
(2016) 10 MEG CK 0001
In the Meghalaya High Court
Case No : WA No.67 of 2016

The Meghalaya Public Service Commission
Vs
Shri Millon Ch. Momin

APPELLANT

RESPONDENT

Date of Decision : 26-10-2016

Acts Referred:

Citation : (2017) 2 GauLT 66 : (2017) 2 NEJ 73

Hon'ble Judges : Shri Dinesh Maheshwari, CJ. and Shri Ved Prakash Vaish, J.

Bench : Division Bench

Advocate : Shri K. Paul, Advocate, for the Appellants; Shri S.P. Mahanta, Senior Adv with Ms. M. Wahlang, Advocate, for the Respondent No. 1; Shri N.D. Chullai, Sr. GA, for the State-Respondents; Shri A.G. Momin, Advocate, for the Private Respondents

Final Decision : Disposed Off

Judgement

Shri Dinesh Maheshwari, C.J. (Oral)—By way of this intra court appeal, the appellants-Meghalaya Public Service Commission ["the Commission" hereafter] and its functionaries have questioned the order dated 16.06.2016 as passed by the learned Single Judge of this Court in WP(C)No.18 of 2015 whereby, the In-Charge Superintendent of Police, CBI has been directed to conduct preliminary enquiry in relation to the subject matter of the said writ petition wherein, the process of recruitment to the post of Meghalaya Police Officer has been put to question.

2. It may be observed at the outset that this appeal against the order dated 16.06.2016 as passed in the pending writ petition was filed only on 24.08.2016 and as per office report, was delayed by a period of 39 days but then, the question of delay in filing the appeal was not put to contention by the respondents; and looking to the peculiar circumstances of the case and the issues raised, this appeal was taken on the regular side while ignoring the delay.

3. However, by the time this appeal was considered for admission on 08.09.2016,

the CBI had already undertaken the preliminary enquiry as ordained by the learned Single Judge. In the circumstances of the case, even while entertaining this appeal, we did not stay the enquiry by the CBI but the learned senior counsel, Shri VK Jindal appearing for CBI was directed to submit the report and the related material in a sealed cover in this appeal, while making it clear that the report so prepared would not be available to any person without specific order of this Court. The order so passed in this appeal on 08.09.2016 was sought to be questioned by the appellants in a Petition for Special Leave to appeal bearing No. 27439 of 2016 that was disposed of by the Hon"ble Supreme Court on 20.09.2016 with the following order :

"Taken on Board.

Heard learned senior counsel for the petitioners.

We find no merit in the Special Leave Petition.

The Special Leave Petition is, accordingly, dismissed.

However, we request the High Court to dispose of the matter pending before it within a period of four weeks from the date of communication of this order.

Pending application stands disposed of."

4. The aforesaid order of the Hon"ble Supreme Court was placed before us on 28.09.2016 and looking to the observations made therein, the CBI was directed to complete the proceedings at the earliest. Thereafter, on 06.10.2016, the preliminary report of CBI was placed before us in a sealed cover, but without the report of the forensic science laboratory on the data taken from the hard disk of the computer to which, we directed expeditious proceedings while indicating that any laxity/delay on the part of any agency would be taken as standing conflict with the order passed by the Hon"ble Supreme Court and this Court. Ultimately, on 24.10.2016, the learned senior counsel for the CBI produced before us the sealed envelopes said to be containing final enquiry report and also produced other envelopes said to be containing the entire material that was supplied to the CBI.

5. After the proceedings aforesaid, looking to the subject matter of the appeal and the subsequent events, we queried from the learned counsel for the parties if they would be willing to argue on the main matter involved in the writ petition itself so as to conclude the litigation in this Court? However, the learned counsel appearing for the appellant, Shri K. Paul as also learned senior counsel, Shri S.P. Mahanta appearing for the contesting respondent (writ petitioner) submitted that they would prefer to confine their submissions in this appeal to the illegality and validity of the order dated 16.06.2016 whereby, preliminary enquiry by the CBI was ordered; and would prefer contesting the main writ petition before the learned Single Judge as none of them would like to lose the forum of appeal in this Court, if aggrieved of the final order passed in the writ petition.

6. In view of the above and in the overall circumstances, when only the question of validity of the order directing CBI enquiry is being examined herein, obviously, after decision of this appeal, the main writ petition, for its consideration on merits, shall be placed before the learned Single Judge of this Court. Thus, and in order to avoid any ambiguity, it is made clear that none of the observations herein shall be construed as any expression of opinion by us on the merits of the issues involved in the writ petition.

