The State Of Assam vs Arabinda Rabha on 7 March, 2025

Author: Dipankar Datta

Bench: Dipankar Datta

2025 INSC 334 REPOR

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2350 OF 2025

STATE OF ASSAM & ORS. … APPELLANT

VERSUS

ARABINDA RABHA & ORS. … RESPONDE

JUDGMENT

DIPANKAR DATTA, J.

FACTS

1. A process of recruitment was set in motion by the office of the Principal Chief Conservator of Forest & Head of Forest Force, Assam 1, Government of Assam, by issuing an advertisement dated 23rd July, 2014 to fill up of 104 posts of Constables in the Assam Forest PCCF AFPF

2. Process of selection was conducted in May, 2016. The respondents, who had applied pursuant to the advertisement, participated in the process. They qualified in the physical efficiency test3, whereafter they were interviewed. It was claimed by the respondents that the select list prepared by the Central Selection Committee, headed by the then PCCF, contained names of candidates found, prima facie, fit for selection and appointment as Constables in the AFPF and that such list, wherein their names figured, had been submitted to the Government for approval.

3. In May, 2016 itself, there was a change in the political regime of Assam pursuant to the elections held to the Assam Legislative Assembly.

4. On 4th July, 2016, the incumbent PCCF submitted a note to the Government highlighting serious anomalies that had crept in, in the selection process. Based on such note of the PCCF but without conducting any inquiry, as alleged by the respondents, the Government approved cancellation of the select list vide order of the Secretary to the Government of Assam, Environment and Forests Department dated 18th July, 2016. The sole reason assigned for such cancellation was that the process had been conducted in violation of the reservation policy as well as judgments of this Court, as suggested by the PCCF.

PET

5. On 17th August, 2016, a notice was published from the office of the PCCF in a daily newspaper informing all concerned of cancellation of the select list. It was conveyed that further action to be taken in the matter of recruitment of constables in the AFPF would be notified in due course.

6. Subsequent thereto, a fresh advertisement dated 14th April, 2017 was issued.

7. Two sets of writ petitions4 were instituted in the Gauhati High Court5. The first writ petition challenged the decision of cancellation of the select list and the notice dated 17th August, 2016. The other writ petition challenged the advertisement dated 14th April, 2017. Notice was issued on the first writ petition on 28 th April, 2017. In course of hearing, a single Judge was informed that the advertisement dated 14th April, 2017 pertains to appointment of 132 constables. Such advertisement was different from the 104 posts, which formed the subject matter of the first writ petition. Considering the same, interim stay of the advertisement dated 14th April, 2017 was not granted.
THE JUDGMENTS OF THE HIGH COURT

8. Vide judgment and order dated 7th May, 2019, the single Judge allowed the first of the two writ petitions, referred to above, holding, inter alia, that the irregularities from which the select list allegedly W.P. (C) 4532 of 2016 and W.P. (C) 2428 of 2017 High Court suffered can be rectified without disturbing the selection process by refixing or reallocating the candidates in accordance with merit, category and status by giving due notice to those who are likely to be adversely affected. The single Judge was also of the view that the chaff could be separated from the grain without much difficulty and, therefore, the decision to view the entire selection process as vitiated, leading to cancellation of the select list, is untenable.

9. The appellants carried the judgment and order dated 7th May, 2019 in an intra-court appeal.

10. An Hon’ble Division Bench6 of the High Court, vide judgment and order dated 8th October, 2021, upheld the view taken by the single Judge and dismissed the writ appeal. The Division Bench was of the view that prior to cancellation of the select list, no finding of fact had been arrived at pursuant to an inquiry conducted by any duly constituted inquiry committee and consequently, the veracity of the irregularities or illegalities alleged had not been ascertained and that the note of the

then PCCF dated 4th July, 2016, which highlighted the anomalies, could not have been treated to be definitive finding of fact arrived at by the Government warranting cancellation of the selection list. A view was also expressed therein that the irregularities could have been rectified and the process taken to a logical conclusion. Division Bench THE CHALLENGE

11. The judgment and order of the Division Bench is the subject matter of assail in this civil appeal, by special leave, at the instance of the State of Assam and its officers.

THE NOTICE ISSUING ORDER

12. We have noted that the notice issuing order dated 1 st August, 2022 recorded that the co-ordinate bench was apprised of no written examination being conducted and that the selection was made on the basis of interview alone preceded by a physical test, which was a qualifying test for appearing in the interview. It was also noted that out of 104 selected candidates, 64 belonged to Kamrup (Metro) and Kamrup (Rural) districts and that not a single candidate had been selected from as many as 16 districts. Concerned thereby, the co- ordinate bench granted stay of operation of the judgment and order under assail till the next date of hearing.

