

Court No. - 4

1. **Case :-** WRIT - A No. - 7076 of 2021

Petitioner :- Samrah Ahmad

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- Aditya Bhushan Singhal, C.S.C., Pranjali Mehrotra

WITH

2. **Case :-** WRIT - A No. - 10440 of 2021

Petitioner :- Sumit Kumar And 15 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Namit Srivastava, Sr. Advocate

Counsel for Respondent :- C.S.C., Pranjali Mehrotra, Vimlesh Kumar Rai

WITH

3. **Case :-** WRIT - A No. - 8744 of 2021

Petitioner :- Deepak Singh

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Hitesh Pachori

Counsel for Respondent :- A B Singhal, C.S.C., Pranjali Mehrotra

WITH

4. **Case :-** WRIT - A No. - 17507 of 2022

Petitioner :- Asif Khan And 6 Others

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Mohd Atif

Counsel for Respondent :- C.S.C., Sanjay Kumar Om, Suresh Singh, Vimlesh Kumar Rai

WITH

5. **Case :-** WRIT - A No. - 12010 of 2021

Petitioner :- Lalit Kumar Yadav And 3 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Pradeep Kumar Upadhyay, Sr. Advocate, Tribhuvan Narayan Upadhyay

Counsel for Respondent :- Aditya Bhushan Singhal, C.S.C., Pranjali Mehrotra

WITH

6. Case :- WRIT - A No. - 8747 of 2021

Petitioner :- Randheer Pratap Singh And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Hritudhwaj Pratap Sahi, Sankalp Narain, Sr. Advocate

Counsel for Respondent :- Aditya Bhushan Singhal, C.S.C., Pranjal Mehrotra

WITH

7. Case :- WRIT - A No. - 11919 of 2021

Petitioner :- Shani Nigam And 5 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Atipriya Gautam, Devesh Mishra, Sr. Advocate

Counsel for Respondent :- C.S.C., Suresh Singh, Vimlesh Kumar Rai

WITH

8. Case :- WRIT - A No. - 9899 of 2021

Petitioner :- Vindhyavasini Pandey And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Jainendra Pandey

Counsel for Respondent :- Pranjal Mehrotra

WITH

9. Case :- WRIT - A No. - 7105 of 2021

Petitioner :- Ashish Kumar Singh And 10 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- Aditya Bhushan Singhal, C.S.C., Pranjal Mehrotra, Sanjay Kumar Om, Sanjeev Kumar Pandey

WITH

10. Case :- WRIT - A No. - 8936 of 2021

Petitioner :- Rajesh Kumar

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shantanu Khare, Sr. Advocate

Counsel for Respondent :- Aditya Bhushan Singhal, Ashok Kumar Yadav, C.S.C., Pranjal Mehrotra

WITH

11. Case :- WRIT - A No. - 12501 of 2021

Petitioner :- Preeti Kumari And 4 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Ashish Mishra

Counsel for Respondent :- C.S.C.,Suresh Singh

WITH

12. Case :- WRIT - A No. - 4531 of 2020

Petitioner :- Sujeet Gupta And 11 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Seemant Singh

Counsel for Respondent :- Aditya Bhushan Singhal,C.S.C.,Sanjay Kumar Om,Sanjeev Kumar Pandey,Suresh Singh

WITH

13. Case :- WRIT - A No. - 4572 of 2020

Petitioner :- Surendra Singh And 5 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Ashish Mishra

Counsel for Respondent :- Aditya Bhushan Singhal,C.S.C.,Sanjay Kumar Om,Sanjeev Kumar Pandey

WITH

14. Case :- WRIT - A No. - 5912 of 2020

Petitioner :- Ambarish Kumar Pandey And 4 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Siddharth Khare,Sr. Advocate

Counsel for Respondent :- C.S.C.,Dinesh Kumar Singh,Pranjal Mehrotra,Suresh Singh

WITH

15. Case :- WRIT - A No. - 4578 of 2020

Petitioner :- Prashant Kumar Singh And 4 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Ashish Mishra

Counsel for Respondent :- C.S.C.,Sanjeev Kumar Pandey,Vimlesh Kumar Rai

WITH

16. Case :- WRIT - A No. - 7893 of 2020

Petitioner :- Subham Verma

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Ashok Kumar Yadav

Counsel for Respondent :- C.S.C.,Pranjal Mehrotra,Sanjeev Kumar Pandey,Suresh Singh,Vimlesh Kumar Rai

WITH

17. Case :- WRIT - A No. - 8884 of 2020

Petitioner :- Puneet Kumar Yadav And 8 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Kalpna Upadhyay,P.K. Upadhyay,Sanjeev Kumar Pandey

Counsel for Respondent :- C.S.C.,Pranjal Mehrotra

WITH

18. Case :- WRIT - A No. - 10447 of 2020

Petitioner :- Anil Kumar Gaurav

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Ashok Kumar Yadav,Shweta Singh Attre

Counsel for Respondent :- A.K. Yadav,C.S.C.,Pranjal Mehrotra,Vimlesh Kumar Rai

WITH

19. Case :- WRIT - A No. - 11662 of 2020

Petitioner :- Laxmi Srivastava

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Ashok Kumar Rai,Rajendra Kumar

Counsel for Respondent :- C.S.C.,Pranjal Mehrotra,Sanjeev Kumar Pandey,Suresh Singh

WITH

20. Case :- WRIT - A No. - 14566 of 2021

Petitioner :- Santosh Chauhan And 2 Others

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Prashant Mishra,Tarun Agrawal

Counsel for Respondent :- C.S.C.,Pranjal Mehrotra,Suresh Singh,Vimlesh Kumar Rai

WITH

21. Case :- WRIT - A No. - 5713 of 2020

Petitioner :- Praveen Chaurasiya And 9 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Siddharth Khare,Sr. Advocate

Counsel for Respondent :- Aditya Bhushan Singhal,C.S.C.,Sanjay Kumar Om,Sanjeev Kumar Pandey

WITH

22. Case :- WRIT - A No. - 6117 of 2020

Petitioner :- Parmanand And 13 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Hritudhwaj Pratap Sahi, Samarath Singh, Sankalp Narain

Counsel for Respondent :- C.S.C., Dinesh Kumar Singh, Pranjal Mehrotra, Vimlesh Kumar Rai

WITH

23. Case :- WRIT - A No. - 4631 of 2020

Petitioner :- Mahesh Kesharwani And 6 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Ashish Mishra

Counsel for Respondent :- C.S.C., Sanjeev Kumar Pandey, Suresh Singh

WITH

24. Case :- WRIT - A No. - 11201 of 2020

Petitioner :- Prem Shankar Maury And 6 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Ashish Mishra

Counsel for Respondent :- C.S.C., Pranjal Mehrotra, Vimlesh Kumar Rai

WITH

25. Case :- WRIT - A No. - 10075 of 2020

Petitioner :- Ajay Singh And 63 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Jitendra Kumar Singh

Counsel for Respondent :- Aditya Bhushan Singhal, C.S.C., Pranjal Mehrotra

WITH

26. Case :- WRIT - A No. - 7150 of 2020

Petitioner :- Shashi Ranjan Chaudhari And 81 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Jitendra Kumar Singh

Counsel for Respondent :- Aditya Bhushan Singhal, C.S.C., Pranjal Mehrotra, Sanjay Kumar Om, Sanjeev Kumar Pandey

WITH

27. Case :- WRIT - A No. - 7474 of 2020

Petitioner :- Shravan Kumar And 61 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Ravi Prakash Kushwaha

Counsel for Respondent :- C.S.C.,Pranjal Mehrotra,Sanjeev Kumar Pandey,Vimlesh Kumar Rai

WITH

28. Case :- WRIT - A No. - 9333 of 2020

Petitioner :- Vinod Kumar Maurya And 78 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Jitendra Kumar Singh

Counsel for Respondent :- C.S.C.,Pranjal Mehrotra,Vimlesh Kumar Rai

WITH

29. Case :- WRIT - A No. - 4453 of 2020

Petitioner :- Manvendra Singh Yadav And 19 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Siddharth Khare,Sr. Advocate

Counsel for Respondent :- C.S.C.,Pranjal Mehrotra,Sanjay Kumar Om,Sanjeev Kumar Pandey,Vimlesh Kumar Rai

