Nidhi Kaim vs State Of M P And Ors Etc on 12 May, 2016

Bench: Abhay Manohar Sapre, J. Chelameswar

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 1727 OF 2016

Nidhi Kaim … Appellant

Versus

State of Madhya Pradesh & Others Etc. … Respondents

WITH

CIVIL APPEAL NOs.1720-1724, 1726, 1728, 1729, 1733, 1734-1741, 1742-1749, 1750-1751, 1752, 1753-1758, 1847-1852, 1759-1764, 1765, 1766, 1767-1768, 1769-1774, 1776-1787, 1788, 1789-1791, 1792-1794, 1795-1798, 1799-1805, 1806-1808, 1809, 1810-1811, 1812, 1813-1814, 1815, 1816-1817, 1818-1819, 1820, 1821, 1822-1824, 1825, 1826, 1827, 1828, 1830, 1831-1832, 1833, 1834, 1835, 1836-1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845 & 1846 OF 2016.

J U D G M E N T

Chelameswar, J.

1. The Madhya Pradesh Vyavsayik Pariksha Mandal Adhiniyam, 2007 [The Madhya Pradesh Professional Examination Board Act, 2007] (hereinafter referred to as 'the Act') came into force on 15th October 2007. Section 3[1] of the said Act contemplates establishment of a Board (a body corporate) by a notification of the State Government. Admittedly, as on today, the notification constituting the Board has not been issued, but a body constituted earlier under various executive orders[2] of the State of Madhya Pradesh (hereinafter referred to as "the BOARD") continues to be in existence. It carries on various activities.

2. One of the objectives of the statutory Board specified under Section 10 is as follows:

> "(a) to conduct entrance examinations for admission to various professional and other educational institutions on the request of the State Government, other State Governments, Central Government, Universities and national or state level institutions."

> 3. It appears that admissions to various medical colleges either privately managed or managed by the government in the State of Madhya Pradesh are regulated by a common entrance examination [called as "Pre-

Medical Entrance Test (PMT)]. Such an examination was conducted annually by the BOARD. The Act came to be passed with a view to create a statutory basis for the BOARD which, inter alia, is

required to conduct entrance examinations for admissions into various educational institutions including medical colleges. Unfortunately, the notification contemplated under Section 3 never came to be issued but everybody in the administration of the State of Madhya Pradesh proceeded all these years on an assumption that the BOARD (a mythical beast) would somehow became the body contemplated under Section 3 of the Act. This aspect of the matter is one of the issues in the case; and, therefore, I shall deal with it later in this judgment.

4. Entrance examination for admissions into medical colleges for the year 2013 was conducted by the abovementioned BOARD on 7.7.2013. On the same day, a crime came to be registered in FIR No.539 of 2013 alleging commission of various offences pursuant to a large scale conspiracy in the context of the examination. The FIR came to be registered against several persons including students and some employees of the State of Madhya Pradesh who were working in the administration of the BOARD.

5. The Chairman of the BOARD also caused some enquiry[3] into the allegations. By two orders, dated 9.10.2013 and 6.12.2013, the BOARD cancelled the results of 345 and 70 candidates respectively. As a consequence, admissions granted to the abovementioned students in various medical colleges stood cancelled. Challenging those orders, a batch of writ petitions came to be filed before the Madhya Pradesh High Court. All the said writ petitions were dismissed by an order dated 11.4.2014 of the Division Bench of the Madhya Pradesh High Court in Ku. Pratibha Singh v. The State of Madhya Pradesh & Others. The correctness of the said judgment was questioned in SLP (C) Nos.13629-630 of 2014 (Pooja Yadav & Another v. State of M.P. & Others) and 16257 of 2014 (Sumit Sinha v. State of M.P. & Others), which were dismissed by orders dated 19.5.2014 and 08.08.2014 respectively confirming the judgment of the High Court.

6. Parallelly, the police investigated the crime (FIR No. 539/2013) mentioned supra. Some officers of the BOARD and others were arrested. Pursuant to information gathered during the course of the investigation of the abovementioned crime, the investigating agency sent two letters dated 23.10.2013 and 31.12.2013[4] to the BOARD. It is informed at the bar that the first of the abovementioned letters informed the BOARD about some irregularities in the conduct of the PMT of 2012, and the second called upon the BOARD to cause an inquiry into and provide certain information with regard to the PMTs of the years 2009 to 2011. On receipt of the said letters, the BOARD decided to enquire into the PMT process of not only the years 2009 to 2012 but also the year 2008.

7. The enquiry was conducted. The pattern of the enquiry is similar to the one conducted concerning PMT 2013. Based on the enquiry reports, the Board came to two conclusions: (i) there was a tampering with the examination process in each one of the abovementioned five years; and (ii) the appellants as well as some others students[5] resorted to unfair means at the said examinations. They were beneficiaries of such tampered examination process. The BOARD, therefore, cancelled the admissions of the appellants and some others. Aggrieved, a large number of students, whose admissions were cancelled, approached the Madhya Pradesh High Court by filing writ petitions. Majority of the writ petitions came to be dismissed by a common judgment dated 24.09.2014. The remaining writ petitions came to be dismissed by another common judgment dated 7.10.2014 in the

light of the judgment dated 24.09.2014. The instant appeals arise out of the said judgments preferred by some of the unsuccessful petitioners therein (students).

8. Before I proceed to examine the correctness of the impugned judgments, I think it would be profitable to describe broadly the examination process (with respect to which there is no dispute) conducted by the BOARD and also the nature of the allegations which formed the basis for the cancellation of the admissions of the various students.

THE PROCESS:

9. Each year the BOARD conducted a common entrance examination (for example PMT 2013) for all students aspiring to secure admission to various medical colleges in the State of Madhya Pradesh. Each year a large number of students (in tens of thousands)[6] not only from various parts of the State of Madhya Pradesh but also from other States appear for such examination. The examination is conducted in different cities/towns of Madhya Pradesh and in each city/town there is one or more identified examination centres depending upon the number of students choosing to appear for the PMT from that city/town. These examination centres are usually located in existing educational institutions in the city/town.

10. Each of the students applying is initially given a registration number and is subsequently allotted a Roll number. It is the agreed case of all the parties that each of the students is entitled to choose a city/town where the student would like to take the examination. Depending on the choice of the city/town in which the student wishes to take the examination, students are allotted a specified examination centre or centres (depending upon the number of students) in the city/town, as the case may be. The process of generating roll numbers and allotment of the centre of examination to each one of the students is done by a computerised process. Such a process is designed and applied by an in-house computer expert body of the BOARD.

11. According to the BOARD, such a computerised process of generating roll numbers and allotting the students to various examination centres in the State is by following some logical pattern. The pattern may vary from year to year and need not be the same for all the years. For example, in a particular year, the allotment of roll numbers could be in the alphabetical order of the names of the students, whereas in another the same could be on the basis of the date of the application of the student. (I make it clear that I am not examining the exact logic applied in each of these years. It was only meant to illustrate the possibilities of the variations in the pattern.) What is important is the existence of a pattern and logic underlying the generation and allotment of roll numbers and examination centres to the students. The existence of such pattern is of great significance and relevance in the instant case.

12. Admittedly, there was no show cause notice to any one of the students before cancelling their admissions. No speaking order indicating the reasons which formed the basis for the cancellation of the admissions was either passed or served on any one of the appellants. Reasons were spelt out for the first time in the High Court. It appears from the impugned judgment and the submissions made before us that respondents relied upon circumstantial evidence[7] to reach the two conclusions

referred to in para 7 (supra).

13. The case of the appellants before the High Court was that:

> (i) the impugned orders cancelling admission of the appellants were passed in flagrant violation of the principles of natural justice. None of the appellants had been given either -

a show cause notice indicating the allegations on the basis of which their admissions were proposed to be cancelled;

or any order in writing containing the reasons which formed the basis for the orders cancelling the admissions.

Therefore, the appellants are unaware of the reasons which prompted respondents to cancel the admission of the appellants. Consequently, appellants had no opportunity to defend themselves against the impugned action of cancellation of their admissions. The entire exercise was undertaken behind the back of the appellants. Therefore the action of the respondents is illegal and void ab initio on the ground of non-compliance with the requirement of the principles of natural justice, more particularly the rule of audi alteram partem.

that the circumstances (mentioned in the Footnote No.7) which formed the basis for the twin conclusions of the respondents, that there was a tampering with the examination process (in each of the years in question) and that the appellants and others are beneficiaries of such tampered examination process are without any proven factual basis and are pure conjunctures. (Certain ancillary submissions made in this regard will be considered later in this judgment).

The appellants also argued very forcefully that the impugned action against the appellants who belong to different batches (commencing from 2008) is unsustainable in view of the long lapse of time between the date of the alleged malpractice committed by the appellants and the date of the action by the respondents. It is submitted that the impugned action is arbitrary and violative of Article 14 of the Constitution because the penalty is disproportionate to the alleged misconduct of the appellants.

14. On the other hand, the defence of the respondent authorities has been:

> (i) it is a case of “mass copying” similar to a situation obtaining in The Bihar School Examination Board v. Subhas Chandra Sinha & Others, (1970) 1 SCC 648 (hereinafter referred to as Sinha’s case) wherein this Court held that in such a situation, there is no requirement of holding a “detailed inquiry into the matter and examine each individual case to satisfy ... which one of the candidates had not adopted unfair means”. Therefore, there is no violation of principles of natural justice as contended by the appellants;

(ii) since the appellants secured admission through fraudulent means, they cannot be permitted to retain the benefits accruing out of such a fraud, merely on the ground that there was some delay in detection of the fraud.

15. The High Court agreed with the respondents and held that it is a case of "mass copying" and there was no need to comply with the requirement of the audi alteram partem rule. In coming to the conclusion, the High Court relied upon its earlier decision in Pratibha Singh's case rendered in connection with PMT 2013[8]. The High Court also agreed with the conclusion of the respondents that there was a logical pattern in the allotment of Roll numbers and the examination centres to the students (with respect to each of the years in question) and the said logical pattern was breached with respect to the appellants. The High Court took note of the fact that the conclusions of the BOARD are based on the opinion of an expert committee (essentially consisting of people qualified in computer science) and the same cannot be interfered with in judicial review.

16. The 2nd submission is also rejected by the High Court on the ground that all the appellants resorted to unfair means in an organized manner (in collusion with officials of the BOARD and certain other criminal elements who played a major role in perpetrating such a large scale illegal activity) and played fraud on the examination system. The High Court, therefore, opined that appellants cannot be permitted to retain the benefit obtained through fraud merely because there was some time gap in detecting the fraud.

17. Hence, the instant appeals.

18. On behalf of the appellants, it is argued before us:

> (i) that the cases on hand are not cases of 'mass copying'. Having regard to the small number of the students whose admissions have been cancelled and having regard to the large number of students who appeared for the examination in each of the years in question (the details of which are already noted in para 7 supra), the number of students who were alleged to have copied constitute a small fraction, therefore, it cannot be said that these are cases of "mass copying".

Apart from the objection based on the statistical data, it is also the case of the appellants that even conceptually the case on hand cannot be a case falling under the category of "mass copying". According to the appellants, the expression "mass copying" has a definite legal connotation as discussed in Bihar School Examination Board case (supra) and the case on hand does not answer the description of "mass copying" as understood in the said case.

Cancellation of the examination and the admissions of the appellants without complying with the rule of audi alteram partem is illegal and assuming for the sake of arguments that there was some basis (the expert committee opinion) for the respondents to draw certain inferences which formed the basis for the allegations constituting the circumstances leading to the twin conclusions impugned by the appellants, there are considerable number of exceptions to each one of the circumstances [mentioned in para

(iii) to (vi) of the Footnote No.7] asserted by respondents. Therefore, the decision of respondents that the result of examination of all these appellants required to be cancelled on the ground that they resorted to "mass copying" without even giving a reasonable opportunity to the appellants to defend is flawed and legally untenable. In view of such exceptions, it is imperative in law that the decision to cancel admissions of the appellants must be preceded by an appropriate enquiry compliant with the principles of natural justice.

(iv) The appellants also made some ancillary submissions to demonstrate that the evidence relied upon by the respondents is based on facts (the details will be considered at the appropriate place) which render the evidence unreliable and unscientific.

(v) Even otherwise, cancellation of result of the appellants after a long lapse of time from the date of the commission of the alleged malpractice (ranging from 1 to 5 years) is an irrational exercise of the power by the BOARD. It is argued that apart from the irrationality, such a course of action would simply ruin the lives of these candidates as they would lose precious number of years in the prime of their youth and they would be barred by age to pursue any other course at this stage.

I make it clear that it is not the argument of any of the appellants herein that the allegations [mentioned in the Footnote 7], even if proved to be unexceptionable, would not be sufficient in law to justify the impugned action of the respondents.

(vi) In the absence of a notification contemplated under Section 3 of the Act, there is no validly constituted BOARD under the Act and, therefore, the BOARD is without any authority of law to cancel the examinations so far as they pertain to the appellants and also the admissions of the appellants.

