2021 INSC 147

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos 639-640 of 2021
@ SLP (C) Nos. 5785-5786 of 2020

Sachin Kumar & Ors. .... Appellants

Versus

Delhi Subordinate Service Selection Board (DSSSB) & Ors. .... Respondents

With

Civil Appeal Nos 643-644 of 2021
@ SLP (C) Nos. 5783-5784 of 2020

With

Civil Appeal Nos 641-642 of 2021
@SLP (C) Nos. 5370-5371 of 2020

With

Civil Appeal Nos 645-646 of 2021
@SLP (C) Nos. 8811-8812 of 2020

With

Civil Appeal Nos 649-650 of 2021
@SLP (C) Nos. 11443-11444 of 2020

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Civil Appeal Nos 647-648 of 2021
@SLP (C) Nos. 11441-11442 of 2020

With

Civil Appeal No 651 of 2021
@ SLP (C) No. 11940 of 2020

With

Civil Appeal Nos 653-654 of 2021
@ SLP (C) Nos. 12410-12411 of 2020

With

Civil Appeal Nos 652 of 2021
@SLP (C) No. 12066 of 2020

With

Civil Appeal Nos 655-656 of 2021
@SLP (C) Nos. 15297-15298 of 2020

With

Civil Appeal Nos 657-658 of 2021
@SLP (C) Nos. 15299-15300 of 2020

And With

Civil Appeal Nos 659-660 of 2021
@SLP (C) Nos. 110-111 of 2021

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

This judgment has been divided into the following sections:

A Broad contours of the litigation

B Factual background

C Proceedings before the Tribunal

D Proceedings before the Delhi High Court

E Submissions

F The position in law

G The present case

A Broad contours of the litigation

1 Leave granted.

2 This judgment visits a familiar conundrum in service jurisprudence. The constitutional values which undergird Articles 14 and 16 mandate that selection processes conducted by public authorities to make recruitments have to be fair, transparent and accountable. All too often, human fallibility and foibles intrude into the selection processes. Selection involves intense competition and there is no dearth of individuals who try and bend the rules to gain an unfair leap in the race. Irregularities in the process give rise to misgivings over whether the process has denied equal access to all persons. The sanctity of the selection process comes under a cloud. The detection of individual wrongdoing by candidates may result in action being taken to exclude those whose credentials or performance is tainted. But when the entire process is tainted, the authority in charge of conducting it may decide to cancel the selection as a whole. Judicial review is then invoked to challenge the decision to cancel the entire process. The guiding principles have evolved over the past five decades as new challenges emerged and novel attempts to suborn the legitimacy of recruitment processes have come to the fore. The Delhi High Court in the present case upheld the view of the Central Administrative Tribunal **("Tribunal")** that the cancellation of the entire process was invalid but it confined the relief to six candidates who had moved the proceedings before the Tribunal in the first instance. Like other cases of its genre, this batch of appeals calls the court to balance two competing considerations : the need to preserve public

confidence in and the sanctity of selection to public posts and the requirement of observing fairness to candidates who invest time and resources in attempting to clear through a selection. Both these considerations have a constitutional foundation going beyond service and administrative law principles. The issue has travelled to the court for resolution and the path ahead requires us to revisit and evolve the law on the subject.

3 This batch of twelve appeals arises from a judgment of a Division Bench of the High Court of Delhi dated 13 January 2020. Two petitions under Article 226 of the Constitution were instituted by the Delhi Subordinate Services Selection Board (**"DSSSB"**) in order to question the legality of the orders of the Tribunal dated 1 February 2017 and 27 February 2017. The Tribunal annulled the decision of the Government of the National Capital Territory of Delhi (**"GNCTD"**) to cancel the recruitment process conducted for appointments to the post of Head Clerk [(Grade 2) (DASS)] in the GNCTD. As a consequence, the Tribunal directed the DSSSB to conclude the selection process for which the Tier-I and Tier-II examinations had been conducted. The proceedings before the Tribunal in two OAs[1] were instituted by a total of six applicants, three in each of the OAs. The Tribunal's decision entails that the benefit of its order setting aside the recruitment process would enure not only to the six applicants who had moved it but to others as well though they had not challenged the cancellation of the recruitment process. The High Court by its judgment held that

[1] OA No. 3941 of 2015 and OA No.1578 of 2016

(i) The orders of the Tribunal dated 1 February 2017 and 27 February 2017 setting aside the cancellation of the recruitment process were in accord with the legal position;

(ii) The relief would stand confined to the six applicants who had moved the Tribunal; and

(iii) Each of the six applicants, who were Respondents before the High Court would need to take the Tier-II examination afresh within a stipulated period and the appointment process would be taken to its logical conclusion for them.

4 The batch of SLPs which arises from the judgment of the High Court can, for convenience of exposition, be bifurcated into three categories :

(i) GNCTD and DSSSB challenged the decision of the High Court affirming the orders of the Tribunal which had set aside the annulment of the recruitment process;

(ii) The six candidates who succeeded before the Tribunal and the High Court in regard to the setting aside of the decision to cancel the recruitment process are aggrieved by the direction of the High Court requiring them to appear in the Tier-II examination afresh; and

(iii) Candidates who had not challenged the annulment of the recruitment process before the Tribunal but were the beneficiaries of the decision of the Tribunal to set aside the cancellation of the recruitment process are

aggrieved by the grant of relief by the High Court only to the six candidates who had moved OAs before the Tribunal.

5 Category (iii) noted above consists in turn of the following :

(i) persons whose intervention applications before the High Court were dismissed during the pendency of the proceedings *inter alia* by an order dated 15 December 2017; and

(ii) persons who had neither moved the Tribunal in the first instance nor had attempted intervention in the High Court but have filed Special Leave Petitions under Article 136 of the Constitution before this Court.

6 Having set out the broad contours of the path which the litigation has followed, it is necessary now to turn to the specifics.

B Factual background

7 On 26 December 2009, DSSSB issued an advertisement[2] inviting applications for various posts among them being the post of [(Grade 2 (DASS)]/Head Clerk (post code 90/09) for a total of 231 vacancies in Services Department – II, GNCTD. 62,056 applications were received, and 61,179 were found eligible. The scheme of the examination comprised of :

[2] Advertisement No.004/2009

(i) Tier-I – a preliminary examination for shortlisting candidates for the main examination. This was an objective type test carrying 200 marks and for a duration of 2.5 hours; and

(ii) Tier-II – the main examination which was of a descriptive type carrying 200 marks for a duration of 2.5 hours.

8 The Tier-I examination was conducted by DSSSB on 29 June 2014. 8,224 candidates appeared at the Tier-I examination. Notably 4,712 candidates (approximately 55 per cent) were drawn from 22 pin codes of Delhi as against a total of 609 pin codes.

9 Between 14 October 2014 and 27 March 2015, complaints were received by the DSSSB as to serious irregularities in the conduct of Tier-I examination alleging:

(i) leakage of question papers;

(ii) mass cheating;

(iii) allotment of common examination centres and rooms to members of the same family; and

(iv) impersonation of candidates.

10 The results of the Tier-I examination were declared on 21 October 2014 and 2,415 candidates were shortlisted. The Tier-II examination was conducted on 29 March 2015 and its results were declared on 15 July 2015.

First Committee

11 Between 30 July 2015 and 1 February 2016, several complaints were received in regard to alleged irregularities in the conduct of both the Tier-I and Tier-II examinations. The Deputy Chief Minister of Delhi constituted a committee on 22 August 2015 consisting of the Director (Vigilance) and District Magistrate (East) to enquire into the complaints regarding irregularities in the conduct of the Tier-I and Tier-II examinations. The Committee, in its report dated 10 September 2015 and 18 September 2015, arrived at the *prima facie* conclusion that there were serious irregularities, including cheating and impersonation both in the course of the Tier-I screening examination and Tier-II main examination. The Committee opined that the examination should have been cancelled at the stage of declaring the Tier-I result and the matter should be referred to the Economic Offences Wing / Crime Branch of Delhi Police for a thorough investigation. The salient findings of the Committee are extracted below:

> "35. On preliminary investigation of the case, based on some documents/information received from DSSSB and inputs given by the complainant, prima facie it appears that huge irregularities have been committed in Tier-I and Tier-II Examination. Randomization is a basis component of any competitive examination for selecting suitable candidates. However, in the instant case whether randomization of the application in Tier-I &Tier-II have been done or not, the outcome of basic investigation is that so many cases emerged .where two or more members of a single family sat in the examination one after the other (consecutively) and they are also coming under zone of probable selection, this defeat [defeats] purpose of fair practice of recruitment procedure.

> 36. Besides, the complainant in their complaint time and again levelled allegation that majority of candidates coming under zone of selection appears having definite geographical reason [region]. This has been verified from the available documents provided by DSSSB and found prima facie substantiated.
>
> 37. Occurrence of similar malpractices in the previous exams conducted by DSSSB may also not be ruled out.
>
> 38. The documents required in the matter are of voluminous nature and each document needs full attention and thorough investigation accordingly for which huge man-powers [man-power] is required. The thorough investigation will require approaching doubtful candidates, their interrogation, trapping of culprits, linking various clues etc. Only CBI or Crime branch can deal with this [these] kind of cases as they have proper manpower, investigation techniques, police powers for investigation and enormous experience in cracking such cases."

Based on the preliminary findings of the first Committee, a questionnaire was prepared by the Directorate of Vigilance and was addressed to the Chairperson of DSSSB on 24 September 2015 for his comments. The questions which were posed included the following:

> "(i) What was the reason for the delay of nearly 5 years in holding the Tier-I Exam?
>
> (ii) Was there scrutiny of the applications to ascertain the eligibility of candidates in terms of the Recruitment Rules ('RRs')? Who were the Officers/officials engaged in that exercise'?
>
> (iii) Since a number of candidates did not have easy access to internet facility, were admit cards sent to all eligible candidates through speed post as well? Who was the officer who had taken the decision to inform the candidates by e-mail/online?

(iv) Was there a randomization of roll numbers of candidates for the Tier-I and Tier-II exams and if not, what were the reasons for the same? Who were the officers/officials responsible for the failure to conduct randomization?