WITH

30. Case :- WRIT - A No. - 11957 of 2020

Petitioner :- Rakshpal Singh And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Seemant Singh

Counsel for Respondent :- C.S.C.,Pranjal Mehrotra,Sanjeev Kumar Pandey,Vimlesh Kumar Rai

WITH

31. Case :- WRIT - A No. - 7952 of 2022

Petitioner :- Faiz Salamat And 2 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Mohd Atif

Counsel for Respondent :- C.S.C.,Suresh Singh,Vimlesh Kumar Rai

AND

32. Case :- WRIT - A No. - 13212 of 2021

Petitioner :- Pinki Sharma

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Ashish Mishra

Counsel for Respondent :- A B Singhal,C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Siddharth Khare, Sri Ashish Mishra, Sri Seemant Singh and Sri Radha Kant Ojha, learned Senior Advocate assisted by Sri Namit Srivastava for petitioners, Sri Manish Goyal, learned Senior Advocate assisted by Ms. Anjali Goklani and Ms. Ananya Shukla, learned counsel appearing on behalf of respondent U.P. Jal Nigam, Sri Ajeet Kumar Singh, learned Additional Advocate General assisted by Sri Amit Verma, learned Standing Counsel for the State respondents, Sri Sanjay Kumar Om, learned counsel for the U.P. Jal Nigam (Rural) and Sri V.K. Rai and Sri Aditya Bhushan Singhal, learned counsel for U.P. Jal Nigam (Urban), Ms. Meha Rashmi, learned counsel appearing for respondent M/s. Aptech Limited.
2. All the aforesaid writ petitions arise out of the same advertisements and selections *qua* posts of Assistant Engineers, Junior Engineers of different trades and Routine Grade Clerks of same department namely U.P. Jal Nigam, accordingly, with the consent of the learned counsel for the parties all of them were connected and are being heard and decided together.

FACTS

3. The erstwhile U.P. Jal Nigam prior to its split into two corporations, namely, U.P. Jal Nigam (Urban) and U.P. Jal Nigam (Rural) issued advertisements on 18th June, 2016, 28th October, 2016 and 29th November, 2016 inviting applications for making selection and appointments against 335 vacancies of Routine Grade Clerks (including stenographers), 853 vacancies of Junior Engineers in the break-up of 723 for Civil trade, 126 of Mechanical/ Electrical trade and 122 vacancies of

Assistant Engineers in the break-up 113 for Civil trade, 5 for Mechanical/ Electrical trade and 4 Computer Science/ Electronic Communication.

4. As against the posts of Assistant Engineers about 34128 candidates in different trades, 61,452 candidates for the posts of Junior Engineers (different trades) and 84,643 candidates against the post Routine Grade Clerk appeared in the Computer Based Test (CBT) that was held for the selection and appointment purposes.
5. The CBT for the post of Assistant Engineers was conducted on 16th December, 2016 in 2 shifts, one for Civil and one shift for other trades, whereas for the post of Junior Engineer, the CBT was held on 6th December, 2016 and 7th December, 2016 in 5 shifts and for the Routine Grade Clerk, the CBT was held from 5th August, 2016 to 7th August, 2016 inclusive.
6. Four set of question papers were prepared for the post of Assistant Engineer consisting of 80 questions each. For the post of Junior Engineers five set of question papers consisting of 80 questions each and for the Routine Grade Clerk nine question papers were prepared consisting of 80 questions each.
7. The CBT results were declared for the posts of Assistant Engineer on 17th December, 2016 for the post of Junior Engineer on 7th December, 2016 and for the Routine Grade Clerk on 9th August, 2016.
8. In the category of Assistant Engineers (Civil) 522 candidates, in the category of Mechanical 22 candidates and Computer Science/ Electronic Communication 20 candidates were shown to have qualified in the CBT.

9. In respect of the Junior Engineers 3961 candidates qualified for civil trade, whereas 699 candidates qualified in the Mechanical/ Electrical trade.
10. In the CBT conducted for Routine Grade Clerks and Stenographers in 2316 candidates were shown to have qualified and out of that only 718 candidates were successful in the typing test, who were ultimately interviewed.
11. In order to conduct interview the corporation proceeded to constitute Boards. 6 Interview Boards were constituted for Assistant Engineers. 10 Interview Boards were constituted for Junior Engineers and 6 Interview Boards were constituted for Routine Grade Clerks.
12. Interview for the post of Assistant Engineers in different trades were held on 30th December, 2016 and 31st December, 2016. For the posts of Junior Engineer in different trades were held from 19th December, 2016 to 7th December, 2016 inclusive and for Routine Grade Clerk interviews were held from 30th November, 2016 to 2nd December, 2016 inclusive.
13. For the post of Assistant Engineer each Board had been assigned 2 slots each day to conduct interview. For Junior Engineer each Board had been assigned only one slot each day for 6 days and so also 6 Boards were constituted for Routine Grade Clerk that had one slot for 3 days.
14. In the case of Assistant Engineer there were two slots, one for the morning session and the other one for post lunch session, whereas in case of Junior Engineer and Routine Grade Clerk the slots continued from morning to evening.

15. The records reveal as per the reports relied upon by the respondents *to wit*, investigation reports submitted by Special Investigation Team, statements have been made by those who were members of interview board that the time schedule for interview was 10:30 am to 5:30 pm and in some cases 10:00 am to 5:00 pm (as per the statements made by two different members of different board) so approximately 15 candidates in 60 minutes if absentees are also included.
16. The records further reveal that as per the pleadings in the counter affidavit filed in writ petition being Writ – A No.- 7076 of 2021 (Samrah Ahmad v. State of U.P. and others), each Board for the post of Assistant Engineers category had been assigned minimum 18 candidates to maximum 28 candidates to be interviewed in one shift. Likewise for the post of Junior Engineer, each Interview Board was assigned minimum 64 to maximum 86 candidates for each day to be interviewed and for the Routine Grade Clerk each Board had been assigned minimum 29 to maximum 44 candidates to be interviewed each day. The numbers are seen to be in reducing trend looking to the days scheduled for interview both in the case of Junior Engineer and Routine Grade Clerk as the days progressed.
17. The records further reveal that the candidates who had been called for interview for the post of Assistant Engineers, were 564 in number, however, 16 candidates remained absent. In the category of Junior Engineer out of 4660 candidates, 266 candidates were absent in interview.
18. Further the selection for the post of stenographer was cancelled on 16th December, 2016. The final select list for the post of Assistant Engineers was declared on 3rd January, 2017, for the

post of Junior Engineers was declared on 2nd January, 2017 and for Routine Grade Clerk select list was declared on 24th December, 2016. The appointment orders for the posts of Assistant Engineers were issued on 3rd January, 2017, for the post of Junior Engineer were issued on 2nd January, 2017 whereas for the post of Routine Grade Clerk appointment orders were issued much before on 24th December, 2016.

19. The entire above selection process was outsourced to M/s Aptech Limited - a private agency, who has been conducting online tests for the purpose of selection and recruitment to various Government departments and other establishments.
20. M/s Aptech Ltd. used a cloud server CtrlS Mumbai to register applications of the candidates online, the digital copy of the admit cards were uploaded to be downloaded by the candidates for CBT to be held at the assigned centres on scheduled dates on online mode.
21. In order to undertake this exhaustive exercise and to ensure transparency and at the same to maintain integrity of online examination data and the result processing by the outsourced agency agreements was entered between the agency and U.P. Jal Nigam for Junior Engineers on 28.10.2016, for Assistant Engineers on 15.12.2016 and for Routine Grade Clerks on 17.06.2016. One such contract (work order) reached between the agency and the Corporation is reproduced hereunder:

“WORK CONTRACT

This Work Contract (WC) is made at Mumbai on this 17th day of June 2016

BETWEEN

Uttar Pradesh Jal Nigam, a Corporation having its Head office at 6, Rana Pratap Marg, Lucknow- 226001 Uttar Pradesh, hereinafter referred to as "U.P. Jal Nigam" (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include its successors entitled and permitted assigns) OF THE FIRST PART.

AND

APTECH LIMITED, a Company incorporated under the Companies Act., 1956 having its registered office at A-65. Aptech House, MIDC, Marol, Andheri East, Mumbai - 400 093, hereinafter referred to as "APTECH LIMITED/Agency" which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to include its successors in entitled and permitted assigns). OF THE SECOND PART.