DISCUSSIONS:

19. I shall first deal with the submission No.(vi) of the appellants i.e. in the absence of the notification contemplated under Section 3 of the Act, the third respondent - a non- statutory Board - has no legal authority to cancel either the examination conducted by it or the admissions of the appellants to the various medical colleges.

20. The learned counsel for the appellants pointed out to Section 24(2)(e) of the Act which authorises the Board constituted under Section 3 of the Act to make regulations providing for "imposition of penalties on candidates using unfair means or interfering in the examinations conducted by the Board" and argued that such power would be available only for the statutory Board, if ever constituted and the third respondent herein has no authority in law – in the sense of legislative sanction to take the impugned action.

21. Admittedly the notification contemplated under Section 3 of the Act has not been issued so far. The composition and legal structure of the third respondent (BOARD) was discussed elaborately in Pratibha Singh's case. It appears from the said judgment that the third respondent (BOARD) was brought into existence "for conducting the examination for admission in the medical, engineering

and agricultural universities and for admission in the polytechnics and initiate the necessary proceedings in this regard" by a notification dated 17.4.1982 issued in the name of the Governor. The said notification was published in the official gazette on 19.4.1982. Such a BOARD was initially constituted with 13 members and reconstituted from time to time. Therefore, the BOARD is a non-statutory 'body'. It is not a corporate entity. It has no existence apart from the government. Barring the vague statement (extracted above) regarding the purpose for which the BOARD is created, the Notification dated 17.4.1982 does not contain any details regarding either the powers or the functions of the BOARD[9].

22. The net result is that the entire exercise of holding the PMT and regulating the admissions of students into the various medical colleges would be only an exercise of the executive powers of the State of Madhya Pradesh.

If the third respondent BOARD is without any authority of law for taking the impugned action, it is equally without any authority of law to conduct the common entrance examination (PMT).

Any admission based on the marks obtained at such common entrance examination would be equally without any authority of law in the sense of legislative sanction. Whatever be the legal implications of the exercise of such power vis-à-vis others (which we are not called upon to examine in these appeals), the appellants cannot be heard saying that the BOARD has no authority of law to take action against them because they had appeared for the said examination and taken the benefit of securing admissions into the various medical colleges on the basis of the marks obtained by them in the examination.

Even otherwise, the argument of the appellants is required to be rejected for the following reasons:

> Under the scheme of our Constitution, the executive power of the State is co-extensive with its legislative power[10]. In the absence of any operative legislation, the executive power could certainly be exercised to protect the public interest[11]. The right of each one of the appellants herein for admission to the medical colleges in the State of Madhya Pradesh is itself an emanation of the State's executive action. No doubt, even executive action of the State can create rights. Unless there is something either in the Constitution or law which prohibits the abrogation or abridgment of rights, it is permissible for the State to do so by executive action in accordance with some specified procedure of law. No doubt, that the overarching requirement of Constitution is that every action of the State must be informed with reason and must be in public interest. Nothing has been brought to our notice which prohibits the impugned executive action. If it is established that the adoption of unfair means on large scale resulted in the contamination of the entrance examination (PMT) process of successive years, the State undoubtedly would have the power to take appropriate action to protect the public interest. I, therefore, reject the submission of the appellants.

23. I shall now deal with the submissions No. (i) and (ii) of the appellants.

Before we deal with the submission, it would be profitable to examine the relevant aspect of the judgment of this Court in Sinha's case (supra), because the High Court placed a heavy reliance on the said judgment for rejecting the submissions of the writ petitioners/appellants herein.

Though Sinha's case acquired the notoriety as a case of "mass copying", the total number of students whose examination was cancelled was 36 out of thousands of people, who appeared for the examination in the State of Bihar. Interestingly, the said judgment nowhere employed the phrase "mass copying". This Court was dealing with a question of the legality of the action of the appellants in cancelling "the examinations of all subjects held at the secondary school examination of 1969 at Hanswadih centre" for the reason "that unfair means were practiced on a large scale".

This Court laid down the principle that the rule of audi alteram partem need not be complied with in connection with the cancellation of examinations where it would be impracticable to apply the said principle. Adoption of unfair means on a large scale is one of them. This Court did not go by the percentage of the students who were alleged to have had resorted to the practice of unfair means. When this Court characterized the situation as practice of unfair means on a 'large scale', it used the expression only to distinguish the situation from cases of practice of unfair means by one or two students. This Court has also held that there are other circumstances justifying the departure from complying with the audi alteram partem rule. They are - leakage of question papers and destruction of a large number of answer papers[12]. In my opinion, the examples given therein are not exhaustive of all the categories constituting exceptions to the application of the rule of audi alteram partem.

Therefore, the percentage of the students who are alleged to have resorted to unfair means is irrelevant. Similarly, resorting to unfair means by a 'large number of students' is not the only circumstance which justifies the non-compliance with the rule of audi alteram partem.

24. That leads me to the next question, whether the situation prescribed in the case on hand falls within the exceptional circumstances contemplated by Sinha's case?

25. A large number of judgments are cited before us to emphasise the importance of the requirement to comply with the rule of audi alteram partem as an aspect of the guarantee contained in Article 14 of the Constitution. On the other hand, the respondents have relied upon an equally good number of judgments to demonstrate that there are well known exceptions to the application of the principles of natural justice. I do not think it necessary to examine all those judgments because as a general proposition of law, there cannot be any dispute about the importance of the above-mentioned rule.

However, the applicability of the said rule in the context of various situations which vitiate an examination process fell for the consideration of this Court on more than one occasion. A law in this regard is fairly well settled.

26. The case of the BOARD is that for taking the impugned action, they need not have proof of the guilt or complicity of the individual students in contaminating the examination process. It is argued

that if there is some reasonably reliable material to establish the fact that the examination process insofar as it concerns the appellants was contaminated, the BOARD would be justified in law to take the impugned action. The moment contamination of the examination process is established, the BOARD is relieved of the legal obligation to comply with the rule of audi alteram partem concerning the students who are the members of the pairs identified by the BOARD (on the basis of the expert committee report) to be the beneficiaries of the contaminated examination process. According to the BOARD, tampering with the examination process took place on a large scale in each of the years in question, and it took place pursuant to a deep conspiracy involving several people. Following the rule of audi alteram partem in such circumstances would be an impracticable exercise and the same is not required to be undertaken in view of the judgments of this Court in Bihar School Examination Board v. Subhas Chandra Sinha & Others, (1970) 1 SCC 648 and B. Ramanjini & Others v. State of A.P. & Others, (2002) 5 SCC 533 to emphasise on the need to comply with the rule of audi alteram partem. The respondents also relied upon Board of High School and Intermediate Education, U.P., Allahabad & Another v. Bagleshwar Prasad & Another, (1963) 3 SCR 767 in support of their submission that the scope of judicial reliance is very limited in the cases of malpractices at examinations.

27. On the other hand, appellants placed heavy reliance on the decision of this Court reported in Board of High School and Intermediate Education, U.P. v. Ghanshyam Das Gupta & Others, 1962 Supp (3) SCR 36 and Onkar Lal Bajaj & Others v. Union of India & Another, (2003) 2 SCC 673 to emphasise on the need to comply with the applicability of the rule of audi alteram partem.

28. Ghanshyam Das Gupta and Subhas Chandra Sinha directly deal with the applicability of the rule of audi alteram partem in the context of allegation of copying in an examination. Ramanjini's case deals with cancellation of the examination (conducted for the purpose of some recruitment process) on the ground of leakage of question papers and Onkar Lal Bajaj (supra) deals with cancellation of allotment of petrol pumps made to a large number of people, on the basis of allegations that such allotment was vitiated as a consequence of a corrupt process of selection.

29. Bagleshwar Prasad's case (supra) was a case of cancellation of examination results of only two students (the respondent before this Court and another) on the ground that they had adopted unfair means. It was not a case of non-compliance with the rule of audi alteram partem. An inquiry was conducted by a Sub-Committee constituted for the said purpose, and it found that both the students were guilty of adopting unfair means. Both the students challenged the decision to cancel their examination. The High Court set aside the impugned order on the ground that there was no direct evidence on the basis of which a Committee could have come to the conclusion that the students had adopted unfair means.

This Court reversed the High Court decision and held that the very fact that both the candidates gave identical answers was sufficient evidence of adoption of unfair means in the examination. While coming to the conclusion, this Court observed that it would be "inappropriate in such cases to require direct evidence[13]" and in cases where direct evidence is not available "the questions will have to be considered in the light of probabilities and circumstantial evidence". This case also laid down the principles governing the judicial review of the decisions of educational institutions

(examining bodies) in the context of the adoption of unfair means in examinations by the students. Though this Court held that the educational institution must "scrupulously follow the principles of natural justice" the scope of judicial review was held to be very limited and "it would ..... not be reasonable to import into these enquiries all considerations which govern criminal trials".

30. It is not necessary to make any analysis of the judgment of this Court in Ghanshyam Das Gupta (supra) as the same was considered by this Court in Sinha's case, analysed and distinguished.

31. I shall now analyse Sinha's case (supra).

In the month of March, 1969, the Bihar School Examination Board conducted the examination for the secondary school students. The results of the examination were published. However, the result of all the 36 students who appeared for the examination at Hanswadih was not announced. The Examination Board cancelled the examination insofar as the abovementioned students are concerned on the ground that they had resorted to 'unfair means on a large scale'. However, the students were allowed to appear at a supplementary examination to be held in September 1969.

The students challenged the said decision of the Board before the Patna High Court successfully.

This Court reversed the decision of the Patna High Court. Principally, two contentions raised on behalf of the students (which found favour with the High Court):

i) That, nobody complained about the commission of any malpractice;

therefore, the Board was not justified in cancelling the result.[14] That there was a failure to comply with the requirement of principles of natural justice.[15] were considered and rejected.

For reaching such conclusions, this court took note of the fact that the examination centre registered an unusually high rate of success compared to the other examination centres[16] - a case of relying upon circumstantial evidence. This Court further undertook a random inspection of the answer papers of the students and recorded a finding that "a comparison of the answer books showed such a remarkable agreement in the answers that no doubt was left in our minds that the students had assistance from an outside source. Therefore, the conclusion that unfair means were adopted stands completely vindicated." The students relied upon an earlier judgment of this court in Ghanshyam Das Gupta's Case. It was held therein that the students (only 3 in number) whose examination was cancelled on the ground that they had resorted to copying ought to have been given an opportunity to defend themselves.

This court distinguished Ghanshyam Das Gupta's case holding that the said judgment did not imply that the rule of audi alteram partem must be followed in cases "...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 practised on a vast scale ...". This Court further held that in Ghanshyam Das Gupta "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" and after so distinguishing Ghanshyam Das Gupta, this Court held as follows:

> "14. ... 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." Sinha's case judgment, in my view, yields the following principles:
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> Where there are allegations that students resorted to "unfair means on a large scale" at an examination, this court would not insist upon registration of a formal complaint. Any reliable information suggesting the occurrence of such malpractice in the examination is sufficient to authorize the examining body to take action because examining bodies are "responsible for their standards and the conduct of examinations" and "the essence of the examination is that the worth of every person is appraised without any assistance from an outside source".
>
> A lone circumstance could itself be sufficient in a given case for the examining body to record a conclusion that the students resorted to "unfair means on a large-scale" in an examination. This Court approved the conclusion of the Bihar School Examination Board that the students had resorted to unfair means on a large scale in one examination centre[17] and also approved the decision making process of the Board on the basis of circumstantial evidence. The lone circumstance that the success rate of the students who appeared for the examination from the centre in question is too high in comparison to other centres.
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> In such cases, the examining body need not hold "a detailed quasi- judicial inquiry with a right to its alumni to plead and lead evidence etc." and the examining body's

> "appreciation of the problem must be respected." To insist on the observance of the principles of natural justice, i.e. giving notice to each student and holding enquiry before cancelling the examination in such cases would 'hold up the functioning' of the educational institutions which are responsible for maintenance of the standards of education, and "encourage indiscipline, if not, also perjury".
>
> Compliance with the rule of audi alteram partem is not necessary not only in the cases of employment of 'unfair means on large scale' but also situations where there is a 'leakage of papers' or 'destruction of some of the answer books' etc. This Court drew a distinction between action against an individual student on the ground that the student had resorted to unfair means in the examination and the cancellation of the examination on the whole (or with reference to a group of students) because the process itself is vitiated.

32. B. Ramanjini's case was a case where the Government of Andhra Pradesh had cancelled the examinations conducted by the District Selection Committee in Anantapur district on the basis of a report of the Superintendent of Police that there was mass copying and leakage of question papers. The said order was set aside by the High Court. It was a case where no opportunity was given to the candidates before cancelling the examination. The challenge was not on the ground that there was a failure of natural justice but on the ground that there was no material before the State justifying the conclusion that the examination process was vitiated. On appeal, this Court reversed the said order holding that:

> "8. Further, even if it was not a case of mass copying or leakage of question papers or such other circumstance, it is clear that in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a foreknowledge of the question paper of otherwise. In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some material for the Government to act one way or the other. ..."

