

(2000) 12 PAT CK 0028

In the Patna High Court

Case No : CWJC No's. 6092, 6352, 6449, 7883, 8041 and 8408 of 2000

Awadhesh Kumar Singh @ Awadhesh Pd. Singh

APPELLANT

Vs

Bihar Public Service Commission and Another
 Manoj
Kumar and Others Vs State of Bihar and Others

RESPONDENT

Date of Decision : 11-12-2000

Acts Referred:

Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955 — Rule 15, 16, 17, 18, 19
Constitution of India, 1950 — Article 19(1), 234, 324, 50

Citation : (2001) 1 PLJR 206

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Rajeev Sharma, Din Dayal Sah, in CWJC Nos. 6092 and 8041 of 2000, Rajendra Narayan, Lakhna Chandra Roy, Anju Narayan, Viresh Sinha, Raj Kishore Singh, in CWJC No. 6449 of 2000, Rajendra Prasad Singh, Uma Kant Singh, Atul Kumar Pandey, in CWJC No. 6352 and 8408 of 2000, Shanti Pratap and Gayanand Roy, in CWJC No. 7843 of 2000, for the Appellant; Ramesh Kumar Datta, Purnandu Singh, Shambhu Kumar for High Court, Ashok Kumar Chaudhary, for BPSC, S.K. Ghose, Arup Kumar Chongder for State, Ram Suresh Roy, Kundan Bahadur Singh for Caveator, Ganesh Prasad Singh and Sanjay Kumar, in Intervenor, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—All these writ applications have been filed by persons who appeared at the 25th Judicial Service Examination (hereinafter referred to as "the examination") conducted by the Bihar Public Service Commission but on the basis of written examination they were not included in the list of 352 qualified candidates who were called for viva voce test. Their grievance is that in holding the examination the Bihar Public Service Commission has not acted as per the requirements of Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955 (hereinafter referred to as "the Rules"), particularly the provisions of Rules 15(a), 16, 17 and 23. Keeping in view the common points arising for

determination in all these writ applications as well as the urgency of the matter, all these writ applications have been heard together and with the consent of the parties, are being finally disposed of at the stage of admission itself by this common judgment.

2. The relevant facts lie within a narrow compass. On 19.3.1999, the Bihar Public Service Commission (hereinafter referred to as "the Commission") published a newspaper advertisement inviting applications from eligible candidates to appear at the 25th Bihar Judicial Service Competitive Examination, 1999 for filling up 152 declared vacancies in the post of Munsif. The Petitioners and other eligible persons applied to take the examination. They appeared at the written examination on 9.10.1999 in accordance with a programme published by the Commission and waited for the result of the written examination which was published in newspapers on 29.6.2000. The result of the written examination shows that 352 candidates qualified therein. Thereafter, the Commission published programmed for holding viva voce test of the candidates declared successful/qualified at the written examination, through a newspaper publication dated 8.7.2000. The viva voce test was conducted from 24.7.2000 to 3.8.2000 with aid of experts which consisted of Judges of this Court nominated by the Court. As per submissions at Bar, the final result of successful candidates on the basis of written examination and viva voce test has been published on 4.8.2000 but no appointments have been made till date.

3. On behalf of the Petitioners, following questions were raised for decision and for seeking suitable interference of this Court with the process of examination, publication of result and consequent appointment to be made on that basis:

(1) Rule 15(a) of the Rules requires the Commission to fix qualifying marks in its discretion in consultation with the Patna High Court. According to Petitioners, there being no consultation in the matter of fixing of qualifying marks by the commission with the High Court, the publication of result of written examination was illegal.

(2) Rule 16 of the Rules requires the Commission to consult the Chief Justice of the Patna High Court confidentially in the matter of selection of examiners for the law papers prescribed for the written examination. According to Petitioners, this was not done by the Commission and hence, examination of law papers by examiners appointed without such consultation is vitiated in law and this renders the entire result of the written examination bad in law.

(3) Rule 17 of the Rules requires the Commission to act on the basis of the marks obtained at the written examination and arrange for a viva voce test of the candidates who have qualified at the written examination according to Rule 15. According to Petitioners, there being no valid qualifying marks fixed under Rule 15(a), it must be held the Rule 17 has not been complied with and the commission has called for viva voce test candidates only on the basis of a principle to call candidates 2.5 times the number of vacancies which is not

permissible under Rule 17.

