

(2020) 03 J&K CK 0026

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 381, 378, 378 Of 2011

Fatima Rahim And Others

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 17-03-2020

Acts Referred:

Jammu And Kashmir Combined Competitive Examination Rules, 2008 — Rule 8(4),
8(5), 9, 9(1), 9(2)
Constitution Of India, 1950 — Article 136, 226

Citation : (2020) 03 J&K CK 0026

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Arshad Nazir Parray, Zahoor Ahmad Bhat, Azar-Ul-Amin, Sajad Ashraf, Syed Faisal Qadri, Hakim Suhail Ishtiaq, Mubashir Gatoo

Final Decision : Disposed Off

Judgement

1. As the issues involved in all these petitions are almost common, all the writ petitions are being taken up together.

2. In writ petition No. SWP 381/2011, the petitioners have sought directions to the Jammu and Kashmir Public Service Commission, (for short, the Commission? hereafter), to add up the reduced marks in the subject of Kashmiri Literature, by quashing the reduction made by the Commission and to determine the merit of the petitioners accordingly. A further prayer has been sought to direct the Commission to publish the subject wise marks awarded to each of the candidate as also the marks awarded in the interview so that transparency is maintained. Petitioners have also prayed that in the event it is found that petitioners have secured more marks as against the selected candidates, the Commission be directed to include the petitioners also in the select list and their names be recommended for appointment to the services for which they have opted, and to disclose the qualifying marks, if fixed, in the subjects offered by the candidates in the main examination.

3. In SWP No. 378/2011, however, the petitioners have challenged the selection inter alia on the ground that in the optional subject? Urdu Literature? their marks have been reduced arbitrarily and without any reason and, resultantly they have been ousted from the zone of selection. The petitioners have taken almost same grounds as are taken by the petitioners in SWP No. 381/2011.

4. In SWP No. 1121/2011 the petitioners have sought mandamus declaring Rule 9 (1) of the Jammu and Kashmir Combined Competitive Examination Rules, 2008, as ultra vires the Constitution. They have also sought directions to the Commission to re-interview the candidates and to conduct the interview in such a manner as the Court may determine and direct. An amended petition was also filed by the petitioners wherein the prayer sought is that marks awarded to the candidates in the interview may be set aside and the selection made on the basis thereof be quashed. They have also sought directions to the Commission to re-interview the candidates after short listing, strictly in accordance with Rule 9(2) of the Rules of 2008. A further direction has been sought to prepare a fresh select list and recommend the petitioners also for appointment.

5. The brief facts of the case are that, respondent Commission vide Notification No. PSC/EXM-09/46 dated 30.12.2008, invited applications for 398 posts available at the gazette level in the State Civil Services, i.e. Junior Kashmir Administrative Service, Police Gazetted Service and Accounts Gazetted Service. The petitioners, being fully eligible, as claimed, responded to the said Notification. They having appeared in the preliminary examination and having been declared successful, appeared in the mains examination as well. The petitioners in SWP No.381/2011 submit that they all had opted ?Kashmiri Literature? as one of their optional subjects. After having been declared successful in the mains examinations as well, the petitioners were called for the interview, wherein they participated. However, when the select list was issued, having found that they have not been selected, the petitioner filed the writ petition challenging the same on the ground that the marks awarded to them in optional subject i.e. ?Kashmiri Literature?, have been reduced and the marks actually awarded by the evaluators changed by the Commission. The other challenge to the selection is that some candidates have been awarded higher marks in the interview and some very less and this way some close relations of the members/officers of the Commission have been favoured.

6. The petitioners afterwards filed an amended writ petition, wherein some of the selected candidates were arrayed as party respondents. They have made certain allegations of favoritism having been shown to some of the selected candidates and have prayed for quashing of their selection as also a direction to the Commission to redraw their merit after adding the actual marks awarded to them in the optional subject ?Kashmiri Literature?.

7. From the above narration, it is clear that when the writ petitions i.e. SWP No.398/2011 & 381/2011 were filed the grievance of the petitioners was limited and restricted to the following:-

a) The Commission had arbitrarily reduced the marks of the petitioners in the optional subject "Kashmiri literature/Urdu Literature" by resorting to moderation, which ultimately impacted the merit of the petitioners in the mains examination.

b) Failure of the respondent-Commission to disclose and publicize subject-wise marks awarded to each candidate in the main examination as also the marks awarded in the interview, has incapacitated the petitioners to know what had actually happened during the course of viva voce and, therefore, the process of selection was shrouded in suspicion.

8. Apart from the aforesaid grievance, the petitioners had not pointed out any defect in the selection process or its outcome. Perhaps, it is because of this reason the petitioners did not array any of the selected candidate as party respondents, nor had they specifically thrown challenge to their selection in the writ petitions. Later on, claimably, after obtaining information from the Commission through the medium of applications under the Right to Information Act, the petitioners amended their petitions so as to lay challenge to the selection of respondent Nos. 5 to 14. Accordingly, paragraph Nos. 17(i) to 17(vi) were inserted and specific allegations were made against each respondents. However, in SWP No.1121/2011, the petitioners have additionally challenged the vires of Rule 9(1) of the Jammu & Kashmir Combined Competitive Examination Rules, 2008 (hereinafter 'Examination Rules of 2008' for short) and have assailed the process of interview on variety of grounds. The selected and appointed candidates are arrayed as party respondents in the aforesaid writ petition.