APPELLANTS' CONTENTIONS

13. Mr. Chinmoy Pradip Sharma, learned senior counsel and Additional Advocate General for the appellants, contended that the writ petition should not have been entertained in the first place by the single Judge. According to him, neither did the empanelled candidates have any indefeasible right of appointment against the existing vacancies nor was the Government under any obligation to fill up the vacancies. Inclusion of the names of the respondents in the select list was at best a condition of eligibility without creating any vested right of appointment; hence, such inclusion by itself did not confer upon them the right to invoke the writ jurisdiction and seek certiorari to set aside the decision to cancel the process as well as for mandamus to take the process forward. The Government was well within its right to cancel the process, for, serious irregularities had crept in tainting the process. In such circumstances, the Government being the sole judge of facts, its decision demanded deference rather than being quashed on the ground that the irregularities were curable. Heavy reliance was placed on the Constitution Bench decision in Shankarsan Dash v. Union of India7 in support of the contention that the High Court – both single Judge and the Division Bench – fell in error in making the directions it did.

14. It was also contended that apart from the fact that the respondents lacked any legal right to invoke the writ jurisdiction of the High Court, bare perusal of the note of the PCCF would reveal that sufficient justification was provided in support of the proposed cancellation of the select list. The said note having been approved by the Government, led to issuance of the notice dated 17th August, 2016. However, the single Judge without even considering as to whether the decision of the Government did suffer from any of the vices attracting judicial review, proceeded to make directions which normally would be (1991) 3 SCC 47 within the province of an appellate authority but certainly not a judicial review court.

15. Insofar as the impugned judgment and order of the Division Bench is concerned, Mr. Sharma contended that the note of the PCCF was based on meticulous examination of the records and without there being any material placed by the respondents before the High Court to suggest that the PCCF had ignored relevant and germane material or had considered extraneous material, the intra-court appeal ought not to have been dismissed on the ground that no inquiry was conducted to ascertain whether the claims made in the said note were correct.

16. Resting on the aforesaid contentions, Mr. Sharma prayed that the appeal be allowed and the appellants be permitted to start the process afresh.

RESPONDENTS' CONTENTIONS

17. On behalf of the respondents, Mr. Manish Goswami, learned senior counsel contended as follows:

> (i) The order dated 18th July, 2016 and the notice published in the newspaper dated 17th August, 2016 would make it evident that the only reason weighing with the Government for cancellation was violation of the reservation policy and violation of judgments of this Court. Therefore, the appellants cannot now be permitted to improve their case by pleadings etc., and urge new reasons justifying the cancellation. The appellants misled this Court while obtaining the notice issuing order dated 1st August, 2022.
>
> (ii) No rules were violated in preparation of the select list since no rules had been framed to govern the selection process and none was in operation at the relevant point of time, which is an admitted position.
>
> (iii) Cancellation of the process was based solely on the note dated 4th July, 2016 of the PCCF and no inquiry was ever conducted into the alleged anomalies. On this ground alone, the appeal is liable to be dismissed.
>
> (iv) No challenge was laid to the select list by any unsuccessful candidate alleging corrupt practice and/or fraudulent activity having been resorted to by the selected candidates including the respondents and the selection process was free from any taint.
>
> (v) Assuming, but not admitting, that there was some violation of the reservation policy, even then the same was limited to only 34 selected candidates. This is evident from the averment of the appellants before the High Court; hence, there was absolutely no justification to cancel the entire select list containing names of 104 persons. The impugned decision to cancel the select list is hit by the doctrine of proportionality.

(vi) Both the single Judge as well as the Division Bench was correct in returning findings that the alleged violation of the reservation policy was a curable defect and could be rectified by the authorities without disturbing the selection process by re-fixing or reallocating the candidates in accordance to their merit, category and status by giving due notice to those who are likely to be adversely affected.

18. In support of the aforesaid contentions, reliance was placed by Mr. Goswami on the following decisions of this Court:

(i) Anamica Mishra v. UPPSC8;
(ii) Union of India & Ors. v. Rajesh P.U., Puthuvalnikathu9;

(iii) Sachin Kumar v. Delhi Subordinate Service Selection Board & Ors.10; and

(iv) Mohinder Singh Gill v. Chief Election Commission11.

19. Mr. Goswami finally urged that in view of the foregoing contentions raised by him, the appeal deserves to be dismissed. He also prayed that this Court may be pleased, in addition, to order that the directions passed by the single Judge, as affirmed by the Division Bench, be implemented by the appellants without any further delay. QUESTIONS ARISING FOR DECISION

20. The broad question of law arising for decision in the light of the judgment(s) and order(s) of the High Court is:

Whether the High Court was justified in its interference with the decision to cancel the select list and to require the process to be carried forward in the manner directed by it?

(1990) Supp SCC 692 (2003) 7 SCC 285 (2021) 4 SCC 631 (1978) 1 SCC 405 Answering the aforesaid question would also require us to notice the grounds based whereon the appellants cancelled the select list. Thus, we have to necessarily answer two other questions:

(a) whether the decision of the appellants to cancel the select list was either vulnerable on application of the doctrine of Wednesbury unreasonableness or suspect applying the doctrine of proportionality and, therefore, liable to invalidation?

(b) Whether the decision of the appellants to cancel the select list infringed the legal rights of the respondents for which a writ petition under Article 226 of the Constitution could be maintained?

