

SH. SUBASH CHANDRA VERMA AND ORS. ETC.

v.

THE STATE OF BIHAR AND ORS. ETC.

DECEMBER 13, 1994

[A.M. AHMADI, CJ AND S. MOHAN, J.]

Service Law: Selection—Filling up of post of Medical Officers (Ayurveda)—Allegation that the question papers were out and become marketable commodity before the examination—Irregularities including evaluation of answer sheets by clerical staff of the Examination Department who had no knowledge of the subject of the examination also alleged—Whether selection vitiated—Held No.

The Bihar Public Service Commission (BPSC) issued an advertisement on 15.9.89 for filling up 56 vacancies to the post of Medical Officers (Ayurveda), which number was subsequently increased to 195.

On 10.1.93, the screening test was held. There were about 3,000 candidates who appeared for screening test. 410 candidates were declared successful in the said screening test which included the appellants.

Some of the candidates who failed to secure the minimum marks and who could not be declared successful in the screening test filed writ petitions seeking quashing of screening test held by BPSC on a number of grounds. The principle grounds on which the screening test was assailed were (i) the question papers had leaked and they became marketable commodity before the examination, (ii) the answer books of objective type examination came to the evaluated in the premises of BPSC by the staff members who had no knowledge of the subject, (iii) the Chairman of BPSC acted arbitrarily in holding the examination and lastly (iv) the questions asked in the screening test were vague and had more than one answer.

Meanwhile pursuant to the screening test held on 10.1.93 the successful candidates were called for *viva voce* in batches before four Boards constituted by the BPSC consisting of two Members of BPSC and one Expert appointed either by the BPSC or by the State Government.

A Some more candidates who had failed in the screening test also filed writ petition seeking to quash the screening test on the very same grounds as were urged in the earlier writ petition. The appellant intervened in both these petitions. By a common judgment both the writ petitions were allowed. The screening test was set aside mainly on the grounds (i) the experts were not present during the interview on all the dates of interview by the BPSC, (ii) the questions in the screening test had more than one probable answer and (iii) the BPSC had fixed 50% for *viva voce* which was contrary to the rulings of this Court. After so setting aside the test results, the High Court directed the BPSC to advertise afresh for the post and make the selection. Aggrieved by this, the appellants have filed the present appeals.

C Allowing the Appeals and upholding the selection, this Court

D HELD: 1. A democratic system could be administered well only if the civil servants are appointed solely on the basis of merit by open competition. It is further essential that they should carry on the administration independently instead of blindly carrying out the orders of the political superiors. For recruitment on the basis of merit, the Constitution has provided for a Public Service Commission for the Union as well as the States. They are made autonomous in order that the functions may be carried on independently, fairly and impartially.

[516 E to F]

E *Ashok Kumar Yadav and Ors. v. State of Haryana and Ors.*, [1985] 4 SCC 412, referred to.

F 2. The service commission in its counter had stated that the question papers for the examination held on 10.1.93 had not leaked out before the commencement of the examination. The question papers were in sealed packets at the time of delivery to the Zonal Officers for distribution to the supervisor and no examination center had reported of any tampering with the sealed packets of the question papers.

[520 E]

G 3.1. The allegation that the answer books were freely available, was not made when the first writ petition came to be filed on 12.3.93. The petitioners would state that about the leakage of these question papers, a report was sent on 11.1.93 under certificate of posting. The specific stand of the commission is that no such report was ever sent. If it had been so sent, it would have been received at the office of the Service Commission. That was never received. One is unable to understand why the petitioners chose to send the report (if at all it had been sent)

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under certificate of posting. If really such a representation was made, nothing would have been easier than to deliver the same at the counter of the Service Commission and get a printed receipt in proof of having filed such a representation. Therefore, that cannot have any probative value since by then the valuation of the answer books was over. The results relating to short listing had been published on 24.2.93. Hence the production of answer sheets after the publication of results will have no evidentiary value. The same would be the case of the Press Report dt.15.3.93. The High Court has not appreciated these aspects properly. [520 G, 521 B to C]

3.2. The stand of the commission is that the screening was objective type and the evaluation staff members were merely required to give marks with reference to key-answers supplied by paper setters, the evaluation staff members were not required at all to have the knowledge of the subjects as they were to merely evaluate the answers with reference to standard answer sheets applied by the paper-setters. Thus, the lack of knowledge of the subject on the part of the evaluation staff has not affected at all the case of the candidates. If really the key answers had been supplied to the persons in charge of valuation, there was no need to send the answer books for out side valuation. It is also to be noted that no candidate was put to any disadvantage since there was no negative marking. [521 E to F]

3.3. Besides the Full Commission had taken a decision regarding the evaluation of the answer sheets in the above terms by its resolution dt.15.1.93 as this was an objective test. According to the Commission, in such tests, if possible, the answer sheets are examined by optical Marks Reader Computer [which examines the objective answer sheets]. It is fed the correct answers on key answer sheets and it corrects the answer papers accordingly. In this case since no Optical Marks Reader Computer was available the commission decided to examine the answer sheets with the help of the key to correct answers obtained from the paper setter through its senior most Assistants for which no knowledge of the subject was required. Thus, the High Court is not justified in concluding that the evaluation was vitiated. [521 G to H, 522 A]

