Ran Vijay Singh vs State Of U.P. . on 11 December, 2017

Equivalent citations: AIR 2018 SC 52, 2018 (2) SCC 357, 2018 (2) ALJ 110, (2018) 1 SERVLJ 47, (2018) 2 KCCR 105, (2018) 1 LAB LN 36, (2018) 1 ADJ 62 (SC), (2018) 1 ESC 7, (2017) 14 SCALE 173, (2018) 1 PAT LJR 184, (2018) 1 SCT 334, (2018) 2 GUJ LH 46, (2018) 1 JLJR 99, (2018) 2 ALL WC 1859, 2018 (127) ALR SOC 37 (SC), 2018 (1) KLT SN 23 (SC), AIR 2018 SUPREME COURT 52

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Bench: Deepak Gupta, Madan B. Lokur

REPORT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 367 OF 2017

Ran Vijay Singh & Ors. …Appe

Versus

State of U.P. & Ors. …Resp

WITH

CIVIL APPEAL NOS. 355, 354, 356-357, 358 AND 366 OF 2017

JUDGMENT

Madan B. Lokur, J

1. What a mess! This is perhaps the only way to describe the events that have transpired in the examination conducted by the U.P. Secondary Education Services Selection Board. We have reached the present stage of judgment after eight long years of uncertainty for, and three evaluations of the answer sheets of, more than 36,000 candidates who took the examination for recruitment as Trained Graduate Teachers way back in January 2009. Hopefully today, their travails, as those of the U.P. Secondary Education Services Selection Board, will come to a satisfactory end.

2. On 15th January, 2009 the U.P. Secondary Education Services Selection Board (for short the "Board") published an advertisement inviting applications for recruitment to the post of Trained Graduate Teachers in Social Science. The recruitment was to be in accordance with the provisions of the U.P. Secondary Education Services Selection Board Act, 1982 and the Rules framed thereunder.

3. More than 36,000 candidates took the written examination held pursuant to the advertisement and the result of the written examination was declared by the Board on 18th June, 2010. It may be mentioned that the written examination was based on multiple choice answers which were to be scanned on OMR sheets.

4. The candidates who qualified in the written examination were called for an interview held between 16th and 26th July, 2010. Eventually, the combined result (written examination and interview) was declared on 14th September, 2010. According to the appellants, they were successful in the written examination as well as in the interview and were amongst those who were in the select list for recruitment.

5. Some candidates who were not successful in the written examination or in the interview filed writ petitions in the Allahabad High Court between 2010 and 2011. All these writ petitions were dismissed by a learned Single Judge. The reasons for dismissal of these writ petitions were that there was no provision for re-evaluation of the answer sheets in the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 or the Rules framed thereunder. Reliance was also placed by the learned Single Judge for dismissing writ petitions on the decision of this Court in Himachal Pradesh Public Service Commission v. Mukesh Thakur 1 in which this Court considered a large number of its earlier decisions and held: "Thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation."

6. Another batch of writ petitions (having 77 writ petitioners) came to be listed before another learned Single Judge of the High Court. The subject and issues were the same and the learned Single Judge admitted these writ petitions for final hearing notwithstanding the dismissal of several similar petitions. The challenge made by the writ petitioners was to seven questions/answers in the written examination which, according to them, had incorrect key answers. The learned Single Judge personally examined those seven questions and concluded that:

(a) The correct answer of question no. 24 in History paper would be option (1).

(b) For question no. 25, History paper, option (2) is correct.

(c) Option (2) is the correct answer of question no. 36 of History paper.

(2010) 6 SCC 759

(d) Option (2) is correct answer in respect to question no. 37 of History paper.

(e) Question no. 40 of History paper is wrongly framed.

(f) In question no. 43, there may be two correct answers, i.e. options (1) and (3).

(g) In question no.32 of Civics Paper, option (3) would be the correct answer.