(v) What are the names and designations of officers responsible for allocation of exam centres to candidates and for deployment of Chief Invigilators, Observers and Assistant Observers at such exam centres? The names of the offices involved in the process of finalising the papers. What was the procedure /policy for setting papers and who was the competent authority for that purpose?

(vi) What is the procedure/policy for selecting printing process for printing the question papers? What are the names of the officers involved in its supervision'?

(vii) What is the procedure for getting printed papers in 'the premises and in whose custody they remained?

(viii) What is the action taken by the DSSSB on the complaints in relation to the conduct of Tier-I exam, on the allegations of impersonation, cheating and leakage of exam papers prior to conducting the Tier-II exam? What action was taken against the specific officials who were named in complaints?

(ix) Whether there was any mal-functioning of the jammer and videography at the Shakarpur Exam Centre and what action was taken by the DSSSB against such officials?"

12 On 1 October 2015, DSSSB provided its comments stating that

(i) No record was available to explain why the examination for which an advertisement was issued in 2009 was not conducted until 2014. By 2013 over 25,000 vacancies had to be filled and DSSSB has been conducting regular examinations to clear the backlog;

(ii) On 1 June 2013, a meeting was convened by DSSSB to discuss sending physical admit cards by post. Following the example of UPSC and the Railway Board, a decision was taken to issue e-admit cards which could be downloaded by candidates from anywhere and wide publicity was given of the procedure in the newspaper apart from the DSSSB website. The recourse to e-admit cards was taken because of the considerable delay since the issuance of the advertisement in 2009, having regard to the fact that there could be changes of addresses, postal delays and difficulties in issuing duplicate cards in the event of loss or damage;

(iii) For the Tier-II examination, randomisation was done. Before 28 June 2015, no software was available for randomisation. However, by way of abundant precaution, in view of the complaints which had been received, a manual reshuffling of the sitting arrangements for candidates fetching the highest marks was done so as to ensure the maintenance of adequate distance. The roll numbers of candidates against whom some complaints were received were highlighted in the sitting plan for all invigilators. Moreover, the question papers were printed in four series as a result of which candidates sitting in proximity would not necessarily have the same question paper. There was, in any event, a natural randomization on account of absentees and failed candidates;

(iv) There was no substance in the allegation of impersonation since invigilators at the examination centres were required to determine the

identity of each candidate on the basis of details, photographs in the attendance sheet and admit card of each candidate;

(v) There was no mal-functioning of the jammers and videography; and

(vi) DSSSB did not carry out any scrutiny of the eligibility of candidates at the initial stage and this was done only for candidates who were able to finally get through the selection procedure.

13 The response to the questionnaire was placed before the first Committee which submitted a detailed report dated 12 October 2015. The principal findings in the report of the Committee were:

(i) There was no justification for the delay of five years in conducting the Tier-I examination after the issuance of the advertisement;

(ii) The advertisement did not stipulate that admit cards would be issued in the electronic form. Failure to send admit cards through speed post to each of the applicants resulted in a sharp decline in the number of candidates who appeared for the Tier-I examination;

(iii) DSSSB had either not commented upon or had given vague responses to the allegations of serious irregularities. This included instance of candidates who had scored above 150 marks out of a total of 200 marks in the Tier-I examination but received few marks in the Tier-II objective paper.

(iv) If randomisation had indeed taken place in the Tier-II examination, this did not explain how members of the same family or close relatives sat in the same examination room;

(v) The allegations of complaints regarding impersonation and the connivance of middle-men and government staff together with the candidates appeared to be correct. For 12 candidates, the *prima facie* findings of impersonation on account of the failure of their signatures on the admit cards to match the signatures in the attendance sheets appeared to be correct; and

(vi) By allowing candidates to appear without a scrutiny of qualifications, DSSSB had failed to carry out a proper scrutiny, thereby allowing unfit candidates to obtain undue benefits.

14 On 19 October 2015, the Secretary (Vigilance) submitted his opinion pointing out the irregularities which were committed by DSSSB in the conduct of the examination. The relevant extract from the opinion reads as follows:

> "64. [...] i) There is a huge difference between number of applications received i.e. 62056 and number of candidates appeared in Tier-I exam i.e. 8224, indicating that proper information regarding exam was not given to the candidates. This has also been supported by the fact that even after the in-ordinate delay of about 5 years, the admit cards were not sent to all eligible candidates through speed post. The DSSSB issued admit cards through electronic mode which was not mentioned in the advertisement for the post. Furthermore, a number of candidates, particularly residing in small towns and villages, might not have easy access to internet facility.

> ii) Some candidates got marks above 150 in Tier-I exam out of 200 marks but got very few marks, even zero, in Tier-II exam.
>
> iii) Although the Board has claimed that randomization of candidates was done, in a number of cases the family members/close relatives sat in the same rooms one after another, in some cases in both Tier-I and Tier-II exams, which does not appear to be plausible.
>
> iv) In some cases, the signatures of candidates on admit cards and attendance sheets do not match. Besides it, in some cases, blurred/manipulated thumb impressions were obtained in the attendance sheets. This shows that impersonation in the exam cannot be ruled out.
>
> v) The Board also allowed some candidates, not having the prescribed essential qualification, to appear in the exam.
>
> 65. Keeping in view the above irregularities, prima-facie, the entire process for recruitment for the post of Grade-II(DASS) appears to be vitiated. Hon'ble Dy. Chief Minister may take a view in the matter."

15 The report of the Committee was placed by the Secretary (Vigilance) before the Deputy Chief Minister on 19 October 2015 following which on 20 October 2015 comments were called from the DSSSB. By its letter dated 9 November 2015, DSSSB informed the office of the Deputy Chief Minister that consequent to a special Board meeting on 5 November 2015, a summary of comments was approved, reading thus:

> "20. By its letter dated 9th November, 2015, DSSSB informed the office of the Deputy CM that a special board meeting of the DSSSB had been held on 5th November, 2015. Enclosed with the said letter was a summary of the comments of the DSSSB, which were approved in the special board meeting. The comments are as under:

(i) The delay was due to certain administrative constrains [constraints] as highlighted in the correspondence with the Services department as well as due to accumulation of huge pendency during this period.

(ii) The decision was taken in the Board meeting in line of similar practices by most major recruiting bodies in view of massive administrative issues arising out of previous system of physical admit cards.

(iii) Difference in score of different exams is quite plausible in view of different level of difficulty, gap between the exams and exam day preparation of the candidate. Similar phenomenon with other examining bodies like SSC is highlighted.

(iv) No case of any deliberate attempt to impede the extra ordinary measures like videography and mobile jammers is made out.

(v) Answer keys are not available in the Board till the completion of exam process. It would be absurd to question the integrity of senior officers of the Delhi govt. who are deployed as Flying squad members.

(vi) Clarification regarding eligibility of various educational qualifications was provided by the Services department which also happens to be the user department in this case.

(vii) Shri Praveen Malik, presented with genuine looking admit card at the centre which did not match with the records present. However, as detailed verification was not possible at the instant, he was allowed with an undertaking to the effect. After his candidature was rejected by the Board, he appeared for Tier- II exam through a court order, the matter is sub judice.

(viii) The Board had already decided to verify the hand writing, signatures and thumb impression of all the candidates in the consideration zone and had completed the proceedings for 12 candidates against whom specific complaint was received."

Consequent on the above exercise, the Deputy Chief Minister issued the following order on 23/28 December 2015:

> "On the basis of recommendations of the DSSSB on the alleged irregularities in the exam conducted for the post of Grade-II DASS) post code 90/09, it is hereby directed that all the candidates who are in consideration zone may be scrutinized by DSSSB to check impersonation before the decision of the Board regarding declaration of the result. The candidates, in the zone of consideration, who fail to attend the process of verification of impressions, should be disqualified from this exam.
>
> FIR should be lodged against any imperson4tor [impersonator] found during this exercise. Disciplinary proceedings may be initiated against concerned Superintendents of the Examination Centres who are responsible to ensure that the invigilators obtain the thumb impression of the candidates in the respective attendance sheets.
>
> DSSSB shall complete this exercise within a month."

Second Committee

16 On 14 January 2016, a committee consisting of four members was constituted by DSSSB "to check the credentials of all the candidates falling in the zone of consideration in the merit list, for Gr.II/DASS (post code 90/09) for checking of the candidate and the authenticity of his/her candidature".

17 Between 1 February and 12 February 2016 and on 26 February 2016, a team of DSSSB officers along with officers of the Forensic Science Laboratory (FSL) and Department of Vigilance (DoV) carried out the process of verification in order to

check impersonation of 290 candidates falling in the zone of consideration. An agency dealing with the biometric identification was also involved in the process for checking the thumb-impressions of the candidates. The process of verification involved:

> "1 Proof of Identity
> 2 Two recent passport size photographs
> 3 DOB Proof.
> 4 Original documents/certificate/marksheets regarding their qualification.
> 5 Caste/sports certificates if any."

The Committee noted that:

> "During the process of verification out of the 290 candidates called as per schedule from 1st February to 12th February only 270 candidates remained present. The remaining 20 candidates were given another opportunity to remain present on 26th February out of which on [sic only] 11 candidates remained present. Besides service of notices the notice of calling remaining 20 candidates was also uploaded on the website and published in prominent newspapers."

The observations of the Committee are as follows:

> "1 Document verification of the present candidates was completed by the identified DSSSB officials along with the Vigilance Department officials. No irregularity was found in the documents of the 281 present candidates.
>
> 2 In regard to 02 candidates (Sh Dinesh Kumar Roll No 90003227 Sh Kishan Kumar Roll No 900057546) all the 6 available thumb impression records with DSSSB were found unfit for match with the live prints captured at the time of verification (Annexure VII).
>
> 3 For 01 candidates (Sh Yogesh Kumar Roll No 90030785) the live print did not match with the Tier II records but was found matching with Tier I records and application

form (Annexure VIII). In the FSL reports suspicious [sic suspicions] in writing & signature are observed.