4. In an objective type of test, more than one answer is given. The candidates are required to tick mark the answer which is appropriate out of the plurality of answers. The questions and answers were prepared by the experts in the field with reference to standard books. Therefore, it is incorrect to say that a question will have more than one correct answers. Even if the answer could be more than one, the

A candidates will have to select the one which is more appropriate out of the alternative answers. In any event, this [is a] difficulty was felt by all the candidates. [522 B to C]

B 5. The High Court should have appointed an expert body and obtained its opinion about the confusing or controversial nature of questions. For reasons best known, it was not done. It has merely chose to accept the version of the writ petitioners before it. The reason why this Court has repeatedly pointed out that such matters should be referred to an expert body and its opinion sought, is that in academic matters like this, Courts do not have the necessary expertise. [522 F]

C *Kanpur University and Ors. v. Samir Gupta and Ors.*, [1984] 1 SCR 73, distinguished.

Dr. Shantanu Singh v. State of U.P. and Ors., AIR (1993) All 85, referred to.

D 6. The Commission had given clear instructions to the evaluators to award full marks to the candidates in cases where (a) the candidate has put tick mark against the correct answer and has also put correct answer in the box ;

E (b) the candidate has put only tick mark against the correct answer but has not written anything in the box ; and

F (c) the candidate has written correct answer in the box but has not put any tick mark against the correct answers. No candidate was put to any disadvantage in awarding marks because of any discrepancy, ambiguity or duplicity. Moreover, there being no negative marking, no disadvantage was caused to any candidate on this amount.

[523 H, 524 A to B]

G 7. If really on the first two days the experts of the Commission participated and on 17th, 18th and 19th the expert nominated by the Government had participated, the High Court had clearly gone wrong when it found that the statement was vague and it does not state as to under what circumstances the services of the experts were not requisitioned for *viva voce* test held on 15th and 16th March, 1993. It is very important to note that there is no allegation impeaching the credibility of experts chosen by the Service Commission. Nor, have the writ petitioners stated that because of the participation of experts appointed by the commission, the selection was vitiated. 50% marks

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had been allocated for the interview. Therefore, the entire process of selection was vitiated. [527 D to F] A

Anzar Ahmed v. State of Bihar and Ors., [1994] 1 SCC 150, relied upon.

8. It is the entire commission which has conducted these examinations and not the Chairman alone. [528 E] B

Sanjay Kumar Singh v. Bihar Public Service Commission and Ors., (1993) BLJ 328, distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 31-32 of 1994 etc. etc. C

From the Judgment and Order dated 19.7.93 of the Patna High Court in C.W.J.C. Nos. 2512 and 2646 of 1993.

Gopal Subramaniam, and M.L. Verma, Vikas Singh, Gopal Singh, Rakesh U. Upadhyay, D.B. Vohra, Sanjeev Malhotra, L.R. Singh, Rana Mukherjee, Goodwill Indeevar, Yunus Malick, E.C. Vidya Sagar, C.B. Babu, Anip Sachthey and B.B. Singh for the appearing parties. D

The Judgment of the Court was delivered by

MOHAN, J. The Bihar Public Service Commission (hereinafter referred to as 'BPSC') issued an advertisement on 15.9.1989 for filling up 56 vacancies to the post of Medical Officers (Ayurveda) in the State Of Bihar. In that advertisement it was specifically provided that for the purpose of selection screening test would be held to short-list the candidates before making final selection. By a corrigendum dated 28.8.1991 it was stated that the vacancies to the post of Medical Officers (Ayurveda) had increased by 139. Thus, the total vacancies became 195. Another corrigendum dated 13.9.1992 was issued stating that all eligible candidates for the interview whoever became eligible till the date of the interview could take the interview. on 24.12.1992, letters were issued by BPSC to all eligible candidates to appear for objective type test in order to screen the applicants and to short-list the number of candidates. E F G

On 10.1.1993, the screening test was held by BPSC. There were about 3,000 candidates who appeared for screening test. The results of the screening test were declared on 24.2.1993. 410 candidates were declared successful in the said screening test which included the appellants herein. H

A Some of the candidates who failed to secure the minimum marks and who could not be declared successful in the screening test filed C.W.J.C. No. 2512 of 1993 on 12.3.1993. They sought to quash the screening test held by BPSC on a number of grounds. The principal grounds on which the screening test was assailed are:

B 1. The question papers had leaked and they became marketable commodity before the examination.

2. The answer books of objective type examination came to be evaluated in the premises of BPSC by the staff who had no knowledge of examination.

C 3. The Chairman of BPSC had acted arbitrarily in holding the examination.

4. The question asked in the screening test were vague and had more than one answers.

D Pursuant to the screening test held on 10.1.1993 the successful candidates were called for *viva voce* between 15.3.1993 to 19.3.1993 in batches before four Boards constituted by the BPSC. In all such interview boards, two Members of BPSC and one Expert appointed either by the BPSC or by the State Government constituted the Board.

