

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH (NAHARLAGUN)

WP(C) No. 475 (AP) of 2018

Shri Neelam Talum & Ors.

... Petitioners.

Vs.

Arunachal Pradesh Public Service Commission & Ors.

... Respondents.

Advocates for the petitioners: Mr. A Hela
Mr. M. Linggi.

Advocate for the respondents: Mr. A. Apang,
Sr. Advocate, SC APPSC.

WP(C) No. 486 (AP) of 2018

Kulenso Pul & Ors.

... Petitioners.

Vs.

The State of Arunachal Pradesh & Ors.

... Respondents.

Advocates for the petitioners: Mr. S. Mow
Mr. M. Opo
Mrs. N. Nada
Mr. M. Molo

Mr. S.D. Loda

Advocate for the respondents: Mr. A. Apang,
Sr. Advocate, SC APPSC.

WP(C) No. 636 (AP) of 2018

Remi Mize & Ors.

... Petitioners.

Vs.

Arunachal Pradesh Public Service Commission & Ors.

... Respondents.

Advocates for the petitioners: Mr. D. Panging
Mr. V. Jamoh
Ms. D. Tamuk
Mr. M. Doji
Ms. E. Perme
Mr. M. Gibi
Mr. G. Basar
Mr. O. Tayeng
Mr. Marge D
Mr A. Modi
Mr. D. Jhony

Advocates for the respondents: Mr. A. Apang,
Sr. Advocate, SC APPSC
Mr. R. Sonar
Mr. L. Tapa

Mr. R. Taku
Mr. T. Devi
Mr. H. Bapu

WP(C) No. 604 (AP) of 2018

Shri Tazing Taggu & Ors.

... Petitioners.

Vs.

Arunachal Pradesh Public Service Commission & Ors.

... Respondents.

Advocates for the petitioners:

Mr. N. Ratan
Mr. K. Loya
Mr. T. Taggu
Mr. R. Ngomle
Mr. M. Ninu
Mr. B. Tajik
Mr. O. Sitek
Mr. B. Murtem
Mr. D. Panging
Ms. D. Tamuk
Mr. M. Gibi
Mr. Marge D

Advocates for the respondents:

Mr. A. Apang,
Sr. Advocate, SC APPSC
Mr. R. Sonar
Mr. L. Tapa

Mr. T. Taku

Mr. T. Devi

Mr. H. Bapu

::: BEFORE :::

HON'BLE MR. JUSTICE NELSON SAILO

Dates of Hearing : 20th & 21st June, 2019 and
24th to 27th June, 2019.

Date of Judgment : **16th September, 2019**

JUDGMENT AND ORDER (CAV)

This order will dispose of all the 4 (four) writ petitions. WP(C) Nos. 475 and 486 of 2018 are filed by the petitioners alleging various anomalies and irregularities committed in the Arunachal Pradesh Public Service Combined Competitive Preliminary Examination – 2017 (the Prelims). WP(C) No. 475 of 2018 covers alleged anomalies in various subjects while WP(C) No. 486 of 2018 is in respect of Commerce subject only.

2. WP(C) Nos. 636 and 604 of 2018 on the other hand are filed by the candidates, who were successful in the Prelims but were prevented from appearing in the Main Examination (the Mains) due to the prevailing situation at the relevant time. Since consideration and determination of these 2 (two)

writ petitions will only arise depending upon the outcome in the first 2 (two) writ petitions, WP(C) Nos. 475 and 486 of 2018 are therefore being taken up for consideration first.

3. Be it stated at the outset that this Court vide Order dated 14.11.2018 passed in WP(C) Nos. 475 and 486 of 2018, directed the Vice Chancellor, Rajiv Gandhi University (the RGU), Doimukh to constitute an Expert Committee comprising of a panel of 5 (five) eminent faculty members to examine the irregularities alleged in the 2 (two) writ petitions in the conduct of the Prelims by the Arunachal Pradesh Public Service Commission (the Commission) and to submit the report before this Court in a sealed cover within a period of 45 days from the date of receipt of a certified copy of the Order. The said Order however, was put to challenge by the Commission before a Division Bench of this Court in W.A. No. 359 of 2018 and the Division Bench vide an interim Order dated 26.02.2019, stayed the Order dated 14.11.2018 pending consideration of the appeal. It was also observed by the Division Bench that the pendency of the appeal will not be a bar for the writ Court to consider the writ petitions on merit and in accordance with law.

4. Mr. Niloy Dutta, the learned Advocate General, Arunachal Pradesh referring to the Order dated 26.02.2019 passed in W.A. No. 359 of 2018 submits that the writ appellate Court was of the view that the interim Order

dated 14.11.2018 was passed by this Court even before arriving at a definite conclusion on merits in the writ petitions and therefore, the same was stayed. He submits that while doing so, the appellate Court did not debar the writ Court from considering the writ petitions on merit and in accordance with law. As such, there is no impediment for this Court to consider the writ petitions.

5. The issues involved in WP(C) No. 475 and in WP(C) No. 486 of 2018 being similar, the factual matrix of the case as projected by the petitioners in WP(C) No. 475 of 2018 is being referred to hereunder for brevity and convenience.

6. The Governor of Arunachal Pradesh in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India framed the Arunachal Pradesh Public Service Combined Competitive Examination Rules, 2001 (the Rules of 2001) which came into force w.e.f 02.03.2001 to regulate recruitment to the said Service. The Commission as per the Rules of 2001 is to hold a combined Competitive Examination in two stages viz; Prelims and Mains Examinations as prescribed thereunder. The Mains comprises of two components, i.e., written examination and interview.