4 During verification it was disclosed by 02 candidates (Sh Deepak Mann Roll No 90038154 and Sh Amit Khatri Roll No 90041220) that they had been imprisoned in the past for their involvement in the paper leak/cheating cases in the UPSC exam and SSC exam respectively. Sh Deepak Mann was employed in Delhi Police till 2010 as Sub Inspector subsequently he resigned. Sh Amit Khatri is employed in Income Tax Department at Mumbai and is currently under suspension.

5 While examining the records of all the 09 absentee candidates it was noticed that Shri Subhash Singh (Roll No 90010887) being earlier called for similar process on 14 August 2015 has a handwritten passage on the FSL experts found it doubtful and wish to re-examine the sample in greater details. The thumb impression were found unfit for match.

6 In the Biometric verification report of Shri Vikas (Roll No 90056139) it is mentioned that Application form fingerprint does not match with Tier I and Tier II fingerprints. Tier I and Tier II fingerprint does not match with each other. And the report of another candidate Shri Subhash Singh (Roll No 90010887) No opinion can be given as Tier I and Tier II fingerprints are unfit for matching. Only fingerprint on application form is partially matchable but no reference fingerprint is available for matching. Both the candidates were absent for verification.

7 Photograph of a candidate Sh Praveen Dabas (Roll No 90020057) was not available in the application form. Attendance Sheet of Tier I and Tier II.

8 Significant numbers of candidates were found already working in various Govt. departments like Delhi Police Central Govt. ministries MCD etc."

18 Before the Department could conclude its on-going verification process, FIR 05/2016 dated 18 January 2016 was registered at PS- Anti Corruption Branch, Delhi under Section 13(1)(d) of the Prevention of Corruption Act 1988 read with Section

120B of the Indian Penal Code. A team of ACB officers seized the original file on 19 February 2016. Certified copies of the dossiers comprising of application forms, OMR sheets of Tier-I and Tier-II, attendance sheets of Tier-I and Tier-II in respect of 290 candidates under consideration were subsequently seized on 26 February 2016. The report of the second Committee was placed before the Deputy Chief Minister. In his note dated 2 March 2016, the Deputy Chief Minister recorded thus:

> "74 This has reference to the examination conducted for the post of Gr II (DASS) post code 90/09 by DSSSB. Consequent upon several complaints received by the Government about the irregularities in the examination process the matter was referred to the Directorate of Vigilance to conduct an inquiry into the allegations.
>
> 75 On receipt of interim report of the Directorate of Vigilance I directed DSSSB to check alleged cases of impersonation before any decision is taken by the Board regarding declaration [sic] is taken by the Board regarding declaration of the result. I also directed that the candidates in the zone of consideration who failed to attend the process of verification of impersonation should be disqualified from this examination and FIR should be lodged against any impersonator found during the said exercise by DSSSB.
>
> 76 I further directed DSSSB to initiate disciplinary proceedings against concerned Superintendents of the Examination Centres who were responsible for ensuring that the invigilators obtained the thumb impression of the candidates in the respective attendance sheets. The verification process was to be carried out by DSSSB under the overall supervision of the Directorate of Vigilance.
>
> 77 It has been reported by DSSSB that out of 2 90 candidates in the zone of consideration, 9 candidates did not report for verification and serious lacuana [lacunae] were found against 7 candidates which inter alia include thumb impression unfit for match with the live prints; suspicious [suspicions] in writing and signature; unmatched thumb impression of candidates in Tier I and Tier II exam;

> photograph of a candidate not available in the application form and police records of two candidates in similar cases.
>
> 78 It is pertinent to note that verification has been carried out only in respect of candidates who are in the zone of consideration and the report of Directorate of Vigilance and DSSSB clearly indicate that the examination process has been vitiated. There are far serious complaints about the conduct of Tier I examination for the same post code.
>
> 79 The Government has zero tolerance towards corruption and officials who may join Government through improper examination are just not acceptable. Therefore it is recommended to cancel the examination conducted by DSSSB for the post code 90/09 and hold the examination afresh. In the interest of justice all the affected candidates who are found eligible to take part in the above examination may be provided suitable age relaxation for the new examination.
>
> 80 May like to approve."

19 Following the recommendation of the Deputy Chief Minister, a notification was issued on 15 March 2016 for the cancellation of the selection process.

C Proceedings before the Tribunal

20 Initially, OA 3941/2015 was filed before the Tribunal by three candidates aggrieved by the failure of DSSSB and GNCTD to act on their representation dated 3 September, 2015. In their representation, these candidates had contended that allegations as to irregularities were made by unsuccessful candidates hoping to get another chance to write the examination. OA 1587/2016 was filed by three other

candidates subsequent to the issuance of the order of cancellation of the recruitment process dated 15 March 2016.

21 The Tribunal by its decision dated 1 February 2017, allowed OA 3941/2015. The principal findings of the Tribunal were thus:

(i) The cancellation of the selection process should only be as a matter of last resort and not on the basis of vague allegations made by unsuccessful candidates;

(ii) An effort should be made to separate the tainted from the untainted candidates and the selection process should be cancelled only where it is impossible to do so;

(iii) In order to vitiate the entire process, the irregularities should be of such a nature as to make it impossible to segregate meritorious candidates from the rest; and

(iv) The cancellation of the entire examination without carrying out such an exercise would be arbitrary and unjustified even though successful candidates do not have an indefeasible right to be appointed.

22 On the above premises, the Tribunal observed that the second Committee had examined the details of candidates who were likely to figure in the merit list and found that 281 candidates “were free from blame”. The status report by the ACB showed that the investigation was confined to only such candidates whose conduct was found to be suspect by the second Committee. 281 candidates did not form a part of the ACB investigation and cancelling their candidature would be arbitrary and

unjustified. The Tribunal accordingly set aside the order dated 15 March 2016 cancelling the selection process clarifying that the appointments to be offered to the successful candidates would be subject to the ACB investigation. In its subsequent order dated 27 February 2017, the Tribunal in OA 1578/2016 followed its earlier order and issued the same direction.

D Proceedings before the Delhi High Court

23 The judgment of the Tribunal was questioned before the Delhi High Court in writ petitions instituted by DSSSB and GNCTD under Article 226 of the Constitution. During the pendency of the petitions, intervention applications were moved before the High Court by candidates who had not instituted proceedings before the Tribunal. The candidates seeking intervention before the High Court claimed to be successful in the examination and submitted that they would be adversely affected if the High Court were to allow the petitions and upheld the cancellation of the recruitment process as ordered on 15 March 2016. The High Court dismissed the applications for intervention and one of its orders in that regard dated 15 December 2017 reads as follows:

> "**CM Nos. 34652/2017 & 43985/2017 (by the interventionist under Order I Rule 10 CPC)**
> 1. The present applications have been filed by the applicants seeking impleadment in the petition on the ground that they were declared as successful candidates in the examination held by the petitioners in respect of advertisement No.004/2d09 for post code No.90/09.
>
> 2. Learned counsel for the applicant submits that under the impugned judgment dated 01.02.2017 the OA filed by the

> respondents raising a grievance that after completion of the entire exercise for filling up the subject post, the DSSSB had not issued the select list as per the merit of the examination and had instead cancelled the entire selection process, was allowed by the Tribunal. While allowing the said OA, the Tribunal had quashed the order dated 15.03.2016 passed by the petitioners herein cancelling the entire examination and had directed DSSSB to finalise the selection process for Grade-II (DASS), post code 90/09 on the basis of the tier-I and tier-II examinations as held on 29.06.2014 and 29.03.2015.
>
> 3. Learned counsel for the applicants state that since they were successful in the aforesaid examination, any decision in the present case challenging the direction to finalise the selection process pertaining to the aforesaid examination, is likely to affect them adversely.
>
> 4. In our view, there is no justification for impleading the applicants in the present petition particularly when, the cause of action, if any, had accrued in their favour on 15.03.2016, when the petitioners/DSSSB had proceeded to cancel the entire examination, which action was admittedly, never challenged by them by filing a petition. Nor had they sought impleadment in the OA filed by the respondents.
>
> 5. In such circumstances, we do not see any reason to allow the present applications which are dismissed as devoid of merits."

24 By its judgment dated 13 January 2020, the Division Bench observed that:

(i) The 286 vacancies for which the advisement in question was issued remain unfilled and there were vacancies against which the six candidates who had moved the Tribunal for appointment could be accommodated;

(ii) The scope of the orders of the Tribunal would be confined to the six applicants before it and the scope of the proceedings would not extend beyond them;

(iii) In the present case, through a detailed enquiry which was conducted by the two committees, it had been possible to determine that at least in respect of 281 candidates that there was no evidence of the use of unfair means;

(iv) An elaborate enquiry had been undertaken by GNCTD and DSSSB as a consequence of which there was no difficulty in separating the untainted candidates, namely the six applicants before the Tribunal, from the tainted ones; and

(v) DSSSB and GNCTD were unable to demonstrate that any of the six applicants who had moved the Tribunal had indulged in malpractices.

25 In view of the above premises, the High Court:

(i) affirmed the decision of the Tribunal dated 1 February 2017 as being consistent with the precedents of this Court;

(ii) held that there was no reason to disturb the orders of the Tribunal dated 1 February 2017 and 27 February 2017, though confined to the six candidates who had moved the Tribunal; and

(iv) held that each of the said six candidates who were respondents before the High Court, would have to appear at the Tier-II examination to be conducted by DSSSB within two months and those among them who qualified would be issued letters of appointment subject to verification of documents. The directions of the High Court were made “subject to any

subsequent development in the form of the on-going investigation by the ACB".

E Submissions

26 Ms Madhavi Divan, learned Additional Solicitor General urged the following submissions on behalf of the DSSSB and GNCTD:

(i) The entire recruitment process was found to be tainted by fraud as a consequence of which it became impossible to disentangle the tainted from the untainted candidates. This resulted ultimately in the cancellation of the entire process as it was found to be beyond redemption;

(ii) Subsequent to the cancellation of the recruitment process, many of the candidates comprised in the larger group of 281 participated in the subsequent recruitment processes, appearing for the examinations held in 2017 and 2020:

- In the 2017 recruitment examination, 133 out of 281 candidates participated out of which 13 were selected.
- In the recruitment process for 2020, 87 out of 281 persons participated of which 3 were short-listed;

(iii) An extensive process was carried out in the present case involving the

(a) Initial report of the first Committee;

(b) The report of the first Committee; and

(c) The report of the second Committee.