E Some more candidates, who had failed in the screening test, filed C.W.J.C. No. 2646 of 1993 on 19.3.1993, seeking to quash the screening test on the very same grounds as were urged in C.W.J.C. No. 2512 of 1993. The appellants filed intervention petitions in both these petitions. They were allowed by the High Court and the counsel for interveners were heard. F By a common judgment dated 19.7.93, both the writ petitions were allowed. The screening test dated 10.1.1993 was set aside mainly on the following grounds:

G 1. The experts were not taken during the interview on all the dates of interview by the BPSC;

2. the questions in screening test had more than one probable answer; and

H 3. the BPSC had fixed 50 per cent for *viva voce* which was contrary to the rulings of this Court.

After so setting aside, the High Court directed the BPSC to advertise afresh for the post and make the selection. Aggrieved by this, the appellants have filed this civil appeals. A

Civil Appeal No. 31 of 1994 and Civil Appeal No. 32 of 1994 are directed against the judgment and order of the Patna High Court dated 19.7.1993 passed in C.W.J.C. Nos 2512 of 1993 and 2646 of 1993 respectively. B

Mr. Gopal Subramanian, learned counsel for the appellants states that the High Court had completely misdirected itself and had arrived at wrong conclusions. The allegation that answer books were freely available was not made when the first writ petition came to be filed on 12.3.1993. The alleged question and answer sheets came to be filed by the BPSC. Only thereafter the writ petitioners filed the same before the court. If really, there was a representation, in this regard, on 11.1.1993, the stand of the BPSC is that no such representation was received by the Examination's Office. It is somewhat surprising that such an important representation should have been sent under Certificate of Posting rather than by Registered Post. Even otherwise, there is an enquiry Counter in the Office of the BPSC. If really, such a representation was to be filed, nothing would have been easier than to deliver the same at the Counter and get a printed receipt in proof of having filed that representation. Nothing of that sort was done. The Press Report about the leakage of question paper came to appear months after the examination and no credence could be given to such a report. Therefore, the finding of the High Court, on this aspect, is clearly wrong. C D E

As regards the allegation of corruption it is somewhat strange that the rejoinder is completely silent on this aspect. The High Court had committed the mistake of referring to Annexure XII mentioned in the rejoinder. F

Concerning the expert participation the position is as follows:

On 26.2.1993, a request was made by the Chairman of BPSC for nominating 8 experts for interview. The Government replied on 12.3.1993 nominating the experts. Since the interviews were to commence on 15.3.1993 the BPSC had made its own arrangement. However, the BPSC replied, as and when it was necessary, the experts appointed by the Government will be informed. The High Court had completely gone wrong in holding that there were no experts on all five days oblivious of the fact that on each one of the interview dates from 15th to 19th March, 1993, the experts nominated by the BPSC participated. On the last two days two of the experts nominated by the Government also participated. It is important G H

- A to note that there is no allegation impeaching the credibility of experts nominated by the BPSC. Hence, the finding of the High Court that it is highly disturbing to notice that the BPSC, on its own, had been taking such decisions which do not answer the test of reasonableness or fairness is incorrect. The BPSC had clearly brought this out in its counter affidavit to the supplementary affidavit. Thus, the finding of the High Court is
- B unsupportable.

- The High Court holds that in the screening test at least 24 per cent questions are confusing and controversial and do not adhere to the norms of such multiple choice type questions. This statement is made by the writ petitioners and the High Court chooses to accept the same. If the High
- C Court had referred the matter to an expert committee and if the expert committee had so opined at least something could be said in favour of the respondents therein. The High Court has no competence to conclude whether a question is capable of two answers. More than above this, there was no negative marking nor even is it the case of the present respondents that they answered the so-called confusing questions in one way and they
- D have not been awarded marks. No such attempt was ever made by any of the appellants excepting to make a vague allegation that the questions were confusing and can be of two answers. Such an allegation could not be accepted straightaway.

- The BPSC is faulted for having assigned 100 per cent for *viva voce*.
- E this Court in *Abid Asghar v. State of Bihar and Others*, [1994] 1 SCC 151 held that 50 per cent marks for *viva voce* and 50 per cent marks for academic performance should be the criterion. In view of this decision, the contrary finding of the High Court is incorrect in law.

- The High Court has further held that the evaluation of the answer sheets should not have been done by the staff of the BPSC; that the answer books should have been sent for outside evaluation. Reliance placed on
- F *Shantanu Singh v. State of U.P. and Others* reported in AIR (1993) Allahabad page 85 has no application to be present case. Having regard to the fact that this is an objective type of question paper, so long as the key answers are supplied to those who are in charge of the evaluation, the BPSC
- G cannot be blamed. All that is required to be done is to tally the answer with the key answer. There is nothing wrong in that evaluation. Thus, the judgment of the High Court is totally unsupportable and requires to be set aside.