33. Coming to the case of Onkar Lal Bajaj (supra), Government of India decided to cancel the allotment of all retail outlets, LPG distributorship etc. which had been made on the basis of the recommendations of a 'Dealer Selection Board'. Such a decision was taken in view of serious allegations of illegality and impropriety in making such allotments. Approximately some 6000 allotments were cancelled without any further enquiry and opportunity to any one of the allottees. This Court set aside the Government's order of cancelling all allotments with certain further directions that the cases of 413 dealers (who were identified by the court on the basis of the material placed before this Court) be examined by a Committee consisting of a retired Judge of this Court and another of the Delhi High Court. For reaching such a conclusion, this Court rejected the

submission of the Union of India that in a given situation, it may be "legally permissible" to resort to such mass cancellation where it is found that large number of selections were tainted and segregation of good and bad would be time consuming. This Court opined "the solution by resorting to cancellation of all was worse than the problem. Cure was worse than the disease. Equal treatment to unequals is nothing but inequality. To put both the categories – tainted and the rest – on a par is wholly unjustified, arbitrary, unconstitutional being violative of Article 14 of the Constitution."

34. From an analysis of the above decisions, the following principles emerge:-

> Normally, the rule of audi alteram partem must be scrupulously followed in the cases of the cancellation of the examinations of students on the ground that they had resorted to unfair means (copying) at the examinations.
>
> 2. But the abovementioned principle is not applicable to the cases where unfair means were adopted by a relatively large number of students and also to certain other situations where either the examination process is vitiated or for reasons beyond the control of both students and the examining body, it would be unfair or impracticable to continue the examination process to insist upon the compliance with audi alteram partem rule.

The fact that unfair means were adopted by students at an examination could be established by circumstantial evidence.

The scope of judicial review of the decision of an examining body is very limited. If there is some reasonable material before the body to come to the conclusion that unfair means were adopted by the students on a large scale, neither such conclusion nor the evidence forming the basis thereof could be subjected to scrutiny on the principles governing the assessment of evidence in a criminal court.

Cases such as the one on hand where there are allegations of criminal conspiracies resulting in the tampering with the examination process for the benefit of a large number of students would be certainly one of the exceptional circumstances indicated in Sinha's case provided there is some justifiable material to support the conclusion that the examination process had been tampered with.

In the light of the principles of law emerging from scrutiny of the abovementioned judgments, we are of the opinion that case on hand can fall within the category of exceptions to the rule of audi alteram partem if there is reliable material to come to the conclusion that the examination process is vitiated.

That leads me to the next question – whether the material relied upon by the BOARD for reaching the conclusion that the examination process was contaminated insofar as the appellants (and also some more students) are concerned and the appellants are the beneficiaries of such contaminated process, is tenable?

35. A great deal of effort was made by the appellants to demonstrate to us that the various circumstances - relied upon by the respondents to reach the conclusion that each one of the appellants herein is the beneficiary of a conspiracy by which the purity of examination process undertaken by the Board is contaminated - are impeachable. The learned counsel demonstrated before us that at least in some cases, one or more of the circumstances relied upon by the Board [indicated in sub-paragraphs (iii), (iv), (v) and

(vi) of Footnote 7 (supra)] are inapplicable. For example, the assumption that the "scorer" is a more accomplished student than the "beneficiary" and that the "scorer" always sat in front of the "beneficiary" at the time of the examination to enable the "beneficiary" to copy from the "scorer" are demonstrated to be wrong at least in some cases. There are cases where the "scorer" secured less marks than the "beneficiary". Similarly, the allegation that "scorers" did not take admission in any of the medical colleges of Madhya Pradesh despite securing sufficiently high marks entitling them to obtain admissions, is demonstrated to be wrong. At least in some cases "scorers" have in fact joined some medical colleges in Madhya Pradesh.

36. There is nothing inherently irrational or perverse in the BOARD's conclusions (i) that the examination process was tampered with; and (ii) that all the appellants herein who are identified to be members of the 'pairs' (referred to earlier) are beneficiaries of such manipulated examination process[18], relying upon the circumstances (mentioned in Footnote 7 supra) if they are unimpeachable. Each one of the circumstances is an inference which flows from certain basic facts which either individually or in combination with some other facts constituted the circumstance. One or more of such facts (constituting circumstances mentioned in (iii) to (vi) of Footnote 7 supra) are demonstrated to be not true (with reference to some of the appellants).

37. The proof of the first two circumstances (mentioned in Footnote 7) depends upon the analysis of the data which is available on the computers. The fact that the entire process of the generation of roll numbers to the students and allotment of the students to various examination centres is done by a computerised process is not in dispute. The assertion of the BOARD that technically such a process requires SOME LOGIC to be followed is not disputed by the appellants. The expert committee (on an analysis of the data) (i) identified the logic followed for generating the roll numbers and allotting the examination centres and also (ii) reaching a conclusion that in the case of the appellants and a few others the allotment was not in accordance with the logic initially adopted. The same are not normally amenable to judicial review because Courts would lack the necessary technical expertise to sit in judgment over such matters. Apart from that, there is no specific challenge to those conclusions, except that the matter should have been examined by an independent expert committee. I do not find any legal basis for such a submission. I, therefore, see no reason to doubt either the factual or legal correctness of the first two circumstances.

It, therefore, logically follows that there was a tampering with the examination process insofar as the appellants and a few others are concerned.

38. The other submission of the appellants in this regard is that if there is a deviation from the general pattern with regard to the allotment of Roll Numbers and the examination Centres, the

appellants could not be blamed or 'penalised' because the entire process of the allotment was done by the BOARD and its officials.

In my opinion, the question of either 'blame' or 'penalty' does not arise in the context. If tampering with the examination process took place, whether all or some of the appellants are culpable is a matter for a criminal court to examine as and when any of the appellants is sought to be prosecuted.

But the fact that the examination process was tampered with is relevant for administrative action such as the one impugned herein. The said fact formed the foundation for the further enquiry for identifying the beneficiaries of such contaminated process. Having regard to the circumstances relied upon, I do not see anything illogical or untenable in the conclusions drawn by the expert committee which formed the basis for the impugned action of the BOARD. It is argued that the formula[19] adopted by the BOARD to record the conclusion that the members of the identified pairs resorted to unfair means at the examination is without any scientific basis. I do not see any irrationality either in the formula or the decision of the BOARD to assign greater weightage to the incorrect matching answers. There is nothing inherently suspicious about two candidates sitting in close proximity in an examination and giving the same correct answer to a question because there can only one correct answer to a question. On the other hand, if they give the same wrong answer to a given question and if the number of such wrong answers is high, it can certainly generate a doubt and is a strong circumstance indicating the occurrence of some malpractice. Such a test was approved by this Court in Bagleshwar Prasad's case[20].

Even otherwise, in my opinion, it would be futile to pursue the inquiry in this regard. Assuming for the sake of argument that the submission of the appellants is right and there are some cases (of appellants) where the appellants can demonstrate (if an opportunity is given to them) that the circumstantial evidence is not foolproof and therefore the impugned order must be set aside on the ground of failure of natural justice, the BOARD would still be entitled (in fact it would be obliged in view of the allegation of systematic tampering with the examination process year after year) in law to conduct afresh enquiry after giving notice to each of the appellants. That would mean spending enormous time both by the BOARD and by the appellants for the enquiry and the consequential (inevitable) litigation regarding the correctness of the eventual decision of the BOARD.

For the abovementioned reasons, I do not propose to interfere with the impugned judgment on the count that the rule of audi alteram partem was not complied with by the respondents before cancelling the admissions of the appellants herein.

39. The next question that requires examination is the legality of the action of the respondents after a lapse of considerable time. It varies between one to five years with reference to each of the appellants. The decision of the respondents necessarily led to litigation which consumed another three years. The net result is that appellants, who belong to 2012 batch, spent four years undergoing the training in medical course; others progressively longer periods extending up to eight years but could not acquire their degrees because of the impugned action and the pendency of this litigation. Most of the appellants would have acquired their degree in medicine by now if they had been successful at the examinations.

40. Learned counsel for the appellants made a fervent appeal that this Court in exercise its jurisdiction under Article 142 permit the appellants to complete their education subject to such conditions as this Court deems fit, to satisfy the demand of justice. A very emotional appeal was made during the course of hearing that the lives of 634 youngsters would be ruined if the impugned action of the respondents remains unaltered. They would lose a decade of precious time of their youth and they would become practically useless for themselves and for their families – even for the society. It is, therefore, submitted that this Court may modify the impugned orders in the light of twin principles that (1) the public policy of this country even with regard to the crimes is that they cannot be taken cognizance of beyond the period of limitation stipulated under various laws. It is submitted that as of now the appellants are alleged to be only beneficiaries of a fraud but not yet proved to be criminals; (2) the appellants are youngsters who were of adolescent age at the time of the commission of the alleged fraud. Even if it is proved that each of the appellants is directly a participant in the 'crime', which led to the tampering with the examination process (year to year), they cannot be subjected to the punishment under the criminal law in view of the provisions of the Juvenile Justice Act. Therefore, it is submitted that this Court may pass such orders, as it deems fit in the circumstances of the case, short of depriving the appellants of their entire future. In this regard, the learned counsel relied upon Priya Gupta v. State of Chhattisgarh & Others, (2012) 7 SCC 433.

41. On the other hand, it is argued on behalf of the respondents that having regard to the nature of deep rooted conspiracy behind the illegal admissions of the appellants, showing of any compassion in dealing with the cases of the appellants would have adverse impact on the enforcement of law in this country. It is argued that having regard to the well known maxim that "fraud vitiates everything" and the settled principle of law that the benefits secured out of a fraudulent action cannot be permitted to be retained, the appellants cannot be permitted to claim any sympathetic consideration from this Court. In support of the said submission, the learned counsel relied upon Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education & Others, (2003) 8 SCC 311.

42. Before I discuss the rival submissions mentioned above, I deem it appropriate to examine the two judgments relied upon by the contending parties.

43. Ram Preeti Yadav's case was a case where intermediate result of the third respondent before this Court was withheld on a suspicion of his having employed unfair means in the examination. However, he was issued a provisional marksheet which did not indicate that the result of his intermediate examination has been withheld. ! On the basis of the said provisional marksheet, he pursued higher studies and became a post graduate and secured employment as a teacher in one of the colleges in Uttar Pradesh. Some twelve years after intermediate examination, he was informed that his intermediate examination was cancelled. Invariably litigation ensued. On examination of the factual background, this Court recorded a conclusion that "thus, it is evident that a fraud was committed. Respondent No.3 is the sole beneficiary to the said fraud and it, as such, must be presumed that he was a party thereto". Invoking the principle that "fraud avoids all judicial acts, ecclesiastical or temporal" and relying upon two earlier judgments in S.P. Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs & Others, (1994) 1 SCC 1 and Lazarus Estates Ltd. v.

Beasley, (1956) 1 All ER 341, this Court reversed the High Court judgment granting relief to the third respondent.

44. In Priya Gupta's case (supra), Priya Gupta's admission to the MBBS course granted in the academic year 2006-07 was cancelled by the State of Chhattisgarh in 2010 on the ground that such admission was not in accordance with the relevant Rules[21]. This Court didn't find any illegality in the cancellation of the admission of Priya Gupta.[22] However, taking into consideration the fact that Priya Gupta had already completed her course study, this Court held as follows:

> "74. On the peculiar facts and circumstances of the case, though we find no legal or other infirmity in the judgment under appeal, but to do complete justice between the parties within the ambit of Article 142 of the Constitution of India, we would permit the appellants to complete their professional courses, subject to the condition that each one of them pay a sum of Rs 5 lakhs to Jagdalpur College, which amount shall be utilised for developing the infrastructure in Jagdalpur College.
>
> 75. We have not and should not be even understood to have stated any precedent for the cases like grant of admission and leave to complete the course like the appellants in the present case." Both Ram Preeti Yadav and Priya Gupta's cases (supra) are cases where opportunities secured by individuals by some fraudulent means were subject matter of litigation. While in the earlier case, this Court declined to take into account the time gap between fraudulent act and the detection of the fraud, for deciding the legality of the action against Ram Preeti Yadav, in the latter case this Court thought it fit to permit the benefits secured to be retained through fraudulent means on payment of certain amount to be utilized "for developing the infrastructure" in the college where Priya Gupta had studied. One of the many judgments of this Court falling under the "jurisprudence of peculiar facts" with a caveat that it does not constitute a precedent. !!

45. Be that as it may, both the above-discussed cases deal with the question of legality of the action taken against individuals (small in number – one in the first of the abovementioned cases and two in the second of the cases) in the context of their fraudulent conduct in securing the benefits of higher education. They pleaded that it would be inequitable to deprive them of the benefits of their education after considerable lapse of time. This Court rejected the plea of Ram Preeti Yadav both in law and fact, but in Priya Gupta's case it was rejected in law? but accepted in fact!

46. Coming to the case in hand, the number of students involved is relatively huge[23]. In view of the conclusion recorded by me earlier that neither the procedure adopted by the respondents nor the evidence relied upon by the respondents for taking impugned action against the appellants could be characterized as illegal, is it permissible for this Court to interfere with the impugned action of the respondents either on the ground that there is a considerable time lapse or that such action would have ruinous effect on the lives and careers of the appellants? and therefore inequitable is a troubling question.