(iv) The above exercise resulted in findings demonstrating that the recruitment process stood entirely vitiated for the following reasons:

(a) Admit cards were not provided to all the applicants as a result of which only 8,000 candidates appeared for the Tier-I examination from amongst 62,000 applications;

(b) The delay of five years between the date of the advertisement and the holding of the Tier-I examination coupled with the failure to ensure the due distribution of admit cards to all the applicants resulted in a situation where equal access was denied to all prospective candidates;

(c) The geographical coverage of candidates has been found to be extremely limited: out of all the 8,224 candidates who appeared in the Tier-I examination, 4,712 candidates representing approximately 55 per cent were confined to only 22 pin codes from Delhi as against a total of 609 pin codes from which candidates had applied;

(d) The Tier-I examination results indicated that there were candidates who secured extremely high marks but who had either failed to appear or received low marks in the ensuing Tier-II examination. There is a reasonable basis to presume that these candidates were not *bona fide* and the effort had been to ensure that the field of competition was substantially narrowed

for those who would ultimately appear and clear the Tier-II examination;

(e) The process of randomisation was manipulated as a result of which persons belonging to the same family or close relatives were assigned the same examination centre and sat for the Tier-I examination in the same examination room;

(f) The education qualifications of the candidates were not verified; and

(g) There were serious doubts in regard to whether the arrangements for installing jammers and for video-graphing the process were at all functional.

(v) The first Committee in its report came to the conclusion that there was a much larger impersonation;

(vi) The decision which was taken by the Deputy Chief Minister after the receipt of the report of the first Committee on 23 December 2015 to constitute a Committee for verifying the impersonation amongst candidates who were falling in the zone of selection did not amount to a closure of the findings which were arrived at by the first Committee on broader issues pertaining to the sanctity of the process. The second Committee had a limited mandate of examining whether any of the candidates who were in the zone of selection after the Tier-II examination were guilty of impersonation. Just because the second Committee exonerated a large number of candidates under its consideration for

impersonation cannot be construed as them being given a clean chit overall. After the report of the second Committee, a final decision was still to be taken when it was concluded ultimately that in view of the large-scale fraud, the entire process should be scrapped;

(vii) At the point of time when the second Committee was appointed for the purpose of verifying impersonation amongst candidates in the zone of selection, the government had not yet finally applied its mind to the report of the first Committee. Ultimately when the Government applied its mind to the report of the first Committee and the report of the Director (Vigilance), a decision was taken to cancel the entire process. This was legitimate because as on 23 December 2015, no final decision had been taken on the report of the first Committee;

(viii) All the 281 candidates who were verified for impersonation by the second Committee cannot be regarded as untainted;

(ix) Many of them may well be untainted but all the other factors have to be read cumulatively. When the examination process has been deprived of its sanctity it was justifiably decided to cancel it in its entirety. This decision was consistent with precedents of this Court which are an authority for the proposition that, when the examination process is beset with systemic flaws, the process as a whole stands vitiated, and it would be wrong to insist that each individual instance of wrongdoing be challenged and addressed.

(x) In other words, the fact that some amongst the candidates may be untainted would not negate the decision of the Government to scrap the process when the entire examination has been found to suffer from serious irregularities; and

(xi) In any event, having regard to the fact that the ultimate decision of the Deputy Chief Minister envisaged the grant of age relaxation, all the candidates were free to appear in the subsequent recruitment process. As a matter of fact, a large number of them have appeared in subsequent examinations. Consequently the grant of relief by the Tribunal was clearly not justified. The Tribunal failed to apply its mind to the deficiencies which were noticed in the Tier-I examination, and this error has affected the judgment of the High Court as well.

27 Mr P S Patwalia, learned Senior Counsel led the submissions on behalf of the candidates. The following submissions have been urged:

(i) The enquiry which was initiated by DSSSB was on the basis of complaints, which in all probability were at the behest of disgruntled candidates who had not succeeded in the examinations;

(ii) The record would indicate that there was no investigation into the authenticity of the complaints; and

(iii) The recruitment process had been cancelled on the basis of surmises.

28 Elaborating on his submissions, Mr Patwalia urged that on 9 November 2015 DSSSB submitted a comprehensive and detailed note containing its comments to the Deputy Chief Minister. The note was signed and endorsed by three IAS Officers who formed a board, apart from whom there were ten other officers. The submission is that on every aspect which was raised in the first and the second enquiry committee reports, a detailed clarification was submitted by DSSSB with supporting reasons establishing that there was no irregularity in the conduct of the examinations. In particular, the following features were emphasized by Mr Patwalia:

(i) DSSSB clarified that on 5 June 2013, it had resolved that admit cards for the recruitment examinations conducted by it would be issued in the electronic form. In the present case, since the advertisement had been issued in 2009, there would have been changes in the addresses of the applicants. The decision was advertised in six newspapers, hence candidates were aware of the fact that admit cards would be provided in the electronic form and as a matter of fact the notification for the Tier-I examination contained information on e- Admit Cards. No candidate complained about the switch from hard copy admit cards to soft copy ones. If this were a genuine concern, grievances would have been appropriately raised;

(ii) The randomization could not be adopted at the relevant time due to the absence of software. But in the course of the examinations sufficient measures were taken to ensure that unfair means would not be adopted. The question papers were printed in four series of booklets which provided

an adequate guarantee against the use of unfair means by candidates who were sitting in close proximity. Alteration of sitting arrangements was made;

(iii) No examination is completely taint-free. Complaints as to the process were made by anonymous sources which does not inspire confidence. On the suspicious geographic concentration of successful candidates, the same thing could be said about examinations such as the UPSC examination. This cannot be a valid basis to call the robustness of the process into question; and

(iv) Adequate provisions were made for conducting videography.

29 In the above backdrop, it has been submitted that based on the recommendations of DSSSB, the Deputy Chief Minister took a decision on 23 December 2015 to constitute a committee for verifying whether candidates in the zone of selection were guilty of impersonation. This in fact was the course of action which was taken by the Deputy Chief Minister because DSSSB has itself clarified in its comments that it was in the process of conducting a verification on the issue of impersonation. Eventually, after carrying out a detailed exercise, the report of the second Committee found that 281 candidates were free of taint. Once, the Deputy Chief Minister had, upon receiving the comments of DSSSB, confined the enquiry to whether there was any impersonation by candidates within the zone of selection, this was the only issue which remained to be resolved. Upon the report of the second Committee, it was found that 281 candidates were free of taint. Adverting to

the reasons adduced by the Tribunal and confirmed by the High Court, it was highlighted that

(i) The ACB investigation was confined to only those candidates whose conduct was suspected;

(ii) The status report of the ACB indicated that 281 candidates did not form part of the investigation; and

(iii) As a result of the exercise conducted by the second Committee, it was possible to identify and separate tainted from untainted candidates.

30 In the above backdrop, Mr PS Patwalia, learned Senior Counsel urged that the decision of the Tribunal to set aside the cancellation of the selection process is eminently fair and proper. Moreover, it was urged that the six candidates who had approached the Tribunal and to whom relief has been confined by the High Court need not be required to appear at the Tier-II examinations once the cancellation of the results has been set aside. As regards candidates who had not moved the Tribunal, it was urged that the benefit of the order setting aside the cancellation of the recruitment process must enure to all candidates among the group of 281 persons who have been found to be free of taint.

31 Mr Chandra Shekhar, learned Counsel appeared on behalf of the candidates who had intervened before the High Court and whose interventions were rejected by the order dated 15 December 2017. Mr Ritin Rai, learned Senior Counsel elaborated upon the fact that DSSSB had in its recommendation indicated that there was no

systematic flaw or irregularity in the recruitment process. The Deputy Chief Minister, it was urged, had accepted the recommendations of DSSSB on 23 December 2015. Hence, once the issue of impersonation was investigated and sorted out through the report of the second Committee, it became possible to segregate the tainted candidates from candidates against whom no taint was found. Learned Counsel submitted that even those candidates who had not moved the Tribunal should be entitled to the benefit of its decision. It was urged that since the Tribunal had set aside the entire decision to cancel the recruitment process, there was no occasion for the candidates to file writ petitions before the High Court. The common issue which arose both before the Tribunal and the High Court was in regard to the sanctity of the examination process. Once it was found that the Tier-I and Tier-II examinations did not suffer from irregularity, all candidates forming a part of the 281 persons who have been verified by the report of the second Committee would be entitled to the benefit of the order of the High Court, and the High Court erred in confining the benefit of its order only to six candidates.

32 The rival submissions now would need to be analyzed.

F The position in law

33 In deciding this batch of SLPs, we need not re-invent the wheel. Over the last five decades, several decisions of this Court have dealt with the fundamental issue of when the process of an examination can stand vitiated. Essentially, the answer to the issue turns upon whether the irregularities in the process have taken place at a

systemic level so as to vitiate the sanctity of the process. There are cases which border upon or cross-over into the domain of fraud as a result of which the credibility and legitimacy of the process is denuded. This constitutes one end of the spectrum where the authority conducting the examination or convening the selection process comes to the conclusion that as a result of supervening event or circumstances, the process has lost its legitimacy, leaving no option but to cancel it in its entirety. Where a decision along those lines is taken, it does not turn upon a fact-finding exercise into individual acts involving the use of mal-practices or unfair means. Where a recourse to unfair means has taken place on a systemic scale, it may be difficult to segregate the tainted from the untainted participants in the process. Large scale irregularities including those which have the effect of denying equal access to similarly circumstanced candidates are suggestive of a malaise which has eroded the credibility of the process. At the other end of the spectrum are cases where some of the participants in the process who appear at the examination or selection test are guilty of irregularities. In such a case, it may well be possible to segregate persons who are guilty of wrong-doing from others who have adhered to the rules and to exclude the former from the process. In such a case, those who are innocent of wrong-doing should not pay a price for those who are actually found to be involved in irregularities. By segregating the wrong-doers, the selection of the untainted candidates can be allowed to pass muster by taking the selection process to its logical conclusion. This is not a mere matter of administrative procedure but as a principle of service jurisprudence it finds embodiment in the constitutional duty by which public bodies have to act fairly and reasonably. A fair and reasonable process

of selection to posts subject to the norm of equality of opportunity under Article 16(1) is a constitutional requirement. A fair and reasonable process is a fundamental requirement of Article 14 as well. Where the recruitment to public employment stands vitiated as a consequence of systemic fraud or irregularities, the entire process becomes illegitimate. On the other hand, where it is possible to segregate persons who have indulged in mal-practices and to penalise them for their wrong-doing, it would be unfair to impose the burden of their wrong-doing on those who are free from taint. To treat the innocent and the wrong-doers equally by subjecting the former to the consequence of the cancellation of the entire process would be contrary to Article 14 because unequals would then be treated equally. The requirement that a public body must act in fair and reasonable terms animates the entire process of selection. The decisions of the recruiting body are hence subject to judicial control subject to the settled principle that the recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process. Now it is in the backdrop of these principles, that it becomes appropriate to advert to the precedents of this Court which hold the field.