One incidental question arising for decision is, whether the appellants have urged new grounds to support the cancellation in addition to those assigned earlier in any affidavit/pleading? The final question is, what would be the just relief that can be granted to the parties to this civil appeal?

ANALYSIS AND REASONS

21. We have perused the judgment(s) and order(s) of the High Court and given due consideration to the contentions advanced by the parties.

22. It would be profitable to note the precedents in the field having a bearing on the questions arising for decision in the appeal, before we venture to answer the questions formulated above. In our view, these could provide valuable guidance to steer us towards the right direction.

23. In State of Haryana v. Subash Chander Marwaha12, this Court held that the mere fact of certain candidates being selected for appointment to vacancies pursuant to an advertisement did not confer any right to be appointed on the post in question and thereby, entitle the selectees to a writ of mandamus or any other writ compelling the authority to make the appointment.

24. The Constitution Bench in Shankarsan Dash (supra) considered the aforesaid decision and, taking cue from it, held that:

> "7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. ..." (1974) 3 SCC 220

25. Close on the heels of the above decision, a three-Judge Bench in Jai Singh Dalal v. State of Haryana13 had the occasion to observe:

> "7. It will thus be seen that at the time when the writ petition which has given rise to the present proceedings was filed, the State Government had withdrawn the aforesaid two notifications by the notification dated December 30, 1991. The stage at which the last-mentioned notification came to be issued was the stage when the HPSC was still in the process of selecting candidates for appointment by special recruitment. During the pendency of the present proceedings the State Government finalised the criteria for special recruitment by the notification of March 9, 1992. Thus, the HPSC was still in the process of selecting candidates and had yet not completed and finalised the select list nor had it forwarded the same to the State Government for implementation. The candidates, therefore, did not have any right to appointment. There was, therefore, no question of the High Court granting a mandamus or any other writ of the type sought by the appellants. The law in this behalf appears to be

well settled. ....”

26. Having noticed the decisions on the point as to the rights that aspiring candidates have, we move on to notice a decision which is not only on the point of right of a selected candidate to seek appointment through writ remedy but also dwells with decisions of subsequent Governments upsetting the decisions of earlier Governments.

27. One finds an extensive discussion on the tests required to be satisfied to invalidate a decision of a subsequent Government, nullifying a previous Government decision, in Jitendra Kumar v. State of Haryana14. The case involved suspension of the process of 1993 Supp (2) SCC 600 (2008) 2 SCC 161 selection by the Government because, inter alia, the cadre strength was found to be unjustly inflated by the previous Government. The appellants before this Court indisputably were the selected candidates and the principal question arising for decision, in the given facts and circumstances, was whether they had a legal right to be appointed. This Court held, “the legal principle obtaining herein is not in dispute that the selectees do not have any legal right of appointment subject, inter alia, to bona fide action on the part of the State”. Noticing the decisions in Subash Chander Marwaha (supra), Shankarsan Dash (supra) as well as other decisions on the point, this Court further held that whereas the selectee as such has no legal right, the superior court in exercise of its judicial review would not ordinarily direct issuance of any writ in the absence of any pleading and proof of mala fide or arbitrariness on the part of the authority, and each case has to be considered on its own merit. Examining the point as to whether the impugned action of the respondent-State lacked bona fide, this Court answered in the negative. Finally, this is what was observed:

> “55. We are not oblivious of the constitutional scheme that the decisions taken by one Government in public interest itself cannot be a ground for review thereof at the hands of the successor Government. It is not the Government which is in the seat of the power, matters in this behalf, but what matters is the public interest.
>
> 56. Mr Dwivedi has drawn our attention to a decision of this Court in State of Karnataka v. All India Manufacturers Organisation [(2006) 4 SCC 683] wherein it was held: (SCC pp.

708-09, para 66) ‘66. Taking an overall view of the matter, it appears that there could hardly be a dispute that the Project is a mega project which is in the larger public interest of the State of Karnataka and merely because there was a change in the Government, there was no necessity for reviewing all decisions taken by the previous Government, which is what appears to have happened. That such an action cannot be taken every time there is a change of Government has been clearly laid down in State of U.P. v. Johri Mal [(2004) 4 SCC 714] and in State of Haryana v. State of Punjab [(2002) 2 SCC 507] where this Court observed thus:

> ‘[I]n the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding Government must be held duty-bound to continue and carry on the unfinished job rather than putting a stop to

the same.'

> 57. There cannot be any doubt in regard to the aforementioned proposition of law but the question herein is whether public interest would be subserved by asking the State to proceed to make appointments. Whereas, on the one hand, an action on the part of the State to interfere with the good work done by the previous Government solely on the basis of change in the regime must be deprecated, there cannot however be any doubt whatsoever that the successor Government cannot blink over the illegalities committed by the previous Government. If illegalities have been committed, the same should be rectified.

When there exists a reasonable apprehension in the mind of the State, having regard to the overall situation including the post- haste manner in which actions had been taken, to cause an inquiry to be made and suspend the process of making appointments till the result of such inquiry is obtained, such a decision on its part per se cannot be said to be an act of arbitrariness or unreasonableness."

