SADANANDA HALO & OTHERS

v.

MOMTAZ ALI SHEIKH & ORS.

(Civil Appeal No. 1609 of 2008)

FEBRUARY 27, 2008

(S.B. SINHA AND V.S. SIRPURKAR, JJ.)

Service Law:

Recruitment of Constables – Recruitment rallies conducted in all Districts of State of Assam – Selections challenged – Single Judge of High Court constituting a Screening Committee and on the basis of sample survey and by fixing a bench mark of 250 candidates to be interviewed per day, set aside selection of fifteen Districts mainly on the ground of enormous number of candidates appearing for interview per day – Division Bench allowed appeals with regard to 4 Districts and affirmed quashing of selection in respect of remaining Districts – Appeals against quashing of selection in three Districts – HELD: Single Judge of High Court had expressed his satisfaction with procedure adopted – No deviation from rules or no inherent defect in selection process which would render whole selection illegal have either been alleged or proved – Instead of testing the matter in the light of ground realities for each District on the basis of material on record, a mere expression of doubts only on the ground of large number of candidates appearing for interview cannot by itself render the whole selection process illegal – Fixing of bench mark of 250 candidates for interview per day was not proper – Judgments of single Judge and Division Bench of High Court in so far as they pertain to selection of three Districts concerned are set aside– Constitution of India – Article 226.

Recruitment of Constables- Allocation of 50 marks for viva voce -- Marks further sub-divided into six factors specifying 20 marks for oral test - Held : Such scheme cannot be found

A *fault with ---Besides, it would be only for the State Government to fix standards for viva voce – Administrative Law.*

Constitution of India, 1950:

Article 226 –Scope of -- Writ petitions by unsuccessful
B *candidates challenging selection of Constables held during recruitment rallies in State of Assam – Single Judge of High Court constituting a Screening Committee – On basis of "sample survey" Single Judge setting aside selection of 15 Districts– HELD: In such a writ petition roving inquiry on factual*
C *aspects is not permissible – While testing fairness of selection process wherein thousands of candidates were involved, High Court should have been slow in relying upon findings of Screening Committee-- Going into microscopic details, not via pleadings of parties but on basis of unnecessary*
D *investigation, cannot be approved – It was not for the High Court to place itself into the position of a fact finding Commission that too at the instance of unsuccessful candidates – Exercise undertaken by scrutinizing the marks allotted to candidates was unnecessary and unwarranted since no such assertions were made in writ petitions – High Court*
E *should have restricted itself to pleadings in writ petitions and counter affidavits – High Court substituted itself for Selection Committee and in the process assumed the role of appellate tribunal which was not proper – Administrative Law – Selection Process – Interference with – Pleadings.*

F

Article 226 – Writ petitions challenging recruitment of a large number of constables – Selected candidates not made parties – High Court advertising the dates of hearing of writ petitions without impleading the selected candidates as parties
G *– Held: The course adopted by High Court not proper- Even those who appeared before the High Court were not supplied copies of writ petitions in time – This amounted to denial of opportunity of hearing to selected candidates – Administrative Law – Principles of Natural Justice – Practice and Procedure.*

H **In the State of Assam 5500 vacancies of Constables**

to be filled in by District-wise selection, were advertised on 21.8.2004. On 16.11.2004 the Government notified its decision that restriction of District-wise selection would be there only to the posts of District Executive Force and not to Armed Police Battalion. The recruitment process commenced on 3.12.2004 and lasted upto 11.12.2004. Select-lists prepared for each District for the Armed Police Battalion located in the District and for the District Executive Force were challenged by unsuccessful candidates in several writ petitions, inter alia, on the grounds of: (i) postponement of selection on more than two occasions with an ulterior motive on the part of the Government ; (ii) not following the procedure laid down in the employment notice, (iii) non-maintenance of necessary registers, (iv) selection of candidates without their taking part in selection process or selection of under-qualified or over-aged candidates, (v) selection of candidates who could not qualify physical test, (vi) interpolation/tampering with marks allotted to candidates, (vii) political interference in favour of some of the candidates, (viii) allotment of 50 marks for personal interview segment, and (ix) consideration of huge number of candidates per day. The single Judge of the High Court got the records of the selection process scrutinized through a Screening Committee of three judicial officers. He upheld the selections in respect of 10 Districts but quashed the selection process and selections in respect of other Districts. The single Judge fixed a bench mark of maximum 250 candidates to be interviewed on a single day and held that in the Districts concerned, average number of candidates was much more. On the basis of the reports of the Screening Committee on random scrutiny, the single Judge opined that allotment of 50 marks for viva voce, was not justified. On the basis of the report of the Amicus Curiae, it was observed that the selected candidates got high marks in viva voce ranging between 30 to 41 out of 50 marks. The Division Bench of

A the High Court allowed appeals with regard to four Districts and dismissed those in respect of the remaining Districts. The only ground on which selections were set aside was that the number of candidates interviewed was enormous and the viva voce was farce.

B The instant appeals were filed against quashing of selection in respect of only three Districts mentioned in the judgment.

Allowing the appeals, the Court

C HELD: 1. As regards the change of dates of interview, firstly, there were no proper pleadings with necessary details before the single Judge; secondly, how the postponements affected the selection process is nowhere displayed and; further, which political leaders were D responsible for such postponements of interview dates is also not known. On the other hand, it was found from the records that selections were postponed on account of Asian Car Rally, Kali Puja, Diwali and Id festivals. There is no definite finding that the postponements affected the E selection process. The very fact that there was a huge turn out in each District suggests the hollowness of the claim that the selection process was affected because of the postponements. Therefore, it cannot be said that anything was wrong in postponing the interview dates. F [para 26] [525-F-H; 526-A-C]

2. The complaint against removal of District-wise restrictions by the Government by its letter dated 16.11.2004 does not hold any ground. None of the courts below has commented on the selection process on this G issue. The petitioners were not able to show as to what prejudice was caused by removal of District-wise restriction in selection. On the other hand, by doing so, the Government made the selection process broader. [para 26] [526-C-E]

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3.1 With regard to the complaint that 50 marks were allotted for personal interview or viva voce, the single Judge as well as the Division Bench have rightly found that in the peculiar circumstances it was of no consequence. No arguments were addressed on this point before the Court. Besides, 50 marks for personal interview were distributed on six factors, namely (1) Educational Qualification -5 marks, (2) Smartness, general ambience - 5 marks, (3) Language, reading and writing - 10 marks, (4) Extra Qualifications - 5 marks, (5) Proficiency in sports, marshal arts - 5 marks, and (6) General knowledge and oral test - 20 marks. Thus the oral test is only left with 20 marks which is quite reasonable. Therefore, it cannot be said that there was anything wrong on account of allotment of 50 marks for viva voce. It has not been disputed that this pattern of interview was followed in all the Districts. Besides, it would only be the State Government which could be in a position to address as to the standards fixed for the purposes of viva-voce. [para 14 and 26] [526-E-F; 516-E-H; 517-A]

3.2 The exercise undertaken of scrutinizing the marks allotted to each and every candidate was unnecessary and unwarranted since in the petition no such assertions were made . The High Court should have restricted itself to the pleadings in the writ petition and the stand of the respondents. It is settled law that in such writ petitions a roving inquiry on the factual aspect is not permissible. The High Court not only engaged itself into a non-permitted fact finding exercise but also went on to rely on the findings of the Scrutiny Committee, which was inappropriate. While testing the fairness of the selection process wherein thousands of candidates were involved, the High Court should have been slow in relying upon such findings. The approach of the single Judge of the High Court in going into the facts and the microscopic details, not via the pleadings of the parties but on the basis

A of an unnecessary investigation, cannot be approved. Such selection of large number of candidates could not have been set aside on the basis of sample survey, for which no evidence was available. It was not for the High Court to place itself into the position of a fact finding B commission, that too, at the instance of unsuccessful candidates. The High Court substituted itself for the Selection Committee and also in the process assumed the role of appellate tribunal which was not proper. Thus, the High Court converted the writ petition into public C interest litigation without any justification. [Para 43, 44 and 49] [538-F; 539-B; 538-G-H; 539-A, 543-G-H; 544-A; 539-A-C]

Union of India & Ors. v. S. Vinod Kumar & Ors. [2007] 8 SCC 100; and *Om Prakash Shukla v. Akhilesh Kumar Shukla* D *& Ors.* [1986] Supp. SCC 285 – relied on.

