the Preliminary Test, 1992, Sri Ghose submitted that the Petitioners and Respondents 3, 4, 7, 8 and 10, who are also Members of the Commission relied on the news items published in the Newspapers long after the Preliminary Test, 1992, had been held and, as such, the news items could not be said to be any concrete proof of the leakage of the question papers. Besides, according to Sri Ghose, the news items did not indicate as to what was the nature of the leakage. Sri Ghose then submitted that the Preliminary Test, 1992, was held on the 24th May, 1992, and the news regarding alleged leakage was published on the 17th of July, 1992. In this connection, he relied upon the averments made in paragraph 8 of the counter-affidavit filed on behalf of Respondents 1 and 2 on the 20th August, 1992, which is reproduced below:

8. That clearly the application has been made, if not at the instance of the five Members of the Commission at least on the basis of their representation mostly devoid of facts. The publication of the so-called leakage in Delhi newspapers, Annexure-6, on 17th July, 1992, the alleged representation of five Members to the Governor published on 25th July, 1992, "Annexure-8" and the filing of the petition on 3rd August, 1992 are clearly one chain of events connected with each other.

Regarding the evaluation of answer-sheets of unsuccessful candidates and the publication of the supplementary result on that basis, Sri Ghose submitted that this allegation is unfounded. He contended that there did not arise any question of evaluation muchless re-evaluation at the instance of the Respondent Chairman. In this context, Sri Ghose submitted that the Commission appointed a 6-Members sub-committee to check the answer-sheets at random. According to Sri Ghose, the said Sub-committee submitted its recommendation, which was considered by majority of Members of the Commission and upon the objection raised by Sri K.K. Tripathi, Member, Respondent No. 3, supported by four other Members, it was directed that further checking would continue. According to Sri Ghose, this further checking of the answer-sheets was not done under the unilateral decision of the Respondent-Chairman, but it was done by the said Sub-Committee itself at the request of the dissenting Members of the Commission.

Further, according to Sri Ghose, the publication of the supplementary list of the successful candidates on the 7th August, 1992, was fully explained which was placed before the Commission. In this connection, Sri Ghose referred to the proceedings of the Commission at pages 2-3 wherein it was recorded as:

Commission discussed the note of the Examination Deptt. regarding Preliminary Examination and decided to form a Six-Members Committee comprising of Hon"ble Members Sri S.A.A. Rizvi, Smt. C.B. Devi, Dr. Karma Oraon, Sri S. Singh, Dr. K.P. Singh and Sri S. Prasad to do a random checking of the result already prepared.

From the proceeding, it appears that this was signed by as many as nine Members including Respondent No. 8. The other Members namely, Sarbshree K.K. Tripathi, B. Ram, and B. Singh, were the dissenting Members. The notes at pages 4-5 of the proceedings read thus:

The Commission discussed the cut off point of the result suggested by the Sub-Committee and approved it. Commission wanted to prepare and publish the result according to this cut off point.

This order was signed by six Members and the other four Members gave their dissenting notes and, accordingly, Sri Ghose submitted that this result was published by the Commission and, if not, then atleast this resolution was adopted by majority of the Members at a meeting of the Commission. According to Sri Ghose, re-checking of the answer-sheets did not mean "disputed cases," but only to correct the mistakes, if any Further, according to him, the disputes were only over the allocation of cut-off point to the various categories of the candidates, namely, General, Scheduled Castes, Scheduled Tribes, Extremely Backward Class, Backward Class, Economically Backward Class and Economically Weak Women and this allocation was done by the Commission strictly in accordance with the provisions of the reservation policy prevalent in the State of Bihar.