(4) Rule 23 of the Rules requires the Commission to prepare a consolidated result of the examination and a copy of the marks obtained both at the written and the viva voce test as well as copy of the printed table of the consolidated results is required to be supplied individually to each candidate, soon after the results are compiled and the lists referred to under Rule 19 is submitted to the Governor. According to some of the Petitioners, the Commission has not been complying with this Rule and is not providing the consolidated results to individual candidate. This, according to Petitioners, shows lack of transparency and probability of foul play.

(5) The State Government should increase the number of vacancies so as to cover all the vacancies occurring till the date of interview (viva voce test) and steps should be taken by the Respondents to fill up all such vacancies with the candidates who have appeared at the examination.

(6) The Commission should be directed to take urgent steps for filling up the vacant seats from the quota of scheduled castes and scheduled tribes from the general category of qualified candidates as per requirement of Rule 20 of the Rules.

4. Keeping in view the controversy between the parties it is desirable to reproduce Rules 15, 16 and 17 of the Rules.

15. (a) The Commission shall have discretion to fix the qualifying marks in any or all the subjects at the written examination, in consultation with the Patna High Court.

(b) The minimum qualifying marks for candidates belonging to the Scheduled Castes and the Scheduled Tribes shall not be higher than 35 per cent unless the number of such candidates qualifying at the written test according to the standards applied for other candidates is considerably in excess of the number of candidates required to fill all the vacancies reserved for the Scheduled Castes and the Scheduled Tribes:

Provided that in determining the suitability of a particular candidate for appointment, the total marks obtained at the written examination and not the marks obtained in any particular subject or subjects, shall be taken into consideration.

(c) There shall be no qualifying marks for the viva voce test.

16. The Commission shall consult the Chief Justice of the Patna High Court confidentially in the matter of selection of examiners for the Law papers prescribed for the written examination.

17. On the basis of the marks obtained at the written examination, the Commission shall arrange for viva voce test of the candidates who have qualified at the written examination according to Rule 15:

Provided that in exceptional circumstances and with the prior approval of Government, the Commission may, at their discretion, admit candidates of the Scheduled Castes and the Scheduled Tribes of the viva voce test even though they may not have obtained the minimum qualifying marks at the written test.

5. In view of submissions advanced by the parties, the question Nos. (1) and (3) noticed above relating to Rule 15(a) and 17 of the Rules require a rather detailed discussion and hence, they will be dealt together after discussing other questions. So far as question No. (2) is concerned, as per Rule 16 of the Rules the Commission is obliged to consult the Chief Justice of the Patna High Court in the matter of selection of examiners for the law papers. According to some of the Petitioners, this has not been done but learned Counsel appearing for the Commission has relied upon statements contained in paragraph 7 of the supplementary counter affidavit filed on behalf of the Respondent No. 2, the Patna High Court in CWJC No. 6449 of 2000 and Annexures E and F annexed therewith to show that by letter dated 28.5.1999 (Annexure-E) the Chairman of the Commission consulted the then Acting Chief Justice of Patna High Court in the matter of appointment of examiners for law papers. The reply of the High Court dated 31.7.1999 (Annexure-F) acknowledges the said letters and the High Court apparently declined to interfere with the suggestion advanced by the Chairman of the Commission. Annexure-F shows that the then Acting Chief Justice was rather annoyed on account of Chairman addressing him directly on the subject noted above but it has been rightly explained on behalf of Commission that a direct letter in the matter was deemed necessary in view of use of the term "confidentially" in the Rule 16 of the Rules. According to the Commission as well as the High Court, Annexure-E was a communication for consultation with the Chief Justice of Patna High Court as per requirement of Rule 16 of the Rules. On going through relevant materials and Annexures E and F noticed above, this Court is of the view that requirements of Rule 16 have been met in the matter of selection of examiners for the law papers and hence, the issue raised in question No. (2) is decided against the Petitioners.