4.1 So far as the major complaint regarding enormousness number of candidates interviewed per day is concerned, the single Judge held that every Board on one day could, at the most, interview 250 candidates. The E Division Bench also seems to have endorsed this view. Such a benchmark could not have been fixed generally and merely because that benchmark was allegedly breached, the selection could not have been found fault with in a mechanical and mathematical manner. Instead F of testing the matter in the light of ground realities for each District on the basis of material on record, a mechanical approach could not have been taken by the High Court. [para 27-28] [527-B-D, F-G]

4.2 From the guidelines, it is apparent that firstly, G alongwith minimum educational qualification, the candidates had to fulfil physical standards. This task was distributed on all the centres amongst a number of other helping staff. Only those who crossed this barrier as also the test by conducting the race, were to proceed for H further physical tests. This exercise was not as time

consuming and could have been done collectively as a team event. The candidates so filtered were further subjected to subsequent physical test of high jump, long jump and sprint of 100 mtrs. etc. It is at this stage that the remaining elegible candidates were interviewed for their viva voce. [Para 33] [530-H; 531-A-E]

4.3 It is worth noting that the recruitment was for the posts of Constables. The minimum educational qualification was prescribed; the physical standards of each candidate were very much there before the interviewing board; the merits of the candidates were also recorded regarding their physical efficiency; there was no requirement of testing administrative or management capacity of the candidates and/or any other quality which is required for higher posts. All that was necessary was to see physical fitness of the candidates in terms of physical endurance, their smartness in appearance and further to test their intelligence level including their general knowledge as required for the post of Constable. Therefore, even less than three minutes time was enough for each candidate. Due credit to the expertise of Selection Committee has also to be given. [para 31] [529-D, E, F]

Sardara Singh v. State of Punjab [1991] 4 SCC 555; and *Joginder Singh and others v. Roshan Lal and others* [2002 9 SCC 765 – relied on

Satpal & Ors. v. State of Haryana & Ors. [1995] Suppl. 1 SCC 206; and *Ashok Kumar Yadav v. State of Haryana* [1985] 4 SCC 417 – distinguished.

4.4 Besides, the courts below did not have any tangible evidence regarding the interviews being farcical, except the self-serving statement made by the unsuccessful candidates in the writ petitions. This is apart from the settled position that unsuccessful candidates, after having taken part in the selection process, cannot turn back and assail the selection process. The High Court

A even did not have the reasons for which the unsuccessful candidates were rejected. Therefore, there is no reason as to how the High Court could have come to the conclusion that the selection board could interview only 250 candidates per day and not more. [Para 26, 33-
B 34,45] [531-E, F, G; 526-G; 527-A]

Canara Bank and others v. Debasis Das and others [2003] 4 SCC 557 ; *All India SC & ST Employees Association and Another v. A. Arthur Jeen and Others* [2001] 6 SCC 380; *Prabodh Verma v. State of U.P.* [1984] 4 SCC 251 and *AMS*
C *Sushanth v. M. Sujatha* [2000 10 SCC 197 – relied on.

General Medical Council v. Spackman 1943 AC 627; *Taylor v. National Union of Seaman* (1967) 1 WLR 532; *Garland v. British Rail Engineering Ltd.* (1969) 1 WLP 1041;
D *Walter Annamunthodo vs. Oilfields Workers' Trade Union* 1961 SE 945; *Chief Constable of the North Wales Police vs. Evans* (1982) 1 WLR 1155; *B. Surinder Singh Kanda v. Government of the Federation of Malaya* (1962) AC 322; *Hadmor Products Ltd. & Ors. v. Hamilton and another* (1983) AC 191 – cited.

E **4.5 The first basic thing for consideration in respect of such a selection process would be lack of bona fides or, as the case may be, malafide exercise of powers by those who were at the helm of selection process. The single Judge or the Division Bench of the High Court has**
F **not recorded any finding that they found any malafides on the part of any of the State officials who headed the interviews. On the other hand, the tenor of the judgments shows that the selection process did not suffer from malafides, lack of bonafides, bias or political interference.**
G **No deviation from the rules or no inherent defect in the selection process which would render the whole selection illegal have either been alleged or proved. A mere expression of doubts only on the ground of large number of candidates appearing for interview cannot by itself**
H **render the whole selection process illegal. [Para 46 and**

47] [540-C, D; 541-D, E, F] A

Union of India & Others vs. Bikash Kumar [2006] 8 SCC 192 – relied on.

Raj Kumar & Others v. Shakti Raj & Others [1997] 9 SCC 527 – distinguished. B

5. The course taken by the single Judge in advertising the dates of hearing of the petitions and inviting objections of the selected candidates who were never made parties to the writ petitions is also not satisfactory. Even when few of the selected candidates C approached the High Court, they were not even supplied copies of the writ petitions in time. This amounted to denial of an appropriate opportunity to the selected candidates. [para 48] [541-F, G; 542-B, C]

D

All India SC & ST Employees Association and Another v Arthur Jeen and Others (2001) 6 SCC 380; *Prabodh Verma v State of U.P.* (1984) 4 SCC 251; and *AMS Sushanth v. M. Sujatha* (2000) 10 SCC 197—relied on.

6. As regards the selection in Dubri District, it is E pointed out that the guidelines dated 2.9.2004 were strictly adhered to. The procedure adopted suggests the systematic way in which the whole interview process went on in the District. The single Judge in his judgment has observed that as per the report of the Amicus Curiae the F selected candidates got higher marks in viva voce ranging between 30 to 41 marks. This could be no reason to reject the selection. The single Judge has in fact recorded his satisfaction for the printed charts and more particularly about their authenticity, as also with the procedure G adopted. There is hardly any reason given by the Single Judge excepting that the benchmark of 250 candidates crossed. The Division Bench has also gone by the mechanical test of benchmark of 250 candidates. It seems to have taken an exception to the proceedings dated H

A 4.12.2004 and 5.12.2004. That is by far the only reason given by the Division Bench for upholding the finding of the Single Judge. No court has, however, considered ground realities shown as per the counter affidavit which has remained uncontroverted. Therefore, the only reason B given by the High Court could not be said to be a deciding factor for setting aside the selection. [para 35-37] [532-G; 533-G; 534-A, B, C, D, E]

7.1 So far as selections in Barpeta District are concerned, the single Judge seems to have gone by the C simple mathematical rule of dividing 5540 candidates by 9 since the interview process lasted for 9 days. He seems to have relied on the rule of average. The Division Bench has given the daily break up of the candidates interviewed on each day and without making any distinction, has held D that merely because the number of candidates exceeded on particular days the said "benchmark", the selection was bad. [para 39-40] [535-G; 536-A, D, E]

7.2 As regards the allegation that some candidates were selected at the written request of a Minister, the E Amicus Curiae in his report stated that the written request was in respect of 43 candidates out of whom 19 candidates were selected. The single Judge has, however, candidly held that the marks given to the said 19 candidates do not reflect award of any abnormally high F marks in the viva voce test. All that the single Judge has recorded is that having regard to the "fragile nature of the selection" it would be just and proper to set aside the selections made in the District This kind of general and casual remarks cannot be approved. This is apart from G the fact that there is nothing to suggest that in reality any recommendations were made. [para 39] [536-A, B, C, D]

8. With regard to selections in District Sonitpur, the single Judge has hardly given any reasons and has recorded that a large number of candidates who failed in H physical test were given low marks in the interview. The

two candidates mentioned specifically, if were not within the proper age limit, the single Judge was undoubtedly right in setting aside their selection. But that could not be a reason by itself to set aside the whole selection of more than 400 candidates. There is absolutely no reference to any ground facts and the single Judge seems to have relied wholly on the views expressed by the Amicus Curiae. The only reason appears to have weighed with the single Judge for setting aside the selection was crossing of the benchmark of 250 candidates a day. The treatment of the Division Bench is identical. [para 42-43] [537-E, F, G; 538-A, B]

9. The judgments of the single Judge as well as the Division Bench in so far as they pertain to the three Districts of Dhubri, Barpeta and Sonitpur, are set aside. [para 50] [544-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1609 of 2008.

From the final Judgment and Order dated 6/12/2006 of the Gauhati High Court in W.A. No. 34/2006.

WITH

Civil Appeal Nos. 1614, 1615 and 1610–1613 of 2008.

Rajeev Dutt, S.K. Dholakia, Jai Prakash Pandey, Sanjeev Sen, H.U. Choudhury, F.I. Choudhury, Dr. Nafis A. Siddiqui, Arna Das, Shakeel Ahmed, Irshad Ahmad, Pradeep Aggarwal, P. Upadhyay, N. Annapoorani and Abhijit Sengupta for the Appellants.

Avijit Roy, Ranjan Majumdar (for M/S. Corporate Law Group) and Dr. Nafis A. Siddiqui for the Respondents.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. Leave granted in Special Leave Petition (C) Nos.3536/2007, 6576/2007, 6581/2007 and 17219-17222 of 2007.

A 2. The present Judgment shall dispose of all the above mentioned Special Leave Petitions.

