
(1995) 01 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4180 of 1994

Manoj Kumar Pandey and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-01-1995

Acts Referred:

Citation : (1995) 01 PAT CK 0018

Final Decision : Allowed

Judgement

S.N. Jha, J.—The Constitution of India envisages recruitment to the Civil Services under the Union and the States on the basis of merit by open competition. Leonard White in his Introduction to the Study of Public Administration states—"Open competitive examinations are as peculiarly democratic institution. Any qualified person may come forward. His relative competence for appointment is determined by a neutral, disinterested body on the basis of objective evidence supplied by the candidate himself. No one has "pull"; every one stands on his own feet. The system is not only highly democratic, it is fair and equitable to every competition. The same rules govern, the same procedures apply, the same yardstick is used to test competence", (Lila Dhar Vs. State of Rajasthan and Others,). The body assigned with the job of selection of qualified persons in India is the Public Service Commission at the level of both the Union and the States.

2. The provisions as contained in Article 316 of the Constitution regarding appointment and term of office of members, Article 317 regarding removal and suspension of members, Article 318 regarding framing of Regulations as to conditions of service of the members and the staff, Article 319 regarding prohibition as to holding of the office by the members on ceasing to be the members not only confer a special status but also give a halo of respectability to the Commission.

3. Article 318 of the Constitution provides that number of members of the Commission shall be fixed by regulation by the President or the Government of

the State, as the case may be. In Bihar, in terms of Regulation 3(1) of the Bihar Public Service Commission (Conditions of Service) Regulations, 1970, the numbers of members has been fixed at 10 besides the Chairman. As to how a multi-number body should function, I would do no better than to quote the following passage from *S.S. Dhanoa v. Union of India* AIR 1991 Supreme Court 1745 at pages 1754-55:

There is no doubt that two heads are better than one, and particularly when an institution like the Election Commission is entrusted with vital functions, and is armed with exclusive uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual, however, all-wise he may be. It ill-conforms the tenets of the democratic rule. It is true that the independence of an institution depends upon the persons who man it and not on their number. A single individual may sometimes prove capable of withstanding all the pulls and pressures which many may not. However, when vast powers are exercised by an institution which is accountable to none, it is politic to entrust its affairs to more hands than one. It helps to assure judiciousness and want of arbitrariness.

4. I have referred, briefly, to the scheme envisaged in the Constitution and indicated how the Commission as a body should function, as a preface to this judgment, in view of the nature of the complaint and controversy raised in these writ petitions. I shall advert to that aspect again later, I now come to specific grievance.

5. The Petitioners seek quashing of the result of the 38th Combined Competitive (Main) Examination conducted by the Bihar Public Service Commission, published on April 27, 1994. In C.W.J.C. No. 4180 of 1994 which was filed earliest in point of time and has been heard as the leading case, a Bench of this Court while admitting e writ petition passes the following interim order- "Till that date no appointment in pursuance of any recommendation if made by the B.P.S.C., shall be made. The other processes relating to the recruitment may continue". It is an admitted position that viva voce test of the candidates successful at the written (Main) examination was held as per schedule and the recommendations have been made in the meantime. The validity of the result of the examination has been questioned on the ground that the decision to hold centralised evaluation of the answer books by the local examiners not mentioned in the Hand Book of the University Grants Commission or the Association of University teachers was contrary to the unanimous decision of the Commission as also the observations of this Court in *Sanjay Kumar and Others Vs. The Bihar Public Service Commission and Others*. The result has also been challenged on the ground that the same was not approved by the Full Commission. It is said that preperation of final merit list without laying down the modalities/guidelines for evaluation of the merit at the viva voce by the Full Commission or without approval of the result of the Main Examination or the final merit itself by the Full Commission was bad and arbitrary.

6. The Commission does not deny the fact that on August 16, 1993 a decision had been taken in regard to evaluation of answer books by examiners outside the State. According to it, the decision was later reviewed and reversed by majority of the members on September 18, 1993. It is also said that as per the rules of the procedures framed by the Commission, which came into force from November 3, 1993, the duties and functions of the Commission have been allocated among the Chairman and/or members. As per the said rules the entire business of the Commission is not to be transacted by the Full Commission.