As regards the allegation of vague and wrong questions paper, Sri Ghose referred to Annexure-4 to the writ application. According to him, the questions set out in Annexure-4 are not correct reproduction of the original. In this connection, he referred to the averments made in paragraphs 17 to 20 of the counter-affidavit filed on behalf of Respondents 1 and 2, on the 20th August, 1992. At this juncture, I would like to mention that the objection as to the incorrect reproduction of real questions in Annexure-4, by necessary implication, stands over-ruled and, at the cost of a repetition, I must say that Annexure-4 has been replaced by the Petitioners on basis of the original question paper filed by Respondents 1 and 2, by seeking amendment of the same, which, according to them, also contained wrong and vague questions.

Further, Sri Ghose submitted that, any way, none of the candidate came forward to complain of any injury caused to him because of the wrong or vague questions. Sri Ghose, while answering the submission of the learned Counsel,

appearing on behalf of the Petitioners regarding vagueness of the questions of International Law Paper, submitted that Petitioner No. 2, in his answer-sheet of international Law Paper, had answered seven out of the total of eleven questions correctly and wrongly answered the remaining four questions and, therefore, it could not lie in his mouth to allege that he had not answered the questions on account of vagueness or the same being wrong or otherwise. He further submitted that except Petitioner No. 2, no other candidate, whether passed or failed, in the Preliminary Test, 1992, ever complained of his inability to answer the questions on the ground of alleged vagueness. Learned Counsel, with reference to the original question paper, contended that in the prevalent situation, the contention of the Petitioners on the point of vagueness of the questions or its being wrong, cannot be accepted.

As to the allegation regarding not numbering the answer-sheets, learned Counsel, submitted that there was neither any rule nor was it necessary to number the answer-sheets of the Preliminary Test, 1992, particularly when the Roll Number was mentioned on them, which were initialled by the Invigilators. In substance, his argument was that the Respondent-Chairman followed only the practice and procedure which had been prevalent in the Commission from before, in conduct of its examinations except that the scheme and/or system of centralised evaluation was introduced for the first time in and from the 37th Combined Competitive Examination of the Commission. He also submitted that from the very inception of the Commission, the discretion regarding the conduct of its examinations had been left with the Chairman and it was only the result, which used to be published after it had been placed before the Commission for its approval.

24. Before I proceed to consider the submissions of the learned Counsel, appearing on behalf of the respective parties, it is, essential to mention here in sequential relevancy of my intendment that till date, admittedly, neither any rule nor any guideline is available in the Commission for the purpose of conducting its examinations besides the observations of this Court in C.W.J.C. No. 1102 of 1992, with regard to "more and fuller involvement of the Members" in the 38th examination, as has been quoted above and till date, the examinations have been conducted by the Commission according to the practice prevalent in the Commission for conduct of such examinations. As submitted above, admittedly, the only change, which has been brought in this connection, is the introduction of the Preliminary Test for the purpose of screening candidates from among the large number of candidates applying and appearing in the examination beginning from the 37th Combined Competitive Examination. Recently, in C.W.J.C. No. 1192 of 1992, disposed of on the 11th June, 1992 (supra), a Division Bench of this Court directed the Commission to frame Rules before commencement of the 39th Combined Competitive Examination.

As regards the first point as to whether the Chairman alone is a Commission within himself and, if not, whether the decision taken with the consent of

majority of Members can be held to be competent warranting no interference by this Court, it is true that the Chairman, Respondent No. 2, in his individual capacity is not the Commission as has been held by a Division Bench of this Court in C.W.J.C. No. 1192 of 1992 (supra) in these words:

...under the scheme of the Constitution, Members along with the Chairman constitute the Commission.

already referred to above. But then, from a perusal of the proceedings of the Commission, in relation to the conduct of the Preliminary Test, 1992, the details of which I have already quoted above, it appears that as many as five Members of the Commission have put in their dissenting notes on the evaluation of the answer-sheets, fixation of cut-off marks, re-evaluation, publication of the supplementary result of 2200 candidates in addition to the result of those already published. From a perusal of the proceedings of the Commission, it also appears from the bottom of page 7 that:

Re-checking should continue unabated and if necessary supplementary result be published later on.

seems to have added subsequently after the Commission approved the publication of the result. The cut-off marks, as suggested by the Sub-Committee, have not been approved by all the Members of the Commission and six Members have put in their dissenting notes. It is also relevant to mention here that as many as five Members of the Commission submitted a Memorandum to the Governor levelling several allegations against the Chairman regarding irregularities and illegalities committed by him in respect of the conduct of the Preliminary Test, 1992, which has already been discussed above in great detail.

