

Case relating to fixation of marks for Oral Test:

Parties : Ashok Kumar Yadav and Others Etc Versus State of Haryana and Others Etc

Court : Supreme Court of India

Case No : No

Judges: HON'BLE JUSTICE P. N. BHAGWATI, HON'BLE JUSTICE Y. V. CHANDRACHUD (CJI), HON'BLE JUSTICE A. N. SEN AND HON'BLE JUSTICE V. B. ERADI

Appearing Advocates : P.P. Rao, A. Mariarputham, K.S. Kendriya, R. Venkatarumani, G.L. Sanghi, S.K. Mehta, P.N. Puri, M.K. Dua, A.K. Vachar, A.K. Ganguli, M.K. Ramamurthi, Mahabir Singh, S. Srinivasan, Vijay Hansaria, R.K. Garg, Advocates.

Date of Judgment : 10-05-1985

Head Note :-

COMPARATIVE CITATIONS:

1987 AIR(SC) 454, 1986 LIC 1417, 1986 (2) LLN 804, 1985 (2) SLJ 482, 1985 (3) SLR 200, 1985 (1) Scale 1290, 1985 (4) SCC 417, 1985 (S1) SCR 657, 1986 SCC(L&S) 88

Judgment :-

BHAGWATI, J.

These appeals by special leave are directed against a judgment of the Division Bench of the Punjab & Haryana High Court quashing and setting aside certain selections made by the Haryana Public Service Commission to the Haryana Civil Service (Executive) and other allied services. The judgment in part proceeds on surmises and conjectures and has made certain uncharitable observations against the Chairman and Members of the Haryana Public Service Commission without any warrant and hence it is necessary to set out the facts giving rise to the appeals in some detail.

Sometime in October 1980 the Haryana Public Service Commission invited applications for recruitment to 61 posts in Haryana Civil Service (Executive) and other allied Services. The procedure for recruitment was governed by the Punjab Civil Service (Executive Branch) Rules, 1930 as applicable in the State of Haryana. Rule 9 clause (1) of these Rules provided that a competitive examination shall be held at any place in Haryana in each year in or about the month of January for the purpose of selection by competition of as many candidates for the Haryana Civil Service (Executive), and others allied services as the Governor of Haryana may determine and such competitive examination shall be held in accordance with the Regulations contained in Appendix I to the Rules. Rule 10 laid down the conditions for eligibility to appear at the competitive examination but we are not concerned with these conditions of eligibility in the present appeals. Regulation I in Appendix I provided that the competitive examination shall include compulsory and optional subjects and every candidate shall take all the compulsory subjects and not more than three of the optional subjects, provided that ex-serviceman shall not be required to appear in the optional subjects. The compulsory subjects included English Essay, Hindi Essay and General knowledge carrying in the aggregate 400 marks and there was also viva-voce examination which was compulsory and which carried 200 marks and each optional subject carried 100 marks. Vide Regulation 5. The result was that the written examination carried an aggregate of 700 marks for candidates in general and for ex- servicemen, it carried an aggregate of 400 marks while in case of both, the viva voce examination carried 200 marks. Some argument has turned on the true interpretation of Regulation 3 and hence it would be desirable to set it out in extenso. It read as follow s:"3. No candidate shall be eligible to appear in the viva voce test unless he obtains 45 per cent marks in the aggregate of all

subjects including at least 33 per cent marks in each of the language papers in Hindi (in Devnagri Script) and Hindi Essay provided that if at any examination a sufficient number of candidates do not obtain 45 per cent marks in the aggregate the Commission may at their discretion lower this percentage to not below 40 per cent for the language papers remaining unchanged."

It appears that in response to the advertisement issued by the Haryana Public Service Commission, about 6000 candidates applied for recruitment and appeared at the written examination held by the Haryana Public Service Commission. Out of about 6000 candidates who appeared for the written examination, over 1300 obtained more than 45 per cent marks and thus qualified for being called for interview for the viva voce examination. The Haryana Public Service Commission invited all the 1300 and more candidates who qualified for the viva voce test, for interview and the interviews lasted for almost half a year. It seems that though originally applications were invited for recruitment to 61 posts, the number of vacancies rose during the time taken up in the written examination and the viva voce test and ultimately 119 posts became available for being filled and on the basis of total marks obtained in the written examination as well as viva-voce test, 119 candidates were selected and recommended by the Haryana Public Service Commission to the State Government. It seems that there were some candidates who had obtained very high marks at the written examination but owing to rather poor marks obtained by them in the viva voce test, they could not come within the first 119 candidates and they were consequently not selected. They were aggrieved by the selections made by the Haryana Public Service Commission and three out of them accordingly filed Civil writ No. 2495 of 1983 in the High Court of Punjab and Haryana challenging the validity of the selections and seeking writ for quashing and setting aside the same. They also claimed that the marks given in the viva voce test should be ignored and selections should be made only on the basis of the marks obtained by the candidates at the written examination and they contended that if that was done, they would be within first 119 to be selected by the Haryana Public Service Commission. Some other candidates who did not figure in the list of 119 selected candidates also filed Civil Writ Petition Nos. 2317, 3344, 3345, 3434, 3457, 3435 and 3719 of 1983 in the High Court of Punjab and Haryana challenging the validity of the selections on substantially the same grounds and claiming substantially the same reliefs as the petitioners in Civil Writ Petition 2495 of 1983. The State of Haryana was joined as 1st respondent, the Haryana Public Service Commission as 2nd respondent and three out of the five members of the Haryana Public Service Commission, as respondents Nos. 3 to 5 in these writ petitions. The Chairman and one other member of Haryana Public Service Commission, namely, Shri B.S. Lather and Shri Gurmesh Prakash Bishnoi were however not impleaded as respondents in the writ petitions. None of the 119 selected candidates were also joined as respondents in the writ petitions. Five out of the 119 selected candidates thereupon applied for being joined as respondents to these writ petitions and on their application, they were added as respondent Nos. 6 to 10 in the writ petitions. This was broadly the array of parties in the writ petitions. Since all the writ petitions raised substantially the same issues and the pleadings in the writ petitions also followed substantially the same pattern, one writ petition, namely, Civil Writ Petition 2495 of 1983 was treated as the main writ petition and the principal arguments were advanced in that writ petition, It would therefore be convenient to refer only to Civil Writ Petition 2495 of 1983 and trace the course followed by it in the High Court because whatever we say in regard to this writ petition would apply equally to the other writ petitions. So far as Civil Writ Petition No. 2495 of 1983 is concerned, the State of Haryana filed its counter affidavit in reply to the writ petition and so also did the Haryana Public Service Commission. The five selected candidates who were impleaded as respondents Nos. 6 to 10 also filed their counter affidavit joining issue with the petitioners. We do not propose to set out here at this stage the averments made in the writ petition or the answer to those averments made on behalf of the respondents, because we shall have to refer to them in some detail when we deal with the arguments advanced on behalf of the parties. Suffice it to state that the averments made in the writ petition and the answer sought to be given on behalf of the respondents raised issues of considerable importance affecting not only the Haryana Public Service Commission but also all other State Public Service Commissions and calling for formulation of principle and norms which should guide all State

Public Service Commissions in the discharge of their functions. We may briefly set out the grounds on which the petitioners challenged the validity of the selections made by the Haryana Public Service Commission.