7. In order to find out how the previous decision in regard to evaluation of answer books by examiners outside the State was reversed and whether the revised decision represents the will of the Commission, at least of the majority of its members, we directed the Commission to produce the relevant records. We have carefully examined the same. The records reveal a very sad and disturbing state of affairs in the functioning of the Commission. The relevant facts in this regard are these.

8. On August 5, 1993 the Officer-on-Special Duty (OSD) solicited guidance of the Commission in regard to conduct of the 38th Combined Competitive (Main) Examination A draft resolution to that effect was put up for consideration before the Commission on August 16, 1993. The Commission at that time comprised of the Chairman and nine members, namely, Dr. (Smt.) C.B. Devi, Dr. Karma Oraon, Sri B. Ram, Dr. S.J. Thakur, Prof. Satyendra Singh, Dr. K.P. Singh, Shri Sarju Prasad, Shri S.N. Singh and Sri S.S. Mashhadi. As many as eight members (the remaining one was absent), besides the Chairman, unanimously decided, inter alia, that "the Question Setters/Moderators/Examiners should be of Professor/Reader rank and should be from outside the State and whose names figure in the UGC Hand Book or Hand Book of Association of University Teachers and the panel thereof should be put up before the Commission for approval". The examination as per the decision was to commence from September 20, 1993. The file thereafter contains different nothings in regard to examination centres etc. The impugned controversial decision in regard to centralised evaluation appears to have been taken by the Chairman and from members, namely, Dr. (Smt.) C.B. Devi, Sri S. Singh, Sri K.P. Singh and Sri S.N. Singh. I shall refer to the contents of the decision regarding centralised evaluation later. The aforesaid decision appears to have been recorded on separate sheets of papers and not in the file. This is clear from the fact that they were separately paginated and were incorporated in the main file and given running page numbers only after certain members at the stage of circulation took objection to it. Dr. S.J. Thakur and Sri B. Ram expressed clear note of dissent when the file was circulated to them on September 18, 1993. Sri Sarju Prasad, who was absent on the date of the said meeting (held on September 18, 1993) also expressed his dissent on September 21, 1993 stating- "I personally tried to plead before the Commission, made an appeal not to make departure from our consistent stand of sending answer scripts to places outside Bihar more in view of the direction of the Hon"ble High Court". Sri S.S. Mashhadi, who too was absent on the date of the said meeting

observed that the decision having already been taken, agree with the proposed list of head examiners and setters. (It is note-worthy that even at that stage he did not seem to agree with the correctness of the decision but he chose to reconcile himself as the majority of the members had already taken that decision). The list of examiners, however, could not be approved. On October 5, 1993, the OSD ex-pressed serious reservation about holding centralised evaluation and solicited instructions. The Chairman, thereupon, on October 5, 1993 requested the members to give their clear opinion on the note of the OSD. The file was, thereafter, circulated to the members again. On October 6, Sri K.P. Singh, who had earlier opted, in favour of centralised evaluation on September 18, 1993, this time observed, "The matter of centralised evaluation was brought before the Commission under impression that it would be approved by nearly all the members. But now it is clear that there is sharp division among the members on the issue, in the present circumstances it would be wise to get the papers evaluated by the examiners outside the State". He suggested, in the circumstances, that the meeting of the Commission be held to discuss the issue in the light of the abovesaid note of the OSD. Sri S. Singh reiterated his view in favour of centralised evaluation. Sri S.J. Thakur and Sri B. Ram, as before, lodged their strong dissent in the matter. Shri S.N. Singh suggested that the matter be placed before the Full Commission. Shri Karma Oraon also suggested that the Commission should meet and deliberate upon the issues raised by the OSD, observing that the Commission would better follow the observations and directions of the High Court (regarding evaluation outside the State). Sri S.S. Mashhadi and Sri Sarju Prasad to whom the file was circulated on October 7, 1993 agreed with the view of Sri K.P. Singh. They also opined that the matter be discussed by the Full Commission. At this juncture, on October 8, 1993 the OSD suggested that in view of the opinion expressed by the members (except Smt. C.B. Devi) the meeting of the Commission should be called. The Chairman asked him to ascertain the views of Smt. C.B. Devi as well. Smt. C.B. Devi stated that although in the meeting held on September 18, 1993 she was in favour of centralised evaluation, in view of the controversy the matter be placed before the Commission again.