9. From a careful reading of the contents of these petitions and the reliefs prayed for therein, it clearly transpires that the petitioners are not aggrieved of the process of selection up to conduct of main examination. They appear to be aggrieved of the manner in which the interviews were conducted by the Commission and favour was allegedly shown to some of the candidates having proximity with one or the other member of the Commission. They, therefore, seek a direction to quash the process from the stage of declaration of result of the examination and conduct of interviews afresh in a fair, unbiased and transparent manner.

10. The Commission has filed detailed affidavit rebutting all the allegations leveled by the petitioners with regard to the fairness of the selection. The allegation of the petitioners, that the Commission had resorted to moderation in the optional paper of Kashmiri/Urdu literature, is emphatically refuted by the respondent-Commission. It is specifically pleaded that no moderation was resorted to in any of the papers including the Kashmiri/Urdu literature paper and the allegation leveled in this regard is only an attempt to mislead the Court by sheer misrepresentation of facts. Regarding the grievance projected by the petitioners that despite the petitioners having approached the Commission, the Commission has shown reluctance to disclose the marks obtained by the candidates in the written examination, it is stated that the Commission is duty

bound to disclose the marks obtained by all the candidates, who have participated in the examination irrespective of whether they have been shortlisted for interview or have failed in the examination. However, it is clarified that such merit is disclosed and the individual mark cards of each candidates are issued only after the process of selection is completed and this is done as per the long standing practice so as to maintain secrecy and sanctity of the selection process. It is further submitted that the result of written examination remains in sealed cover and is not even disclosed to the interview committee of the Commission. It is the further reply of the Commission that after the conclusion of the selection process, the Commission dispatches marks cards to all the candidates individually and also make them available on the official website of the Commission.

11. With regard to the range of marks that were awarded in the viva voce, it is stated by the Commission that no candidate in the selection secured 248 marks out of 250 in the interview, as alleged by the petitioners. However, in as many as 32 candidates, 07 belonging to Open Merit and 25 belonging to reserved categories secured 20 marks in the viva voce. Some candidates with as low as 20 marks in the viva voce succeeded in making it to the final select list on the basis of their aggregate performance. Elaborating further, the Commission, in its reply states that there were 19 such candidates, who had secured 190 marks in the viva voce but only 10 such candidates made it to the select list and this again was because of their overall performance and merit in the aggregate. Based on the aforesaid data pleaded in the reply affidavit, it is urged that stray instances here and there indicating that the candidates getting higher marks in viva voce as compared to their performance in written examination will not vitiate the selection, nor the same is indicative of any mala fide consideration having prevailed in the selection.

12. It has been submitted by the learned counsel for the respondent-Commission that some of the petitioners, after receiving information from the Commission under Right to Information Act, had forged the said information and leveled false and frivolous allegations against the Commission before the media and the Commission had even lodged an FIR against these petitioners for misrepresentation and forgery.

13. The contents of paragraphs 17(i) to 17(v) raising specific allegations of favoritism with respect to the private respondents have been denied in the reply affidavit filed by the Commission.

14. Paragraph No.17 (i) of the amended writ petition is dedicated to the selection of respondent Nos.7 & 8. Their participation in the interview has been assailed on the ground that they were called in interview despite having failed to obtain minimum qualifying marks in the written examination. In rebuttal, the allegation has been vehemently denied. It is stated that both respondent Nos. 7 & 8 had qualified the written examination and were well past minimum qualifying marks. It is stated that the Commission had fixed the minimum criteria for qualifying the

written examination in the following manner:-

General English : 40%

Other subjects :

OM : 30%

Reserved categories : 25%

15. Respondent No.7, it is stated, acquired 197 marks in general studies whereas she was required to secure only 180 marks. Similarly respondent No.8 secured 191 marks in the general studies. Overall merit of both the candidates was 951 and 968 in the written examination, whereas cut off for interview of open merit was 911 marks.

16. With regard to short-listing of respondent No.6, a ST category candidate, who despite having obtained 898 marks was allowed to participate in the interview, though, the cut off for short-listing was 911, it is explained by the Commission that the cut off was lowered in the case of SC and ST categories only with a view to accommodate requisite number of candidates belonging to SC and ST categories in the viva voce, as the candidates shortlisted on the basis of cut off merit of 911 had fallen short of the requisite ratio of 1:3. Therefore, with a view to ensure equitable participation of the candidates in each category, minimum standard for the SC and ST were lowered down. The Commission further states that, though, by lowering the standards, the cut off for the ST category came to be fixed at 875 but respondent No.6 had obtained 898 marks and had much higher marks than the candidates who had the benefit of reduced standard. With regard to allegation of favour shown to respondent No.5, who is alleged to be the daughter of one of the members of the interview committee, the Commission has sought to explain by pleading that before commencement of the interview and in pursuit of ensuring fairness in the selection process, the members of the interview committee had voluntarily disclosed their relationship with the candidates, who were likely to appear in the interview before the committee and such of the members, whose relations had to appear in the interview, recused from the interview on the dates their relations were interviewed. The respondent-Commission in its reply affidavit has not denied that respondent No.5 is daughter of one Mr. J.A.Makhdomi, member of the interview committee, but submits that the said member had recused from the process of interview held on the date, his daughter appeared for interview. Similarly, other member, namely, M.H.Samoon, too recused from the interview on the date when his cousin's son i.e. respondent No.6 was interviewed. The relationship of then Controller of Examination, Mr. M.A.Bukhari with Syed Mubashira Hussain, however, has been denied contending further that the Controller of Examination is not part of the interview committee and, therefore, had no role to play in the assessment of candidates in the interview.

