

(1994) 01 P&H CK 0151
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8584 of 1994

Satish and Others

APPELLANT

Vs

Haryana Public Service Commission and Others

RESPONDENT

Date of Decision : 18-01-1994

Acts Referred:

Constitution of India, 1950 — Article 317

Citation : (1995) 1 ILR (P&H) 294

Hon'ble Judges : Satpal, J; R.P. Sethi, J

Bench : Division Bench

Advocate : Suman Jain, for the Appellant; H.N. Mehtani, for Respondents Nos. 1 and 2, S.G. Mohunta assisted by, Ashuntosh Mohunta, for Respondents Nos. 3 and 4, Ram Kumar Malik, for Respondent No. 5, Surinder Dhall, for Respondent No. 6, H.L. Sibal, General and Jagdev Sharma, Addl. A.G., Sudershan Goel, for Respondent No. 8, J.S. Sibal and Shailender Singh, for Respondent No. 10 and K.K. Gupta, for Secretary, for the Respondent

Final Decision : Allowed

Judgement

R.P. Sethi, J.—Intrusions into the impartial functioning of the constitutional institutions, like Public Service Commissions, is alleged to be an increasing trend in our polity and if not checked, it likely to not only adversely affect but surely dash to the ground the constitutional edifice adopted and prevalent in our country. Extraneous considerations, alleged uncalled interference, internal rivalry for various reasons, including personal vanity and attempted effort to secure gains or favours from the executive have not only affected the smooth and proper functioning of the constitutional Tribunal, but also has created dissatisfaction amongst the common man, who has unflinched and unrestricted faith in the constitutional mechanism prevalent in our society. The alleged irregularities in the conduct of Haryana Civil Service (Executive Branch) Examination and the personal bickerings amongst the members of the Haryana Public Service Commission (Hereinafter called "the Commission") culminated in passing of the impugned order, by which the aforesaid examination held in the

month of October, 1993, was scrapped. The controversy did not rest with the scrapping of the examination only but reached the lowest level of allegations and counter allegations amongst the members of the Commission, a group staging a coup against the Chairman, who in turn resigned along with some other members. In the name of "maintaining the glorious traditions and highest standards of the Civil Service" and in the name of protecting the image of the Commission, its constituent Members behaved like unrespectable Members and threw filth upon each other in public, which does not deserve any other comment than to be condemned. The functioning of the Commission and its Members, including its Chairman shook the faith of not only the candidates, who had appeared in the examination and who are likely to appear in the examinations to be conducted by the Commission in future, but also amongst the common man, who was supposed to look at the Commission with respect and regard. In the order impugned (Annexure P/1), it was mentioned that after the examination, during the process of evaluation of scripts, a number of acts of commissions and commissions, like non-sealing of key/clippings at the proper time and other irregularities reflecting upon the observance of proper secrecy had come to the notice of commission, due to which the examination held in October, 1993, was being scrapped and the action of the Commission was stated to be in the interests of observance of objectivity, impartiality, justice and fair competition.

2. The facts giving rise to the present controversy in brief are that the Commission,--vide Advertisement Notice No. 7 Exam 1/92, issued in the last week of November, 1992, advertised various posts for Haryana Civil Service (Executive Branch) and other Allied Services. Details of the posts were specified in the advertisement-notice. It was mentioned that number of candidates to be called for interview after qualifying the written examination was not to exceed three times the prescribed vacancies. Thousands of candidates applied for those posts and took the examination, which commenced from 2nd of October, 1993, and concluded on 15th of October, 1993. Sealed answer books are stated to have been received from different centres in the office of the Secretary of the Commission by that date. It is stated that the key for listing original roll numbers and fictitious roll numbers was prepared in the month of October, 1993, itself. The clippings from answer books after recording fictitious roll numbers on the back of original roll numbers and also recording roll numbers on the front page of answer sheets, as per listing in the Key, are stated to have been removed in the months of November and December, 1993. Answer Books with fictitious roll numbers are admitted to have been sent to the examiners for evaluation along with proforma for award list during this period. The answer books after proper evaluation along with the award lists were received from the examiners by the Secretary to the commission in February, March and April, 1994. It is stated that during the months of March and April, 1994, scrutiny of marked answer books (scripts) for checking totals, tallying of marks in the abstract vis-a-vis body of the answer books, detection of unmarked parts, over attempted questions from different sections, detection of any attempt for disclosing identity

of the candidate and carrying out the correction in the scripts as also award lists was conducted. During this period, answer books to Original examiners were sent where marking of left over parts of attempted questions was required. Preparation of result cards, candidate-wise, with fictitious roll numbers is stated to have commenced in May/June, 1994. Arranging result card, merit wise, with marks of 45 per cent and above was carried out in the month of June, 1994. Preparation of merit list with fictitious roll numbers for determining qualified candidates with 45 per cent and above marks for the purposes of interview also commenced during this period. However, when the results were expected to be declared by the commission, internal bickering amongst its members is alleged to have commenced, which perpetuated to the extent that the whole of the examination was ultimately scrapped,--wide the order impugned in the petitions. The Petitioners, who have approached this Court for quashing scrapping of the examination result, have alleged that harsh action of passing the impugned order was due to internal fight between tire Chairman on one hand and the Members of the en-block on the other hand, which is stated to be lowness and incredibility of the Members and the Chairman. It is submitted that Members of the Commission manipulated the non-sealing of key of the fictitious roll numbers themselves as number of relatives of the members had appeared in the examination and such members were keen to know the awards of their kith and kind. It is further alleged that after becoming aware of their marks in the written examination, they approached the Chairman for doing the needful for their favourite candidates. Allegedly, not finding favour to their kith and kind the Members are alleged to have raised voice against the technical faults, such as non-sealing of key etc. The members are stated to have been non-serious about such technicalities earlier. The non-sealing of key for sometime is stated to have not changed the process of correct evaluation. It is contended that the members of the Commission had created such a chaos, which was published in all the leading newspapers, giving the impression that the Haryana Public Service Commission was nothing but "a Posts selling Commission". The alleged corruption at such high level is stated to have been made public with the result that the Chairman to save his skin had to resign. Some of the other members are also stated have followed the path chosen by the Chairman. The action of Scrapping the whole examination is stated to be mala-fide. Such mala-fides have been sought to be supported by different news items published in various news papers. The Petitioners have claimed that the examination was conducted in a fair manner and tampering, if any, related to the result part of the examination. Scrapping of entire examination after one year and that too on technical grounds is alleged to be highly unjustified. The Petitioners claim to have spent two precious years of their life for appearance in the competitive examination and awaiting the result. They claim that they were not at fault and could not be penalised for the acts of omission or commission done by members of the Commission. The Petitioners have prayed that the answer sheets be handed over to some independent agency, like the Union Public Service Commission, for fresh evaluation and preparation of the result so that the time spent on conduct of the examination is

saved. It is further contended that the Commission has no right or jurisdiction to scrap the examination, which is claimed to have been conducted in a fair manner. The candidates, who have burnt their mid-night lamps for months together by keeping themselves off from their respective jobs and engaged themselves for all the 24 hours in preparation of written examination of the commission, cannot be asked again to prepare for the same after a lapse of more than a year, particularly when they are not at fault. It is submitted that no finger was ever raised during the conduct of the examination and as the examination was held in a fair manner, there was no justification for scrapping of the whole examination. It is further contended that the Commission should not have permitted to be converted into a "Post selling agency of the State". It has been prayed that a direction be issued for seizing records pertaining to the aforesaid examination, held in October, 1993, and the impugned order scrapping the same be set aside. Answer sheets of the H.C.S. (Executive Branch) and other allied examination be sent to the Union Public Service Commission or some other independent agency for re-evaluation within a specified period, The Petitioners have prayed for grant of exemplary costs and compensation.

3. In the written Statement filed on behalf of Respondents No. 1 and 2 (in C.W.P. No. 8584 of 1994), it is stated that as no fundamental or legal right of the Petitioners has been violated, the writ petition filed by them is liable to be dismissed. The aforesaid Respondents have submitted that as the entire record of the examination has been seized and sealed under orders of the Court, the written statement was being submitted on the basis of the personal knowledge or the information derived from the record whatever was available with the Commission. The Chairman of the Commission, Shri L.D. Kataria, is stated to have resigned. The issuance of the advertisement notice, holding of the examination and preparation of the result-sheet, as stated herein before, has been admitted. The order impugned in the petition, which has been filed with the written statement as Annexure R/1, is claimed to be speaking, detailed and self-contained. It is stated that in view of the circumstances mentioned therein and taking a view in totality, Respondent No. 1 scrapped the examination held in October, 1993, for the reasons stated in the order impugned. It is further contended that the scrapping of the examination was not without legal sanctity and could not be termed to have been passed in an arbitrary manner. It is contended that scrapping of the examination was not directed on account of differences between the members and the then Chairman. It is submitted that on the basis of the facts and circumstances before the Commission, the then Chairman and the members acting in their wisdom, taking a view in totality, and in the interest of observation, objectivity, impartiality, justice and fair competition decided to scrap the H.C.S. examination held in October, 1993,--vide the impugned order in this petition. The averments of the Petitioners that they had worked hard; spent time and had burnt their mid night lamps, have been termed to be based on conjectures and surmises. The allegation that the Commission was "a Post selling agency", has been denied, with the submission that such

allegations were misconceived and baseless.