9. It would appear from the above narration that out of nine membres, except Sri Singh all the rest eight including Smt. C.B Devi, Sri K.P. Singh and Sri S.N. Singh, who were party to the decision of September 18, 1993, expressed their reservations. In fact, five of them namely, Sri Sarju Prasad, Sri S.J. Thakur, Sri B. Ram, Sri K.P. Singh and Sri Mashhadi, in clear words, said "No" to the proposal while, the other three wanted the matter to be reconsidered by the Full Commission, without expressing any positive opinion one way or the other. It is indeed sad to note that despite the strong majority of the members openly suggesting at least, fresh discussion and reconsideration of the matter (if not clearly opposing the proposed centralised evaluation), the matter was never placed for consideration before the Full Commission, although the evaluation actually commenced much later on November 28, 1993.

10. The position appears to be somewhat like this. The Chairman and four members on September 18, 1993 sat together and decided to hold centralised evaluation in the Commission's office. The decision was recorded on two separate sheets. The sheets were circulated. Four members expressed their views in the margin. Later, the sheets were incorporated in the file. The file was, thereafter, circulated. The fact that prior to 18th September, there was no proposal, not even a whisper, that the 16th August unanimous decision should be revised and there should be centralised evaluation, is amply borne out not only by the movement of the file but also following observations of one of the Members Sri Sarju Prasad himself in his minute dated October 7, 1993, "in the meeting of 17-18 September was not present since till the afternoon of 16th there was no talk of any meeting of the Commission on 17th." It is obvious that the Chairman and four members (some of whom also later backed out) themselves suddenly took the decision in favour of centralised evaluation without any prior circulation. Neither the Office nor even the other members of the Commission were taken into confidence.

11. The impugned decision dated September 18, 1993 makes an interesting reading. The relevant parts of the decision are as follows:

Commission deliberated intensively over the matter of evaluation of answer books connected with 38th Combined Competitive (Main Examination....

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The Following pertinent points surfaced prominently for consideration:

(a) Whether the Commission can opt for centralised evaluation at the Commission's Office under a foolproof system where there is no scope of leakage and consequential allegation on that account in order to save time likely to be consumed in despatch of the answer books to various destinations outside Bihar and their arrival back at the office of the Commission.

(b) Whether the option of the Commission will not be in derogation of the observation of the Hon'ble Patna High Court given in C.W.J.C. No. 1192/92 concerning 37th Combined Competitive Examination wherein the Commission has been well advised to send the answer-books outside Bihar to avoid any allegation in future....

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After elaborate consideration of all the pertinent aspects of the matter discussed herebefore the Commission decided as under:

(i) Commission decided to adopt the system of centralised evaluation at the office of the Commission under the strict vigilance of the Chairman and the members nominated by the Commission.

(ii) Commission further decided that since there had not been any comment (?) over the system of centralised evaluation adopted during the 37th Combined

Competitive Examination, therefore, the same system with necessary changes and ensuring fuller involvements of the members be adopted for evaluation of answer books connected with the 38th Combined Competitive (Main) Examination.

(iii) It was also resolved that the selection of examiners and Head-examiners be made from among the Readers and Professors whose names figure in the Hand Book of Teachers published by the University Grants Commission and by the Association of the University Teachers available in the Commission's office.

(iv) A list of such teachers prepared by the Secretary will be approved with necessary changes indicated therein.

(v) It was also decided to make utmost efforts to get such examiners and Head examiners more and more from outside Bihar and in cases of nonavailability they should be replaced from among the persons from Bihar and who also figure in those Hand Book and who are of eminence and have been associated with various Commission's working.

12. In the case of Sanjay Kumar v. BPSC (supra) the validity of the result of the 37th Combined Competitive Examination had been challenged on the ground, inter alia, that the centralised evaluation introduced for the first time with respect to the said examination was not the result of any decision of the Commission but made wholly at the instance, of the Chairman alone. This Court did not approve of the manner in which the decisions were being taken as regards the conduct of the examination. As regards departure from the old practice of evaluation by the examiners outside the State it was observed (at page 425 of PLJR):

I may here clarify that on the face of it the 37th Examination might have appeared slightly different from the past examinations (Centralised evaluation scheme being introduced for the first time) but on the basic level it only followed the past pattern as, like the past examinations, decisions were taken by the Chairman and only the result was presented before the Commission for its approval. It is evident from the record that since the inception of the Commission the decisions regarding the conduct of the examination were left in the hands of the Chairman and it was the result (in the first stage of the qualified candidates and in the final stage of the selected candidates) which was placed before the Commission for its approval; in this process there was no departure so far as the examination in question is concerned, that is to say that the decisions were taken by the Chairman and the list of the qualified candidates was placed before the Commission for its approval.