17. With regard to the allegations contained in paragraph No.17(iv) of the

petitions, stand of the Commission is that the two candidates i.e. respondent No.9 and one Sidharth Dhiman, applied for scrutiny and rechecking of their answer scripts after notifying final select list by the answering respondents. After scrutiny of the result including answer sheets of these two candidates, it was found that the marks in respect of one paper i.e. Geography of respondent No.9 and the marks in respect of "law paper" of Sidharth Dhiman have not be computed correctly. Accordingly, after investigation by the Enquiry Committee, constituted by the Commission for the purpose, it was found that respondent No.9 had actually scored 135 marks in Geography paper and not 35 as indicated in the result sheet. Accordingly, necessary rectification in his case was directed. Similarly, rectification was made in the case of Sidharth Dhiman with respect to ? law paper?. It is, thus, submitted that respondent No.9 after having found to have obtained aggregate marks of 1223 as against 1123 earlier reflected, he was found to be in the selection zone and accordingly, he was appointed vide Government Order No.34-GAD of 2012 dated 06.12.2012.

18. The allegation of the petitioners leveled in paragraph 17(v) and 17(vi) too have been refuted by the respondent-Commission on the touch stone of Rule position. It is pleaded that pursuant to the direction issued by this Court, the petitioners were allowed to inspect their answer scripts, therefore, their grievance that they were not given access to the answer scripts, does not survive anymore.

19. Having heard learned counsel for the parties and perused the record, I am of the view that the writ petitions at the behest of candidates, who, having participated in the selection process are finding fault with the procedure and criteria adopted by the respondents, is grossly misconceived and deserve to be dismissed. There has been a conscious attempt made by the petitioners to misrepresent the facts by raising totally false and reckless allegations, which the petitioner knew, were untrue. In essence, through the medium of these petitions, the petitioners are seeking indulgence of this Court to hold a roving enquiry into the unfounded and unsupported allegations made by the petitioners to impugn the selection process in which they voluntarily participated without protest and demur and felt aggrieved only when they could not find their names in the select list.

20. Before I proceed to examine some specific allegations made by the petitioners to impugn the selection, it would be necessary to address two issues that call for deliberation in the instant case.

21. First pertains to ?estoppel? by conduct of the petitioners, who were well aware of the Rule position governing the selection and the procedure to be adopted by the Commission, yet participated without any protest and demur and are now finding fault with the selection process only because the result of the selection is not palatable to them. Another important aspect deals with "Access Jurisprudence". The writ remedy is an extra ordinary equitable remedy and this Court may refuse to exercise such jurisdiction, if it finds that a person seeking to

invoke such jurisdiction, has mis-represented the facts and has tried to mislead the Court. "He, who seeks equity must do equity" is core of the "Access Jurisprudence". This Court has noticed a new trend in the litigation, particularly, pertaining to selection matters. The candidates take a chance in the selection process, do not raise any objection either to the Rules governing the selection or the procedure/criteria, which is made well known in advance, but they approach the Court leveling all sort of allegations with regard to the procedure and the manner adopted by the selecting bodies in making selection after they are ousted from the zone of selection. In doing so, they make all sort of reckless allegations, which are totally unsubstantiated. No supporting material worth the name is placed on record. By mere filing of the writ petition and making bald and reckless allegations, these candidates expect the Court to hold a roving enquiry, scan and sift the selection record and make out a case in their favour. This exactly has happened in the instant case. Initially, when the petitions were filed, the grievance of the petitioners was limited but the scope of the petitions and the nature of enquiry which the petitioners wanted this Court to hold was expanded by introducing amendments. The petitioners in the un-amended petitions had only one grievance i.e. the Commission by scaling down the marks obtained by them in the "Kashmiri/Urdu" literature paper by resorting to the process of moderation had acted to their prejudice. It is not pleaded anywhere in the petition as to how the petitioners came to know that the Commission had scaled down the marks in the Urdu/Kashmiri literature paper or had resorted to the process of moderation. The official respondents have specifically refuted the aforesaid allegation and have stated on affidavit that no moderation was resorted to, nor the marks in any subject including Urdu/Kashmiri literature were scaled down.

22. The petitioners have also made a specific allegation that with a view to favour some blue eyed persons, the interview committee of the Commission awarded 248 marks out of 250, which again is proved to be a white lie. With the intervention of this Court, the petitioners examined their answer scripts and could not find anything wrong with the process of evaluation. In that view of the matter, the attempt of the petitioners to somehow bring the Commission to disrepute and assail the selection process on imaginary and unsubstantiated grounds needs to be deprecated in strongest possible terms.