There were several grounds on which the validity of the selections made by the Haryana Public Service Commission was assailed on behalf of the petitioners and a declaration was sought that they were entitled to be selected as falling within the first 119 candidates. The first ground was that the Chairman and members of the Haryana Public Service Commission were not men of high integrity, calibre and qualification and they were appointed solely as a matter of political patronage and hence the selections made by them were invalid. Secondly, it was urged on behalf of the petitioners that two of the selected candidates, namely, Mrs. Shakuntala Rani and Balbir Singh were related to one of the members of the Haryana Public Service Commission namely, Sh. R.C. Marya, while the third selected candidate namely Trilok Nath Sharma was related to another member namely, Sh. Raghubar Dayal Gaur and though these two members did not participate in the interview of their respective relatives they did participate in the interview of other candidates and the tactics adopted by the Chairman and the members of the Commission was to give high marks to the relatives and award low marks to the other candidates so as to ensure the selection of their relatives. This, according to petitioners, vitiated the entire selection process. Thirdly, contended the petitioners, it was contrary to the well settled practice followed by the Union Public Service Commission and other selecting authorities to call for interview as many as 1300 candidates even though the number of vacancies required to be filled in was only 119. The number of candidates called for interview was almost 20 times the number of vacancies and this not only imposed an intolerable burden on the Haryana Public Service Commission but also widened the scope for arbitrariness in selection by making it possible for the Haryana Public Service Commission to boost up or deflate the total marks which might be obtained by a candidate. The argument of the petitioners was that the number of candidates to be called for interview should not exceed twice or at the highest, thrice the number of vacancies because otherwise the objective test of written examination would be considerably diluted by the subjective assessment made in the vive voce test and there would be considerable scope for arbitrariness in the process of selection. This infirmity, submitted the petitioners, had the effect of invalidating the selections made by the Haryana Public Service Commission. The fourth contention urged on behalf of the petitioners was that the allocation of 200 marks for the viva voce test out of a total of 900 marks for the generality of students and a total of 600 marks for ex-servicemen, was arbitrary and excessive and it had the effect of distorting the entire process of selection by introducing in a preponderant measure subjective element which could facilitate arbitrariness and manipulation and it was accordingly unconstitutional as involving denial of equal opportunity in public employment. Lastly, it was contended on behalf of the petitioners that the viva voce test was not conducted fairly and honestly and the selections made were vitiated on account of nepotism, favouritism and casteism and also political motivation. These were broadly the grounds of attack levelled against the validity of the selections made by the Haryana Public Service Commission. These grounds of challenge were sought to be repelled on behalf of the respondents and it was contended that not only was it not competent to the court on the existing set of pleadings to examine whether the Chairman and members of the Haryana Public Service Commission were men of high integrity, calibre and qualification but also there was no material at all on the basis of which the Court could possibly come to the conclusion that they were men lacking in integrity, calibre or qualification. It was also urged on behalf of the respondents that the Haryana Public Service Commission being a constitutional authority it was not necessary for Sh. R.C. Marya and Sh. Raghubar Dayal Gaur to withdraw altogether from the interviews and they acted correctly in abstaining from participation when their relatives came to be interviewed. This was according to the respondents, in conformity with the principles of fair play and did not affect the validity of the selections. The respondents also contended that under Regulation 3 in Appendix I every candidate who obtained 45 per cent and more marks in the written examination was eligible to be called for interview and the Haryana Public Service Commission was therefore justified in calling for interview all the 1300 and odd candidates, who qualified by getting more than 45 per

cent marks and in fact it would have been a denial of equal opportunity in public employment if some of them had not been called despite having qualified for the viva voce test. So far as the allocation of 200 marks for the viva voce test is concerned, it was contended that this allocation of 200 marks for the viva voce test was made under the Punjab Civil Service (Executive Branch) Rules 1930 which had been in force since over 50 years and no one had raised any objection to it during this long period of half a century and it had stood the test of time and could not possibly be regarded as arbitrary or excessive. The allegation that the selections were not made fairly and honestly and they were tainted by nepotism, favouritism, casteism or political patronage was vehemently denied on behalf of the respondents and it was contended that there was nothing to show that any extraneous considerations had influenced the selection process. The respondents accordingly submitted that the challenge to the validity of the selections was unfounded and the writ petitions were liable to be dismissed. The writ petitions came to be heard by a Division Bench of the High Court of Punjab and Haryana. The Division Bench after hearing the parties at great length delivered a judgment on 20th October 1983 allowing the writ petitions. The Division Bench held that the Chairman and members of the Haryana Public Service Commission had been appointed purely on the basis of political partisanship and caste considerations and that they did not satisfy the stringent test of being men of high integrity, calibre and qualification. The Division Bench actually went to the length of alleging corruption against the Chairman and members of the Haryana Public Service Commission and observed that they were not competent "to validly wield the golden scale of viva voce test for entrants into the prestigious public service." This ground alone, accordingly to the Division Bench, was sufficient to invalidate the selections made by the Haryana Public Service Commission. The Division Bench then proceeded to hold that it was not enough for Sh. R. C. Marya and Sh. Raghubar Dayal Gaur to abstain from participating in the interview when their relatives came up for the viva voce test and their presence and participation at the time of interview of the other candidates was sufficient to taint the selection process with a serious infirmity. The Division Bench almost seemed to suggest, without there being the slightest warrant for it, that "it was a familiar and deliberate tactic adopted by the members of the Commission to abstain from participating in the interview of their close relatives which in effect made patent to the remaining members about their deep interest in them and further that each member of the Commission adjusted the relatives" of the other and awarded low marks in interview to other candidates who had secured high marks in the written examination in order to oust the latter and bolster up the former in the merit list. The Division Bench also condemned out of hand the practice adopted by the Haryana Public Service Commission of calling for interview all the candidates who obtained more than 45% marks in the written examination and who thus proved themselves eligible for the viva voce test. The view taken by the Division Bench was that the number of candidates to be called for interview should not exceed twice or at the highest, thrice the number of vacancies required to be filled up. The Division Bench also observed that the allocation of 200 marks for the viva voce test was arbitrary and excessive, as it introduced a large amount of subjective discretion in the process of selection which subordinated the objective test of written examination and this, according to the Division Bench, constituted denial of equal opportunity in public employment. The Division Bench also came to the conclusion that candidates who had obtained high marks in the written examination had been depressed by award of low marks in the viva voce test and candidates who had obtained low marks were pulled up by award of high marks in the viva voce test and the entire selection process was vitiated by an "obvious oblique motive" and tainted by nepotism, favouritism, caste considerations and political pressures. The Division Bench on this view set aside the selections made by the Haryana Public Service Commission and directed the Haryana Public Service Commission and the State of Haryana "to forthwith declare the result of candidates of all categories on the basis of written examination alone, scrupulously excluding all considerations of the viva voce test. Respondents No. 6 to 10 thereupon preferred Civil Appeal No. 10160 of 1983 with special leave obtained from this Court and similarly with special leave, Civil Appeal No. 10161 of 1983 was preferred by 672 the State of Haryana and the Haryana Public Service Commission against the judgment of the Division Bench. Since disparaging observations were made against the Chairman and members of the Haryana Public Service Commission by the

Division Bench in its judgment, three members of the Haryana Public Service Commission who were impleaded as respondents No. 3, 4 and 5 in the writ petitions also applied for special leave to appeal and on such leave being obtained, preferred Civil Appeal No. 10161 of 1983. All these three appeals were heard together since they were directed against the same judgment of the Division Bench and we proceed to dispose them of by this common judgment. The first question that arises for consideration in these appeals is whether the Division Bench of the High Court was right in condemning the Chairman and members of the Haryana Public Service Commission as men lacking in integrity, calibre and qualification and alleging corrupt motives against them. The answer must plainly be in the negative and for more than one reason. In the first place, it is common ground that the Haryana Public Service Commission consisted of 5 members including the Chairman and all of them participated in the interviews save and except Shri. R.C. Marya, who did not participate in the interview of his daughter-in-law Shakuntala Rani and the brother of his son-in-law, Balbir Singh and Shri Raghubar Dayal Gaur who did not participate in the interview of the son-in-law of his sister, Trilok Nath Sharma. The Division Bench of the High Court cast serious aspersions on all the members of the Haryana Public Service Commission including the Chairman and observed that "in the matter of appointments to the Haryana Public Service Commission, the actualities of work-a-day politics have wholly whittled away the ideal and the purpose" in which the constitutional institution of Public Service Commission was conceived. The Division Bench of the High Court went to the length of holding that the appointments of the Chairman and the member of the Haryana Public Service Commission were made "wholly caste considerations and political affiliations" and all of them including the Chairman did not satisfy the stringent test of "men of high integrity, calibre and qualification". These were highly disparaging observations made against the Chairman and member of the Haryana Public Service Commission and cast serious reflection on their character and integrity. Surprisingly, these condemnatory observations were made against the Chairman and all the members of the Haryana public Service Commission without their being party respondents to the writ petitions. Three members namely S/Sh. D. R. Chaudhary, Raghubar Dayal Gaur and R. C. Marya were joined as respondent Nos. 3, 4 and 5 but the Chairman Shri B. S. Lather and another member Shri Gurmesh Parkash Bishnoi were not impleaded in the writ petitions and yet the most damaging observations were made against them. This was clearly in violation of the principles of natural justice. The observations made against Shri B. S. Lather and Shri Gurmesh Prakash Bishnoi cannot therefore be allowed to stand and if these observations are obliterated from the judgment, the entire super-structure of the argument assailing the constitution of the Haryana Public Service Commission as a whole must collapse. Secondly, these observations against the Chairman and members of the Haryana Public Service Commission were made without any factual basis in the pleadings or the evidence. There were no averments made in any of the writ petitions, save and except Civil Writ petition No. 3344 of 1983, regarding the Chairman or any of the members of the Haryana Public Service Commission. It was nowhere alleged in any of these writ petitions that the Chairman and members of the Haryana public Service Commission were lacking in integrity, calibre and qualification or that they were appointed on the Haryana Public Service Commission purely on account of caste considerations or political affiliations without any merit or competence. The only averments in regard to the appointments of the Chairman and members of the Haryana Public Service Commission were to be found in paragraph 9 of Civil Writ petition No. 3344 of 1983 where a direct allegation was made that all the members of the Haryana Public Service Commission including the Chairman had political links and backing and their appointments were "only due to political and caste considerations". The petitioners in this writ petition proceeded to point out the relationship of the Chairman and members of the Haryana Public Service Commission to one or the other member of the political party ruling the State at the date of the respective appointments and sought to draw an inference from such relationship that their appointments were on account of caste considerations and political linkages and merit, competence and integrity were sacrificed. The relationship alleged in paragraph 9 was not disputed on behalf of the respondents but the inference sought to be drawn there from was stoutly resisted and it was contended that there was no material at all on the basis of which it could be said that the Chairman and members of the Haryana Public Service Commission were