Where as The State Government Constituted a Corporation by the name of UTTAR PRADESH JAL NIGAM in the year 1975 which came into existence with effect from 18th June 1975, whose area of operation extends to whole of Uttar Pradesh, excluding Cantonment areas under an Act called as Uttar Pradesh Water Supply & Sewerage Act, 1975. The basic objective of creating this corporation is development and regulation of water supply & sewerage services and for connected matters therewith.

Whereas APTECH LIMITED and its subsidiaries interalia are engaged in providing testing, training, certification and other allied services and provides various types of survey, assessment & testing services to various clients including individuals, educational institutions, firms, corporate and other enterprises, government undertakings, organizations and departments and others and also provides software, hardware and training support to all such clients.

Whereas U. P. Jal Nigam is desirous of awarding work contract to APTECH LIMITED for conduct of computer based exam for recruitment of routine grade clerk & stenographer as per the terms and conditions as also allocation of responsibilities contained herein below:-

Salient Features of Recruitment Exam on C.B.T. Mode:

1. Recruitment Examination to be conducted for Routine Grade Clerk (R.G.C.) & Stenographer (Grade-IV).
2. There would be following types of examination for above stated recruitments-

2.1 C.B.T. Mode test for Routine Grade Clerk (R.G.C.)

2.2 C.B.T. Mode test for Stenographer

2.3 Computer Type Test for R.G.C.

2.4 Stenography Test including Computer Type Test for stenographer

3. The candidates' qualification appearing for the entrance exam would be Intermediate (10+2) with prescribed computer knowledge. Both the groups would have to be rendered separate set of 80 questions.

4. The exams would be conducted over a period of time in multiple sessions.

5. The exam would be of 1 Hour duration. There would be 80 Questions in the exam of MCQ basis.

6. All the questions would be of objective type Multiple Choice with 4 options.

7. The online C.B.T. exam would be conducted in English and Hindi language, where ever possible.

8. After shortlisting of candidates (Count would be provided by UP Jal Nigam based on the vacancies) for Computer Type Test and Stenography Test.

9. Based on the accumulating scores, the merit list for selected candidates would be prepared and handed over to UP Jal Nigam.

APTECH LIMITED'S RESPONSIBILITIES:

1. On-line registration of candidates during the stipulated period.

2. In the registration form, provision will be made for choice of five centers in order of preference. Candidate will be allotted a center based on his/her preferred choice depending upon the availability.

3. Aptech Limited will provide payment gateway for payment of exam fees by candidates. The gateway will be integrated with U. P. Jal Nigam bank account for this purpose. Transaction fee as applicable, against the fee amount for online/offline payments will be borne by the candidate.

Provision for candidates to pay through bank challan, will also be done.

4. Aptech Limited would conduct the examination through the C.B.T. mode.

5. Aptech Limited, shall provide the testing services through the Test center infrastructure installed at its Aptech Limited Authorized Test Centers (AATCs) for conduct of the online exams at the locations listed in the annexure A. Aptech Limited would designate a Test Center subject to the center holding a minimum of 100 nodes. If number of exams per center is less than 100, Aptech Limited in consultations with U.P. JAL NIGAM would finalize alternate location. U. P. JAL NIGAM would communicate to Aptech Limited at least 30 days in advance about the choice of final locations.

6. APTECH LIMITED will ensure that the necessary security controls and measures in respect of the equipment/ infrastructure provided to candidates are maintained. It would be responsibility of Aptech Limited to maintain the integrity and sanctity of the test environment at all centers.

7. Aptech Limited would be generating question data bank on the specifications provided by U. P. JAL NIGAM.

8. Aptech Limited would provide the Results in 5 working days from conclusion of the last examination. The result would be based on C.B.T. test marks, educational qualification marks & other specified marks. The results would reflect candidate wise and topic wise score.

9. Aptech Limited would conduct Hindi/English type test of selected candidates. Stenography test would be conducted for the candidates against stenographer post. Since this test is qualifying in nature, the test result would be in two parts i.e. list of successful & list of unsuccessful candidates.

10. Based on merit list against sl. 8 excluding unsuccessful candidates against sl.9, U.P.J.N. would conduct interview of selected candidates. The marks of interview would be made available to Aptech Limited after which result of various category would be prepared & handed over to U.P. Jal Nigam.

11. Test centre capacity planning for exam would be for 50000 candidates.

12. Aptech Limited would provide 5 seats for helpdesk in Lucknow, so that the coordination would be smooth between

UP Jal Nigam. Helpdesk would consist of Toll free, tolled and Email support to resolve candidate queries.

13. After Handover of results in soft and duly signed hard copies of each stage Aptech Limited would not retain data for six months. Also the support would be provided to address candidates queries for six months after declaration of result.

14. Responsibilities of Security and non-leakage of question papers, accurate evaluation and tabulation of marks will fully rest with Aptech Limited.

U. P. JAL NIGAM RESPONSIBILITIES:

1. The advertisements regarding examination as needed will be issued by the U. P. Jal Nigam. The cost of these advertisements will be borne by the U. P. Jal Nigam.

2. Bank account opening for fee collection purpose would be done by U.P. Jal Nigam. The required details for the same would be shared to Aptech Limited.

3. Declaration of results will be the responsibility of U. P. Jal Nigam.

4. Interview of selected candidates would be conducted by U.P. Jal Nigam.

5. U.P. Jal Nigam undertakes to comply with all the access authorization and access controls as may be prescribed by Agency. U.P. Jal Nigam shall limit the access to Services Environment only to the Authorized Users. U.P. Jal Nigam acknowledges that the Services offered by Agency under this Agreement are not the data processing services but are in the nature of information technology infrastructure and application services for U.P. Jal Nigam's own data processing and business use only and agrees that the U.P. Jal Nigam shall not, in any way, commercially exploit the Services otherwise. UP. Jal Nigam shall only be responsible for activity occurring under its control and shall abide by all applicable laws. U. P. Jal Nigam shall be always vigilant about any unauthorized use of the Services or Services Environment by any person other than authorized user. However, on detection of the same, the U.P. Jal Nigam shall notify Agency immediately of any unauthorized use of the Services of Services Environment and the Agency shall immediately take remedial action. U.P. Jal Nigam undertakes that all UP. Jal Nigam Data will not infringe the intellectual property rights of any third party.

COMMERCIAL TERMS:

1. The pricing for APTECH LIMITED's services is on a per - candidate per exam basis. Aptech Limited will charge Rs.405/- (service tax extra) per candidate for total no. candidates scheduled booked for the C.B.T. exam for R.G.C. and Stenographer, Rs.120/- (service tax extra) per candidate for total no. candidates scheduled booked for the Typing Test/ Stenography & typing Test. The pricing includes cost for generation of question data bank and compilation of result. U.P. JAL NIGAM will be charged for absent candidates. Service Tax will be applicable on the above price as per prevailing Government of India rules & rates at the time of invoicing.

2. Aptech Limited will raise invoice in following manner:

- a. 25% after generation of admit cards*
- b. 25% after computer based test*
- c. 50% after handing over of final result*

3. The Bank guarantee amount shall be 10% value of total contract cost with a minimum of Rs. 15.00 lacs. Bank guarantee of Rs. 15.00 lacs would be submitted at the time of agreement and balance amount if any would be deposited immediately after closer of submission of application form. The bank guarantee would be released after three months of handing over of final result.

GENERAL TERMS AND CONDITIONS:

1. The Contract for conduct of the entrance exam is valid for the current appointment of routine grade clerk & stenographer post, however it may be extended for further appointment after mutual consent as per same terms and conditions.

2. The execution, validity and performance of this work contract shall be governed in all respects by the laws of India.

3. U.P. JAL NIGAM and Aptech Limited in performance of any contractual obligations shall stand exonerated for such failure due to circumstances beyond their control including force measure conditions.