In view of the decision reported in Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, that the selection made in accordance with the practice consistently followed for a long time should not be interfered with in the absence of any allegation of malafide, this Court did not uphold the challenge. The Court, however, observed (at page 426 of PLJR):

The manner in which the 37th Examination was unsatisfactory and left much to be desired.

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

Regarding the scheme of centralised evaluation, the Court observed (at page 426-28 of PLJR):

I am informed that a preliminary screening test has been introduced for the 36th Examination. This would naturally reduce the number of candidates who will finally take the written examination and number would once again come within manageable limits. Under this circumstance the Commission will be well advised to once again consider the question of sending the answer books to the examiners outside the State of Bihar as this process seems to evoke greater confidence and keeps the Commission's examinations free from any controversy.

It would, thus, appear that both as regards the decision making process as also the decision itself, this Court had made clear and positive adverse observations. It may be mentioned here that the judgment in case of Sanjay Kumar was delivered on June 11, 1992.

13. In the background of the observations made by this Court, I am really unable to understand as to what the signatories to the decision dated September 18, 1993, meant to convey by saying in the minutes quoted hereinabove that "there had not been any comment over the system of centralised evaluation adopted during the 37th Combined Competitive Examination". This Court did not accept the challenge of the result of the 37th Examination. But as noticed above, the gravamen of the challenge in the case of Sanjay Kumar (*supra*) was that the decision regarding centralised evaluation had been taken by the Chairman alone and not by the Commission as a whole. The said plea was not accepted as per the past practice to the effect that except in certain cases and stages decisions used to be taken by the Chairman himself. So far as the wisdom of the decision (centralised evaluation) is concerned, the Court did say, though by way of advice, to once again consider the question of sending the answer books to the examiners outside the State in public interest.

14. I should not be understood as condemning outright the system of centralised evaluation. Materials have not been produced before us either in its favour or against it. I am not aware of the recent trends in the field of Public Administration in this regard. But as is often said, in exercise of the writ jurisdiction what the Court should examine is the process or manner of taking the decision and not the decision itself unless, of course, the decision is unjust or arbitrary. I shall come to the merit of the decision, the question of its resultant effect on the selection process, later in this judgment. At this stage I would merely voice my complete agreement with the observation of this Court in the case of Sanjay Kumar (*supra*) that the process of getting the answer books evaluated by examiners outside the State will certainly evoke greater confidence

of the public and impart more credibility to the examination system, particularly having regard to the prevailing state of affairs in the State.

15. What I would like to emphasise is that once the members including even those who were party to the revised decision regarding centralised evaluation, started expressing their reservations and suggested further discussion by the Commission, mentioning about the "collective wisdom", what prevented the Chairman from getting the matter examined and deliberated upon afresh. In a multi-member body all decisions may not be unanimous. If the members fail to arrive at unanimity the decision may have, to be taken by majority. Persons may have different perceptions. But when they deliberate upon the matter objectively they may modify or change their views. All that is required is sincere desire and effort to understand each Ors. " point of view. Mr. S.K. Ghose, learned Counsel for the Commission, stated that the dissent came late. However, from the sequence of events narrated above it is obvious that, even besides Sri S.J. Thakur and Sri B. Ram, who had been rather vociferous in their opposition, the dissent had started coming from August 21, 1993 (vide-the opinion of Sri Sarju Prasad) and by October, 8, 1993 almost the whole Commission except two including the Chairman wanted, at least, a fresh consideration in the light of the difficulties pointed out by the OSD.