28. It has not escaped our notice that the decision in Jitendra Kumar (supra) has been doubted in All India Railway Recruitment Board v. K. Shyam Kumar15 on the point as to whether Wednesbury unreasonableness has been replaced by the (2010) 6 SCC 614 doctrine of proportionality. The facts in K. Shyam Kumar (supra) bear close resemblance to the facts of the present appeal and, thus, may be noticed. Therein, the Railway Recruitment Board (RRB) had called for applications for appointments on Group D posts in the South-Central Railway Zone, Secunderabad. Consequently, in excess of three lakh candidates appeared for the written examination. Of them, ten short of two thousand seven hundred candidates having achieved the minimum qualifying marks in the written examination, were called for a PET. Candidates who qualified in the PET were called for verification, during which certain malpractices were detected in the written examination. Additionally, there was a deluge of allegations of mass copying, question paper leakage, and impersonation committed during the written examination. A vigilance enquiry was conducted and the report prima facie revealed these abovementioned illegalities. Relying on the vigilance report, the RRB decided to conduct a re-test of the candidates who had obtained the minimum qualifying marks in the written examination. This decision was challenged by some candidates before the Central Administrative Tribunal, Hyderabad. The tribunal did not find any irregularity or illegality with the decision of the RRB, due to which the candidates were constrained to move the High Court. Before the High Court, the candidates termed the decision of the RRB as arbitrary and unreasonable. The High Court agreed with the candidates and set aside the order directing the re-test as, in the High Court's opinion, the decision was unreasonable and violative of the Wednesbury principles. The RRB approached this Court in appeal. In the resultant decision, this Court while reversing the decision of the High Court discussed the scope of both the unreasonableness test as well as the proportionality test. It was held that the unreasonableness test looks, not necessarily at the merits of the decision, but the way the decision was made; the available courses of action of the deciding authority are scrutinised to ascertain what a reasonable man would do. On the other hand, the proportionality test is more wide reaching in its approach, closely analysing the course of action vis-à-vis the situation requiring a remedy. Hon'ble K.S.P. Radhakrishnan, J. explained the interplay between these two tests as follows:

> "36. Wednesbury applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to 'assess the balance or equation' struck by the decision-maker. Proportionality test in some jurisdictions is also described as the 'least injurious means' or 'minimal impairment' test so as to safeguard the fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice it to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalise or lay down a straitjacket formula and to say that Wednesbury has met with its death knell is too tall a statement..." Keeping in mind these two tests, this Court noticed that the RRB had three courses of action once the irregularities had been brought to light. The first option was to conduct the written examination again for all the eligible candidates, which would be expensive and time consuming. The second option was to conduct re-test for the candidates who had obtained the minimum qualifying marks. The third option would have been to exclude the sixty-two candidates who were identified as having indulged in impersonation. The RRB, relying on the vigilance report, held that there were allegations and prima facie evidence of mass copying as well as leakage of question papers and these irregularities could not be tackled by just excluding the sixty-two candidates accused of impersonation. This Court held that the actions of the RRB to conduct the re-test for candidates who obtained the minimum qualifying marks struck the right balance, as the first option would have been too expensive and time consuming and the third option would have been too restrictive in combatting the irregularities in the examination.

29. The decision in K. Shyam Kumar (supra) further sheds light on another aspect, that is, whether the authority can rely on subsequent information to justify its decision. In the process, the decision in Mohinder Singh Gill (supra) was distinguished in the following manner:

> "45. ...The principle laid down in Mohinder Singh Gill case is not applicable where larger public interest is involved and in such situations, additional grounds can be looked into to examine the validity of an order. The finding recorded by the High Court that the report of CBI cannot be looked into to examine the validity of the order dated 4-6-2004, cannot be sustained."

30. Bearing in mind the aforesaid precedents, we have to examine the facts in some more detail.

31. A close look at the note of the PCCF dated 4th July, 2016 is indeed imperative, for, it is the basic document providing justification for the ultimate decision of cancellation. The single Judge in the judgment dated 7th May, 2019 quoted the said note in full. We consider it appropriate not to reproduce the note but to summarise its contents, hereunder:

The Central Selection Committee was directly constituted by the Minister, Environment & Forests, as per the enclosed communication.

All the original documents relating to PET were collected directly by the Central Selection Committee, as per the enclosed order of the Minister.

A total of 104 candidates, as per the enclosed list, were recommended for selection/appointment as Constables by the Central Selection Committee.

Out of 104 candidates, 64 selected candidates belonged either to Kamrup or Kamrup Metro districts, which raises serious questions about the fairness of the selection process.

While 18 and 46 candidates who were selected for appointment hailed from Kamrup (Metro) and Kamrup (Rural) districts, respectively, the other selectees hailed from the 8 named districts with the number of candidates ranging between 1 to 9 from each district.

No candidate was selected from the 16 named districts which included the Hill districts, the Barak Valley districts and the Bodoland Territorial Council (BTC) districts.