47. The public policy of the country and the larger public interests, in our opinion, would be more appropriate guides than the considerations of equity to decide the questions in the absence of any statutory prescription applicable to the controversy on hand than the consideration of equity.

48. This court in Central Inland Water Transport Corporation Limited & Another v. Brojo Nath Ganguly & Another, (1986) 3 SCC 156 explained the concept of public policy and its role in the judicial decision making process in the following words:

> "92. The Indian Contract Act does not define the expression "public policy" or "opposed to public policy". From the very nature of things, the expressions "public policy", "opposed to public policy", or "contrary to public policy" are incapable of precise definition. Public policy, however, is not the policy of a particular government. It connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time. As new concepts take the place of old, transactions which were once considered against public policy are now being upheld by the courts and similarly where there has been a well recognized head of public policy, the courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy. There are two schools of thought— "the narrow view" school and "the broad view" school. According to the former, courts cannot create new heads of public policy whereas the latter countenances judicial law-making in this area. The adherents of "the narrow view" school would not invalidate a contract on the ground of public policy unless that particular ground had been well-established by authorities. Hardly ever has the voice of the timorous spoken more clearly and loudly than in these words of Lord Davey in Janson v. Driefontein Consolidated Gold Mines Ltd. [(1902) AC 484, 500] : "Public policy is always an unsafe and treacherous ground for legal decision". That was in the year 1902. Seventy- eight years earlier, Burrough, J., in Richardson v. Mellish [(1824) 2 Bing 229, 252 : 130 ER 294, 303 and (1824-34) All ER 258, 266] described public policy as "a very unruly horse, and when once you get astride it you never know where it will carry you". The Master of the Rolls, Lord Denning, however, was not a man to shy away from unmanageable horses and in words which conjure up before our eyes the picture of the young Alexander the Great taming Bucephalus, he said in Enderby Town Football Club Ltd. v. Football Assn. Ltd. [(1971) Ch 591, 606] : "With a good man in the saddle, the unruly horse can be kept in control. It can jump over obstacles." Had the timorous always held the field, not only the doctrine of public policy but even the common law or the principles of Equity would never have evolved. Sir William Holdsworth in his History of English Law Vol. III, p. 55, has said:
>
> "In fact, a body of law like the common law, which has grown up gradually with the growth of the nation, necessarily acquires some fixed principles, and if it is to maintain these principles it must be able, on the ground of public policy or some

> other like ground, to suppress practices which, under ever new disguises, seek to weaken or negative them." It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification. Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority our courts have before them the beacon light of the Preamble to the Constitution. Lacking precedent, the court can always be guided by that light and the principles underlying the Fundamental Rights and the Directive Principles enshrined in our Constitution."

49. One of the indicators of public policy on a given topic is the legislation dealing with the topic. The questions on which the public policy is required to be ascertained in the context of the present case are:

> 1. Whether administrative action to nullify any benefit acquired by a person through fraudulent means could be taken without reference to any limitation of time?
>
> 2. Whether a benefit obtained through the perpetration of fraud could be permitted to be retained?

The law of limitation is relevant and indicates to policy in the context of the first question. Various periods of limitation are prescribed for initiation of legal proceedings under the Limitation Act, 1963 and various other laws. This Court in Situ Sahu & Others v. State of Jharkhand & Others, (2004) 8 SCC 340 held that the statutory power of suo moto revision could be exercised to deprive a person of the property acquired by him even in the cases where such acquisition is through fraudulent means only within a reasonable period. It was a case of the claim of a member of a scheduled tribe that their ancestors were tenants of a piece of land whose landlord obtained a deed of surrender by fraud. The question before this Court was whether the Dy. Commissioner could exercise the statutory authority under Section 71-A of the Chota Nagpur Tenancy Act, 1908 at any point of time without any limitation and restore the land to the claimant. This Court held that such power must be exercised within a reasonable time.

Criminal law also prescribes time limits for taking cognizance of offences. But in cases of offences where the prescribed punishment is more than 3 years, no period of limitation is provided under the Code of Criminal Procedure, 1973.[24]

50. Public policy of this country regarding the retention of the benefit obtained by perpetrator of crime is that normally the benefit cannot be permitted to be retained by the perpetrator of crime. But the principle is applied only on adjudication that the benefit was obtained by perpetration of crime.

51. A person adjudged to be guilty of an offence is not permitted to retain the financial gains arising out of such crime.[25] Transfer of property for the purpose of concealing the fact that it is the benefit arising out of or statutorily presumed to be arising out of crime is not countenanced[26]. Similarly, it is the law of this country that a person found guilty of murder is not entitled to succeed (even if he is otherwise eligible for succession in accordance with the relevant principles of succession) to the estate of the victim[27].

Situ Sahu's case (supra) is also a case establishing the principle that the law permits the retention of property acquired pursuant to fraudulent means (allegedly) because law does not permit an enquiry into the allegation beyond the reasonable period.

However, when it comes to other civil rights, the public policy, as can be discerned from various enactments, seems to be not to deprive completely those who are found to have been guilty of offences of all civil rights. For example, the right to contest an election for the various constitutional bodies is denied to a person convicted of various offences enumerated under Section 8 of the Representation of Peoples Act, 1951 but only for a certain specified period. Similarly, the right to vote is denied to persons convicted of offences specified under Section 11A of the Representation of the People Act, 1951 for a period specified therein. It is also worthwhile noticing that even such disqualifications could be removed by the Election Commission for reasons to be recorded.[28] It is required to be examined whether it would be consistent with the public policy to deprive the appellants of the benefits of their education on the ground that they secured certain benefits by adopting fraudulent means.

52. We are informed that all the appellants are also being investigated for the commission of various offences which if proved would render them liable for imprisonment for periods extending beyond three years, and therefore, there is no period of limitation for taking cognizance of them. Therefore, it cannot be said that the impugned action against the appellants would be inconsistent with the public policy on the ground of the time gap.

53. While it is a salutary principle based on public policy not to permit the retention of 'property' obtained by fraudulent means, the application of the said principle becomes a matter of doubtful utility to the society in the context of the acquisition of knowledge by adopting fraudulent means examined from the point of view of the public interest. In the context of property (economic gains), the application of the principle works to the benefit of the rightful owner. But in the context of acquisition of knowledge, nobody would benefit by the application of the rule and would therefore serve only a limited public purpose.

54. Some 634 youngsters, who have already completed their training in medicine (or about to complete) and whose knowledge could have otherwise been utilized for the benefit of the society, would be simply rendered useless for the society in the sense their knowledge cannot be utilized for the welfare of the society. The question is not whether these appellants deserve any sympathy. In my view, a larger question- whether this society can afford to waste such technically trained and qualified human resources which require enormous amounts of energy, time and other material resources to generate. Obviously, it takes another five years of time and expenditure of considerable

material resources to produce another set of 634 qualified medical graduates. It is in the background of this consideration, this issue is required to be decided.

55. Another important consideration in the context is that most of (if not all) the appellants, whatever be their respective role, if any, in the tampering of the examination process, must have been 'juveniles'[29] as defined under the Juvenile Justice Act. They cannot be subjected to any 'punishment' prescribed under the criminal law even if they are not only the beneficiaries of the tampered examination process but also the perpetrators of the various acts which constitute offences contaminating the examination process.

56. For the abovementioned reasons, I would prefer to permit the appellants to complete their study of medicine and become trained doctors to serve the nation. But at the same time there is a compelling national interest that dishonest people cannot be made to believe that "time heals everything' and the society would condone every misdeed if only they can manage to get away with their wrong doing for a considerably long period.

Society must receive some compensation from the wrongdoers. Compensation need not be monetary and in the instant case it should not be. In my view, it would serve the larger public interests, by making the appellants serve the nation for a period of five years as and when they become qualified doctors[30], without any regular salary and attendant benefits of service under the State, nor any claim for absorption into the service of the State subject of course to the payment of some allowance (either in cash or kind) for their survival. I would prefer them serving the Indian Armed Forces subject to such conditions and disciplines to which the armed forces normally subject their regular medical corps. I would prefer that the appellants be handed over the certificates of their medical degrees only after they complete the abovementioned five years. The abovementioned exercise would require the ascertainment of the views of Ministry of Defence, Government of India, and passing of further appropriate orders by this Court thereafter. In view of the disagreement of views in this regard, I am not proposing such an exercise.

Registry is directed to place the papers before Hon'ble the Chief Justice of India for appropriate orders.

.....J. (J. Chelameswar) New Delhi;

May 12, 2016 Reportable IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL No.1727 OF 2016 Nidhi Kaim .....Appellant(s) VERSUS State of M.P. & Ors. Etc. .....Respondent(s) WITH CIVIL APPEAL NOs. 1720-1724, 1726, 1728, 1729, 1733, 1734-1741, 1742-1749, 1750-1751, 1752, 1753-1758, 1847-1852, 1759-1764, 1765, 1766, 1767-1768, 1769-1774, 1776- 1787, 1788, 1789-1791, 1792-1794, 1795-1798, 1799-1805, 1806-1808, 1809, 1810-1811, 1812, 1813-1814, 1815, 1816-1817, 1818-1819, 1820, 1821, 1822-1824, 1825, 1826, 1827, 1828, 1830, 1831-1832, 1833, 1834, 1835, 1836-1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845 & 1846 OF 2016 J U D G M E N T Abhay Manohar Sapre, J.

1) I have had the advantage of going through the elaborate and well considered draft judgment proposed to be pronounced by my learned Brother.

2) Having gone through the draft judgment, I agree with the reasoning given by my learned Brother on all the issues except on one issue dealt with in paragraphs 39 to 55 relating to issuance of directions to the respondents.

3) In my view, keeping in view the nature of controversy and the findings recorded by us on the main controversy which has resulted in upholding of the impugned judgment, no case is made out for passing any directions under Article 142 of the Constitution of India and hence these appeals deserve to be dismissed.

4) However, having regard to the issues which were ably argued by the learned counsel and in the light of my disagreement on one issue, as mentioned above, with my learned Brother, I propose to write few paragraphs of my own in support of my reasoning and the conclusion.

5) I need not set out the facts in detail since my learned Brother has succinctly mentioned them in his draft judgment.

6) Suffice it to say, the controversy involved in these appeals centers around broadly to the following facts.

7) The appellants along with several other candidates appeared in the PMT examinations held in the years 2008 to 2012 and 2013. So far as these appeals are concerned, they relate to examinations held in the years 2008 to 2012. The State of M.P. through Professional Examination Board hereinafter called “Vyapam” had conducted these examinations for getting admission in MBBS Degree Course in various Government/Private Medical Colleges in State of M.P.

8) The appellants cleared the PMT examination and got admissions in MBBS Degree Course in various Government/Private Medical Colleges in the State of M.P. Some are prosecuting their studies in MBBS Course and some claims to have completed their studies.

9) The Vyapam, however, cancelled the appellants’ PMT Examination results by order dated 09.10.2013 and various orders. The reason for cancellation was that the detailed investigations were made in conducting of the PMT examinations held in the years 2008 to 2013. The outcome of the investigations, however, revealed that the appellants and several other candidates resorted to unfair means in large scale by adopting planned strategy in answering their question papers. It was revealed that the appellants and other candidates in connivance with Vyapam's officials and some outsiders entered into a conspiracy and conceived a plan as to how the appellants and their associates should sit in the examination centre and accordingly sitting arrangements in particular examination centers with another candidate (described in scam as "scorer") were made which facilitated the candidate (described in scam as “beneficiary”) to copy from the candidate (scorer) sitting in front of him from his answer sheet. It was also revealed that the appellants and conspirators were successful in their plan and the appellants secured the requisite marks in the PMT

examination which enabled them to get admission in MBBS course at the cost of deserving candidates who despite clearing the examination could not secure admissions in MBBS Course in the respective years.

10) In support of their decision, the State/Vyapam filed material which was seized by the Special Task Force (STF) sleuths in the ongoing investigation. The material seized consisted of (1) relevant files relating to conduct of these examinations from Vyapam's office (2) statement of persons recorded by STF sleuths involved in the scam such as Vyapam's officials, candidates, their parents, outsiders who hatched the conspiracy on receiving money consideration etc. (3) computers, hardware and software used in programing the examinations (4) benefits (cash or otherwise) alleged to have been received by the persons involved in the scam (5) copies of FIR and Charge sheets filed against several accused for commission of offences of fraud, cheating, conspiracy etc. (6) Copies of bail orders (granting or/and refusing bail) passed in several cases by various courts including the orders of the High Court passed from time to time in PIL dealing with the scam (7) order of this Court directing the CBI to take over the ongoing investigation of the Scam from STF (8) Expert Committee's reports on scam etc.

11) The appellants, felt aggrieved by the decision of cancellation of their results, filed several writ petitions before the High Court of M.P. out of which these appeals arise. The challenge to the cancellation of their result was on several factual and legal grounds as detailed infra.

12) The State and Vyapam supported the decision of cancellation of the results and inter alia contended that it is based on Expert Committee's reports, which has taken into account the aforementioned material for coming to a conclusion that it was a case of "mass copying".