34 Over four decades ago, in **Bihar School Examination Board** v. **Subhas Chandra Sinha & Others**[3] , a three judge Bench of this Court dealt with a case involving a challenge to the decision to cancel the annual secondary school examination in relation to a particular centre in a district in Bihar. The irregularities at

[3] (1970) 1 SCC 648

the centre were summarised in the following extracts contained in the judgment of this Court:

> "5. The Tabulators of the Hanswadih Centre reported that the percentage of successful examinees was as high as 80% whereas the average at the Arrah, Dalippur Centre was only 50%. They were therefore asked to prepare percentage subject-wise. All the Tabulators submitted these percentages. The matter was referred to the Unfair Means Committee of the Board. The Committee in its turn asked the Moderators to look into all the answer books where the percentage was 80% or more. They reported unfair means on a mass scale. The Chairman then passed an order on August 30, 1969 cancelling the examination in all subjects at the Hanswadih Centre allowing the examinees to re-appear at the Supplementary Examination in September, 1969 without payment of fresh fees. The Head Masters of the three schools concerned were also informed by registered letters. The action of the Chairman was placed before the Board at its meeting on September 9, 1969 and was approved. It was stated in the return that a complaint was received from one Satnarain Singh of Jagdishpur, who, however, wrote a letter that he had made no such complaint."

The High Court had quashed the action on the ground that the examinees were not furnished with a show cause and the materials on which the Chairperson relied to pass the order were not disclosed. Chief Justice M Hidayatullah, speaking for the Court, noted that "the results speak for themselves: whereas at other centres the average of successful candidates was 50 per cent, at one particular centre the percentage of successful candidates ranged from 70 per cent to 100 per cent in individual subjects. In this context, the Court observed :

> "13. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must

the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go."

The Court distinguished an earlier decision observing that:

"14. Reliance was placed upon *Ghanshyam Das Gupta case* [(1962) 3 Supp SCR 36] to which we referred earlier. There the examination results of three candidates were cancelled, and this Court held that they should have received an opportunity of explaining their conduct. It was said that even if the inquiry involved a large number of persons, the Committee should frame proper regulations for the conduct of such inquiries but not deny the opportunity. We do not think that that case has any application. **Surely it was not intended that where the examination as a whole was vitiated, say by leakage of papers or by destruction of some of the answer books or by discovery of unfair means practiced on a vast scale that an inquiry would be made giving a chance to every one appearing at that examination to have his say? What the Court intended to lay down was that if any particular person was to be proceeded against, he must have a proper chance to defend himself and this did not obviate the necessity of giving an opportunity even though the number of persons proceeded against was large.** The Court was then not considering the right of an examining body to cancel its own examination when it was satisfied that the examination was not properly conducted or that in the conduct of the examination the majority of the examinees had not conducted themselves as they should have. To make such decisions depend upon a full-fledged judicial inquiry would hold up the functioning of such autonomous bodies as Universities and School Board. While we do not wish to whittle down the requirements of natural justice and fair-play in cases where such requirement may be said to arise, we do not want that

> this Court should be understood as having stated that an inquiry with a right to representation must always precede in every case, however different. The universities are responsible for their standards and the conduct of examinations. The essence of the examinations is that the worth of every person is appraised without any assistance from an outside source. If at a centre the whole body of students receive assistance and are managed to secure success in the neighbourhood of 100% when others at other centres are successful only at an average of 50%, it is obvious that the University or the Board must do something in the matter. It cannot hold a detailed quasi-judicial inquiry with a right to its alumni to plead and lead evidence *etc.*, before the results are withheld or the examinations cancelled. If there is sufficient material on which it can be demonstrated that the university was right in its conclusion that the examinations ought to be cancelled then academic standards require that the university's appreciation of the problem must be respected. It would not do for the Court to say that you should have examined all the candidates or even their representatives with a view to ascertaining whether they had received assistance or not. To do this would encourage indiscipline if not also perjury."
>
> (**emphasis supplied**)

35 The decision of a three judge Bench of this Court in **Anamica Mishra** v. **UP Public Service Commission, Allahabad**[4] ("**Anamica Mishra**") involved recruitment to various posts in the educational services of the State of Uttar Pradesh. There was a two stage recruitment involving a written test and interview. It was found that after the written examination, due to the improper feeding of data into the computer, some candidates who had a better performance in the written examination were not called for interview and candidates who secured lesser marks were not only called for the

[4] (1990) Supp. SCC 692

interview but were finally selected. The entire process was canceled by the Public Service Commission. Dealing with the situation, this Court observed:

> "4. We have heard counsel for the parties and are of the view that when no defect was pointed out in regard to the written examination and the sole objection was confined to exclusion of a group of successful candidates in the written examination from the interview, there was no 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 select those who on the basis of the written and the freshly-held interview became eligible for selection."

The case is therefore representative of a situation where the cancellation of the entire recruitment process was held not to be justified since there was no systemic flaw in the written test, and the issue was only with regard to calling the candidates for the interview. The situation could have been remedied by setting aside the selection made after the interview stage and calling for a fresh interview of all eligible candidates. This is the ultimate direction which was issued by the Court.

36 In **Madhyamic Shiksha Mandal, MP** v. **Abhilash Shiksha Prasar Samiti**[5], the High Court had interfered with the decision of the MP Madhyamic Shiksha Mandal to cancel the entire examination, following the report of the Naib Tehsildar who found that students had been indulging in mass copying. The report of the Naib Tehsildar showed that during the course of a visit to the centre, students were indulging in copying even before the question papers were distributed indicating that

[5] (1998) 9 SCC 236

there was leakage of the question paper. The teachers had not objected to the students entering the examination hall with books and copying material, indicating their complicity. Holding that the view of the High Court to set aside the cancellation was unsustainable, this Court held:

> "2. […] In the face of this material, we do not see any justification in the High Court having interfered with the decision taken by the Board to treat the examination as cancelled. It is unfortunate that the student community resorts to such methods to succeed in examinations and then some of them come forward to contend that innocent students become victims of such misbehaviour of their companions. That cannot be helped. In such a situation the Board is left with no alternative but to cancel the examination. It is extremely difficult for the Board to identify the innocent students from those indulging in malpractices. One may feel sorry for the innocent students but one has to appreciate the situation in which the Board was placed and the alternatives that were available to it so far as this examination was concerned. It had no alternative but to cancel the results and we think, in the circumstances, they were justified in doing so."

37 On the other hand, the judgment of a two judge Bench of this Court in **Union of India** v. **Rajesh P U Puthuvalnikathu**[6] involved a situation where a selection list consequent to a written examination, interview and physical fitness test for filling up the posts of constables in the CBI was cancelled, due to allegations of favouritism on the part of the officers conducting the physical efficiency test and irregularities in the written examination. A challenge to the cancellation failed before the Tribunal upon which proceedings were initiated before the High Court. A Committee had

[6] (2003) 7 SCC 285

been appointed by the Director, CBI, which upon meticulous examination found that 31 candidates who were otherwise ineligible were included in the selection list and an equal number of eligible candidates was ousted. In this backdrop the High Court found that there was no justification to cancel the entire selection when the impact of irregularities which had crept into the evaluation of merits could be identified specifically and was found on verifying the records to have resulted in 31 candidates being selected undeservedly. Upholding the view of the High Court, a two judge Bench of this Court held:

> "6. […] In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational".

38 The decision in **Inderpreet Singh Kahlon** v. **State of Punjab**[7] ("**Inderpreet Singh Kahlon**"), again of a two judge Bench, involved a case where it was alleged that the Chairperson of the Punjab Public Service Commission (**PSC)** had got a large number of persons appointed on the basis of extraneous considerations between 1998 and 2001. The State government cancelled the entire selection for recruitment to the PSC (Executive Branch) and Allied Services 1998. Two Scrutiny Committees were appointed and on the acceptance of their reports, the services of those who were appointed on the basis of the selection made by the Commission against vacancies for 1998 – 2000 came to be terminated. The Full Bench of the High Court dismissed the writ petitions filed by the selected candidates. In appeal before this court, Justice SB Sinha enunciated in the course of his judgment the basis on which the services of persons who had put in some years of service could be validly terminated:

> "41. If the services of the appointees who had put in few years of service were terminated, compliance with three principles at the hands of the State was imperative viz. (*1*) to establish satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted; (*2*) to determine the question that the illegalities committed go to the root of the matter which vitiate the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reason of a thorough investigation in a fair and transparent manner; (*3*) whether the sufficient material present enabled the State to arrive at a satisfaction that the officers in majority have been found to be part of the fraudulent purpose or the system itself was corrupt".

[7] (2006) 11 SCC 356

39 The Court noted that there were serious imputations against the Chairperson who was at the helm of affairs of the State Public Service Commission, and all decisions made during his tenure were yet to be set aside. The Court noted that:

> "45**.** If fraud in the selection process was established, the State should not have offered to hold a reselection. Seniority of those who were reselected ordinarily could not have been restored in their favour. Such an offer was evidently made as the State was not sure about the involvement of a large number of employees."