The background aspects

7. Put in brief, the relevant background aspects of the matter are that the appellant-Commission issued an advertisement dated 04.04.2013 for filling up 34 vacancies to the post of Meghalaya Police Officer under the Home (Police) Department of the Government of Meghalaya. In the recruitment in question, as per the reservation policy of Government, bifurcation of the vacancies had been in the manner that 5 vacancies were kept unreserved whereas 14 vacancies were reserved for Khasi and Jaintia candidates, another 14 for Garo candidates and 1 for Other Scheduled Tribes. It appears that in the recruitment in question, the concerned candidates were first to appear in the physical efficiency test and after passing the same, they were required to take preliminary examination; and the candidates qualifying the preliminary examination were admitted to the main written examination of 2300 marks. Thereafter, the candidates, in the ratio of 1:2 for each category of vacancies were admitted to interviews carrying 250 marks. It has been pointed out that ultimately, 68 candidates were admitted to interviews, and so far Garo candidates were concerned, as against 14 vacancies reserved for them, 28 candidates were called for the interviews. The writ petitioner (respondent No. 1) as also the respondents No. 8 to 11 of this appeal were amongst the candidates admitted to the interview as against the vacancies earmarked for Garo candidates. The personal interviews were conducted by the appellant-Commission from 15th to 17th December, 2014. Ultimately, the result was declared by the Commission on 19.12.2014, showing 34 names of the successful candidates, who were recommended for appointment, including the respondents No.8 to 11. The writ petitioner's name was not included in the said select list but then, after going through the statement of marks, as uploaded by the Commission on its website, the writ petitioner found that his total marks were stated to be "874" and such total marks were indeed more than those of respondents No. 8 to 11, who had secured 867, 820, 815 and 814 marks respectively.

8. On being aggrieved of the position that he was not shown in the select list despite having secured higher marks, and the candidates allegedly securing lesser marks than himself were shown as selected, the writ petitioner made a complaint on 22.12.2014 before the Commission and thereafter, filed a writ petition in this Court bearing No. 2 of 2015. However, during the pendency of the said writ petition, the appointment order dated 09.01.2015 was issued by the Government in relation to respondents No. 8 to 11. The writ petitioner, therefore,

withdrew from said the writ petition on 27.01.2015 with liberty to file afresh.

9. Thereafter, on 16.02.2015, the writ petitioner filed the petition bearing No. 18 of 2015 wherein the impugned order came to be passed by the learned Single Judge on 16.06.2016.

The submissions of the contesting parties in the writ petition

10. While giving out the facts aforesaid, the writ petitioner contended in the writ petition that the respondents No. 8 to 11, who were shown in the select list at Sl. No. 30 to 33 were much inferior in merit to him and at least one of them did not deserve selection. The petitioner further averred that the action of the Commission had not only demoralized him but also compelled him to think otherwise about the integrity of the authority concerned and mode of functioning of the Commission, particularly in preparation of the impugned select list dated 19.12.2014. The petitioner further averred that according to his information, the authorities concerned, having realized that manipulation of marks had come to his knowledge, hurriedly issued the impugned appointment order dated 09.01.2015 that would call for intervention by the Court. While questioning the action of the authorities of the appellant-Commission, the writ petitioner further averred that they had acted in illegal, arbitrary, unreasonable and biased manner to serve certain vested interest and to facilitate the selection of the candidates like respondents No.8 to 11. The writ petitioner, thus, contended that the matter was required to be examined by the Court after calling for the entire record.

11. Put in a nut shell, the case of the petitioner had been that there was no reason that he was denied appointment despite standing higher in merit and the selection of the private respondents had been entirely illegal. It is noticed that even when there has not been any plea in the writ petition as against the marks awarded in the main written examination yet, while claiming reliefs, the writ petitioner chose to make a prayer even against evaluation of the answer scripts apart from questioning the marks awarded in the interviews.

12. The writ petition so filed by the present respondent No.1 was entertained by the learned Single Judge of this Court by the order dated 18.02.2015. On 18.02.2015 itself, in Misc. Case No. 15 of 2015, the learned Single Judge of this Court took note of the uncertain position where the writ petitioner, though being shown having secured higher marks was not included in the merit list and, therefore, ordered as under :

"18.02.2015

Heard Mr. SP Mahanta, learned senior counsel assisted by Ms. S. Pde, learned counsel appearing for the applicant, Ms. NG Shylla, learned GA appearing for the respondents No. 1 - 3 and Mr. B. Khyriem, learned counsel for the respondents No. 4-7.

Issue notice returnable within three weeks.

Applicant is to take steps for service of notice to the respondents No. 8 - 11 by registered post with AD within three days.

It is stated in the writ petition that the Meghalaya Public Service Commission, (for short "MPSC") issued a advertisement dated 04.04.2013 inviting applications for appointment to 34 posts of Meghalaya Police Service (for short "MPS") Officer. In response to the said advertisement, the petitioner and others had applied for the said posts and appeared the selection test. The selection test consists of (i) physical efficiency test; (ii) preliminary examinations; (iii) final examination and; (iv) viva voce test. The name of the petitioner was not included in the list of the selected candidates whereas, the respondents No. 8 - 11 whose secured less marks than that of the petitioner in the said test have been included in the select list stated 19.12.2014 (Annexure-8 to the writ petition). After the name of the petitioner was not included in the select list, the petitioner downloaded the respective marks obtained by the selected candidates. The respective marks obtained by the respondents No. 8 - 11 and the petitioner are mentioned at para 7 of the writ petition, which reads as follows :-

Petitioner/respondents

Sl.No. In statement of Marks (Annexure-10)

Roll No.