4. Shri L.D. Kataria, the then Chairman of the Commission, who is a party Respondent in all the writ petitions, (impleaded as Respondent,--vide C.M. No. 8511/1994, in C.W.P. No. 8584/1994,--vide order dated September 27, 1994) in his affidavit has stated that no legal or fundamental right of the Petitioners has been violated, as such their petition is liable to be dismissed. However, giving background of all essential chain of events resulting in cancellation of the written examination,--vide the impugned order, Shri Kataria in his affidavit has stated that the Commission is the highest constitutional authority within the State, which is giving specialised service in the State according to the provisions of the Constitution for carrying out selection on merit to various kinds of posts, as per requirement of the State Government from time to time. The Commission is engaged in the wide variety of selections, involving thousands of candidates throughout the year. In order to facilitate the proper selection on sound basis, procedures to ensure fairness in selection are followed. Wherever there is a written test as also interview as part of the selection procedure, it is absolutely necessary to ensure that strict secrecy is maintained in the assessment of the written papers so that neither the question paper nor what the candidate has written in the answer sheet is made available to any third party. Tampering with the answer sheets or leakage of the papers is the main concern of the Commission, for which complex procedures are followed, depending on the requirement of the situation. With a view to achieve the objective of maintaining the secrecy, the candidates' original roll numbers, as they appear on the answer sheets, are substituted with fictitious roll numbers before the same are sent to the examiners for evaluation. This is done on the basis of a key which contains the original roll number of the candidate and the fictitious roll numbers, as is allotted against the original roll number when the answer books are sent to the examiners for evaluation. The key is prepared by the Secretary of the Commission personally. It is ensured that no third party gets any information regarding the identity of any candidate or his answer book between the time he appeared and the time the evaluation is done and the result is prepared and compiled. Before the answer books are sent to the examiners for evaluation, that portion of the sheet of the answer book, which contains the original roll number, is removed. This portion of is removed only after recording on its backside the fictitious roll number allocated to the candidate. Fictitious roll number is also recorded on the first page of the answer book of the candidates, which is then sent to the examiner for evaluation. The portion of the answer book containing the original and fictitious roll numbers is called "Clipping", which is removed by the Secretary with the help of his Staff. The entire key as also the clippings are meant to be kept in a sealed cover by the Secretary of the Commission till such time key and the clippings are required to be opened when the compilation of the written result for the purpose of inviting the candidates for interview is required to be prepared. When the result of the written examination is prepared, no order of merit is notified, so that no prejudice is caused to any candidate appearing for

the interview. Even the members of the Commission including the Chairman are not meant to have any access to the information regarding the written performance of any candidate, who is to appear in interview, as otherwise there is apprehension of prejudice against any candidate, which may lead to possibility of nepotism or such like malpractices. In the examination, which is the bone of contention in these writ petitions, the evaluation of the answer sheets was more or less completed by the month of May, 1994, when the answer sheets were received back in the office of the Commission. At a time when the result of the written examination was being completed for the purposes of inviting the successful candidates for interview, two members of the Commission, namely Shri Sher Singh and Shri Ude Ram are alleged to have approached the deponent for helping in selection of some candidates. One of such candidates was related to Shri Sher Singh, being his nephew. The then Chairman claims that he resisted this unhealthy approach, which led to some type of frustration and antagonism on the part of those two members. The attempt to influence the Chairman is stated to have been first made in October, 1993, at the time when the written examination was held and upon his inability to oblige those two members, some bitterness and hostility was exhibited by the aforesaid two members, who also tried to influence the then Secretary to the Commission, Shri Tuli, for helping them in an illegal way to achieve their objective, which effort too was resisted by him. The key and the clippings were meant to be sealed by the Secretary of the Commission after sending the answer books to the examiners. Such an obligation was completed in the middle of December, 1993. The aforesaid two members are alleged to have somehow got the knowledge that the Secretary instead of putting the key of the fictitious and actual roll numbers in sealed cover had not done so as was the practice in the past and they raised this issue in the meeting of the commission held on 29th December, 1993. Shri Tuli, the then Secretary of the Commission was called with a view to verify the information whether the key was not sealed was correct or not. Shri Tuli informed the Commission members that he had kept the key in safe custody, which was lying in his personal locked box in his almirah. He emphasised that: no person had any access to his almirah. He was asked to bring the key, which when brought was found in the locked box, as stated by him, but was not kept in a sealed cover. He was reprimanded by the Chairman and advised to put the key in a sealed cover, which was done in the presence of all the members of the Commission. All the members are stated to have been satisfied and the controversy ended. The Chairman claims that he was satisfied that the aforesaid commission on the part of the Secretary was merely a technical lapse and there was no room for doubt to apprehend that there had been any violation of secrecy. The Chairman was convinced with the fairness of the written test. Such assessment of the Chairman is stated to have remained unchanged right till June, 1994, when he resigned from the Commission. He has further alleged that because of his resistance to the effort made by the two members aforesaid, a sudden feeling of antagonism had developed against him and the then Secretary of the Commission. Ultimately the flash-point reached on 21st June, 1994 when new Secretary of the Commission Mr. Jha was on leave,

being a restricted holiday. The Controller Examination was looking after the work of the Secretary during his absence on that day. All the six members of the Commission (other than the Chairman) called the Controller of Examination and asked him to bring the key of the fictitious and actual roll numbers as also the clippings of all the answer sheets, which would show the fictitious and actual roll numbers. The matter was brought to the notice of the Chairman who advised the aforesaid members in writing that the key is in the custody of the Secretary and the sealed key can be seen by them when the Secretary comes back from leave and that the record should not be opened and seen in the interest of secrecy. On this all the aforesaid six members sent a written note to the Chairman, stating inter alia that non-production of the record pertaining to the key and the clippings showed that no secrecy was maintained in the compilation of the written result. They also alleged that the Chairman and the Secretary knew about the result of the written examination in violation of the norms of secrecy. They also indicated in writing that because of such a situation created, they would not be a party to the preparation and declaration of result and would like that the H.C.S. (Executive Branch) examination held is cancelled. It is submitted by the Chairman that "this was a fantastic and a bogus allegation. Neither the members of the Commission, as stated earlier, nor the Chairman are meant to have any knowledge regarding the written performance of any individual candidate. This can only be ensured by keeping the records of the fictitious and original roll numbers (including the clippings and the key) in safe custody without access to the members". The aforesaid members are stated to have influenced the other four members into believing without any basis that some mal-practice has taken place in compilation of the written examination, process of which was still continuing at that time. There was no question of final preparation of the merit list for the purpose of inviting the successful candidates for interview till the sealed cover in which the clippings or the key was contained were opened and the necessary comparison done. This note of the six members of the Commission was received by the Chairman in the evening of 21st June, 1994 and by that time all the aforesaid six members had left the Commission office as generally they did not attend the office after lunch, as per practice. On 22nd June, 1994 a news item appeared in the press, in which grave allegations are stated to have been levelled against the Chairman and the staff of the Commission. The allegations made in the note of the members of the Commission dated 21st June, 1994 were repeated in the press news-item. The Chairman claims that he again tried to resolve the matter by discussion on 23rd June, 1994 but failed. He called a press conference on that day to dispell the alleged damage, which was created by the publication of the news item in the press. He contends that before going to the press, last ditch effort was made to the members that they were free to see any record they wanted to see, as he was interested somehow that all the hard labour put in by thousands of the candidates is not put to waste by cancellation of the result, which was the only option left. The members, however, did not respond. He has categorically stated that the compilation of the result on the basis of fictitious roll numbers is carried

out by the Secretary with the help of his staff and is neither the work of the Chairman, nor of any member. The Secretary is, however, required to obtain guidelines or orders whenever necessary. The allegations made by the six members of the commission are termed to be wild allegations and without any basis. He felt that it would be in the interest of the public that the examination is scrapped and the fresh process is initiated as he had no choice in the matter. There was no way left with the Chairman to prevail upon the members to see the reason and withdraw from the position, which they had taken that the result be declared void. In order to put to rest the unseemly controversy, the Chairman had to pass the order impugned in these petitions. He has alleged that feeling frustrated and unhappy at the "scandalous behaviour of some of the members of the Commission and the enormity of the damage done to the reputation of the Commission as an institution, he put his resignation to vindicate his position on 30th June, 1994, which was duly accepted by the Governor. He also issued a press note vindicating his position. It is further deposed by the Chairman that "he had a special responsibility and a role to play as Chairman of the Commission to see that the result of the written examination in which thousands of young candidates were involved is not cancelled to void widespread frustration. The Answering Respondent was also conscious of the need to ensure secrecy of the examination and the prestige and the creditability of the exam, in the eye of the public. He was also at the same time conscious that any genuine doubt of the members of the Commission should be suitably removed. The Answering Respondent basically was clear all along that there has been no violation of secrecy whatsoever to justify such a drastic step as cancellation of the examination which the 6 members unanimously decided to do on 21st June, 1994 itself on such grounds which had already been sorted out earlier like sealing of the key on 29th December, 1994 itself. Nothing had happened since then to justify any change of attitude or perception regarding violation of the secrecy of the written examination. However, when all the efforts failed to persuade the members to see the matter in a larger perspective particularly in the context that there has been no violation of secrecy or unfair advantage taken by any party because of delayed dealing of the key and keeping in view the negative attitude shown in the Press Conference by the Members on 23rd June, 1994, the Answering Respondent was left with little choice but to take the decision to put his seal of concurrence to the cancellation of the written examination". It is further contended that the members had pointed out the following alleged irregularities:

(a) That certain award lists sent by the examiner which were earlier sealed under the signatures of the two members namely Udho Ram and V.S. Chaudhary alongwith the Secretary of the Commission were opened under orders of the Chairman without prior approval of these two members.