In the above backdrop, Justice SB Sinha drew a distinction "between a proven case of mass cheating for a board examination and an unproven imputed charge of corruption where the appointment of a civil servant is involved".

40 The Court noted *inter alia* the decision in **Anamica Mishra** (supra) where tainted cases were separated from the non-tainted ones and only where it is found impossible or highly improbable could "*en masse* orders of termination have been issued". Hence, in the view of this Court, an effort should have been made to segregate the tainted from the non-tainted candidates. The decided cases were broadly categorized along the following lines:

> "52**.** …
>
> (*i*) **Cases where the "event" has been investigated:**
>
> (*a*) *Union Territory of Chandigarh* v. *Dilbagh Singh* [(1993) 1 SCC 154 : 1993 SCC (L&S) 144 : (1993) 23 ATC 431] , SCC at paras 3 and 7.
>
> (*b*) *Krishan Yadav* v. *State of Haryana* [(1994) 4 SCC 165 : 1994 SCC (L&S) 937 : (1994) 27 ATC 547] , SCC at paras 12, 15 and 22.
>
> (*c*) *Union of India* v. *Anand Kumar Pandey* [(1994) 5 SCC 663 : 1994 SCC (L&S) 1235 : (1994) 28 ATC 165] , SCC at para 4.

(*d*) *Hanuman Prasad* v. *Union of India* [(1996) 10 SCC 742 : 1997 SCC (L&S) 364] , SCC at para 4.

(*e*) *Union of India* v. *O. Chakradhar* [(2002) 3 SCC 146 : 2002 SCC (L&S) 361] , SCC at para 9.

(*f*) *B. Ramanjini* v. *State of A.P.* [(2002) 5 SCC 533 : 2002 SCC (L&S) 780] , SCC at para 4.

(*ii*) **Cases where CBI inquiry took place and was completed or a preliminary investigation was concluded:**

(*a*) *O. Chakradhar* [(2002) 3 SCC 146 : 2002 SCC (L&S) 361]

(*b*) *Krishan Yadav* [(1994) 4 SCC 165 : 1994 SCC (L&S) 937 : (1994) 27 ATC 547]

(*c*) *Hanuman Prasad* [(1996) 10 SCC 742 : 1997 SCC (L&S) 364]

(*iii*) **Cases where the selection was made but appointment was not made**:

(*a*) *Dilbagh Singh* [(1993) 1 SCC 154 : 1993 SCC (L&S) 144 : (1993) 23 ATC 431] , SCC at para 3.

(*b*) *Pritpal Singh* v. *State of Haryana* [(1994) 5 SCC 695 : 1994 SCC (L&S) 1239 : (1994) 28 ATC 169]

(*c*) *Anand Kumar Pandey* [(1994) 5 SCC 663 : 1994 SCC (L&S) 1235 : (1994) 28 ATC 165] , SCC at para 4.

(*d*) *Hanuman Prasad* [(1996) 10 SCC 742 : 1997 SCC (L&S) 364]

(*e*) *B. Ramanjini* [(2002) 5 SCC 533 : 2002 SCC (L&S) 780] , SCC at para 4.

(*iv*) **Cases where the candidates were also ineligible and the appointments were found to be contrary to law or rules**:

(*a*) *Krishan Yadav* [(1994) 4 SCC 165 : 1994 SCC (L&S) 937 : (1994) 27 ATC 547]

(*b*) *Pramod Lahudas Meshram* v. *State of Maharashtra* [(1996) 10 SCC 749 : 1996 SCC (L&S) 1487] wherein appointments had been made without following the selection procedure.

(*c*) *O. Chakradhar* [(2002) 3 SCC 146 : 2002 SCC (L&S) 361] wherein appointments had been made without typewriting tests and other procedures of selection having not been followed."

(**emphasis supplied**)

41 The decision in **Inderpreet Singh Kahlon** (supra) emphasizes that when the services of employees are terminated on the ground that they may have aided and abetted corruption, the Court must satisfy itself that conditions for this exist. The Court while setting aside a selection "may require the State to establish that the process was so tainted that the entire selection process is liable to be cancelled." Justice Dalveer Bhandari, in a separate opinion, held that where the basis of a termination of service involves serious allegations of corruption, it is imperative that the principles of natural justice must be fully complied with. The judgment of Justice Bhandari emphasizes the "**peculiar facts of the case which [..] were that some of the candidates had worked for about three years and their services were terminated only on the basis of the criminal investigation which was at the initial stage. The termination of their services, as a consequence of the cancellation of selection would not only prejudice their interest seriously but would ruin their entire future career**." Both the judgments concurred in issuing a direction to the High Court to consider the matters afresh and for the constitution of two committees – one related to the executive officers and the other related to judicial officers for segregating the tainted from the untainted officers. Consequential directions were also issued for compliance with the principles of natural justice.

42 While analyzing the decision in **Inderpreet Singh Kahlon (**supra), it needs to be emphasized that it involved a situation where persons who had been appointed were sought to be terminated after several years of service on the ground that their selection had been tainted by a fraud tracing its origin to the Chairperson of the

Public Service Commission. It was, in other words, as Justice SB Sinha termed it "an unproven imputed charge of corruption where the appointment of a civil servant is involved". Justice Dalveer Bhandari also emphasized "the peculiar facts of this case" where persons who were appointed to the services of the State were sought to be terminated on serious charges of corruption involving a stigma. Having made this distinction, it must also be noted that the judgment emphasizes that where it is possible to segregate tainted from untainted candidates, the State must make an effort to do so. Both the judges in fact observed that performing this task was not impossible in that case. In that context the final directions to do so were issued.

43 The sequel to the decision **Inderpreet Singh Kahlon** (supra) is another two judge Bench decision in **Joginder Pal** v. **State of Punjab**[8] ("**Joginder Pal**"). After the decision in **Inderpreet Singh Kahlon** (supra), a Committee of three Judges of the High Court was constituted to separate the tainted from non-tainted candidates. As this Court noted in **Joginder Pal** (supra), the Committee "could pinpoint those candidates who had got selected were selected for oblique considerations". In other words, candidates against whom no taint was found had been selected on merits on their performance in the written examination and interview. Yet the Committee came to the conclusion that the entire process of selection was a product of "a well-planned scheme of deception, forgery and fraud" and, therefore, deserved to be set aside in its entirety. As a result of this report, the original writ petitions were re-heard following the remand by this Court in **Inderpreet Singh Kahlon** (supra) and were

[8] (2014) 6 SCC 644

referred to a five judge Bench. The writ petitions of the tainted candidates were dismissed by the High Court but even in the case of non-tainted candidates, it was held that the government was entitled to cancel the entire selection process, once it was found to be vitiated by deception, forgery and fraud. The conclusion of the High Court in regard to the tainted candidates was affirmed in the judgment of this Court in **Joginder Pal** (supra), authored by Justice AK Sikri. The judgment of this Court held that by the directions which were issued in **Inderpreet Singh Kahlon** (supra), an effort was required to be made to segregate the tainted from non-tainted candidates. Justice Sikri held that two conclusions of the High Court were "antithetical": once it was found that segregating the tainted from non-tainted candidates is possible and was also achieved, the other conclusion (to set aside the entire process) was incompatible. The Court held that the issue of the entire selection process being vitiated would have arisen only if the findings of the Committee were that it was not possible to distinguish the cases of the tainted from the non-tainted candidates. The Court held that the reasons for holding the entire process should be vitiated were the same as those which had been urged before the High Court earlier. Moreover, a crucial development which had taken place after the remand was that the State had come forward and indicated its willingness to take back candidates who were not tainted and were selected on the basis of merit. In this backdrop, the order passed by the High Court was set aside.

44 The decision in **Chairman All India Railway Recruitment Board** v. **K Shyam Kumar**[9] ("**Chairman, Railway Recruitment Board**") involved a case where the Board had invited applications for Group-D posts in the South Central Railway. As many as 10.02 lac applications were received of which 5.86 lac applicants were found eligible. The eligible candidates were required to appear at a written test. 3.22 lac candidates appeared of whom 2690 were selected and called for the physical efficiency test. Those who qualified were called for verification of original certificates. At that stage, it was noticed that certain mal-practices took place during the written examination *inter alia* involving mass copying, leakage of question papers and impersonation. The Vigilance Department recommended that the matter be referred to the Central Bureau of Investigation. The Railway Recruitment Board decided to conduct a retest. This decision was challenged by certain candidates who had taken the first written examination, before the Tribunal. The Tribunal rejected the plea. While considering a challenge to the decision of the Tribunal, the High Court held that there was no reasonable basis to cancel the first selection and directed the Board to finalize the selection on the basis of the first written test save and except for 62 candidates against whom there were allegations of impersonation.

[9] (2010) 6 SCC 614

45 In appeal, this court noted the report of the Vigilance Department which indicated that:

(i) Several candidates were suspected to have obtained answers for the questions a few hours before the examination through a middle-man who had accepted a bribe;

(ii) In respect of 62 candidates, there were serious allegations of impersonation and on close scrutiny it was found that at least 6 candidates had adopted unfair means to secure qualifying marks in the written test. The investigation *prima facie* established a leakage of question papers to a sizable number of candidates; and

(iii) This seemed to be pre-planned and the possibility of the involvement of the staff of the Board could not be ruled out.

In this backdrop, this Court considered whether the High Court was justified in interfering with the decision of the Board to conduct a retest for those who had obtained minimum qualifying marks in the first written test. During the pendency of the proceedings before this Court, the Board was directed to declare the result of the second test and to appoint the selected candidates subject to the result of the appeals. Justice K S P Radhakrishnan, speaking for a two judge Bench emphasized that three options were available to the Railway Recruitment Board:

> "20**.** …(*1*) to cancel the entire written test, and to conduct a fresh written test inviting applications afresh; (*2*) to conduct a retest for those candidates who had obtained minimum qualifying marks in the first written test; and (*3*) to go ahead

> with the first written test (as suggested by the High Court), confining the investigation to 62 candidates against whom there were serious allegations of impersonation."