6. Question No. (4) raises an issue which can arise only after the written as well as viva voce test is over and hence, it does not have much relevance to the grievances in these writ applications. This issue even if decided in favour of the Petitioners can only warrant a direction for supply of consolidated results to each individual candidate within reasonable time. The stand of the Commission on this issue is that in view of large number of candidates it has practically become impossible to supply the consolidated results to each of the candidates but there is no quarrel with the spirit of the provisions in Rule 23 that a consolidated result of the examination containing copy of marks obtained both at the written and the viva voce test has to be prepared by the Commission soon after the results are compiled and the lists referred to under Rule 19 is submitted to the Governor. The purpose of this Rule is to allow each candidate to know not only his performance but also the competitive performance of other candidates. Further, this Rule serves a laudable purpose of providing transparency in the matter of

selection. No doubt, the ideal situation would be to provide a copy of consolidated results to each candidate but in case for any unavoidable reasons the Commission is not able to do so then it must keep a few copies of the consolidated results conveniently available in its office wherefrom the desirous candidates can have a right of perusing the results of taking notes. In case of formal request by a candidate copy of the consolidated results must be made available at a nominal and reasonable fee. The availability of the consolidated results for inspection or for obtaining copies through application must be notified in the newspaper within a week after the results are compiled and the facts referred to under Rule 19 is submitted to the Governor. Failure to comply with such substantial compliance of Rule 23 would otherwise amount to denial of right of information which is now recognised to be a part of fundamental right flowing from Article 19(1)(a) of the Constitution of India which guarantees freedom of speech and expression to all citizens. It is not possible to interpret Rule 23 in such a way as to read all its clauses as mandatory nor it is possible to hold, as suggested on behalf of some of the Petitioners, that non-compliance with this Rule should be construed as an evidence of foul play in the selection process. It may be useful to reiterate that the stage for operation of this Rule has arrived after 4.8.2000 i.e. after the publication of final result of successful candidates and in the facts of the case, no benefit can be given to the Petitioners on the basis of grievance raised with regard to non-compliance of this Rule.

7. So far as the number of vacancies advertised by the Commission to be filled up by the 25th Judicial Service Examination is concerned, a grievance in this regard was made in paragraphs 17 to 19 of CWJC No. 6449 of 2000. To this, the Commission has replied in paragraph 18 of its counter affidavit. There it has been stated that the matter of identifying the vacancies in the present selection process was for this High Court and on its report the State Government duly acted in conformity and requested for advertising 152 vacancies as identified by the High Court. In support of this fact a communication from the Registrar General of the Patna High Court dated 26.11.1999 has been annexed as Annexure-B. As per Rule 3 of the Rules, the Governor has to decide in each year the number of vacancies in the posts of Munsiff to be filled in that year in according with relevant provisions in the Rules. As per pleadings and materials, this appears to have been done on the information given by the Patna High Court which is the best authority in the matter.

8. In support of the submissions in relation to question No. (5) reliance was placed on behalf of the Petitioners on a Division Bench judgment of this Court in the case of Vijay Kant v. State of Bihar, reported in 1988 BBCJ 677. In paragraph 11 of the said judgment the Division Bench expressed its view with regard to number of vacancies and held that a rational basis for determining vacancies by the State Government would be to communicate all the vacancies occurring in particular type of posts till the last day of the interview but it would not be reasonable to include posts being sanctioned or having fallen vacant after the interview of the candidates. The latter types of vacancies should be advertised

and filled up from the successful candidates at the next examination. Paragraph 12 of that judgment further shows that in the transaction relating to 19th examination the State Government had in consultation with the High Court taken a decision that more posts should be filled up out of the list of successful candidates at the 19th examination. In those circumstances, the Court directed the Commission to forward a further list of candidates for appointment against further vacancies arising before the interview of candidates of the 19th examination. The said decision was in the particular facts of that case and in paragraph 12 of the judgment the Division Bench made it clear that it did not propose to lay down any rule of law in that respect. As a rule of law it is settled that the Rules governing recruitment of judicial officers is statutory as it is made under Rule 324 of the Constitution of India. The vacancies determined by the Governor under Rule 3 are normally the only vacancies that should be filled up on the basis of particular examination held for the concerned year. In the present case, there is no material or good reason to direct the Commission to treat the vacancies different and higher than those fixed under Rule 3 of the Rules. Hence, question no. (5) is decided against the Petitioners.

9. The issue raised in question No. (6) would arise as soon as the list of nominees is prepared under Rule 19 and forwarded to the Governor. If the list of nominees submitted under Rule 19 does not contain an adequate number of candidates belonging to the Scheduled Castes and Scheduled Tribes, as the case may be, the Commission is required to take steps for filling up such vacant seats as per Rule 20 of the Rules so far as the present examination is concerned and hence, there is no issue to be decided in this regard for the present. It goes without saying that the Commission will act with urgency in taking steps in accordance with Rule 20 of the Rules and shall submit a supplementary list in accordance with law. Such list, if required, should be submitted either simultaneously with the list of nominees under Rule 19 or within a few days thereafter so that the transaction of appointment may be completed together without unnecessary delay.