appointed solely "due to political and caste considerations" without taking into account calibre, competence or integrity. In fact the State of Haryana in its counter affidavit seriously disputed that the Chairman and members of the Haryana Public Service Commission had any political affiliations. Now it is difficult to see how on the basis of a mere averment in paragraph 9 of one of the writ petitions, which averment was disputed on behalf of the respondents, the Division Bench of the High Court could possibly come to the conclusion that politics had played a major role in appointment of the Chairman and members of the Haryana Public Service Commission and that they were men lacking in integrity, calibre and qualification, particularly when no such allegation was made by the petitioners in any of the other writ petitions. We do not think that the Division Bench of the High Court was at all justified in drawing from the facts set out in paragraph 9 of Civil Writ petition No. 3344 of 1983 any inference that the Chairman and members were totally unfit to be appointed on the Haryana Public Service Commission or that they were not men of integrity calibre and qualification. Merely because Shri B. S. Lather was the brother of Shri Mahinder Singh Lather who was allegedly influential with the Government of Haryana when the Janta Party was in power or Shri R. C. Marya was close to Shri Chand Ram who was a Union Minister for State during the Janta regime or Shri D. R. Chaudhary was close to Ch. Devi Lal former Chief Minister of Haryana and belonged to his caste as well as to his village or Shri Raghubar Dayal Gaur was close to and belonged to the caste of Shri Chiranji Lal Sharma who was a Congress Member of Parliament or Shri Gurmeh Prasad Bishnoi was close to and belonged to the caste of Shri Bhajan Lal, present Chief Minister of Haryana, it does not necessarily follow that they were not fit to be appointed but were appointed solely on account of personal relationship and caste considerations. The Division Bench of the High Court proceeded solely on surmises and conjectures and committed a grievous error in jumping to the conclusion that the Chairman and members of the Public Service Commission were lacking in integrity, calibre and qualification and were appointed solely on account of extraneous considerations. It is a very serious matter to cast aspersions on the character, integrity and competence of men occupying the high office of Chairman and members of a Public Service Commission and we wish the Division Bench of the High Court had acted with care and circumspection in making such imputation against the Chairman and members of the Haryana Public Service Commission, when it was not even specifically alleged in paragraph 9 of Civil Writ Petition 3344 of 1983 that the Chairman and members of the Haryana Public Service Commission were unfit to hold the office to which they were appointed or were lacking in integrity, character and qualification. We may point out that even if the Chairman and members of the Haryana Public Service Commission were appointed on account of political and caste considerations, they could still be men of character, integrity and competence and the extraneous considerations which might have weighed with the appointing authority need not necessarily reflect upon their competence, character or fitness. The condemnatory observations made against the Chairman and members of the Haryana Public Service Commission thus not only went beyond the averments made in the writ petitions but were also totally unjustified and unwarranted. Thirdly, it is difficult to see how the Division Bench of the High Court could possibly undertake an inquiry into the question whether the Chairman and members of the Haryana Public Service Commission were men of integrity, calibre and qualification or not. It was totally irrelevant inquiry, because even if they were men lacking in integrity, calibre and qualification, it would not make their appointments invalid, so long as the constitutional and legal requirements in regard to appointment were fulfilled. Article 316 of the Constitution makes provision for appointment and term of office of members of a State Public Service Commission. Clause (1) of this Article provides that the Chairman and members of a State Public Service Commission shall be appointed by the Governor of the State and the proviso to that clause enacts that "as nearly as may be one half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years" under the Government of a State. Clause(2) of Article 316 declares that a member of a State Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains the age of sixty two years, whichever is earlier. Article 319 lays down inter alia that on ceasing to hold office, the Chairman of State Public Service Commission shall not be eligible for any employment under the Government of India or the Government of a State, save and

except that of Chairman or any other member of the Union Public Service Commission and similarly, a member of a State Public Service Commission. These are the only provisions in the Constitution bearing on the appointment of Chairman and members of a State Public Service Commission. Now concededly none of these constitutional provisions was violated in making appointments of the Chairman and members of the Haryana Public Service Commission nor was any legal provision breached and the appointments of the Chairman and members of the Haryana Public Service Commission were in conformity with the constitutional and legal requirements. If that be so, it passes our comprehension as to how the appointments of the Chairman and members of the Haryana Public Service Commission could be regarded as suffering from any infirmity or any selections made by them could be said to be vitiated, merely on the ground that they were not, in the opinion of the Division Bench of the High Court possessed of integrity, calibre or qualification. We may take an analogy to illustrate the point we are making. Suppose a District Judge is appointed by the Governor of the State in consultation with the High Court in accordance with the requirements of Article 233 and the appropriate rules made in that behalf. Can a judgment delivered by him be assailed as invalid on the ground that he has not the requisite integrity, calibre or qualification? The judgment may be set aside if it is wrong but not because it is given by a Judge who is lacking in integrity, calibre or qualification. Similarly, selections made by the Chairman and members of the Haryana Public Service Commission may be quashed if they are found to be vitiated by the influence of extraneous considerations or are made in breach of the rules, but they cannot be invalidated merely by showing in a general sort of way that they were not men possessed of high integrity, calibre or qualification. Lastly, we do not think that the Division Bench of the High Court was justified in going into the question whether the Chairman and members of the Haryana Public Service Commission were appointed on account of caste considerations and political patronage or were lacking in integrity, calibre or qualification, when the validity of their appointments was not challenged in the writ petitions nor was any relief claimed for setting aside their appointments. The validity of their appointments could not be questioned collaterally while considering the challenge to the selections made by them. This view receives support from the observations of Chinnappa Reddy, J. speaking on behalf of the Court in *C. Ranga Raju v. State of Andhra Pradesh* [1981] 3 S.C.R. 474. There, the learned Judge pointed out: "The defective appointment of a de facto judge may be questioned directly a proceeding to which he be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the judge except as a judge. Two litigants litigating their private title cannot be permitted to bring in issue and litigate upon the title of a judge to his office. Otherwise as soon as a judge pronounces a judgment a litigation may be commenced for a declaration that the judgment is void because the judge is no judge. A judge's title to his office cannot be brought into jeopardy in that fashion. Hence the rule against collateral attack on validity of judicial appointments."