- Mr. M.L. Verma, learned counsel, appearing for the contesting
- H respondents (the writ petitioners before the High Court) would urge, it

cannot be denied that the questions were confusing. Several questions were capable of two answers. That being so, where the respondents are prejudiced, it is open to them to complain. In this case, out of the 50 questions, at least, 12 questions, namely, 24 per cent were confusing and controversial and do not adhere to the norms of such multiple choice type questions. This allegation has come to be accepted by the High court. This court also in *Kanpur University and Others v. Samir Gupta and Others*, AIR (1983) SC 1230 had criticised such type of questions. Rightly, the High Court had followed the ruling of this Court. As was pointed out by the High Court, even if the evaluation of the answer sheets of the candidates is not computer-based, no attempt was made on the part of the BPSC to find out whether there was any discrepancy in the key answers; nor was any expert committee constituted in this regard.

Annexures formed part of the affidavit. Therefore, as rightly held by the High Court, Annexures V and IX had not been rebutted by the BPSC.

With regard to the appointment of experts the BPSC is unable to explain as to why, when it received the communication from the Government on 12th March, 1983 itself, the experts appointed by the Government were not allowed to participate and were asked to go. After all, there were still three days left for the *viva voce* to commence. It is this aspect which has come in for comment at the hands of the High Court. A statutory functionary like the BPSC cannot behave in this fashion. In the writ petition (C.W.J.C. No. 2512 of 1993) filed by Dr. Uma Kumar and Ors. It was specifically alleged at paragraph 2 as under:

“Whether the examination in question could be held on 10.1.93, even after the question papers were out, and had become a marketable commodity, before the examination was held?”

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Whether the answer books could be examined in the premises of the BPSC building itself, by clerical staff of the Examination Department who had no knowledge of the subject of the Examination?”

In paragraph 16 it was stated thus:

“That the petitioners had obtained the photostat of the question papers with correct answers, sold to the candidates at the test examination centers, for price.

A The copy of the question paper and answer is attached herewith as Annexure-2.”

B Though this writ petition made the specific allegation the same was not met in the counter by the BPSC. If really, according to the BPSC, the answer books were in sealed envelopes, the question of obtaining the answer books surreptitiously would not arise. Therefore, this statement in the counter has to be rejected.

C The explanation offered by the BPSC for directing the evolution to be done by the clerical staff is strange. Even though it is an objective type test unless the valuer has some knowledge of Ayurveda, such an evaluation must be held to be bad in law and farcical. The High Court had delved into these factual aspects and come to a proper conclusion. Hence, interference by this Court may not be warranted.

D In Civil Appeal No. 32/94 Mr. Rakesh Upadhyay appearing for respondents submits that the Chairman had himself instructed to the Commission to handle the examinations. Hence, they are invalid. In support of this argument reliance is placed on *Sanjay Kumar v. Bihar Public Service Commission*, 1993 (1) B.L.J. 328.

We will now proceed to examine the correctness of these submissions.

E A democratic system could be administered well only if the Civil servants are appointed solely on the basis of merit by open competition. It is further essential that they should carry on the administration independently instead of blindly carrying out the orders of the political superiors. For recruitment on the basis of merit, the constitution has provided for a Public Service Commission for the union as well as at the States Level. They are made autonomous in order that the functions could be carried on independently, fairly and impartially. The importance and the role a Public Service Commission is expected to play, has been pointed out by this Court in *Ashok Kumar Yadav and Ors. v. State of Haryana and Ors.*, [1985] 4 SCC 417 at 456 in the following words :

G “..... the Public Service Commission occupies a pivotal place of importance in the State and the integrity and efficiency of its administrative apparatus depends considerably on the quality of the selections made by the Public Service Commission. It is absolutely essential that the best and finest talent should be drawn in the administration and administrative services must be composed of men who are

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honest, upright and independent and who are not swayed by the political winds blowing in the country. The selection of candidates for the administrative services must therefore be made strictly on merits, keeping in view various factors which go to make up a strong, efficient and people oriented administrator. This can be achieved only if the Chairman and members of the Public Service Commission are eminent men possessing a high degree of caliber, competence and integrity, who would inspire confidence in the public mind about the objectivity and impartiality of the selections to be made by them. We would therefore like to strongly impress upon every State Government to take care to see that its Public Service Commission is manned by competent, honest and independent persons of outstanding ability and high reputation who command the confidence of the people and who would not allow themselves to be deflected by any extraneous considerations from discharging their duty of making selections strictly on merit.....”

Therefore, every Service Commission is expected to conduct its affairs fairly and impartially.

The Government of Bihar by its letter dated 3.2.1989 requested the BPSC to make recommendation for appointment on the temporary posts of Ayurvedic Medical Officer. The Commission invited applications from suitable and eligible candidates by its advertisement No. 24/89 which was published in the Bihar Gazette on 20.9.1989. The said post of Ayurvedic Medical Officer is a Gazetted Class-II post and carries the pay scale of Rs. 1000-50-1700-EB-60-1820. The number of posts were 56. The candidates were required to possess the degree of Ayurveda or equivalent degree obtained from a recognized and approved college. In addition, the candidates were also required to possess the Internship Training Certificate of six months from a recognized institution which has a provision for indoor patients as also for training of Ayurvedic Medical Officer. The maximum age of the candidates as on 1.8.1989 was fixed at 35 years. However, for state government employees, the maximum age was 40 years and the candidates of scheduled caste and scheduled tribes were entitled to relaxation in the age-limit for a maximum of 5 years. The last date for making of the applications was 15th November, 1989. The advertisement clearly stipulated that the aforesaid qualifications are minimum qualifications and the candidates not possessing the minimum qualifications will have no right to be called for interview. In the event of receipt of large

A number of applications, it will be open to the Commission to conduct a screening test.