Total Mains examination marks

Personal interview marks

Total marks secured

Petitioner

20

21

674

200

874

Respondent No. 8

32

284

668

199

867

Merit List No. 30

Respondent No. 9

34

304

615

205

820

Merit List No. 31

Respondent No. 10

35

308

633

182

815

Merit List No. 32

Respondent No. 11

13

140

604

210

814

Merit List No. 33

Ms. NG Shylla, learned GA appearing for the respondents No. 1 - 3 as well as Mr. B. Khyriem, learned counsel for the respondents No. 4 - 7 submit at the Bar that until and unless they receive comments from the respondents, they may not be able to answer as to why the respondents No. 8 - 11 whose secured less marks than that of the petitioner have been included in the select list and later on appointed as an MPS officer. As an ad-interim measure, it is provided that the appointment of the respondents No. 8 - 11 are subject to the outcome of the present writ petition or one post of MPS officer shall remain unfilled till the final disposal of the present petition.

The MPSC is directed to produce the answer scripts of the respondents No. 8 - 11 in a sealed envelope on the next date of hearing i.e. 11.03.2015.

List this case accordingly on 11.03.2015."

13. Thereafter, the respondents of the writ petition filed their respective counter affidavits and the record concerning the matter was produced in the Court in a sealed cover on 08.04.2015. The matter was adjourned on 06.05.2015, 27.05.2015 and 20.06.2015 granting time to the writ petitioner for filing rejoinder affidavit. However, on 15.07.2015, it was specifically submitted on behalf of the writ petitioner that he was not filing the rejoinder affidavit and since the pleadings were complete, the matter was posted for hearing.

14. At this juncture, we may take note of the explanation offered by the present appellants in their counter affidavit. Briefly put, their case had been that it was a matter of bona fide clerical error where the marks awarded by some of the members of the Interview Board to another candidate bearing Roll No. 238 got inserted in the computer list prepared for the purpose of uploading as against the name of the petitioner also; and because of such a mistake, his interview marks were shown as 200 whereas, in fact, he had been awarded 120 marks in the interview and his total marks were "794" and not "874".

15. It has also been stated in the counter affidavit that there was another error in relation to the candidate at Sl. No. 11 in the list which was detected by the Chief Controller of Examination and was corrected, but the error in relation to the petitioner was not detected. It has also been stated that the matter was thoroughly examined on the representation of the petitioner and the correct facts were not only noticed but were indeed divulged to the petitioner. The present appellants have, inter alia, averred in the counter affidavit as under :

"The staff prepared the statement of marks of the successful candidates in the excel sheets which contained names, total marks obtained in the personal interview and total marks obtained in the written examination and the grand total in order of merit. The data was taken from the hand written document. The statement was printed and then signed by the Chief Controller of Examination. It was scanned and forwarded to the National Information Centre (NIC) for uploading in the website. The marks were uploaded during office hours. The error in respect of Donkumar Moksha (roll No. 13) serial No. 11 was detected by the Chief Controller of Examination and corrected immediately on the same day.

Late during the day, the Commission further took a decision to also display the marks obtained by the candidates, and accordingly directed the Chief Controller of Examination. For this purpose two statements were prepared (i) for candidates who appeared for the interview and (ii) all the candidates who sat for the written examination. The first statement was prepared for candidates who appeared for the personal interview. The preparation of the statement was assigned to the same staff that was handed over the hand written document. The staff prepared the statement in the descending order of marks obtained by the candidates in the written examination. Since the statement was prepared to only showcase the marks obtained by the candidates, the normal procedure of rigorous checking

and verification of the marks was regrettable not done. The Chief Controller of Examination signed the printed document which was scanned and forwarded to the NIC for uploading at 4:30 P.M. NIC uploaded the two statements at 7:00 P.M. on the 19th December, 2014. The error was brought to the notice of the Secretary after the complaint was filed by Shri Millon Ch. Momin in the MPSC office on 22.12.2014. The Chief Controller of Examination was out of station w.e.f. 20.12.2014 was contacted and informed of the complaint.

The Chief Controller of Examination who was in custody of the results and all the connected records immediately contacted the Petitioner over phone on 22.12.2014 and informed him that he would be shown all the relevant documents regarding the compilation of the MPS marks on the 3.1.2015. The Petitioner who was also explained over phone that it was maybe a typing mistake and the Petitioner agreed to wait till the 3.1.2015 to look at the result sheets in person for his own satisfaction.

Accordingly, the Chief Controller of Examination, MPSC met the petitioner who was accompanied by his wife in the Office of the MPSC on 3.1.2015 at 3:30 P.M. to address his complaint based on the result of the Junior MPS officer under Home (Police) Department declared on 19.12.2014 and more particularly on the marks displayed on the MPSC website for all candidates who has appeared for the personal interview conducted by the Commission on the 15.12.2014, 16.12.2014 and 17.12.2014.

The Chief Controller of Examination had sought the permission of the Commission to break the seal of the envelope containing (i) handwritten statement, (ii) Roll No. wise statement of Marks, (iii) general Merit list where the ranks were indicated against successful candidates, (iv) Garo Merit list, (v) Khasi merit list and (iv) OST merit list. With the prior permission granted by the Commission the cupboard was opened and the sealed envelope was taken out and placed before the Petitioner.

The seal envelope containing the handwritten statement, including the result sheets was broken by the staff of MPSC in the presence of the Petitioner and his wife.

On the joint scrutiny of the (i) handwritten statement, (ii) Roll No. wise statement of Marks, (iii) general Merit list where the ranks were indicated against successful candidates, (iv) Garo Merit list, (v) Khasi merit list and (vi) OST merit list it was found that the total interview marks of the petitioner was 120 and not 200 in the hand written statement, the roll no wise statement, the general merit list and the Garo merit list.