These 16 districts, from where not a single candidate had been selected, represented a population of 1.60 crore out of the population of 3.11 crore of the State of Assam as per 2011 census;

thus, a population of 52% comprised in the said 16 districts would go unrepresented.

Not a single candidate has been selected from the Hill districts or the Barak Valley districts or the BTC districts except one candidate from Baksa district.

A total of 3518 candidates were called for interview against 104 posts, thus, making it a ratio of about 34 candidates per post.

However, reservation for the various categories like Scheduled Caste, Scheduled Tribes, Scheduled Tribes (Plain), etc. as shown in the note were given a complete go-bye. Figures of the number of candidates who were called from different categories, i.e., General, ST (Plain), ST (Hills), SC, OBC/MOBC were indicated in a chart, thereby demonstrating how the law governing reservation and the judgments of this Court had been violated in calling the candidates for interview. It was observed that candidates who ought not to have been called were called, whereas those deserving of a call were not called.

> Although, 15 OBC/MOBC candidates, 17 ST (Plain) candidates, 1 ST (Hills) candidate and 1 SC candidate had qualified on merit and could have been counted as General category candidates, they were shown to have been selected against their respective reserved categories. As a result, a number of candidates belonging to the reserved categories were deprived of selection and undeserving candidates selected.

Reference was made to a particular candidate who was placed at Serial No.162 in the list of General category candidates. However, she was included in the select list for General candidates with only 50 vacancies. Similar type of serious irregularities or illegalities had taken place in selection of many other candidates. The entire process of recruitment is highly questionable, unfair and non-transparent.

32. What can be deduced from the above points flagged by the PCCF, ultimately approved by the Government, is this.

33. Papers/documents relating to the process of selection manifested selection of aspirants from certain specified districts and without there being any representation from a major cross-section of the population of the State of Assam. That apart, illegalities were detected in the process leading to preparation of the select list. Non- meritorious aspirants, undeserving of figuring in the select list, were included. Besides, appropriate earmarking of posts for reserved candidates were given a complete go-bye. In addition, meritorious aspirants belonging to the reserved category were not considered for filling up open category vacancies but were placed against the reserved category to which they belonged, thereby depriving other reserved category aspirants from entering the zone of consideration for appointment and paving the way for not so meritorious open category candidates to be placed in the select list. The Government, having serious reservations about the efficacy of the selection process, felt that the situation called for cancelling the process. The question is, whether it was so unjustified that interference in writ jurisdiction was warranted?

34. Although the ball had been set rolling in 2014, the interview of the candidates qualifying in the PET commenced in May, 2016 when admittedly the elections were knocking at the door. This, per se, may not be seen as a vitiating factor in the absence of any reference in the note of the PCCF dated 4th July, 2016 as well as in any subsequent decision of the Government. That apart, proceeding to conduct a process of recruitment without there being recruitment rules but based on executive instructions under Article 162 of the Constitution is not open to invalidation only on such ground. The Constitution Bench decision of this Court in B.N. Nagarajan v. State of Mysore16, since followed by a coordinate bench in Smt. Swaran Lata v. Union of India17, may be referred to in this context. In addition, one would find the absence of any requirement for the aspiring candidates to take a written examination, thereby, leaving the fate of such candidates to be determined solely and wholly on the basis of an interview. Once again, we cannot feign ignorance of the decision of another coordinate bench in Kiran Gupta v. State of U.P.18 where the law was laid down in clear terms as follows:

> "22. It is difficult to accept the omnibus contention that selection on the basis of viva voce only is arbitrary and illegal and that since allocation of 15% marks for interview

> was held to be arbitrary by this Court, selections solely based on interview is a fortiori illegal. It will be useful to bear in mind that there is no rule of thumb with regard to allotment of percentage of marks for interview. It depends on several factors and the question of permissible percentage of marks for an interview-test has to be decided on the facts of each case. However, the decisions of this Court with regard to reasonableness of percentage of marks allotted for interview in cases of admission to educational institutions/schools will not afford a proper guidance in determining the permissible percentage of marks for interview in cases of selection/appointment to the posts in various services. Even in this class, there may be two categories: (i) when the selection is by both a written test and viva voce; and (ii) by viva voce alone. The courts have frowned upon prescribing higher percentage of marks for interview when selection is on the basis of both oral interview and a written test. But, where oral interview alone has been the criteria for selection/appointment/promotion to any posts in senior positions the question of higher percentage of marks for interview does not arise. ...” AIR 1966 SC 1942 (1979) 3 SCC 165 (2000) 7 SCC 719