(b) That use of examiners other than the original paper setters for the purpose of making supplementary evaluation on those portions of the Answer Sheets of the some of the candidates which had remained unassessed by mistake.

(c) That Answer Sheets had been exchanged and additional answer sheets were added/replaced.

5. All these allegations are stated to be false, frivolous and baseless. He has further stated that in February, 1994, Shri Udho Ram and Shri V.S. Chaudhary, who are members and co-members concerned with the subject of H.C.S. Examination insisted on sealing the award lists so that the then members have more close association with the exercise of compilation, of this written examination result. They had sealed about 5 to 10 award lists in the month of February, 1994. The aforesaid action is termed to be of no consequence being unnecessary and they are alleged to be acting simply as obstacles to the expeditious completion of the work of compilation of the written examination result. However, with a view to ensure that the result is expeditiously completed, the Chairman permitted the Secretary to open the sealed award lists. The object of opening the sealed award lists is stated to be expeditious completion of the result and not amounting to non-observance of secrecy. The award lists are never sealed by the members of the Commission and are kept in the personal custody of the Secretary, who is incharge of the work of tallying of answer books with the award lists and was responsible for the same. It is submitted by the Chairman that during his tenure of about three years, no relation of his ever appeared in the examination held by the Commission or the examination held in October, 1993. It is further revealed that to the knowledge of the Chairman, the case has been sent by the State Government to the Central Government for taking appropriate action against the defaulting members of the Commission and some action is proposed to be taken against those, who have not so far resigned.

6. In his reply, Shri Bhagat Ram, the then Member of the Commission has stated that the allegations of the Petitioners that the examination was scrapped on extraneous considerations or with ulterior motives was totally wrong and baseless. Being a Member of the Commission, it came to his notice that during the process of evaluation of scripts a number of acts of omission and commission, like non-sealing of key/clipping at the proper time and other irregularities reflecting upon observance of proper secrecy had been committed. In the course of preliminary checking some other irregularities on record had also been noticed. Taking into consideration the totality of the circumstances, it was realised that the observance of secrecy in finalisation of the result of the examination was vitiated. In order to maintain impartiality, justice and fair competition, it was decided in good faith that the examination held in October, 1993, be scrapped.

7. In his reply (filed in Civil Writ Petition No. 9800/1994) Shri V.S. Chaudhary, the then Member of the Commission has submitted that he took over as member of the Commission on 12th August, 1993 when all the preparations for conduct of the examination had already been completed. The examination was held in October, 1993 and barring a few complaints of copying and other unfair means, the written examination was held fairly. During the course of assigning fictitious

roll numbers to the answer-scripts and their despatch to the examiners, some members occasionally raised their voice against leakage of secrecy, for which the then Chairman reprimanded the then Secretary orally, but no positive action was taken against him. According to distribution of work amongst the Chairman and the members, the Chairman was incharge of all the Departments and the establishment of the office. On 29th December, 1993 one member of the Commission complained in the meeting that the key to the fictitious roll numbers was lying unsealed and that the Secretary had opened the award lists received from the examiners. The Chairman called the Secretary to verify these allegations. The same were found to be correct and it was decided that two members, namely the answering Respondent and Shri Udho Ram, should get these documents sealed in their presence and sign the envelopes as a testimony to that fact. All the award lists to be received in future should be opened by the Secretary in the presence of the answering Respondent and Shri Udho Ram. The decision was implemented but Respondent No. 9 is alleged to have stopped bringing the award lists for the reasons allegedly best known to him and perhaps under the instructions of Respondent-Chairman. The Secretary did not get scripts and the answer-sheets sealed in the manner as prescribed and resorted to methods which could be used to identify the actual roll numbers of the candidates even at that point of time for the motives, which are stated to be quite clear. Respondent-Chairman is alleged to have got the result Compiled With the help of the Secretary by ordering opening of the award-lists, which were sealed in envelopes under the signatures of Shri V.S. Chaudhary and Shri Udho Ram, without their knowledge and information and got the merit-list of the qualifying candidates prepared. He kept everything close to his chest and did not share any information with the members. He took certain decisions, for which he was not competent in the absence of mandate by the Commission and which were disclosed by him in the form of a note on 21st June, 1994. It is further alleged that Respondent Chairman was always reluctant and evasive to show the scripts and other record of written examination to the members even in a state when they bore fictitious roll numbers on the pretext of leakage of secrecy, knowing fully well that no secrecy could be divulged till the fictitious roll numbers were deciphered into actual roll numbers and the members of the Commission were under the same oath of secrecy as the Chairman. The Chairman ultimately agreed to show the record to the members in his room on 23rd June, 1994 when serious irregularities were observed. Respondent-Chairman fearing that more irregularities might be detected by further scrutiny, decided to scrap the result.--vide his order dictated, got typed and signed, which was also endorsed by all the members, by appending their signatures. It is further submitted by the answering Respondent that none of his relations has appeared in the examination. There was no question of expressing any no-confidence in the Chairman and all the members including the aforesaid Respondent had always been extending the courtesy towards him as being first amongst equals. The stands taken by the Chairman in his press conference held on 23rd June, 1994 and 29th June, 1994 are stated to be contradictory. It has been further

contended that there was hardly any need to hold an enquiry before taking the decision to scrap the result of the examination when the facts and circumstances were so clear and the Chairman and all the members of the Commission were so strongly convinced that there was no alternative except to scrap the examination in the interest of observance of objectivity, impartiality, justice and fair competition. This decision was taken to safeguard the interests of serious, earnest and sincere candidates. The decision was taken after due deliberations and not under any pressure, or with any ulterior motive. It is alleged that a close and careful scrutiny of the answer sheets, award lists and other related record of first 40 to 50 candidates appearing in the merit list, prepared by Respondent No. 2 will reveal the types of irregularities committed during the course of evaluation of answer scripts and compilation of result of the written examination. The aforesaid Respondent has expressed the desirability of getting a high level probe into the affair.

8. Shri Tara Chand Khicher, former member of the Commission though served, has not filed reply.

(9) Shri I.D. Kaushik, former member of the Commission has submitted that he was illegally removed from the membership of the Commission. He submits that he took over as member of the Commission on 17th February, 1994 when the written examination had already been held. At that time, rumors were ripe that large scale bungling in the preparation/compilation of the examination had taken place. The Chairman, however, claimed that everything was O.K. and he was responsible being incharge of the secrecy and establishment branches. The results was got compiled by the Chairman with the help of the Secretary, by ordering the opening of the award lists, which were sealed in envelopes under the signatures of Udho Ram and V.S. Chaudhary, members of the Commission. The envelopes were opened without knowledge and information of the aforesaid members of the Commission. The Chairman is stated to have kept everything close to his chest and did not share any information with the other members. He took certain decisions, which he was not competent to take without mandate of the members of the Commission. However, when the Chairman ultimately agreed to show the record to the members on 23rd June, 1994, a number of serious irregularities were noticed in the couple of hours, which according to this Respondent had vitiated the result. The Chairman allegedly fearing that more serious irregularities might be detected, was convinced that there was no alternative left but to scrap the examination result, which was endorsed by all the members by appending their signatures. The rest of the submissions made in the reply are identical as made by Shri V.S. Chaudhary and the resigning of the Chairman has been termed to be alter-thought to cover his unrepentant attitude. He has also submitted that a high level inquiry tie got conducted and criminal cases be registered against the defaulting persons.