On being queried by the Petitioner as to how such a mistake was made, joint scrutiny of the entries made in the hand written document and those that were entered in the computer revealed that the same set of interview marks viz 42, 40, 40 and 41 allotted by the 1st, 2nd, 3rd and 4th member of the Commission entered against the candidates bearing Roll No. 238 was somehow repeated

against the name of the Petitioner candidate bearing Roll No. 21. The actual interview marks as reflected in the hand written document of the 1st, 2nd, 3rd and 4th member against Candidate bearing Roll No. 21 who is also the Petitioner are 22, 20, 20, and 21. This was the error committed by the staff who was asked to prepare the statements required to be uploaded in the website. Because there was no further check and verification as explained above the error was not detected.

After verification of the original marks by the Petitioner and the Chief Controller of Examination, the MPSC uploaded the corrected version of the result in respect of the Petitioner bearing Roll No. 21 on its website. It is a fact that due to human error the interview marks of candidate bearing Roll No. 21 was erroneously entered in the statement used for displaying the marks of all the candidates who had appeared for the interview to the post of Junior MPS Officer scheduled on the 15.12.2014, 16.12.2014 and 17.12.2014."

16. As noticed, the aforesaid averments by the appellants stand unrebutted on record inasmuch as the writ petitioner has not filed any rejoinder thereto and rather specifically stated before the Court that he was not filing the rejoinder affidavit.

The proceedings leading to order for CBI preliminary enquiry

17. After completion of the pleadings with the petitioner not filing any rejoinder affidavit, the writ petition was ultimately taken up for hearing by the learned Single Judge of this Court on 01.06.2016. It appears that while hearing the matter, the learned Single Judge found that the dispute was essentially as regards the marks obtained by the petitioner in viva voce but felt it necessary that the documents produced by the learned counsel for the Commission in the sealed cover be jointly inspected and hence, requested the learned counsel for the parties to go through the same and the matter was posted for further hearing on 15.06.2016 while observing as under:

"01.06.2016

The matter came up for hearing. Mr. S.P. Mahanta, learned Sr. counsel assisted by Mr. H. Lyngdoh, learned counsel appeared on behalf of the petitioner, Mrs. N.G. Shylla, learned GA appeared for the State respondents No. 1-3 and Mr. B. Khyriem, learned SC MPSC appeared for the respondents No. 4-7.

In the middle of hearing it was realized that the documents produced by the MPSC in a sealed cover needs a joint inspection by the learned counsels for the parties as here the dispute arose pertaining to the marks obtained by the petitioner in viva-voce. Both the packets were found in a sealed cover and it was opened in presence of the court as well as the learned counsels for the parties.

The learned counsels for the parties are requested to go through all the documents as and when they are free in presence of the Court Master.

The matter remain part heard.

As suggested by the learned counsels, list this matter on 15.06.2016 for further hearing."

18. Thereafter, the matter was taken up on 15.06.2015 when the learned counsel appearing for the petitioner attempted to suggest before the Court that there were some manipulations in the viva voce score sheet but, he was not exactly in a position to clarify the matter whereupon, the learned Single Judge directed the Chairperson as also the Chief Controller of Examination of the appellant-Commission to remain present before the Court on the next date i.e., 16.06.2016.

19. On 16.06.2016, the learned Single Judge examined the viva voce score sheet and found that some marks were noted against certain candidates twice, with pencil and with ball pen. The learned Single Judge also found that the respective columns in the viva voce score sheets like Personality, Capacity, Command and Confidence, etc. were not carrying specific marks and only the total marks were stated and that eraser was also used. The learned Single Judge further found that the Chairperson and Chief Controller of Examination, who appeared before the Court, were unable to give satisfactory answer about the marks given in viva voce score sheet. Having thus recorded the impressions gathered from the viva voce score sheets and the fact that the functionaries of the Commission were unable to give satisfactory answer, the learned Single Judge entertained certain doubts and observed that an independent enquiry was necessary "to remove the doubt". Thereafter, the learned Single Judge summoned the In-charge Superintendent of Police, CBI and directed him to carry out the preliminary enquiry while observing, inter alia, as under:

"3. After hearing the learned Sr. counsel for the petitioner, the viva-voce score sheet was called for by this court and accordingly, it was placed before this court in a sealed cover and the same was re-opened in presence of the court and the learned counsels for the parties.

4. While examining the viva-voce score sheet, it was found that some marks were noted down against certain candidates twice, one is with pencil and another with ball pen. It is also noticed that in the respective columns in viva-voce score sheet like, Personality, Capacity Command and Confidence, Intelligence, General Knowledge and Special Knowledge, there is nothing mentioned about the specific marks. All of a sudden the total mark mentioned is 39 both with pencil and with ball pen. It appears eraser was used.

5. In response to my order dated 15.06.2016 Smti Biana W. Momin, Chairman/ Chair Person, Meghalaya Public Service Commission, Shillong and Smti W.A.M. Booth, Chief Controller of Examination, Meghalaya Public Service Commission, Shillong appeared before this court. However, they also could not give any satisfactory answer about the marks given in the viva-voce score sheet.