Estoppel by conduct or Acquiescence

23. The law of estoppel in selection matters is now well crystallized by the Supreme Court in number of judgments. In the case of *Vijendra Kumar Verma v. Public Service Commission, Uttarakhand and others*, (2011) 1 SCC 150. Hon^{ble} the Supreme Court was confronted with the similar situation and what was held by the Supreme Court in para 24 after analyzing the case law on the subject reads as under:-

"24. When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of

the candidates with regard to basic knowledge of computer operation would be tested at the time of interview for which knowledge of Microsoft Operating System and Microsoft Office operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office Operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of the computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction."

24. This view was reiterated by the Supreme Court in its subsequent judgment rendered in the case of Romesh Chandra Shah and others v. Anil Joshi and others, (2013) 11 SCC 309. The latest view of the Supreme Court on the point is available in the case of Union of India and others v. C. Girja and others , (2019) 2 Supreme 513 in which strong reliance is placed on the judgments of Vijendra Kumar Verma and Romesh Chandra Shah (supra) and the legal position is reiterated.

25. In the case of D.Sarojkumari v. R. Helen Thilakom and others (2017) 9 SCC 478 after surveying the case law on the subject and while reversing the judgment of the Kerla High Court in paragraph No.10, Hon?ble the Supreme Court held thus:-

"10. The Kerala High Court did not note the above mentioned judgments and ignored the well settled position of law in rejecting the specific plea raised by the appellant herein that the appellant could not raise the issue that no direct recruitment should have been conducted once she had applied for and taken part in the selection process by direct recruitment."

26. Similar view was echoed by a 3-Judge Bench of the Supreme Court in the case of Ashok Kumar and another v. State of Bihar and others, (2017) 4 SCC 357. Hon?ble the Supreme Court after referring to catena of judgments on the point in paragraph Nos.12, 13, 14 and 17 held thus:-

"12. The appellants participated in the fresh process of selection. If the appellants were aggrieved by the decision to hold a fresh process, they did not espouse their remedy. Instead, they participated in the fresh process of selection and it was only upon being unsuccessful that they challenged the result in the writ petition. This was clearly not open to the appellants. The principle of estoppels would operate.

13. The law on the subject has been crystallized in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla (2002) 6 SCC 127, this

Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In *Union of India v. S. Vinodh Kumar* (2007) SCC 100, this Court held that:

"18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See *Munindra Kumar v. Rajiv Govil* (1991) 3 SCC 368 and *Rashmi Mishra v. M.P. Public Service Commission* (2006) 12 SCC 724.)"

14. The same view was reiterated in *Alan Jyoti Barooah* (2009) 3 SCC 227 wherein it was held to be well settled that the candidates who have taken part in a selection process knowing fully well the procedure laid down therein are not entitled to question it upon being declared to be unsuccessful.

15.

16.

17. In *Ramesh Chandra Shah v. Anil Joshi*, (2013) 11 SCC 309 candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under Article 226 and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that:

"18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome." 18. The legal position enunciated by the Supreme Court in the cases of *Chandra Prakash Tiwari v. Shakuntala Shukla*, (2002) 6 SCC 127, *Union of India v. S. Vinodh Kumar*, (2007) 8 SCC 100, *Manish Kumar Shah v. State of Bihar*, (2010) 12 SCC 576, *Vijendra Kumar Verma* (supra), *Ramesh Chandra Shah* (supra), *Chandigarh Administration v. Jasmine Kaur*, (2014) 10 SCC 521, *Pardeep Kumar Rai v. Dinesh Kumar Pandey*, (2015) 11 SCC 493 and *Madras Institute of Development v. S.K. Shiva Subramanyam*, (2016) 1 SCC 454 was reaffirmed by a larger Bench in *Ashok Kumar* (supra)."

27. Before proceeding to conclude, it would be appropriate to mention that the principle of estoppel or waiver in selection matters is not an absolute rule and is not without exceptions. This is very aptly observed by the Supreme Court in paragraph No.18 of the judgment rendered in the case of *Dr. (Maj.) Meeta Sahai*

v. State of Bihar and others, Civil Appeal No.9482 of 2019 decided on 17.12.2019, which for facility of reference is reproduced hereunder:-

"18. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process."

28. Reconciling the recent judgment of the Supreme Court in the case of Dr. (Major) Meeta Sahai (supra) with the three Judge judgment of Ashok Kumar (supra), following principles can be fairly deducible:-

a) That, as a general proposition of law, a candidate who has taken part in the selection process without any protest or demure cannot lay challenge to it merely because the result of selection is not palatable to him.

b) In the circumstances, where the candidate is well aware about the mode, manner and the methodology to be adopted in the selection process, he cannot, on failure, challenge the same, as in that event, he would be estopped by his conduct and will not be permitted to ?approbate and reprobate?.

c) That this principle is not absolute but is subject to well recognized exceptions i.e. if the selection process is conducted in violation of the notified procedure or is in violation or misconstruction of statutory rules or that the selection process suffers from incurable illegality or has been conducted in derogation of the provisions of the Constitution.