10. Vide CM. No. 12807 of 1994 (in C.W.P. No. 9800/1994), Shri I.D. Kaushik has sought permission to place on record photo copies of three documents, annexed

with the said application. In the application, he has stated that the then Chairman of the Commission has attempted to cover up the "fraud earlier played by him and the member of the Commission refused to be a party to the bungling committed by him." The photo copy of the note dated 21st June, 1994, bearing signatures of the Chairman and all the members has been annexed with the C.M. as R/8-1. It is submitted that later on the said date, the members again met and demanded to examine the seal on award enveloped sealed by the members, key and the clippings of all subjects. The Chairman refused to meet the legitimate demand of the members. This compelled the members to refuse to be party to the result allegedly prepared fraudulently by the Chairman,. Photo copy of the note to this effect has been annexed with the C.M. as R-8/2. A part of the record was shown to the members and within two hours the members were able to point out irreversible bungling, having taken place in preparation of the record, i.e. the clippings were converted into key by fixing fictitious numbers thereon contrary to the rules. The candidates had attempted answers on blank space earlier left and such answer book were sent to the unauthorised examiners for evaluation after disclosing their names to the candidates. Vide a note recorded on 24th June, 1994, the Chairman decided to scrap the result. All the members concurred with the chairman because they were not prepared to become party to a fraudulent result, which was prepared by the Chairman as a result of large scale irreversible bungling. A prayer has been made that the record of the Commission be examined to verify the allegations made in the C.M. and in the affidavit filed by the aforesaid Respondent.

11. In his reply, Shri Sher Singh, member of the Commission besides highlighting the importance of the Commission has submitted that on 29th December, 1993 the Chairman of the Commission along-with the members held a meeting in the room of the Chairman when it transpired that the key of the fictitious roll numbers was lying unsealed with the Secretary and that he had opened the award lists received from the examiners, which fact raised apprehensions about non-observance of the secrecy. The then Chairman Shri L.D. Kataria called the then Secretary Shri T.R. Tuli and asked to bring the sealed key of the fictitious roll numbers. He produced a box containing the key, which was unsealed. The members are stated to have taken a serious note on the alleged lapse on the part of Shri Tuli. On asking of the Chairman, it was decided in the meeting that the Secretary should seal the key before the two members of the Commission namely Shri V.S. Chaudhary and Shri Udho Ram. It was also decided that all the award lists should also be sealed in the abovesaid manner in future also. Shri T.R. Tuli, the then Secretary, is alleged to have not got the clippings of the answer sheets sealed at the time when the clippings were detached from the answer scripts. The members felt concerned about the floating of such rumours and in order to verify that all was safe and sound in respect of maintaining secrecy wanted to see the merit list of the qualifying candidates on fictitious roll numbers, result card of the qualifying candidates on fictitious roll numbers, award lists and lists of discrepancies found in the answering scripts. The

Chairman of the Commission, Shri L.D. Kataria, did not think it advisable to make available the documents expected to be seen by the members despite the fact that he was fully aware that perusal of the documents would not in any way unveil the secrecy of the written result. The members are stated to have made a note to the effect that without verifying that the key, the award lists and clippings of the answer-sheets had not been tampered with it would be useless to check the award lists and list of discrepancies in the script. On 21st June, 1994 the members of the Commission came to know that the then Chairman had got the result compiled from the Secretary by opening of the award lists, which were in sealed envelopes under the signatures of Shri V.S. Chaudhary and Shri Udho Ram-members, without their knowledge and information and had also got the merit list of the qualifying candidates prepared. The Chairman had kept everything with himself and took the decision behind the back of the members which was disclosed by him on 21st June, 1994 in the form of a note. This was done only after the members of the Commission had sent a note to him proposing that the result of the examination held in October, 1993, be declared as void as secrecy had been vitiated. The Chairman is alleged to have been reluctant to show the scripts and other record of the written examination to the members despite the fact that the same was on fictitious roll numbers. The chairman is stated to have ultimately agreed to show the record on 23rd June, 1994 for a preliminary checking so that the members could feel satisfied with the observance of secrecy and that no serious lapses had taken place. When the members of the Commission and the Chairman jointly carried out a preliminary check for a short time of 1½ hours daring and gross lapses were found to have occurred, which completely vitiated the result of the examination. All the members including the Chairman unanimously decided to scrap the examination. It is submitted that the irregularities in maintaining secrecy were not due to the fault of any of the members as the charge of secrecy and the confidential branch of all the Departments, including the Establishment branch, was with the then Chairman Shri L.D. Kataria. The examiners are selected, question papers got printed, examinations are arranged to be held, answer sheets bearing fictitious roll numbers are sent for evaluation and received back after marking by the Secretary of the Commission. Result is initially compiled on the basis of fictitious roll members and the members of the Commission have no role in the aforesaid process. All members of the Commission asked the Chairman to allow them to scrutinise the record with the object to ascertain and verify that secrecy had been properly maintained and no irregularity of any type has been committed. After preliminary inquiry, it was found that neither the key, nor the clippings were sealed at the proper time and that some answer sheets were sent to the examiners, other than the approved examiners, with the result that the secrecy had been gravely violated. The lapses were not considered to be of technical nature, but were so serious that the declaration of the result would have become a farce. It was, therefore, decided in the meeting of the Chairman and the members held on 24th June, 1994 that result of the examination should be scrapped and the necessary steps should be taken to hold the examination

afresh. Old candidates would not be required to apply again. It is contended that there was no infighting amongst the members of the Commission or with the Chairman. The decision was taken in the best interests of holding an impartial test. Reference made to certain press reports is alleged to have no authenticity and is termed to be based upon surmises and conjectures, having no nexus with the real circumstances. None of the members had manipulated or could manipulate the non-sealing of the key or violating conditions in respect of maintaining secrecy in the examination. The answering Respondent was not interested in getting any particular candidate selected. Statement of then Chairman published in the Indian Express on 1st July, 1994 was incorrect, being baseless. It is denied that the members had created any chaos or given an impression that the Commission was nothing but a post selling Commission. It is contended that by scrapping the examination, confidence has been generated in the public in maintaining highest standard of impartiality. The allegations that certain members had malice or motive behind the quashing of the examination on account of thru- kith and kins not allegedly figuring in the merit list of the written examination, have been termed to be baseless and incorrect. It is submitted that no loss or injustice would be caused to the candidates, who had already appeared in the examination, if the result of the earlier examination is held to have been validly scrapped. The Commission acting in its wisdom and taking a view in totality felt that the observance of secrecy in finalisation of the result of the examination had got vitiated, which forced them to pass the order impugned in the petition.

12. In his reply, Shri Udho Ram, Another member of the Commission has reiterated and repeated what Shri Sher Singh has stated in his written statement.

13. Shri T.R. Tuli, the then Secretary of the Commission in his reply has submitted that he by and large agreed with the contentions raised by the Petitioners in their writ petition. He has stated that the whole controversy involved in the case was because of internal bickerings between the Chairman and the other members of the Commission, which ultimately resulted into the scrapping of the examination, which had taken place much after the transfer of the deponent. He submits that he has been made scapegoat in the controversy in order to save the faces in the public. During his tenure in the Commission, he did his duties sincerely and honestly. The examinations were conducted in a peaceful manner at Chandigarh itself as against the previous practice of conducting the same in various cities of Haryana. The checking was also done in a most secret manner without any influence or favour, which was infact the real cause of irritation amongst the members of the Commission. He handed over his charge on 4th May, 1994 to his successor on his transfer to the State Government. The examination is said to have been held from 2nd to 15th of October, 1993 in 42 centres, all set up at Chandigarh in order to avoid any chances of copying and unfair means or cheating of any sort, as alleged. All arrangements made proved to be meticulous and fool proof and no case of unfair means or copying was detected except a few ones, which were more or less negligible. The examination

was held in an absolutely proper and fair manner under the strict and close supervision of the then Chairman and the members of the Commission and to the entire satisfaction of all concerned. Utmost care was taken for maintaining complete secrecy of all confidential work as per practice/procedure. After the examination was over, the process of conversion of original roll numbers into fictitious roll numbers on the answer scripts and then forwarding of them to the examiners for evaluation in strict secret manner took about two months. Soon after the answer scripts were sent for evaluation, the key was sealed in a box specially prepared for the purpose by the commission and then the aforesaid box along-with clippings was put in an almirah with four locks, to be jointly operated by the officials. Secretary, Controller of Examination, Superintendent and the dealing assistant. Later on all the members of the Commission also checked the arrangements and the key was sealed by them in an envelope under their signatures on 29th December, 1993. The method, of handling of the examination was fool proof and trustworthy. The scrutiny of answer books was taken up on receipt of answer scripts of compulsory papers after the evaluation from the examiners during February, 1994, and about 70 per cent of this work was completed before 28th of April, 1994, when the then Secretary was transferred and he handed over the charge to his successor on 4th of May, 1994. This scrutiny of the answer books was done by the deponent under the close supervision of the Chairman and no irregularity or manipulation, whatsoever, was ever found out by any one till he handed over the charge to his successor. It is contended that the Chairman and the deponent (Shri Tuli) did not allow the members of the Commission to interfere in the examination and did not associate them in final preparation of the result of the written examination and the merit list thereof, due to which they got annoyed for not getting favour to their kith and kins in the written examination in any manner. All the members, therefore, revolted against the chairman and resorted to mud-slinging on each other. Upon his transfer, he handed over the key and the clippings duly sealed to his successor alongwith the answer scripts, which were lying in the confidential room, as stated earlier. He has further contended that "since all the efforts made by some members of the Commission in getting help from the answering Respondent through leg-pulling and pin-pricking in daily routine work, intimidation, blackmailing of the deponent under stress and strain fell flat, they thought it best alternative to scrap the fairly conducted examination, by making him a scapegoat in his absence and mud-slinging, as it did not suit them."