6. After hearing the submissions advanced by the learned counsel for the parties

and after examining the viva-voce score sheet, a doubt gather and to remove the doubt, I feel that an independent enquiry is very necessary. Accordingly, the In-Charge Superintendent of Police, CBI, Mr. N.G. Khamrang was called and he appeared before this court.

7. I direct the In-Charge Superintendent of Police, CBI to conduct a preliminary enquiry to find the actual position and to submit the report within 3(three) months from today. He shall have full liberty to examine all the documents as well as the persons concerned and the witnesses as and when necessary and to take further steps whatever he feels best for the interest of the investigation and to submit the report within 3(three) months.

8. The Registry is directed to hand over the 13(thirteen) bunch of vivavoce score sheets, tabulation sheets, etc. to Mr. N.G. Khamrang, In-Charge Superintendent of Police, CBI immediately. Besides that, the CBI shall also have all the liberty to seize other documents as and when required for the interest of the investigation. The Registry is also directed to furnish a copy of this order to the In-Charge Superintendent of Police, CBI today itself."

(underling supplied)

20. As noticed, this intra court appeal seeking to challenge the order aforesaid was filed by the appellants only on 24.08.2016. However, before filing of this appeal, as the matter had already been handed over to the In-Charge Superintendent of Police, CBI with directions to complete the enquiry within 3 (three) months and to submit the report, the concerned officer of the CBI had indeed taken up the task as ordained. It was pointed out before us on 08.09.2016 that in fact, the CBI had recorded the statements of some of the witnesses and had put a seal on the main computer in the office of the Controller of Examination of the appellant-Commission. After taking note of the preliminary submissions of the learned counsel for the parties and finding arguable case, while we admitted the appeal for hearing and in the given set of circumstances, permitted the CBI to complete the preliminary enquiry but while providing that the report shall be submitted in this appeal by the CBI in a sealed cover and copy thereof shall not be provided to any person without specific orders of the Court. As noticed, the entire report and the material have now been placed in the sealed covers before us.

The rival submissions in appeal

21. Seeking to assail the order impugned, learned counsel for the appellant Shri K. Paul has strenuously argued that there had been neither reason nor any justification for ordering CBI enquiry in this matter. The learned counsel elaborated on his submissions that of course, there had been errors in uploading the marks of the candidates, particularly when the writ petitioner was shown having secured 200 marks in the interview and 874 marks in total but then, it had only been a matter of human clerical error, as has been specified in detail in the counter affidavit to the petition. The learned counsel also submitted that in

fact, the tabulation as prepared by hand correctly recorded the marks of the petitioner and the error occurred when excel sheet was prepared for uploading but in any case, such a matter cannot be said to be of any manipulation or ill-intent on the part of the Commission. The learned counsel emphasised on the submissions that the plenary powers in the Court under Article 226 of the Constitution of India are wide enough to return any finding after examination of the record and to pass any appropriate order as considered necessary in the interest of justice but then, such a process of examination of record cannot be delegated to any other agency. According to the learned counsel, even if certain doubts cropped up or were generated by the writ petitioner, the matter could not have been referred for CBI enquiry. The enquiry, learned counsel contended, was required to be conducted in the first place by the Hon''ble Court and at least a prima facie finding was required to be returned that any particular aspect was calling for enquiry by CBI; and handing over the matter for CBI enquiry without even a prima facie finding by the Court was not justified. Learned counsel has referred to and relied upon the decisions of the Hon''ble Supreme Court in the case of Secretary Minor Irrigation and Rural Engineering Services U.P. v. Sahngoo Ram Arya & Ors. : (2002) 5 SCC 521 and State of West Bengal v. Committee for protection of Democratic Rights : (2010) 3 SCC 571.

22. The learned senior Government Advocate, Shri ND Chullai appearing for the State respondents as also learned counsel, Shri A.G. Momin appearing for respondents No. 8 to 11 have supported the submissions made on behalf of the appellants and submitted that there was no occasion for ordering CBI enquiry in this matter.

23. Per contra, the learned senior counsel, Shri SP Mahanta appearing for respondent No. 1 (writ petitioner) has vehemently argued that the course adopted in this matter by the learned Single Judge remains justified because serious questions raised by the writ petitioner on the fairness of the process adopted by the appellants have gone unanswered and when the case of manipulation/interpolation of the score sheet and alteration of marks did come to the fore. According to the learned counsel, in the given circumstances, the learned Single Judge was justified in asking for a report from CBI to find out true and correct factual aspects relating to the matter. The learned counsel attempted to elaborate on the process as adopted by the Interview Board where several score sheets did not carry the names and signatures of the members of the Board; no seal of the Commission was available on the score sheet; marks were not given on five different heads shown in the score sheets; and the marks were written by the expert member both in pencil and ball pen. The learned counsel submitted that the story as suggested by the appellants that the marks given by four members to Roll No. 238 came to be stated as marks of the writ petitioner at Roll No. 21 is also entirely implausible because the marks as given by the expert to these two Roll numbers do not tally; and in fact, the total marks of Roll No. 238 were 202 and not 200. The learned counsel also submitted that when the tabulation for different category candidates were carried out separately, it