We wholly endorse these observations and conclude that the principle underlying these observations must be held to be equally applicable in the present case and the title of the Chairman and members of the Haryana Public Service Commission cannot be allowed to be placed in jeopardy in proceeding for challenging the selections made by them. This ground of attack against the validity of the selections must therefore be rejected. That takes us to the next ground of attack which found favour with the Division Bench of the High Courts, namely that the participation of Shri R.C. Marya and Shri Raghubar Dayal Guar in the process of selection introduced a serious infirmity in the selections. It was not disputed and indeed on the record it could not be, than when the close relatives of Shri R.C. Marya and Shri Raghubar Dayal Guar came up for interview, but, according to the Division Bench of the High Court, such limited withdrawal from participation was not enough and both the members, said the Division Bench ought to have withdrawn from the selection process altogether. The Division Bench of the High Court relied heavily on the fact that Trilok Nath Sharma, who was the son-in-law of the sister of Shri Raghubar Dayal Guar obtained 160 marks out of 300 in the viva voce test while Shakuntala Rani daughter-in-law of Shri. R.C. Marya obtained 131 marks and Balbir Singh brother of the son-in-law of Shri R.C. Marya obtained 130 marks and observed that "these admitted facts are

obviously telltale". The Division Bench went to the length of imputing nepotism and favouritism to the Chairman and members of the Haryana Public Service Commission by observing that each member of the Haryana Public Service Commissions adjusted the relatives of the others and awarded low marks in the interview to the other candidates with a view to ousting the latter and bolstering up the former in the merit list. We are pained to observe that such a serious aspersion should have been cast on the Chairman and members of the Haryana Public Service Commission without any basis or justification. Merely because Trilok Nath Sharma obtained 160 marks, Shakuntala Rani obtained 131 marks and Balbir Singh obtained 130 marks, no inference can necessarily be drawn that these high marks were given to them in viva voce examination undeservedly with a view to favouring them at the cost of more meritorious candidates. There is nothing to show that these three candidates who happened to be related to Shri Raghubar Dayal Gaur and Shri R.C. Marya were not possessed of any requisite calibre or competence or their performance at the viva voce examination did not justify the marks awarded to them. The only circumstance on which the Division Bench relied for raising the inference that such high marks were given to these three candidates, not on merits, but as an act of nepotism with a view to unduly favouring them so that they can come within the range of selection, was that out of these three candidates, two were related to Shri R.C. Marya and one was related to Shri Raghubar Dayal Gaur. This inference, we are constrained to observe, was wholly unjustified. We cannot help remarking that the Division Bench indulged in surmises and conjectures in reaching the conclusion that high marks were given unjustifiably to these three candidates at the viva voce examination with a view to pushing them up and low marks were deliberately given to other more meritorious candidates with a view to pushing them down and thus facilitating the selection of these three candidates who would not otherwise have come within the range of selection. We fail to appreciate what is the basis on which the Division Bench could observe that these three candidates got high marks at the viva voce examination only because they were related to Shri R.C. Marya and Shri Raghubar Dayal Gaur. Can a relative of a member of a Public Service Commission, Central or State, not get high marks at the viva voce examination on his own merit? Must he always get low marks, so that if high marks are awarded to him, that would necessarily be attributed to his relationship with the member of the Public Service Commission? The Division Bench sought to draw support for its inference from an article written by Shri D.R. Chaudhari, a member of the Haryana Public Service Commission, who is arrayed as respondent No. 3 in the writ petition. This article was captioned "Public Service Commissions under Pressures" and was written by Shri D.R. Chaudhari and published in the issue of Tribune dated 13th March 1981. Shri D.R. Chaudhari was appointed a member of the Haryana Public Service Commission on 2nd December 1977. He had been such member for over three years at the time of writing this article.

He pointed out in this article, and we are quoting here a passage which has been strongly relied upon by the Division Bench:

"With political morality in our system at its lowest ebb, the politicians are always in a hurry to pack the P.S. Cs with such persons who would be pliable tools in the matter of recruitment. Academic worth, intellectual calibre, experience of men and matters, and integrity are of no relevance. What is important is a person's "dependability."

Narrow caste, communal and regional issues dominate Indian Politics today and these considerations override questions of talent in the matter of recruitment. In the process a member with little intellectual calibre and less integrity begin to serve his own interests at those of his political benefactor, No wonder there is a widespread feeling in the States (mercifully, with the U.P.S.C. as a possible exception) that every post carries a price tag.

We have reached a state when the composition and functioning of our P.S. Cs should be critically evaluated. This is necessary if the institution has to survive as a meaningful body. Its functioning should be brought under public gaze. At present there is a halo of secrecy surrounding the P.S.C. and secrecy always breeds corruption. It would be suicidal to treat the

P.S.C. as a sacred cow. There is nothing more sacred than the public interest and the public interest demands that the functioning of the P.S. Cs should be widely debated through the press and other forums. I invite my, colleagues of the P.S. Cs and public spirited individuals to join the debate."We may reasonably assume that a person who write such an article would never be a party to any manipulations in the selection of candidates nor would he debase or demean himself by indulging in or even lending his support to, any acts of nepotism or favouritism. It would be quite legitimate to infer that if there had been any attempt to manipulate the marks at the viva voce examination with a view to favouring the undeserving or pushing down the meritorious, Shri D.R. Chaudhuri would have protested against such improper and unholy attempt. The very fact that Shri D.R. Chaudhuri not only did not register any dissent in regard to the marks awarded at the viva voce examination but actually agreed with the evaluation made by his colleagues shows that there was nothing wrong with the marking nor was there any manipulation of marks indicating nepotism or favouritism. In fact Shri D.R. Chaudhuri filed an affidavit in these proceedings where he candidly said that this article written by him was based on his direct experience of working in the Haryana Public Service Commission and he proceeded to add boldly and courageously:

"As a member of H.P.S.C., I noticed various forces trying to undermine the independent functioning of the Commission. What irked me most was the political interference. An attempt was made to convert this august body into a petty government department where politicians' writ could run large. Besides this, caste lobbies and money bags were active to influence its decisions at every stage.

I was in a state of agony. I decided to take the matter to the public through the medium of the press. I knew that I would incur the wrath of the powers that be and dismay caste lobbies and money bags.

I took a calculated risk and wrote the article under question. It did infuriate the political bosses as is evident from a news item published in the Tribune dated June 25, 1981 (clipping attached). But at the same time it served the purpose I had in mind. It started a public debate. It created a furore. It was read and debated widely. A number of letters to the Editor appeared in the Tribune. It also figured in the session of the Haryana Vidhan Sabha. The article had a desired effect. Pressures ceased. Political operators and other manipulators were put on the alert. As such I did not feel the necessity of writing again on the same issue though I continued writing on other matters."

Then speaking specifically about the viva voce examination held by the Haryana Public Service Commission in the present case, Shri D.R. Chaudhuri stated:

"The interviews for the recruitment of H.C.S. and Allied Services, which is the subject of writ petitions in the Hon'ble Punjab and Haryana High Court, were conducted about two years after the publication of the article. No pressure, political or otherwise, was exercised on me, nor to the best of my knowledge, on any other colleague of mine in the commission during the course of this recruitment."

There is no reason why this statement made by Shri D.R. Chaudhuri should not be believed. It is indeed surprising that the Division Bench accepted readily what was said by Shri D.R. Chaudhuri in the article written by him on 13th March, 1981 but for some inexplicable reason, refused to believe the same Shri D.R. Chaudhuri when he stated that this article had the desired effect and on account of the exposure made in this article, pressures, political or otherwise, ceased so far as the functioning of the Haryana Public Service Commission was concerned and in awarding of marks at the viva voce examination, no pressure, political or otherwise, was exercised on Shri D.R. Chaudhuri nor to the best of his knowledge, on any of his other colleagues. We accept what has been stated by Shri D.R. Chaudhuri in his affidavit and disapprove of the observation made by the Division Bench that high marks were undeservedly given to the three candidates related to Shri R.C. Marya and Shri Raghubar Dayal Gaur and low

marks were deliberately given to the meritorious candidates with a view to manipulating the selection of the former at the cost of the latter. We are of the view that there was no material whatsoever on record to justify such observation on the part of the Division Bench. In fact, far from there being any material supportive of such observation. We find that there is one circumstance, which, in our opinion, completely militates against the view taken by the Division Bench and that circumstance is that the marks obtained by the candidates at the written examination were not disclosed to the members of the Haryana Public Service Commission who held the viva voce examination. If the members, who interviewed the candidates, did not know what were the marks obtained by the candidates at the written examination, it is difficult to see how they could have manipulated the marks at the viva voce examination with view to pushing up the three candidates related to Shri R.C. Marya and Shri Raghubar Dayal Gaur or any other candidates of their choice so as to bring them within the range of selection. But the question still remains whether the selections made by the Haryana Public Service Commission could be said to be vitiated on account of the fact that Shri R.C. Marya and Shri Raghubar Dayal Gaur participated in the selection process, though Trilok Nath Sharma who was related to Shri Raghubar Dayal Gaur and Shakuntala Rani and Balbir Singh both of whom were related to Shri R.C. Marya, were candidates for selection. It is undoubtedly true that Shri Raghubar Dayal Gaur did not participate when Trilok Nath Sharma came up for interview and similarly Shri R.C. Marya did not participate when Shakuntala Rani and Balbir Singh appeared for interview at the viva voce examination. But, according to the petitioners, this was not sufficient to wipe out the blemish in the process of selection for two reasons: firstly, because Shri R.C. Marya and Shri Raghubar Dayal Gaur participated in the interviews of the other candidates and that gave rise to a reasonable apprehension in the mind of the candidates that Shri R.C. Marya and Shri Raghubar Dayal Gaur might tend to depress the marks of the other candidates with a view to ensuring the selection of the candidates related to them and secondly, because there could be reasonable apprehension in the mind of the candidates that the other members of the Haryana Public Service Commission interviewing the candidates might, out of regard for their colleagues, tend to give higher marks to the candidates related to them, The argument of the petitioners was that the presence of Shri R.C. Marya and Shri Raghubar Dayal Gaur on the interviewing committee gave rise to an impression that there was reasonable likelihood of bias in favour of the three candidates related to Shri R.C. Marya and Shri Raghubar Dayal Gaur and this had the effect of vitiating the entire selection process. This argument was sought to be supported by the petitioners by relying on the decisions reported in D.K. Khanna v. Union of India & Ors. Surinder Nath Goel v. State of Punjab and M. Ariffudin v. D.D. Chitale & Ors. We do not think this argument can be sustained and for reasons, which we shall presently state, it is liable to be rejected. We agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a Judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. It is also important to note that this rule is not confined to cases where judicial power *stricto sensu* is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a welfare state where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. This was the basis on which the applicability of this rule was extended to the decision-making process of a selection committee constituted for selecting officers to the Indian Forests Service in A.K. Kraipak v. Union of India