29. When the case of the petitioners is viewed in the aforesaid context and in light of the legal position adumbrated herein above, this Court does not find it a case falling in the exceptions illustrated above.

30. In view of the legal position enunciated in the aforesaid judgments, I am of the firm view that it is a fit case where the petitioners are estopped, by their conduct and acquiescence, from calling in question the selection process. Otherwise also, even if this Court finds that the allegations leveled by the petitioners, if accepted at their face value, would vitiate the whole selection process, it may not be in a position to hold so in the absence of selected candidates being party respondents. Two petitions would, therefore, also suffer from non-joinder of necessary parties. However, in the third petition the selected candidates are party but the allegations against them are vague, unsubstantiated and do not vitiate the selection process.

Access Jurisprudence

31. Although, the access jurisprudence is well entrenched in our judicial system, yet its applicability to discourage unscrupulous litigation has remained a dream. The Courts have been lenient in dealing with such litigants, sometime, having regard to their illiteracy, poverty or the reason of their marginalization. Resultantly, there is upsurge in this new creed of litigants, who have no respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. Hon'ble the Supreme Court in paragraph Nos. 1 and 2 of the judgment rendered in the case of Dalip Singh v. State of Uttar Pradesh and others, (2010) 2 SCC 114 observed thus:-

"1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

32. Following the judgment of the Supreme Court in Dalip Singh's case (supra), a Division Bench of the Delhi High Court in the case of Satyender Singh and others v. Gulab Singh and others, 2012 (129) DRJ, 128 made the following observations:-

"As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause.

Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court. Indeed, it is a nightmare faced by a Trier of Facts;

required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no

fabric left."

33. In a subsequent judgment, the Supreme Court in the case of *Kishore Samrite v. State of Uttar Pradesh* (2013) 2 SCC 398 in paragraph Nos.31 to 36 reiterated the aforesaid observations:-

"29. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition

carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(vii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

[Refer : Dalip Singh v. State of U.P. & Ors. (2010) 2 SCC 114; Amar Singh v. Union of India & Ors. (2011) 7 SCC 69 and State of Uttaranchal v Balwant Singh Chauhal & Ors. (2010) 3 SCC 402].

30. Access jurisprudence requires Courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of the process of the Court. In P.S.R. Sadhanantham v. Arunachalam & Anr. (1980) 3 SCC 141, the Court held:

"15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:

"The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most basic ?human-right? of a system which purports to guarantee legal rights."

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition."

31. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

32. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily

mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer : Tilokchand H.B. Motichand & Ors. v. Munshi & Anr. [1969 (1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr. [(2012) 6 SCC 430]; Chandra Shashi v. Anil Kumar Verma [(1995) SCC 1 421]; Abhyudya Sanstha v. Union of India & Ors. [(2011) 6 SCC 145]; State of Madhya Pradesh v. Narmada Bachao Andolan & Anr. [(2011) 7 SCC 639]; Kalyaneshwari v. Union of India & Anr. [(2011) 3 SCC 287]).

34. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

35. No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be

dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC 481].

36. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530)."

34. Viewed in the context of "Access Jurisprudence", that requires Court to deal with legitimate litigation, and decline to exercise jurisdiction, if such litigation is an abuse of the process of Court, I find that in the instant case, the petitioners have taken the judicial system for granted and consumed the precious time of this Court. These petitions were filed in the year 2011 and are pending since then. No attempt has been spared by the petitioners to protract it by one way or the other. There are several interlocutory applications filed during pendency of these petitions to bring one or the other new fact on record.

35. The plea of the petitioners that respondent-Commission resorted to moderation/ scaling down of marks in Urdu examination only, has been found to be factually incorrect. As a matter of fact, when the writ petition was originally filed, it was the primary grouse of the petitioners that they have been discriminated by selectively applying the principle of 'scaling down' to the Urdu/ Kashmiri Literature paper only. Equally fallacious is found the allegation of the petitioners that the Commission had fixed minimum of 40% marks in each paper for short listing the candidates for interview. Similarly, as alleged by the Commission, an attempt was made by some of the petitioners to forge the marks cards, which were issued to them by the Commission, to paint wrong picture of the Commission and to attribute unfounded malafidies in the selection process, regarding which an FIR stands registered in the concerned Police Station. The petitioners, namely, Fatima Rahim, Zahoor Ahmad Bhat and Ali Muhammad Bhat even went to the extent of filing wrong affidavit in this Court, indicating therein marks in their marks cards which were forged and tempered with. The petitioners, namely, Zahoor Ahmad Bhat and Arshad Nazir even went to the Press with the forged information to tarnish the image and reputation of the Commission. Despite the fact that petitioners were aware that the relative members had recused from the interview process on the dates their relatives were interviewed, yet made unsubstantiated allegations to persuade this Court to hold the selection process unfair. The applications after applications were filed in these petitions to seek indulgence of this Court to collect the evidence in support of the unfounded allegations leveled by the petitioners.