4. The question bank created would remain with Aptech Limited.

5. *Payment to be released within 30 days of the submission of the invoice.*

6. *Payment to be made by cheque/DD RTGS payable to Aptech Limited, payable at Mumbai.*

7. *The party affected by Force Measure shall notify the other party without delay. In the event that the affected party is delayed in or prevented from performing its obligations under this Agreement by Force Measure, only within the scope of such delay or prevention, the affected party will not be responsible for any damage by reason of such a failure or delay of performance. The affected party shall take appropriate means to minimize or remove the effects of Force Measure and attempt to resume performance of the obligations delayed or prevented by the event of Force Measure. After the event of Force Measure is removed, both parties agree to resume performance of this Agreement with their best efforts.*

8. *The parties shall strive to settle any dispute arising from the interpretation or performance in connection with this Agreement through friendly consultation within 30 days after one party asks for consultation. In case no settlement can be reached through consultation, each party, can submit such matter to the Courts in Lucknow alone.*

9. *The validity, interpretation and implementation of this Agreement shall be governed by the Indian laws.*

10. *Time of completion of this work would be 120 days from date of start. In case of delay a penalty of Rs. 50,000=00 per day would be deposited by Aptech Limited with a maximum of 10% of contract value.*

11. *In case malpractices, willful manipulation is found during the execution of this agreement, the agreement would be rescinded & performance security & other payments would be forfeited.*

SCOPE OF WORK:

a. *Design and development of customized ONLINE Application form with facility to upload scanned copy of candidate's photograph, thumb impression, signature and other documents such as proof of Date of Birth, Education qualification, Caste, Dependent of freedom fighter, Ex-serviceman and Physically Handicap certificate, sport experience certificate etc. as applicable to each category of candidate.*

b. System should have inbuilt validation system to validate the data entered. The system should guide the candidate through pop-up messages, before final submission. Eligibility of the candidates has to be checked/validated with reference to the age, qualification, category and fees, besides relaxation provided to various categories in terms of age & fees, on the basis of data furnished by the candidate in the Application form.

c. Candidate should be able to login into the system by using Application number and Password (to be sent to the candidate after registration, through SMS to Registered Mobile Number (RMN) and E-mail ID) to download the Bank-Challan for Off-line payment of Application fees in bank (optional) and download/print the completely filled form, Admit Card (with photo, thumb impression and signature and other details), Instruction sheet and Acknowledgement/ Declaration form.

d. Providing and operating VeriSign-quality/security seal, integrate payment gateway, Debit/Credit Card, and manage online/offline payments.

e. After validation of Application fee and successful submission of Application form, the system will process the same and generate Application number and password for each candidate. Beside the above the system will generate a Unique ID (Roll No.) for each candidate, which be communicated to him and will be required for login to start the C.B.T.

f. Admit card for C.B.T. & type and stenography test and for interview are to be dispatched/informed through E-Mail/SMS to Registered Mobile Number simultaneously.

g. Conciliation of Application fees deposited through Challan, ATM cum Debit card /credit card and payment gateways, & validation thereof.

h. Generation of attendance sheet with preprinted candidate's photo, thumb impression and signature. The invigilator will enter the node number in the attendance sheet, which will be duly signed by the candidate the invigilator & representative of U. P. Jal Nigam.

i. Booking of reputed Examination venues (venues are to be well connected to railway station and bus stand by local transport. Neat and clean secured place with proper ventilation, light & fan, fresh drinking water, seating arrangement, first aid box and other basic amenities).

j. Seating arrangement for C.B.T. should be such that no two candidates sit side by side with same set of question paper.

k. Alternate source of supply (Generator of sufficient capacity) should be in standby position with operator.

l. Design and development of Question Bank in bilingual language (English and Hindi) with multiple choice answers (80 nos.), so as to judge the Hindi Knowledge & Hindi writing aptitude (40 questions), General Knowledge (20 Questions), General aptitude (20 Question).

m. The encrypted question paper should be password protected and pushed to the local server before the scheduled time. Password should be given before the start of the C.B.T. It should be ensured that there are no repetitions of question, in different shifts.

n. The C.B.T. is to be carried out in a single day/ multiple day based on the candidate count at all centers. Deputing coordinators to test venues, transportation of man and material under full security. Evaluation of C.B.T. and short listing the candidates" branch wise and category wise, on the basis of merit of marks obtained in C.B.T.

o. To ensure security, Application number and Unique ID should be bar-coded also.

VENUE SELECTION AND SEAT ARRANGEMENT

a) Venues for C.B.T. shall be finalized in consultation with U.P. JAL NIGAM. It should be well connected to railway station and bus stand by local means of public transport. For easy handling there should not be more than 1000 examinees in one centre. There should be one invigilator over 30 candidates, two exam coordinators, sufficient waterman and guards required to hold the examination in safe and secure environment. Agency will provide list of Official (in charge of conducting test, venue booking, to & fro transportation of material etc. for each centre venue).

b) Neat and clean secured place with proper seating arrangement, light & fan, fresh drinking water, well ventilated, first aid box and other basic amenities.

c) Safe and secure place adequately guarded for keeping the examination papers and other related material.

d) The seating plan be such that no two candidates with same set of paper and discipline sit side by side.

e) Seating plan will be displayed outside the venue place only one hour before the starting time of examination.

f) Copy of the booking agreement with the centre should be submitted to U.P. Jal Nigam in advance so that it may be checked beforehand and local administrative authorities are informed in advance.

ATTENDANCE SHEET:

a) Classroom wise photo, thumb impression and signature attendance sheet for all venues in duplicate.

b) Attendance sheet should indicate roll number, name and discipline, against each candidate.

c) Biometric impression.

DESIGN AND DEVELOPMENT OF QUESTION PAPER:-

a) The agency will prepare multiple choice objective type question papers in bilingual language (English - Hindi).

b) The question paper shall comprise of concerned numerical and logical reasoning questions (25%), general knowledge (25%) and General Hindi (50%).

c) Question paper for each discipline should have a balanced mix and match of easy (30%), average (50%) and tough (20%) questions.

d) Each set of question paper to have same questions, but randomized question wise, should be ensured in one shift.

PRE-EXAMINATION STAGE ACTIVITIES:-

a). Online display of advertisement, instructions, and other information related to examination, from time to time.

b). Online demo examination with sample questions (mock test).

c). Online registration with facilities to upload scanned photograph, thumb impression and signature in the application form and uploading of scanned documents (such as proof of DOB Education Caste Dependant of freedom fighter/Ex-serviceman/Physically Handicap certificate etc. as applicable to each candidate) as annexure. Candidate Validation and screening at the time registration, as per rules and requirements specified.

d). Online fee collection through ATM cum Debit/Credit Card and Net-banking.

e). Off-line fee collection through Bank Challan. (Challan form to be downloaded).

f). After validation of payment and final submission of application form, unique ID to be generated as per requirement.

g). Generation of Admit card (with photo, signature, centre address and other details), facility of downloading printing of Admit card, Instructions Acknowledgement Declaration form, if required and dispatching through E-mail.

h). Online monitoring and generation of desired report.

i) Question bank development and generation of different sets of question paper in randomized order.

j) Payment reconciliation and validation.

k) No change in application entry to be allowed after the final submission of application form.

l) Identification of centers on various infrastructural, operational and security parameters.

m) Provisioning of 5 seats helpdesk in Lucknow for resolving candidate's queries. Helpdesk should have Toll free, Tollen Number with email support.

EXAMINATION STAGE ACTIVITIES:-

a) Conducting Branch discipline-specific (R.G.C./ Stenographer), multiple-choice online examination in different cities across the State.

b) At least 10% Buffer nodes to be available at each center of examination so that a candidate does not have any loss of time, in case of any problem.

c) System generated random seat arrangement such that no two candidates side by side have same set of paper.

d) Manual attendance sheet with photo, thumb impression and signature.

e) Randomized questions in each set, delivery in bilingual language (English/Hindi) for each discipline.

f) Secured data transmission between exam centers and central server. Provision of primary and secondary server at each center.

g) Event record of question paper loading at central server, encrypted paper downloading at centre server, de-cryption time, password entry time and data transmission time from centre to main central server, is to be provided city-wise and center-wise.

h) The candidate can only login 15 min. before the scheduled time using the registration and unique ID for Instructions. But the actual set of question paper should open and close strictly at scheduled time only. The clock of the server installed at the center should be in-sync with the central server of the Agency.

i) Facility for navigation among the questions.

j) Digital clock and photograph of the candidate should be displayed at the right corner of the display unit.

k) To address the queries of candidates regarding system operation.

l) Examination proctoring.