14. In his reply, Shri Amit Jha, who succeeded Shri Tuli in the Commission, has submitted that the examination was scrapped by the Commission after the Commission felt that the observance of the secrecy in finalisation of the result had got violated. He has submitted that as the whole of the record has been seized and sealed by the Court,--vide orders passed in Civil Writ Petition No. 8584 of 1994, he was not in a position to reply appropriately. The allegations made in the petition pertained to his predecessor-in-interest, to which he cannot appropriately submit his reply.

15. In Civil Writ Petition No. 11782 of 1994, a prayer has been made for directing the Respondents to conduct fresh examination and not to declare the result of the scrapped examination under the pressure of any authority or Government. A prayer has also been made for entrusting the case to the Central Bureau of Investigation for further investigation in the interests of public at large and registration of criminal cases against the defaulting persons. The Petitioner in that petition has submitted that the entire Commission excepting the Chairman had unanimously decided for scrapping of the examination, as the same was void for the reasons recorded by the Commission in its minutes of the meeting. It is submitted that all the members of the Commission including Shri L.D. Kataria, admitted that bungling had taken place and answer sheets of some of the candidates were tampered with and no secrecy was maintained in conduct of the examination. It is alleged that after submitting his resignation, Shri L.D. Kataria, had sent a report to the Government ostensibly to save his skin, in which aspersions were cast on the independent functioning of the Commission. It is submitted that the said Chairman was responsible for all mal-practices and he never functioned as an impartial Chairman. It is further alleged that the Chairman, Shri Kataria, was a tool in the hands of the politicians. Another recruitment made during his tenure was allegedly with partial mind. He exhibited his partiality in recruitment of 30 persons in H.C.S. (Executive Branch) by way of special recruitment as all the aforesaid 30 posts were cornered by the relatives of top politicians of the Haryana State. It is alleged that in the process of the aforesaid controversy, the members of the Commission were called by the Chief Minister of Haryana and asked to submit their resignations for reconstitution of the Commission. Four members resigned and one of the members, namely Shri Kaushik, wrote to the Government that he was forced to resign by the Chief Minister of Haryana and his resignation may be considered as conditional. He has also stated that Respondents No. 2 and 3 in the petition were liable for cheating the highly educated unemployed youth and they have failed to perform their constitutional duties/obligations besides being responsible for the tampering of answer sheets in order to help their favourites.

16. In the replication (filed in Civil Writ Petition No. 8584 of 11)94), the Petitioners have reiterated what they have contended in their writ petition and further contended that the examination was scrapped in an arbitrary manner and without there being any basis for it.

17. We have heard the arguments at length and with the consent of the counsel appearing for the Petitioners have decided to adjudicate the present bunch of writ petitions (bearing Nos. 8584, 9800, 15937, 17815, 8962, 8961, 11524, 9425, 9900, 9966, 12337, 16768, 11525, 12792, 11782 of 1994 on merits at this stage.

18. Public Service Commissions at the Centre and in the States have been constituted for the purposes of fair and impartial selection to the Public Services which are meant to be the back bone of any polity. The Constitution makers have

acknowledged the Commission to be a necessity of modern State. The Commission is primarily meant to keep appointments away from day to day politics, party preferences and influences of the individuals or groups, who are at the helm of the affairs in the administrative set up of the State. The appointments through the Commission are required to be made as far as possible on merit, without any interference by the executive authorities of the State. The Commission has been tried to be made more or less autonomous with the object of getting the best selected basically in recognition of sheer merit. It is acknowledged that the government, be it monarchy or democracy, anarchy or dictatorship, are admittedly carried on not merely by the ruler, cabinet or dictator, but in fact and in essence by the civil services of the country. Importance of the civil services cannot be gainsaid. Even in the democracies, like U.S.A. and Great Britain, it has been acknowledged that the merit system alone was successful at work in the matter of public services. In Great Britain, the system of patronage was tried but failed. In that country, the relatives, friends and supporters of Ministers used to get jobs in the Government and even in America people used to distribute the spoils amongst their friends and supporters. And new Jackson was considered father of the spoils system, which continued for about 50 years or so since 1828 when Andrew Jackson became President of United States of America, but thereafter it was found very difficult to continue with the spoils system and a Commission of three members was appointed, which was required to hold examinations to fill up the posts that fell vacant. The system of examination in America and Great Britain are different as compared to our country. A casual look to the various Constitutions would reveal that the civil services are established on merits by examination. In India, the system of selection to public services on the basis of merit was sought to be followed, for which Article 284 was introduced in the Draft-Constitution, which was debated and approved on 22nd of August, 1949. Article 285 of the Draft-Constitution pertained to appointment and terms of the office of the members of the Commission and during debates it was reiterated that an independent, impartial and without influence of extraneous consideration, authority was required for the purposes of recruitment to the services. The commission was intended to be an independent body and its members should not be left to look upto the executive for any favour. The members of the Commission were intended not to win favour of the executive or secure appointments in succession. They were required to possess great experience and ability. During the debates in Constituent Assembly, it was stated:

With the independence of our country the responsibilities of the Services have become more onerous. They may make or mar the efficiency of the machinery of administration-call it steel frame or what you will, a machinery, which is so vital for the peace and progress of the country. A country without an efficient Civil Service cannot make progress inspite of the earnestness of those people at the helm of affairs in the country. Wherever democratic institutions exist experience has shown that it is essential to protect the Public Services as far as possible

from political or personal influence and to give it that position of stability and security, which is vital to its successful working as an impartial and efficient instrument by which Government of whatever political complexities may give effect to their policies. It is imperative that whichever Government comes into power, the permanent service must carry out the policy laid down by the Government for the time being in office.

19. The Public Service Commission was intended to be free in the matter of appointment and under no influence of nepotism or favouritism or exercise of political patronage and completely independent of the executive in order to maintain the integrity of the administration and the Civil Services. The Commission was intended to be equated with the independent constitutional authorities, such as Judiciary," Auditor General and Election Commission, Dr. B.R. Ambedkar in his speech delivered in the Constituent Assembly on 22nd August, 1949 unequivocally declared, "The function of the Public Service Commission is to choose people, who are fit for public Service. The judgment required to come to a conclusion on the question of fitness presupposes a certain amount of experience on the part of the person, who is asked to judge." He further stated, "our whole object is to make the members of the Public Service Commission independent of the executive. One way of making them independent of the executive is to deprive them of any office with which the executive might tempt them to depart from their duty." To ensure the impartiality of the members of the Commission and security of tenure of office, it was decided to be provided in the Constitution that the provisions contained in the Government of India Act, 1935, for removal of Judges of the Federal and High Court would be applicable in case of members of the Commission. Under the Government of India Act, 1935, for removal of a Federal Court Judge or a High Court Judge, it was necessary to get an inquiry made by the Federal Court in case of the High Court Judges, or by the Privy Council in the case of the Federal Court Judges, and on a report being made that there has been a case of misbehaviour, it was open to the Governor General to remove either the Federal Court Judge or the Judge of the High Court. The Constituent Assembly, therefore, adopted the same provisions with regard to removal of members of the Commission in case of misbehaviour, as is provided under Article 317 of the Constitution.

20. The Constitutional framers, therefore, had envisaged a Commission for the purposes of recruitment to Public Services, which was free from all extraneous considerations and capable of selecting the best for the Civil Services in the democratic set up established in our country after 11th August, 1947, it was never conceived that the members of such Commission would stoop so low that they would indulge in mud slinging on each other and that too in the public with the implied intention of marring the glittering face of the constitutional set up with the paramount object of smoothly running and controlling the administrative set up under the democratic process and polity. Such Commission or its members should not have and cannot be permitted to pollute the congenial Constitutional atmosphere. If such course is not checked or controlled or nipped

in the bud, at the initial stage, may destroy whole of the edifice of our Constitutional system. Personal vanity or antoginism amongst the members of the Commission cannot be permitted to be substituted for the purpose and object, which was intended to be achieved by the Constitution of Public Service Commissions. Internal wrangles, apparent disputes, political interference, administrative lapses, personal gains, enmity, or such like considerations, are required to be warded off not only in the interest of the Commission or the persons, who appeared before it for taking examinations, but also to save the debacle of democratic institutions, which are alleged to be under attack from within and from outside. The independent Commission is further required to act according to the expected norms of behaviour and procedure, without letting or permitting any person or authority, to raise a finger of doubt regarding its conduct in the matter of untainted selection or impartiality. The actions of the Respondents are not only intended to be fair, but are also desired to look to be fair to the people in general and to the examinees in particular, on the touch stone of these expectations of the nation, the conduct of the Commission and its members is to be tested in these petitions.