36. This Court, as noted above, in these petitions has been called upon to hold a roving enquiry into the false and incoherent pleas raised by the petitioners. Filing of such litigation by the litigants, who have no scruples and its easy entertainment by the Courts has resulted in explosion of Court docket. This is

thus, high time when the Courts start asserting and discouraging such litigation with heavy hands. For the act of misrepresentation and raising of false, unsubstantiated and incoherent pleas, this Court may not examine other issues raised in these petitions, though, same have been aptly dealt with by the Public Service Commission in its reply affidavit. It is also worthy taking note that, as asserted by the Commission, even if, the selection of private respondents is quashed, the petitioners, who are not the candidates next in the order of merit would not be benefited in any manner. There are several candidates intercepting between the petitioner and the candidates last selected in their respective categories.

Plea of Bias

37. Regarding the allegation of bias, the respondent-Commission has sufficiently explained the manner in which the interviews were conducted and the possibility of any bias was excluded. There is no rebuttal to the stand of the Commission that on the dates the daughter of Mr. J. A. Makhdoomi, member of the interview Committee and cousin's son of another member, namely, Mr. M. H. Samoon appeared for interview, both the members recused from the interview process for the entire day and they did not participate in deliberations with regard to the merit of their relatives. Similarly, the Controller of Examination, Mr. M. A. Bukhari, who was stated to be close relative of a candidate, namely, Syed Mubashira Hussain, was not associated in the interview process as he was not a member of the interview committee and, therefore, had no role to play in the assessment of merit of the candidates in the interview. I have no reasons to disbelieve the stand of the Commission.

38. The issue of bias in selection is now firmly established. The judgment rendered by a Constitution Bench of Hon^{ble} the Supreme Court in the case of A. K. Kraipak & Ors vs. Union Of India & Ors, AIR 1970 SC 150, is a landmark in the development of administrative law and has been consistently followed in the later judgments of Apex Court as well as the High Courts. The Supreme Court in case of Ashok Kumar Yadav vs. State of Haryana, AIR 1987 SC 454, another Constitution Bench judgment, in paras 15 & 16, held thus:-

"15. But the question still remains whether the selections made by the Haryana Public Service Commission could be said to be vitiated on account of the fact that Shri R.C. Marya and Shri Raghubar Dayal Gaur participated in the selection process, though Trilok Nath Sharma who was related to Shri Raghubar Dayal Gaur and Shakuntala Rani and Balbir Singh both of whom were related to Shri R.C. Marya, were candidates for selection. It is undoubtedly true that Shri Raghubar Dayal Gaur did not participate when Trilok Nath Sharma came up for interview and similarly Shri R.C. Marya did not participate when Shakuntala Rani and Balbir Singh appeared for interview at the viva voce examination. But, according to the petitioners, this was not sufficient to wipe out the blemish in the process of selection for two reasons: firstly, because Shri R C. Marya and Shri Raghubar Dayal Gaur participated in the interviews of the other candidates and

that gave rise to a reasonable apprehension in the mind of the candidates that Shri R.C. Marya and Shri Raghubar Dayal Gaur might tend to depress the marks of the other candidates with a view to ensuring the selection of the candidates related to them and secondly, because there could be reasonable apprehension in the mind of the candidates that the other members of the Haryana Public Service Commission interviewing the candidates might, out of regard for their colleagues, tend to give higher marks to the candidates related to them, The argument of the petitioners was that the presence of Shri R.C. Marya and Shri Raghubar Dayal Gaur on the interviewing committee gave rise to an impression that there was reasonable likelihood of bias in favour of the three candidates related to Shri R.C. Marya and Shri Raghubar Dayal Gaur and this had the effect of vitiating the entire selection process. This argument was sought to be supported by the petitioners by relying on the decisions reported in *D.K. Khanna v. Union of India & Ors.* *Surinder Nath Goel v. State of Punjab* and *M. Ariffudin v. D.D. Chitaley & Ors.* We do not think this argument can be sustained and for reasons, which we shall presently state, it is liable to be rejected.

16. We agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a Judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. It is also important to note that this rule is not confined to cases where judicial power *stricto sensu* is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a welfare state where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. This was the basis on which the applicability of this rule was extended to the decision-making process of a selection committee constituted for selecting officers to the Indian Forests Service in *A.K. Kraipak v. Union of India* happened in this case was that one Naquisbund, the acting Chief Conservator of Forests, Jammu and Kashmir was a member of the Selection Board which had been set up to select officers to the Indian Forest Service from those serving in the Forest Department of Jammu and Kashmir. Naquisbund who

was a member of the Selection Board was also one of the candidates for selection to the Indian Forest Service. He did not sit on the Selection Board at the time when his name was considered for selection but he did sit on the Selection Board and participated in the deliberations when the names of his rival officers were considered for selection and took part in the deliberations of the Selection Board while preparing the list of the selected candidates in order of preference. This Court held that the presence of Naquisbund vitiated the selection on the ground that there was reasonable likelihood of bias affecting the process of selection. Hegde, J. speaking on behalf of the Court countered the argument that Naquisbund did not take part in the deliberations of the Selection Board when his name was considered, by saying:

"But then the very fact that he was a member of the Selection Board must have its own impact on the decision of the Selection Board. Further, admittedly, he participated in the deliberations of the Selection Board when the claims of his rivals ... were considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberation of the selection board, there was a conflict between his interest and duty The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct."