The Court held that the High Court had misdirected itself in directing the Board to accept the third option and had transgressed the limitations on the power of judicial review. The Court emphasized that the first alternative would have been time consuming and expensive. If the Board believed that the best option was to conduct a retest for candidates who had obtained minimum qualifying marks in the first written test, the decision of the Board was fair and reasonable. The decision of the High Court, it was held, would only perpetuate an illegality since there were serious allegations of the leakage of question papers, large scale impersonation of candidates and mass copying in the first test. Upholding the decision of the Railway Recruitment Board, the judgment of the High Court was set aside.

46 A more recent decision of a two judge Bench was in **State of Tamil Nadu** v. **A Kalaimani**[10] ("**Kalaimani**"). The Teachers Recruitment Board in the State of Tamil Nadu had invited applications for selection to the posts of lecturers in Government Polytechnic Colleges. The written examination was of an objective type and candidates were required to fill up OMR sheets. There were allegations of large scale malpractices in the written examination involving tampering of the OMR sheets. After re-evaluation, discrepancies were found in the entries pertaining to 196 candidates who were beneficiaries of a fraudulent alteration of marks. A decision

[10] 2019 SCC Online 1002

was taken to cancel the examination which was conducted for selection to the posts of lecturers as the Board was of the view that there were chances of more malpractices being unearthed at a later stage and there was a serious doubt about the purity of the process. The Division Bench of the High Court held that the fabrication of the records pertained only to 196 candidates and when a segregation was possible, the entire examination ought not to be cancelled. In appeal, this Court adverted to the decision in **Inderpreet Singh Kahlon** (supra) as well as the view which was taken in **Gohil Vishvaraj Hanubhai** v. **State of Gujarat**[11] ("**Gohil**") where it was held:

> "15. …
>
> > "21. Purity of the examination process - whether such examination process pertains to assessment of the academic accomplishment or suitability of candidates for employment under the State - is an unquestionable requirement of the rationality of any examination process. Rationality is an indispensable aspect of public administration under our Constitution. The authority of the State to take appropriate measures to maintain the purity of any examination process is unquestionable. It is too well settled a principle of law in light of the various earlier decisions of this Court that where there are allegations of the occurrence of large-scale malpractices in the course of the conduct of any examination process, the State or its instrumentalities are entitled to cancel the examination. This Court has on numerous occasions approved the action of the State or its instrumentalities to cancel examinations whenever such action is believed to be necessary on the basis of some reasonable material to indicate that the examination process is vitiated. They are also not obliged to seek proof

[11] (2017) 13 SCC 621

of each and every fact which vitiated the examination process."

16. It was further held in the said judgment as follows:

"30. Identifying all the candidates who are guilty of malpractice either by criminal prosecution or even by an administrative enquiry is certainly a time-consuming process. If it were to be the requirement of law that such identification of the wrongdoers is a must and only the identified wrongdoers be eliminated from the selection process, and until such identification is completed the process cannot be carried on, it would not only result in a great inconvenience to the administration, but also result in a loss of time even to the innocent candidates. On the other hand, by virtue of the impugned action, the innocent candidates (for the matter all the candidates including the wrongdoers) still get an opportunity of participating in the fresh examination process to be conducted by the State."

Justice L Nageswara Rao held that the view of the Division Bench of the High Court was unsustainable and observed:

"14. In the instant case, the Board initially conducted an inquiry on its own regarding the allegations pertaining to manipulation of the OMR answer sheets. The Board found that a few people benefited due to the tampering of the OMR answer sheets. On a deeper scrutiny sufficient material was found against 196 persons who were beneficiaries of the fraud in the alteration of marks. The Board was convinced that there were chances of more people being involved in the manipulation of marks for which reason a decision was taken to cancel the entire examination. A bona fide decision taken by the Board to instill confidence in the public regarding the integrity of the selection process could not have been interfered with by the High Court. Sufficiency of the material on the basis of which a decision is taken by an authority is not within the purview of the High Court in exercising its power of judicial review. More material is being unearthed in the investigation and several people have been arrested. The investigation is in progress."

The Court noted that candidates who had a chance of being selected and appointed as lecturers in Government Polytechnic Colleges on the basis of the results of the written examination may be inconvenienced "but a serious doubt entertained by the Board about the magnitude of the manipulation of the examination has to be given due weightage". The judgment of the High Court was accordingly set aside.

47 The decisions in **Chairman, Railway Recruitment Board**, **Gohil** and **Kalamani** (supra) all go to emphasise that a recruiting authority is entitled to take a *bona fide* view, based on the material before it, that the entire process stands vitiated as a result of which a fresh selection process should be initiated. The integrity of the selection process cannot be lightly disregarded by the High Court substituting its own subjective opinion on the sufficiency of the material which has been taken into account by the decision making authority. Undoubtedly, fairness to candidates who participate in the process is an important consideration. There may be situations where candidates who have indulged in irregularities can be identified and it is then possible for the authority to segregate the tainted from the untainted candidates. On the other hand, there may be situations where the nature of the irregularities may be manifold and the number of candidates involved is of such a magnitude that it is impossible to precisely delineate or segregate the tainted from the untainted. A considered decision of the authority based on the material before it taken *bona fide* should not lightly be interfered in the exercise of the powers of judicial review unless it stands vitiated on grounds of unreasonableness or proportionality.

G The present case

48 On 22 August 2015, following the receipt of "serious complaints" in the office of the Chief Minister, GNCTD regarding irregularities in the conduct of the examinations conducted by DSSSB for the post of Grade-II DASS, a Committee consisting of the Director (Vigilance) and District Magistrate (East) was appointed to enquire into the matter and submit its report. The Committee upon a preliminary examination noted the gravamen of the complaints which involved allegations that:

(i) As many as 50 candidates who had high marks in the Tier-I test (e.g. 170 out of 200) secured less than 50 marks in the Tier-II test and some candidates had obtained zero marks;

(ii) The absence of randomization enabled candidates who were closely related to sit in a sequence; and

(iii) A significant proportion of the candidates belonged to a concentrated geographical area.

49 The Committee noted that there was a delay of almost five years in conducting the Tier-I examination. As a result, of the 62,056 applicants only 8224 had appeared at the Tier-I examination giving rise to an apprehension that adequate information had not been furnished to candidates. The Committee furnished examples of candidates who had secured high marks in Tier - I examination but extremely low marks in the Tier-II exam. Candidates also appeared to be concentrated from a particular area of Delhi. The Committee found it "astonishing

that the whole marks lists is dominated by a particular section of society" based on their surnames. There were instances of candidates who had secured high marks in Tier-I failing to appear at the Tier-II examination. The Committee was critical of the role of DSSSB in failing to devote serious attention to the irregularities which had taken place during the course of the examination.

50 The Committee had representations before it from candidates as well. The Committee found that members of the same family were found to be sitting in close proximity both in the Tier-I and Tier-II examinations of which details were tabulated in the report. The Committee noted that it had addressed a questionnaire to the officials of DSSSB in regard to the alleged irregularities but they expressed their inability to answer the queries. The Committee found that in the absence of randomization, many cases had emerged where two or more members of a single family sat in consecutive order and were falling under the zone of probable selection. A majority of candidates falling in the zone of selection appeared to belong to the same geographical area. In this backdrop and considering the voluminous nature of the documentary material, the Committee was of the view that either the CBI or the Crime Branch would be able to investigate into the matter. The matter did not rest there. In its report, the first Committee found that there were serious irregularities in the examinations conducted by DSSSB for the post of Grade-II DASS. The report of the Committee dwells on:

(i) The delay of five years in holding the Tier-I examination after the advertisement was released in 2009; and

(ii) The issuance of admit cards only through the electronic mode, which was not prescribed in the advertisement.

51 The Committee was of the view that one of the main reasons for the appearance of a small proportion of candidates as compared to the applications was the inability of candidates to access the internet to download the e-admit cards. This, in the view of the Committee, *prima facie* vitiated the selection process. DSSSB in its reply had noted that it would earlier remit the admit cards by post but this gave rise to administrative difficulties as a result of postal delays, changes in address and the issuance of duplicate cards in place of those lost or damaged in transit.

52 On 5 June 2013, the Board had followed the pattern of the UPSC and Railway Board and decided to also issue e-admit cards which was to be given a wide publicity. On this aspect the Committee noted that the advertisement had not mentioned that admit cards shall be issued through the electronic medium only. A period of five years had elapsed since the date of the advertisement. It was not possible for the candidates to keep a vigil on the notifications of a single examination. In this backdrop, the decision of DSSSB, during the course of the process, to allow only e-admit cards was a deviation which resulted in a small number of candidates appearing in the Tier-I examination. This was clearly a pointer to the denial of equal access and opportunity to all candidates in the selection process. The Committee buttressed this finding by observing that there was a wide variation between the marks obtained in the Tier-I and Tier-II examinations. In the absence of randomization, it was found that members of a family and close relatives

sat in the same room and details of these candidates were duly tabulated. The Committee dealt with the explanation of DSSSB that the software for randomization was not available prior to 28 June 2015 and that steps have been taken for reshuffling candidates. The Committee did not accept the explanation of the Board, noting that if randomisation had been done in the Tier-I examination, it was then inconceivable as to how family members and close relatives sat in the same room. Moreover, it found it surprising that randomisation had been done in Tier-I and not in Tier-II. Though, according to DSSSB, manual reshuffling had been done for the Tier-II examination, even then a considerable number of closely related persons sat in proximity at the Tier-II examination. Besides these irregularities, the Committee noted that there was a racket which had led to the impersonation of candidates. This racket involved a person by the name of Anil Kumar Malik who was the Chief Invigilator at a particular centre. It was alleged that he was connected with a coaching centre which was also involved in the leakage of the question papers. The Committee noted the allegation that this person had repeatedly fixed his duties in a choice of his own centres with the help of DSSSB staff and there were instances of impersonation which had emerged. The Committee proceeded to tabulate these instances. Apart from this, the Committee found that the videography was blurred, thumb impressions were unrecognizable, jammers were not working properly and candidates had been allowed to appear irrespective of their educational qualifications. Further, it was noted that allegations of flying squad members passing answers onto candidates could not be ruled out. Now, in this backdrop, the

Secretary Vigilance opined that the entire process of recruitment appeared to be vitiated.