35. It cannot be gainsaid that the factors of “when”, “which”, “what”, “who” and “how” that are associated with a recruitment/selection process is the prerogative of the recruiting authority and the selectors; however, at the same time, the process has to be conducted consistent with statutory provisions governing the same, if any, as well as principles of absolute fairness and complete non-arbitrariness. Though it is true that the law does not postulate a fetter on the authority of the employer-State and it is within the domain of the Government when to initiate a process of recruitment for public employment, either according to recruitment rules or even in the absence thereof, it is for the Government of the day to decide in which manner it proposes to conduct selection, what would be the various stages the candidates aspiring for appointment have to pass through in order to be placed in the select list, who would be the selectors, and how weightage is to be given to each of the testing methods, a great deal of credence is lent to a process if it is fairly and transparently conducted in accordance with rules, whatever be its source, without the slightest hint of any bias or favouritism or nepotism. Normally, it is not for the courts to interfere unless the process smacks of mala fides. However, the right to be considered for public employment being a Fundamental Right, it would be safe and prudent to have recruitment rules to govern the process of selection so that the best possible talent is appointed in public service. Obviously, assessing the merit of the candidates aspiring for public employment on the basis of a prescribed standard would not only provide a level playing field for each of them, the excellence of any institution to which the appointment is to be made would depend directly on the proficiency of its members/staff and that would, in turn, depend on the quality and merit of those who offer themselves for selection and ultimately get selected, necessitating the selection to be conducted without any hidden taint or masked mala fides. Last but not the least, having regard to present times when corruption has been held to be a walk of life by certain responsible citizens of the country, it would have been desirable if the process of recruitment of 104 Constables were conducted after framing of recruitment rules and also prescribing a written examination to keep the process absolutely above board.

36. Be that as it may, drawing from our joint experience on the bench, we can say with some degree of conviction and authority that conducting recruitment processes in terms of executive orders and

in the absence of statutorily prescribed standards, more often than not, invite avoidable litigation producing undesirable results. Left to us, if any process of selection was challenged by unsuccessful candidates on the ground of absence of recruitment rules, or on the grounds of absence of a written examination, or on the allegations of bias or favouritism or nepotism which are nebulous, we would certainly not interfere in the absence of other apparent vitiating factors. However, the situation in the present case has taken a completely different turn. It is the successor Government which nullified the select list. Hence, the considerations for interference which ordinarily weigh in the minds of the court, having regard to the peculiar fact situation, are not exactly the same here. This aspect of the matter, discussed in some more depth hereafter, seems to have escaped the notice of the High Court.

37. As the factual narrative has unfolded, it is not that the High Court was called upon by any unsuccessful candidate to test the bona fide of the earlier Government decision not to frame recruitment rules and/or not to prescribe a written examination and/or to require the aspiring candidates to only go through an interview; on the contrary, the facts presented evince that it is the successor Government that had taken an informed decision not to proceed with the earlier process and to start a new process. At that stage of decision making, possibly, three options were available to the Government, being – (i) allow the process to be taken to its logical conclusion, without being unduly bothered by the illegalities/irregularities detected and referred to by the PCCF; (ii) cancel the entire process and start it anew; and

(iii) separate the grain from the chaff and to proceed with the former and complete the process. No doubt, the Government could have set right the process by preferring the third option. However, once the Government arrived at the decision considering the illegalities/irregularities detected by the PCCF that the process ought to be started afresh and preferred the second option to the first and third options, thereby cancelling the previous process, the High Court ought to have applied the proportionality test to adjudge whether the perfect balance was struck by preferring that option out of the other available options. Sadly, such test has not been applied.

38. The approach of the single Judge of the High Court, we are afraid, has evinced an exercise of appellate jurisdiction. Resting on the sole premise that no allegation of corrupt practice or unfair means adopted by the candidates (read, the respondents herein) had been levelled, the single Judge found force in the submission advanced by learned counsel for the respondents that the selection process cannot be said to be vitiated by malpractice. The single Judge also expressed the opinion that mere over-representation or under-representation, though may be suggestive of irregularity or malpractice, that by itself was not sufficient to arrive at a definitive conclusion that malpractice had occurred. Insofar as the ratio of candidates called for interview qua different categories, the single Judge observed as follows:

> “29. As regards the non-conformity of ratio of candidates called for interview, though it can be said to be an irregularity, but the question is whether such irregularity itself will be sufficient to vitiate the selection process.

> It may be mentioned that adhering to certain ratio for calling of candidates for interview is to ensure equitable opportunities to the candidate for assessment and so that deserving candidates are not unduly deprived of. In the present case, it has been noted that the variation in the ratio is not substantial to be considered unreasonable. Hence, merely because the ratio has not strictly adhered, that cannot be a ground for setting aside the recruitment process.
>
> 30. Further, though this Court has also noted that the ratio had not been consistently followed by the Selection Committee, in absence of any allegation of any corrupt practice or fraudulent activity, this Court is of the view that mere non-adherence to specific ration ought not to be a ground to interfere with the entire selection process.

39. Viewed in isolation vis-à-vis the claim of the respondents, the opinion expressed may not seem to be flawed. However, the larger public interest that the successor Government had in mind was not kept in view by the single Judge. Fostering diversity and inclusivity in public service, ensuring that there is representation from almost all the districts including from the hills and historically backward classes without, however, compromising merit should be the commitment of all Governments of States in the North-Eastern part of the country. The decision to cancel the select list has the marks etched to proceed towards such commitment and achieving the greater good. Such a noble initiative was, by no means, open to scrutiny by the judicial review court. Two distinct conclusions in the given set of facts being clearly possible and the successor Government having taken a view, which by no means was unreasonable and/or implausible, the writ court instead of substituting its view and/or imposing its own decision as to what would have been and was the correct option that the Government should have preferred in lieu of the other option actually preferred, ought to have stayed at a distance instead.