In the meanwhile, the Commission was informed by the Government of Bihar that the Health Department had taken a decision to fix the age limit in place of 1.8.1989 to 1.8.1988. Accordingly, the maximum age limit as on 1.8.1988 had to be 35 years. Rest of the terms and conditions were to remain the same. In view of the aforesaid development, the Commission on 7.3.1990 issued a corrigendum and informed the candidates about the same. The other terms and conditions were to remain the same. However, in view of the change, the last date for making of the applications was extended to 28.3.1990.

The Commission received a further communication from the Government of Bihar whereby the Government informed the commission that it has created 139 more posts of Ayurvedic Medical Officers with the result that vacancies now were increased to 195. Accordingly, the Commission again on 24.8.1991 issued a corrigendum bringing the aforesaid facts to the notice of general public. In the light of increased vacancies, the last date for making of the applications was extended to 7.10.1991. Rest of the terms and conditions were to remain the same.

It appears in the case of appointment of Unani Medical Officer, the Patna High Court in a writ petition (C.W.J.C. No. 2672 of 1992) had directed the Government and the Commission to permit all candidates in the interview if they possess the requisite qualification by the time of the interview. In view of this ruling, the Government and the Commission decided to permit all candidates to appear in the interview who would be completing the period of internship and are in a position to produce their Internship Certificate and the Registration Certificate on the date of interview notwithstanding that by the time of the making of the applications they had not completed the Internship. Hence, the Commission again on 9.9.1992 issued another corrigendum informing the candidates that all such candidates who are in a position to produce the Internship Training Certificate and the Registration Certificate by the time of interview, shall be eligible to appear in the interview. Accordingly, the last date for making of the applications was extended to 30th of September, 1992.

In view of receipt of large number of applications, the Commission on 10.1.1993 conducted Ayurvedic Chikitsa Padadhikari (objective type screening test) at seven centres. The candidates were required to merely put a tick(✓) mark against the correct answers. The results of the screening test

was published on 24.2.1993. C.W.J.C. No.2512/1993 was filed on 12.3.1993. The viva-voce took place between 15.3.1993 to 19.3.1993. After the test, since the question booklet-cum-answer sheets were printed on ordinary papers and further since the Commission was not having the facility of optical marks reader which can examine the computerized answer-sheets of objective tests and hence, *the full Commission in its meeting held on 15.1.1993*, decided to get the answer-sheets evaluated in the office of the commission with reference to key of correct answer supplied by the paper-setters who were chosen from outside Bihar by the senior most Assistant under the direct supervision of officer-on-special duty (Examination-in-Charge) as also under the supervision of the members of the commission. Since the examination was of objective type and correct answers were supplied by the paper-setter, the checking staff were merely required to check the correct answers with reference to the stencil and award marks accordingly. For the said purpose, they were not required to possess the knowledge of the subject concerned. Therefore, *the Commission had decided* to evaluate the answer sheets manually with the help of key of correct answers supplied by the paper-setters. Accordingly, the Officer on special duty-cum-Deputy Secretary (Incharge Examination) with the help of the confidential section *under the direct supervision of the members of the Commission* got the marks calculated according to the key provided by the question setters. The calculation of the marks was again checked by the Officer on special duty-cum-Deputy Secretary (Incharge Examination) as *also by the members of the Commission* on the basis of random checking. The marks thus calculated were fed into the computer and the final result was obtained. Thus, in the entire process, there was no subjective evaluation or element involved. The result so prepared of the screening test was published on 24.2.1993. The factors which weighed with the High Court in setting aside the impugned selections to the post of Medical Officer (Ayurveda) are as follows :

1. Because of rampant corruption, the questions paper that had leaked out, had become a marketable commodity even before the examination. In fact, answers to these questions were freely available.
2. The Service Commission had the answer books examined by the staff of the Service Commission contrary to the prevailing practice of the getting them examined by experts of different States.
3. Several controversial questions were set and in relation to some questions, there could be more than one answer.

- A 4. There had been gross violations of the norms set out for selection as the Commission did not utilize the services of the experts nominated by the State except on two days at the interview.
5. 50 marks had been allocated for the interview. Therefore, the entire process of selection was vitiated.

B We will now examine, whether these grounds had been made out by those candidates who took the objective test as well as the *viva voce* and yet could qualify for selection.

- C 1. *Because of rampant corruption, the questions paper that had leaked out, had become a marketable commodity even before the examination. In fact, answer to these questions were freely available:* In paragraph 15 of the impugned judgment, the High Court states : "So far as the contention of rampant corruption in holding the examination is concerned, even the petitioners could obtain a photostat copy of the questions papers with correct answers; one of which is contained in Annexure 5 to the writ application and other is contained in Annexure 12 to the reply to the counter-affidavit filed by the petitioners in C.W.J.C. No.2512 of 1993."