10. Now to question Nos. (1) and (3). Before noticing the relevant facts relating to the issues connected with these questions, it has become essential to answer certain issues of law on account of submissions advanced on behalf of the Petitioners. The relevant rule i.e. Rule 15 and Rule 17 have already been extracted earlier. On behalf of the caveaters and intervenors who are candidates successful at the written examination and who have appeared to oppose the writ applications, it was submitted that Rule 15(a) bestows an absolute discretion upon the Commission either to fix or not to fix any qualifying marks in any or all the subjects at the written examination and consultation with the Patna High Court would be required only if it decides to fix the qualifying marks otherwise not. In other words, it has been submitted that the Commission may choose not to fix any qualifying marks for any or all the subjects and in that event there will be no occasion of any consultation with the High Court. It has further been submitted on behalf of the intervenors that the qualifying marks under Rule

15(a) relate only to subjects, any or all and not to candidates. For supporting this submission a comparison of Clause (a) of Rule 15 was made with Clause (b) thereof for the purpose of highlighting the fact that upper ceiling of minimum qualifying marks has been fixed by the Rule 15(b) itself by referring to candidates belonging to the Scheduled castes and the Schedule tribes but there is no such provision in Rule 15(a) referring to candidates belonging to the unreserved category.

11. The aforesaid submissions are found to be fallacious and misconceived.

The word qualifying marks in Rule 15(a) cannot be applied to subjects in abstract without any reference to the candidates. It is not the subjects who qualify for the viva voce test but the candidates and this would be apparent on a plain reading of Rule 15 together with Rule 17 of the Rules. Rule 15(a) cannot be read in isolation divorced from other rules particularly Rule 17 which provides for arranging for viva voce test of the candidates who have qualified at the written examination according to Rule 15 on the basis of marks obtained at the written examination. In order to make the rules of selection meaningful and operational and in order to achieve the purpose of Rule 17, the Commission has to fix the qualifying marks in any or all the subjects at the written examination in consultation with the Patna High Court. The discretion of the Commission is only in the matter of deciding in consultation with the Patna High Court what should be the qualifying marks in any or all the subjects at the written examination for the purpose of arranging for viva voce test in terms of Rule 17. If the submission as noticed above is accepted then the result would be that those who belong to Scheduled Castes and Scheduled Tribes will not be eligible for viva voce test once they fail to obtain minimum qualifying marks but there shall be no such disqualification for candidates belonging to unreserved category governed by Rule 15(a). This would be an absurd and undesirable situation, to say the least. Further, in absence of any (sic) marks being fixed by the Commission on the ground that it has discretion even not to fix any qualifying marks, the following words--"candidates who have qualified at the written examination according to Rule 15", as occurring in Rule 17 would become meaningless and otiose. For these reasons, the interpretation of Rule 15 as advanced on behalf of the intervenors cannot be accepted.

12. Now, coming to the facts relating to these questions as submitted on behalf of the Petitioners it is noticed that there is no averment or proof of any specific consultation with the Patna High Court in the matter of fixing of qualifying marks by Commission under Rule 15(a) of the Rules. It has further been noticed that for some reason or under some apprehension the Commission has not even disclosed as to what was the qualifying marks fixed under Rule 15. The Commission has used the term "cut off marks" to indicate the marks obtained by the last candidate who has been declared successful in the written examination and called for the viva voce test. Of course, the Commission has disclosed that for general i.e. unreserved category the minimum qualifying percentage was

40% and on that basis, the minimum qualifying marks was 340. Since the number of such persons was large hence, on the basis of marks obtained at the written examination they were arranged in a list and only 2 1/2 times the number of posts in the general category were called for viva voce test. However, since the number of such posts for general category was 116 and at the last cut off marks of 461 there were more than one candidate, hence, altogether 296 candidates were called for the viva voce test and out of them 116 have been recommended by the Commission for appointment against 116 number of general category posts. Only the figures of general category have been noticed above because all the Petitioners belong to general category. The aforesaid disclosure is through a chart submitted on behalf of the Commission in the records of CWJC No. 6092 of 2000 on 28.8.2000.