7. The Commission vide an Advertisement issued under Memo No. PSC-R(A)/09/2016 dated 09.05.2017 invited applications for admission to the Prelims for filling up 57 posts in various categories as mentioned in the

Advertisement. Thereafter, the number of posts were increased vide Addendums dated 25.05.2017, 20.06.2017, 17.09.2017, 25.10.2017 and 28.05.2018 taking the posts to 111 but later, reduced to 105 posts. The petitioners submitted their respective application by selecting the optional subject of their choice and then, sat for the Prelims held on 26.11.2017 at 14 examination centers.

8. However, after the Prelims was conducted, a number of representations were filed before the Commission, alleging mass copy pasting from unreliable websites, errors in questions papers, out of syllabus, unsealed questions papers, lack of moderation etc. It was also represented that there were several anomalies, discrepancies and ambiguities in questions and optional answers, which prejudiced the interest of candidates. The Commission therefore, conducted an inquiry into the complaints and upon finding that there were anomalies, the Prelims held on 26.11.2017 was cancelled vide Order dated 15.12.2017 (Annexure-3). Thereafter, a notice vide Memo No. PSC-R(A)/09/2016 (VOL-I), dated 24.04.2018 (Annexure-4) was issued notifying 29.07.2018 as the date for re-conducting the Prelims and the candidates were informed to use the admit cards issued to them earlier. Prelims was accordingly, re-conducted on 29.07.2018. However, anomalies similar to the previous ones, crept in again and the aggrieved candidates submitted a number of representations which included 3 separate

representations filed by candidates of Commerce, Civil Engineering and Geography optional subjects on 30.07.2018, 30.07.2018 and 01.08.2018 (date of receipt) respectively before the Chairman and the Secretary of the Commission. The Commission on receiving the representations took the opinion of the panel subject experts on the 3 optional subjects and they rendered their opinions through email, admitting that there were 30, 49 and 3 questions in Geography, Commerce and Civil Engineering respectively which were out of syllabus. The Commission accepted the opinion and dropped the identified questions in the 3 optional subjects and after allotting marks on pro-rata basis, declared the results on 02.08.2018.

9. Thereafter, a representation was filed by 76 students who had opted Geography as their optional subject on 10.08.2018, alleging technical error/anomaly in Geography Series 'C'. On the basis of their representation, the Commission constituted a Six Member Committee to verify and rectify the technical/machine error in Geography 'C' Series. The report said there was technical/machine error in Geography 'C' Series, and the Commission again being convinced declared the second phase result on 16.08.2018, in which all the 76 students were found qualified for the Mains.

10. Again on 21.08.2018, another representation was filed by candidates praying for constitution of an Expert Committee, headed by a Senior Professor

to look into their grievances. They prayed that they be given compensatory marks for all the questions or the examination in Commerce subject to be re-conducted and if not, they should be allowed to appear in the Main Examination pending redressal of their grievances. However, as the Commission did not consider their prayer, the Commerce students got their papers checked by senior Professors of the RGU. Upon finding that there were as many as 100 questions out of syllabus, they approached this Court by filing WP(C) No. 417 of 2018. The writ petition was disposed of with a direction to the respondent authority concerned to dispose the representation dated 20.08.2018 (21.08.2018) by a reasoned and speaking order. As was directed, the Commission then disposed the representation vide Order dated 24.09.2018. However, during the pendency of WP(C) No. 417 of 2018, a representation dated 03.09.2018 was filed before the Governor as well as before the Secretary of the Commission by some of the candidates, praying for the Prelims to be conducted again but as the same was not considered, WP(C) No. 475 of 2018 was then filed with a prayer for the constitution of an Expert Committee. That is how Order dated 14.11.2018, directing the Vice Chancellor of RGU to constitute an Expert Committee to look into the matter and to submit a report in a sealed cover within a time frame as stated earlier came to be passed.

11. Mr. A. Hela, the learned counsel for the petitioners in WP(C) No.475 (AP) of 2018 submits that after the Prelims was re-conducted on 29.07.2018, the Commission declared the results on 02.08.2018 i.e., within three days time because after the representations by three different optional subject candidates was submitted, it found all the representations to be legitimate and the anomalies to be true. The Commission being aware of the fact that more representations may be forthcoming, declared the results in three days time so that if any representation is filed by any other candidate, it will be in violation of Clause 28 of the Arunachal Pradesh Public Service Commission Rules of Procedure & Conduct of Examination Guidelines 2012 (the 2012 Guidelines) as it provides that no representation/complaint will be entertained after the declaration of results. The learned counsel submits that thereafter, 76 students of Geography optional paper who were given 'C' Series question paper and who did not qualify, filed their representation on 10.08.2018 under the influence of the All Arunachal Pradesh Student Union (AAPSU), alleging that there were anomalies/technical errors in answer keys in 'C' Series question paper. The Commission then on 14.08.2018, constituted a six (6) member Expert Committee comprising of 1 Controller of Examination, 2 Section Officers, 1 Computer Programmer and 2 Technical Experts vide an Order dated 14.08.2018 to verify the technical/machine errors only. Referring to the Speaking Order dated 24.09.2018, the learned counsel submits that the

stand of the Commission is that the grievances regarding correction of Geography optional paper of 'C' series is completely different from the issue raised by the Commerce candidates. In fact, while addressing the technical/machine error in respect of 'C' series of Geography optional paper, the Technical Experts verified and checked all other optional papers including commerce optional paper to see if there were similar errors but no error was found. Accordingly, the Technical Experts certified that they verified all other papers and found them to be correct. Thereafter, on 16.08.2018, the second phase result was declared, declaring all the 76 Geography students qualified for the Mains.