happened in this case was that one Naquisbund, the acting Chief Conservator of Forests, Jammu and Kashmir was a member of the Selection Board which had been set up to select officers to the Indian Forest Service from those serving in the Forest Department of Jammu and Kashmir. Naquisbund who was a member of the Selection Board was also one of the candidates for selection to the Indian Forest Service. He did not sit on the Selection Board at the time when his name was

considered for selection but he did sit on the Selection Board and participated in the deliberations when the names of his rival officers were considered for selection and took part in the deliberations of the Selection Board while preparing the list of the selected candidates in order of preference. This Court held that the presence of Naquisbund vitiated the selection on the ground that there was reasonable likelihood of bias affecting the process of selection. Hegde, J. speaking on behalf of the Court countered the argument that Naquisbund did not take part in the deliberations of the Selection Board when his name was considered, by saying: "But then the very fact that he was a member of the Selection Board must have its own impact on the decision of the Selection Board. Further, admittedly, he participated in the deliberations of the Selection Board when the claims of his rivals ... were considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberation of the selection board, there was a conflict between his interest and duty ... The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct."

This Court emphasised that it was not necessary to establish as but it was sufficient to invalidate the selection process if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection.

The High Court of Himachal Pradesh in D.K. Khanna's case (supra) drawing inspiration from A.K. Kraipak's case, held that where one of the members of the Committee constituted for selecting members of the State Civil Service for promotion to the Indian Administrative Service, was the son-in-law of a candidate who was competing for inclusion in the list of selected candidates, the entire selection process was vitiated by the presence of such member, though he did not take any part in the consideration of his father-in-law's candidature or in any manner try to influence his colleagues in regard to his father-in-law. The High Court observed that the degree of relationship in this case was so close as to reasonably give an impression to the other candidates that there was a real likelihood of the son-in-law espousing the cause of his father-in-law as his own. So also in Surinder Nath Goel's case (supra), the High Court of Punjab and Haryana took the same view where it was found that two of the candidates appearing for selection were related to one of the members of the Selection Committee. The same approach was adopted by the High Court of Andhra Pradesh in M. Aiffurdin's case (supra) where one of the members of the Andhra Pradesh Public Service Commission who sat on the Commission and participated in the selection for the posts of Professor and Lecturer in the Andhra Pradesh Technical Education Service, was a partner with some of the candidates appearing for the selection and it was held that the entire selection process was vitiated, because there was clearly reasonable likelihood of bias in favour of those candidates on the part of such member of the Commission. We may point out that so far as this last decision is concerned, it does not appear that the member of the Commission who was a partner with some of the candidates, withdrew when those candidates came to be interviewed and did not participate in the consideration of their candidature. We must straightaway point out that A.K. Kraipak's case is a landmark in the development of

administrative law and it has contributed in a large measure to the strengthening of the rule of law in this country. We would not like to whittle down in the slightest measure the vital principle laid down in this decision which has nourished the roots of the rule of law and injected justice and fair play into legality. There can be no doubt that if a selection committee is constituted for the purpose of selecting candidates on merits and one of the members of the Selection Committee is closely related to a candidate appearing for the selection, it would not be enough for such member merely to withdraw from participation in the interview of the candidate related to him but he must withdraw altogether from the entire selection process and ask the authorities to nominate another person in his place on the selection committee, because otherwise all the selections made would be vitiated on account of reasonable likelihood of bias affecting the process of selection. But the situation here is a little different because the selection of candidates to the Haryana Civil Service (Executive) and allied services is being made not by any Selection Committee constituted for that purpose but it is being done by the Haryana Public Service Commission which is a Commission set up under Article 316 of the Constitution. It is a Commission which consists of a Chairman and a specified member of members and is a Constitutional Authority. We do not think that the principle which requires that a member of a Selection Committee whose close relative is appearing for selection should decline to become a member of the selection committee or withdraw from it leaving it to the appointing authority to nominate another person in his place, need be applied in case of a Constitutional Authority like the Public Service Commission, whether Central or State. If a member of a Public Service Commission were to withdraw altogether from the selection process on the ground that a close relative of his is appearing for selection, no other person save a member can be substituted in his place. And it may sometimes happen that no other member is available to take the place of such member and the functioning of the Public Service Commission may be affected. When two or more members of a Public Service Commission are holding a viva voce examination, they are functioning not as individuals but as the Public Service Commission. Of course, we must make it clear that when a close relative of a member of a Public Service Commission is appearing for interview, such member must withdraw from participation in the interview of that candidate and must not take part in any discussion in regard to the merits of that candidate and even the marks or credits given to that candidate should not be disclosed to him. Chinnappa Reddy, J observed to the same effect in *Javid Rasool Bhat v. State of J and K* while dealing with a similar question which arose before him for consideration: "The procedure adopted by the Selection Committee and the member concerned was in accord with the quite well-known and generally accepted procedure adopted by the Public Service Commission everywhere. It is not unusual for candidates related to members of the Service Commission or Other Selection Committee to seek employment. Whenever such a situation arises, the practice generally is for the member concerned to excuse himself when the particular candidate is interviewed. We notice that such a situation had also been noticed by this Court in the case of *Nagarajan v. State of Mysore* where it was pointed out that in the absence of mala fides, it would not be right to set aside the selection merely because one of the candidates happened to be related to a member of the Selection Committee who had abstained from participating in the interview of that candidate. Nothing unusual was done by the present Selection Committee. The girl's father was not present when she was interviewed. She was one among several hundred candidates. The marks obtained by her in the written test were not even known when she was interviewed. In the case before us, the Principal of the Medical College, Srinagar, dissociated himself from the written test and did not participate in the proceedings when his daughter was interviewed. When the other candidates were interviewed, he did not know the marks obtained either by his daughter or by any of the candidates. There was no occasion to suspect his bona fides even remotely. There was not even a suspicion of bias, leave alone a reasonable likelihood of bias. There was no violation of the principles of natural justice."

We wholly endorse these observations. Here in the present case it was common ground between the parties that Shri Raghubar Gaur Dayal Gaur did not participate at all in interviewing Trilok Nath Sharma and likewise Shri R.C. Marya did not participate at all when Shakuntala Rani and Balbir Singh came to be interviewed and in fact, both of them retired from the room when the