E Reference is made to Annexure 12. The Service Commission in its counter had stated that the question papers for the examination held on 10.1.93 had not leaked out before the commencement of the examination. The question papers were in sealed packets at the time of delivery to the Zonal Officers for distribution to the supervisors of different examination centres. No supervisor of any examination centre had reported of any tempering with the sealed packets of the question papers.

F The allegation that the answer books were freely available, was not made when the first CWJC no.2512/93 came to be filed on 12.3.93. The petitioners would state that about the leakage of these question papers, a report was sent on 11.1.93. under certificate of posting. The specific stand of the Commission is that no such report was ever sent. If it had been so sent, it would have been received at the office of the Service Commission. That was never received. The normal procedure for sending such a representation is pointed out in the counter affidavit of the Service Commission as under :

H "... the office of the Bihar Public Service Commission has an Enquiry Counter. Any person can file any paper at this

counter and get a printed receipt thereof. As has been stated earlier no such representation was received in the office of the Commission...” A

We are at a loss to understand why the petitioners chose to send the report [if at all it had been sent] under certificate of posting. As has rightly been pointed out by Mr. Gopal Subramaniam, if really such a representation was made, nothing would have been easier than to deliver the same at the counter of the Service Commission and get a printed receipt in proof of having filed such a representation. The High Court referred to Annexure 12 which is mentioned *only in the rejoinder filed in CWJC no 2512/93*. Therefore, that cannot have any credential value since by then the valuation of the answer books was over. The results relating to short listing had been published on 24.2.93. The writ petitions came to be filed on 12.3.93. Hence, the production of answer sheets after the publication of results will have no evidentiary value. The same would be the case of the Press Report dated 15.3.93. We are afraid, the High Court has not appreciated these aspects properly. B C D

2. The Service Commission had the answer books examined by the staff of the Service Commission contrary to the prevailing practice of getting them examined by experts of different States: The stand of the Commission is the screening test was objective type and the evaluation staff were merely required to give marks with reference to key-answer supplied by paper setters, the evaluation staff were not required at all to have the knowledge of the subjects as they were to merely evaluate the answers with reference to standard answer sheets supplied by the paper-setters. Thus, the lack of knowledge of the subject on the part of the evaluation staff has not affected at all the case of the candidates. E

If really the key answers had been supplied to the persons in charge of the valuation, where was the need to send these answer books for outside valuation? It is also to be noted that no candidate was put to any disadvantage since there was no negative marking. F

Besides, the Full Commission had taken a decision regarding the evaluation of answersheets in the above terms by its Resolution dt. 15.1.93 as this was an objective test. According to the Commission, in such tests if possible, the answersheets are examined by Optical Marks Reader Computer and Optical Marks Reader Computer which examines the objective answer sheets has no knowledge of the subject. It is fed the correct answers on key answersheets and it corrects the answer papers H

A accordingly. In this case since no Optical Marks Reader Computer was available the Commission decided to examine the answer sheets with the help of the key to correct answers obtained from the paper setter through its senior most Assistants for which no knowledge of the subject was required. Thus, in our view, the High Court is not justified in concluding the valuation was vitiated.

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3. *Several controversial questions were set and in relation to some questions, there could be more than one answer:* In an objective type of test, more than one answer are given. The candidates are required to tick mark the answer which is the most appropriate out of the plurality of answers. The questions and answers were prescribed by the experts in the field with reference to standard books. Therefore, it is incorrect to say that a question will have more than one correct answer. Even if the answers could be more than one, the candidates will have to select the one which is more correct out of the alternative answers. In any event, this is a difficulty felt by all the candidates.

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D Mr. Kamla Kant Tripathi in his counter affidavit talks of only two questions. The High Court had come to the conclusion that 24% questions are confusing and controversial and do not adhere to the multiple type of questions.

E Mr. M.L. Verma, learned counsel relying on *Kanpur University and Ors. v. Samir Gupta and Ors.*, [1984] 1 SCR 73 would submit that the finding of the High Court on this aspect is fully justified.

F We are unable to uphold this contention. Normally speaking, the High Court should have appointed an expert body and obtained its opinion about the confusing or controversial nature of questions. For reasons best known, it was not done. It has merely chosen to accept the version of the writ petitioners before it. The reason why this Court has repeatedly pointed out such matters being referred to an expert body and its opinion sought, is that in academic matters like this, courts do not have the necessary expertise. In *Kanpur University's* case [supra] relied upon by Mr. M.L. Verma, the following observations occur at pp. 81-82:

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“We agree that the key-answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct.

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The contention of the University is falsified in this case by a large number of acknowledged text books, which are commonly read by students in U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect. A

Students who have passed their Intermediate Board Examination are eligible to appear for the entrance Test for admission to the Medical Colleges in U.P. Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-books. Those text-books support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalize the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong." B C D

That is not the position here.