13. On behalf of the Petitioners it has been categorically asserted that while fixing the qualifying marks under Rule 15(a) the Commission did not consult the Patna High Court. The stand of the Patna High Court is same as appears from the counter affidavit filed on its behalf. On the other hand on behalf of the Commission it has been asserted that for the purpose of consultation with the Patna High Court the Chairman of the Commission had written a confidential letter dated 28.5.1999 to then Acting Chief Justice of the High Court and in response the Commission received a reply from the Registrar General of the High Court dated 31.7.1999 whereby it was conveyed to the Commission that the High Court is not directly concerned with the holding of examination which has to be held by the Commission in accordance with the rules and thereafter, it was mentioned in the letter that at the time of interview, when requested, the High Court will nominate experts to interview the candidates. Those two letters are Annexure-E and F to the supplementary counter affidavit of Patna High Court, Respondent No. 2 in CWJC No. 6449 of 2000. On the basis of Annexure-F the Commission claims that it got the impression that the High Court was not prepared for consultation at any stage prior to the stage of the nomination of experts for holding of interview/viva voce test as required by Rule 18 of the Rules. Thus, in substance, the stand of the Commission is that by virtue of its effort of consultation for appointment of examiners for law papers required by Rule 16 and in view of reply received thereto, there was deemed consultation in the matter of fixing of qualifying marks under Rule 15(a) or in the alternative, the Commission was discharged of its duty of such consultation on account of implication arising from reply of the High Court contained in Annexure-F.

14. To be fair to learned Counsel for the Commission, it must be noticed that it was not his stand that there is no need of fixing any qualifying marks for unreserved category of candidates under Rule 15(a) or that there is no legal requirement of any consultation in the matter with the Patna High Court. As noticed above, the stand of the Commission is that there has been deemed consultation or the consultation was waived by the High Court. According to learned Counsel for the Patna High Court, consultation through letter contained in Annexure-E was only on the matter of appointment of examiners in law papers

and never with regard to fixation of qualifying marks under Rule 15. According to him, consultation can be only on specific points and facts communicated to the authority which is required to be consulted. There can be no specific or deemed reply of the High Court in the matter of fixation of qualifying marks under Rule 15(a) when admittedly no facts or suggestions touching such matter was ever communicated to the High Court. In the facts of the case, the stand of the Commission is found to have no merit and it has to be held that the stand of the High Court is correct and there was no consultation by the Commission with the Patna High Court as required by Rule 15(a) of the Rules.

15. With regard to Rule 17 it was contended on behalf of the Petitioners that this Rule requires the Commission to arrange for viva voce test of all those candidates who have qualified at the written examination according to Rule 15 and that under this rule there is no scope for the Commission to fix any further qualifying marks which has been described by the Commission as the cut off mark. On the other hand, on behalf of the Respondent-Commission as well as intervenors it has been submitted that in view of judgment of the Supreme Court in the case of Ashok Kumar Yadav and Others Vs. State of Haryana and Others, it is well settled that securing qualifying marks only provides eligibility to a candidate for the viva voce test but not an entitlement and that it is desirable to restrict the number of persons to be interviewed between two times to three times the number of vacancies. The aforesaid judgment of the Apex Court, as would appear from paragraph 20 of the report, was on the basis of Regulation 3 contained in the relevant rules applicable in the State of Haryana. The said Regulation 3 has been set out in paragraph 2 of the said report and a perusal thereof clearly shows that it conferred only eligibility to appear in the viva voce test. To be more specific it was couched in negative terminology and provided that no candidate shall be eligible to appear in the viva voce test unless he obtained the requisite qualifying marks. The language of Rule 17 applicable in this case is quite different and on a plain reading it casts a duty upon the Commission to arrange for viva voce test of the candidates who have qualified at the written examination. No doubt, the words--"on the basis of the marks obtained at the written examination" do appear to leave some scope to argue that arrangement for viva voce test of the qualified candidates is required to be made on the basis of marks at the written examination and hence, on the basis of such marks the Commission may in its discretion call for viva voce test only reasonable number of candidates. But this interpretation requires something more to be read in Rule 17 so as to empower the Commission to fix a cut off mark different from qualifying mark fixed under Rule 15 for which the Commission would be under no obligation to consult the High Court. As the following discussion would show, there is no necessity to read more in this rule. In the case of Prakash Chandra Agrawal v. State of Bihar reported in 1985 PLJR (SC) 58 the Apex Court noticed Rule 17 of the Rules and in paragraph 8 of the report gave a finding that for that examination the Commission had taken a policy decision to fix 38% marks as the qualifying marks in regard to candidates