interviews of their respective relatives were held. Moreover, neither of them took any part in any discussion in regard to the merits of his relatives nor is there anything to show that the marks or credits obtained by their respective relatives at the interviews were disclosed to them. We are therefore of the view that there was no infirmity attaching to the selections made by the Haryana Public Service Commission on the ground that, though their close relative were appearing for the interview, Shri Raghubar Dayal Gaur and Shri R.C. Marya did not withdraw completely from the entire selection process. This ground urged on behalf of the petitioners must therefore be rejected. There was also one other contention which found favour with the Division Bench in support of its conclusion that there was reasonable likelihood of bias vitiating the "whole gamut of the selection process". This contention was based on the fact that though only 61 vacant posts were advertised for being filled up, over 1300 candidates representing more than 20 times the number of available vacancies, were called for the viva voce examination. The Division Bench pointed out that in order to have a proper balance between the objective assessment of a written examination and the subjective assessment of personality by a viva voce test, the candidates to be called for interview at the viva voce test should not exceed twice or at the highest, thrice the number of available vacancies. This practice of confining the number of candidates to be called for interview to twice or at the highest, thrice the number of vacancies to be filled up, was being followed consistently by the Union Public Service Commission in case of Civil Services Examination, but in the present case, observed the Division Bench, a departure was made by the Haryana Public Service Commission and candidates numbering more than 20 times the available vacancies were called for interview. The result, according to the Division Bench, was that the area of arbitrariness in the viva voce test was considerably enlarged and even a student who had got poor marks in the written examination and who having regard to dismal performance at the written examination did not deserve to be called for interview, could get a chance of being called and he could then be pulled up within the range of selection by awarding unduly high marks at the viva voce examination. This conclusion was sought to be buttressed by the Division Bench by relying on a comparison of the marks obtained by some of the petitioners in the written examination and at the viva voce test. This comparison showed that eight of the petitioners secured "a percentage of around 60 per cent rising up to a highest of 68.5 per cent" in the written examination, but they were awarded "a disastrously low percentage of marks in the viva voce ranging from the rock bottom of 13 per cent to 21 per cent", making it impossible for them to bridge the difference so as to be able to come within the range of selection. How could such brilliant candidates who had done so well in the written examination fare so poorly in the viva voce test that they could not get more than 20 per cent marks, asked the Division Bench? The Division Bench also pointed out that some out of these eight petitioners had appeared in an earlier examination held in 1977-78 and at the viva voce test held at that time. They had secured more than 50 to 55 per cent marks and it was difficult to believe that during the next three succeeding years, they had deteriorated to such an extent that they slumped down to 20 per cent marks. The Division Bench also analysed the comparative marks obtained by the first 16 candidates who topped the list in the written examination and noted that on account of the poor marks obtained by them at the viva voce test, 10 out of these 16 candidates were "knocked out of the race" because their ranking, on the basis of the total marks obtained by them in them in the written examination and the viva voce test, went for below 61 and only 4 out of the remaining 6 could rank within the first 16 so as to be eligible for appointment in the Haryana Civil Service (Executive Branch) which is a superior service compared to other allied services. It was also pointed out by the Division Bench that out of 16 candidates who topped the list on the basis of combined marks obtained in the written and viva voce examinations and who consequently secured appointment to posts in the Haryana Civil Service (Executive Branch), 12 could make it only on account of the high marks obtained by them at the viva voce examination, though they were not high up in ranking in the written examination. On the basis of these facts and circumstances, the Division Bench concluded that the petitioners had discharged the burden of showing that there was reasonable likelihood of bias vitiating the entire selection process. We do not think we can agree with this conclusion reached by the Division Bench. But whilst disagreeing with the conclusion, we must admit that the Haryana Public Service Commission

was not right in calling for interview all the 1300 and odd candidates who secure 45 per cent or more marks in the written examination. The respondents sought to justify the action of the Haryana Public Service Commission by relying on Regulation 3 of the Regulations contained in Appendix 1 of the Punjab Civil Service (Executive Branch) Rules 1930 which were applicable in the State of Haryana and contended that on a true interpretation of that Regulation, the Haryana Public Service Commission was bound to call for interview all the candidates who secured a minimum of 45 per cent marks in the aggregate at the written examination. We do not think this contention is well founded. A plain reading of Regulation 3 will show that it is wholly unjustified. We have already referred to Regulation 3 in an earlier part of the judgment and we need not reproduce it again. It is clear on a plain natural construction of Regulation 3 that what it prescribes is merely a minimum qualification for eligibility to appear at the viva voce test. Every candidate to be eligible for appearing at the viva voce test must obtain at least 45 per cent marks in the aggregate in the written examination. But obtaining of minimum 45 per cent marks does not by itself entitle a candidate to insist that he should be called for the viva voce test. There is no obligation on the Haryana Public Service Commission to call for the viva test all candidates who satisfy the minimum eligibility requirement. It is open to the Haryana Public Service Commission to say that out of the candidates who satisfy the eligibility criterion of minimum 45 per cent marks in the written examination, only a limited number of candidates at the top of the list shall be called for interview. And this has necessarily to be done because otherwise the viva voce test would reduced to a farce. It is indeed difficult to see how a viva voce test for properly and satisfactorily measuring the personality of a candidate can be carried out, if over 1300 candidates are to be interviewed for recruitment to a service. If a viva voce test is to be carried out in a thorough and scientific manner, as it must be in order to arrive at a fair and satisfactory evaluation of the personality of a candidates, the interview must take anything between 10 to 30 minutes. In fact, Herman Finer in his book on "Theory and Practice of Modern Government" points out that "the interview should last at least half an hour". The Union Public Service Commission making selections for the Indian Administrative Service also interviews a candidate for almost half an hour. Only 11 to 12 candidates are called for interview in a day of 5 1/2 hours. It is obvious that in the circumstances, it would be impossible to carry out a satisfactory viva voce test if such a large unmanageable number of over 1300 candidates are to be interviewed. The interviews would then tend to be casual, superficial and sloppy and the assessment made at such interviews would not correctly reflect the true measure of the personality of the candidate. Moreover, such a course would widen the area of arbitrariness, for even a candidate who is very much lower down in the list on the basis of marks obtained in the written examination, can, to borrow an expression used by the Division Bench, 'gate-crash' into the range of selection, if he is awarded unduly high marks at the viva voce examination. It has therefore always been the practice of the Union Public Service Commission to call for interview, candidates representing not more than twice or thrice the number of available vacancies. Kothari Committee's Report on the 'Recruitment Policy and Selection Methods for the Civil Services Examination' also points out, after an indepth examination of the question as to what should be the number of candidates to be called for interview: "The number of candidates to be called for interview, in order of the total marks in written papers, should not exceed, we think, twice the number of vacancies to be filled.. ."

Otherwise the written examination which is definitely more objective in its assessment than the viva voce test will lose all meaning and credibility and the viva voce test which is to some extent subjective and discretionary in its evaluation will become the decisive factor in the process of selection. We are therefore of the view that where there is a composite test consisting of a written examination followed by a viva voce test, the number of candidates to be called for interview in order of the marks obtained in the written examination, should not exceed twice or at the highest, thrice the number of vacancies to be filled. The Haryana Public Service Commission in the present case called for interview all candidates numbering over 1300 who satisfied the minimum eligibility requirement by securing a minimum of 45 per cent marks in the written examination and this was certainly not right, but we may point out that in doing so the Haryana Public Service Commission could not be said to be actuated by any malafide or

oblique motive, because it was common ground between the parties that this was the practice which was being consistently followed by the Haryana Public Service Commission over the years and what was done in this case was nothing exceptional. The only question is whether this had any invalidating effect on the selections made by the Haryana Public Service Commission. We do not think that the selections made by the Haryana Public Service Commission could be said to be vitiated merely on the ground that as many as 1300 and more candidates representing more than 20 times the number of available vacancies were called for interview, though on the view taken by us that was not the right course to follow and not more than twice or at the highest thrice, the number of candidates should have been called for interview. Something more than merely calling an unduly large number of candidates for interview must be shown in order to invalidate the selections made. That is why the Division Bench relied on the comparative figures of marks obtained in the written examination and at the viva voce test by the petitioners, the first 16 candidates who topped the list in the written examination and the first 16 candidates who topped the list on the basis of the combined marks obtained in the written examination and the viva voce test, and observed that these figures showed that there was reasonable likelihood of arbitrariness and bias having operated in the marking at the viva voce test. Now it is true that some of the petitioners did quite well in the written examination but fared badly in the viva voce test and in fact their performance at the viva voce test appeared to have deteriorated in comparison to their performance in the year 1977-78. Equally it is true that out of the first 16 candidates who topped the list in the written examination, 10 secured poor rating in viva voce test and were knocked out of the reckoning while 2 also got low marks in the viva voce test but just managed to scrape through to come within the range of selection. It is also true that out of the first 16 candidates who topped the list on the basis of the combined marks obtained in the written examination and the viva voce test, 12 could come in the list only on account of the high marks obtained by them at the viva voce test, though the marks obtained by them in the written examination were not of sufficiently high order. These figures relied upon by the Division Bench may create a suspicion in one's mind that some element of arbitrariness might have entered the assessment in the viva voce examination. But suspicion cannot take the place of proof and we cannot strike down the selections made on the ground that the evaluation of the merits of the candidates in the viva voce examination might be arbitrary. It is necessary to point out that the Court cannot sit in judgment over the marks awarded by interviewing bodies unless it is proved or obvious that the marking is plainly and indubitably arbitrary or affected by oblique motives. It is only if the assessment is patently arbitrary or the risk of arbitrariness is so high that a reasonable person would regard arbitrariness as inevitable, that the assessment of marks at the viva voce test may be regarded as suffering from the vice of arbitrariness. Moreover, apart from the only three candidates, namely, Trilok Nath Sharma, Shakuntala Rani and Balbir Singh one of whom belonged to the general category and was related to Shri Raghubar Dayal Gaur and the other two were candidates for the seats reserved for Scheduled Castes and were related to Shri R.C. Marya, there was no other candidate in whom the Chairman or any member of the Haryana Public Service Commission was interested, so that there could be any motive for manipulation of the marks at the viva voce examination. There were of course general allegations of casteism made against the Chairman and the members of the Haryana Public Service Commission, but these allegations were not substantiated by producing any reliable material before the Court. The Chairman and members of the Haryana Public Service Commission in fact belonged to different castes and it was not as if any particular caste was predominant amongst the Chairman and members of the Haryana Public Service Commission so as even to remotely justify an inference that the marks might have been manipulated to favour the candidates of that caste. We do not think that the Division Bench was right in striking down the selections made by the Haryana Public Service Commission on the ground that they were vitiated by arbitrariness or by reasonable likelihood of bias. That takes us to the next ground of challenge which found acceptance with the Division Bench. This ground of challenge was strenuously urged on behalf of the petitioners and it was sought to be supported by reference to the decision of this Court in *Ajay Hasia v. Khalid Mujjubudin*. The contention of the petitioners under this ground of challenge was that in comparison to the marks allocated to the written examination,