25. The question, therefore, as to what would be the impact of these irregularities on the results of the Preliminary Test, 1992 conducted by the Commission, which have already been published. As already stated above, in absence of any Rules and/or Guidelines prescribed for the conduct of examinations by the Commission, the practice prevalent in this regard has been adopted. From a perusal of the proceedings of the Commission, it is apparent that whatever decisions taken have, though not been taken by the Commission as a whole, but at least by majority of Members of the Commission. Although manifestly it cannot be said in the strict legal terms that the decisions have been taken by the Commission, yet in absence of the rules and/or guidelines, as stated above, the decision can very well be said to have been taken by majority of the Members. Some of the decisions of the Chairman, for example, the decision regarding re-checking, on the face of it, seems to be the unilateral action of the Chairman and not the Commission. It is true that the decisions have not been taken by the Commission but by the Chairman with the support of some of the Members of the Commission. I am conscious of the view that although the function of the Commission cannot be usurped by the Chairman unilaterally, in view of:

In any event, the constitutional duty of the Commission cannot be taken over personally by the Chairman.

as has been held in C.W.J.C. No. 1192 of 1992 (supra), yet in the peculiar facts and circumstances of the case, the Chairman had no option and/or alternative but to take the decision with the support of some of the Members of the Commission in absence of any specific rule and/or Guideline available in this regard. In that view of the matter, all the processes adopted in relation to the Preliminary Test, 1992 including publication of its results cannot be held to be illegal. It, however, does not mean in judicial parlance that I approve of the manner in which the Respondent Chairman has acted in this matter. He, in my view, ought to have taken in confidence the Commission as a whole in the (sic) of the Commission, particularly, in relation to its examinations, mode of evaluation of answer-sheets, publications of results including all other allied matters. Earlier this Court, while dealing with the challenge of the 37th Combined Competetive Examination, directed the Commission in the following terms:

Such rules must be framed before the commencement of the 39th examination. The further conduct of the 38th examination must proceed with more and fuller involvement of all the Members of the Commission.

26. In the aforesaid context, it is also relevant to mention one of the findings arrived at in paragraph 42 of the Division Bench judgment of the Court in C.W.J.C. No. 1192 (supra), which reads thus:

I accordingly find and hold that though the manner in which the 37th examination was held was unsatisfactory and left much to be desired yet it was an examination held by the Commission.

27. Thus, in my opinion, in view of the original proceeding, I am of the view that the procedures adopted were, though not strictly correct in substance, yet not vitiated as there is nothing to show in this connection. The Chairman should have certainly allowed the Commission more say in the matter and to participate in the matter more in details but having regard to the fact that the individual members of the Commission have not objected at that stage to the procedures followed, I do not think that it is proper for me at this stage to set aside the whole result, merely because of such irregularities committed by the Chairman. In my opinion, the Chairman should understand that he is not the Commission but he is merely one of the members of the Commission and in respect of the examination, it is the Commission with all the members to function. If there is any difference, it will be decided by the majority. The procedures followed by the Chairman in this case was not satisfactory. However, in this case, I am concerned with the examination which involves thousands of students and in view of the pendency of this proceeding for a long time wherein interim orders have been passed, in my opinion, departure from the procedure by not allowing more active participation of the members of the Commission, cannot be allowed to be a

ground for setting aside the whole evaluation process and the result of 1992 Preliminary Test.