3. A large number of petitioners have filed the above sets of Special Leave Petitions challenging therein a common judgment of the Guwahati High Court disposing of as many as B 54 Writ Appeals which were filed against the judgment and order passed by the learned Single Judge of that High Court disposing of as many as 222 Writ Petitions. All those 222 Writ Petitions were disposed of by the learned Single Judge by a common judgment. The writ petitions pertained to the selections in a C selection process for the 5500 posts of Armed Constables which was initiated by advertisements dated 21.8.2004. This advertisement was based on the separately identified vacancies for each Armed Police Battalion having its permanent headquarters in a District. The recruitment was to be held in 25 D different centres covering each District of State of Assam for the vacancies identified separately for that district. As many as 2 lakh candidates took part in the recruitment process which commenced on 3rd December, 2004 and lasted upto 11th December, 2004. On completion of the recruitment drive, E separate select-lists for each District for the Armed Police Battalion located in the District and the District Executive Force were prepared. These select-lists were challenged in the above mentioned 222 writ petitions by nearly 3000 unsuccessful aspirants. Later on more than 1000 selected candidates also F got themselves impleaded in the writ petitions. Initially the court sought for the records of the selection process and ordered the same to be kept in safe custody of the Registry of the court. This was done since the apprehensions were expressed by the Writ Petitioners that there may be tampering of records. A G scrutiny of these records was got done by the learned Single Judge through three Judicial Officers who were appointed for that purpose. A sample survey of the records of the selected/ unsuccessful candidates was done by the three Judicial officers. While going through the records, the learned Single Judge considered the same District-wise and ultimately upheld the H

selections in respect of 10 Districts while the selections as well as the selection process in the other Districts were set aside and quashed. This gave rise to the Writ Appeals both by the State as also by the selected candidates. The appeals, therefore, came to be filed in respect of the following Districts and Battalions:

1) Dhubri
2) Karimganj
3) Hailakandi
4) Cachar
5) Sibsagar
6) Jorhat
7) Nagaon
8) Darang
9) Sonitpur
10) Goalpara
11) Morigaon
12) Barpeta
13) 4th APBN, GRP, CID, SB & ACB
14) Commando BN & Kamrup DEF
15) 10th APBN

The Division Bench allowed the appeals pertaining to (i) Karimganj District, (ii) Hailakandi District, (iii) Commando Battalion & Kamrup DEF; and (iv) 10th AP Battalion. The appeals pertaining to the rest of the Districts/Battalions were dismissed. As such the selections made in those Districts/Battalions were also set aside as was done by the learned Single Judge. In the present Civil Appeals before us we are concerned with the selections of only three Districts, they are: (i) Dhubri, (ii) Barpeta; and (iii) Sonitpur. Civil Appeal arising out of SLP (C) No.3536/ 2007 pertains to Dhubri District, Civil Appeal arising out of SLP (C) Nos.6581 and SLP (C) Nos.17219-17222 of 2007 pertain

A to Barpeta District while Civil Appeal arising out of SLP (C) 6576 of 2007 pertains to Sonitpur District. We will, therefore, be limiting ourselves only in so far as those Districts are concerned.

B 4. As has been stated earlier, there were advertisements dated 21.8.2004 published in all the leading newspapers of the State which provided the District/Battalion-wise vacancies as also the vacancies meant for the reserved categories candidates. The notice also provided the further details regarding the dates and venue of the Recruitment Rally in each C District. The minimum physical standards for male and female candidates were also indicated therein. The educational qualification was 8th Class passed while age limit was between 18 to 25 years as on 1.1.2004, relaxable by three years in the case of candidates belonging to SC/ST. 10% of the vacancies D were to be filled up by women candidates while further 5% were reserved for compassionate appointments. Under the procedure of selection it was provided as under:

> "All the candidates will have to undergo test on physical standard as stated above, if their application forms found E correct and in order in all respect. Candidates found to have any physical deformity duly certified by the medical officer present in the test, shall be rejected. Thereafter, all male candidates will be asked to run a race of 0.60 KM and female (sic) candidates qualified in the race shall F be allowed to appear for subsequent test mentioned below.

(a) Physical efficiency test	Maximum marks	Qualifying marks	1. 100 Mtrs. Race 2. High Jump 3. Long Jump
(b) Personal interview	50'	25	General awareness general knowledge and language

G

H

Only candidates who qualify in the physical efficiency test shall be short listed for appearing in the personal interview (viva voce).

(c) Final selections will be made district/battalion wise on the basis of the over all merit on physical efficiency test and personal interview (viva voce) and reservation of quota under RVSP Act, 1978."

One Selection Board was constituted for each District consisted of:

"(1) Superintendent of Police/Commandant (whoever is senior – Chairman)'

(2) Superintendent of Police/Commandant (whoever is junior – Member)

(3) One Medical Officer (to be nominated by the Joint Director, Health Services of the District – Member).

In the Districts, where there is (sic) no Battalion headquarter, the Commandant of the nearest Battalion was to be the Chairman or Member as the case may be, to be nominated by the DGP. In the notification constituting the Selection Board, it was also provided that the Selection Board shall (sic) also consider candidates having HSLC or equivalent qualification or above from recognized Board/University of Assam for recruitment to District Executive Force (UB)."

The guidelines were issued on 2.9.2004 for conducting recruitment tests. As per the said guidelines, the entry of the candidates into the Recruitment Rally was restricted to 5,000 on a single day. The candidates were to submit their filled in application forms to the Chairman of the Selection Board or his representatives before participating in the elimination race. For the male candidates, the distance of the race was 1.60 Kms. while for the female candidates it was 0.80 Kms. Only those candidates who could qualify in the physical standards were

A permitted to participate in the elimination race and only those who could qualify the elimination race were to be given identity numbers after recording their Bio-Data in the prescribed register. Those who could qualify in the elimination race were to face the physical test comprising of 100 meter race, high jump and long B jump and only those candidates who could secure 25 marks out of the 50 allotted for physical efficiency test were to be called for personal interview, for which the allotted marks were 50. Those candidates who could qualify in the elimination race were to get 15 marks whereas the 35 marks were reserved for the C physical efficiency test wherein 15 marks were to be for 100 meter race, 10 marks were for long jump and 10 marks for the high jump. The Recruitment Rallies were held between 3rd to 11th December, 2004 and after completion of the entire process of selection the select-lists for each District/Battalion were D prepared. It was, at this stage that the Writ Petition came to be filed firstly challenging the very recruitment process and methodology adopted.

5. The selections were ultimately held between 7th to 11th December, 2004. Though, initially the candidates belonging to E one particular District could take part in the Recruitment Rallies for the posts of that District only, afterwards the Government by its letter dated 16.11.2004 conveyed the decision that the restrictions relating to District-wise selection of candidates being limited to the candidates of those Districts only would not apply F to the recruitment of the Armed Police Battalion but would hold good only for the posts advertised for the District Executive Force.

6. In the writ petitions various challenges were made before the learned Single Judge they were, inter alia, (i) not following G the procedure in the employment notice; (ii) non maintenance of necessary Registers; (iii) selection of the candidates without their taking part in the selection process or the selection of under-qualified and over-aged candidates; (iv) selection of those candidates who could not qualify the physical tests; (v) H interpolations/tampering in the allotted marks to the candidates;

(vi) political interference in support of some of the selected candidates; (vii) allotment of 50 marks for the personal interview segment as also (ix) consideration of huge number of candidates within a span of only 9 days. In short the whole selection was dubbed as farcical. Learned Single Judge cancelled the entire selection in respect of 15 Districts out of 26 Districts and that is how the appeals were filed by the selected candidates as has already been clarified by us. Now we are concerned only with the selections of three Districts named above.

7. Though it was stated before us by the learned counsel appearing on behalf of the appellants that the learned Single Judge as well as the Division Bench had upset the selections only on the ground of non feasibility of completing the interviews of large number of candidates in short time and further though the learned counsel concentrated on that factor, it would be better to take account of the general findings as regards the selection process recorded by the learned Single Judge as well as the Division Bench to see whether those findings would affect the selections.

10. It was argued before the learned Single Judge that the selection process was postponed on more than two occasions and there was an ulterior purpose on the part of the government behind these postponements. It was also stated that though initially there was a restriction of belonging to a particular District in order to be able to take part in the selection process, such restriction was later on removed by the State Government. Considerable arguments seems to have been addressed on this aspect before the learned Single Judge. It was pointed out that initially the selections were to be held earlier but they were postponed to 18th to 24th November, 2004 on account of the bye-elections in one of the Assembly Constituency, further the second postponement was made to 30th November, 2004 by an order dated 2.11.2004 on account of Asian Car Rally, Kali Puja, Diwali and Id Festivals and ultimately, the selections were postponed to the second week of December and in the

A meantime the government by its letter dated 16.11.2004 had removed the restrictions relating to the District-wise selection of candidates being limited to the candidates of those Districts only in cases of posts advertised for District Executive Force.

11. A further common contention was raised that this B postponement was politically motivated and the removal of the District restrictions was also politically motivated and it resulted in large scale irregularities in the selection.

12. The next contention was regarding the distribution of C marks. It was pointed out that 50 marks were allotted for the personal interview which was not correct. Lastly it was contended that the interviews were farcical in nature and the large number of candidates could not have been interviewed on a single day.