12. Mr. A. Hela, the learned counsel submits that all the above actions have collectively been termed by the Commission as the action of an expert committee in order to manipulate the petitioners as well as the Court. He submits that the Commission in fact has never constituted any expert committee and that the grievances of the petitioners can be well appreciated from the representation filed by them on 03.09.2018 before the Governor of the State and the Secretary of the Commission [ANNEXURE-10 (Series)] on behalf of candidates of all the optional subjects. Through the representation, they have clearly pointed out the anomalies in all the optional subject including act of plagiarism, mass copy and paste from single/one source, out of syllabus questions in all subjects, incorrect questions, spelling errors,

question with wrong options, lack of moderation, no normalization of marks of diverse subjects (e.g. Mathematics and English), violation of statutory rules and not maintaining transparency in conducting such prestigious examination. The learned counsel submits that as for the nature of examination by the Six Member Expert Committee, the same was purely and only to verify the technical/machine mistakes.

13. Mr. A. Hela further submits that the Commission is absolutely silent on the contentions and grievances raised in the representation dated 03.09.2018. There is no mention about the same anywhere in the affidavit-in-opposition to WP(C) No. 475/2018, I.A(C) No. 199/2018, Writ Appeal No. 359/2018 or in the Reasoned and Speaking order dated 25.09.2018. The Reasoned and Speaking Order was specifically to redress the issues raised by the Commerce students in their representation dated 20.08.2018. He submits that the petitioners after seeing the findings of the Commission in Geography, Commerce and Civil Engineering consulted Professor and Assistant Professors of the State and Central Universities to verify as to whether there were anomalies in the questions of the remaining 19 optional subjects. Consequently, while few of them certified, others orally informed the petitioners that they found anomalies in all the optional subjects. It was only thereafter that the petitioners filed their representation and then the writ petition before this Court i.e., WP(C) No. 475/2018.

14. Mr. A. Hela further submits that after filing of the WP(C) No. 475/2018, the petitioners filed I.A. No. 199/2018 in which the petitioners pointed out the findings of the Apex Court and High Courts on invoking of '*Wednesbury Principle*' also known as '*Wednesbury Unreasonableness*'. He submits that Dr. Rajendra K. Babu and Dr. Otem Padung, are senior Professors who have been teaching Commerce to Graduates, PGs and Ph.D scholars and they have earned themselves a name in the field of education. Similarly, Professor Dr. Kiran Kumar, Head of Geography Department is also a distinguished Professor in the subject. They having noticed anomalies in the questions set on the subject, their opinion ought to be considered for better resolution of the case. The learned counsel further submits that the alleged committee report presented before this Court and which was also shown to the counsels for the petitioners includes the name of only four Professors i.e. 2 Professors of Commerce subject, 1 of Civil Engineering and 1 of Geography. On the other hand, the Commission claims to have consulted or have taken opinion of Subject Experts in all the 22 subjects. There were total 76 Geography students of Series 'C', who filed representation dated 10.08.2018 through AAPSU and remarkably, all of them got selected for the Mains. The learned counsel submits that such action itself is in violation of the 2012 Guidelines.

15. Mr. A. Hela further submits that the allegation of wrong questions, mass copy pasting from single sources or units, wrong answer keys,

plagiarism, lack of moderation and scaling, no normalization of marks, etc, leveled against the respondent, has not been justified by the respondent authorities in any manner and no action has been taken to even identify the anomalies. He submits that when any question paper is set on any subject in a competitive exam, it is prepared in four (4) sets viz; A, B, C & D. All the questions in the four sets are the same but their serial numbers are jumbled up. It is therefore obvious that if any technical/machine error, spelling mistake, wrong answer key etc., or any such anomaly has crept in, in any of the sets, the other sets will have the same and identical mistakes. As there was technical machine error in Geography Series 'C', the same mistake is bound to be present in Series 'A', 'B' & 'D' sets as well. However, this aspect has unfortunately been over-looked by the Commission. The Commission has made references and comparisons with the Union Public Service Commission (UPSC) mentioning about the standard, the rules and procedures it follows for conducting such examination but the stand is only baseless and irrelevant in as much as the UPSC makes the answer keys public and invites objections from the students within one week from the date of examination, whereas, no such procedure is followed by the Commission.

16. Mr. A. Hela submits that the students of particular examination centers having same optional subjects, were made to sit in double seating arrangement and some candidates got the opportunity to communicate to

each other and exchange answers keys and thereby, resulting in the selection of candidates from the such centers to be comparatively higher than the other centers. The petitioners somehow could procure two affidavits of the students of particular examination centers affirming and declaring the double seating arrangements at Two Examination Centers. The affidavits are of Bijay Gara S/o Tabi Gara, Roll No. 112852 with Blue Mount, Daporijo as the examination center. The other is by Olam Jamoh S/o Taben Jamoh, Roll No. 114638 with the Examination Center as JN College, Pasighat. The two results declared by the Commission on 02.08.2018 and 16.08.2018 shows that a total 128 students were selected as qualified candidates from the said examination centers. This, he submits only amounts to violation of Clause 26 (ii) and (viii) of the 2012 Guidelines. He submits that the result declared quite clearly shows that students bearing simultaneous/alternate roll numbers have qualified as successful candidates and therefore, the matter should be investigated upon to find out whether the students bearing alternate roll numbers have marked wrong answers similarly or not or in the alternative, a fresh examination should be re-conducted.