21. So far as cancellation of the examination is concerned, it is not disputed that the advertisement was issued in the month of November, 1992, and the examination was held from 2nd to 15th of October, 1993. Neither any of the Petitioners, nor any functionary or member of the erstwhile Commission has alleged directly, indirectly or remotely about any irregularity regarding holding of the examination upto 15th of October, 1993. From the affidavits of the parties, referred to above, it is established that fair examination was held from 2nd to 15th of October, 1993, in 42 centres, all set up at Chandigarh. Arrangements made for holding the examination, by and large, proved to be satisfactory as no case of unfair means of copying was reported except a few, which were termed by the then Secretary to be more or less of negligible nature. No one has alleged that the examination was not conducted in a fair or proper manner under the supervision of the then Chairman, members of the Commission and the Secretary.

22. It has, however, now been suggested that in the answer books some students had tried to disclose their identity with the intention of tampering the secrecy or that some answers were written after the closure of the answers to the question papers. The irregularities, if any, were found by the members of the Commission only on 23rd June, 1994 when a preliminary checking was allegedly carried out for about 1? hours. It is further alleged that some answer scripts had been sent for evaluation to the examiners, other than the approved and original examiners, with the result that whole process of maintaining secrecy had been gravely violated.

23. In order to ascertain the true position, the record of the Commission is required to be perused. It may be mentioned at this stage that record of the Commission was directed to be seized and sealed,--vide Court orders dated 4th July, 1994. In obedience to the Court directions, the following record of the

examination was seized and sealed:

1. List of Applicants of various categories (Packet No. 1)
2. Question papers (Press copies) (Packet No. 2)
3. Sealed key of the examination (Packet No. 3)
4. Award lists (Packet No. 4 & 5)
5. Merit list of fictitious roll numbers. (Packet No. 6)
6. Result cards of candidates who passed. (Packet No. 7 & 8)
7. Result cards of candidates, who failed. (Packet No. 9 to 16)
8. Clippings of fictitious roll numbers (sealed). (Packet No. 17 to 33)
9. List of Examiners. (Packet Nos. 34 & 35)
10. List of discrepancies (Packet No. 36)
11. Department file about the examination, containing 109 pages in the noting portion and 457 pages in the correspondence part. (Packet No. 37)

on 6th July, 1994. Besides these all the answer sheets were also sealed. The aforesaid record contained in 37 packets was kept in one Trunk and the answer sheets and other record in 9 big trunks. The key of the trunk in which the record regarding the merit list of fictitious roll numbers, result card of candidates who failed, List of discrepancies and departmental file about the examination was lying with the District and Sessions Judge (Vig.), Haryana which was got opened and the aforesaid record perused.

24. Before advertng to the record of the Commission it is necessary to point out that members of the Commission were given some odd names for observance and maintenance of secrecy. Shri V.S. Chaudhary was known as I.M. Shri Tara Chand Khichher as E.M., Shri I.D. Kaushik as A.M., Shri Uda Ram as R.M., Shri Sher Singh as F.M. and Shri Bhagat Ram as L.M. The Commission had also distributed the work amongst the Chairman and the Members as is detailed in Annexure P/4 attached with C.W.P. No. 8584 of 1994.

25. From the pleadings of the parties, it appears that the controversy regarding the fair conduct of the examination was first raised in the month of December 1993, when it was alleged that the key had not been kept in safe custody. The matter is stated to have been raised in the meeting of the commission on 29th December, 1993 when the then Secretary Shri Tuli was called with a view to verify the fact that the key had been sealed or not. Shri Tuli is stated to have informed the Commission that he had kept the key in safe custody which was lying in his personal locked box in his almirah but it had not been properly sealed or signed by the concerned Members. According to the Chairman the Secretary was reprimanded and advised to put the key in the sealed cover which was got

put in a sealed cover in the presence of the Members of the Commission. He has further reiterated that the Members were satisfied and that was the end of the matter in so far as the non-sealing of the key is concerned. The record of the Commission, however, does not disclose the holding of such a meeting and discussion regarding non sealing of the key or reprimand to the Secretary. After the note dated 22nd December, 1993 the next note is dated 6th January, 1994. The note dated 14th January, 1994 pertains to the representation by National Council of Blinds which was considered on 25th January, 1994 and appears to have been disposed of on 1st February, 1994. The note dated 23rd February, 1994 pertains to the representation of a candidate Shri Akshay Kumar Battas and note dated 5th May, 1994 is regarding the representation/suggestion of Shri Bam Pal Singh addressed to the President of India stating that the Commission has advertised the posts and holding the examination only at Chandigarh. The other notes upto the then page 41 are of formal nature and on 7th June, 1994 a note is stated to have been prepared by some Superintendent regarding the complaint of some candidates with the suggestion to inform them regarding the points raised. The Controller of Examination in his note dated 8th June, 1994 mentioned that the points had been considered by the Examiners while awarding marks to the questions regarding which complaint was made and no discrimination had been done to the candidates who had attempted that question. He requested that the candidates be appropriately replied. The whole of the controversy appears to have been set rolling by Shri Uha Ram, Member, on 21st June, 1994 when he wrote, "it should be discussed in the Commission meeting". The battle lines appear to have been drawn thereafter and on 22nd June, 1994 the member, I.M noted:

It is not understood as to how C.E. has come to the conclusion that the point raised by the candidate in his representation has been considered by the examiner while awarding the marks of Question No. 1, Part (a) and (b) in the paper of History upto 1,000 A.D. and that no discrimination has been done to the candidates who have attempted this question. This could be possible only if the C.E. has seen the paper of the candidate making the representation and also deciphered the fictitious roll numbers of the candidates with the help of the key. If this is true then it implies that the key was accessible to the C.E. and no step was taken to ensure the secrecy of the result.

26. The Chairman agreed but pointed out that explanation of the C.E. be called in the first instance and thereafter the matter be placed for consideration in the Commission's meeting. The Controller of Examination in his note dated 21st June, 1994 pointed out:

I have been called by the Hon"ble Member of the Commission in the room of R.M. and they wanted the following documents:

(1) Merit-list of the qualified candidates;

A

(2. Result card of the qualified candidates;

(3) Award Lists;

B

(4) Lists of discrepancies pointed out in the scripts;"

Thereupon, the Chairman of the Commission noted,

In the interest of secrecy of the written result, record at "A" above cannot be supplied and will not be supplied to the Members for checking the marks of different candidates, however, the Members are free to see the record at "B" above.

and the Members thereafter made the following note:

It is no use wasting the time by the Members on seeing the records of the candidates who do not qualify in the written examination. It is not understood as to how the merit list of the qualified candidates was drawn before checking of the record by the Members of the Commission and a copy of the same supplied to the Chairman alone while no Member has any information about it. It is also not understood as to how it will affect the secrecy of the result when the merit of the qualified candidates and the result cards of qualified candidates still bear the fictitious roll numbers. Otherwise also, it is felt that nothing can be secret from the Members of the Commission who are under an oath of secrecy.

27. If the Chairman thinks that the Members are a part and parcel of the Commission and they are bound by the oath to maintain the secrecy then all the record whatsoever required by the Members of the Commission for checking the result of the HCS (Ex. Br.) Examination may be made available to them. If this position is not acceptable to the Chairman, then the Members will not have anything to do with the-declaration of the result and they will not sign, the result.

Bhagat Ram, one of the Members of the Commission noted:

I request to Honourable Members, we may discuss with Honourable Chairman.

Thereafter, other Members noted:

The Members have considered the suggestion of Shri Bhagat Ram and it is felt that it will not serve any useful purpose to discuss this matter with the Chairman.

28. The Controller of Examination is shown to have been again summoned by the Members who wanted to see the award envelope sealed by the Members, key and Clipping of all subjects. The Chairman, thereafter noted that, for completion of work for the compilation of the result and for comparison of the award lists with the marks in the scripts I had asked the Secretary to open the award-lists Members are free to see the award lists vis-a-vis scripts for ascertaining the correctness thereof. The sealed key was stated to be in the custody of the Secretary which shall be made available for scrutiny and will be opened only, on

the date of declaration off result under the supervision of the Chairman. The Members were free to see the sealed key, at that time." He also noted that, "Clipping of all the subjects contain fictitious as also real roll numbers of the candidates. These are kept sealed and are not opened and may not be available in the interest of secrecy. These will have to be retained; in the safe custody of the Secretary." On the same day, i.e. 21st June, 1994; the Members of the Commission are shown to have made the following note:

C.E. was called in the morning by the Members to bring the relevant record pertaining to HSC (Ex. Br.) Examination who submitted a note to the Chairman seeking his permission to show, this record to the Members. The Chairman declined to make available the record relating to merit list and result cards of the qualified; candidates on the pretext of the secrecy being violated even though these documents had been prepared according to fictitious roll numbers. Members have expressed their view on this subject in a separate note.

29. Chairman will kindly recall that the key to the fictitious roll numbers and a large number of award lists received from the examiners were found unsealed with the former Secretary and it was decided in the meeting of the Commission that the Members and the Co-Members should get the key and the award lists sealed in their presence and also sign on the envelope. The key thus remained open with the then Secretary about 4 months after allotting of fictitious roll numbers.