13. Learned Single Judge did not give independent D findings on these contentions but chose to consider all these contentions together. He first fixed a benchmark of maximum 250 candidates to be interviewed on a single day relying on certain rulings of this Court. He also held that the State would have to justify the allotment of 50 marks for the viva voce test. E The learned Judge also recorded that while deciding about the effect of postponement of interviews and the removal of District restrictions; he would consider the case of each District basing the same on the scrutiny made by the three judicial officers who were appointed by him to examine the District-wise records. In F para 25 the learned Judge held:

> "The above discussion would now require the court to record what has been revealed by the scrutiny of the records that had been undertaken by the court and the conclusions that the court considers prudent to reach on G that basis. It would not only be convenient but also imperative for the court to proceed in the matter district/ centre-wise as each selection has to be construed as a separate and independent selection. What, however, must be emphasized, at this stage, before embarking upon the H necessary discussions is that the records of each district

have been scrutinized by the court only to determine the fairness of the exercise performed while subjecting the huge number of candidates to the different stages of the selection process. The court has not, even remotely, been concerned with the marks awarded to any particular candidate; no attempt has been made to evaluate the standards reached by the candidate at any of the stages of the selection process. It is broad and general impression of the selection process that has been attempted to be reached by the court on the basis of the records scrutinized and not a minute and microscopic examination of the selection process. *Again, it must be emphasized that the scrutiny of the records has been made on a representative basis, as already indicated in the opening part of the present judgment and the conclusions as will be reached and recorded is by a process of correlation of the result of the sample scrutiny with the rest of the cases* constituting the general trend. This, the court understands to be the only pragmatic manner of resolution of the dispute involving the selection of nearly 5500 constables from a total of over 2 lakh job seekers."

(Emphasis Supplied)

We do not, however, find concrete findings having been given on the general submissions. Before taking up this exercise the learned Single Judge seems to have rejected, though indirectly, the objection raised by the State that having taken part in the selection process, the unsuccessful candidates could not have complained about the postponement of the selection process nor could they question the correctness thereof after being declared unsuccessful in the same. Though the substantial case law has been quoted by the learned Single Judge, the learned Judge relying on **Raj Kumar & Ors. v. Shakti Raj & Ors. [(1997) 9 SCC 527]** went on to hold:

"In such circumstances, the court is of the view that in the facts of the present case it would not be correct to refuse

A an adjudication of the merits of the dispute raised by the petitioners."

The learned Judge also observed that considering the enormousness of the selection process, the court would have to uphold its adjudicatory mechanism to protect the inherent B requirement of fairness in the administrative process and rule of law on the basis of "Basic Pleadings" thereby indicating his satisfaction about the pleadings in the writ petitions which were fiercely opposed by the State on the ground of absence of proper pleadings. Further, the learned Judge justified the interference C though the writ petitions were filed by unsuccessful candidates who had participated in selection process without demur. Similar view as taken regarding allotment of 50% marks to personal interview. The learned Judge decided to depend on the Scrutiny Committee's reports on allotment of marks to see whether the D marks were awarded excessively.

14. When we see the District-wise approach by the learned Single Judge, it is apparent that in so far as Golaghat District (with which we are not concerned) is concerned, the 50 marks allotted for viva voce were further bifurcated in the following E manner:

"1.	Educational Qualification	5 marks
2.	Smartness, general ambience	5 marks
F 3.	Language, reading and writing	10 marks
4.	Extra Qualifications	5 marks
5.	Proficiency in sports, marshal arts	5 marks
6.	General knowledge and oral test	20 marks"

G

It was argued before us on behalf of the Government that this was normally the pattern of interviews practically in all the Districts as the guidelines were fixed for the purpose of interviews (viva-voce) in the similar fashion commonly for all the H Districts. This was not contradicted before us and indeed it

cannot be, for the simple reason that it would only be the State which could be in a position to address as to the standards fixed for the purposes of viva-voce (presuming that they were so fixed).

15. As regards Barpeta District, the learned Single Judge found that the register of candidates of Barpeta was maintained only from the stage of completion of the elimination race wherein 5540 candidates had qualified. All of them were allowed to take the physical test. The learned Judge then deduced that 5540 candidates were interviewed in a span of 9 days. He, therefore, came to the conclusion that the average number of candidates on each day was much more than the benchmark of 250 which he had fixed. He also recorded that one Minister had made written request in respect of 43 candidates but out of them only 19 were selected. However, the learned Judge did remark that the marks secured by most of the aforementioned 19 candidates did not reflect award of any abnormally high marks in the viva voce test. The learned Judge then recorded:

> "....yet having regard to the very fragile nature of the viva voce segment of the selection on account of the participation of over 5500 candidates therein, I am of the view that the just and proper conclusion that must be reached in the totality of the facts of the case is that the selections held in Barpeta District should receive this Court's interference. Accordingly, the said selections are set aside."

16. As regards Dhubri District, the learned Single Judge noted that as many as 117 posts were advertised and 3722 candidates competed for the same after being qualified for the physical test. The learned Judge then noted, as per the report of the Amicus Curaie, that all the selected candidates had got high marks in viva voce ranging between 30 to 41 out of 50 marks. The learned Judge did not find fault with the application forms of the selected candidates which were duly initialed by the concerned officers nor did he find fault with the procedure

A adopted. However, the learned Judge noted that the number of candidates who were interviewed during 9 days was a "high disturbing factor" as also the award of high marks in the viva voce to the selected candidates which has an isolated feature by itself which could assume significance. It is only on this B material that the whole selection was set aside.

17. Lastly in respect of Sonitpur District, the learned Judge found that for 414 posts advertised, 12,433 candidates had applied, out of which 5399 candidates were found qualified for the viva voce and all of them were also interviewed. According C to the learned Judge this by itself would be a deciding factor considering that over 500 candidates had been interviewed per day. The learned Judge did note on the basis of the report of the amicus curaie that no discrepancy in award of marks in the physical test and award of uniform marks in the viva-voce vis-à-D vis written test was noticed. Here, however, the learned Judge chose to disagree with the views expressed by the amicus curaie and very interestingly observed:

> "Though the marks obtained by the candidates in the different segments of the physical test have been noted in E a tabulation/ compilation sheet, the entries therein are not supported by the contemporaneous records. There are instances of a large number of candidates who had fared well in the physical test but have scored low marks in the interview/viva voce."

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The learned Judge also gave example of two selected candidates being under-age. It is on this basis that the selection of Sonitpur District was set aside.

18. When the matters reached the Division Bench, the G Division Bench firstly noted the findings of the learned Single Judge on the general issues. It also noted that representative notice was issued inviting the affected parties, i.e., selected candidates to the proceedings before the learned Single Judge. The Division Bench also noted the method of random scrutiny H of the selections in 26 Districts/Battalions by the Scrutiny

Committee. A

19. It was argued generally before the Division Bench that the learned Single Judge could not have set aside the selections on the basis of the reports of the Scrutiny Committee which were, admittedly, the sample and partial scrutiny. Even during the arguments before the Division Bench no opportunity was given B to the counsel for the appellants to examine the materials on record and also to take the copies thereof enabling them to support the selection of the candidates. Regarding the aspect of non joining of proper parties, i.e. selected candidates to the writ petition, the Division Bench noted the general notice directed C to be issued through publication by the Single Judge by his order dated 6.10.2005. The Division Bench further noted in para 18 that the notice so published was vague as it did not mention the case numbers, districts, selection centres, etc. It also noted the arguments of the appellants that though applications were made D by the selected candidates for impleadment in the related writ proceedings and though a direction was prayed for supply of copies of the writ petition, the learned Single Judge did not pass any order and the copies of the writ petition became available to the appellants only on 23.11.2005 and they had to file their E Reply Affidavits even without knowing the contents of the writ petition. The Division Bench also noted the further arguments that the writ petitions themselves were vaguely drafted. It was, therefore, argued that the selected candidates were denied a fair and reasonable opportunity of projecting their cases resulting F in violation of principles of natural justice. It was pointed out that even at the time of fixing the writ petition for hearing on 8.11.2005, the selected candidates were, admittedly, not impleaded as parties and the proceedings, therefore, suffered from serious procedural lapse. It was further argued that the G learned Single Judge also fell in error in directing the selected candidates to file the appropriate affidavits even without either impleading them or ensuring that the copies of the writ petitions were served on them. It was also pointed out that the reports prepared by Amicus Curaie and the three judicial officers on H

A the basis of the sample scrutiny made by them were not made available to the selected candidates and, therefore, the learned Single Judge erred entirely in relying on those Scrutiny Reports.

20. Per contra, the submissions made on behalf of the appellants were opposed by the writ petitioners and it was B reiterated that no prejudice was caused to the selected candidates and no such grievance was made before the learned Single Judge. It was reiterated that the selection of any particular individual or individuals was not impugned but the whole selection process was found faulty.