the proportion of the marks allocated to the viva voce test was excessively high and that introduced an irredeemable element of arbitrariness in the selection process so as to offend Articles 14 and 16 of the Constitution. It is necessary in order to appreciate this contention and to adjudicate upon its validity to consider the relative weight attached by the relevant rules to the written examination and viva voce test. We have already referred to the Punjab Civil Service (Executive Branch) Rules 1930 as applicable in the State of Haryana. Rule 9 of these rules prescribes that a competitive examination shall be held in accordance with the Regulations set out in Appendix 1 for the purpose of selection by competition of candidates to the Haryana Civil Service (Executive Branch) and other allied services and under Regulations 1 and 5 every ex-service officer has to appear in a written examination in 5 compulsory subjects carrying in the aggregate 400 marks and a viva voce test carrying 200 marks and likewise, every candidate belonging to the general category has to appear in a written examination in 8 subjects carrying in the aggregate 700 marks and for him also there is a viva voce test carrying 200 marks. The argument of the petitioners was that in case of ex-service officers the marks allocated for the viva voce test were 200 as against 400 allocated for the written examination so that the marks allocated for the viva voce test came to 33.3% of the total number of taken into account for the purpose of making selection. So also in the case of candidates belonging to the general category, the marks allocated for the viva voce test were 200 as against 700 allocated for the written examination with the result that the marks allocated for the viva voce test came to 22.2% of the total number of marks for the competitive examination. This percentage of 33.3% in the case of ex-service officers and 22.2% in the case of other candidates was, according to the Division Bench, unduly high and rendered the selection of the candidates arbitrary. The correctness of this view has been challenged before us on behalf of the respondents. This Court speaking through Chinnappa Reddy, J. pointed out in *Liladhar v. State of Rajasthan* that the object of any process of selection for entry into public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So open competitive examination has come to be accepted almost universally as the gateway to public services. But the question is how should the competitive examination be devised? The competitive examination may be based exclusively on written examination or it may be based exclusively on oral interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case. To quote the words of Chinnappa Reddy, J. "In the very nature of things it would not be within the province or even the competence of the court and the Court would not venture into such exclusive thickets to discover ways out, when the matters are more appropriately left" to the wisdom of the experts. It is not for the Court to lay down whether interview test should be held at all or how many marks should be allowed for the interview test. Of course the marks must be minimal so as to avoid charges of arbitrariness, but not necessarily always. There may be posts and appointments where the only proper method of selection may be by a viva voce test. Even in the case of admission to higher degree courses, it may sometimes be necessary to allow a fairly high percentage of marks for the viva voce test. That is why rigid rules cannot be laid down in these matters and not any courts. The experts bodies are generally the best judges. The Government aided by experts in the field may appropriately decide to have a written examination followed by a viva voce test. It is now admitted on all hands that while a written examination assesses the candidate's knowledge and intellectual ability, a viva voce test seeks to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the viva voce test, there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities can be evaluated, perhaps with some degree of error, by a viva voce test, much depending on the constitution of the interview Board.

Glenn Stahl has pointed out in his book on Public Personnel Administration that the viva voce test

does suffer from certain disadvantages such as the difficulty of developing a valid and reliable oral test, the difficulty of securing a reviewable record of an oral test and public suspicion of the oral test as a channel for the exertion of political influence and, as pointed out by this Court in *Ajay Hasia'* case (supra), also of other corrupt, nepotistic or extraneous considerations, but despite these acknowledged disadvantages, the viva voce test has been used increasingly in the public personnel testing and has become an important instrument whenever tests of personnel attributes are considered essential. Glenn Stahl proceeds to add that "no satisfactory written tests have yet been devised for measuring such personnel characteristics as initiative, ingenuity and ability to elicit cooperation, many of which are of prime importance. When properly employed, the oral test today deserves a place in the battery used by the technical examiner."

There can therefore be no doubt that the viva voce test performs a very useful function in assessing personnel characteristics and traits and in fact, tests the man himself and is therefore regarded as an important tool along with the written examination. Now if both written examination and viva voce test are accepted as essential features of proper selection in a given case, the question may arise as to the weight to be attached respectively to them. "In the case of admission to a college for instance", as observed by Chinnappa Reddy, J. in *Liladhar's* case, "where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has to be given to performance in the written examination" and the importance to be attached to the viva voce test in such a case would therefore necessarily be minimal. It was for this reason that in *Ajay Haisa's* case this Court took the view that the allocation of as high a percentage of marks as 33.3% to the viva voce test was "beyond all reasonable proportion and rendered the selection of the candidates arbitrary". But, as pointed out by Chinnappa Reddy, J., "in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way subject to basic and essential academic and professional requirements being satisfied". There may also be services "to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise" and in case of such services where sound selection must combine academic ability with personality promise, some weight has to be given to the viva voce test. There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts. The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless to use the words of Chinnappa Reddy, J. in *Liladhar's* case "exaggerated weight has been given with proven or obvious oblique motives." We may now, in the background of this discussion, proceed to consider whether the allocation of as high a percentage of marks as 33.3 per cent in case of ex-service officers and 22.2 per cent in case of other candidates, for the viva voce test renders the selection process arbitrary. So far as ex-service officers are concerned, there can be no doubt that the percentage of marks allocated for the viva voce test in their case is unduly high and it does suffer from the vice of arbitrariness. It has been pointed out by the Division Bench in a fairly elaborate discussion that so far as the present selections in the category of ex-service officers are concerned, the spread of marks in the viva voce test was inordinately high compared to the spread of marks in the written examination. The minimum marks required to be obtained in the written examination for eligibility for the viva voce test are 180 and as against these minimum 180 marks, the highest marks obtained in the written examination in the category of ex-service officers were 270, the spread of marks in the written examination thus being only 90 marks which works out to a ratio of 22.2 per cent. But when we turn to the marks obtained in the viva voce test, we find that in case of ex-service officers the lowest marks obtained were 20 while the highest marks secured were 171 and the spread of marks in the viva voce test was thus as wide as 151 in a total of 200 marks, which worked out to an inordinately high