So far as the manner of conduct of the examination and evaluation are concerned, I have gone through some of the questions, answer papers and all other relevant documents and I have found that the allegations made by the writ Petitioners regarding the same are basically incorrect and having regard to the nature of the examination of this kind, even if there is certain departure from the prescribed procedure, that is not so vital in nature as to compel one to invalidate the whole examination. There is no doubt that there are certain irregularities but it was for the members of the Commission to decide the same. Though there are some differences of opinion and some members have objected to the procedure followed, even having gone to the extent of making complaint to the Governor, it does not appear that the majority of the members of the Commission have objected to the same.

28. Coming to the second point as to whether the Preliminary Test, 1992, as well as its results suffers from the vice of various irregularities and illegalities, I must say that there have been exchange of affidavits, in different forms, amongst the different sets of contesting parties in this behalf. In this connection, Press Reports have been referred wherein it had been published that the question papers were on sale in the open market before the commencement of the Preliminary Test, 1992, with opposition to its acceptability mainly on the ground that the said news publications were made much after the said Preliminary Test had been held. However, I may say that the news items were published on the 17th September, 1992; whereas the instant Preliminary Test, 1992 had already been held on the 24th May, 1992. Therefore, it cannot definitely be said that the questions were leaked out prior to the commencement of the Examination in question. Moreover, there is no authentic document on record to support this allegation under the second point.

29. As to the allegation that the objective test for the purpose of screening was conducted with vague and subjective questions making thereby the whole examination to be farce, I refer to the newly substituted Annexure-4, which is not confined only to the International Law Paper, but also to the General Studies and General Economics. The Petitioner No. 2 has not even disclosed his optional subject. He has rather answered 7 questions correctly and only four questions wrongly out of the total number of 11 questions in the paper of International Law. In that view of the matter, the Petitioners cannot be allowed to challenge the impugned Preliminary Test, 1992, on this ground of vague and wrong questions. It is relevant to mention here that the Petitioners have not produced the original question papers as it is stated that the question papers were not allowed to be retained with the examinees and, therefore, what has been supplied in Annexure-4 is on the basis of memory only. From the answer-sheets produced before us, it is, no doubt, clear that some of the questions are vague having multiple of answers, but that by itself cannot be a ground for nullifying

the whole process of the Preliminary Test, 1992, including publication of its results.

30. Similarly, the evaluation of the answer-sheets of all the unsuccessful candidates cannot also be said to be arbitrary, because the Commission, as stated above, appointed a 6-Members Sub-Committee to check the evaluation already done at random. The Sub-Committee made its recommendation, which was considered by the Commission, although some of the Members of the Commission put in their dissenting notes. On the basis of the re-checking, the supplementary result was published on the 7th August, 1992, and, accordingly, it has to be held that the publication of the supplementary result on the basis of the recommendation of the Subcommittee was accepted by the majority of Members. Therefore, the re-checking, in the facts and circumstances of this case, cannot be said to be the "re-evaluation," but it can only be said to be a work to ensure that the evaluation has been properly and correctly done with the topmost priority to avoid any such aspect that might entail upon the students to suffer on this score.

31. From the proceedings of the Commission, it appears that initially, the notes in the proceedings mention the number of candidates belonging to different categories on the basis of "cut-off" points, the numbers of candidates belonging to different categories were fixed, which appears to have been done on the basis of the recommendation of the Sub-Committee. This was adopted by the 6-Members including the Chairman.

32. As regards the allegation of denial of the proportional representation resulting in heavy polarization in favour of one optional, that is to say, that only in "History" optional subject, eleven thousand candidates were declared qualified out of fifteen thousand total candidates, whose results were published to the detriment of prospects of the candidates belonging to the other optional papers. Although the said allegation has not been satisfactorily controverted by the Commission, yet the Commission being a constitutional body, it is expected to have bestowed its serious thought over this question also. It, however, does not appear from the record that this aspect of the matter has been considered by the Commission. The Petitioners, in paragraph 17 of the writ applications, have specifically raised this question, but it is too late for the Petitioners to have raised this question, particularly when the Preliminary Test, 1992 has already been held and the results thereof have already been published on the basis of the said Preliminary Test. It is indeed shocking that out of fifteen thousand candidates belonging to the various optional papers, eleven thousand candidates belonging to only one optional paper, i.e. "History" have been declared qualified, but this Court, in exercise of its power under Article 226 of the Constitution, cannot go into this question and interfere with the results already published, on this score alone.