53 On 23 December 2015, the Deputy Chief Minister noted, on the basis of the recommendations of the DSSSB on the alleged irregularities in the examination, that all candidates who were in the zone of consideration may be scrutinised to check for impersonation "before the decision of the Board regarding declaration of the results". Candidates in the zone of consideration who would fail to attend the process of verification would stand disqualified from the examination. The second Committee was then constituted to check the credentials of all candidates falling in the zone of consideration. This led to the report of the second Committee. The Committee noted that out of 290 candidates who were called, 270 remained present and another lot of 11 candidates came forth upon being granted a further opportunity. After conducting a process of verification the Committee observed that "no irregularity is found in the documents of the 281 present candidates". However, in the meantime, an FIR was lodged on 18 January 2016 by the Anti-Corruption Branch, Delhi; the files in original were seized on 19 February 2016 and certified copies of the dossier were subsequently seized on 26 February 2016. The Deputy Chief Minister on 2 March 2016, was apprised of the report of the second Committee. The Deputy Chief Minister noted that verification had been carried out in respect of the candidates who were in the zone of consideration. At the same time, the report of the Directorate of Vigilance indicated that the examination process had been vitiated and "there are far serious complaints about the conduct of Tier-I examination for the same post code".

Noting that there should be "zero tolerance towards corruption and officials who may join government through improper examination are just not acceptable", a decision was taken to cancel the entire examination. However, an age relaxation was provided for candidates to appear in the new examination.

54 The drift of the submissions which have been urged by Mr PS Patwalia, learned Senior Counsel is that when the Deputy Chief Minister directed that a Committee be constituted to check for impersonation from amongst candidates within the zone of selection, by his noting dated 23 December 2015, this would necessarily mean that the explanation which was tendered by DSSSB in regard to whether any irregularities had taken place in the examination stood accepted and nothing further remained except to check for impersonation. Hence, it has been submitted that once the second Committee came to the conclusion that none of the 281 candidates in the zone of selection were found to be engaged in impersonation, there was no basis thereafter to cancel the examination. On the other hand, Ms Madhavi Divan, learned ASG has submitted that the remit of the second Committee was narrow in scope, which was to verify only the aspects of impersonation. This did not efface the findings in the report of the first committee and the deputy Chief Minister could have legitimately decided to cancel the entire process.

55 We find on the basis of the record that there is substance in the submission which has been urged by the ASG. The complaints in regard to the recruitment process related both to the Tier-I and Tier-II examinations. The complaints were carefully analysed by the first Committee and as noted earlier serious irregularities

were found. The irregularities were not confined to acts of mal-practice or unfair means on the part of a specific group of persons. On the contrary, the report of the Committee found deficiencies of a systemic nature which cast serious doubts on the legitimacy of the entire process of recruitment involving both the Tier-I and Tier-II examinations. The order of the Deputy Chief Minister dated 23 December 2015 did not differ with the conclusions of the first Committee. In fact, the said order refrained from commenting on the findings of the first Committee. All that the Deputy Chief Minister's order directed was the narrowing of the scope of further investigation to one of the irregularities, that is, impersonation. In directing that a verification be carried out on whether any of the candidates in the zone of selection had been guilty of impersonation, the Deputy Chief Minister's order did not wipe out the irregularities in the entire examination process. It is not possible to accept the submission that after ordering a verification on impersonation, nothing further remained to be done and that there could be no further rejection of the sanctity of the process on the basis of the report of the first Committee. It is quite possible that the Deputy Chief Minister directed a further investigation into the allegations of impersonation only to lend credibility to the ultimate decision which he would take. Mr Patwalia has made a strenuous effort to read from the explanation submitted by DSSSB, urging that as many as three IAS officers and other officers who had appended their signatures to the explanatory note provided a justification to the defence that the Tier-I and Tier-II examinations did not suffer from flaws. It must be noted that the conduct of DSSSB and its officials was itself under a cloud. Their explanation could by no means be regarded as conclusive or binding upon the authorities of GNCTD. The Deputy Chief

Minister in recommending that the entire process be cancelled emphasised the systemic nature of the violations which had taken place. These violations may or may not involve all of the candidates within the ultimate zone of selection but that in our view is beside the point for the simple reason that the gravamen of the charge in the present case is not in regard to the taint which attaches to a specific group of persons but to the sanctity of the recruitment process as a whole. The precedents of this Court sufficiently demonstrate that when the credibility of an entire examination stands vitiated by systemic irregularities, the issue then is not about seeking to identify the candidates who are tainted. In the present case, as we have seen, there was a basic denial of equal access to the Tier-I examination. The nature of the allegations which were found to be substantiated upon a careful examination by the first Committee showed that the credibility of the process itself had been eroded. In such a situation, where a decision is taken by the Government to cancel the entire process, it cannot be held to be irrational or arbitrary, applying the yardstick of fair procedure and proportionality to the decision-making process.

56 During the course of his submissions, Mr PS Patwalia has sought to provide explanations for each of the systemic irregularities pointed out by the first Committee, including the drastic reduction in the number of candidates who appeared for the Tier-I examination, non-issuance of hard copies of admit cards, shortlisting of candidates belonging to a certain geographical area, lack of randomization in the examination centres, among others. In response to this, the learned ASG has pointed out that while assessing whether the recruitment process

has been compromised, the factors (or irregularities) must be looked at cumulatively to ascertain whether they are sufficiently grave to cancel the recruitment. We find ourselves in agreement with the learned ASG. So long as there is sufficient basis to contend that mass-scale irregularities have occurred, this Court need not indulge in a roving inquiry to rule out all possible explanations and alternative scenarios where such irregularities would be justified.

57 Recruitment to public services must command public confidence. Persons who are recruited are intended to fulfil public functions associated with the functioning of the Government. Where the entire process is found to be flawed, its cancellation may undoubtedly cause hardship to a few who may not specifically be found to be involved in wrong-doing. But that is not sufficient to nullify the ultimate decision to cancel an examination where the nature of the wrong-doing cuts through the entire process so as to seriously impinge upon the legitimacy of the examinations which have been held for recruitment. Both the High Court and the Tribunal have, in our view, erred in laying exclusive focus on the report of the second Committee which was confined to the issue of impersonation. The report of the second Committee is only one facet of the matter. The Deputy Chief Minister was justified in going beyond it and ultimately recommending that the entire process should be cancelled on the basis of the findings which were arrived at in the report of the first Committee. Those findings do not stand obliterated nor has the Tribunal found any fault with those findings. In this view of the matter, both the judgments of the Tribunal and the High Court are unsustainable.

58 During the course of her submissions, the ASG has placed on record the fact that in the subsequent recruitment processes a number of the 281 candidates participated afresh. An age relaxation had been granted. In 2017, 133 out of 281 candidates participated and 13 were selected. In 2020, 87 out of the 281 participated, and 3 of them were short-listed. During the course of her submissions, the ASG has also submitted that even among the 281 candidates, it is not possible to conclude that all of them are untainted. In the view which we have taken it is not necessary to dwell on this aspect of the matter once the Court has arrived at the conclusion that the entire process was vitiated and that the cancellation was proper.

59 The Tribunal while setting aside the decision to cancel the recruitment process directed the Government to process the appointments of all 281 candidates who were found to be within the zone of selection though as a matter of fact only 6 of them had moved the Tribunal. After DSSSB and GNCTD moved the High Court in proceedings under Article 226 to challenge the decision of the Tribunal, intervention applications were moved by several candidates. These interventions were rejected by the High Court and we have also extracted from the order passed during the pendency of the proceedings on 15 December 2017 in para 20 of this judgment. The High Court while dismissing the applications for intervention noted that the cause of action had accrued on 15 March 2016 when the entire examination had been cancelled, in spite of which none of the intervening candidates had challenged the decision. The judgment of the High Court in the present case was delivered on 13 January 2020 and it is only thereafter that this Court has been moved under Article

136 of the Constitution. Some of the petitioners who instituted Special Leave Petitions before this Court had not even moved applications for intervention before the High Court. Others did not pursue their remedies against the order of the High Court dated 15 December 2017 for over 2 years. They have taken no steps to challenge the decision for the cancellation of the examination. In view of the fact that we have upheld the submissions of DSSSB and GNCTD and proceed to set aside the judgment of the High Court, the SLPs filed by the candidates would have to stand rejected, in any event.

60 For the above reasons, we order and direct:

(i) The facts which have come to light during the course of the hearing of this batch of SLPs reflect on the serious flaws in the process which was conducted by DSSSB. DSSSB and GNCTD must now take adequate measures to ensure against the recurrence of such instances which erode the credibility of and public confidence in the recruitment process. We direct that a comprehensive exercise to re-visit the modalities and safeguards be carried out within a period of two months to ensure that the probity of the recruitment process in future is maintained;

(ii) The notification dated 15 March 2016 of GNCTD cancelling the Tier-I and Tier-II examinations held for recruitment to the post of Head Clerk [(Grade II (DASS)] under post code 90/09 is upheld;

(iii) The appeals filed by DSSSB (arising from Special Leave Petition (C) No. 11940 of 2020) and GNCTD (arising from Special Leave Petition (C) No. 12066 of 2020) are allowed;

(iv) The judgment of the Division Bench of the Delhi High Court dated 13 January 2020 (and in consequence the judgment of the Tribunal) are set aside; and

(v) The companion appeals arising out of the SLPs[12] filed by the candidates stand dismissed.

61 There shall be no order as to costs. Pending application(s), if any, stand disposed of.

…….....J.
[Dr Dhananjaya Y Chandrachud]

…….....J.
[M R Shah]

New Delhi;
March 3, 2021

[12] SLP(C) No. 5785-5786/2020
SLP(C) No. 5783-5784/2020
SLP(C) No. 5370-5371/2020
SLP(C) No. 8811-8812/2020
SLP(C) No. 11443-11444/2020
SLP(C) No. 11441-11442/2020
SLP(C) No. 12410-12411/2020
SLP(C) No. 15297-15298/2020
SLP(C) No. 15299-15300/2020
SLP(C) No. 110-111/2021