16. Article 320 of the Constitution lays down that it shall be the duty of the Public Service Commission to conduct examinations for appointment to the service of the Union and the States. Rule 4 of the Bihar Civil Service (Executive Branch) and the Bihar Junior Civil Service (Recruitment) Rules, 1951 provide that the competitive examinations will be conducted by the Commission. In terms of Rules 16, 17, 18 and 19 of the said Rules also it is the Commission which has to fix the qualifying marks at the written examination; to arrange for the viva voce test of the candidates qualifying at the written examination; to prepare the merit list and submit recommendation of the qualified candidates. The "conduct of examination" is no doubt a compendious expression. It comprises of different stages. It may not be possible for the Chairman and all the members to sit together for every bit of work. Therefore allocation of work/business is certainly permissible. All said and done, when the majority of the Members were against the centralised evaluation or, at least, had desired further debate and discussion, the Chairman had no option but to convene a meeting of the Full Commission, and try for a consensus. After all, the Office which has to take the follow-up steps and implement the. decision had also expressed reservations and pointed out difficulties. Nothing, absolutely nothing, appears to have been done for full one month. There is no noting, no minute, no examination of the matter. After the minute of Smt. C.B. Devi dated Oct. 8, 1993 (referred to above), the file appears to have "disappeared" until November 9, 1993, when the OSD submitted his note regarding approval of the list of examiners. This was, perhaps, because the rules of procedure were then in offing and the Chairman wanted to while away time. The rules are said to have been approved by majority of 5 to 4 on November 3, 1993. The conduct of the Chairman in pre-

empting any discussion, and getting centralised evaluation done in the circumstances is un-understandable to me. It verges on malafide and cannot be approved at all.

17. In Sanjay Kumar (supra) this Court had observed (at page 421 of PLJR):

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

Again, at page 424 of the Report (PLJR) it was said:

Under the scheme of the Constitution the Members along with the chairman constitute the Commission. The Members are not there as advisers and consultants whom the Chairman may consult or from whom he may take advice before taking decisions.

The Court accepted the argument that the position of the Chairman is different from that of the Members as regards administrative matters but rejected the contention that the conduct of an examination was also an administrative function with respect to which too, the Chairman had special powers. At page 423 of the Report (PLJR) it was observed:

In any event, the conduct of examination is one of the primary functions of the Commission; so to say its *raison d'être* and I am of the firm opinion that this constitutional duty of the Commission could not be taken over by the Chairman personally on the basis of Regulation 8.

In this background and the facts stated above, the fact that in the past the Chairman had been taking decisions all by himself, in view of which the challenge to the result of the 37th Examination was not upheld, loses its relevance.

18. It is worth mentioning here that Rule 4(xi) of Chapter III of the newly-framed Rules of Procedures provides for centralised evaluation in the premises of the Bihar Public Service Commission. Without going into the question, at this stage, as to whether the aforesaid Rules of Procedures can be made applicable to the 38th Examination, I would ask that even as per the said Rules read with the schedule regarding allocation of business, "Any new decision or changing the existing policy of conduct of examination" has to be taken by the Commission as a whole, and not by the Chairman alone or with the "support" of few members by himself or themselves by-passing the other members. It would not be out of place to mention here that no formal decision taken after November 3, 1993,

when the said Rules or Procedures are said to have come into force, was brought to our notice.

19. So much so about the centralised evaluation. So far as the appointment of examiners and Head examiners is concerned, both according to unanimous decision of August 16, 1993 and the so called revised decision of September 18, 1993, the examiners were to be of the rank of Professor/Reader from outside the State whose names figure in the U.G.C. Hand Book or the Hand Book of Association of University Teachers. The note of the OSD dated November 9, 1993 stated that as per the decision of the Commission the Examiner should be of Professor/Reader's rank and from the Hand Book of Teachers published by UGC or the Association of University Teachers but despite, several efforts none of the outside examiners was available for evaluation. He again referred to his aforementioned note of October 5, 1993 wherein he had pointed out the difficulties in the matter of centralised evaluation. He, however, also suggested that according to newly, framed rules of procedure the approval of the examiners is to be made by the Committee, hence a Committee may be constituted for approval of the list. No order was passed on the said note. On November 23, 1993 he put up two notes stating that the office had prepared a new list of examiners and a list had also been received from the Universities of Bihar at Muzaffarpur and Patna. He again suggested that a Committee may be constituted to approve the list. On the same day the Chairman formed a Committee of Dr. .C.B. Devi and Sri S. Singh. The said two members along with the Chairman approved the panel of the examiners/Head examiners by the office and also the panel sent by the Vice-Chancellors of the said three Universities. Admittedly, evaluation was done in the premises of the Commission building at Patna by the said examiners.