C

21. The Division Bench noted its own earlier order dated 4.10.2005 whereby the earlier appeals were disposed of and a further direction was given that the parties were at liberty to take recourse to provisions of Order 1 Rule 10 as also the other D provisions in the CPC and the issue was left open to the learned Single Judge to direct publication of notice in newspapers so that the interested parties could appear in the proceedings if they so desire. The Division Bench in para 27 of its judgment noted about such notice having been published in the leading newspapers of Assam as also the order passed by the learned E Single Judge to publish the list of selected candidates on or before 19.10.2005. It also noted that on 8.11.2005, the learned Single Judge had found that in the notice of proceedings published in the issue dated 19.10.2005 of the local daily Assam Tribune, the date of hearing had not been mentioned and, F therefore, the date of hearing was directed to be published in daily "Asomiya Pratidin" to be 17.11.2005. The Division Bench also noted the subsequent orders passed by the learned Single Judge allowing the impleadment which began after the second week of November, 2005 and continued upto the last week of G November, 2005 during which the hearing also took place and the judgment ultimately came to be delivered on 12.12.2005. The Division Bench further held that all the selected candidates had been duly heard on relevant aspects of controversy and that they had expressed no grievance regarding the non H impleadment or delayed impleadment or refusal of copies

though prayed and applied for and as such they had waived their objections. In para 30 it was argued that: A

> "They obviously chanced favourable decision without any reservation in this regard and thus had waived any objection on the above counts. On this consideration alone their present turn around apparently lacks bonafide. In view of their omission to point out to the learned Single Judge the factum of non receipt of the copies of the writ petition and non impleadment in the proceedings during the pendency thereof, they are now estopped from raising these pleas of this point of time.". B C

22. The Division Bench in para 32 observed that no prayer was made by any parties seeking a copy of the reports of the Amicus curaie or of the judicial officers assisting the court in the inspection of the records. It, therefore, recorded a finding to the effect that: D

> "....we do not feel persuaded to sustain the cavil of the appellants bearing on denial of opportunity of effective and meaningful participation in the proceedings to their prejudice." E

In paras 35 to 43 of its Judgment, the Division Bench took note of the following cases:

i) **General Medical Council v. Spackman [1943 AC 627]** F

ii) **Taylor v. National Union of Seaman [(1967) 1 WLR 532]**

iii) **Garland v. British Rail Engineering Ltd. [(1969) 1 WLP 1041,** G

iv) **Walter Annamunthodo vs. Oilfields Workers' Trade Union [1961 SE 945]**

v) **Chief Constable of the North Wales Police vs. Evans [(1982) 1 WLR 1155,** H

A vi) **B. Surinder Singh Kanda v. Government of the Federation of Malaya [(1962) AC 322]**

vii) **Hadmor Products Ltd. & Ors. v. Hamilton and another [(1983) AC 191]**

B viii) **Canara Bank and others v. Debasis Das and others [(2003) 4 SCC 557].**

All the above decisions were distinguished in para 44 on the ground that foundational facts were different. The Division Bench held:

C

> "The requirement of adherence to the exigency of the fair procedure notwithstanding the attendant facts do not buttress the appellants plea based thereon. Additionally, while in those cases, the adjudicative process pertained to issues concerning individuals, the scrutiny in the instant case relates to a mammoth exercise of appointment to 5486 posts in public service."

D

It ultimately held that the deficiency in the pleadings on the grounds of challenge, if any, in the writ petitions in the above E premise cannot be construed to be fatal. It further held that by the same analogy in view of the unqualified participation of the selected candidates in the proceedings, their plea of non impleadment therein and denial of the copies of the writ petitions does not merit acceptance. The Division Bench further condoned F the non passing of the individual orders on the impleadment applications and recorded its findings in para 46 to the following effect:

> "On an overall consideration of the emerging facts and the documents on record, we are of the unhesitant opinion G that the procedure adopted by the learned Single Judge in conducting the proceedings is not in derogation of the established principle of natural justice and fairness in judicial determination. This plea, therefore, fails."

H The Division Bench then referred to the exercise

undertaken between 21.9.2006 and 16.10.2006 pertaining to the examination of the records by the Bench in presence of the counsel for the parties. It further noted that no objections were raised by the counsel. The Division Bench ultimately held in para 48 as under:

> "In the above premise, the learned counsel for the parties having been afforded all reasonable opportunities of consulting the records and highlighting grievances; if any on the issues of impleadment, non supply of copies of the writ petition etc., in course of the hearing of the appeals and they having chosen not to avail the same; the plea of want of fairness is of no consequence on this ground as well."

23. In para 52 the Appellate Court raised the question as to what should be the ideal number of candidates who could reasonably and practically be interviewed on a day. The Division Bench observed that this question would have to be considered in the context of large number of candidates as high as more than 2,000 on a single day vis-à-vis the candidates within the benchmark adopted by the learned Single Judge (250 per day). State's affidavit was referred to and it was noted in para 53 that even therefrom it is apparent that at best 8 hours on a day could be utilized for the interview. Though it was claimed by the State that the interviews at times were taken spending 8 to 15 hours a day. It was held that if 15 hours are spent in a day, it would not be reasonably practicable and that by itself may lead to the inference of a farcical selection. After extensively quoting from the circular letter No.3 – Police dated 3rd May, 1971 issued by IGP, Assam regarding the policy with regard to recruitment of the rank of Constables, the Division Bench observed in para 56 that "while good physique and bearing cannot be sacrificed, at the same time, the mental caliber for recruitment to the constabulary cannot be compromised". The Division Bench then endorsed:

> "Although an argument was advanced that provision for

A 50% marks for interview was in the higher side giving scope for maneuvering the selection, but the learned Single Judge on an overall consideration of the matter has come to the conclusion that prescription of 50% marks for the interview is acceptable."

B In the same para it went on to observe:

"To judge a candidate on his mental faculties, alertness, general knowledge, general bearing and knowledge of language, etc., some amount of interaction with the C candidate by the members of the Selection Board will be always required and it cannot be an affair of some moments and, therefore, there was a necessity to fix the number probable candidates who could be interviewed effectively in a day within the hours indicated in the D affidavits which hours also could not be at a stretch but had to be with intervals of tea breaks, lunch breaks, etc."

The Division Bench then proceeded to decide as to how many candidates could be interviewed in a day. The Division Bench then took stock of the reported decision in **Satpal & Ors. v. State of Haryana & Ors. [(1995) Suppl. 1 SCC 206], Ashok Kumar Yadav v. State of Haryana [(1985) 4 SCC 417]** argued on behalf of the writ petitioners as also noted the law laid down in **Sardara Singh v. State of Punjab [(1991) 4 SCC 555]** and came to the conclusion on the basis of the law laid down in the F above mentioned cases that the claim of three minutes per candidate, as was accepted in **Sardara Singh's case** was not feasible and in the present case minimum five minutes will be required for the realistic appraisal of the candidate. If that was done then the interview of 300 candidates would require 15 G hours. Ultimately, the Division Bench recorded a finding that the learned Single Judge had correctly fixed benchmark of 250 candidates to be interviewed in a day and at times it could even be stretched to 300 candidates a day. It was on this basis, the Division Bench then proceeded to examine the individual District and found fault with the selection process in Dhubri, Barpeta H

and Sonitpur Districts on the ground that the candidates interviewed were more than the benchmark fixed and also noted other alleged irregularities in the matter and proceeded to set aside the selection in those three Districts.

24. We have already indicated above that we are concerned with the above mentioned three Districts only. We will, therefore, consider the selection process in these three Districts in the light of the observations made by the learned Single Judge as also the Division Bench in the appeals. But before that we must take stock of the arguments by the learned counsel on behalf of the appellant as also the arguments by the State which though has not filed appeal, has chosen to support the appellants for the obvious reasons as also the other concerned parties.

25. We have deliberately referred to the findings of the learned Single Judge as well as the Division Bench as we are convinced from those findings that the only ground on which the selections were set aside was the factual situation that the number of candidates interviewed were enormous and as such the personal interview and more particularly the viva-voce was a farce, having been completed only by way of a formality due to the shortage of time and hence the selections made on the basis of farcical viva voce could not answer the test of objectivity and reasonableness.