17. Mr. A. Hela submits that for students belonging to far flung areas it was not at all possible to file representation within the stipulated time. No notification inviting representation was issued and therefore, the students got the opportunity of filing a combined representation only on 03.09.2018,

pointing anomalies in all the 22 optional subjects. The learned counsel submits that although I.A 199/2018 was filed seeking stay of the Mains scheduled to be held on 10.11.2018 but it was allowed to be held resulting in protests/dharnas created by the students. As a result, a large number of students, 650 to 700 approximately, out of the 1339 students could not give the Mains leading to multiplicity of proceedings, as the qualified candidates who could not give Mains filed petition for the Exams to be re-conducted and further, those who gave the examination have filed a writ petition for declaration of the results. The Commission has dealt with the issue in such a manner that it had caused chaos and an unsatisfactory feeling amongst the students and further, if re-examination is not conducted, it will only be an unending legal battle.

18. The learned counsel places his reliance on the following decisions:-

i) Manish Ujwal & Ors. Vs. Maharishi Dayanand Saraswati University & Ors. (2005) 13 SCC 744

ii) Judgment & Order dated 01.10.2013 of Madras High Court in W.P.(MD) Nos. 13267 & 14940 of 2013 (J. Antony Clara Vs. The State of Tamil Nadu & Ors.

iii) Judgment dated 15.06.2015 of the Apex Court in W.P.(C) No. 298 of 2015 (Tanvi Sarwal Vs. Central Board of Secondary Education & Ors.)

iv) Sanjay Singh & Anr. Vs. UPPSC , Allahabad & Anr. (2007) 3 SCC 720

v) Richal & Ors. Vs. Rajasthan Public Service & Ors. (2018) 8 SCC 81

vi) Subash Chandra Verma & Ors. Vs. State of Bihar & Ors. 1995 Suppl (1) SCC 325.

vii) Judgment & Order dated 28.07.2015 of the Orissa High Court in WP(C) Nos. 10842 & 13086 of 2015 (Madhumala Bisoyee & Ors. Vs. Odisha Public Service Commission & Anr.),

viii) Judgment & Order dated 30.08.2012 of the Punjab and Haryana High Court in CWP No.10309 of 2012 (Jitender Kumar & Anr. Vs. Haryana Public Service Commission).

19. Mr. S. Mow the learned counsel for the petitioners in WP(C) No. 486 (AP) of 2018 reiterates and adopts the argument of Mr. A. Hela. By referring to paragraph No. 11 of the Affidavit-in-opposition dated 06.10.2018 filed by the Commission, he submits that only 64 questions and not 125 questions were examined and therefore, the second representation submitted on 21.08.2018 has not at all been addressed by the Commission. He further submits that the Commission has also not published the answer keys which in fact could have helped in addressing the issue or if not, given a clearer picture on the controversy. He submits that the anomalies found in the Commerce

optional subject alone warrants re-examination or alternately, a thorough examination by an expert committee. He submits that the Commission has been functioning on its whims and fancies and playing tricks/tactics to complete the examination procedure as expeditiously as possible, which quite obviously gives a strong scent of its attempts to cover up a big mess. The Commission has admitted that there are anomalies in the question papers, which was beyond its control. Therefore, to make out as to whether such anomalies are part of any corrupt practices or leakage of question paper, it can only be verified by a constituted SIT.

20. In support of his submissions, the learned counsel relies upon the following authorities:-

i) Madhumala Bisoyee & Ors. Vs. Odisha Public Service Commission & Anr. (Supra)

ii) Vikas Pratap Singh & Ors. Vs. State of Chhatisgarh & Ors. (2013)14 SCC 494

iii) J. Antony Clara Vs. The State of Tamil Nadu & Ors. (Supra)

iv) Pankaj Sharma Vs. State of Jammu & Kashmir & Ors. (2008) 4 SCC 273

v) Mehar Singh Saini Vs. Haryana Public Service Commission (2010) 13 SCC 586

vi) Richal & Ors. Vs. Rajasthan Public Service & Ors. (Supra)

vii) Kanpur University Through Vice Chancellor & Ors. Vs. Samin Gupta (1983) 4 SCC 309

21. Mr. A. Apang, learned senior counsel and Standing counsel of the Commission by referring to the affidavit-in-opposition filed by the Commission in the two writ petitions on 06.10.2018 submits that it is the prayer of the petitioners for setting aside and quashing the impugned result Notifications dated 02.08.2018 and 16.08.2018 issued by the Secretary to the Commission where 1339 candidates have been selected for the mains. However, these selected candidates have not been made a party to the writ petitions. Therefore, if the writ petitions are allowed, the rights of the selected candidates will be affected. He further submits that two of the petitioners in WP(C) No. 475(AP)/2018, namely, Sh. Ajay Kumar Yadav and Beauty Lego have qualified the prelims and therefore, the veracity of the signatures in the Vakalatnama is doubtful and the affidavit sworn is false as well.