POST-EXAMINATION STAGE ACTIVITIES:-

a) Preparing merit list category wise, post wise in U.P. Jal Nigam. The templates for the same would be provided by UP Jal Nigam,

b) Other lists as per requirement of the U.P. JAL NIGAM.

c) Agency will scrutinize the application forms of the candidates who qualify the C.B.T. and shortlisted for type test post wise and category wise, with the scanned certificate uploaded during the registration by the candidate. U.P. JAL NIGAM may authorize anyone to check the system any time. However confidentiality is to be maintained at all levels.

d) Disclosure of any record/marks/merit/status before the declaration of final result will invite cancellation of the Contract Agreement and other administrative action as deemed fit by the U.P. JAL NIGAM.

e) Answer key will be displayed for 07 (seven) days after Test or as instructed by UP Jal Nigam Objections Queries

received online should be attended and remedial action to be taken.

f) Provision of e-call letter for the next stage to candidates who qualify the C.B.T, but the number of candidates called should not exceed 10 times as per instructions from UP Jal Nigam, the vacancy in each category post on merit basis. The above number may increase if, several candidates secure same marks as that of last shortlisted candidate, will also be called for the type test.

g) Conducting interview (if any) at the venue to be provided by the U. P. JAL NIGAM at Lucknow only.

h) Subject Expert from reputed college, should be invited, and form a part of the panel constituted for conducting the interview. The identity of the experts should not be disclosed. All expenses such as Remunerations, Boarding & Lodging, Transportation of Subject experts to Interview venue and other facilities at the venue will be provided by the UP Jal Nigam.

Proprietary Rights:

All the rights, title and interests in and to the Agency's Application System, Services Environment and any other material used by Agency in the provision of the Services shall exclusively belong to Agency or its licensors ("Aptech Limited Proprietary Material"). Any and all Intellectual Property Rights with respect to the Services and the Aptech Limited Proprietary Material and all modifications, improvements, enhancements, or derivative works made thereto, shall always belong to Agency or its licensors and U.P. Jal Nigam shall not be entitled to claim any rights therein. All rights, title and interests in the U.P. Jal Nigam Data shall always remain with UP Jal Nigam. However, with prior written permission of M.D. UP. Jal Nigam, the agency shall have the right to use U.P. Jal Nigam's Data only for support, testing and enhancement during the period of the Agreement. U.P. Jal Nigam acknowledges that the provision of the Services hereunder by Agency shall be on a non-exclusive basis and Agency shall be free at all times to provide the services or perform obligations same or similar to the Services and obligations envisaged hereunder to any of its other clients, either existing or future, and nothing herein shall preclude Agency from providing such services or performing such obligations to its other clients.

Liability:

Neither Party shall be liable to the other for any special, indirect, incidental, consequential (including loss of revenue, data and or profit), exemplary or punitive damages, whether in contract, tort or other theories of law, even if the Party has been advised of the possibility of such damages. The total cumulative liability of either party under this Agreement shall not exceed in aggregate the contracted amount payable to the Agency by the U P. Jal Nigam for the Service that gives rise to such liability during the Agreement period. Aptech Limited shall not be held liable for any delay or failure in its obligations, if and to the extent such delay or failure has resulted from a delay or failure by or on behalf of U.P. Jal Nigam to perform any of Agency's obligations. In such event, Agency shall be (a) allowed additional time as may be required to perform its obligations, and (b) entitled to charge the U.P. Jal Nigam for additional costs incurred, if any, as may be mutually agreed upon between the Parties.

Representation and Warranties

Aptech Limited warrants that the Services will be provided in a skillful and workman like manner and in conformity with the scope prescribed in the Agreement. Notwithstanding the aforesaid, any Services which are provided by Agency free of charge or are otherwise not chargeable shall be provided on an 'AS IS' basis without any warranties whatsoever. Each Party represents, warrants and covenants to the other that (i) it is duly organized and validly existing and in good standing under the laws of the state of its incorporation or formation; (ii) it has the full right and authority to enter into and that the agreement constitutes a legal, valid and binding obligation; and (iii) its execution, delivery and performance of this Agreement does not and will not conflict with, or constitute a breach or default under, its charter of organization, or any contract or other instrument to which it is a party. EXCEPT AS SET FORTH IN THIS CLAUSE. Aptech Limited MAKES NO WARRANTIES TO U.P. Jal Nigam, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICES OR DELIVERABLES PROVIDED HEREUNDER OR UNDER SCOPE OF WORK. INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED BY AGENCY.

Confidential Information:

Each Party (the "Receiving Party") acknowledges and agrees to maintain the confidentiality of Confidential Information (as hereafter defined) provided by the other Party.

"Confidential Information" shall mean and include all documents. Courseware/ Training/ Testing/ Assessment Material/ Standard Operating Procedures. Question Bank, Business strategies, pricing lists, information and services catalogues, other products information, and any such demand estimates/ projections/ Promotional Inventory Schemes/ Schemes for the services/ Transaction and Contact Data of Customer and Employees/ Sales Data/ communication/ and such other information provided directly or indirectly and developed by the parties in connection with the execution of this Agreement."

22. It is also pertinent here to reproduce the data retention policy dated 21st January, 2015 of M/s Aptech Ltd as the same was in force at the time of above agreement:

“DATA RETENTION POLICY

Version	Date	Description	Prepared by	Approved by
1.0	21 st Jan, 2015	Data Retention and Backup Policy	Roman Fernandis	Rajiv Bhatnagar

1. The critical information shall be protected by suitable and adequate backup system to ensure that all the essential information can be recovered during a disaster or media failure.
2. Backup tasks shall be automated, wherever it is possible.
3. **Automated audit trails shall be generated for the backup activity, wherever it is possible and exceptions shall be reported to the information owner.**
4. Selection of backup media shall take following into considerations -
 - √ criticality of the data to be stored;
 - √ media shelf life, rotation, etc.;
 - √ Ease of usage.
5. A record of the storage of backups (onsite and offsite) shall be maintained in **Backup Register (ISMS-L4-FRM-13)** and shall contain -

- ✓ date & time of start & completion of backup;
- ✓ media health checks;
- ✓ exceptions / errors;
- ✓ backup status (successful / unsuccessful);
- ✓ backup size;

6. Backup shall be tested for readability and restorability at regular intervals as per the **Backup & Restoration Plan (ISMS-L4-CHK-02)**.

a. Backup & Restoration Plan shall be established to define the schedule / requirement for backup of information, software and systems.

b. Backup & Restoration Plan shall be prepared by the respective information assets owner (operating systems, databases, applications, network components etc), taking into consideration its importance to the Company's business, legal requirements and technology available.

7. The backup media shall be identified and labeled as per the **Asset Management Process (ISMS-L3-OCP-03)**.

8. The backup media shall be destroyed /disposed-off in accordance to **Media Handling Policy (ISMS-L2-POL-14)**.

9. Backup shall be scheduled before and after the execution of critical points in time such as end of day, end of week, end of month.

10. Data Retention Policy: All the data shall be stored at TIER IV data center and retained as per the below mentioned guidelines:

Type of Data Center	TIER IV Data Center
Location of Data Center	Mumbai
Duration of data storage at TIER IV DC	30 Days
Till Result Processing	Local DB Storage restoration server
Location of Local DB Storage restoration server	Mumbai RO Office
Data storage location post result processing	Secondary Data Center
Location of Secondary Data Center	Noida
Duration of data storage at Secondary Data Center	6 Months
More than 6 month’s old data	Data shall be archived post 6 months at storage media (NAS/

	External media)
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11. Whenever there is a change in the system environment (such as application, operating system etc.), it should be ensured that the data backup is compatible with the new system environment.

12. **Safety & Security:**Backup is as critical as original information, thus adequate security (both logical as well as physical) controls shall be enforced to-

- a. Ensure limited access to backup data;
- b. Backups shall be stored in secure location(s). Backup media shall be stored in an off-site location to prevent the destruction of both the main source and the backup source;
- c. Backup media shall be stored in a steel almirah/cabinet under lock & key. For hardcopy (paper) format:
 - i. Data / information such as original contracts, licenses, system configuration documentation, service continuity plans & strategies, logs / registers / records etc. in paper format are essential to business working. Suitable backup mechanism of such data / information in paper shall be designed and applied.
 - ii. Originals shall be kept in fire-safe cabinet/almirah under lock and key.
 - iii. **For data/information needed to be referred frequently, scanned copies or photocopies of original shall be used. This will ensure integrity of paper is not compromised due to mishandling / environmental deterioration.**
- d. Inventory of media shall be maintained for-
 - i. The media used for backups
 - ii. Unused media (blank)”

(emphasis added)

23. It is also an admitted fact that the position on record was until the appointment orders were issued, neither the agency published the master answer key, the candidates’ response sheet, inviting objections, nor even the corporation insisted upon the agency to do the same. It appears that after the corporation received notices under the Right to Information Act, 2005 about the CBT results then it required the M/S Aptech Ltd. to publish online the master answer key.