26. However, since the courts below referred to the other defects in the selection process, we would take a stock of those findings. It was firstly urged by way of a complaint against these interviews that the dates were changed and that was done in order to meet the political goals on the part of some leaders. We do not think that this complaint was justified. Firstly there were no proper pleadings with the necessary details before the learned Single Judge. Secondly how the postponements affected the selection process is nowhere displayed and further which political leaders were responsible for such postponements of the interview dates had also not been pleaded. On the other

A hand it was found from the records that the postponement were on account of Asian Car Rally, Kali Puja, Diwali and Id festivals. If that was so, we do not find any reason to hold against the selection process and indeed though we find some murmur in the judgments appealed against, we do not see any definite B finding that such postponements affected the selection process. The very fact that there was a huge turn out in each District suggests the hollowness of the claim that the selection process was affected because of the postponements. We, therefore, do not think that anything was wrong in postponing the interview C dates. Similarly, we are also not impressed with the complaint that the District-wise restrictions were removed by the Government by its letter dated 16.11.2004 apart from the fact that both the courts have not commented on this aspect adversely against the selection process. We are of the opinion D that, that by itself cannot be a reason to find fault with the selection process, again on the ground that the petitioners were not able to show as to what prejudice was caused because of the removal of such step taken by the Government on 16.11.2004. On the other hand we are of the clear opinion that the Government had made the selection process broader by E removing the District-wise restrictions. As regards, the complaint that 50 marks were allotted for the personal interview or viva voce, the learned Single Judge as well as the Division Bench have found that in the peculiar circumstances it was of no consequence. We also endorse this view as no arguments were F addressed on this point before us. Therefore, even that complaint has to go. In the earlier part of this judgment we have already noted that these 50 marks were also distributed on as many as six factors and each factor had separate marks. The oral test, after the distribution of the marks over the factors like G educational qualifications, smartness, general ambience in reading, writing, extra qualifications, proficiency in sports and martial arts, is only left with 20 marks which, in our opinion, is quite reasonable. We do not, therefore, find anything wrong on account of the allotment of 50 marks for viva voce. This is apart H from the fact that the unsuccessful candidates, after having taken

part in the interview process could not turn back and call names to the system. A

27. We are, therefore, left with only one major contention regarding the enormousness of the number of candidates interviewed and the possible inability on the part of the interview board to complete the interviews in a proper manner. We would, therefore, proceed to consider this aspect in detail. B

28. The basis of the contention regarding this factor made by the writ petitioners was the paucity of time. Based on the factors like the available time, the general requirements for assessing an individual candidate for the post of Constable, the number of persons available for holding the interviews, the leaned Single Judge had come to a finding that every Board on one day could, at the most, interview 250 candidates. The Division Bench also seems to have endorsed this view. We have very carefully examined the contentions raised by the appellant herein and also the material provided by the State through its counter affidavits as also the plea raised by the officers who actually held the interviews in respect of the concerned three Districts of Dhubri, Barpeta and Sonitpur. But before we go into the exercise of considering the situation in these three Districts individually, we must consider the benchmark fixed by the learned Judge at 250 candidates per day. We are afraid we cannot uphold that finding. Learned Single Judge as well as the Division Bench seem to have proceeded more on imagination than the reality. Such a benchmark could not have been fixed generally and only because that benchmark was allegedly breached, the selection could not have been found fault with in a mechanical and mathematical manner. Instead of testing the matter on the basis of the ground realities for each District on the basis of material made available by the State, a mechanical approach, in our opinion, could not have been taken by the High Court. C D E F G

29. The Courts below seems to have relied upon **Satpal's case** (supra). That was a case regarding the selection of Patwaris who obviously have a entirely different and more H

A onerous duties than those of the constables in police. A Patwari is a basic Revenue Officer in the village and has to maintain the revenue records. In para 6 this Court observed that:

> "...Even if one were to assume that the committee devoted as many as 12 hours i.e. from 9.00 a.m. to 9.00 p.m. on a single day for interviewing candidates it would not be able to devote more than two minutes' time per candidate."

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It was on the above basis that it was found that it was impossible for the authorities to conduct the interviews of as C many as 400-600 candidates in a single day. The Court also observed, considering the shortest time available to interview, that:

> "It is difficult to hold that the interviews were meaningful and purposive to enable proper assessment of the D knowledge and suitability of each candidate for the post".

In our opinion these observations would be most apposite in respect of the selection of a Patwari who is required to have the knowledge regarding the records, etc. Such is certainly not the requirement for the constables.

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30. In **Ashok Kumar Yadav's case** (supra) this question did not come. That was a case more particularly of bias. Aspersions on character, integrity and competence of Chairman and members of State Public Service Commission were made F in that case. At any rate the interviews held in that case were for the selection to the Judicial Service and, therefore, the nature of the interview was entirely different.

31, However, in **Sardara Singh's case** (supra), this Court specifically observed in para 6:

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> "...The selection is for the Patwaris in the class III service. The ratio in *Ashok Kumar Yadav v. State of Haryana [(1985) 4 SCC 417]* has no application to the facts in the case. Therein the selection was to the Class I service of the State Service and sufficient time was required to

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interview each candidate. In this case, on calculation, we found that on an average three minutes were spent for each candidate for selection. Rule 7 of the Rules provides the qualifications, namely, pass in the Matriculation or Higher Secondary Examination; knowledge in Hindi and Punjabi upto the Middle Standard and good knowledge of rural economy and culture. The educational qualifications are apparent from record and need no interview in this regard. It could be seen that candidates normally hailing from rural backgrounds had presumptively good knowledge of rural economy and culture. Therefore, there is no need for special emphasis to ascertain their knowledge of the rural economy or culture. Under those circumstances much time need not be spent on each candidate for selection except asking some questions on general knowledge and aptitude for work as Patwari etc."

The observations are extremely telling and need no further elaboration. In the present case the qualifications were known. The physical standards of each candidate were very much there before the interviewing board and, therefore, in our opinion, there was no necessity to test the knowledge of maintenance of revenue records, rural economy and culture as was required for the post of Patwari. The merits of the candidates were also recorded regarding their physical efficiency. Therefore, even less than three minutes time was enough for each candidate. We would also have to give due credit to the expertise of Selection Committee.

32. The question of large number of candidates appearing for the selection process again came up before this Court in **Joginder Singh and others v. Roshan Lal and others [(2002) 9 SCC 765]**. A complaint was made in this case that 323 candidates appeared for the test in two days and on that basis a select list was prepared by the Departmental Promotion Committee. The High Court called this selection process as a farce on the ground that fair chance was never given to the candidates to show their worth. The Court observed in para 5

as under:

> "On the facts on record we see no justification for the High Court to have come to this conclusion. The High Court in exercise of its jurisdiction under Article 226 of the Constitution is not supposed to act as an Appellate Authority over the decision of the Departmental Selection Committee. If the Committee has been properly constituted, as in this case, and the post is advertised and a selection process known to law which is fair to all, is followed then the High Court could have no jurisdiction to go into a question whether the Department Selection Committee conducted the test properly or not when there is no allegation of malafides or bias against any member of the Committee. Merely because there were a large number of candidates who appeared on two days, cannot ipso facto lead to the conclusion that the process of selection was a farce and fair chance was not given. Normally experienced persons are appointed as members of the Selection Committee and how much time should be spent with a candidate would vary from person to person. Merely because only two days were spent in conducting the interviews for the selection of Class IV posts cannot lead to the conclusion that the process of selection was not proper."

33. To sum up, these were the interviews for the post of Constables and the minimum educational standard was prescribed as 7th class pass. There were no requirements of testing the administrative or management capacity of the candidates and/or any other quality which is required for the higher posts. All that was necessary was firstly to see their physical fitness in terms of physical endurance, their smartness in appearance and further to test their intelligence level as required for the post of constable including their general knowledge. We cannot ignore that thousands of candidates had turned up and what we find from the guidelines was, firstly these candidates had to fulfil physical standards in terms of height,

etc., as also the minimum educational qualification. Obviously all the candidates could not have had those physical standards. It is apparent from the records that the task of conducting measurement for fixing the physical standards was distributed on all the centres amongst number of other helping staff. Once they crossed this barrier of physical standards and minimum educational qualification as also the race of 1.60 kms. in the case of men and 0.80 in the case of women, they were to proceed for the further physical tests. This exercise, in our opinion, was not as time consuming and could have been done collectively also for the simple reason that every candidate was not asked to run the race individually. That would certainly be a team event where several candidates could run at the same time in group. To complete the race in a particular time could not, in our opinion, require hours together. The subsequent physical test of high jump, long jump and sprint of 100 mtrs., etc., would be restricted only to those candidates who had successfully met their physical standards and educational qualifications and their number would definitely reduce. The further filtration for the viva voce test was more substantial as the number of candidates who could pass the exacting standards in high jump, long jump and the sprint could not have been more. It is at this stage that the remaining candidates were interviewed for their viva voce. This is apart from the fact that the courts below did not have any tangible evidence regarding the interviews being farcical except the self-serving statement made by the unsuccessful candidates in the writ petitions. The learned Judges even did not have the reasons for which the unsuccessful candidates were rejected. We, therefore, do not see any reason as to how a concrete finding could have been given that the selection board could interview only 250 candidates per day and not more.

34. Once this barrier is cleared, the mechanical test adopted by the learned Single Judge and the Division Bench must go and the matters would have to be decided on the basis of the ground realities as presented before us.