30. The Members wanted C.E. to bring the sealed envelopes of the award lists, the key and the clippings of answer sheets containing fictitious as well as original roll numbers in order to ascertain as to whether the seals were intact and have not been tampered with. Learned Chairman has admitted that the award lists have been opened for the completion of the work regarding compilation of the result. The Members take serious objections to this and the opening of the envelope, which were sealed and which bore the signatures of the Member and the Co-Member, without their information and knowledge. The sealed cover containing the key has not been produced by the C.E. before the Members on the pretext that the same was in the custody of the Secretary. The same was the case about clippings. The non-production of the record sought by the Members makes it clear that no secrecy was maintained by the office or secrecy was flouted openly in the process of compilation of the result. It is also apprehended that the result is known to the Chairman and the Secretary and the concerned staff. Otherwise there is no justification for keeping all the Members of the Commission in the dark. The Members are constrained to keep themselves away from the preparation and declaration of result in these circumstances and it is proposed that taking into account the totality of the circumstances the result of HCS (Ex. Br.) Examination which was held in October, 1993 be declared as void."

31. The Chairman is shown to have made a note dated 23rd June, 1994 to the effect, "Discussed. Members are free to see any record they like. I am not the only custodian of the office record and the Members and the Chairman are

working as a whole. I am, as a Chairman, also working on behalf of the Commission." However, on 24th June, 1994, the Chairman recorded as under:

H.C.S. (Ex. Br.) & Allied Services Examination was held in/October, 1993. After the examination during the process of evaluation of scripts, a number of acts of commissions and commissions like non-sealing of key/Clippings at the proper times and other irregularities reelecting upon observance of proper secrecy have come to the notice of the Commission. In addition more acts of ommissions and commissions like non-observance of secrecy of the examiners, evaluation of scripts by examiners other than original examiners have been also noticed. In the circumstances taking a view in totality it is felt that observance of secrecy in the finalisation of result of the examination have got vitiated. In the interest of observance of objectivity, impartiality, justice and fair competition it has therefore been decided that the examination held in October, 1993 is hereby scrapped. Necessary action will be taken to hold the examination afresh. Old candidates will not be required to apply afresh. Advertisement/corrigendum will issue for inviting applications from the new candidates.

All the Members endorsed the note and appended their signatures. Press note was thereafter issued scrapping the whole of the result of the examination held by the Commission for which about 17,000 candidates had applied and 3,647 had actually appeared. The examination in which huge amount is expected to have been spent and for which thousands of the students had worked day and night to prepare was washed away by a stroke of pen on account of the personal bickerings and prestigious issues raised by the Members of the Commission on 24th June, 1994. All had happened only because the Controller of Examination declined to show the belligerent Members, the marks lists and result card of the qualified candidates. The Chairman who also was firstly adamant ultimately melted before and scummed to the pressure of his comrades in revolt. Even though in the note of the Commission dated 24th June. 1994 it is mentioned and acknowledged by all the Members including the Chairman that, "a number of acts of omission and commission like non sealing the key/clipping at the proper time and other irregularities reflecting upon observance of proper secrecy have come to the notice of the Commission. In addition more acts of omission and commission like non-observance of secrecy of the Examiners, evaluation of scripts by the examiners have also noticed." Yet no such fact has been noted in any note of Commission. The order impugned appears to have been passed in a culpable rash, negligent and hurried manner without caring for the observance of the minimum norms expected from the Members of a constitutional authority like the Commission. The Chairman who appears to have earlier resisted the allegations also fell victim and scumbed to the pressure of the Members of the Commission. Even though it is alleged that the examination from its commencement was not fair yet no effort was made by any of the Members to place on record their observations or apprehensions regarding the fairness of the examination or non-observance of secrecy expected by the Commission to be maintained in such an examination. The Chairman of the Commission even

though has stated in his reply that "the attempt to influence the answering Respondent was first made in the month of October, 1993 at the time the written examinations were held. Lateron there was bitterness and hostility on the part of these two members. They also tried to influence the then Secretary of the Commission Shri Tuli for helping them in an illegal way to achieve their objective which effort too was resisted by him", yet he also failed to make any note of such attempt to influence him or the Secretary of the Commission. For the first time it appears that such an allegation was made by him in his reply filed in the writ petition wherein he has not recorded the details or the extent of and for which the influence was attempted to be made upon him. S/Shri Uda Ram and Sher Singh, Members of the Commission, in their reply stated that:

in the instant examination, the seal of the award list sent by the examiners was broken by the Secretary and when this was pointed out by all the Members on 29th December, 1993, the Chairman called the Secretary and found the facts to be correct and then it was decided by the Commission that the Award List should be sealed by the Secretary afresh in the presence of two members namely Shri V.S. Chaudhary, I.A.S. and the answering Respondent and both counter-signed them. Lateron, the seal of the award list was broken by the Chairman without the knowledge of both the Members. This was admitted by the Chairman on 21st June, 1994.

32. The Chairman in his reply has, however, stated that the necessary work regarding tallying the award list with the answer sheets and for making corrections in the totals etc. commenced in February, 1994 when Shri Uda Ram and Shri V.S. Chaudhary who were co-members concerned with the subject of H.C.S. Examination insisted on sealing the award list so that the then members have more close association with the exercise of compilation of this written examination result. Similarly, Shri T.R. Tuli, the then Secretary of the Commission in his reply has stated that the work of scrutiny of answer books was taken upon receipt of the answer books of the compulsory papers after evaluation from the examiner during the month of February, 1994, and about 70 per cent of this work was completed before 28th April, 1994. He has also stated that the process of conversion of original roll numbers with fictitious roll numbers on the answer books and then forwarding them to the examiners for evaluation in a strict secret manner took about two months. It cannot therefore be understood as to how an objection regarding the award list was raised by Shri Uda Ram and Sher Singh on 29th December, 1993. Prima-facie it appears that the award list had not been received in the office of the Commission till 29th December, 1993 when the aforesaid members are alleged to have raised an objection and got the award list sealed which according to them was lateron misused by opening the seal in their absence. From the record of the Commission it appears that the Secretary started opening the award list of various subjects on 27th May, 1994 to enable him, to compile with the scripts and the result card.

33. From the record of the Commission it appears that some discrepancies were noted by the Assistants in the script of the candidate which were sent to the Examiner for re-marking re-evaluation. The Examiners did the needful and returned the answer sheets. However, in the paper of Public Administration, 10 scripts were found wherein the candidates were admitted to have disclosed their identity in the scripts which was held to be against the instructions and they were directed to be penalised. In the same paper one candidate was found to have attempted the paper partly in English and partly in Hindi which was against the instructions. It was also found that in the same subject, two candidates had taken additional sheets beyond the requirement which had not been used and left blank. They were also recommended for imposing some penalty.

34. 283 Candidates in Hindi paper were found .to have disclosed their identity by writing their roll numbers in the script which was against the instructions and a decision was taken that five marks may be deducted as penalty in each case. It may be pointed-out that there were in all 3543 scripts in Hindi paper.

35. Two candidates were found to have used additional answer sheets unnecessarily in Political Science Paper and 18 candidates were shown to have disclosed their identity by writing roll numbers.

36. 23 scripts out of 1127 in the subject of Sociology were found to have disclosed their identity and three candidates attempted the paper partly in English and partly in Hindi for which penalty was recommended.

In Psychology out of 204 scripts, one candidate was found to have attempted the paper partly for which a recommendation was made to award him zero marks.

In the subject of Criminal Law, out of 266 scripts only six scripts were found where the candidates had disclosed their identity, and three candidates have attempted the paper partly in English and partly in Hindi. In Civil Law, two candidates out of 77 are shown to have a tempted the paper partly in English and partly in Hindi and two candidates have disclosed their identity. In the subject of Personal Law, one candidate is shown to have attempted the paper partly in English and partly in Hindi out of 105 scripts for which a suitable action is shown to have been recommended against the defaulting candidate.

In Math II out of 234 scripts four candidates are shown to have disclosed their identity for which zero marks were recommended to be awarded.

37. In the subject of Economics, out of 435 candidates, only three candidates are found to have attempted the paper partly which was held to be against the instructions and action was recommended against there. 16 candidates were also shown to have disclosed their identity in Economics.

In the subject of History (1,000-1,707 AD) out of 748 scripts, 10 candidates were found to have disclosed their identity for which a penalty was recommended. In History (1,707--1,920) paper, out of 769 candidates, 7 were found to have disclosed their identity for which action was recommended and

only one candidate have attempted the paper partly in English and partly in Hindi for which action was also recommended.

In Statistic out of 377 scripts, only 18 candidates were found to have disclosed their identity and four have attempted the paper partly in English and partly in Hindi for which action was recommended.

38. In Physics, two candidates out of 153 had disclosed their identity and in Chemistry four candidates out of 120 have disclosed their identity for which suitable action was recommended.