24. Once the CBT result was declared, it was provided to the Jal Nigam to hold/ conduct interview by constituting the Board and same was done accordingly. After the interview was over, the agency was to prepare the final select list adding the marks of the CBT result of the candidates with marks obtained in the interview.
25. Thus on facts, it is an admitted position that the entire examination was conducted through outsourcing, to which the corporation fully trusted at least till the appointment order were issued and candidates were given joining.
26. It is with the publication of master answer key that objections to certain questions asked in the question papers and answer to certain questions provided in master answer key were raised and this resulted in the controversy leading to the petitions being filed over here and at Allahabad and its Lucknow Bench by some of candidates, according to whom they were wrongly ousted from merit list of C.B.T.
27. The records further reveal that about 53 challenges were made in respect of the Junior Engineers and 9 questions were challenged in the category of Routine Grade Clerk. In respect of the 53 challenges in the question papers made for Junior Engineer CBT, 6 questions were found incorrect/ wrong and 18 answers were also found incorrect/ wrong out of total 400. In respect of Assistant Engineers question paper of CBT, 7 questions were found to be incorrect/ wrong and 20 answers were found to be incorrect/ wrong out of 320 questions in 4 set of papers. In the case of Routine Grade Clerk only 7 answers were found to be incorrect/ wrong out of total 720 questions asked for in different set up of papers. The revised C.B.T.

results accordingly were asked by the corporation from M/s Aptech Ltd. on 25th July, 2017 and 30th July, 2017 and 14th August, 2017 respectively and the agency handed over it to the Jal Nigam on 8th August, 2017, 19th August and 31st August, 2017 in respect of the Routine Grade Clerk, Junior Engineer and Assistant Engineer respectively.

28. With the litigation started at Allahabad High Court and its Lucknow Bench, an issue arose about the correctness of the CBT results published by M/s Aptech Ltd. on the basis of which the candidates were called for interview. Interlocutory orders were passed asking the corporation to do corrections and even orders were passed by the Lucknow Bench to the extent that if need be the question answers may be got verified from institutions like IITs as per the statement made on behalf of the corporation. Afterall when the agency, of course, with concurrence of corporation published the revised result, those who were not called for interview due to alleged irregularity were identified as 479 in number in category of Junior Engineer (Civil & Electrical/ Mechanical) and hence became entitled to be interviewed. This led the corporation to form a *prima facie* view at the initial stage to the effect that there were some serious irregularities committed at the end of the agency in conducting the CBT and preparing its result, which needed investigation and accordingly it held two in-house inquiries by the Chief Engineer (Nagar), who submitted his report on 29th May, 2017 and another report of Chief Engineer Level- II submitted on 7th July, 2017.
29. Taking notice of the findings arrived at in the inquiry reports Corporation decided to annul the entire selection and

appointments that had already taken place, vide order on 11th August, 2017 passed by the Chief Engineer. Those who were selected and appointed became aggrieved for the reason that order though was having adverse civil consequences and yet no notice much less a show cause notice was given to any of them and if the order was sustained, it would lead to a serious miscarriage of justice. Accordingly, writ petitions were filed before this Court. Writ petition of Ajit Singh Patel and 10 others v. State of U.P. and 3 others being Writ – A No.- 37143 of 2017 came to be disposed of by this Court along with other connected matters by a detailed judgment and order dated 28th November, 2017.

30. The order impugned was set aside basically on the ground that no exercise was undertaken to distinguish tainted from untainted candidates and had this exercise been undertaken, each individual petitioner would have been entitled to notice to offer at least his/ her explanation. The liberty was given to the respondents to pass reasoned and speaking order afresh after providing opportunity of hearing to the petitioners and other affected parties on the basis of observations made in the said judgment.
31. Since Corporation had raised pleas to be valid enough in its wisdom, to the effect that neither the posts were sanctioned, nor proper procedures were followed, inasmuch as, the results and appointment orders were issued just a day or two before the notification of the model code of conduct in view of the scheduled Legislative Assembly elections in the State, it questioned the order of Division Bench of this Court before the Supreme Court by filing leave petitions, being SLP (C) No.

5410-5419 of 2018. The only plea taken before the Supreme Court was that the High Court had failed to give opportunity to the Corporation to rework on the merit list in view of the incorrect questions and answers coupled with the argument that factual matrix of the case not required any individual notice.

32. Supreme Court taking notice of the above arguments observed that the plea of reworking of the merit list could not be a ground to set aside the order because this opportunity was always there and the doors of Court were not closed, if the respondents so advised, to approach the High Court for this liberty. It, however, left it to the discretion of the High Court to entertain this plea on its own merit, if raised. The SLP got disposed of by a very short order of the Supreme Court passed on 16.03.2018 without interfering with the findings returned by the Division Bench of this Court under the order assailed before the Supreme Court. The order of the Supreme Court dated 16.03.2018 is reproduced hereunder:

“Mr. Rakesh Dwivedi, learned senior counsel appearing for the petitioners, points out that the petitioners having found out that there were defective questions and incorrect answer keys, the High Court should have permitted the petitioners to re-work the merit list. He submitted that the High Court has gone wrong in insisting for an individual notice in the factual matrix of this case. In this regard he has also placed reliance on a judgment of this Court in Vikas Pratap Singh and Others v. State of Chhattisgarh and Others, reported in (2013) 14 SCC 494.

Mr. Mukul Rohatgi, learned senior counsel appearing for the respondent(s), however, points out that whether the questions were defective or key answers were incorrect are disputed question and, therefore, liberty should be granted to the respondents to participate in the inquiry. He further submits that the decision of this Court referred to by the learned

senior counsel for the petitioners may not apply to the facts of this case.

Be that as it may, having gone through the impugned judgment, we do not find that the door is yet closed. It is for the petitioners, if they are so advised, to approach the High Court itself for a liberty to re-work the answer sheets on the basis of the corrections, in case the High Court is also of the view that the corrections need to be made.

The special leave petitions are, accordingly, disposed of.

Pending application(s), if any, shall stand disposed of.”

33. Resultantly, Corporation approached the High Court again by filing a review petition but the Division Bench declined to entertain the same on merits. The bench observed that the respondents had been granted liberty to pass fresh order after providing opportunity to the petitioners and other effected parties following the exercise of segregation between tainted and untainted candidates but the Corporation failed to do the same. The Court observed that while passing the order fresh, the Corporation was free to look into every aspect of the matter and as such no permission was required from the Court. The Court thus dismissed the review petition on merits finding there to be no error apparent on the face of judgment which may require exercise of power of review.
34. At this stage it is also worth noticing that some complaint was made by an ex Executive Engineer of U.P. Jal Nigam to the State Government on 22.03.2017 and the State Government on 13.07.2017 referred the matter to the Special Investigation Team (SIT). The SIT submitted a preliminary investigation report on 18.03.2018 finding *prima facie* case, it appears against the officials of the Corporation and officials of the outsourcing agency M/s. Aptech Limited and resultantly first information report (FIR) was lodged by it on 25.04.2018 with

the approval of the preliminary investigation report by the Principal Secretary (Home), Government of U.P.