33. Now, touching the last milestone of the case, with regard to the allegation that the answer-sheets used in the Preliminary Test, 1992, suffered from

varieties of infirmities leaving sufficient scope for manoeuvring for wrongful gains, such as, answer-sheets used in the impugned Preliminary Test were not printed on prescribed computer paper, no number muchless serial number was assigned to the same, no coding was done, so on so forth, but that by itself, too, will not, in my view, vitiate the results already published and/or for that matter, the Preliminary Test, 1992, also cannot be cancelled, yet more because any such cancellation at the present stage would otherwise be inequitous serving no body's purpose due to the time lag.

34. I fully agree with the comments made by Hon"ble the Chief Justice regarding the role played and to be played by the Commission and its Chairman and the position held by them. I also agree with the directions given by Hon"ble the Chief Justice regarding the future conduct of the examination by the Commission.

35. In the result, subject to such observation and direction, this writ application fails and is, accordingly, dismissed. The parties shall bear their own costs.

36. In view of the prefatory discussions, Civil Writ Jurisdiction Case No. 8049 of 1992, having a similar dimension to that of Civil Writ Jurisdiction case No. 7203 of 1992, is also, accordingly, disposed of in the preceding terms. Resultantly, this application is, thus, dismissed with an order to the contesting parties to bear their own costs.

B.C. Basak, C.J.

37. The validity of 38th Competitive (Preliminary) Examination, 1992 (hereinafter referred to "the said Examination") held by the Bihar Public Service Commission is challenged in these writ petitions.

38. I have gone through the judgment delivered by my learned brother Hon"ble Choudhary S.N. Mishra, J., who has gone through the questions involved in this case in details. I agree with the order proposed by him. However, I may add a few words.

39. This case discloses a very sorry state of affairs in respect of an authority which has been set up by the Constitution itself viz., Bihar Public Service Commission. The constitution confers on a Public Service Commission very important and wide powers. The important position held by a Public Service Commission would be clear from Article 317(1) which provides that the Chairman or any other member of a Public Service Commission can only be removed from his office by order of President of India on the ground of misbehaviour after the Supreme court, on reference being made to it by the President has, on inquiry held in accordance with the procedure prescribed in the behalf under Article 145, reported that the Chairman or such other member, as the case may be, ought on such ground to be removed. Only in exceptional cases as provided under Article 317(3), that the President of India can remove from office a member of the Commission without such inquiry. In this connection special reference may be made to the decisions In re. Reference under Article 317(1) of the Constitution of

India reported in (1990) 48 C.C. 262 and Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others, . The importance of and the special position held by the Public Service Commissions have been made clear by various judgments of various High Courts, including this High Court and the Supreme Court from time to time.