of unreserved category and there was no fresh fixation of qualifying marks by the Commission and on that basis it further held thus : "as long as such fresh determination is not made every candidate who has secured 38% marks and above in the written examination would be entitled to appear at the viva voce test and to be included in the list prepared under Rule 19 of the Rules in the order of merit on the basis of the aggregate of the marks obtained in the written examination and in the viva voce test". Though the judgment in the case of Ashok Kumar Yadav v. State of Haryana (supra) is later and by a larger Bench but as noticed earlier, it was not in context of the Bihar Rules hence the interpretation of Rule 17 is required to be made in the light of judgment of the Apex Court in the case of Prakash Chandra Agrawal v. State of Bihar (supra) and accordingly, it is found and held that Rule 17 of the Rules requires the Commission to arrange for viva voce test of those candidates who have qualified in the written examination as per Rule 15 and only the arrangement for the viva voce test of such candidates has to be made on the basis of marks obtained at the written examination.

16. As noticed earlier, the judgment of the Apex Court in the case of Ashok Kumar Yadav (supra) clearly provides that the number of candidates to be called for interview should not exceed twice or at the highest thrice the number of vacancies to be filled. Such observation was made after a thorough discussion of all the relevant aspects and hence, the aforesaid interpretation of Rule 17 does appear to pose a difficulty in the way of the Commission. In view of such apparent difficulty it was submitted on behalf of the Commission that Rule 17 (sic) interpreted to empower it to fix cut (sic) mark for the purpose of calling only limited number of qualified candidates (sic) viva voce test. However, the materials (sic) record show that this difficulty is only apparent difficulty and not a real one. (sic) Patna High Court appears to have (sic) this difficulty in mind while offering views in the matter of fixation of (sic) marks under Rule 15 for the previous (sic) examination i.e. the 24th Judicial (sic) Examination. The relevant corresp (sic) dence from the Registrar, Patna H Court to the Commission dated 18.3.1 (sic) has been annexed as Annexure-G to supplementary counter affidavit of (sic) High Court, Respondent No. 2, in (sic) No. 6449 of 2000. A perusal of Annexure G shows that the High Court had (sic) the minimum qualifying marks for the (sic) emanation as 35% for the scheduled (sic) and scheduled tribe candidates and for other candidates and had (sic) resolved that in giving effect to abovementioned qualifying marks, (sic) didates not more than thrice the (sic) of vacancies be called for interview for maintaining the ratio of 1 : 3 qualifying marks may be pushec (sic) protanto. Fixation of qualifying mark (sic) this pattern made in consultation (sic) Patna High Court appears to have worked satisfactorily and it also fulfilled the requirement of Rule 15. Thus, in practical terms there is no difficulty in fixing qualifying marks under Rule 15 itself in such a way so that the number of persons to be called for interview is within the desired limit as per judgment of the Apex Court in the case of Ashok Kumar Yadav (supra). On a plain reading of Rule 15 the Commission has the discretion to fix the qualifying

marks besides the minimum qualifying marks for different category of candidates but in this exercise it is obliged to hold consultation with the Patna High Court.

17. On behalf of the Commission as well as the intervenors extra pain was taken to show and emphasise that even if the required consultation with the High Court under Rule 15(a) has not taken place, the selection process has been fair; only those candidates have been called for viva voce test who have secured much more than the minimum qualifying marks fixed by the Commission; all the Petitioners have obtained lesser marks than those called for the viva voce test and hence, the present selection process and the final result on the basis of aggregate of marks obtained at the written examination and viva voce test should not be interfered with by this Court in exercise of writ jurisdiction. The aforesaid submission prima facie appears to be attractive but on deeper consideration of all the issues involved and the submissions advanced on behalf of the Petitioners, the same is found to be misplaced. For deciding the question whether this Court should interfere in the matter or not inspite of clear violation of Rule 15(a), the relevant aspect is not of fairness or correctness of the final result but the procedure through which it has been arrived at. The process must be in accordance with constitutional requirements and the provisions of the Rules framed under Article 324 of the Constitution of India. From this point of view the significance of consultation with the High Court in the matter of fixation of qualifying marks by the Commission under Rule 15(a) cannot be over emphasised. In such matters the role of the High Court, to borrow a phrase from the Apex Court in the case of *State of Bihar and Another Vs. Bal Mukund Sah and Others*, is "pivotal and meaningful". While dealing with desired selection process for the judicial service in the case of *All India Judges' Association and Others Vs. Union of India and Others*, the Apex Court not only directed for inclusion of one representative of the High Court as a member of selection committee constituted by the Public Service Commission but also held that the opinion given by him with regard to suitability of the candidate shall not be disregarded unless there are strong and cogent reasons for not accepting the opinion, which reasons must be recorded in writing. The aforesaid view was in context of holding of viva voce test and we are not directly concerned with that matter in the present case but it does show the primacy of the High Court in the entire selection process in which fixation of qualifying marks is of substantial importance. The judgments of the Apex Court referred above have clearly spelt out that independence of judiciary is one of the basic tenets and a fundamental requirement of our Constitution and with that purpose in mind the Constitution through Article 50 requires the State to take steps to separate the judiciary from the executive in the public services of the State and consultation with High Court in the matter of framing of rule under Article 234 is mandatory. In such constitutional scheme there is no scope to hold the provision for consultation with High Court under Rule 15(a) of the Rules to be anything other than mandatory. In such a situation it is not possible to accept the contention of the Respondent-Commission and the intervenors that for the present examinations no interference be made even if Rule 15(a) is held