22. The learned senior counsel further submits that the question papers are not set by the Commission itself but it is out-sourced. The question papers for preliminary examination held on 26.11.2017, which was subsequently cancelled due to multiple errors in about 15 optional subjects was out-sourced to a firm for setting the question and for printing the same. The said firm has

since being black listed and served with a legal notice. As for the question papers for the prelims held on 29.07.2018, they were set by engaging experts from different Centre and State Government Universities from outside the State in the level of Professors, Associates Professors and Assistant Professors. For this, the Commission maintains a panel of experts in all the optional subjects. At least two sets of question papers were set by two different subject experts. After the questions were set, they are again moderated by subject experts. Out of the two sets, one is selected by draw of lottery by the Commission and then sent to security printers for printing.

23. Mr. A. Apang, the learned senior counsel submits that there were 22 optional subjects for the prelims held on 29.07.2018. For this, the Commission had to engage minimum 44 subject experts from outside the State. Similarly, for moderation, at least 22 subject experts were consulted which indeed is a homogeneous tasks to get the question papers set. After getting the question papers set and moderated, one set is chosen by draw of lottery by the Commission and then given to the security printer for printing. The printer after printing the question papers, seal them in packets which are meant for each exam hall/room in different Examination Centres as per the room plan provided by the Commission. The sealed question packets are delivered by the assigned printer to the Commission and which in turn are handed over to the Centre Superintendent with seals intact. The sealed packets meant for each

exam hall/room is then opened by the Assistant Centre Superintendent/Invigilators in presence of the candidates just before the commencement of the examination. The Commission designates a particular Officer to co-ordinate the whole process of question setting beginning with contacting subject experts from the panel approved by the Commission, till the final stage of printing and delivery of sealed question papers to the Commission. In case of any leakage, the designated officer will be held responsible.

24. Mr. A. Apang, the learned senior counsel thus submits that from the above steps taken, the Commission has no means of accessing the question papers. Even if any member of the Commission has access to the question, the issue of copy pasting or out of syllabus question or wrong answer to a question or multiple answer to a question etc., cannot be detected. Such errors can be only detected by the concerned experts who are specialized in the subject. He submits that strictly speaking, the question of copying, pasting, out of syllabus questions, wrong answers etc., are not in the hands of the Commission. It entirely depends upon the sincerity, honesty and integrity of the subject experts. The Commission maintains a panel of subject experts in the level of Professor or Senior Assistant Professor from Government in Universities. The Commission maintains guidelines for setting question papers and the guidelines clearly stipulate that the questions shall be from the

syllabus, there shall be no copy pasting, there shall be proper scaling etc., amongst others. Syllabus of each subject is also provided to the subject expert from whom questions are to be set. The learned counsel submits that in the event of a situation where the exams are to be re-conducted, the entire process as stated hereinabove will have to be repeated.

25. Mr. A. Apang, the learned senior counsel further submits that while the Commission admits that there were errors like out of syllabus question, wrong answers etc., which were subsequently redressed as brought before it, some errors in general studies papers as pointed out very lately were faced by all the candidates equally. The Commission is of the view that the candidates should cover extensively the entire syllabus and beyond as there could be related questions, while preparing for the highest recruitment examination of the State. The Commission believes that the 1339 successful candidates are amongst those who prepared well extensively keeping in mind the syllabus of the mains as well and also had wider and more in detailed coverage of the General Studies paper. The overall merit is based on the total marks scored in General Studies and the optional subjects put together.

26. Mr. A. Apang, the learned senior counsel also submits that the Commission was led to cancelling the last prelims held on 26.11.2017, after having found that there was many copy paste questions, wrong questions, out

of syllabus and wrong options etc. The results were not yet declared and therefore, the prelims could be re-conducted. However, after the prelim was re-conducted, the results were notified on 02.08.2018 and 16.08.2018. Thereafter, the date for the mains was notified on 16.08.2018 with a reminder on 27.08.2018. The petitioners have filed their representation only after the notification of mains examination and the last date of submission of application forms for the mains examination.

27. To sum up his arguments, Mr. A. Apang, learned senior counsel submits that the prelims held on 26.11.2017 was cancelled by the Commission on the ground of there being many copy paste questions and decided to hold the examination again on 29.07.2018.

28. On 29.07.2018, preliminary examination was conducted in 14 Examination Centres spread across the State. For the first time in history of the examination, internet was suspended in all Examination Centres to prevent unfair means of using information technology during the exams. The candidates through the Admit Card were instructed to reach the examination hall one hour before the commencement of the examination. It was indicated that the candidates will not be allowed to enter Examination Hall after 20 minutes of commencement of the exam and further, Mobile Phone and Electronic Gadgets will not be allowed. On 30.07.2018, after the preliminary

examination, three complaints alleging question to be out of syllabus were received from 2 candidates, namely, Italo Mega and Tasso Tallu alleging 64 questions to be out of syllabus in the Commerce optional subject. Likewise, 10 questions in Civil Engineering optional subject was said to be out of syllabus. On 31.07.2018, complaint was received from candidates who opted Geography as their optional subject alleging copy pasting and out of syllabus questions. The representations were addressed by getting the questions verified from the subject experts. On receiving the reports from the subject experts, the Commission adopting the methodology of awarding marks on pro-rata basis. On 02.08.2018, the scanning of OMR sheets were completed and the results were tabulated and the result declared in which 1263 candidates were found to be qualified and eligible to appear for the mains.