20. Much was argued, about the competence of the examiners. As a matter of fact, specific instance of Sri Ram Ratan Singh, Retired Chief Inspector of Weights and Measures, who is said to have not only evaluated the Agriculture paper but also appointed Examiners, was cited. It was stated that some of the Examiners like himself were not teachers. It was said that Sri Ram Ratan Singh is the uncle of Sri S. Singh, the Member. On behalf of the Commission as well as the intervenors, it was stated, that Sri Ram Ratan Singh had served as a teacher for ten years before he joined the Govt. service in 1973. It was argued that having been a teacher for ten years and dealt with the subject during his service career he cannot be said to be lacking in proficiency or knowledge of the subject. I do not wish to offer my comments on the professional, competence of Sri Ram Ratan Singh. The point is that as per both the decisions of the Commission dated August 16 and September 18, 1993, the examiners should have been of Professor/Reader's rank mentioned in the "Hand Book". Sri Ram Ratan Singh admittedly does not figure in the "Hand book". He cannot claim to be of the rank of Professor/Reader either. There may be several such types of persons who evaluated the answer books.

21. At one stage of the hearing we felt inclined to ask the Commission to produce the whole list of examiners with their biodatas. We, however, decided not to do the same. It might have encroached upon the territory of confidentiality (we were told that once the name of the examiner becomes known to Ors. he becomes disqualified for future evaluation). Secondly, it would not have been proper or even permissible to go into their competency. The Court may not sit in appeal over the judgment of the Commission in the matter of selection of the examiners but surely in view of the controversy and the criticism on the point and the thrust of the arguments, the Commission was obliged to satisfy the Court that the examiners were qualified and that the decision of September 18, 1993, at least, was faithfully carried out. This could have been done even without disclosing the names by at least denying the allegations. On the contrary, the stand of the Commission is that "the answer books have been evaluated by teachers of Constituent Government Colleges having ten years of teaching experience or a teacher having five years teaching experience in post-graduate department" (vide para 3 of the main affidavit). It may be noted that the aforesaid stand is virtually a quotation of Chapter III Rule 4(viii) of the said Rules or Procedure. Besides being a bald, omnibus stand, factually it does not appear to be true. For example, as regards Shri Ram Ratan Singh himself, whose name came to light during course of hearing, the counsel for the Commission could not take a firm stand that even according to the above rule, he was qualified. The circumstances in which the office prepared the list of examinees during the interregnum between October 8 and November 9, 1993 when the file had virtually "disappeared" (See paragraph 16 above), are indeed suspicious. What was cooked under the cloak of confidentiality is difficult to know.

22. Dr. Sadanand Jha, learned Counsel for the intervenors, pooh-poohed the respectability of the aforesaid Handbooks of the year 1986 as being obsolete. He pointed out that some of the persons mentioned therein are dead or have retired in the meantime. I do not find any substance in the submission. Whether appointments of examiners should have been made from out of the persons mentioned in the Handbooks or from other source was for the Commission to decide. The 1993 Rules of Procedure do provide for appointment of teachers having certain teaching experience, as noticed above. Even if the Rules were to apply, they could not have overridden the aforesaid two decisions dated August 16, and Sep. 18, 1993, taken with respect to 38th Examination itself. Apart from the plea that Handbooks had become obsolete, counsel for the intervenors did not take the plea that the decision to appoint teachers as mentioned in the Handbooks was a Wrong decision. There is nothing on the record to suggest that teachers of the rank of Professor/Reader as mentioned in the Handbooks were not available for evaluation. They might not be available for evaluating the answer books at Patna within the premises of the Commission but surely they were available at their respective places, provided the answer books had been sent outside.

23. Mr. Swaraj Kumar Ghose and Dr. Sadanand Jha, learned Counsel for the

Commission and the Intervenors, respectively were at pains to argue that the Rules of Procedure having been framed in view of the observation of not only this Court but also the Supreme Court, the Commission cannot be faulted for having chosen to act according to the said rules. Dr. Jha referred to various authorities *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra*, Adult, quoted Maxwell on Interpretation of Statutes and Craies' Statute Law in support of the proposition that amendment in rules of procedure is retrospective in its application. The decisions and authorities, in my view, have no application in this case. The proposition is no doubt correct but is applicable to judicial proceedings. The impugned decisions, both of August 16 and September 18, 1993 having been taken specifically with respect to the 38th Examination, it is doubtful if they could be deemed to have become non est only because the Rules were adopted in the midst of the selection process. Further, as regards the centralised evaluation, as noticed above, no decision in terms of Rule 4(xi) of Chapter III of the Rules appears to have been taken after the said Rules are said to have come into force on November 3, 1993.