40. However, we have found that the performance of the Bihar Public Service Commission (hereinafter referred to "the said Commission") in this State is far from satisfactory as would appear from the number of cases instituted in this court. Recently the Supreme Court had to consider a situation where a blind member of the Commission was involved Jai Shankar Prasad, Adv. Vs. State of Bihar and Others, . In the present case we find that 5 members of the Commission had made representations to the Governor of the State making certain allegations regarding the said examination. This was given wide publicity by the news papers. In this context, on behalf of the Commission Under-Secretary in-charge of the Examination has stated in his counter-affidavit that three of the Members in their representation before the Governor concealed the fact that their sons had appeared in the Preliminary Test and when the names of their sons did not appear in the result, they raised this question before the Governor as well as before the Commission. It was also alleged that one of the members had concealed the fact that earlier his wife was a candidate in the 37th Combined Competitive Examination and when she did not succeed, he started creating troubles in and against the Commission. Several members of the Commission had also filed counter-affidavits in the case supporting the stand taken by the writ Petitioner and stated that the Preliminary Test of 1992 was conducted in complete disregard to the directions give by a Division Bench of this Court in its judgment, dated 11th June, 1992 passed in C.W.J.C. No. 1192 of 1992 (hereinafter referred to as the earlier judgment). They have complained about the high-handed action of the Chairman. It has also been complained by the said members that the counter- affidavit sought to be affirmed by the Under Secretary on behalf of the Commission cannot be treated as counter-affidavit on behalf of the Commission, since he has not taken approval of the Commission and that the deponent was never authorised by the Commission to swear the said counter and supplementary counter-affidavits. Various allegations have been made by various members against the so-called arbitrary and high-handed actions of the Chairman, who, according to them had acted on his own. The details of the same have been given by my learned brother in his judgment.

41. From the records of the Commission produced before us we also find that several members of the Commission have raised objections regarding the functioning of the Chairman. It was even contended on behalf of some of the members of the Commission before us that the lawyer who sought to appear on behalf of the Commission, has not in fact, been appointed by the Commission, but only by the Chairman without consulting the Commission. Some of the member of the Commission have even gone to the extent of alleging that the SLP filed by the Chairman before the Supreme Court being Nos. 154 and 15475 of

1992, against the interim orders of this High Court in these proceedings, were filed without the approval of the Commission in respect of which a huge amount of money was paid from the office of the Commission. The appointment of one Sachchidanand Singh, Secretary of the Commission and one Lal Babu Keshri, Senior Personal Assistant to the Chairman of the Commission have, also been challenged by some of the members of the Commission by their affidavit. It has been further alleged that the affidavit sought to be affirmed on behalf of the Commission could not be treated as an affidavit of the Commission. As stated by my learned brother, originally only the Commission and its Chairman were made parties, but subsequently upon application made to that effect, different members of the Commission were joined as party Respondents.

42. In this context, reference may be made to our order dated 3.11.92, wherein we have observed as follows:

This writ petition is a hotly debated one and a hotly contested one. It appears that whenever there is some matter relating to Bihar Public Service Commission (hereinafter referred to as B.P.S.C.) there are not only disputes regarding the merits of the case, but disputes amongst the members. Commission consists of several persons. It appears that the Chairman is, supported by some members and he is opposed by some other members. Accordingly, it becomes difficult to ascertain the views of the "Commission" as such. Similar situation was there in another matter which is now before the Supreme Court where it is being considered whether to have the matter transferred to Supreme Court. In this case similar steps may be taken. So far as the present case is concerned, in this case the writ Petitioners have challenged the result of 38th Combined Competitive Examination 1992 published on 18/24th July, 1992 and asked for other consequential ancillary reliefs. Originally only the "B.P.S.C. through its Secretary" and "The Chairman" of the B.P.S.C. were made party Respondents and nobody else. Thereafter we passed orders on 7th August, 1992 and 27th of August 1992 respectively which will speak for themselves. By the order dated 27th August, 1992, all the members of the Commission have been made party Respondents in this case. When this matter was taken up today at the outset, Mr. B.C. Ghosh, learned advocate stated that he was appearing on behalf of Respondent Nos. 1 and 2. However, upon objection being raised to that effect Mr. Ghosh admitted that no Vakalatnama has been filed on behalf of Respondent No. 1 that is, the Commission, but that it has been filed only on behalf of Respondent No. 2 who is the Chairman of B.P.S.C. There being no Vakalatnama on behalf of B.P.S.C. no one can represent the same. Mr. Ghosh has stated that there is on Secretary and as the B.P.S.C. is made a party through the Secretary no Vakalatnama has been filed on behalf of the Commission. So far as Respondent No. 8, who is one of the members of the Commission is concerned, Mr. V.P. Verma appears. So far as Respondent No. 7, another member is concerned, Mr. Anjani Kumar appears. So far as Respondent Nos. 3, 4, 6 and 10, some other members are concerned, Mr. Shukla appears. So far as Respondent No. 5 and 11, two other members are concerned, Mr. S.K. Ghosh appears. It further appears