13) The High Court upheld the stand taken by the State/Vyapam and dismissed the writ petitions. The High Court by its reasoned judgment held inter alia that Firstly, it was a case of "mass copying"; Secondly, the material seized was sufficient for the Expert Committee for coming to a conclusion that it was a case of "mass copying" found to have been done at a large scale by the appellants and other candidates by resorting to unfair means; Thirdly, the decision to cancel the appellants' result is based on Expert Committee's report which has applied their mind to all aspects of the case after taking into account all material seized in investigation and, therefore, no fault could be found in such decision of the Expert Committee; Fourthly, the decision has been taken in larger public interest; and lastly, this being a case of "mass copying", it was not necessary for the State/Vyapam to give any opportunity of hearing to any candidate individually to show cause before cancellation of their results as has been laid down by this Court consistently in several decided cases referred to hereinbelow.

14) It is this issue, which is now carried by the unsuccessful candidates (appellants) to this Court in these appeals.

15) The controversy in these appeals mainly centered around to the following legal issues.

16) In the first place, submission of learned counsel for the appellants was that the perusal of the materials relied on by the State/Vyapam against the appellants (though disputed by the appellants) would go to show that it does not make out a case of "mass copying" but at best may make out a case of unfair means resorted to by few individual candidates in answering their questions papers. It was, therefore, their submission that since these candidates, who resorted to unfair means, were later identified, the State/Vyapam should have given show cause notices to these candidates individually setting out therein the nature of unfair means committed by each such candidate by following the rule of natural justice, i.e., rule of audi alteram partem and after affording the erring candidates (appellants) an opportunity of hearing by supplying the alleged material, an appropriate order should have been passed.

17) Second submission of learned counsel for the appellants was that there was no material on the basis of which the decision to cancel the appellants' results could have been taken by the State/Vyapam. It was urged that in any event such material was neither sufficient and nor relevant for cancellation of the results and, more so, since it was not supplied to the appellants, the same was of no consequence.

18) Third submission of learned counsel for the appellants was that the decision to cancel the results was not taken immediately after the examinations were over but was taken after a considerable delay and since in the meantime, the appellants on the basis of the results altered their position and successfully completed their MBBS degree course or are about to complete in near future, the cancellation of the results done at such belated stage is not justified being inequitable and unreasonable and hence deserve to be set aside. In the alternative, it was urged that the appellants be allowed to prosecute their studies on suitable terms as this Court may deem fit and proper to impose on the appellants.

19) Fourth submission of learned counsel for the appellants was that since the constitution of Vyapam (Board) was not done in accordance with the requirements of the M.P. Professional Examination Board Act, 2007 (hereinafter referred to as "the Act") inasmuch as no notification under Section 3 of the Act was issued till date, all actions so far taken including cancellation of the results by the Board are rendered illegal because these actions/decisions were taken by the Board which was not validly constituted.

20) The aforementioned submissions were elaborated by the learned counsel for the appellants with reference to the record of the case and by placing reliance on various decisions of this Court.

21) In reply, learned counsel for the respondents (State/Vyapam) supported the reasoning and the conclusion of the High Court and prayed for its upholding calling no interference therein.

22) The questions, which arise for consideration in these appeals, are, Firstly, whether it is a case of "mass copying"; Secondly, whether the appellants were entitled to a show cause notice before cancellation of their results; Thirdly, whether the appellants are entitled to claim any equity in their favour on account of delay occurred on the part of the State/Vyapam in cancelling their result and, if so, what relief are they entitled to claim; and lastly, whether the Vyapam Board was legally

constituted in accordance with the provisions of the Act and if not then its effect on the controversy involved in these cases.

23) Before we examine the aforementioned questions, it is necessary to take note of the law laid down by this Court especially the law dealing with the cases of "copying" and "mass copying".

24) The first leading case of this Court (Five- Judge Bench) on the question of "copying" is Board of High School and Intermediate Education U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, AIR 1962 SC 1110 = 1962 Supp (3) SCR 36. The facts of this case were that 3 students of G.S. Hindu Intermediate College of Sikandrarao appeared in Intermediate (Commerce) Examination in 1954. These 3 students passed the examination. In December 1954, their fathers/guardians received information that the Examinations Committee had cancelled their results and debarred them from appearing in examination to be held in 1955.

25) These 3 students thereupon filed writ petition in the High Court contending that the Examinations Committee had never afforded any opportunity to them to rebut the allegations made against them and that they were never informed about the nature of unfair means used by them in the examination.

26) The majority of Judges of the High Court, who heard the writ petition, accepted the writ petitioners' contention and allowed the writ petition. The Board, therefore, filed an appeal to this Court. This Court affirmed the view taken by the High Court. Construing powers of the Examination Committee, in Rule 1 (1) of the Regulations, this Court held that the Examination Committee was acting as quasi-judicially body while exercising powers under Rule 1 (1) and, therefore, principles of natural justice should have been observed. Justice Wanchoo speaking for the Bench held as follows:

> "11..... We are therefore of opinion that the Committee when it exercises its powers under Rule 1(1) is acting quasi-judicially and the principles of natural justice which require that the other party, (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee. This view was taken by the Calcutta High Court in Dipa Pal v. University of Calcutta, AIR 1952 Cal 594 and B.C. Das Gupta V. Bijoyranjan Rakshit, AIR 1953 Cal 212 in similar circumstances and is in our opinion correct."

> 27) The second leading case where this Court (Three-Judge Bench) examined the case of "copying" and how it should be dealt with by the concerned authorities and the Court is Board of High School and Intermediate Education, U.P., Allahabad and Anr. vs Bagleshwar Prasad and Anr., AIR 1966 SC 875=(1963) 3 SCR 767.

> 28) The facts of this case were that two candidates were found copying in the examination. The charge of copying was based on the fact that one candidate had given wrong answer to one question precisely in the same form in which the said answers had been given by another candidate. Both the candidates were accordingly given show cause notice to explain the charge.

Both denied the charge. The enquiry committee was then constituted to probe the issue and the committee came to a conclusion, after examining the whole issue, that it was a case of copying and accordingly cancelled their results.

29) Both the candidates filed writ petition in Allahabad High Court. The High Court allowed the writ petition and set aside the cancellation order. It was held that the decision to cancel the result is not supported by any evidence. The Board appealed to this Court. This Court allowed the appeal, set aside the order of the High Court and while upholding the cancellation of the result dismissed the writ petition filed by the two candidates.

30) Justice Gajendragadkar (as His Lordship then was) speaking for the Three-Judge Bench in his distinctive style of writing held in Paras 11 and 12 as under:-

> "11. Before the High Court, a statement was filed showing the seating arrangement in Room No. 10 where the respondent was sitting for writing his answers. It appears that he was No. 3 in the 3rd row, whereas the other candidate with Roll No. 94733 was No. 4 in the second row. The High Court was very much impressed by the fact that the respondent could not have looked back and copied from the answer-book of the other candidate, and the High Court did not think that there was any evidence to show that the other candidate could have copied from the respondent's paper with his connivance. We have looked at the incorrect answers ourselves and we are not prepared to hold that the identical incorrect answers were given by the two candidates either by accident or by coincidence. Some of the incorrect answers, and, particularly, the manner in which they have been given, clearly suggest that they were the result of either one candidate copying from the other, or both candidates copying from a common source. The significance of this fact has been completely missed by the High Court. The question before the Enquiry Committee had to be decided by it in the light of the nature of the incorrect answers themselves, and that is what the Enquiry Committee has done. It would, we think, be inappropriate in such a case to require direct evidence to show that the respondent could have looked back and copied from the answer written by the other candidate who was sitting behind him. There was still the alternative possibility that the candidate sitting behind may have copied from the respondent with his connivance. It is also not unlikely that the two candidates may have talked to each other. The atmosphere prevailing in the Examination Hall does not rule out this possibility. These are all matters which the Enquiry Committee had to consider, and the fact that the Enquiry Committee did not write an elaborate report, does not mean that it did not consider all the relevant facts before it came to the conclusion that the respondent had used unfair means.
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> 12. In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or Appellant 1 set up Enquiry Committees to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the

> matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is justification to do so, courts should be slow to interfere with the decisions of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Article 226, the High Court is not sitting in appeal over the decision in question; its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunals must scrupulously follow rules of natural justice;

but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary courts of law. In the present case, no animus is suggested and no mala fides have been pleaded. The enquiry has been fair and the respondent has had an opportunity of making his defence. That being so, we think the High Court was not justified interfering with the order passed against the respondent."

31) In the third leading case of Bihar School Examination Board vs Subhas Chandra Sinha & Ors. (1970) (1) SCC 648, this Court (Three-Judge Bench) examined the question of "mass copying" or I may say "unfair means practiced on a large scale in examination" and how the concerned authorities and the courts qua the candidates should deal with such case.

32) The facts of this case were that the Bihar School Examination Board (for short "Board") conducted annual Secondary School Examination in the State of Bihar. Several candidates appeared at various centres all over the State. 36 students of two schools namely, S.S.H.E School Jagdishpur and H.E. School Malaur of District Shahbad (Bihar) appeared in the examination at Hanswadih Centre. The results of all the candidates were declared in papers except the results of the 36 candidates of the two schools who had appeared in the examination from Hanswadih Centre. After sometime, news was published in the paper that the examinations of all subjects held at Hanswadih Centre were cancelled and the reason given for cancellation was that the candidates at this Centre practiced unfair means on a large scale. However, the candidates of this Centre were allowed to appear in the supplementary Secondary School Examination.

33) The candidates challenged the order of cancellation of their results in writ petition in the High Court of Patna on the ground that before cancelling the result, the rules of natural justice and fair-play were not observed because the candidates were not afforded any opportunity of hearing before cancellation of their results.

34) The High Court accepted the submission and allowed the writ petition by quashing the order of cancellation of their results. Against the decision of the High Court of Patna, the Board appealed to this Court. This Court ordered production of answer books for their inspection and compared them. The comparison showed remarkable agreement in the answers that students had assistance from an outside source. This Court allowed the Board's appeal, set aside the order of the High Court and dismissed the writ petition filed by the candidates and upheld the cancellation of the results.

35) Justice Hidayatulla-the learned Chief Justice speaking for the Three- Judge Bench in his inimitable style of writing distinguished the case of Ghanshyamdas Gupta (supra) and held in paras 13 and 14 as under:-

> "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.
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> 14. Reliance was placed upon Ghanshyam Das Gupta case 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 practised 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."

36) In the fourth leading case of Prem Parkash Kaluniya Vs. Punjab University and Ors., (1973) 3 SCC 424, which involved identical facts alike the facts of the case of Bagleshwar Prasad (supra) involving two students whose results were cancelled on the ground of using unfair means of copying in the examination, this Court (Three-Judge Bench) relied on facts and law laid down in Bagleshwar Prasad (supra) and upheld the cancellation of the results.

37) Justice Grover speaking for the Bench held in paras 11 and 12 as under:-

> "11. A good deal of emphasis had been laid on the answers which were given by the two candidates and our attention had been invited to the discrepancies between the details of the answers contained in the two answer books. It was further pointed out that the appellant had made rough calculations at the back of the answer book which showed that he had worked out the answer on his own without the aid of any other source which could be regarded as common from which the other candidate was alleged to have copied. These, however, are matters on which the court cannot entertain a petition under Article 226. It was for the Standing Committee to arrive at its own conclusion on the evidence before it and the same cannot be re- examined except on very limited grounds which have not been established. We are also unable to see how the finding of the Standing Committee could be regarded as vague or as having been based on no evidence.
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> 12. In Board of High School and Intermediate Education, U.P. v. Bagleshwar Prasad in which the facts were very similar, it was held that the identity of the wrong answers given by the respondent in that case with that of the other candidate bearing the consecutive Roll Number rendered the charge of the respondent having employed unfair means highly probable and that the findings of the enquiry committee based

upon such probabilities and circumstantial evidence could not be said to be based on no evidence as in such matters direct evidence quite often cannot be available. It was further pointed out that in dealing with these cases the problem faced by such institutions should be appreciated by the High Court and so long as the enquiry held was fair and afforded the candidate an opportunity to defend himself, the matter should not be examined with the same strictness as applicable to criminal charges in the ordinary courts of law. There is hardly any justification for saying in the present case that the finding of the Standing Committee was based on no evidence."

38) In the fifth case of B. Ramanjini & Ors. vs. State of A.P. & Ors.

(2002) 5 SCC 533, the facts of the case were that the State authorities had cancelled the examination held for selecting secondary school teachers after noticing certain complaints of "mass copying" found to have been done by the candidates in the examination in respect of Anantapur District.