This Court emphasised that it was not necessary to establish as but it was sufficient to invalidate the selection process if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection.

17.

18.We wholly endorse these observations. Here in the present case it was common ground between the parties that Shri Raghubar Gaur Dayal Gaur did not participate at all in interviewing Trilok Nath Sharma and likewise Shri R.C. Marya did not participate at all when Shakuntala Rani and Balbir Singh came to be interviewed and in fact, both of them retired from the room when the interviews of their respective relatives were held. Moreover, neither of them took any part in any discussion in regard to the merits of his relatives nor is there anything to show that the marks or credits obtained by their respective relatives at the interviews were disclosed to them. We are therefore of the view that there was no infirmity attaching to the selections made

by the Haryana Public Service Commission on the ground that, though their close relative were appearing for the interview, Shri Raghubar Dayal Gaur and Shri R.C. Marya did not withdraw completely from the entire selection process. This ground urged on behalf of the petitioners must therefore be rejected."

39. In a recent judgment, a Division bench of Allahabad High Court in the case of Smt. Mazda Begum vs. State of U.P (Special Appeal No. 240/2014 decided on 13.01.2017) elaborately discussed the doctrine of bias and while relying upon its earlier Division Bench judgment rendered in the case of Dr. Virendra Kumar Sharma v. State of U.P., 2006(6) AWC 6263, culled out following principles:-

(1) If a selection committee constituted for the purpose of selecting candidates on merits and one of the member of the selection committee is closely related to a candidate appearing for selection it would not be enough for such member merely to withdraw from participation in the interview of the candidate related to him but must withdraw altogether from entire process of selection and ask the authorities to nominate another person in his place on the selection committee, otherwise selection would be vitiated.

(2) The above principle as it stands cannot be applied in respect of selection made by Central or State Public Service Commissions, where member of the commission whose close relative is appearing for selection, consisting of interview or promotions etc. without interview, he need not to withdraw from selection altogether rather he should abstain in interview of his close relative and further deliberations in allocation of marks, but in multimember commissions where other alternatives are available, it would be most appropriate to leave the matter of interview and deliberations of allocations of marks to another member comprising Board of selection.

(3) Where the selection committee is constituted under statutory rules or Government orders, a member is disqualified in a given situation vis-a-vis a particular candidate whose promotion or selection is in question there can be no difficulty in his recusing himself and requesting another officer to be substituted in his place in committee. Alternatively, when there are three or more members in such committee, the disqualified member could leave it to the other remaining members to take decision. In case however they differ then authority which constituted the committee, could be requested to nominate a third member In case of committee having three members.

(4) The aforesaid rule shall also be applied with necessary modification in the matter pertaining to disciplinary action where the commission is to be consulted and in cases where the Inquiry Officer or Disciplinary or Appellate Authority is disqualified to take decision on account of bias, affecting such decision.

(5) There can be no difficulty in applying the rule in connection of members of screening committee constituted for the purpose of compulsory retirement with necessary modification, if any member of screening committee is disqualified on account of bias in taking even advisory decision.

(6) However, before setting-aside such decisions tainted with bias, it is necessary for the courts or Tribunals to examine that as to whether the decision can be saved by applying the doctrine of necessity in the manner indicated herein before as exception to the rule against bias affecting the decision but where there is no such statutory compulsion, the doctrine of necessity cannot be pressed into service."

See Javid Rasool Bhat vs. State of J&K, 1984 (2) SCC 63.

40. It is thus trite law that where selection has to be made by a constitutional body like Public Service Commission and if substitution of the member is not possible, the selection in such circumstances by itself would not be vitiated. However, when a close relative of a member of the Public Service Commission appears for the interview, such member must withdraw from participation in interview of that candidate and must not partake in any discussion with regard to merit of that candidate and even the marks and credit given to such a candidate should not be disclosed to such member. In the present case, such a precaution was taken by the Commission. Not only the members, whose relatives were going to be interviewed, were asked to disclose their relationship but they also recused for the dates when their relatives were interviewed. This excludes the reasonable possibility of bias.

Vires of Rule 9(1)

41. Lastly, a brief discussion with regard to challenge laid to vires of Rule 9(1) of the Examination Rules of 2008. Before embarking upon appreciation of the argument of learned counsel appearing in writ petition SWP No. 1121/2011, it would be necessary to set out Rule 9 in its entirety:-

"9. Interview.

(1) The number of candidates to be summoned for interview will not be more than thrice the number of vacancies to be filled. The interview will carry a maximum of 250 marks (with no minimum qualifying marks). Failure to appear in the interview shall render a candidate ineligible for being recommended for appointment notwithstanding the marks obtained by him in the written examination.

(2) The candidates shall be short-listed for interview on the basis of overall merit obtained by them in the Main Examination irrespective of the category (ies) to which he/she/they belong.