40. It is further useful to remember that the Government itself felt that the selection being entirely based on interview, the same admitted an element of arbitrariness and that the assessment of candidates being based merely on the basis of marks at the interview, was reasonable for drawing a presumption of being misused for favouritism and could well be regarded as suffering from the vice of arbitrariness. In such circumstances, it is indeed difficult, if not impossible, for a court to law to substitute its decision for the one taken by the Government reasoning that the selection has not been challenged by any unsuccessful candidate.

41. Insofar as the candidate referred to in the penultimate point of the note of the PCCF, the single Judge was of the following opinion:

> 31. As regards the allegation of including one non meritorious candidate namely, xxx , this Court is of the opinion that her name can certainly be struck off and the more meritorious candidate can be included and such one off illegality cannot said to have vitiated the entire selection process.

The illegal recommendation of xxx is an instance where the authorities can themselves rectify by cancelling her selection, which will not have any bearing on the merit of the other remaining

candidates." The aforesaid observations, admitting illegal recommendation having been made, overlook that it was not a sole instance of favouritism but the PCCF had also referred, albeit without giving detailed particulars, to other illegalities/irregularities in respect of selection of many other candidates.

42. On an overall study of the note, no person of reasonable prudence would be left in doubt that the process had a coat of discernible taint suggesting impropriety and bias, if not corruption; and applying the test of proportionality, the decision taken by the successor Government of cancelling the process initiated by the earlier Government cannot be said to be so disproportionate and incommensurate with the illegalities/irregularities detected that interference could have been said to be legitimately warranted.

43. The Division Bench arrived at its own conclusion that the select list should not have been cancelled without any detailed inquiry having been conducted to find out the veracity of the irregularities or illegalities alleged.

44. Whether or not a detailed inquiry was needed, despite the note of the PCCF, ought to have been left undisturbed since the successor Government reached a satisfaction of its own that for the various reasons highlighted in the said note, it would be unjust to proceed further. Such satisfaction could not have been tinkered by the Division Bench on the ground that a detailed inquiry ought to have been conducted.

45. We, thus, unhesitatingly arrive at the conclusion that based on the note of the PCCF dated 4th July, 2016 and the recommendation made by him for cancellation of the select list, the decision of the Government to approve the said note and, thereby, cancel the select list did not stand vitiated to attract its invalidation either by application of the doctrine of Wednesbury unreasonableness or proportionality.

46. Before ending our discussion on the relevant issues, we record having perused the decisions in Anamica Mishra (supra), Rajesh P.U. (supra) and Sachin Kumar (supra).

47. In Anamica Mishra (supra), this Court held 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 decision there turns on its facts, with a written examination being followed by an interview. The reasons for cancelling the process were also trivial as compared to the very different reasons with which the appellants were faced. The cited decision is, therefore, distinguishable.

48. There were no serious grievances of malpractices in Rajesh P.U. (supra) either. In fact, this Court held that "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". It was concluded that "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" (emphasis supplied by us).

49. Paragraph 35 of the decision in Sachin Kumar (supra) has been relied on. There, this Court held that:

> "35. In deciding this batch of SLPs, we need not reinvent 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 malpractices 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 wrongdoing 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 wrongdoing should not pay a price for those who are actually found to be involved in irregularities. By segregating the wrongdoers, 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 malpractices and to penalise them for their wrongdoing, it would be unfair to impose the burden of their wrongdoing on those who are free from taint. To treat the innocent and the wrongdoers 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." (emphasis supplied by us)

50. What follows from the above is that each case has to be decided on its own peculiar facts. It has to be pleaded and proved to the satisfaction of the Court that the decision of the recruiting authority (to cancel the entire process because of wrongdoing by some tainted elements and not save a part of the process, to the extent it could be saved, to the utter detriment of the interests of the innocent) is wholly disproportionate to the risk and overly severe relative to what is at stake, thereby virtually rendering such decision to be irrational.

51. Based on what has been discussed in the paragraphs preceding consideration of the authorities cited by Mr. Goswami, the appellants' decision in cancelling the entire selection process initiated vide the advertisement dated 23rd July, 2014 relying on the note of the PCCF dated 4th July, 2016, and not part of it, in our considered opinion, does not seem to be either arbitrary or unreasonable or without any sense of proportion. Since the earlier process did border on fraud, in the light of the reservation policy not being respected and observance of the decisions of this Court (that meritorious reserved category candidates are entitled to be accommodated in the open category) in breach, there was a brazen violation which was sought to be corrected and, if we may say, justifiably so. It has not been proved to our satisfaction that the impugned decision of cancelling the select list is the neat result of an injudicious exercise of discretion and was ill- directed in the guise of achieving the sanctity of the entire selection process.