39) Justice Rajendra Babu (as His Lordship then was) speaking for the Bench took note of the law laid down in the case of Bihar School Examination (supra) and while upholding the decision of cancellation of the result of the candidates held as under:

"8. Further, even if it was not a case of mass copying or leakage of question papers or such other circumstance, it is clear that in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a foreknowledge of the question paper or otherwise. In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some material for the Government to act one way or the other. Further, in this case, the first examinations were held on 19-4-1998. The same stood cancelled by the order made on 15-5-1998. Fresh examinations were held on 11-7-1998 and results have been published on 29-7-1998. Interviews were however held on 29-7-1998 (sic 27-8-1998) in such cases. The events have taken place in quick succession. The parties have approached the court after further examinations were held and after having participated in the second examination. It is clear that such persons would not be entitled to get relief at the hands of the court. Even if they had not participated in the second examination, they need not have waited till the results had been announced and then approached the Tribunal or the High Court. In such cases, it would lead to very serious anomalous results involving great public inconvenience in holding fresh examinations for a large number of candidates and in Anantapur district alone nearly 1800 candidates were selected as a result of the examinations held for the second time. Therefore, we think, the High Court ought not to have interfered with the order made by the Government on 15-5-1998 in cancelling the examinations and holding fresh examination."

40) In the sixth case of Union Public Service Commission vs. Jagannath Mishra, (2003) 9 SCC 237, the facts were identical to the facts of the cases of Bagleshwar Prasad and Prem Prakash Kalunia (supra). In this case also two candidates sitting in close proximity in examination centre copied from each other. The committee examined their answer papers and found that answers were matching with each other. Their results were accordingly cancelled which led to filing of petition first before the Tribunal and then to the High Court successfully. However, when the matter came to this Court at the instance of UPSC, this Court placed reliance on the law laid down in Bagleshwar Prasad and Prem Prakash Kalunia (supra) and while allowing the UPSC's appeal, set aside the orders of the Tribunal and the High Court and upheld the decision of cancellation of the result. It is apposite to reproduce what is held by this Court in para 4 as under:

"4. Before we answer the questions posed, to have our conscience clear, we had called upon UPSC to produce the answer papers of both the candidates. We have carefully scrutinised the answer papers of both the candidates and on a thorough scrutiny of the same, we have no doubt in our mind that but for assistance and/or connivance of the respondent it would not have been possible for the other candidate to answer in the manner in which he has answered. As has been stated by this Court in the case of Prem Parkash Kaluniya v. Punjab University in a matter like this it would be difficult to get direct evidence and so long as an inquiry is held to be fair and it affords the candidate adequate opportunity to defend himself, the matter should not ordinarily be examined by courts with the same strictness as applicable to criminal charges. The Court had further held that where findings are based on probabilities and circumstantial evidence, such findings cannot be said to have been based on no evidence. From the facts alleged, it is crystal clear that the respondent was a brilliant student. But, if a brilliant student is found to have adopted any unfair means in a competitive examination, he will have to bear the consequences of the same. Since we ourselves have examined the two answer papers in question and have come to the conclusion that but for the assistance or connivance of the respondent in some way or the other, it would not have been possible for the other candidate to answer his question paper in the manner in which he has answered, who was sitting just behind the respondent, we see no justification for the Tribunal to interfere with the conclusion of UPSC. The judgment of this Court on which the Tribunal as well as the High Court has placed reliance will have no application to the case in hand. In that view of the matter, we are of the considered opinion that the Tribunal committed serious error in interfering with the conclusion of UPSC and in interfering with the punishment awarded by it. The High Court also committed error in affirming the said decision of the Tribunal. It is true that there has been no report from the invigilator indicating any malpractice by the respondent or the person who was sitting behind him. But, mere absence of such report would not be sufficient to exonerate the delinquency, if otherwise a conclusion could be arrived at that but for the assistance of the respondent the candidate sitting behind him could not have copied in the manner he has done. The Tribunal as well as the High Court committed serious error

by giving extra weightage for the absence of any report from the invigilator. It cannot be held as a principle that wherever there is no report from the invigilator indicating adoption of malpractice in any examination the appropriate authority cannot come to the conclusion about the adoption of malpractice. It would always be a case depending upon the materials produced and there would be no bar for an expert body to come to a definite conclusion about adoption of malpractice in an examination even in the absence of a report of the invigilator to that effect. It would always be a question of fact to be decided on the basis of materials produced before the expert body."

41) In the seventh leading case decided by (Three-Judge Bench) in Chief General Manager, Calcutta Telephones District, Bharat Sanchar Nigam Ltd. & Ors. Vs. Surendra Nath Pandey & Ors., 2011 (15) SCC 81, the facts of the case were that B.S.N.L. a Government Company conducted departmental examination for granting promotion to the post of Junior Accounts Officers to their employees. The results were displayed containing the names of successful and unsuccessful candidates. Some unsuccessful candidates then made a representation as required under Rule 13 of Telegraph Manual requesting for disclosure of their marks obtained by them in the examination. This request was not acceded to and hence these candidates filed O.A. before CAT. The CAT directed BSNL to publish the results, allow the candidates to appear in the examination next year and pass appropriate orders on their representation. The authorities concerned disposed of the representation stating that some irregular practices were noticed in the examination attributable to the candidates who resorted to unfair means and hence their results were cancelled.

42) The candidates filed writ petitions against this order in Calcutta High Court. The learned single Judge allowed the writ petition and held that B.S.N.L could not prove that it was a case of "mass copying" attributable to candidates. The appeal filed by B.S.N.L having been dismissed by the Division Bench, the matter came to this Court at the instance of B.S.N.L. This Court allowed the appeal, set aside the orders of High Court and dismissed the candidates' writ petition.

43) Referring to and placing reliance on all the aforementioned cases referred to above, Justice Nijjar speaking for the Bench held in paras 28 and 33 as under:-

"28. We are of the considered opinion that the procedure adopted by the appellants cannot be said to be unfair or arbitrary. It was a reasonable and fair procedure adopted in the peculiar circumstances of the case. It cannot be said to be in breach of rules of natural justice. It must be remembered that rules of natural justice are not embodied rules. They cannot be put in a straitjacket. The purpose of rules of natural justice is to ensure that the order causing civil consequences is not passed arbitrarily. It is not that in every case there must be an opportunity of oral hearing.

> 33. As noticed earlier, in the present case, the appellants had adopted a very reasonable and a fair approach. A bona fide enquiry into the fact situation was conducted by a committee of high-ranking officers of the Department. In our opinion, the High Court was wholly unjustified in interfering with the decision taken by the appellants in the peculiar circumstances of the case. It is settled beyond cavil that the decisions taken by the competent authority could be corrected provided it is established that the decision is so perverse that no sensible person, who had applied his mind to the question to be decided could have arrived at it. The aforesaid principle is based on the ground of irrationality and is known as the Wednesbury principle. The court can interfere with a decision, if it is so absurd that no reasonable authority could have taken such a decision. In our opinion, the procedure adopted by the appellants cannot be said to be suffering from any such irrationality or unreasonableness, which would have enabled the High Court to interfere with the decision."
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> 44) After examining the facts and the law laid down in abovementioned seven cases, in my opinion, the ratio laid down in these cases can be summarized thus : First, in a case where several candidates are found involved in "mass copying" or in other words, where vast majority of candidates were found to have resorted to use of unfair means in any examination then it is not necessary for the concerned Institute to give any show cause notice to any individual candidate before cancellation of his result; Second, when it is difficult to prove by direct evidence that the "copying" was done by the candidates then the same can be proved by drawing inference based on probabilities and circumstantial evidence;

Third, there are several ways in which unfair means can be resorted to by the candidates for doing copying individually or in the large scale by vast majority of candidates; Fourth, where few candidates are found involved in doing copying then it is necessary to give to individual candidate a show cause notice by following rules of natural justice before taking any action against him; Fifth, there must be some material (whether direct or based on probabilities and circumstances) to prove that a candidate resorted to unfair means for doing copying in answering his question paper; Sixth, if there is adequate material to prove that the copying was done by individual candidate or by the candidates on a large scale then even if no report was submitted by any invigilator of any such incident yet it would be of no significance; Seventh, the Court should not act as an appellate Court over the decision of Expert Committee to examine the issue of "copying" or/and "mass copying", i.e., copying done on a large scale by vast majority of candidates and more so when the Expert Committee has found the candidate guilty of resorting to unfair means; Eighth, the Court should be slow to interfere in the decision taken by the Expert Committee in such cases; Ninth, if wrong answers of two candidates sitting in close proximity tallies with each other then it would be a strong circumstance of copying done by these two candidates; Tenth, this Court has consistently maintained a distinction between a case of "copying" and "mass copying", i.e. copying done on a large scale by vast majority of candidates for applying the rules of natural justice to the case. In the case of former, rules of natural justice would be applicable and hence show cause notice to individual candidate who is accused of doing copying will have to be given to such candidate

whereas in the case of later, the rules of natural justice are not applicable and hence it is not necessary to give any show cause notice to any candidate involved in mass copying; and Eleventh, the use of unfair means by any candidate is a serious matter because it affects the credibility of the examination and, therefore, once such charge is held proved against any such candidate, the matter needs to be dealt with sternly in relation to erring candidates.

45) When I examine the facts of the case at hand in the light of ratio laid down in the aforementioned cases, then I find that the facts of the case at hand are identical partly to the facts of the case of Bihar School Examination Board (supra) and partly to the facts of Bagleshwar Prasad and Prem Prakash (supra). This I say for the following reasons.

46) First, this is a case where large number of candidates (more than two hundred) in the examinations held from 2008 to 2012 were found involved in copying like what was noticed in the case of Bihar School Examination (supra) where 36 candidates were found involved in copying. Second, there was uniform pattern adopted by the candidates for doing copy in the examinations. This circumstance lends support to the fact that “mass copying” was done by the candidates in a planned manner; Third, candidates who managed to sit in pair in close proximity (described as "scorer" and "beneficiary"), their wrong answers consistently matched with each other. This circumstance was relied on in the cases of Bagleshwar Prasad and Prem Prakash Kalunia (supra) for forming an opinion that both the candidates copied from each other; Fourth, the material seized in investigation prima facie established that “mass copying” was done in a planned manner by the several candidates (appellants herein) to enable them to answer the questions; Fifth, interpolations were found in sitting plan originally made by Vyapam for some years to accommodate the candidates (appellants) and others like the appellants to sit in a particular examination center in close proximity with each other so that they are able to copy from each other; Sixth, many candidates despite clearing the examination did not take admission in any medical college. There was no satisfactory answer given by them barring very few; Seventh, material seized in investigation was found sufficient by the Expert Committee to form an opinion that it was a case of “mass copying”. In addition it was also established on probabilities and circumstantial evidence that the candidates in large scale which included the appellants did mass copying; Eighth, the Expert Committee examined the issues from all angles and analyzed the material seized for coming to a conclusion that it was a case of “mass copying” done by the candidates in large scale as a part of a planned strategy and that they used unfair means; Ninth, allegations of mala fides were not alleged in the writ petitions by any candidate against any member of Expert Committee or/and officials of the State/Vyapam; Tenth, the writ court rightly did not act as an appellate court to reverse the decision of Expert Committee; Eleventh, the formula evolved by the Expert Committee was usually applied in such type of cases by various institutions and no perversity or/and arbitrariness was shown by the appellants in the formula except to contend that it was not a proper formula; and lastly, the expression "mass copying" not being defined in any Act/Regulation/Rules, its meaning in ordinary parlance can be summed up as "sizable or large number of candidates found copying or discovered to have copied while answering their question paper by using unfair means in examination". In my view, this fully applies to the facts of the case at hand.

47) I am not impressed by the submissions of learned counsel for the appellants when they made attempt to find fault in the material relied on by the State/Vypaym against the appellants and contended that it is not a material at all, and in any event, it is irrelevant and hence can not be looked into for any purpose. It was also urged that since it was not supplied to the appellants and hence it is of no use.

48) As held above, Firstly, neither the writ court and nor this Court could sit as an appellate Court over the decision of the Expert Committee and find fault in the material relied on by the Committee; Secondly, the method evolved by the experts was usually applied to find out as to whether two candidates had copied from each other and hence no fault could be noticed in it; Thirdly, the decision to cancel the results was based on other contemporaneous material seized during the investigation by STF; Fourthly, the decision to cancel the results was not taken in post-haste but was taken with full application of mind by the Expert Committee which consists of experts in subjects and lastly, this being a case of "mass copying", it was neither necessary to give any show cause notice to the appellants and nor necessary to supply the material to the appellants. It is for these reasons, I find no merit in this submission.

49) Though an attempt was made by learned counsel for the appellants to distinguish the cases cited above but I am unable to notice any significant distinction. This Court, therefore, has to apply the law laid down in these cases for deciding the case at hand. It is all the more because the learned counsel for the appellants did not challenge and in my view rightly, the correctness of the view taken in any of these decisions.

50) In the light of detailed discussion and the reasoning given supra, I am of the considered opinion that it is a clear case of what is called in ordinary parlance a "mass copying" and I have no hesitation in holding so. I am also of the opinion that the procedure adopted by the State/Vyapam cannot be said to be unfair or arbitrary. I am also of the view that the action impugned is not in breach of rules of natural justice which has no application to the facts of this case as held in the cases of Bihar School Examination and BSNL (supra). It is a settled principle that rules of natural justice are not embodied rules and hence such rules cannot be put in a strait-jacket. The object of the rules of natural justice, is only to ensure that order causing civil consequences should not be passed arbitrarily. It is not that in every case, there must be an opportunity of oral hearing to person concerned. This principle, in my view, applies to the case at hand.