percentage of 76. The spread of marks in the viva voce test being enormously large compared to the spread of marks in the written examination, the viva voce test tended to become a determining factor in the selection process, because even if a candidate secured the highest marks in the written examination, he could be easily knocked out of the race by awarding him the lowest marks in the viva voce test and correspondingly, a candidate who obtained the lowest marks in the written examination could be raised to the top most position in the merit list by an inordinately high marking in the viva voce test. It is therefore obvious that the allocation of such a high percentage of marks as 33.3 per cent opens the door wide for arbitrariness, and in order to diminish, if not eliminate the risk of arbitrariness, this percentage need to be reduced. But while considering what percentage of marks may legitimately be allocated for the viva voce test without incurring the reproach of arbitrariness it must be remembered that ex-service officers would ordinarily be middle aged persons of mature personality and it would be hard on them at that age to go through a long written examination involving 8 subjects and hence it would not be unfair to require them to go through a shorter written examination in only 5 subjects and submit to a viva voce test carrying a higher percentage of marks than that might be prescribed in case of younger candidates. The personalities of these ex-service officers being fully mature and developed, it would not be difficult to arrive at a fair assessment of their merits on the basis of searching and incisive viva voce test and therefore in their case, the viva voce test may be accorded relatively greater weight. But in any event the marks allocated for the viva voce test cannot be as high as 33.3 per cent. The position is no different when we examine the question in regard to the percentage of marks allocated for the viva voce test in case of persons belonging to the general category. The percentage in the case of these candidates is less than that in the case of ex-service officers, but even so it is quite high at the figure of 22.2. Here also it has been pointed out by the Division Bench by giving facts and figures as to how in the case of present selections from the general category the spread of marks in the viva voce test was inordinately high compared to the spread of marks in the written examination so that a candidate receiving low marks in the written examination could be pulled up to a high position in the merit list by inordinately high marking in the viva voce test. The viva voce test in the general category, too, would consequently tend to become a determining factor in the process of selection, tilting the scales in favour of one candidate or the other according to the marks awarded to him in the viva voce test. This is amply borne out by the observations of the Kothari Committee in the Report made by it in regard to the selections to the Indian Administrative Service and other allied services. The competitive examination in the Indian Administrative Service and other allied services also consists of a written examination followed by a viva voce test. Earlier in 1948 the percentage of marks allocated for the viva voce test was 22 and it was marginally brought down to 21.60 in 1951 and then again in 1964, it was scaled down to 17.11. The Kothari Committee in its Report made in 1976 pleaded for further reduction of the percentage of marks allocated for the viva voce test and strongly recommended that the viva voce test should carry only 300 out of a total of 3000 marks. The Kothari Committee pointed out that even where the percentage of marks allocated for the viva voce test was 17.11, nearly 1/4th of the candidates selected owed their success to the marks obtained by them at the viva voce test. This proportion was regarded by the Kothari Committee as "somewhat on the high side". It is significant to note that consequent upon the Kothari Committee Report, the percentage of marks allocated for the viva voce test in the competitive examination for the Indian Administrative Service and other allied services was brought down still further to 12.2. The result is that since the last few years, even for selection of candidates in the Indian Administrative Service and other allied services where the personality of the candidate and his personal characteristics and traits are extremely relevant for the purpose of selection, the marks allocated for the viva voce test constitute only 12.2 per cent of the total marks. Now if it was found in the case of selections to the Indian Administrative Service and other allied services that the allocation of even 17.11 per cent marks for the viva voce test was on the higher side and it was responsible for nearly 1/4th of the selected candidates securing a place in the select list owing to the marks obtained by them at the viva voce test, the allocation of 22.2 per cent marks for the viva voce test would certainly be likely to create a wide scope for arbitrariness. When the Kothari Committee admittedly an Expert Committee, constituted for the

purpose of examining recruitment policy and selection methods for the Indian Administrative Service and other allied services took the view that the allocation of 17.1 per cent marks for the viva voce test was on the higher side and required to be reduced, it would be legitimate to hold that in case of selections to the Haryana Civil Services (Executive Branch) and other allied services, which are services of similar nature in the State, the allocation of 22.2 per cent marks for the viva voce test was unreasonable. We must therefore regard the allocation of 22.2 per cent of the total marks for the viva voce test as infecting the selection process with the vice of arbitrariness. But the question which then arises for consideration is as to what is the effect of allocation of such a high percentage of marks for the viva voce test, both in case of ex-service officers and in case of other candidates, on the selections made by the Haryana Public Service Commission. Though we have taken the view that the percentage of marks allocated for the viva voce test in both these cases is excessive, we do not think we would be justified in the exercise of our discretion in setting aside the selections made by the Haryana Public Service Commission after the lapse of almost two years. The candidates selected by the Haryana Public Service Commission have already been appointed to various posts and have been working on these posts since the last about two years. Moreover the Punjab Civil Service (Executive Branch) Rules 1930 under which 33.3 per cent marks in case of ex-service officers and 22.2 per cent marks in case of other candidates, have been allocated for the viva voce test have been in force for almost 50 years and everyone has acted on the basis rules. If selections made in accordance with the prescription contained in these rules are now to be set aside, it will upset a large number of appointments already made on the basis of such selections and the integrity and efficiency of the entire administrative machinery would be seriously jeopardised. We do not therefore propose to set aside the selections made by the Haryana Public Service Commission though they have been made on the basis of an unduly high percentage of marks allocated for the viva voce test.

Now if the allocation of such a high percentage of marks as 33.3 in case of ex-service officers and 22.2 in case of other candidates, for the viva voce test is excessive, as held by us, what should be the proper percentage of marks to be allocated for the viva voce test in both these cases. So far as candidates in the general category are concerned we think that it would be prudent and safe to follow the percentage adopted by the Union Public Service Commission in case of selections to the Indian Administrative Service and other allied services. The percentage of marks allocated for the viva voce test by the Union Public Service Commission in case of selections to the Indian Administrative Services and other allied service is 12.2. and that has been found to be fair and just, as striking a proper balance between the written examination and the viva voce test. We would therefore direct that hereafter in case of selections to be made to the Haryana Civil Services (Executive Branch) and other allied services, where the competitive examination consists of a written examination followed by a viva voce test, the marks allocated for the viva voce test shall not exceed 12.2 per cent of the total marks taken into account for the purpose of selection. We would suggest that this percentage should also be adopted by the Public Service Commissions in other States, because it is desirable that there should be uniformity in the selection process throughout the country and the practice followed by the Union Public Service Commission should be taken as a guide for the State Public Service Commissions to adopt and follow. The percentage of marks allocated for the viva voce test case of ex-service officers may, for reasons we have already discussed, be somewhat higher than the percentage for the candidates belonging to the general category. We would therefore direct that in case of ex-service officers, having regard to the fact that they would ordinarily be middle aged persons with personalities fully developed the percentage of marks allocated for the viva voce test may be 25. Whatever selections are made by the Haryana Public Service Commission in the future shall be on the basis that the marks allocated for the viva voce test shall not exceed 12.2 per cent in case of candidates belonging to the general category and 25 per cent in case of ex-service officers. Before we part with this judgment we would like to point out that 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 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 calibre, 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 merits. Whilst making these observations we would like to make it clear that we do not for a moment wish to suggest that the Chairman and members of the Haryana Public Service Commission in the present case were lacking in calibre, competence or integrity.

We would also like to point out that in some of the States, and the State of Haryana is one of them, the practice followed is to invite a retired Judge of the High Court as an expert when selections for recruitment to the Judicial Service of the State are being made and the advice given by such retired High Court Judge who participates in the viva voce test as an expert is sometimes ignored by the Chairman and members of the Public Service Commission. This practice is in our opinion undesirable and does not commend itself to us. When selections for the Judicial Service of the State are being made, it is necessary to exercise the utmost care to see that competent and able persons possessing a high degree of rectitude and integrity are selected, because if we do not have good, competent and honest judges, the democratic polity of the State itself will be in serious peril. It is therefore essential that when selections to the Judicial Service are being made, a sitting Judge of the High Court to be nominated by the Chief Justice of the State should be invited to participate in the interview as an expert and since such sitting Judge comes as an expert who, by reason of the fact that he is a sitting High Court Judge, knows the quality and character of the candidates appearing for the interview, the advice given by him should ordinarily be accepted, unless there are strong and cogent reasons for not accepting such advice and such strong and cogent reasons must be recorded in writing by the Chairman and members of the Public Service Commission. We are giving this direction to the Public Service Commission in every State because we are anxious that the finest talent should be recruited in the Judicial Service and that can be secured only by having a real expert whose advice constitutes a determinative factor in the selection process. We accordingly allow the appeals, set aside the judgment of the Punjab and Haryana High Court and reject the challenge to the validity of the selections made by the Haryana Public Service Commission to the Haryana Civil Services (Executive Branch) and other allied services. But in view of the fact that an unduly large number of candidates were called for interview and the marks allocated in the viva voce test were excessively high, it is possible that some of the candidates who might have otherwise come in the select list were left out of it, perhaps unjustifiably. We would therefore direct that all the candidates who secured a minimum of 45 per cent marks in the written examination but who could not find entry in the select list, should be given one more opportunity of appearing in the competitive examination which would now have to be held in accordance with the principles laid down in this Judgment and this opportunity should be given to them, even though they may have passed the maximum age prescribed by the rules for recruitment to the Haryana Civil Services (Executive Branch) and other allied services. We would direct that in the circumstances of the case the fair order of costs would be that each party should bear and pay his own costs throughout.

Appeals allowed.