appears seriously questionable as to how the marks of the Khasi community candidate bearing Roll No. 238 could have got incorporated towards the marks of the petitioner, a candidate of Garo community ? The learned counsel also attempted to submit that the respondents No. 8 to 11, who had secured much lesser marks in the written examination than the petitioner are shown allegedly securing higher marks in the interview and the petitioner's marks are suggested to be 120 only that gives rise to serious doubts on the fairness of the procedure adopted. The learned counsel for the respondents has also referred to the principles in the case of *State of West Bengal v. Committee for protection of Democratic Rights* (Supra) and has further referred to the decisions in *Pooja Pal v. Union of India and Others* : (2016) 3 SCC 135, *Dharam Pal v. State of Haryana and Others* (2016) 4 SCC 160, *K.V. Rajendran v. Superintendent of Police, CBCID, south Zone, Chennai and Others* : (2013) 12 SCC 480 and *Narmada Bai v. State of Gujarat and Others* : (2011) 5 SCC 79.

24. We have anxiously considered the submissions made by the learned counsel for the parties with reference to the law applicable and have examined the material placed on the record of writ petition as also this appeal.

The question for determination and applicable principles.

25. As noticed, the core question calling for determination in this appeal is as to whether the direction to CBI to conduct a preliminary enquiry in relation to the subject-matter of the writ petition at the given stage of the proceedings had been justified ?

26. The principles for directing an enquiry by CBI or any alike agency have been enunciated and expounded by the Hon'ble Supreme Court in the cited decisions. It may, however, be noticed in the first place that the cases referred to and relied upon by the learned counsel for the parties essentially relate to the matters of investigation into the offences where the fairness or objectivity of the investigations carried out by the State agencies were in question or some shortcomings were noticed during the course of trial/enquiry.

27. In the case of *Committee for Protection of Democratic Rights* (supra), the issue referred for authoritative pronouncement by the Constitution Bench of the Hon'ble Supreme Court had been as to whether the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India could direct the CBI under the Delhi Special Police Establishment Act, 1946 to investigate a cognisable offence, which was alleged to have taken place within the territorial jurisdiction of the State, without the consent of the concerned State Government? The incident involved in the matter related to offences pertaining, inter alia, to Sections 364/302/201 IPC as also Sections 25/27 of the Arms Act, 1959 and Section 9-B of the Explosives Act, 1884. There had been questions raised on the fairness of the enquiry of State police of the concerned State and, having regard to the circumstances, the High Court of Calcutta, while dealing with the incident in question in a writ petition under Article 226 of the

Constitution of India, considered it appropriate to handover the investigation to CBI. On the principal question referred for determination, the Hon''ble Constitutional Bench ultimately came to the conclusion that such directions for investigation by CBI on a cognisable offence in the State without the consent of the State Government neither impinged upon the federal structure nor violated the distribution of power. Such conclusions of the Hon''ble Constitution Bench on the principal question referred may not have a direct bearing on the question involved in the present appeal. However, in the said decision, the Constitution Bench also delineated on the width, amplitude as also limitation of the writ jurisdiction of the Court while issuing a direction for CBI investigation in the following :-

"70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

28. The Hon''ble Constitution Bench of the Supreme Court further referred to the decision in Sahngoo Ram Arya (supra) with approval, while observing as under :-

71. In Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations."

29. In the case of Sahngoo Ram Arya (supra), the Hon''ble Supreme Court cautioned against an order for investigation by CBI in a routine manner while emphasizing that direction for an enquiry by CBI could only be issued if the Court, after considering the material on record comes to a conclusion that such material indeed disclosed a prima facie case calling for investigation by CBI or similar agency. The Hon''ble Supreme Court said,-

"6. It is seen from the above decision of this Court that the right to life under Article 21 includes the right of a person to live without being hounded by the Police or CBI to find out whether he has committed any offence or is living as a law-abiding citizen. Therefore, it is clear that a decision to direct an inquiry by the CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a prima facie case established to direct an inquiry has proceeded on the basis of "ifs" and "buts" and thought it appropriate that the inquiry should be made by the CBI. With respect, we think that this is not what is required by the law as laid down by this Court in the case of Common Cause."

(underlining supplied for emphasis)

30. In the case of Pooja Pal (supra), the widow of victim, who was a sitting MLA of Uttar Pradesh State Assembly and was allegedly subjected to murderous attack, had been seeking to secure the investigation by CBI into the incident in question. In paragraphs 100 and 101 of this decision, as referred by the learned counsel for the respondent No.1, the Hon"ble Supreme Court, after noticing the material on record, indicated that on the given factual scenario, either the trial be allowed to drift towards its conclusion with the possibility of the offence going unpunished or to embark upon the investigation, though belated, to unravel the truth. In the given fact situation, the Hon"ble Supreme Court, notwithstanding pendency of the trial and the availability of the powers in the Code of Criminal Procedure and Evidence Act, found it imperative that de novo investigation be carried out by CBI so as to rule out any possibility of denial of justice to the parties and to instil and sustain the confidence of the community at large. In the said decision too, the Hon"ble Supreme Court did refer to the principles stated in the case of Committee for Protection of Democratic Rights (supra), while observing as under :-

"75. That the extraordinary power of the constitutional courts under Articles 32 and 226 of the Constitution of India qua the issuance of direction to CBI to conduct investigation must be exercised with great caution, was underlined in Committee for Protection of Democratic Rights as adverted to herein above. Observing that although no inflexible guidelines can be laid down in this regard, it was highlighted that such an order cannot be passed as a matter of routine or merely because the party has levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights."