51) This takes me to the next submission of learned counsel for the appellants, namely, that since there was inordinate delay in taking the decision to cancel the examination and in the meantime the appellants have altered their position by completing their degree course, or are about to complete the Course in near future and hence this Court should protect the appellants' interest on equitable considerations. I do not agree.

52) The issue of somewhat similar nature was examined by this Court in the case of Ram Preeti Yadav vs. U.P. Board of High School and Intermediate Education and Ors., (2003) 8 SCC 311. In this case, the facts were that in the year 1984, Mr. Mahendra Pratap Yadav (respondent No.3 therein) appeared as private candidate in intermediate examination conducted by U.P.Board of High School

and Intermediate Education. Mr. Yadav's result was withheld as a suspected case of using unfair means in the examination. He was, however, issued two provisional mark sheets. In one mark sheet, it was mentioned that his result is withheld (WB) whereas in other it was not. Mr. Yadav on the basis of provisional marks-sheet which did not mention withholding of his result took admission in B.A. and cleared the examination. He also thereafter cleared M.A. examination. He was then selected as a teacher. In the year 1993, an inquiry was made pursuant to which he was informed in 1996 that his intermediate examination result, which was held in the year 1984, is cancelled.

53) Challenging the cancellation of his result, Mr. Yadav filed writ petition in the High Court at Allahabad on three grounds: Firstly, he was not afforded any opportunity of hearing before his result was cancelled; Secondly, the cancellation of the result was done after almost 10 years and hence it is wholly arbitrary; and Thirdly, since in the meantime, he cleared BA and MA Examinations with good percentage and secured employment as a teacher, the cancellation of his intermediate examination result is bad in law.

54) A learned Single Judge of the High Court was of the view that since Mr. Yadav has successfully cleared BA and MA Examinations and has also secured employment due to his brilliant performance in BA and MA Examinations, why should his career be ruined. It was on these grounds, his writ petition was allowed and cancellation of his result was set aside. The appeal filed by the Board and the institute against the order of Single Judge was dismissed and hence the Board carried the matter in appeal to this Court.

55) This Court allowed the appeal and while rejecting the aforementioned three grounds of challenge, set aside the order of the High Court and dismissed the writ petition. This Court while rejecting the submissions placed reliance on earlier decision of this Court rendered in Madhyamic Shiksha Mandal M.P. vs. Abhilash Shiksha Prasar Samiti & Ors., (1998) 9 SCC 236 and quoted para 2 of Madhyamic Shiksha Mondal's case (supra) in support of their reasoning which reads as under:-

> "2. We feel a little distressed that in matter like this the High Court should have interfered with the decision taken by the Board..... 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. This should serve as a lesson to the students that such malpractices will not help them succeed in the examination and they may have to go through the drill once again. We also think that those in charge of the examinations should also take action against

their Supervisors/Invigilators, etc., who either permit such activity or become silent spectators thereto. If they feel insecure because of the strong-arm tactics of those who indulge in malpractices, the remedy is to secure the services of the Uniformed Personnel, if need be, and ensure that students do not indulge in such malpractices."

56) This Court then equated the incident of this nature with fraud played by the candidate and held in Paras 13,14 and 26 of Ram Preeti Yadav's case which read as under:

"13. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. (See Derry v. Peek, (1889) 14 AC

337)

14. In Lazarus Estates Ltd. v. Beasley, (1956) 1 All ER 341, the Court of Appeal stated the law thus: (All ER p. 345 C-D) "I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever;"

26. Further, we find that there is no equity in favour of Respondent 3, inasmuch as he knew that his result had been withheld because of the allegation of having used unfair means in the examination. Suppressing this fact, he took admission in BA and studied further."

57) Applying the aforesaid law to the facts of the case at hand, I find that the appellants are not entitled to claim any equitable relief on the ground that they have almost completed their course during the interregnum period and hence no action on the basis of their PMT Examination results is called for.

58) In my view, when in the case of Ram Preeti Yadav (supra), the decision to cancel the result was taken after 10 years of the examination in which he had appeared and in the meantime, he had also completed his higher studies and secured an employment yet this Court was not impressed by such submission and rejected it in express terms. So is the case here where delay in cancellation of the result is less as compared to the case of Mr. Yadav. That apart, the case at hand prima facie established a case of "mass copying" attributable to the appellants who resorted to unfair means in a planned way in the PMT examination and lastly, when any action is done discretely, it takes times to discover.

59) Learned counsel for the appellants placed reliance upon the decision in Priya Gupta Vs. State of Chhattisgarh and ors., (2012) 7 SCC 433 and contended that this Court should invoke its extra-ordinary jurisdiction under Article 142 of the Constitution as was exercised in the case of Priya Gupta for granting relief to the appellants on equitable terms and conditions and allow the appellants to continue their study in MBBS Degree course. I cannot accept this submission for more than one reason.

60) First, the facts of the case at hand and the facts of the case of Priya Gupta (supra) are not similar because in the case of Priya Gupta, the right of only one candidate was involved whereas in the case at hand large number of candidates are involved. Second, when this Court invokes its extra-ordinary jurisdiction under Article 142 of the Constitution which is indeed rare and should indeed be rare for its invocation, it is always confined to the particular facts of that case and cannot be cited as a law laid down by this Court. Third, when in similar type of cases, this Court did not grant any equitable relief to the erring candidates except permitted the candidates to appear in the supplementary examination (see Para 2 of Bihar School Examination case (supra) at page 649 of the report where this Court upheld such direction while allowing the appeal filed by Board), then in my view, the same principle should apply to this case also. Fourth, once the cancellation of the Examination results is upheld as being just, legal and proper, then its natural consequence must ensue. In other words, once the examination is cancelled irrespective of ground on which it is cancelled then candidates whose results are cancelled have to repeat the examination whenever it is held. They can not take any benefit of such examination like those candidates who successfully passed the examination with their merit. Fifth, having regard to the nature of the controversy involved in the case coupled with the complicity of several persons in the Scam and the manner in which the appellants cleared the examination which gave rise to initiation of criminal proceedings (though pending) against the appellants and several others, the exercise of extraordinary equitable jurisdiction under Article 226 for grant of equitable relief of any nature to the appellants is not called for and if granted, it will be against the settled legal position laid down by this Court. Since no equitable relief under Article 226 is called for, as a corollary, the question of invoking our extraordinary powers under Article 142 does not appear to be proper. In any case, in the light of the finding recorded by this Court against the appellants which has resulted in upholding of the impugned order of the High Court, this is not a fit case for invocation of extraordinary equitable jurisdiction available under Article 142. Sixth, grant of any equitable relief may be construed as awarding premium to the appellants of what they did. It would demoralize the meritorious students who could not secure the admission on their merit due to the appellants' entry in the Colleges by illegal means. Seventh, this is not a case where the appellants' results were cancelled on some technical ground and that too attributable to the State. In other words, if the cancellation had been done on a cause not attributable to the appellants then perhaps this Court would have considered grant of appropriate prayer to the appellants. However, such is not the case here. Eighth, grant of any equitable relief, as prayed by the appellants, once they are held responsible for cancellation of their results would affect the creditability in conducting the examination and cause more harm to the candidates as a whole and especially those who prepare for their examination sincerely and on their merit. In my view it will not be, therefore, in larger public good in long run to entertain any such prayer. Ninth, since the appellants, are in their youth, they can still appear in the examination and clear it with distinction by proving their merit. And lastly, grant of any such relief to the

appellants may amount to some extent travelling beyond the real controversy and may be considered inconsistent with the main findings rendered by this Court.

61) In these circumstances, the State may consider permitting the appellants and other candidates alike the appellants to appear in the competitive examination whenever it is held and consider granting age relaxation to those candidates who crossed the age limit, if prescribed. Such liberty, if granted, would not cause any prejudice to any one and at the same time would do substantial justice to all such candidates as was done in the case of Bihar School Examination (supra). Beyond this, in my view, the appellants are not entitled to claim any indulgence.

62) Learned counsel for the appellants cited several cases, such as Union of India & Anr. Vs. Tulsiram Patel, (1985) 3 SCC 398, Dr. Dinesh Kumar & Ors. vs. Motilal Nehru Medical College, Allahabad & Ors., (1985) 3 SCC 542, State of Maharashtra & Ors. vs. Jalgaon Municipal Council & Ors., (2003) 9 SCC 731 and Situ Sahu & Ors. vs. State of Jharkhand & Ors., (2004) 8 SCC 340 etc. in support of their submissions. Perusal of these decisions would show that this Court in these decisions has explained the general principle of rules of natural justice and how this principle is applicable to a particular case.

63) This Court has laid down in these cases that the applicability of rules of natural justice is not static but it has different facets and, therefore, its applicability vary from case to case. I find that none of these cases has dealt with the cases of “copying” or “mass copying”. In my view, when the question as regard the applicability of rules of natural justice has already been decided by this Court in several cases relating to “copying” and “mass copying” then the law laid down in such cases must be applied to the cases at hand and not the one which lays down the law which explains the principle in general. Similarly, the last case cited has no application to the facts of this case because it deals with the applicability of rule to the case relating to the land. It is for these reasons, the submission based on the case law cited has no merit. It is accordingly rejected.

64) This takes me to the issue regarding constitution of Vyapam under the Act and its effect on the controversy in question. Since this issue has been elaborately dealt with by my esteemed Brother, I respectfully agree with His Lordship's reasoning and the conclusion and hence do not wish to add anything.

65) It is pertinent to mention that this Court by order dated 08.08.2014 has dismissed one S.L.P. (c) No. 16257 of 2014 in limine arising out of the order of the High Court dated 11.04.2014 in W.P. No. 20342 of 2013 entitled Km. Pratibha Singh & Ors. vs. State & Ors. and other connected matters. This writ petition was filed by the candidates who had appeared in the PMT examination held in the year 2013. The results of these candidates were also cancelled on the same grounds on which it was cancelled in the cases at hand. i.e., in relation to candidates of the years 2008 to 2012. The High Court by order dated 11.04.2014 dismissed the writ petitions and upheld the cancellation of the results. In fact, the impugned judgment in this case has followed in extenso the main decision rendered in Pratibha Singh’s case (supra). Since it was a dismissal of SLP in limine and as rightly argued by the learned counsel for the appellants that there was no merger of the decision of the High Court and nor it could be considered that this Court affirmed the view taken by the High Court in

Pratibha Singh's case (supra), we considered in the interest of justice to hear these matters in detail and record our reasons.

66) It was then brought to our notice by the learned counsel appearing for the State/Vyapam that pursuant to FIR registered in these cases, the investigation is still going on by the CBI as directed by this Court vide an order passed in pending special leave petition. It is stated that in several cases, charge sheets have been filed against several accused in Courts.

67) It is accordingly made clear that any observation made by this Court in this judgment would not, in any way, influence the ongoing investigation and any pending criminal case. It is also made clear that this Court has examined the issue relating to cancellation of results in the light of grounds raised by the appellants in the writ petitions and the special leave petitions. In this view of the matter, ongoing investigation and pending criminal cases will be dealt with and decided strictly in accordance with law uninfluenced by any observation made hereinabove.

68) Before parting, it is considered apposite to observe that it is well known that the Examination is always considered as one of the major means to assess and evaluate candidate's skills and knowledge be it a school test, university examination, professional entrance examination or any other examination. Candidate's fitness for his further assignment whether in studies or employment is, therefore, judged on the basis of his performance in the examination. It is for this reason, the examination is considered as a common tool around which the entire education system revolves.

69) Examination malpractices, academic fraud or cheating in the examination is as old as the examination itself. Study made by the educationist has revealed that these malpractices are gradually on the rise across the world and has caused a threat to public trust in reliability and credibility to the system as a whole. These malpractices occur within and outside the examination halls and are perpetrated by the candidates, staff and other external agencies before, during and after the examination. Various kinds of strategies are innovated and then applied to enable the candidate to clear the examination any how. It has, therefore, destroyed the piousness of the examination. With a view to prohibit such activities, State of A.P. had enacted a legislation but it was found inadequate to control such activities.

70) It is, therefore, the collective responsibility of the Government (Central/States), educational bodies/Institutions to ponder over and evolve a uniform policy in a comprehensive manner to firmly deal with such activities in the larger public good. It is hoped that effective remedial steps would be taken in that regard.

71) In view of foregoing discussion, I find no merit in these appeals. All the appeals thus fail and are accordingly dismissed. No Costs.

.....J. [ABHAY MANOHAR SAPRE] New Delhi, May 12, 2016.

IN THE SUPREME COURT OF INDIA

CIVIL APPELALTE JURISDICTION

CIVIL APPEAL NO(S).1727 OF 2016

NIDHI KAIM APPELLANT(S)

VERSUS

STATE OF M P AND ORS ETC RESPONDENT(S)

WITH

CIVIL APPEAL NOs.1720-1724, 1726, 1728, 1729, 1733, 1734-1741, 1742-1749, 1750-1751, 1752, 1753-1758, 1847-1852, 1759-1764, 1765, 1766, 1767-1768, 1769-1774, 1776-1787, 1788, 1789-1791, 1792-1794, 1795-1798, 1799-1805, 1806-1808, 1809, 1810-1811, 1812, 1813-1814, 1815, 1816-1817, 1818-1819, 1820, 1821, 1822-1824, 1825, 1826, 1827, 1828, 1830, 1831-1832, 1833, 1834, 1835, 1836-1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845 & 1846 OF 2016.