The learned Single Judge then proceeded to observe:

> "It cannot be doubted that being a selection body for appointment of Teachers in Secondary Schools, the Selection Board was under
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> a pious as well as statutory obligation to hold selection very carefully, meticulously and in the most honest and correct manner. The job of Selection Board could not have been completed by mere holding a selection without caring whether examination is being conducted correctly and properly, whether all the questions have been framed in a proper manner, whether the answer(s), if it is multiple choice examination, have been given with due care and caution so as to leave no scope of error or mistake therein etc. In fact if such a mistake is committed, it causes a multi-edged injury to an otherwise studious, intelligent and well conversant student who understand the subject, well knows the relevant details and correct answers but suffers due to sheer negligence of the examining body. The obligation of examining body cannot be allowed to whittle out in any manner for any reason whatsoever. For the fault of examining body, a candidate cannot be made to suffer."

7. On this basis, the learned Single Judge passed a judgment and order dated 8th February, 2012 directing re-examination of the answer sheets of these 77 writ petitioners. It was further directed that in case these writ petitioners are selected then those at the bottom of the select list would automatically have to be pushed out.

8. In must be recorded that the learned Single Judge did refer to and cite several decisions of this Court on the subject or re-evaluation but unfortunately did not appreciate the law laid down. The learned Single Judge relied on Manish Ujwal v. Maharishi Dayanand Saraswati University2 but failed to appreciate that the six disputed answers under consideration in that case were demonstrably wrong and this was not in dispute and even the learned counsel appearing for the University did not question this fact. The decision is clearly distinguishable on facts.

9. Be that as it may, the issue that remained in Manish Ujwal was of the appropriate orders to be passed. While considering this, the following cautionary measures were suggested:

> "....it is necessary to note that the University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more than one reason. We mention few of those; first and paramount reason being the welfare of the student as a wrong key answer can result in the merit being made a casualty. One can well understand the predicament of a young student at the

> threshold of his or her career if despite giving correct answer, the student suffers as a result of wrong and demonstrably erroneous key answers; the second reason is that the courts are slow in interfering in educational matters which, in turn, casts a higher responsibility on the University while preparing the key answers; and thirdly, in cases of doubt, the benefit goes in favour of the University and not in favour of the students."

10. Feeling aggrieved by the decision of the learned Single Judge, the Board preferred Special Appeal No. 442 of 2012 before the Division Bench of the High Court. Some candidates also preferred Special Appeals directed against the judgment and order dated 8th February, 2012. The (2005) 13 SCC 744 Special Appeal filed by the Board was dismissed by a Division Bench of the High Court on 13th March, 2012. In some other Special Appeal filed by a candidate, it was stated by the Board on 11 th April, 2012 that the answer sheets of all the candidates would be re-evaluated in the light of the judgment of the learned Single Judge.

11. Following up on this, the judgment and order passed by the learned Single Judge was implemented on 10th September, 2012 and the re- evaluated results of the written examination of all candidates were declared. As a result of the re-evaluation, it appears that some candidates, who were declared successful in the combined result declared on 14th September, 2010 were now declared unsuccessful. The appellants before us were not affected by the re-evaluation of the written examination and continued in the select list.

12. Thereafter, a set of petitions was filed including some before this Court and eventually it came to pass that those aggrieved by the order passed by the Division Bench on 13th March, 2012 could file review petitions.

13. On 12th May, 2014 the Board published the final select list of candidates who had qualified in the written examination as well as in the interview. In this final select list, the appellants did not find a place and, therefore, they challenged the order of the learned Single Judge dated 8th February, 2012. According to the appellants the learned Single Judge had incorrectly re-evaluated the seven disputed questions and had arrived at incorrect answers to these questions.

14. The Division Bench heard all the review petitions as well as the appeals and passed an order dated 28th April, 2015 referring the seven disputed questions/answers for consideration by a one-man Expert Committee. On or about 18th May, 2015 the Expert Committee gave its Report to which the appellants filed objections. Eventually, by the judgment and order dated 2nd November, 2015 the Division Bench directed a fresh evaluation of the answer sheets on the basis of the Report of the Expert Committee. This decision of the Division Bench is under challenge before us.