31. The case of Dharam Pal (supra) had essentially been for proper investigation

in the case involving offences, inter alia, under Sections 376(2)(g) IPC and Section 3 of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. On the need for fair investigation, the Hon'ble Supreme Court observed as under :-

"24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the "faith" in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "id est fixe" but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an "orphan under law".

32. The case of K.V. Rajendran (supra) too had been of a criminal investigation and the prayer had been for transfer of the investigation to CBI. The Hon"ble Supreme Court indicated the principles for transfer of investigation from the State agency to other independent agency like CBI in the following :-

"13. The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the investigation has already been completed and charge-sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge-sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (vide Gudalure M.J. Cherian v. Union of India, R.S. Sodhi v. State of U.P., Punjab and Haryana High Court Bar Assn. v. State of Punjab, Vineet Narain v. Union of India, Union of India v. Sushil Kumar Modi, Disha v. State of Gujarat, Rajender Singh Pathania v. State (NCT of Delhi) and State of Punjab v. Davinder Pal Singh Bhullar.)."

33. The case of Narmada Bai (supra), again, had been of a criminal case where the petitioner alleged that her son was killed in a fake encounter by the officials of Gujarat and Rajasthan; and the Hon"ble Supreme Court found it necessary that investigation be conducted by CBI on all aspects of the case relating to the killing of the son of the petitioner and called for the report from CBI.

34. It is at once clear that the aforesaid decisions on the necessity of impartial investigation by an independent agency like CBI were rendered in the circumstances where the questions came up before the Court as to whether such investigation/enquiry by CBI was to be preferred in substitution of that by the State Investigating Agency. The said decisions may not have a direct bearing on the question involved in the present matter but, the basic parameters expounded by the Hon"ble Supreme Court for adopting a course of enquiry by CBI need to be kept in view while considering if at all any enquiry by CBI or alike agency is to be ordered. On a conjoint reading of the principles enunciated by the Hon"ble Supreme Court in the aforesaid decisions, it is but clear that an order for CBI enquiry or investigation is not to be passed in a routine manner or merely because a party has levelled some allegations. Any investigation/enquiry by CBI has been treated to be an extraordinary measure; and, as laid down by the Hon"ble Supreme Court, such a measure is to be resorted to sparingly, cautiously and in exceptional situations.

35. In *Sahngoo Ram Arya* (supra), the Hon'ble Supreme Court has indicated the principles in clear terms that the decision to direct an enquiry by CBI against a person could be ordered only if the High Court, after considering the material on record, comes to the conclusion that such a material indeed discloses a prima facie case calling for an investigation by CBI or other similar agency.

Whether directions for CBI enquiry at the given stage justified

36. The relevant background aspects of the matter as also the basis and reasons leading to the directions for preliminary enquiry by CBI in the order dated 16.06.2016 have already been noticed hereinbefore.

37. Evidently, the present one is not a case of any allegation of an offence and for enquiry by the investigating agency into the offence. The present one is essentially a civil case where the petitioner has stated grievance that despite having secured higher marks, he was not included in the merit list. The appellant-Commission has of course, produced the entire record before the Court and stated its explanation while admitting its error but while asserting that it was not a case of manipulation and has also indicated the corrective measures taken by it. Of course, while examining the material related with the recruitment process, the Court entertained certain doubts, however, until the stage of passing the impugned order by the learned Single Judge, neither anyone had alleged that any offence was committed nor the learned Single Judge came to even a prima facie conclusion that there had been manipulative dealings or there were efforts at interpolation of the record or falsification thereof, which may lead to an offence.

38. It appears that the learned Single Judge perused the material placed by the Commission and also noted that certain doubts were indicated by the learned counsel for the petitioner. However, as noticed by the learned Single Judge in the order dated 15.06.2016, the learned counsel for the petitioner, even while alleging manipulation in the viva voce score sheets, was not exactly in a position to clarify in the matter. The functionaries of the Commission were called in the Court and they were also unable to clarify. However, it is noticed that the queries raised before the Court were put in the form of so called "points emerging after inspection of the marks given in viva voce" by the learned counsel for the petitioner. Such queries were of the nature as indicated herein above like expert member indicating marks in pen and pencil; date below his signature being not given; the expert member not writing his name; use of eraser; three persons not putting their signatures on the score sheets; seal of MPSC being not on the score sheets etc. etc. It was also indicated that the marks as given by the expert member to Roll No.328 were different than those of the writ petitioner at Roll No.21 and further that the candidate of Roll No.328 was a Khasi candidate whereas, the writ petitioner was a Garo candidate. The writ petitioner also stated grievance that though he secured higher marks in written, he was allegedly put on lesser marks in the interview. The aforesaid so called points indicated by the learned counsel for the petitioner before the Writ Court, even if giving rise to

certain doubts, cannot be taken as conclusive nor the explanation stated elaborately by the appellants in their counter affidavit before the Writ Court could be ignored.