O R D E R In view of the divergence of opinion in terms of separate judgments pronounced by us in these appeals today, the Registry is directed to place the papers before Hon'ble the Chief Justice of India for appropriate further orders.

.....J. (J. CHELAMESWAR) .....J. (ABHAY MANOHAR SAPRE) NEW DELHI MAY 12, 2016

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[2] Section 3. Incorporation of the Board. – (1) The State Government shall establish by a notification, a Board to be called the Madhya Pradesh Professional Examination Board with effect from such date as may be specified in the notification.

(2) The Board shall be a body corporate by the name of the Madhya Pradesh Professional Examination Board and shall have perpetual succession and a common seal with power to acquire and hold property, both movable and immovable and shall have power to transfer any property held by it and to contract and do all other things necessary for the purposes of its constitution and may sue or be sued in its corporate name.

[4] For the details of the executive orders, See Ku. Pratibha Singh (Minor) v. The State of Madhya Pradesh & Others, 2014 (III) MPJR 178 [6] The nature of the enquiry was discussed by Madhya Pradesh High Court in great detail in the judgment of Ku. Pratibha Singh (Minor) v. The State of Madhya Pradesh & Others, 2014 (III) MPJR 178 [8] (a) In reference to above subject, it is submitted that on conducting inquiry from the accused arrested in the cases registered in connection with referenced examination and other examinations in S.T.F., M.P. Bhopal and even in so far as the accused arrested by your office have stated regarding forgery in these examination. Accused Jagdish Sagar and Sanjiv Shilpkar arrested in the S.T.F. Crime No.12/2013, under Section 420, 467, 468,

471, 120 B I.P.C., 3(D)1, 2/4 M.P. Recogniltion Examination Act, 1937 have stated regarding forgery for setting of equal roll number in P.M.T. Examination 2012 and 2013 and for setting of equal roll numbers in the P.M.T. Examination 2013 in collusion with Officers of Vyapam namely Nitin Mohindra and Others.

Therefore, it is requested to provide report after conducting investigation in accordance with law as conducted in connection P.M.T. Examination 2013, P.M.T. Examination 2012, in the referenced P.M.T. Examination 2009, 2010, 2011, so that, action would be taken in accordance with law in connection with above. – relevant portion of the letter dated 31.12.2013

(b) We understand that the original letter is in vernacular and the above is a Translation placed on record before us." [10]Year Number of Student Year Total number of students who appeared in the PMT 2008 38,378 2009 29,162 2010 26,711 2011 26,116 2012 38,671 [13]. The Circumstances are:-

> (i) with respect to each of the five years in question, a definite pattern was followed by the BOARD in allotment of Roll numbers as well as examination centres. But, it is detected on enquiry that allotment of both the Roll number and the examination centre with respect to some of the students was in deviation from the pattern adopted for the year;

Such deviations with reference to several centres occurred in pairs. The logical pattern employed for the generation of Roll numbers was broken with respect to some pairs of students. They were allotted sequential Roll numbers, though they could not have been allotted those numbers if the logical pattern were followed. Further, such pairs of students were allotted examination Centres which they could not have been allotted having regard to Roll numbers allotted to them, and the pattern of the Roll numbers allotted to the particular examination Centre.

(iii) in such pairs, once again there is a pattern i.e. the more accomplished student is made to sit in front of the other of the pair (referred to in the impugned judgment as "Scorer" and "beneficiary" respectively). Such an arrangement was made in order to enable the "beneficiary" to copy from the "scorer";

(iv) with reference to most of the identified pairs, the candidates not only got substantially similar (if not identical) marks, but also their answers, both correct and incorrect, with reference to each one of the questions answered by them matched to a substantial extent.

in most of the cases of the identified pairs, the 'scorer' did not belong to Madhya Pradesh.

Such 'scorers' in most of the cases though secured sufficiently high marks in the PMT, did not take admission in any one of the medical colleges of Madhya Pradesh. The respondents, therefore, believe that the 'scorers' were not genuinely interested in securing admission in any medical college of MP and they appeared in the examination only to facilitate the 'beneficiary' to obtain good marks to enable the beneficiary to secure admission.

[15] “Para 72. We have already held that the candidates had indulged in mass copying in Pre-Medical Tests, 2008 to 2012 therefore, for the reasons assigned by Division Bench in paras 91 to 106 of the decision in the case of Pratibha Singh (supra) the principles of natural justice would have no application in the peculiar fact situation of these cases. . . .” [The judgment in Pratibha Singh’s case (supra) dated 11.4.2014 is a common judgment delivered in a batch of writ petitions filed by number of students who had appeared in the PMT 2013, but whose admissions were also cancelled on the allegation of large scale malpractices in the said examination.] [17] An unfortunate state of affairs in public administration of a country where people associated with the different branches of governance under the Constitution make tall claims about the constitutional commitment to the rule of law in the country.

[19] Rai Sahib Ram Jawaya Kapur & Others v. The State of Punjab, AIR 1955 SC 549 Para 7. Article 73 of the Constitution relates to the executive powers of the Union, while the corresponding provision in regard to the executive powers of a State is contained in Article 162. The provisions of these articles are analogous to those of section 8 and 49(2) respectively of the Government of India Act, 1935 and lay down the rule of distribution of executive powers between the Union and the States, following the same analogy as is provided in regard to the distribution of legislative powers between them. Article 162, with which we are directly concerned in this case, lays down:

> "Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:
>
> Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

Thus under this article the executive authority of the State is exclusive in respect to matters enumerated in List II of Seventh Schedule. The authority also extends to the Concurrent List except as provided in the Constitution itself or in any law passed by the Parliament. Similarly, Article 73 provides that the executive powers of the Union shall extend to matters with respect to which the Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or any agreement. The proviso engrafted on clause (1) further lays down that although with regard to the matters in the Concurrent List the executive authority shall be ordinarily left to be State it would be open to the Parliament to provide that in exceptional cases the executive power of the Union shall extend to these matters also.

Neither of these articles contain any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the States on the other. They do not mean, as Mr. Pathak seems to suggest, that it is only when the Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect to them.

On the other hand, the language of Article 162 clearly indicates that the powers of the State executive do extend to matters upon which the state Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. The same principle underlies Article 73 of the Constitution. These provisions of the Constitution therefore do not lend any support to Mr. Pathak's contention.

[21] Bishambhar Dayal Chandra Mohan v. State of Uttar Pradesh & Others, (1982) 1 SCC 39 "Para 20. ... In other words, the State in exercise of its executive power is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. Otherwise, the administration would come to a standstill." [23] 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.

[25] Para 12. In dealing with petitions of this type, it is necessary to bear in mind that educational institutions like the Universities or Appellant 1 set up Enquiry Committees to deal with the problem posed by the adoption of unfair means by candidates, and normally it is within the jurisdiction of such domestic Tribunals to decide all relevant questions in the light of the evidence adduced before them. In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is justification to do so, courts should be slow to interfere with the decisions of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Article 226, the High Court is not sitting in appeal over the decision in question; its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be justified to quash that order. But the conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are famed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunals must scrupulously follow rules of natural justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary courts of law." See also: Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi & Others, (1991) 2 SCC 716 "Para 37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would

be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt “but” the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries.” [27] Para 9- The argument that no one had complained about the examination need not detain us. The Tabulators sent their remarks on which investigation was made. The Unfair Means Committee and the Moderators gave their opinion. These were sufficient for taking action. There was no need to wait for a complaint, nor was a complaint really necessary. The results were withheld so that inquiries could be completed. In the meantime the results of the other centres which were not under suspicion could be declared because in their case there was no reason to withhold publication.

[29] Para13. 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.

[31] Para 11. This brings us to the crux of the problem. The High Court interfered on the ground that natural justice and fair-play were not observed in this case. This was repeated to us by the respondents in the appeal. A mention of fair-play does not come very well from the respondents who were grossly guilty of breach of fair-play themselves at the examinations. Apart from the reports of the experts, the results speak for themselves. At the other centres the average of successful candidates was 50%. At this centre the examinations had the following percentage:

1. Mother Indian Language .. 94%

2. English .. 70%

3. Social Studies .. 95%

4. Everyday Science .. 90%

5. Elementary Mathematics .. 100%

6. Economics and Civics .. 92%

7. Elementary Physiology and Hygiene .. 96%

8. Geography .. 99%

9. History .. 88%

10. Physics .. 70%

11. Chemistry .. 100%

12. Advance Mathematics .. 99%

13. Sanskrit .. 100% [33] To assure itself regarding the correctness of the said inference, this Court undertook comparison of the answer papers of some of the students and recorded satisfaction that such answer papers "showed such a remarkable agreement in the answers that no doubt was left in the minds of this Court that the students had assistance from an outside source".

[35] Whether the said circumstances would be sufficient to connect any one of the students on a criminal charge is a different question and we express no opinion on the same as we understand that criminal cases are registered and are being investigated against some of the appellants (if not all) in connection with the same transaction which is the subject matter of debate in these appeals.

[37] The Expert Committee evolved a formula to examine whether a conclusion could be reached with respect to the identified pairs that they had resorted to the unfair means. The facts relevant for the said formula are:

(1) the total number of questions answered by each number of the pair;

(2) the number of correct answers given by each number of the pair and how many of the said correct answers matched;

(3) the number of wrong answers matched.

After determining the above mentioned numbers with respect to each of the identified pairs, greater weightage is given to the incorrect matching answers to arrive at a conclusion that the number of the identified pair resorted to unfair means at the examination.

[39]. Para 6. "... He admitted that the mistaken answers in the two papers were identical and he pleaded that he could not say anything as to why this happened. ..." Para 11. " ... We have looked at the incorrect answers ourselves and we are not prepared to hold that the identical incorrect answers were given by the two candidates either by accident or by coincidence. Some of the incorrect answers, and, particularly, the manner in which they have been given, clearly suggest that they were the result of either one candidate copying from the other, or both candidates copying from a common source. ..." [41] It was found that "the admission ... had been on the basis of fake letters purported to be issued from the Directorate General of Health Services (DGHS) ...".

"Para 73. ... By their admissions, firstly, other candidates of higher merit have been denied admission in the MBBS course. Secondly, they have taken advantage of a very low professional college fee, as in private or colleges other than the government colleges, the fee payable would be Rs.1,95,000 per year for general admission and for management quota, the fee payable would be Rs.4,00,000 per year, but in government colleges, it is Rs.4000 per year. So, they have taken a double advantage. As per their merit, they obviously would not have got admission into Jagdalpur College and would have been given admission in private colleges. The ranks that they obtained in the competitive examination clearly depict this possibility because there were only 50 seats in Jagdalpur College and there are hundreds of candidates above the appellants in the order of merit. They have also, arbitrarily and unfairly, benefited from lower fees charged in Jagdalpur College." [45] They are the beneficiaries of a tampered examination process. The tampering took place systematically and repeatedly for a number of years virtually destroying the credibility of the examination process. It deprived a number of other more deserving students from securing admissions to the medical colleges.

[47] See Sections 468 of the Code of Criminal Procedure, 1973

468. Bar to taking cognizance after lapse of the period of limitation.-

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be –

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

[49] See Sections 452, 453 and 456 of the Code of Criminal Procedure, 1973 "Section 452. Order for disposal of property at conclusion of trial.- (1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub- section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Section 453. Payment to innocent purchaser of money found on accused.- When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person bought the stolen property from him without knowing or having reason to believe that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

Section 456. Power to restore possession of immovable property.- (1) When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the Court that, by such force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the

property:

> Provided that no such order shall be made by the Court more than one month after the date of the conviction.
>
> (2) Where the Court trying the offence has not made an order under sub-section (1), the Court of appeal, confirmation or revision may, if it thinks fit, make such order while disposing of the appeal, reference or revision, as the case may be.
>
> (3) Where an order has been made under sub-section (1), the provisions of section 454 shall apply in relation thereto as they apply in relation to an order under section 453.
>
> (4) No order made under this section shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit." [51] See Section 4 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 "Section 4. Prohibition of holding illegally acquired property.– (1) As from the commencement of this Act, it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf.
>
> (2) Where any person holds any illegally acquired property in contravention of the provision of sub- section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Act." [53] See Section 25 of the Hindu Succession Act, 1956 "Section 25. Murderer disqualified.—A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder." [55] See Section 11 of the Representation of the People Act, 1951 "Section 11. Removal or reduction of period of disqualification.—The Election Commission may, for reasons to be recorded, remove any disqualification under this Chapter (except under section 8A) or reduce the period of any such disqualification.

[57] Section 2(k) - "juvenile" or "child" means a person who has not completed eighteenth year of age; 3[(l) "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence [59] Community service as an alternative to the traditional punishment of imprisonment for those found guilty of crime is gaining currency in some countries. It appears to me to be more useful to the society. I do not see any reason why such a concept cannot be adopted in the context of situations like the one on hand.