29. Mr. A. Apang, the learned senior counsel in support of his submission relies upon the following authorities:-

i) Tridip Kumar Dingal & Ors. Vs. State of West Bengal & Ors., (2009) 1 SCC 768.

ii) J.S. Yadav Vs. State of Uttar Pradesh & Anr., (2011) 6 SCC 570.

iii) Vikas Pratap Singh & Ors. Vs. State of Chhattisgarh & Ors., (2013) 14 SCC 494.

iv) Ran Vijay Singh & Ors. Vs. State of Uttar Pradesh & Ors., (2018) 2 SCC 357.

v) Judgment & Order dated 14.06.2018 of the Apex Court in Civil Appeal No. 5838/2018 (Uttar Pradesh Public Service Commission through its Chairman & Anr. Vs. Rahul Singh & Anr.)

30. The learned senior counsel by referring to *Tridip Kumar Dingal & Ors. (Supra)* submits that the Apex Court agreed with the finding of the Tribunal that in the absence of selected and appointed candidates and without affording opportunity of hearing them, their selected could not be set aside. In the instant case as well, since the selected candidates have not been made a party, the writ petitions cannot be entertained for want of non-joinder of necessary parties. Similarly, by referring to *J.S. Yadav (Supra)*, the learned senior counsel submits that in service jurisprudence, if an unsuccessful candidates challenges the selection process, he is bound to implead at least some of the successful candidates in the representative capacity, which otherwise has not been done in the instant case.

31. With regard to award of pro-rata marks, the learned senior counsel relies upon the case of *Vikas Pratap Singh & Ors. (Supra)*, wherein the Apex Court on the facts of the given case held that on re-evaluation, 8 questions were found to be incorrect and were deleted. Marks were then allotted on

pro-rata basis in accordance with the examination conduct rules. This according to the Apex Court was a valid decision and could not be said to have caused any prejudice to any stake holders. By referring to *Ran Vijay Singh & Ors. (Supra)*, the learned senior counsel submits that the principles of natural justice cannot be extended beyond reasonable and rational limit and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of an answer books and determining whether there has been a proper and fair valuation of the answers by the examiners. He submits that the principles laid down by the Apex Court is that Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by Professional men possessing Technical Expertise and rich experience of actual day to day working of educational institutions and the departments controlling them. The learned senior counsel submits that the decision rendered in *Ran Vijay Singh & Ors. (Supra)* was also relied upon by the Apex Court in *Rahul Singh & Anr. (Supra)*, wherein it was held that where there are conflicting views, then the Court must bow down to the opinion of the experts

by exercising great restraint and not over stepping its jurisdiction to upset the opinion of the experts.

32. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

33. The facts broadly as can be noticed are that a preliminary examination for the Arunachal Pradesh Public Service Combined Competitive Examination for various posts was held on 26.11.2017 at 14 Examination Centres but due to various representations submitted to the Commission alleging mass copy pasting from unreliable websites, errors in question papers, out of syllabus, lack of moderation etc., the Commission conducted an inquiry into the complaints and upon finding and accepting the anomalies, it cancelled the examination vide Order dated 15.12.2017. Thereafter, prelims was re-conducted on 29.07.2018 but again, similar anomalies cropped up and the aggrieved candidates submitted a number of representations. Representations from the candidates who particularly opted the optional subjects of Commerce, Civil Engineering and Geography was received by the Commission whereafter, the Commission took the opinion of panel subject experts on the three optional papers. Upon getting their opinion that some of the questions were out of syllabus, it decided to drop the identified questions in the three optional subjects and allot marks on pro-rata basis. The result was then

declared on 02.08.2018. Thereafter, yet again 76 students from the Geography optional subjects submitted their representation alleging technical errors in Geography 'C' question papers. The Commission then constituted 6 Member Committee to verify and rectify the technical errors. Pursuant to the verification, the 2nd phase result was declared on 16.08.2018, where all the 76 students were found to be qualified for the Mains.

34. Thereafter again on 21.08.2018, another representation was filed by candidates praying for constitution of Expert Committee headed by Senior Professors to look into their grievance. As the Commission did not consider their prayer, the students asked their papers checked by the Senior Professors of RGU, who found that as many as 100 questions were out of syllabus. As such, they approach this Court by filing WP(C) No. 417/2018, which was then disposed of with a direction to the respondent authority concerned to dispose of the representation by a reason and speaking order. However, even as the said writ petition was being disposed of, another writ petition i.e., WP(C) No. 475/2018 was filed with a prayer for constitution of an expert committee. Therefore, even though the Commission disposed of the representation of the petitioners in WP(C) No. 417/2018, by way of a speaking order dated 24.09.2018, the subsequent writ petitions remain to be considered.

35. As regard the claim of the Commission of having given marks on pro rata basis because of the anomalies found in the three (3) optional subjects of Commerce, Civil Engineering and Geography, I am of the view that it will be gainful to abstract the relevant portion of the decision of the *Punjab and Haryana High Court in Jitender Kumar & Anr. (Supra)* as below:-

"The action of the Commission to delete the questions which were admitted by the paper-setters to be discrepant and granting marks to the candidates for the said questions, as far as the paper of General Studies is concerned, can be said to be justified as the said paper was common to all the candidates and, therefore, no prejudice has been caused to them as all discrepant questions have been deleted and the benefit to those questions were granted in the form of equal marks to all the candidates. No undue benefit was thus conferred on any of the candidates, but this parameter would not pass the test of reasonableness and equality when it is applied to the optional papers where discrepancies have been found in the Electrical Engineering, Geography, Physics and Political Science & International Relations, wherein 2, 5, 1 and 3 questions respectively were found discrepant and were deleted because of which as many marks were given to the candidates of said optional papers.