to be mandatory insofar as it provides for consultation with High Court and even if it is found that no such consultation was held with regard to the present examination. Some judgments were cited to support the contention that the purpose of selecting deserving candidates having been achieved on account of participation of High Court's representatives in the viva voce test, no other purpose is left to be achieved by insisting upon compliance with Rule 15(a). The judgments relied for this purpose are those in the case of Ashok Kumar Yadav (supra), All India Judges Association (supra) and State of Bihar v. Bal Mukund Sah (supra). On going through relevant parts of those judgments it is found that they do not support the aforesaid contention as in those judgments there was no consideration of any situation like one arising out of non-compliance with requirement of consultation with the High Court under Rule 15(a). The issues involved in those cases was entirely different and the views of the Apex Court even on those matters do not help the Commission or the intervenors.

18. Now, it has to be seen as to what relief can be granted to the Petitioners and for that purpose to what extent interference with the selection process is found necessary and desirable. Since it has been held that consultation with the Patna High Court under Rule 15(a) is mandatory and that has not been done in the present case hence, this Court has no option but to direct the commission to consult the High Court under Rule 15(a) of the Rules and fix the minimum qualifying marks/qualifying marks for the unreserved category of candidates afresh as per law. Ordinarily the viva voce test as well as the final result published thereafter would have been quashed but keeping in view all the facts of the case and larger aspects such as labour, time and expense of the authorities as well as the candidates concerned it is found that outright quashing of the viva voce test already held would be a colossal waste on all counts and would serve no useful purpose which cannot be achieved otherwise and hence, this Court directs to keep the final result in abeyance and to republish the same only after complying with this Court's directions as given hereinafter. The Commission must fix the qualifying marks in consultation with the Patna High Court as per law and find out whether further candidates are required to be called for viva voce test or not. If so required, viva voce test be arranged for such additional candidates by selection committee which should be same or similar in constitution as at the time of viva voce test of candidates already interviewed. Thereafter, if required on account of marks obtained by such additional candidates in viva voce test, the final result be modified and republished and fresh recommendations be made to the Governor. Similar exercise may also be required if the qualifying marks are so determined as to exclude some candidates already interviewed. It is deemed necessary to add here only by way of clarification that there may be a situation where fixation of qualifying marks afresh in accordance with Rule 15(a) may not lead to any change in the candidates for the viva voce test or change in the final result. This is only to highlight that such matter and further course of action as per rules will depend clearly upon the qualifying marks to be fixed hereafter by the

Commission in consultation with the Patna High Court under Rule 15(a) of the Rules. Since the result have been ordered to be kept in abeyance which is bound to lead to delay in process of appointment hence, it is expected that the Commission will complete the process of fixation of minimum qualifying marks/qualifying marks under Rule 15(a) and other necessary steps with utmost expedition, preferably within a period of one month from today. Once the necessary steps are complete and the Commission is in a position to refinalise the list of successful candidates under Rule 19 then it should publish the final result of successful candidates once again. Till then the final list/result of successful candidates already published and follow up actions shall remain in abeyance and thereafter the same shall stand modified to the extent found necessary on account of aforesaid exercise.

19. All the writ applications are accordingly allowed to the extent indicated above. In the facts of the case, there shall be no order as to costs.