24. Dr. Sadanand Jha very fairly, if I may say so, did not argue that the action of the Commission in holding centralised evaluation in the circumstances mentioned above was fair. He made an ardent appeal, nevertheless, not to interfere with the result. He contended that merely because of the centralised evaluation it cannot be said that end result was also bad. According to the counsel, because of the fault of the Chairman candidates should not be made to suffer.

25. I have given my utmost anxious consideration to this aspect of the matter. It is true that a candidate at a competitive examination has no say as to the mode and manner of conducting the examination. Who will evaluate the answer books cannot be his concern. The submission, therefore, that the candidates should not be made to suffer for the fault of the Chairman may be right in its own place. The aforesaid argument, however, can be made in all such cases, irrespective of the magnitude of irregularities and arbitrariness. If the argument is accepted then virtually in no case the selection will be quashed. If the mode and manner of selection is bad, illegal or unjust, surely, the ultimate sufferers are the successful candidates. From a broader angle, however, it is not the successful candidates alone who suffers. Those who are not able to make grade on account of faulty or arbitrary or unjust procedure also suffer. In the former case it is the interest of the known individuals i.e. the individual interest which suffers; in the latter, it is the interest of the masses, i.e. the public interest which suffers. It would not be unreasonable to hold that if the correct procedure had been followed the result of selection might be different. Better candidates might find place in place of those already selected. If there is clash between individual interest and public interest, there can be no two opinions that individual interest must give way to public interest. What is of utmost importance is that the people's faith in the system must be maintained. If the people lose their faith in the system the very existence of the Commission would become irrelevant. That is where the observations of Leonard White, with which I began this judgment,

become relevant.

26. The point which I am trying to make finds echo in the following observations in the recent case of Pritpal Singh and others Vs. State of Haryana and others, :

We appreciate that it may be that there are among those selected some who deserved selection and who will, consequently, suffer as a result of this order. There is, regrettably, considering the state of the selection records, no way in which such men can be identified. The public interest outweighs their interest. The directions that we shall now give shall enable them to compete once again with those who had sought selection with little or no disadvantage as a result of the years that have passed.

27. It appears to me that a feeling has grown in the minds of the powers-that-be in the Commission or other selection bodies that whatever may be said about their conduct the Courts ultimately would not interfere with the selection/appointments. In the case of Sanjay Kumar and Others Vs. The Bihar Public Service Commission and Others this Court held that the manner in which the 37th Examination was held was unsatisfactory. The result of the examination, however, was not interfered with. The result of the preliminary examination of the 38th Examination was also challenged by the Association of Civil Service Examinees and Amaresh Kumar Singh Vs. The Bihar Public Service Commission and Others found fault with the conduct of the Chairman but again declined to set aside the result. In my opinion, on the facts of the case, the Court should not stop short at merely condemning the action of the Chairman. It is a case where the Court should rise to the occasion and strike the blow by annulling the entire evaluation process.

28. On the facts and in the circumstances of the case and for reasons stated above, I am satisfied to hold that both the process of taking the decision to hold centralised evaluation and its implementation were bad rendering the entire evaluation process illegal and arbitrary. In the case of Sanjay Kumar this Court had said (as regards the 38th Examination) that the Commission should, with more and fuller involvement of all the members, again consider the question of sending the answer books outside the State of Bihar. The observation appears to have been thrown with disdain to the winds. I am of the view, in this background, that a firm direction should be issued this time. I would, accordingly, direct the Commission to get the answer books of the 38th Combined Competitive (Main) Examination evaluated afresh sending them for evaluation outside the State within four months and proceed further in the matter accordingly with utmost expedition. Needless to say that as a result of this direction the viva voce and the final recommendation made by the Commission would be deemed to have become non est.

29. In the result, these writ applications are allowed. There will be no order as to cost.

S.J. Mukhopadhaya, J.

30. I agree.