that though originally Vakalatnama was filed on behalf of Respondent No. 6 through Mr. Akhileshwar Pd. Pandey, who is junior to Mr. Shukla and counter affidavit was filed on behalf of Respondent No.6 in that capacity, now Mr. S.K. Ghosh seeks to file another Vakalatnama on behalf of Respondent No. 6. Upon enquiry made to that effect Mr. Shukla states that Mr. Oraon, Respondent No. 6 signed Vakalatnama in favour of Mr. Pandey and he came to him on about ten occasions to give instructions for filing affidavit. Accordingly power and counter affidavit has been filed on his behalf by Sri Pandey. Recently a letter has been received stated to have been written by Mr. Oraon, which has brought to Mr. Shukla from the office of the Chairman of the Commission but Mr. Oraon did not meet him personally. He is not aware of anything else. Therefore, there seems to be a doubt as to by whom Mr. Oraon will be represented in Court-whether by Mr. Shukla or Mr. S.K. Ghosh. According to Patna High Court Rules second Vakalatnama cannot be filed unless no objection is gives. Mr. Oraon himself states that he wants to change his lawyer but he is not aware whether Mr. Oraon himself wants to be represented (sic) Mr. Shukla or wants to be represented by some other lawyer now.

In that view of the matter, we direct the Registrar of this Court to issue notice to Mr. Oraon, Respondent No. 6, by tomorrow informing him to appear in Court in person on Monday next. i.e. 9.11.1992 at 10.30 A.M., so that the Court may ascertain, the correct position regarding Respondent No. 6.

So far as objection raised by Mr. Ghosh to the effect that there being no Secretary no one can file Vakalatnama on behalf of the Commission, which is Respondent No. 1, is concerned, it may be pointed out that the Respondent No. 1, the Commission and not the Secretary has been made a party, and only the service is through the Secretary. In the earlier case, under similar circumstances, it was stated by Mr. Ghosh appearing for the Chairman that though there was no Secretary officially but somebody else was performing the duties of the Secretary of the Commission. Accordingly, we would have expected that the person, who is performing the duties as the Secretary would have filed power on behalf of the Commission but he has also chosen not to file Vakalatnama on behalf of Respondent No. 1. Accordingly, for the time being no one is representing B.P.S.C. as such. It appears that one Mr. S.N. Singh, Deputy Secretary of the Commission is now performing the duties of the Secretary. Let a copy of this petition be served on Mr. S.N. Singh by tomorrow. Liberty is give to the Petitioners to serve a copy of the petition on Respondent No. 1 through its Chairman also.

This Court was ready to take up and dispose of this matter expeditiously but having regard to the complications raised this could not be done. We fix this matter for disposal on Monday next. We are not inclined to hear the stay application alone.

43. This discloses a very sorry state of affairs regarding the Public Service Commission in this State.

44. Two main points were argued before us. Firstly, that the Chairman acted arbitrarily in connection with this examination as he did not allow the members of the Commission to take active part and that this was in violation of law and also violation of the earlier judgment. The second point urged before us was with regard to the alleged irregularities regarding such examination itself. My learned Brother has dealt with these two aspects in details in his judgment. I shall only add a few words.

45. So far as the first point is concerned, the earlier judgment has been quoted by my learned Brother in details in his judgment. In the said earlier judgment it was observed, *inter alia*, as follows:

In fact going through the contents of the counter-affidavit, I repeatedly wondered whether the counter-affidavit was prepared and filed at the behest of the Commission or at the instance of the Chairman alone.

46. In the present case a similar comment can justifiably be made regarding the counter-affidavit sought to be affirmed on behalf of the Commission.