In *Dr. Shantanu Singh v. State of U.P. and Others*, AIR (1993) All. 85, it is stated at page 87 as under:

"In proceedings under Article 226 of the Constitution it is not possible for this court to further probe into the matter and on the basis of affidavits and documents on record it has not been established that more than 6 questions had dual correct answers resulting in any disadvantage to the candidates who attempted the said questions. The University has directed that no negative marking on the disputed 6 questions should be done and as such no prejudice has been caused to the students who appeared in the examination. It is noteworthy that the University *suo motu* examined this aspect after the examinations were over and constituted a Committee of Experts to ensure that the students did not suffer on this score." E F G

In the circumstances quoted above, the question of appointment of a Committee of Experts *suo motu* by the Commission did not arise.

It requires further to be noted that the Commission had given clear instructions to the evaluators to award full marks to the candidates in cases H

- A where (a) candidate has put tick mark against the correct answer and has also put correct answer in the box; (b) candidate has put only tick mark against the correct answer but has not written anything in the box; and (c) the candidate has written correct answer in the box but has not put any tick mark against the correct answers. No candidate was put to any disadvantage in awarding marks because of any discrepancy, ambiguity or duplicity.
- B Moreover, there being no negative marking, no disadvantage was caused to any candidate on this account.

- C Lastly, we may also note Annexure 2 complained only about 2 questions while Annexure 5 about 6 questions and Annexure 6 about another 6 questions as confusing and controversial. The High Court merely adds up all these and says 24% are confusing and controversial. We are not in a position to accept the finding of the High Court on this issue.

- D 4. *There had been gross violations of the norms set out for selection as the Commission did not utilize the services of the experts nominated by the State except on two days at the interview:* On 26.2.1993 the Commission had written to the Government for nomination of experts. The Government replied that letter on 12.3.1993 as under:

“GOVT. OF BIHAR
HEALTH, MEDICAL EDUCATION AND FAMILY WELFARE
DEPARTMENT

E From

Sh. Bhairva Mahto
Deputy Secretary to Govt.

F To

Chairman,
Bihar Public Service Commission,
Beli Road, Patna.

Patna, dated 12.3.93

- G Sub: In connection with nominations of experts for appointment of Ayurvedic Medical Officers.

Sir,

- H With reference to your letter No.2375 dated 26.2.93 on the above subject, I am directed to say that a request has been made for nominating

eight experts for interview of the appointment of Ayurvedic Medical Officers. A

In this connection the names of the following officers have been selected :

- | | | |
|--|---|---|
| 1. Dr. Anirudh Mishra M.D. PHD | Superintendent
Govt. Ayurvedic College
and Hospital, Patna. | B |
| 2. Dr. N.G. Bandhyopadhyaya
M.D., PHD | Prof. and H.O.D. P.S.Deptt, Govt
Ayurvedic College, Patna. | |
| 3. Dr. Sudhakar Sharma M.D. | Prof. Incharge, Principal, Govt.
Ayurvedic College and
Hospital, Darbhanga. | C |
| 4. Dr. Bali Ram, M.D. | Professor Govt. Ayurvedic
College, Patna. | D |
| 5. Dr. Bidyanand Prasad
M.D. | Reader, Department of
E.N.T., Govt. Ayurvedic
College, Patna | |
| 6. Dr. Maltilata Sinha | Professor, Govt. Ayurvedic
College, Begusarai. | E |
| 7. Dr. K.P. Mishra, M.D. | Reader, P.G. Deptt.
Ayurvedic College, Patna. | |
| 8. Dr. Ramsebak Singh M.D. | Lecturer, Govt. Ayurvedic
College, Patna. | F |
| | Sd/- Bhairba Mahto
Deputy Secretary | |

Memo No.

Health

Patna

Dated G

Copy forwarded to:-

All concerned officers for information. It is requested that they should ensure to reach B.P.S.C. office on 15.3.93 before 9 a.m. for taking interview of Ayurvedic Medical officer.

H

A

Sd/- Bhairba Mahto
Deputy Secretary
Bihar State Govt."

B

The interviews were to take place from 15.3.1993 onwards. By then the Commission had appointed its own experts. In the counter of the Commission filed before the High Court it is stated:

C

" ... the Commission appoints expert for interviews either by itself for requests the Government to assign experts from the concerned Department. In this case the Commission had on its own, appointed some experts as also 8 experts were assigned by the Government at the Commission's request. On the first day of interview i.e. 15.3.1993 the services of all the experts were not required and accordingly they were so informed. They were also informed that on the subsequent dates of their services are required they shall be accordingly informed and requested to assist at the interview.

D

That thereafter i.e. on 17th, 18th and 19th, March, 1993 some of the 8 experts assigned by the Government were requested to assist the Commission at the interview and accordingly two experts assigned by the Government namely Dr. K.P. Mishra and Dr. Bali Ram took part in the interview on those days."