52. The broad issue and issue (a) (supra) are, thus, answered in favour of the appellants by holding that the impugned decision of cancellation was neither unjustified nor was one which could be upset by applying the doctrines of either Wednesbury unreasonableness or proportionality.

53. Since we find question (b) supra to be a question of frequent occurrence engaging the courts of law, it is considered fruitful to take it up for an answer now. It has been argued that by dint of mere empanelment/enlistment of an aspirant's name for filling up a public post, no right accrues in favour of such an aspirant to move the writ court for redress. We do not consider that an empanelled or a selected candidate has absolutely no right to move the writ court. We are conscious of the line of decisions of this Court and have noted some of them here, which lay down the law that mere empanelment/enlistment does not result in accrual of any indefeasible right in favour of such

empanelled/selected candidate as well as the law that the employer may, in its wisdom, either decide to cancel the select list or not carry on the process further resulting in the notified/advertised vacancy/vacancies not being filled up pursuant to the selection process, which has been conducted. What it means is that an empanelled/selected candidate can claim no right of appointment, if the State has cogent and germane grounds for not making the appointment. However, at the same time, it is also the law that the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. Shankarsan Das (supra) cautions that the State has no licence to act in an arbitrary manner. In R.S. Mittal v. Union of India19, a coordinate bench held that when a person has been selected by the Selection Board and 1995 Supp (2) SCC 230 there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment and that there has to be a justifiable reason to decline to appoint a person who is on the select panel. The position in law finds reiteration in a decision of recent origin in Dinesh Kumar Kashyap v. South East Central Railway20, where the majority held that the employer must give cogent reasons for not appointing selected candidates.

54. Any decision taken not to appoint despite there being vacancies and a valid select list, obviously, is in the nature of a policy decision. It has to be borne in mind that securing public employment is the dream of many, who put their heart and soul to prepare for it. Nowadays, aspirants undertake rigorous study sessions as well as training modules to equip themselves, which also comes at a heavy cost. That apart, since every process of recruitment necessarily involves substantial expenses which are borne from the public exchequer and at the same time the aspirants for the posts (who, as per their own estimation, have performed sufficiently well and therefore stand a good chance of being appointed upon figuring in the select list) cherish fond hopes of a bright and secure future, the law is clear that the policy decision not to carry the process forward must be taken bona fide, there has to be justifiable reason if the (2019) 12 SCC 798 process is abandoned mid-way, and such decision must not suffer from the vice of arbitrariness or the whims of the decision maker. This acts as a check on the employer's power deciding against not making any appointment from the select list despite availability of vacancy/vacancies on the advertised/notified public post(s). A writ court may, upon reaching the requisite satisfaction, intervene in such manner and make such directions as the facts and circumstances warrant. We, therefore, do not find it acceptable that the aspirants, not having an indefeasible or vested right of appointment, do not also have the right to question any decision adverse to their interest affecting achievement of their goals to secure public employment. Whether, and to what extent, any relief should be granted, must depend on the facts of each case.

55. On facts and in the circumstances, however, the respondents' legal rights were not infringed because of absence of grant of legitimacy to the select list by way of an approval from the Government; hence, the writ petition should not have been allowed.

56. Question (b) (supra) is, accordingly, answered.

57. The answer to the issue of the appellants urging new grounds need not detain us for long. We have not looked into the counter affidavit of the appellants but have confined our attention to the note of the PCCF dated 4th July, 2016, containing the reasons based on which cancellation of the select list was proposed. The law laid down in Mohinder Singh Gill (supra) admits of no dispute;

however, the said decision has no application because of what has been immediately observed by us.

58. We reiterate having read the note dated 4th July, 2016 of the PCCF in between the lines and record that there were materials proffering sufficient justification for the successor Government to cancel the select list; hence, we endorse our approval of the same.

59. Having answered all the aforesaid crucial issues, ruling on the final issue invariably has to be in favour of the appellants. RELIEF

60. Consequently, the impugned judgment(s) and order(s) of the High Court stand(s) quashed.

61. The civil appeal stands allowed, without order for costs.

62. Pending applications, if any, shall stand disposed of. CONCLUDING DIRECTIONS

63. The appellants are granted liberty to take forward the process of filling up 104 Constables in the AFPF, in accordance with law, by publishing fresh advertisement. It would be desirable if rules are framed for the purpose of recruitment and such rules are uniformly applied to all and sundry, so as to preempt any allegation of bias or arbitrariness. Even if rules are not framed, the selection process may be taken forward in terms of administrative instructions which, in any case, should be placed in the public domain.

64. The respondents, if they choose to apply in pursuance of such advertisement, shall be considered for appointment waiving their age bar as well as waiving insignificant minor deficiencies in physical measurement as well as insignificant requirements of the PET, considering that almost a decade has passed since the earlier process was initiated. This concession is granted in exercise of our power conferred by Article 142 of the Constitution. In addition, it shall be open to the PCCF to grant such further relaxation to the respondents as deemed fit and proper.

65. Let the fresh process be initiated and concluded without any delay.

……J. (DIPANKAR DATTA) ……J. (MANMOHAN) NEW DELHI;

MARCH 07, 2025.