15. During the pendency of the appeals in this Court, the third re- evaluation was completed by the Board. The result of the third re- evaluation has been kept in a sealed cover. The sealed cover was initially filed before us but later returned to learned counsel for the Board.

16. We are pained that an examination for recruitment of Trained Graduate Teachers advertised in January, 2009 has still not attained finality even after the passage of more than eight years. The system of holding public examinations needs to be carefully scrutinised and reviewed so that selected candidates are not drawn into litigation which could go on for several years. Be that as it may, we have still to tackle the issues before us.

17. It was submitted by learned counsel for the appellants that the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 and the Rules framed thereunder do not provide for any re-evaluation of the answer sheets and, therefore, the learned Single Judge ought not to have undertaken that exercise at all. Reference was made to the following passage from Mukesh Thakur which considered several decisions on the subject and held:

> "In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court."

18. A complete hands-off or no-interference approach was neither suggested in Mukesh Thakur nor has it been suggested in any other decision of this Court – the case law developed over the years admits of interference in the results of an examination but in rare and exceptional situations and to a very limited extent.

19. In Kanpur University v. Samir Gupta3 this Court took the view that "…. the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct." In other words, the onus is on the candidate to clearly demonstrate that the key answer is incorrect and that too without any inferential process or reasoning. The burden on the candidate is therefore rather heavy and the constitutional courts must be extremely cautious in entertaining a plea challenging the correctness of a key answer. To prevent such challenges, this Court recommended a few steps to be taken by the examination authorities and among them are: (i) Establishing a system of moderation; (ii) Avoid any ambiguity in the questions, including those that might be caused by translation; and (iii) Prompt decision be taken to exclude the suspect question and no marks be assigned to it.

20. Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth4 is perhaps the leading case on the subject and concerned itself with Regulation 104 of the (1983) 4 SCC 309 (1984) 4 SCC 27 Maharashtra Secondary and Higher Secondary Education Boards Regulations, 1977 which reads:

> "104. Verification of marks obtained by a candidate in a subject.—(1) Any candidate who has appeared at the Higher Secondary Certificate examination may apply to the Divisional Secretary for verification of marks in any particular subject. The verification will be restricted to checking whether all the answers have been examined and that there has been no mistake in the totalling of marks for each question in that subject and transferring marks correctly on the first cover page of the answer book and whether the supplements attached to the answer book mentioned by the candidate are intact. No revaluation of the answer book or supplements shall be done.
>
> (2) Such an application must be made by the candidate through the head of the junior college which presented him for the examination, within two weeks of the declaration of the examination results and must be accompanied by a fee of Rs 10 for each subject.
>
> (3) No candidate shall claim, or be entitled to revaluation of his answers or disclosure or inspection of the answer books or other documents as these are treated by the Divisional Board as most confidential."

21. The question before this Court was: Whether, under law, a candidate has a right to demand an inspection, verification and revaluation of answer books and whether the statutory regulations framed by the Maharashtra State Board of Secondary and Higher Secondary Education governing the subject insofar as they categorically state that there shall be no such right can be said to be ultra vires, unreasonable and void.

22. This Court noted that the Bombay High Court, while dealing with a batch of 39 writ petitions, divided them into two groups: (i) Cases where a right of inspection of the answer sheets was claimed; (ii) Cases where a right of inspection and re-evaluation of answer sheets was claimed. With regard to the first group, the High Court held the above Regulation 104(3) as unreasonable and void and directed the concerned Board to allow inspection of the answer sheets. With regard to the second group of cases, it was held that the above Regulation 104(1) was void, illegal and manifestly unreasonable and therefore directed that the facility of re- evaluation should be allowed to those examinees who had applied for it.

23. In appeal against the decision of the High Court, it was held by this Court that the principles of natural justice are not applicable in such cases. It was held that: "The principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners."