A **DHUBRI DISTRICT**

35. Our attention was invited by the learned Senior Counsel Shri Rajiv Dutt to the counter affidavit filed by the State in respect of the selections made in District Dhubri. The counter is supported by the affidavit of Shri Joydip Shukla, Extra Assistant B Commissioner which suggests that a Board was constituted under the Chairmanship of Shri P.K. Dutta, Superintendent of Police, Dhubri, Shri N. Borah, APS, Asstt. Commandant 20th IR Battalion, Panbari and Dr.N. Amin, Senior Medical & Health Officer, Dhubri. They were to execute the task as per the C Notification No.FB/1/98/2004/1 dated 21.8.2004. The said notification dated 21.8.2004 is on record. The affidavit further suggests that a meeting was held on 20th October, 2004 in connection with the Recruitment Rally for the post of constables wherein it was decided to constitute sub-committees and D accordingly the sub-committees were constituted including interview board for the post of viva voce test. The affidavit goes on to say that since there were large number of candidates, it was impossible for a single interview board to complete the interviews and, therefore, four tables for interviewing the E candidates were arranged and each table was to be headed by a Gazetted Officer who was explained the modalities of the interview. The names of the four Gazetted Officers, heading the interview panel on each table, were (i) Shri P.K. Dutta, APS, Superintendent of Police, Dhubri, Chairman of the Board; (ii) F Shri N. Borah, Asstt. Commandant, 20th IR Battalion, Panari, Member; (iii) Shri A.K. Bose, APS, Dy. Superintendent of Police (DSB), Dhubri; (iv) Shri R.C. Medhi, APS, Asstt. Commandant, 20th I.R. Battalion, Panbari. The affidavit also goes on to say that a board which has already been referred to earlier for final G selections was also constituted consisting of Shri P.K. Dutta, Shri N. Borah and Dr.N. Amin. It is suggested that the guidelines dated 2.9.2004 were issued prescribing the procedure to be followed during the Recruitment Rally which was issued by the State-respondents and it is further asserted that the said guidelines were strictly adhered to. The affidavit further goes H

on to suggest that the process of interview was started at 8.00 a.m. and continued till late in the day. However, the viva voce tests slated for 4th and 5th December, were continued on the following days, i.e., on 5th and 6th December, 20004 and the number of candidates selected for viva voce test were barely 601 on 4th December and 1068 for 5th December. It is asserted that the candidates were interviewed by each table of Interview Board. It is then pointed out that after conducting the interviews for 3722 candidates for a period of nine days, ultimately 178 candidates were selected for appointment out of which 85 vacancies were for the post of constable in the District of Dhubri and 93 in the 20th I.R. Battalion and the final selection list was affixed on the Notice Board on 3.2.2005. It is in this manner, that the interviews were held in Dhubri. It is seen from the minutes of the meeting dated 20th October, 2004 that it was attended by as many as 23 personnel and in that the whole procedure for holding the interviews was finalized by creating a Reception Counter, then holding the elimination race, then the documentation, the physical test and ultimately the viva voce. The detailed chart suggests that as many as 22 Reporting Centres were created for which different officers were appointed; two constables were to act as the escorts of the candidates, while as many as 26 persons were engaged for holding the elimination race; for documentation as many as 93 personnel were named even for the subsequent events of physical test, long jump six personnel were appointed, for high jump 9 personnel were appointed and for 100 meters sprint further 9 personnel were appointed. Ultimately for viva voce 2 personnel were named being Shri P.K. Datta and Shri A.K. Bose, both APS Officers. Not only this, the standard marks to be given for the physical tests and even the basic minimum standard accepted is also seen from Annexures A and B from the chart. This suggests the systematic way in which the whole interview process went on in Dhubri.

36. Learned Single Judge in his judgment has observed that as per the report of the Amicus Curaie the selected

A candidates got higher marks in viva voce ranging between 30 to 41 marks. In our opinion this has hardly any effect and merely because the selected candidates got the higher marks ranging between 30 to 41 marks that by itself could be no reason to reject the selection. We have extensively referred to the B comments made by the learned Single Judge in the earlier part of the judgment where the learned Judge has in fact recorded his satisfaction for the printed charts and more particularly about their authenticity. The learned Judge had also expressed his satisfaction with the procedure adopted. There is hardly any C reason given by the learned Single Judger excepting that the benchmark of 250 candidates had already been crossed.

37. The treatment given by the Division Bench is no different. The Division Bench has also gone by the mechanical test of benchmark of 250 candidates. The Division Bench D seems to have taken an exception to the proceedings dated 4.12.2004 and 5.12.2004. That is by far the only reason given by the Division Bench for upholding the finding of the Single Judge. No court has, however, considered the ground realities which we have already shown as per the counter affidavit which E has remained uncontroverted before us. We are, therefore, convinced that the only reason given by the courts below could not be said to be a deciding factor for setting aside the selection.

BARPETA DISTRICT

F 38. The story regarding Barpeta District does not appear to be any different. Shri Dholakia, Senior Counsel took us through the counter affidavit filed on behalf of the State wherefrom it is apparent that a Selection Board was constituted for Barpeta District consisting of one Shri B.B. Chetry, APS, the then G Superintendent of Police, Barpeta District as its Chairman and Shri D. Upadhaya, APS, the then Commandant, 4th APTF Bn., Barpet District as its Member. The affidavit further goes on to suggest the names of the members of the sub-committees for conducting the elimination race and for other events. In so far as elimination race is concerned, two police personnel, namely,

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ABSI Pramod Das and Hav. Clerk Altaf Hussain were appointed. As for documentation and measurement a team of 13 personnel was named so also for 100 meters race, long jump and high jump, there appears to be a team of two personnel each. It is then asserted that in all 5540 candidates appeared between 3rd December to 8th December and interviews were started at 6.30 a.m. and lasted till 8.30 p.m. giving clean 14 hours to the Selection Committee. It is pointed out that out of 5540 candidates 1815 candidates were selected on being eligible/ physically fit to appear for viva voce. It is then pointed out that candidates who were left out of the viva voce test due to shortage of time on the date of selection were called on 9.12.2004 and 10.12.2004 also. It is asserted that this fact was reflected on the Police Radiogram dated 5.12.2004 and 10.12.2004 and only the selected candidates were called to appear for personal interview on the dates fixed for that purpose. These fixed dates were on 3rd, 4th, 5th, 6th and 7th December, 2004 and as has already been submitted 9th and 10th December, 2004. It is very frankly contended in the counter affidavit that those who were left out due to paucity of time, were called on 9th and 10th December, 2004. The counter also goes on to explain that the interview board was alive to the considerations required for selection for the post of constables and as such it was sufficient to test the candidates on the basis of their physical capability and agility. It is then contended that in viva voce random questions were put to the candidates considering the time constraints to ascertain their minimum intelligence level which a constable is required to possess. The copies of the documents like the Memo dated 2.12.2004, Memo dated 3.9.2005, Police Radiograms dated 5.12.2004 and 10.12.2004 are annexed to the counter affidavit which go on to suggest the genuineness of the claim by the State Government supporting the selections.

39. Shri Dholakia painstakingly took us through the judgments of the learned Single Judge as well as the Division Bench. The learned Single Judge seems to have gone by the simple mathematical rule of dividing 5540 candidates by 9 since

A the interview process lasted for 9 days. He seems to have relied on the rule of average. There was one peculiar finding that as per the report of the amicus curaie a complaint was made that some candidates were selected at the written request of a Minister. The amicus curaie had initially reported that the number
B of such candidates is three out of total 210 candidates selected. At the hearing, however, the amicus curaie claimed that the said written request was in respect of 43 candidates out of whom 19 candidates have been selected. The learned Single Judge has, however, candidly held that the marks given by the 19 candidates
C do not reflect award of any abnormally high marks in the viva voce test. All that the learned Judge has recorded is that having regard to the "fragile nature of the selection" it would be just and proper conclusion to set aside the selections made in Barpeta. We are not at all satisfied with this kind of general and casual
D remarks. This is apart from the fact that there is nothing to suggest that in reality any recommendations were made.

40. The story of the Division Bench is again no different. The Division Bench has given the daily break up of the candidates interviewed on each day and without making any
E distinction, has proceeded to hold that merely because the number of candidates exceeded on particular days, the said "benchmark", the selection was bad. We are not convinced with this.

SONITPUR DISTRICT

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41. As regards Sonitpur District also the counter suggests that there was a Selection Board consisting of Shri Nitul Gogoi, APS, Superintendent of Police, Sonitpur, Tezpur as its Chairman, Shri Dwijendra Nath Sarma, APS Asst.
G Commandant, 12th AP Bn., Jamugurihat as its Member and Dr.(Mrs.) Dipti Baruah, Senior Medical & Health Officer, Biswanath Chariali PHC as its Member. As in the other counters, the minutes of the pre-selection meeting in this case held on 30th November, 2004 have been referred to. Figures which are
H given are that out of 12,433 candidates 4319 were only found

to be qualified and appeared for the interview. It is pointed out that on 3rd December, 2004 out of 1365 candidates 489 candidates only qualified and appeared for viva voce and medical test. The number given on the other dates are that on 4th December 757 out of 1676 candidates; on 5th December 558 out of 1602 candidates; on 6th December 602 out of 1892 candidates; on 7th December 473 out of 1081 candidates; on 8th December 1175 out of 2169 candidates; on 9th December 536 out of 1066 candidates ; on 10th December 709 out of 1192 candidates and on 11th December 91 out of 391 candidates came for the interviews after passing preliminary rounds. A clear cut assertion is made that the candidates appearing for viva voce were only those who had passed the physical test. It is pointed out further that more credence was given to the physical fitness and the agility of the candidates since that was the main essence to discharge the duties of a constable. Again it is asserted that random questions were put to the candidates in viva voce so as to ascertain their minimum intelligence level. The documents explaining the counter seem to support the said facts. Learned counsel heavily relied on Annexure R-3, the Minutes of the meeting dated 30.11.2004 as also the Minutes of the meeting held on 3.2.2005.