39. We would hasten to observe that after considering the question raised by the petitioner and answers given by the appellants in their counter affidavit, the Writ Court could have definitely formed an opinion or at least reached to a prima facie conclusion on contentious issues and thereafter, could have adopted the course as deemed fit. However, in the present case, it appears from the order impugned that the learned Single Judge, after referring to some of the doubts indicated by the learned counsel for the petitioner, straightaway ordered an enquiry by CBI while observing that such enquiry was considered necessary "to remove the doubts". With great respect, we are unable to endorse the direction as issued, particularly at the given stage and for want of necessary finding, as indicated by the Hon'ble Supreme Court in the cases referred herein-above. In other words, we are clearly of the view that in the present case, the Writ Court could not have taken recourse of the extraordinary measure of CBI enquiry only because certain doubts cropped up without coming to a specific conclusion that the material on record disclosed prima facie case calling for such an enquiry by CBI.

40. With great respect, we are clearly of view that a doubt or even multiple doubts cannot be the substitute for specific findings by the Court of a prima facie case. A doubt, unless translating into a finding by the Court remains a query alone; and in the process of determination of a civil case, a query alone is not sufficient to call for an enquiry by a third agency so as to state the so called "actual position" before the Court. Permitting any other agency to state the so called actual position would be akin to allowing such agency to intervene with the decision making process of the Court. Such a procedure, in our view, is not countenanced by law.

41. During the submissions in this matter, after having heard the learned counsel for the parties at length, we posed a direct question to learned senior counsel Mr. SP Mahanta, appearing for the respondent No.1/writ petitioner that although the report made by CBI is in the sealed cover and we have not permitted it to be opened and its contents are not known to the parties to this litigation or to us but, even if we assume that the report is in the negative i.e., that the CBI did not find any manipulation as alleged, whether that could be treated as decisive of the matter and would be conclusive of his writ petition; and, other way round, if the report is in the affirmative and suggest something of manipulation, whether that alone would be a substitute for adjudication and finding by the Court? Learned senior counsel, in all fairness and forthrightness submitted that the answer to this query cannot be in the affirmative. Learned senior counsel candidly submitted that the decision of the writ petition would ultimately depend on the adjudication by the Court and not on the report of CBI alone. In our view, this aspect clinches the entire issue.

42. In the process of adjudication, the Court is required to find the answers to

the contentious issues on the basis of material on record and the law applicable thereto. Of course, for the purpose of certain scientific investigation or alike matters, the Court do take the opinion of the experts but and however, even such an opinion remains merely an opinion and ultimately, the view has to be taken by the Court after its own appreciation of evidence. Of course, after a view is taken by the Court and a finding is reached (which may be a prima facie finding or a concluded finding) and therein, the Court finds something calling for an enquiry by an independent authority/agency, the matter could, of course, be handed over to such an authority/agency but not before.

43. As noticed, the subject-matter of this intra court appeal is limited to the validity of the order dated 16.06.2016 about CBI enquiry and else, the entire matter is open for adjudication in the writ petition. Hence, we do not propose to enter into the factual aspects sought to be suggested by the parties and the contentious issues sought to be raised thereupon. Suffice it to observe that for the present purpose that merely because certain doubts cropped up, the CBI could not have included in the process of adjudication by the Court.

44. Learned counsel for the petitioner has repeatedly underlined the observations made by the Hon''ble Supreme Court in Dharam Pal (supra) that a person should not be left to feel that he is an orphan under the law. We are unable to appreciate as to how the petitioner could entertain such a feeling at all? It had not been the case that the petitioner had lodged any criminal case and an enquiry/investigation was not being properly carried out. The writ petition is still pending for consideration. Of course, the petitioner raised certain questions but then, there are also answers given by the appellants in the counter affidavit. Ultimately, adjudication on the questions and final determination is within the jurisdiction of the Court. The matter being sub-judice and finding yet to be reached by the Court, there arise no occasion for the petitioner to harbour any feeling that his grievance is not being examined in accordance with law.

Conclusion :

45. For what has been observed hereinbefore, we are unable to endorse the process adopted in the writ petition by the learned Single Judge as such. However, for the subsequent events and factors, we do not propose to annul the enquiry that had already been undertaken. As observed hereinbefore, the report made by the CBI and the entire material is now in the sealed covers. We have not opened such covers nor find any necessity to do so in this appeal. In the given set of circumstances, we are of the view that interest of justice shall be served if the entire material with the record of the writ petition is placed before the learned Single Judge, who may examine such material as deemed necessary and take a considered decision in the matter in accordance with law.

46. Obviously, after returning final or at least prima facie finding on the contentious issues, the aspects relating to CBI report may also be examined by the learned Single Judge and appropriate decision thereupon could be taken in

accordance with law.

47. Having regard to the circumstances and for appropriate further proceeding in the writ petition, it is considered appropriate that the order dated 16.06.2016 and directions therein be treated to be in abeyance until specific finding is reached in the writ petition as indicated hereinbefore. As observed, after such finding, appropriate orders shall follow in accordance with law.

48. It is noticed that the writ petition was to be placed before the learned Single Judge after three months from 16.06.2016 but, has remained pending because of this appeal. Now, with the disposal of this appeal, the office is directed to place the entire record of the writ petition before the learned Single Judge; and the parties through their respective counsel shall stand at notice to appear before the learned Single Judge on 15.11.2016.

49. This Writ Appeal stands disposed of accordingly. No costs.