[Provided that if the number of candidates belonging to any reserved category, who qualify for the interview on the basis of the above short-listing criteria, falls short of upto three times the number of vacancies reserved for such a category, the Commission shall call the candidates belonging to such category over and above the number short-listed for interview.]"

42. The first part of Rule 9 i.e. Rule 9(1), provides that the number of candidates

to be summoned for the interview will not be thrice the number of vacancies to be filled up and that interview will carry a maximum of 250 marks (with no minimum qualifying marks). It further provides that failure to appear in interview shall render a candidate ineligible for being recommended for appointment notwithstanding the marks obtained by such a candidate in the written examination. The impugned part of Rule 9 has been assailed by the petitioners mainly on the ground that in the absence of any guidelines or yardstick laid for awarding these 250 marks in the viva voce, the members of the interview Committee have been given wide amplitude to indulge in arbitrariness. It is argued that in the process of interview the minimum marks awarded to a candidate is 20 whereas the maximum was awarded as 205. It is further submitted that by providing that there would be no qualifying mark in the interview, the provision has been rendered arbitrary.

43. I find no substance in the submission made by the learned counsel appearing for the petitioners in SWP 1121/2011. The marks earmarked for viva voce in the instant selection are only 12.8% of the marks allocated for the written examination. It may be seen that in the instant case the written examination carried 1950 marks while as 250 marks were earmarked for viva voce. This way the allocation of marks for viva voce are neither excessive nor exceed the prescribed limit. That apart, the petitioners were well aware that the selection process is being conducted as per the Examination Rules of 2008, yet they participated in the selection process without raising any protest or demur against the procedure laid down in the Rules including the one in Rule 9(1) of the Examination Rules of 2008. The principle of estoppel will apply to the petitioners in these circumstances. That apart, the marks allocated for viva voce in the instant case comes only to 11.37% of the total marks allocated in the selection process and, therefore, cannot be said to be excessive so as to give leverage to the interview committee to convert merit into de-merit or vice versa. The judgment in the case of Ashok Kumar Yadav (*supra*) is complete answer to the submissions made by the learned counsel for the petitioners in writ petition SWP No. 1121/2011.

44. There are very irresponsible and unfounded allegations regarding regional bias made by the petitioners, which, on scrutiny, have been found far from truth. The allegation leveled is not substantiated by placing on record any evidence that regional consideration had weighed in the selection.

45. Before I close, I deem it appropriate to deal with the argument of Mr. Zahoor Ahmad Bhat, petitioner appearing in person, that whole selection process is vitiated as the respondents have short listed the candidates for viva voce contrary to Rule 8(4) of the Examination Rules of 2008. It is the contention of the petitioner that, despite the fact that some of the candidates did not obtain the minimum qualifying marks in the written part of the Main Examination in all the papers, they were short listed and permitted to sit in the viva voce. The Commission in its reply affidavit has squarely met the argument and submitted

that reading sub-rule (4) and (5) of Rule 8 of the Examination Rules of 2008 together, it is abundantly clear that a candidate is required to obtain minimum qualifying marks in the written part of the main examination in all the papers and all the papers would mean the papers in the subjects set out in appendix-I of the Rules. That apart, I am not inclined to entertain this plea of the petitioners for yet another reason. The petitioners were amongst the candidates short listed for viva voce and they too were short listed in terms of sub-rule (4) and (5) of Rule 8 of the Examination Rules of 2008. They did not question the manner in which sub-rule (4) and (5) of Examination Rules, 2008 was understood and applied by the Commission. They took calculated chance in the interview and, therefore, they cannot be permitted to turn around and cry foul of the selection process on the ground that there was irregularity committed by the Commission even in the matter of short listing the candidates for viva voce.

46. The allegation of the petitioners, that the cut off in the Scheduled Tribe category for the purposes of short listing was lowered down illegally to favour respondent No. 6, is without basis and substance.

47. As is apparent from the proviso to sub-rule (2) of Rule 9 of the Examination Rules of 2008, if the number of candidates belonging to any category, for the purposes of short listing criteria, falls short of three times the number of vacancies reserved for such category, the Commission shall call the candidates belonging to such category over and above the number short listed for interview. Finding that candidates three times the number of vacancies reserved for the category of Scheduled Tribe had not qualified for the interview on the basis of short listing criteria, respondent- Commission lowered the cut off so as to enable the candidates thrice the number of vacancies reserved for category of Scheduled Tribe to participate in the viva voce. The same process was also followed in the case of SC category. The respondent-Commission has thus, only carried the mandate of proviso to Rule 9(2) of the Examination Rules of 2008 and has committed no illegality.

48. Viewed from any angle, I find no merit in these petitions, the same are accordingly, dismissed.

49. All the connected applications in these writ petitions shall also stand disposed of, accordingly.

50. It is a fit case, where this Court would have imposed heavy exemplary costs on the petitioners for unnecessarily engaging the Court in futile litigation, but taking note of the fact that the petitioners are unemployed youth and may have made false, frivolous and unsubstantiated allegations out of frustration and to somehow maintain the petitions, I refrain from doing so but not without warning the petitioners in particular and the litigants in general that such deliberate misrepresentation of facts before Court would invite serious consequences.