47. We have examined the records of the Commission in this regard. We are not happy about the manner in which this matter has been conducted by the Chairman and the role played by him. We find that there is some substance in the allegation that the Chairman himself practically conducted, controlled and supervised the whole process of examination and that the members of the Commission as such did not play any substantial role in the matter. Similar allegations were made in the earlier judgment and upheld by the Court therein. In view of the guide-line by the Division Bench in the earlier judgment it was to be expected that the Chairman would have taken into confidence the members of the Commission more closely and the members of the Commission would have been allowed to play more important role in respect of taking decision in the matter of the examination. But this was not done.

48. However, on that ground alone I am not inclined to set aside the results of the said examination mainly because, this matter involves recruitments to several posts in this State and this has been pending for a long time. There was an interim order preventing the results being given effect to which has been vacated some time back. In view of the complications created in the conduct of the litigation and in view of different stands taken and different affidavits filed including affidavits filed by the individual members of the Commission, it had taken some time to deliver the judgment in this case. If we set aside the preliminary examination on this ground it would cause more misery and suffering for the concerned people. Therefore, I am inclined to treat the same as mere irregularity not invalidating the examination on that ground. However, I should make it quite clear that the/ Commission including the Chairman and the individual members must be more careful in future. The Chairman should allow the members of the Commission to play a larger role in such matters. It should be remembered by the Chairman that he does not constitute the Commission by

himself; the Commission consists of several persons. The role to be played by the Commission in such matters are to be played by all the members of the Commission and not by the Chairman alone to the inclusion of other members of the Commission.

49. So far as the alleged irregularity regarding the examination itself, my learned Brother has considered the same in details in his judgment and I find that no substantial ground has been made out. There might have been some irregularities, but for that reason alone we should not set aside the whole examination; otherwise a fresh examination has to be held causing further delay.

50. Before concluding I may refer to some observations made and directions given in the earlier judgment particularly as follows:

(i) I agree that rules and" guidelines must be framed for the conduct of the examination and it is directed accordingly.

(ii) I further agree that until and unless there is a formal resolution by the Commission authorising the Chairman to act on behalf of the Commission in the conduct of the examination, the Chairman must not act on his own and there should not be any post facto ratification of the action of the Chairman in this regard and it is directed accordingly. The Chairman and the Commission are directed accordingly.

(iii) I further agree that the conduct of the examination must be all along in the hand of the Commission itself and not of the Chairman alone. The selection of the paper setters, examiners and printers etc. must not be made by the Chairman alone, but should be made by the Commission. Basic and fundamental decisions for conduct of the examination must be taken by the Commission and not by the Chairman.

(iv) There seems to be certain practice, which is being followed for some time, whereby only the Chairman is to play the important role and not all the members of the Commission. This must be discontinued at once and it is directed accordingly.

(v) As observed by the Division Bench, the absence of any rule making power under the Constitution surely does not prohibit the Commission from framing rules, norms or guide lines for the transaction of its business and to carry out its different constitutional duties and functions. If that is done then there would be no further scope for any allegation on the part of any member or public to allege that the Chairman has acted arbitrarily.

(vi) The Chairman may have some more additional administrative powers, but he alone is not the Commission and he cannot act as the Commission and for the Commission, to the exclusion of the members of the Commission. The Commission and the Chairman are directed to act accordingly.

(vii) I agree with the interpretation given to the Regulation 8 by the earlier

judgment. The conducting of examinations is one of the primary functions of the Commission and this should not be taken over by the Chairman personally. The Chairman cannot validly or justifiably conduct the examination on his own. The members along with the Chairman constitute the Commission and the members do not merely function as advisors to the Chairman. It is directed accordingly.

51. Subject to the aforesaid observations and directions, I respectfully agree with the order proposed to be passed by my learned Brother.

*Ed.--Sanjay Kumar v. B.P.S.C.--This case, which could not be reported earlier, is being reported in subsequent issue (s). Readers may please refer to index of 1994(2) PLJR for this case.

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