24. On the validity of the Regulations, this Court held that they were not illegal or unreasonable or ultra vires the rule making power conferred by statute. It was then said:

> "The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. None of these vitiating factors are shown to exist in the present case.....". It was also noted by this Court that:
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> "..the High Court has ignored the cardinal principle that it is not within the legitimate domain of the Court to determine whether the purpose of a statute can be served better by adopting any policy different from what has been laid down by the Legislature or its delegate and to strike down as unreasonable a bye-law (assuming for the purpose of discussion that the impugned regulation is a bye-law) merely on the ground that the policy enunciated therein does not meet with the approval of the Court in regard to its efficaciousness for implementation of the object and purposes of the Act."

25. Upholding the validity of Regulation 104, this Court then proceeded on the basis of the plain and simple language of the Regulation to hold that "The right of verification conferred by clause (1) is subject to the limitation contained in the same clause that no revaluation of the answer books or supplements shall be done and the further restriction imposed by clause (3), prohibiting disclosure or inspection of the answer books." This Court then concluded the discussion by observing:

> "As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible,

> avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case."

26. In Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission 5 the question under consideration was whether the High Court was right in directing re-evaluation of the answer book of a candidate in the absence of any provision entitling the candidate to ask for re-evaluation. This Court noted that there was no provision in the concerned Rules for re-evaluation but only a provision for scrutiny of the answer book "wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of (2004) 6 SCC 714 marks of each question and noting them correctly on the first cover page of the answer-book." This Court reiterated the conclusion in Paritosh Bhupeshkumar Sheth that "in the absence of a specific provision conferring a right upon an examinee to have his answer-books re- evaluated, no such direction can be issued."

27. The principle laid down by this Court in Paritosh Bhupeshkumar Sheth was affirmed in Secy., W.B. Council of Higher Secondary Education v. Ayan Das6 and it was reiterated that there must be finality attached to the result of a public examination and in the absence of a statutory provision re-evaluation of answer scripts cannot be permitted and that it could be done only in exceptional cases and as a rarity. Reference was also made to Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Board of Secondary Education v. Pravas Ranjan Panda7 and President, Board of Secondary Education v. D. Suvankar8.

28. The facts in Central Board of Secondary Education v. Khushboo Shrivastava9 are rather interesting. The respondent was a candidate in the All India Pre-Medical/Pre-Dental Entrance Examination, 2007 conducted by the Central Board of Secondary Education (for short "the CBSE"). Soon after the results of the examination were declared, she applied for (2007) 8 SCC 242 (2004) 13 SCC 383 (2007) 1 SCC 603 (2014) 14 SCC 523 re-evaluation of her answer sheets. The CBSE declined her request since there was no provision for this. She then filed a writ petition in the Patna High Court and the learned Single Judge called for her answer sheets and on a perusal thereof and on comparing her answers with the model or key answers concluded that she deserved an additional two marks. The view of the learned Single Judge was upheld by the Division Bench of the High Court.

29. In appeal, this Court set aside the decision of the High Court and reiterating the view already expressed by this Court from time to time and allowing the appeal of the CBSE it was held:

> "We find that a three-Judge Bench of this Court in Pramod Kumar Srivastava v. Bihar Public Service Commission has clearly held relying on Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth that in the absence of any provision for the re-evaluation of answer books in the relevant rules, no candidate in an examination has any right to claim or ask for re-evaluation of his marks. The decision in Pramod Kumar Srivastava v. Bihar Public Service

> Commission was followed by another three-Judge Bench of this Court in Board of Secondary Education v. Pravas Ranjan Panda in which the direction of the High Court for re- evaluation of answer books of all the examinees securing 90% or above marks was held to be unsustainable in law because the regulations of the Board of Secondary Education, Orissa, which conducted the examination, did not make any provision for re- evaluation of answer books in the rules.
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> In the present case, the bye-laws of the All India Pre- Medical/Pre-Dental Entrance Examination, 2007 conducted by the CBSE did not provide for re-examination or re-evaluation of answer sheets. Hence, the appellants could not have allowed such re-examination or re-evaluation on the representation of Respondent 1 and accordingly rejected the representation of Respondent 1 for re-examination/re-evaluation of her answer sheets.....
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> In our considered opinion, neither the learned Single Judge nor the Division Bench of the High Court could have substituted his/its own views for that of the examiners and awarded two additional marks to Respondent 1 for the two answers in exercise of powers of judicial review under Article 226 of the Constitution as these are purely academic matters. ....."