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The same stand is reiterated in the affidavit filed before this Court which is as follows:

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"There is no provision either in the rules or in instructions that the Commission cannot appoint its own experts. Infact, the past practice shows that the Commission itself used to appoint experts who are to be associated with the interview. In the instant case also, the Commission appointed following experts:

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1. Dr. Nagesh Dwivedi
2. Dr. Jai Prakash Narayan Singh
3. Dr. Ajmat Hussain Ansari
4. Dr. (Smt.) Vidyawat Pathak

H

5. Dr. Devanand Prasad Singh, and
6. Dr. Ajay Kumar Singh .

A

All the aforesaid experts were associated and they participated in the Interview Board held on 15th and 16th of March, 1993. In addition, the Government had also forwarded list of eight experts to the Commission out of whom, Dr. Baliram and Dr. K.P. Mishra were associated with the interview held on 17th, 18th, and 19th of March, 1993. In this view of the matter, the High Court erred in coming to the conclusion that it was not explained as to why and under what circumstances the services of the experts were not requisitioned for the *viva voce* test held on 15th and 16th March, 1993. The Commission is not obliged to select experts nominated by the Government alone.”

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If really, therefore, on the first two days, the experts of the Commission participated and on 17th, 18th, and 19th Dr. Bali Ram and Dr. K.P. Mishra, the experts nominated by the Government had participated, the High Court had clearly gone wrong when it found “the statement was vague and it does not state as to under what circumstances the services of the experts were not requisitioned for *viva voce* test held on 15th and 16th March, 1993”. It is very important to note that there is no allegation impeaching the credibility of experts accepted by the Service Commission. Nor again, have the writ petitioners stated that because of the participation of experts appointed by the Commission participating, the selection was vitiated.

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5. 50 marks had been allocated for the interview. Therefore, the entire process of selection was vitiated: This point is concluded by the recent decision of this Court in *Anzar Ahmed v. State of Bihar and Ors.*, [1994] 1 SCC 150). The headnote reads:

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“ The decision of the Supreme Court with regard to fixation of marks for interview in a selection broadly fall in two categories: (i) selection for admission to educational institutions and (ii) selection for employment in service. The personality traits of students seeking admission to educational institutions are not fully developed and therefore greater importance has to be given to written examination than to *viva voce* but in case of appointment to public service recruitment has to be made from persons of mature personality. The observations in *Lila Dhar* case indicate that

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A question of weightage of marks to be attached to interview vis-a-vis marks for written examination can arise only when written examination as well as *viva voce* test are both accepted as essential features of selection. There also no hard and fast rule regarding the precise weightage to be given to *viva voce* test as against written examination, can be laid down. The weightage must vary according to the requirements of service.

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C The question of weightage to be attached to *viva voce* would not arise where the selection is to be made on the basis of interview only. Decision in Ashok *alias* Somanna Gowda case cannot be construed to mean that the principles which govern the allocation of marks for interview in a selection based on written and *viva voce* would also apply to a selection where no written test is held but the selection is based on interview only.”

D Mr. Rakesh Upadhyaya, learned counsel for the respondents in C.A. No.32/94 raises an additional point that insofar as the Chairman himself had handled the examination without reference to the Commission, the entire examination stood vitiated. In support of the submission he places reliance on *Sanjay Kumar Singh v. Bihar Public Service Commission and Ors.*, (1993) 1 BLJ 328. The Service Commission would counter this argument by submitting that this is factually incorrect. It is the entire Commission which has conducted these examinations. Thus, the reliance placed on *Sanjay Kumar Singh's* case (*supra*) is wrong and not justified as laid down in the same decision at pp. 338-40. We find it to be factually incorrect. The Commission in its affidavit categorically states:

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H “After the test, since the questions booklet-cum-answer sheets were printed on ordinary papers and further since the Commission was not having the facility of Optical Marks Reader which can examine the computerized answersheets of objective tests and hence, *the full Commission in its meeting held on 15.1.1993*, decided to get the answer-sheets evaluated in the office of the Commission with reference to key of correct answers, supplied by the paper-setters, who were chosen from outside Bihar, by the senior most Assistant under the direct supervision of Officer-on-Special Duty [Examination Incharge] as also under the supervision of the members of the Commission. Since the examination was of

objective type and correct answers were supplied by the paper-setter, the Checking Staff were merely required to check the correct answers with reference to the stencil and award marks accordingly. For the said purpose, they were not required to possess the knowledge of the subject concerned. Therefore, the *Commission had decided* to evaluate the answer sheets manually with the help of key of correct answers. Supplied by the paper-setters. Accordingly, the officer on Special Duty-cum-Deputy Secretary (Incharge Examination) with the help of the confidential section *under the direct supervision of the members of the Commission*, got the marks calculated according to the Key provided by the question setters. The calculation of the marks was again checked by the Officer on Special Duty-cum-Deputy Secretary [Incharge Examination] *as also by the members of the Commission* on the basis of random checking. The marks thus calculated were fed into the computer and the final result was obtained. Thus, in the entire process, there was no subjective evaluation or element involved. The result so prepared of the Screening Test was published on 24.2.1993. [emphasis supplied]

Thus, it is clear that the entire Commission has functioned and not the Chairman alone. Hence, *Sanjay Kumar's* case (supra) has no application.

For all these reasons, the impugned judgment of the High Court is set aside. The selections made by the BPSO for the post of Medical Officer [Ayurveda] are upheld. The Civil Appeals are allowed accordingly, I.A. Nos. 3 and 4 of 1994 are disposed of accordingly. The appellants will be entitled to their costs which are quantified at Rs. 5,000 from the respondents [the writ petitioners before the High Court.]

K.S.D.

Appeals allowed.