The effect thereof was that the candidates of these optional papers without attempting the questions were given full marks proceeding on the assumption that they would have given correct answers to these questions and thus were assigned full marks. An argument can be raised that by deleting these questions, they would be deprived of an opportunity to attempt these number of questions and, therefore, they have been compensated by the marks on deletion of the said questions. But this cannot be accepted as each marks counts in a competition especially when it has been so pleaded and admitted that in general category at the cut off marks of 134, there are 134 candidates bracketed. So each mark is important. There is always a possibility that if the candidates of these optional papers when called upon to attempt the new set of questions in place of the deleted questions, they could have got any number of marks. But then undue benefit has been conferred upon the candidates of these optional papers which may have the possibility of excluding meritorious candidates from the zone of consideration. It cannot be lost sight of the fact that the preliminary examination is only a screening test i.e. a step towards taking the main examination which would determine the eligibility of a candidate for moving on to the next step of personality test (viva-voce). In the light of the above, it cannot be said that no prejudice has been caused to the candidates of other subjects by grant of marks to the candidates of the optional subjects where the questions have been found to

be incorrect/discrepant. The only option under these circumstances is to hold re-examination for the said optional papers. But this step can be taken only after the Committee of Experts has submitted its report to the Commission.

During the course of hearing, this Court had asked counsel for respondents to provide subject-wise break-up of the merit of the candidates in which questions have been found to be incorrect/discrepant. In response thereto, the said information has been supplied. In the subject of Geography, 5 marks have been assigned to the candidates because five questions have been deleted. The cut-off marks in the general category are 134. If we add up five marks to this 134, the cut-off marks would become 139 for the candidates of Geography which would suggest that 105 candidates have got entry into the list because of these five marks. In the category of scheduled castes where the cut-off marks are 120, 19 candidates have made the cut-off marks. In the BC category, 8 candidates and in the ex-servicemen category, one candidate. In Political Science & International Relations where three questions are wrong, after deducting three marks, 31 candidates in the general category did make the grade, 11 in SC category, 5 in BC category and 3 in ESM category. Similarly, in Physics where there is one wrong question, two candidates have made it to the list of cut-off candidates in the general category. In the Electrical Engineering, none of the candidates has been benefited. This would demonstrate the impact of the marks granted to the

candidates of the optional subjects in which the questions have been found to be erroneous when deleted. More the number of wrong questions more the candidates have crossed the cut-off marks. This highlights the effect of the decision of the Commission. The Court is aware of the fact that by the decision of the Commission to delete the incorrect questions, the candidates have been deprived of the right to attempt those questions. But when the equity is balanced, it cannot be presumed that all candidates in these optional subjects, where the questions are found to be wrong, would have answered those questions correctly, especially when each mark has an overwhelming effect on the cut-off marks for moving on to the next step of the examination”.

36. Similarly, in the present case, fair as it may seem on the award of compensatory pro-rata marks against the out of syllabus questions but however, by applying the ratio of the above decision, it appears that the same will only be against the principle of natural and equitable justice. At the cost of repetition, it may be stated that the Commission itself admitted/accepted that there were errors in the question papers, out of syllabus questions, mass copy pasting etc., which prompted them to call for conducting the second prelims. Even then, anomalies cropped up in the three optional subjects and on a complaint made by the candidates, the Commission found a number of questions to be out of syllabus and which prompted them to give marks on

pro-rata basis. Thereafter, anomalies were found in the Geography 'C' series paper which again was looked into by the Commission by constituting 6 member committee. Although the representation was addressed by declaring all the complainants to have qualified for the mains, representations alleging errors in other optional subjects still persisted which led to passing of the Order dated 14.11.2018 directing the Vice Chancellor RGU to constitute an expert committee.

37. The Orissa High Court in *Madhumala Bisoi & Ors. (Supra)* while dealing with various allegations and anomalies alleged by the petitioners in the conduct of preliminary written examination of the Odisha Judicial Service Examination, 2015 held on 31.05.2015, found several questions set in the examination paper to be not only out of syllabus but containing grammatical, typographical errors and questions which had no answers in the options provided. Although an expert committee was constituted to verify the correctness of such objections and the questions so framed but as no finding was made, the Court passed an interim order directing the authority concerned not to declare the results. Consequently, the preliminary examinations were directed to be re-conducted. In doing so, the High Court observed that the role of the Public Service Commission is to be considered in the light of the provisions of Article 315 of the Constitution of India. The Commission is bound to conduct examination for appointment to Services of

the State in terms of the Rules framed by the State. It is however free to evolve the procedure for the conduct of examination and while doing so, it has to follow the principle of fair play. In the given situation, a lot of anomalies were found and awarding of marks on pro-rata basis was not found to be the solution. Under the circumstance, preliminary examination was directed to be re-conducted.

38. In *Manish Ujwal & Ors. (Supra)* a challenge to the ranking in the entrance test conducted by the University concerned for admission to medical and dental courses in various colleges in the State of Rajasthan was considered. The grievance of the students was that various answer keys on the basis of which all the answer sheets were evaluated were wrong and consequently, wrong and erroneous ranking was prepared. The Apex Court held that the University and those preparing the answer keys have to be very careful. Abundant caution is necessary as due to wrong and erroneous answer keys, students having merit are made a casualty. Accordingly, a re-evaluation was directed to be made. To come to such conclusion, the case of *Kanpur University through Vice Chancellor & Ors. (Supra)* was referred to. Paragraph Nos.15 and 16 of the said Judgment is found to be relevant and is abstracted below:-

"15. The findings of the High Court raise a question of great importance to the student community. Normally, one would be inclined to the view, especially if one has been a paper-setter and an examiner, that the key answer furnished by the paper-setter and accepted by the University as correct, should not be allowed to be challenged. One way of achieving it is not to publish the key answer at all. If the University had not published the key answer along with the result of the Test, no controversy would have arisen in this case. But that is not a correct way of looking at these matters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence. The publication of the key answer has unraveled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a closer look at the system of examinations which they conduct. What has failed is not the computer but the human system.