42. Learned Single Judge has hardly given any reasons and has recorded that a large number of candidates who were failed in physical test were being given low marks in the interview. Two examples have been given of one Mridul Bora and Diganta Das who were under-age but were selected. We have nothing to say about these two selections and if they were not within the proper age limit, the learned Judge was undoubtedly right in setting aside their selection. But that could not be a reason by itself to set aside the whole selection of more than 400 candidates. There is absolutely no reference to any ground facts and the learned Judge seems to have relied wholly on the views expressed by the Amicus Curaie. A curious statement has been made to the following effect:

"Though the marks obtained by the candidates in the

A different segments of the physical test have been noted in a tabulation/compilation sheet, the entries therein are not supported by the contemporaneous records."

We wonder as to what such contemporaneous record could be. Anyway, the only reason appears to have been B weighed with the learned Single Judge was the crossing of the benchmark of 250 candidates.

43. The treatment of the Division Bench is identical. The Division Bench has found out a pattern in selection and C commented that the candidates who secured higher marks in the physical test, i.e., above 40 and upto 46, were awarded abnormally low marks i.e., marks ranging from 7 to 20 and thereby these candidates were ousted from consideration. The marks were found to be over-written/interpolated in respect of D all the candidates and not a single instance was found free from such impairment. The Division Bench has given few examples in para 153 where the marks were substantially changed and reduced to reject those candidates. Some further defects were found that the candidates were not awarded marks for 100 meter race which had been completed within the permissible limit. E Two such examples were cited by the Division Bench. So also it is commented that some candidates were not given proper marks and were not allowed to cross the benchmark. It is on this basis that the selection has been set aside, of course again considering the crossing of the benchmark of 250 candidates F a day. In our opinion the exercise undertaken of scrutinizing the marks allotted to each and every candidate was unnecessary and unwarranted since in the petition no such assertions were made.

G 44. It is settled law that in such writ petitions a roving inquiry on the factual aspect is not permissible. The High Court not only engaged itself into a non permitted fact finding exercise but also went on to rely on the findings of the Amicus Curaie, or as the case may be, the Scrutiny Team, which in our opinion was inappropriate. While testing the fairness of the selection H

process wherein thousands of candidates were involved, the High Court should have been slow in relying upon such microscopic findings. It was not for the High Court to place itself into a position of a fact finding commission, that too, more particularly at the instance of those petitioners who were unsuccessful candidates. The High Court should, therefore, have restricted itself to the pleadings in the writ petition and the say of the respondents. Unfortunately, the High Court took it upon itself the task of substituting itself for the Selection Committee and also in the process assumed the role of an Appellate Tribunal which was, in our opinion, not proper. Thus, the High Court converted this writ petition into a public interest litigation without any justification.

45. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in **Union of India & Ors. v. S. Vinod Kumar & Ors [(2007) 8 SCC 100]** where one of us (Sinha, J.) was a party. This was a case where different cut off marks were fixed for the unreserved candidates and the Scheduled Caste and Scheduled Tribes candidates. This Court in para 10 of its judgment endorsed the action and recorded a finding that there was a power in the employer to fix the cut off marks which power was neither denied nor disputed and further that the cut off marks were fixed on a rationale basis and, therefore, no exception could be taken. The Court also referred to the judgment in **Om Prakash Shukla v. Akhilesh Kumar Shukla & Ors. [(1986) Supp. SCC 285]** where it has been held specifically that when a candidate appears in the examination without protest and subsequently found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise. The Court further made observations in para 34 of the judgment to the effect:

> "There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the

A law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some
B lacuna in the process."

In para 20 this Court further observed that there are certain exceptions to the aforementioned rule. However, the court did not go into those exceptions since the same were not material.

C 46. In our opinion the first basic thing for such a selection process would be the lack of bona fides or, as the case may be, malafide exercise of powers by those who were at the helm of selection process. Both the courts below have not recorded any finding that they found any malafides on the part of any of the
D State officials who headed the interviews. On the other hand the tenor of the judgments show that the whole process did not suffer from malafides, lack of bonafides, bias or political interference. In **Union of India & Others vs. Bikash Kumar [(2006) 8 SCC 192]** this Court observed in para 14 thus:

E "When a Selection Committee recommends selection of a person, the same cannot be presumed to have been done in a mechanical manner in absence of any allegation of favouritism or bias . A presumption arises in regard to the correctness of the official act. The party who makes
F any allegation of bias or favouritism is required to prove the same. In the instant case, no such allegation was made. The selection process was not found to be vitiated. No illegality was brought to our notice....."

47. The learned Single Judge relying upon the decision in
G **Raj Kumar & Others v. Shakti Raj & Others [(1997) 9 SCC 527]** seems to have found an exception to this Rule and has more particularly relied on the observation made in para 16 to the following effect:

"...But in his case, the Government have committed glaring
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illegalities in the procedure to get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law."

We do not think that this case is apposite for the present controversy. In the reported decision the court found a clear cut breach of 1955 Rules. It also found that the names, though were required to be called from the Employment Exchange, were not so called. The Court also found fault with the procedure involved. We are afraid such is not the case in the present situation. No deviation from the rules or no inherent defect in the selection process which would render the whole selection illegal have either been alleged or proved. We have already shown in the earlier part of our judgment that there were proper advertisements issued and reasonable procedure was chalked out in the earlier meetings held by the authorities, even the guidelines were defined and the interviews proceeded along those guidelines. A mere expression of doubts only on the ground of large number of candidates appearing and their not being objectively and properly tested without any further material, in our opinion, cannot by itself render the whole selection process illegal.

48. Similarly we are not satisfied with the course taken in inviting the objections of the selected candidates who were never bothered to be made parties to the writ petitions. This Court in **All India SC & ST Employees Association and Another v. A. Arthur Jeen and Others [(2001) 6 SCC 380]** has stressed the necessity of joining the selected candidates as a party in paras 13 and 14 of its judgment, referring to the reported decisions in **Prabodh Verma v. State of U.P. [(1984) 4 SCC**

A **251] and AMS Sushanth v. M. Sujatha [(2000) 10 SCC 197].** In these cases this Court has stressed the necessity of the selected candidates being joined as a party atleast in the representative capacity. The Single Judge, after realizing the fact that the selected candidates were not joined as a party, B though the selection lists were available to the petitioner, had merely advertised about the dates of hearing of the petitions and when few of the selected candidates approached the High Court, they were not even supplied with the pleadings or the copies of the petitions in time. All this, in our opinion amounted C to denial of an appropriate opportunity to the selected candidates. All this has been dealt with by both the courts below and particularly the Division Bench in a very casual manner holding that the decisions relied on by the appellants were individual cases. Even if they were so, the principles stated in those cases regarding the natural justice were most apposite D particularly in **Canara Bank's case** (supra), a reference of which has been made. In that case this Court held:

> "Natural justice has been variously defined. It is another name for common-sense justice. Rules of natural justice E are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from F the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights G of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

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The Court further went on to say:

"Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. *The old distinction between a judicial act and an administrative act has withered away.* The adherence to principles of natural justice as recognized by all civilized States is of supreme importance."

(Emphasis supplied).

The Division Bench thus could not have condoned the non supply of copy of the writ petitions prior to the hearing of the writ petitions before the learned Single Judge. Similarly, after having noticed that the notice issued by the learned Single Judge was vague and that the impleaded selected candidates were constantly crying for the copies of the writ petitions, the Division Bench could not have simply brushed aside those weighty objections. We also do not understand the alleged stand taken by the counsel for the selected candidates before Division Bench regarding their readiness to argue. It is for this reason that we have extensively quoted the arguments by the counsel in paras 19 to 22 of this judgment where the non supply of copies of petitions was criticised.

49. We also do not approve of the approach adopted by the learned Single Judge of the High Court as going all the way into the facts and the microscopic details not via the pleadings of the parties but on the basis of an unnecessary investigation. We also disapprove of the logic of relying on the findings arrived at only on the basis of sample survey. Such selection of large number of candidates could not have been set aside on the

A basis of sample survey. No evidence was available before us as to the proportion of this so-called "sample survey".

50. For all the above reasons we hold in favour of the appellants and allow the appeals, setting aside the judgments of the learned Single Judge as well as the Division Bench in so B far as they pertain to the three District of Dhubri, Barpeta and Sonitpur.

R.P. Appeals allowed.