30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it; (ii) If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed; (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate – it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse – exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the Courts in the result of examinations. This places the

examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the Court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination – whether they have passed or not; whether their result will be approved or disapproved by the Court; whether they will get admission in a college or University or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.

33. The facts of the case before us indicate that in the first instance the learned Single Judge took it upon himself to actually ascertain the correctness of the key answers to seven questions. This was completely beyond his jurisdiction and as decided by this Court on several occasions, the exercise carried out was impermissible. Fortunately, the Division Bench did not repeat the error but in a sense, endorsed the view of the learned Single Judge, by not considering the decisions of this Court but sending four key answers for consideration by a one-man Expert Committee.

34. Having come to the conclusion that the High Court (the learned Single Judge as well as the Division Bench) ought to have been far more circumspect in interfering and deciding on the correctness of the key answers, the situation today is that there is a third evaluation of the answer sheets and a third set of results is now ready for declaration. Given this scenario, the options before us are to nullify the entire re-evaluation process and depend on the result declared on 14 th September, 2010 or to go by the third set of results. Cancelling the examination is not an option. Whichever option is chosen, there will be some candidates who are likely to suffer and lose their jobs while some might be entitled to consideration for employment.

35. Having weighed the options before us, we are of opinion that the middle path is perhaps the best path to be taken under the circumstances of the case. The middle path is to declare the third set of results since the Board has undertaken a massive exercise under the directions of the High Court and yet protect those candidates may now be declared unsuccessful but are working as Trained Graduate Teachers a result of the first or the second declaration of results. It is also possible that consequent upon the third declaration of results some new candidates might get selected and should that happen, they will need to be accommodated since they were erroneously not selected on earlier occasions.

36. Learned counsel for the appellants contended before us that in case her clients are not selected after the third declaration of results, they will be seriously prejudiced having worked as Trained

Graduate Teachers for several years. However, with the middle path that we have chosen their services will be protected and, therefore, there is no cause for any grievance by any of the appellants. Similarly, those who have not been selected but unfortunately left out they will be accommodated.

37. As a result of our discussion and taking into consideration all the possibilities that might arise, we issue the following directions:

> (1) The results prepared by the Board consequent upon the decision dated 2nd November, 2015 of the High Court should be declared by the Board within two weeks from today.
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> (2) Candidates appointed and working as Trained Graduate Teachers pursuant to the declaration of results on the earlier occasions, if found unsuccessful on the third declaration of results, should not be removed from service but should be allowed to continue.
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> (3) Candidates now selected for appointment as Trained Graduate Teachers (after the third declaration of results) should be appointed by the State by creating supernumerary posts. However, these newly appointed Trained Graduate Teachers will not be entitled to any consequential benefits.

38. Before concluding, we must express our deep anguish with the turn of events whereby the learned Single Judge entertained a batch of writ petitions, out of which these appeals have arisen, even though several similar writ petitions had earlier been dismissed by other learned Single Judge(s). Respect for the view taken by a coordinate Bench is an essential element of judicial discipline. A judge might have a difference of opinion with another judge, but that does not give him or her any right to ignore the contrary view. In the event of a difference of opinion, the procedure sanctified by time must be adhered to so that there is demonstrated respect for the rule of law.

39. With the above directions, the appeals and miscellaneous applications are disposed of.

.....J (Madan B. Lokur) .....J (Deepak Gupta) New Delhi;

December 11, 2017