16. Shri Kacker, who appears on behalf of the University, contended that no challenge should be allowed to be made to the correctness of a key answer unless, on the face of it, it is wrong. 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 reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. 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."

39. It may be noticed that the petitioners in WP(C) No. 475 (AP)/2018 has made an averment that the representations filed on 03.09.2018 requesting the conduct of a fresh examination of APPSCC Prelims on the ground of plagiarism/mass copy and paste, one single source, out of syllabus questions, incorrect questions, spelling errors, printing errors, questions with wrong options, lack of moderation, violation of statutory rules etc. has not been addressed by the Commission in their affidavit-in-opposition. All that was stated is that the representation dated 03.09.2018 was received after the Mains was notified. In the writ petition, the petitioners have made specific averments at paragraph Nos. 5 to 12 pointing out various anomalies in the questions of different optional subjects. However, the Commission has not

made any particular reply to such averments besides maintaining that such complaints cannot be considered until and unless the entire selection process in three stages i.e., Prelims, Mains & Viva Voce/interview is completed. It may further be also noticed that the petitioners have taken the specific plea that students, who appeared for the optional subjects such as Mathematics were not allowed to use battery operated non-programmable calculators in terms of Regularization 28 of 2012 Guidelines. The averment has also not been met with a proper and reasonable response from the Commission.

40. The settled position in law is that the Court should be slow in interfering with the kind of dispute such as the one at hand unless a body of experts as may have been constituted has made its findings that the anomalies alleged are well founded. In the present case, facts undisputed are that the first Prelims which was conducted on 26.11.2017 at 14 Examination Centers had to be cancelled due to the finding and acceptance of the Commission that there was mass copy pasting from unreliable website, errors in question papers, out of syllabus questions, lack of moderation etc. Therefore, Prelims was re-conducted on 29.07.2018. But similar anomalies arose again which invited a number of representations from the candidates including those who appeared for Commerce, Civil Engineering & Geography optional subjects. The Commission again in respect of the three subjects after obtaining opinion from the subject experts in the panel decided to drop the

out of syllabus questions which were identified and allot marks on pro rata basis. Besides this, as many as 76 students who opted for Geography subject submitted their representation in respect of Geography 'C' Series question papers. Although the result were declared on 02.08.2018 but yet again a second phase result was declared on 16.08.2018 whereby, all the 76 students were declared to be qualified for the Mains. Therefore, from the manner in which the various anomalies have been detected coupled with the fact that the Commission itself has accepted the same though claiming to have addressed it at the same time, I find that the grievances put forth by the petitioners in WP(C) Nos. 475 (AP)/2018 and 486 (AP)/2018 to be legitimate and with substance. As such, a proper and thorough examination on the anomalies alleged in the Prelims by an expert committee appears to be warranted. However, considering the fact that the Mains have already been conducted on 10.11.2018, such a recourse does not appear to be the best option. Rather, I am of the considered opinion that it will only be fair to all the stakeholders if the Prelims is conducted afresh with due care and caution and in conformity to the laid down norms and rules in this regard. Having taken this view, I do not find the necessity to dwell upon the other authorities cited by the parties except on the observation of the Apex Court in *Tanvi Sarwal (Supra)* while directing the conduct of examinations afresh in respect of All

India Pre-Medical & Pre-Dental Entrance Test, 2015. Relevant portion of the said decision is abstracted below:-

" We are aware, that the abrogation of the examination, would result in some inconvenience to all concerned and that same extra time would be consumed for holding a fresh examination with renewed efforts therefor. This however, according to us, is the price, the stakeholders would have to suffer in order to maintain the impeccable and irrefutable sanctity and credibility of a process of examination, to assess the innate worth and capability of the participating candidates for being assigned inter se merit positions commensurate to their performance based on genuine and sincere endeavors. It is a collective challenge that all the role-players would have to meet, by rising to the occasion and fulfill the task ahead at the earliest, so as to thwart and abort the deplorable design of a mindless few seeking to hijack the process for selfish gain along with the unscrupulous beneficiaries thereof."

41. In the result, upon consideration the case in its entirety, the writ petitions are disposed of in the following terms:-

(i) The Prelims conducted on 29.07.2018, the results declared on 02.08.2018 and 16.08.2018 are hereby set aside. In view thereof, the Mains conducted on 10.11.2018 also do not survive and stands set aside.

(ii) The Commission shall now conduct a fresh preliminary examination by strictly following the Rules, guidelines, syllabus etc. within a period of eight (8) weeks from today.

(iii) The Commission shall allow all the candidates who were earlier given Admit Cards to appear for the Prelims to be conducted. Admit Card already issued may be used by the candidates for participating in the Prelims and if the same is no longer retained by the candidate, the Commission shall issue a fresh one on request.

(iv) In view of the above conclusion and direction, WP(C) Nos. 636(AP)/2018 and 604(AP)/2018 are rendered infructuous and are disposed of accordingly. No cost.

JUDGE

Annette