39. In the subject of History of Europe, out of 50 candidates only one was found to have attempted the paper partly in English and partly in Hindi for which zero marks was recommended to be awarded.

In the subject of Hindi Literature, out of 424 candidates only 9 candidates are found to have disclosed their identity and in English Literature, three candidates out of 76 were recommended for penalty.

41. In Sanskrit out of 44 scripts, only one candidate had disclosed his identity and in Philosophy, out of 31 candidates, one candidate had shown the identity; in Zoology five candidates out of 132 were shown to have disclosed their identity; in Georaphy four candidates out of 365 are found to have disclosed their identity; in Advance Accountancy 43 candidates were found to have disclosed their identity for which action was recommended. Similarly in the subject of Business Management, one candidate out of 167 was found to have disclosed the identity and in Botany, five candidates out of 107; in Agriculture two candidates out of 120 and in General Knowledge 81 candidates out of 3533 partly attempted the paper in English and partly in Hindi for which penalty was recommended.

42. The facts detailed herein above reflect that in about 20,000 scripts the Commission had found about 600 scripts wherein either the candidates had disclosed their identity or answered the questions partly in Hindi and partly in English for which recommendations were made to penalise the erring candidates.

43. The belligerent and rebellious Members of the Commission particularly S/Shri Sher Singh and Uda Ram are proved to have attempted to raise a storm in a cup of tea completely ignoring their constitutional obligations and commitments to the society as expected under the political system prevalent in our country. They appear to have succeeded to mobilise the other members in their efforts to block the successful completion of the examination without caring for the strenuous efforts already carried by the Commission and the Candidates appearing in the examination. The Members completely lost sight of the fact that besides the huge losses which are likely to be caused to the Commission and the State, the candidates appearing in the examination had put in their hard labour and incurred huge expenses besides putting off their regular activities and pursuits. The candidates as aspirants to join the service on the basis of the merit, without any pull or support apparently appears to be not only disappointed but

disheartened as well. The Members of the Commission resorted to uncalled for tactics to satisfy their vanity and personal ego. They left no stone unturned to frustrate the completion of the result of the examination without specifically pointing out the illegalities or irregularities allegedly committed in its conduct. The action of the Members of the Commission including its Chairman cannot be appreciated by any reasonable person and the manner in which they tried to wash the dirty linen in the streets is highly condemnable.

44. The Chairman of the Commission even though earlier took a stand yet yielded before the un-called for pressure of the aforesaid members which apparently was engineered and set in motion only on 21st June, 1994 when the Controller of Examination refused to show them the record allegedly required by them for the purpose of ascertaining the secrecy of the examination. The Members of the Commission failed to discharge the duty entrusted to them or expected from them under the constitutional scheme of our democratic set up. The Commission as a whole miserably failed to protect the interests of those candidates who had worked hard and burnt their eyes for preparation of the examination. Some defaulting Members and the Commission in order to save their skins and escape from the wrath which ultimately be ushered upon them ran away from the field by tendering their resignations in order to absolve themselves from their liabilities. Shri Sher Singh and Uda Ram, Members, are stated to be still holding their guns aimed against the interests of the Commission and were reluctant even to relinquish their posts despite the fact that they alongwith others had brought the institution to disrepute. The number of the candidates found to have been guilty of disclosing their identity or attempted other irregularities had been found to be neglige which under the existing circumstances can be termed to be the normal wear and tear of an examination. It does not mean that we are endorsing the action of the defaulting candidates or intend to discourage the Commission from taking action against such candidates intending to pollute the sanctity of the examination. However, we also cannot shut our eyes from the prevalent situation and circumstances or the atomosphere in which a competitive examination like the examination in dispute was scrapped. Before taking the action of scrapping of the whole of the examination the Commission was required to have applied its mind to the circumstances and to pass appropriate orders ensuring its sanctity with impartial and fair result thereof. The Commission completely ignored the judgment of the Supreme Court in Kumari Anamica Mishra and another, Vs. U.P. Public Service Commission, Allahabad and others, , wherein it was pointed out that when no defect was pointed out in regard to the written examination and the sole objection was confined to the exclusion of a group of successful candidates in the written examination from the interview, there was not justification for cancelling the written part of the recruitment examination, on the other hand, the situation could have been appropriately met by setting aside the recruitment and asking for a fresh interview of all eligible candidates on the basis of the written examination and selecting those who on the basis of the written and the freshly

held interview became eligible for selection. The Supreme Court further directed that the Public Service Commission should have been more careful in dealing with the matter so that years spent in the process of recruitment would not have been lost and the public cause would not have suffered; public time would not have been wasted in requiring re-doing of what had once been done and the litigation could have been avoided. The Court in that case found that there was no justification for cancellation of the written part of recruitment examination and forcing the candidates to litigation.

After minutely going through the pleadings of the parties, the replies submitted by the Members of the Commission including its Chairman and the record of the Commission, we have come to the conclusion that the impugned order by which the result of the examination was scrapped was passed in a most negligent and casual manner. The alleged number of acts of omission and commission were almost non-existent. The irregularities reflected in the record of the commission which is contained in Packet No. 36 were of ordinary and normal nature without effecting the alleged proper secrecy of the examination. The evaluation of number of scripts by the Examiners other than the original Examiners was negligible which could not be made a basis for cancellation of the whole of the examination. Such omission or irregularities could have been avoided or rectified if joint efforts are made by all the" Members of the commission.

The claim of the Commission that the order of scrapping the examination was passed in the interests of objectivity, impartiality, justice and fair competition is without any substance and is not supported by the record of the Commission.

46. Learned Counsel appearing for the Respondents did not address arguments regarding the maintainability of the writ petitions despite the objections having been raised in their replies. The arguments commenced with the assumption that the rights of the candidates appearing in the examination have been violated and the Court had the jurisdiction to grant the appropriate relief.

47. We have, therefore, come to the conclusion that even though , there was no justification for the cancellation of the written examination yet on account of the un-called for publicity given to the controversy regarding the evaluation of question papers certain safe guards are required to be provided and appropriate directions issued for the finalisation of the examination in the interests of the candidates who appeared by maintaining the purity and fairness of the ultimate selection. In order to protect the interests of the candidates and to inspire confidence of the common man in the institution of the Commission entrusted with the employment of public service, we hereby quash the impugned order by which the whole of the written examination was scrapped but with following directions:

(a) That all action taken after 15th October, 1993 which have become the basis of controversy shall be deemed to have been quashed;

(b) The process of preparation of key, clipping, would commence afresh and the

earlier fictitious roll numbers mentioned on the answer sheets shall be removed. Appropriate safeguards shall be taken for the maintenance of secrecy and purity of the examination;

(c) The answer sheets with fictitious roll numbers shall be sent to the new Examiners for re evaluation who are directed to award marks separately without being influenced by the earlier marks awarded by the erstwhile Examinors by using different ink and the earlier marks awarded shall be properly covered.

48. Before sending the answer books for re-evaluation, such scripts which disclose the identity of any candidate in any manner shall be excluded and their papers in that result shall be deemed cancelled:

(d) After the receipt of the answer books alongwith the award list, scrutiny of marked answer books for checking totals, tallying of marks in the abstract vis-a-vis body of the answer book detection of unmarked parts, over attempted questions from different sections, detection of any attempt for disclosing identity of the candidates and carrying out corrections in the script, the result of all such candidates shall be prepared candidatewise with fictitious roll numbers;

(e) After the preparation of the key and the clipping", the aforesaid key and clipping shall be sealed and locked and kept in a safe custody.

The merit-wise result shall be prepared in accordance with the prevalent practice;

(f) The process of re-evaluation and compliance of directions (a) to (e) above shall be carried out by the Punjab Public Service Commission, Patiala who shall do the needful as per the procedure prevalent and in accordance with the directions contained in this judgment. The process of completion of the written examination shall be carried out as expeditiously as possible and preferably within three-months;

(g) The expenditure involved in the process of re-evaluation and compilation of the result shall be at the cost and expenses of the Haryana Public Service Commission which shall be reimbursed to the Punjab Public Service Commission on demand;

(h) The record seized in the matter shall be handed over by the District and Sessions Judge (Vig.) Haryana to the Secretary Punjab Public Service Commission Patiala, against a proper receipt within a period of one week from today;

(i) After the preparations of the merit list, the Chairman. Punjab Public Service Commission is directed to ensure the holding of proper interview by the Members of the said Commission and by taking assistance of the expert Members, if required, and finalise the selection;

(j) After the finalisation of the selection, the record shall be returned to the Secretary, Haryana Public Service Commission after three months unless otherwise directed by any Court of law.

49. All the Members of the Commission including the Chairman are liable to pay the costs which are assessed at the rate of Rs. 5,000 each. The costs shall be deposited in the Registry within one month. After the deposit of the total amount the same shall be paid to the Haryana Legal Aid Cell.

50. These directions shall not be deemed to be an aspersion on the newly constituted Haryana Public Service Commission.

51. A copy of these directions shall immediately be supplied to the Chairman, Punjab Public Service Commission, Patiala for appropriate directions and compliance.