35. The Corporation still not satisfied with the judgment, thought it not appropriate to go in for exercise as was mandated in the order of the High Court dated 28.11.2017 affirmed in judgment on review petition order, but to assail the judgment before the Supreme Court again and accordingly filed SLP which later on was converted into Civil Appeal No. 11017 to 11018 of 2018.
36. This time when the matter came up before the Court on 20.08.2018 the Court put a query to the appellants now respondents herein in these above petitions, about status of inquiry or exercise, if any, undertaken to identify tainted candidates so as to segregate them from untainted candidates. The Court required the appellant to furnish status on affidavit. The Corporation since had yet not taken any such exercise now wrote to the Indian Institute of Technology, Kanpur and Indian Institute of Information Technology, Allahabad on 31.08.2020 to furnish information *qua* the possibility to segregate tainted from untainted candidates amongst selected and appointed against posts of Assistant Engineers and pleaded urgency, it appears in view of the fact that 20.09.2018 was fixed in the matter before the Supreme Court.
37. Interestingly, this time the information was sought only in the matter of selection of Assistant Engineers from both the institutes and the information came to be furnished by IIIT, Allahabad and by IIT, Kanpur.
38. During the investigation, the SIT not only looked into the statements so recorded of those officials of Corporation,

members of interview board and officials of M/s. Aptech Limited who were in helm of affairs as far as the selection process was concerned but also tried to collect material evidence so as to arrive at a definite conclusion as to alleged irregularities committed in conducting CBT.

39. As a sequel to the above, the agency obtained order from a Judicial Magistrate to seize the computer hard disks that were stationed in the local environment office of M/s. Aptech at Mumbai and this was done on the basis of statements of the officials of Aptech Limited recorded by SIT. Investigating team arrived at Mumbai and seized the hard disks and prepared seizure memo in three dates i.e. 10.09.2018, 11.09.2018 and 12.09.2018. They obtained also certificates of officials Mr. Roman Fernandes and Mr. Neeraj Mallik *qua factum* of seizure of hard disks from the premises of M/s. Aptech Limited and sent the same to Central Forensic Science Laboratory, Hyderabad on 23.10.2018. Four times reports were sought by the SIT from CFSL and ultimately it relied upon last two reports dated 11.12.2019 and 22.01.2020. SIT also looked into the report submitted by Aptech and ultimately arrived at a conclusion that there were sufficient evidence to indicate those named in the FIR to have committed criminal offence under Sections 409, 420, 201, 467, 468, 471, 123 IPC read with Section 31-A of Prevention of Corruption Act and Section 66 of Information and Technology Act in connection with the FIR in case crime no. 2 of 2018 and the charge sheets filed are numbered as 02 of 2021, 2-A of 2021 and 2-B of 2021 against the 8, 4 and 3 persons respectively.

40. Upon the charge sheet so filed, the Court has already taken cognizance in various dates like 24.05.2021, 12.08.2021 and 20.12.2021 but the Court is informed of a fact that charges have yet not been framed. In respect of one Bhavesh Jain, an officer of M/s. Aptech the Lucknow Bench of this Court has already quashed the charge sheet which of course is a subject matter of challenge before the Supreme Court in a pending SLP.
41. In the second round of litigation before the Supreme Court all those issues raised before the Division Bench of this Court in the first round of litigation resulting in the judgment dated 28.11.2017 affirmed in SLP by the judgment of Supreme Court dated 16.03.2018, were re-agitated during hearing before the Supreme Court at the strength of reports of experts of Institutes of Technology that were available by that time. Emphasis was laid before the Supreme Court upon these reports obtained from IIT, Kanpur and IIIT, Allahabad to take a plea that since original data was deleted from the primary source cloud server of the CtrlS the authenticity of the data downloaded by the Aptech and kept in local environment was questionable, inasmuch as, the report submitted by the CFSL, Hyderabad, confirmed this position of tampering with the data by citing examples of those candidates who had been shown in the data retrieved from the hard disks to have secured lesser marks in CBT. The inflated marks actually provided to them to facilitate their participation in interview to offer them appointments. A plea was also taken before the Supreme Court that M/s. Aptech Limited itself had acknowledged the fact that there has been change in the final results may be on the ground of incorrect/ wrong questions and answers being identified but in the total

circumspect of the events that had led the second round of litigation before the Supreme Court, there left no possibility in sight to segregate tainted from untainted.

42. Thus, plea taken before the Supreme Court was that in matters where the selection process was too vitiated to be reckoned with, the individual notices were not required in view of the settled legal position.
43. Considering the arguments advanced on behalf of the rival parties before Supreme Court, the Court held the Corporation to be in serious error in not complying with the directives of the High Court in its first judgment dated 28.11.2017. The Court held that it was mandatory for the Corporation to have first complied with the order in terms of the observations made in the said judgment but at the same it may take into consideration the reports including the previous reports and such other relevant material and documents that were available to it. However, the Court clarified that it was not dilating in any manner upon the efficacy of the opinions rendered by the Professors of the Institutes of Technology. Supreme Court, therefore, in its second order passed on 15.11.2018 again declined to interfere or dilute its earlier position as was in its earlier order dated 16.03.2018 and commanded the Corporation to do the needful in the matter in letter and spirit of the previous judgment of Division Bench of the High Court. Relevant part of the judgment is reproduced:

“13. Suffice it to observe that while disposing of the Special Leave Petition filed by the appellants on the earlier occasion vide order dated 16th March, 2018, this Court has neither disturbed the conclusion reached by the High Court in its order dated 28th November, 2017 nor granted liberty to the appellants to challenge the said conclusion in the review

application or for that matter, by way of a fresh Special Leave Petition. The relevant conclusion of the High Court in its order dated 28th November, 2017, reads thus:

“In view of the above, we are of the considered opinion that the impugned order dated 11.8.2017 has been passed in violation of principles of natural justice without issuing notice and without affording opportunity of hearing to the petitioners, no exercise was undertaken to distinguish the case of tainted and non-tainted candidates to arrive at the conclusion while passing the impugned order as such the impugned order dated 11.8.2017 is not sustainable and is liable to be set aside.”

14. The limited plea taken before this Court as noted in the first paragraph of order dated 16th March, 2018 was to allow the appellants to re-work the question and answer sheets and revise the merit list and issue fresh, reasoned order after providing opportunity of hearing to the affected candidates. That option has been kept open. It is for the appellants to pursue the same. In other words, the appellants must, in the first place, act upon the decision of the High Court dated 28th November, 2017 whereby the order passed by the Chief Engineer dated 11th August 2017 has been quashed and set aside. The appellants may then proceed in the matter in accordance with law by passing a fresh, reasoned order. Indeed, while doing so, the appellants may take into consideration the previous inquiry reports as also all other relevant material/documents which have become available to them. We make it clear that we have not dilated on the efficacy of the opinion given by the experts of “IIT Allahabad and IIT Kanpur”.

15. In view of the above, the challenge to the impugned judgment dated 28th November, 2017 and 25th July, 2018 must fail but with a clarification that the competent authority of Nigam is free to pass a fresh, reasoned order in accordance with law.

16. We may not be understood to have expressed any opinion either way on the merits of the course of action open to the appellants against the respondents including against the other appointees under the same selection process. All questions in that behalf are left open.

17. The appeals along with all the interlocutory applications are disposed of in the above terms. No order as to costs.”

44. From this direction issued in the second judgment by the Supreme Court, the Corporation drew an inference that it was open for it to consider entire issue afresh and based upon its understanding of facts and the findings in inquiry reports including SIT report, it again proceeded to hold that it was not possible to draw any line between the tainted candidates and untainted candidates for the fraud and conspiracy lying in the root of selection itself. Thus, it concluded that it was not possible to save the selection in support of those candidates who had already been offered appointment and given joining. According to the orders so passed on 20.03.2020, though separately passed but identically framed in respect of Assistant Engineers, Junior Engineers and Routine Grade Clerks, it was in order to ensure public trust maintained in process of selection in public employment as to its sanctity that it became imperative to annul the entire selection process and cancel the appointments. It is these orders that are challenged before this Court in this bunch of petitions filed by 56 Assistant Engineers of different trades, 367 Junior Engineers of different trades and 26 Routine Grade Clerks.
45. I have been informed that identical set of petitions have also been filed by some other candidates who were aggrieved by the orders before Lucknow Bench of this Court at Lucknow.
46. It is again pertinent to mention here at this stage that when the order was passed on 02.03.2020 there was already a contempt petition pending before the Supreme Court being Contempt Petition (Civil) No. 625-26 of 2019 regarding act and conduct of the respondents in not giving joining to those already selected and appointed employees in the three categories

pursuant to the judgment of Division Bench of this Court dated 28.11.2017, the Assistant Engineers also filed writ petition before the Supreme Court questioning the order dated 02.03.2020. It appears that since issue of segregation of tainted and untainted candidate was yet not resolved and many facts had intervened due to various reports and the question as to whether segregation was possible or not was yet to be decided and that in the meanwhile the respondents had taken decision that it was not possible, the Court did not find *prima facie* case for contempt to have been made out. However, on the question of legality of the order, since matter was already engaging attention of this Court in various petitions filed here before this Court, Supreme Court directed those writ petitioners in the category of Assistant Engineers to also approach the High Court to get their matter also adjudicated with pending petitions. Thus, the Court disposed of the matter on 03.06.2021 asking the petitioners to approach the High Court and dismissed the contempt petitions pending before it discharging notices. Relevant part of the order is reproduced as under:

66. The Court had set aside the termination order dated 11.8.2017 issued by the respondents, solely on the ground that it was in violation of principles of natural justice. At the same time, liberty was given to the respondents to pass a fresh order in accordance with law including by undertaking exercise of segregating the tainted from the untainted candidates. Indeed, the Court expected that before taking any precipitative action against the petitioners, the respondents must afford opportunity of hearing to them. This observation is contextual. It would come into play dependent upon the opinion eventually formed by respondents after due consideration of the material collated by them to distinguish the tainted and untainted candidates, was possible or otherwise. Had the respondents concluded that it was possible to segregate tainted from untainted candidates, they would have been obliged to comply with the directions given by the High Court and restated by this Court in order dated 15.11.2018, to afford prior opportunity of hearing to the

petitioners and similarly placed persons before passing fresh, reasoned order. However, from the subject termination order dated 2.3.2020, which is a speaking order, it is crystal clear that after due enquiry and taking into consideration all aspects of the matter, in particular the enquiry reports and the opinion of the experts including final report of SIT, the respondents were of the considered opinion that it was not possible to segregate tainted from the untainted candidates for reasons recorded in that order. We are not inclined to go into the correctness of the said reasons, because it is subject matter of challenge in writ petitions pending before the High Court (as pointed out in Annexure R29 of the Supplementary Affidavit), filed not only by Assistant Engineers, but also by Junior Engineers, Routine Grade Clerks and others.

67. We would, therefore, confine our analysis as to whether the respondents were justified in passing subject termination order dated 2.3.2020 without giving prior opportunity of hearing to the petitioners. In light of the conclusion reached by the respondents in the stated order dated 2.3.2020 — that it was not possible to segregate the tainted from the untainted candidates, in law, it must follow that the respondents could annul the entire selection process and pass the impugned order without giving individual notices to the petitioners and similarly placed persons. We are fortified in taking this view in terms of the exposition in O. Chakradhar 68 and the subsequent decisions of this Court in Joginder Pal⁶⁹, Veerendra Kumar Gautam 70 and Vikas Pratap Singh & Ors. v. State of Chhattisgarh & Ors. adverted to in paragraph 12 of the judgment dated 15.11.2018 of this Court while disposing of earlier appeals between the parties.

68. In other words, since the respondents have concluded that it was not possible to segregate tainted from the untainted candidates because of the reasons noted in the termination order dated 2.3.2020, in law, there was nothing wrong in respondents issuing the said termination order without affording prior opportunity to the petitioners and similarly placed persons. Had it been a case of even tittle of possibility in segregating the tainted from the untainted candidates, which exercise the respondents were permitted to engage in, in terms of the decision of this Court dated 15.11.2018, it would have been a different matter. In that case alone, the petitioners and similarly placed persons could complain of wilful disobedience of the order passed by this Court dated 15.11.2018.

69. *Having said thus, we must conclude that even the second set of contempt petitions in reference to the subject termination order dated 2.3.2020 being in violation of direction given by this Court to afford opportunity to the petitioners vide order dated 15.11.2018, must fail.*

70. *Considering the fact that multiple writ petitions have been filed by different groups of affected persons before the High Court being similarly placed persons against the subject termination order dated 2.3.2020 and as the same are pending, as aforesaid, to obviate even slightest of prejudice being caused to the petitioners in those cases, who are not before us, we refrain from examining the arguments regarding the justness and validity of the stated order and leave all other contentions open to the parties to be pursued before the High Court in pending proceedings. Consequently, we would dispose of the transfer petition, as well as, the writ petition by relegating the petitioners therein including the applicants in intervention/ impleadment applications, to pursue their grievance in the form of writ petitions before the High Court, which could be heard by the High Court analogously along with all other pending writ petitions involving overlapping issues to obviate any inconsistency and conflicting findings regarding the same subject matter in any manner. Indeed, in the event the High Court agrees with the conclusion recorded by the respondents in the stated order dated 2.3.2020, that it is not possible to segregate the tainted from the untainted candidates, the High Court would be bound by the observations made by us in this judgment. For, in that eventuality, in law, it would not be necessary for the respondents to give prior hearing or afford opportunity to the petitioners and similarly placed persons before annulling the entire selection process and issuing the termination order under challenge.*

71. *Accordingly, while discharging the show cause notices issued in the concerned contempt petitions and disposing of all the contempt petitions, we deem it appropriate to relegate the petitioners in the transfer petition and the writ petition filed in this Court, before the High Court to pursue their remedy under Article 226 of the Constitution to assail the order dated 2.3.2020 with further direction that all petitions involving overlapping issues and referred to in Annexure R29 of the Supplementary Affidavit or any other writ petition pending or to be filed, list whereof be furnished by the parties to the High Court, for being heard analogously. We request the High Court to expeditiously dispose of the writ petitions, leaving all contentions other than decided in this*

judgment, open to the respective parties to be raised before the High Court. The same be decided on its own merits as per law.

72. *In view of the above, we pass the following order:*

(1) Show cause notices issued in the respective contempt petitions stand discharged. Contempt petitions are dismissed;

(2) The transfer petition stands rejected, as a result of which the writ petitions referred to therein will now proceed before the High Court in terms of this judgment;

(3) The writ petition is disposed of with liberty to the petitioners therein including applicants in intervention/impleadment applications to pursue their remedy before the High Court by way of writ petition under Article 226 of the Constitution, if so advised. That writ petition be decided on its own merits in accordance with law keeping in mind the observations made in this judgment along with other pending or fresh writ petitions involving similar issues; and

(4) We request the High Court to take up all writ petitions involving overlapping issues together for analogous hearing expeditiously. We leave all contentions open except the issues decided in this judgment.

73. *There shall be no order as to costs. All pending interlocutory applications stand disposed of in terms of this judgment."*

47. Before Mr. Khare, learned Senior Advocate could have led the arguments for petitioners on merits, Mr. Goyal, learned Senior Advocate appearing for the Corporation put a point that in matters of Assistant Engineers, Junior Engineers and that of Routine Grade Clerks should all be separately decided as they were separate writ petitions filed by these category of employees and they involved different set of facts.

48. Meeting the above submission, Mr. Khare took the plea that since reasons assigned in all the three impugned orders are identical touching the selection process which was undertaken

by the same outsourced agency M/s. Aptech Limited and the same set of data has been analysed, may be by the CFSL but inquiries and investigations have been held collectively in respect of entire selection process, the legal issues that arise for consideration of this Court are also identical. It was also pleaded before the Court that previous round of litigation either before the High Court or Supreme Court, the controversy remained the same.

49. Upon a pointed query, Mr. Goyal could not dispute these above facts and hence matters are proceeded with to be decided in respect of all the three categories of employees together.

Arguments raised for petitioners

50. Assailing the order impugned in this bunch of writ petitions Sri Ashok Khare, learned Senior Advocate raised following arguments:

(i) There was absolutely no genuine exercise undertaken by the respondent Corporation so as to explore possibilities to segregate tainted candidates from untainted candidates as was mandated under the first order of the Division Bench of the High Court dated 28.11.2017 affirmed by Supreme Court twice under its judgment and orders dated 16.03.2018 and 15.11.2018 and therefore, findings arrived at under the orders impugned dated 02.03.2020 were based upon no such material which may justify the decision to annul the entire selection and appointments in question.

(ii) There was no forensic examination of the computer based online examination data collected, within the legal framework of the Information Technology Act, 2000 by the agencies

recognized and approved by an appropriate government and any other opinion obtained may be from Professors or Associate Professors of the Institutes of Technology like in the present case IIT, Kanpur and IIT, Allahabad, could not be taken as conclusive in law for lack of requisite expertise and requisite authority in law to conduct data verification forensically.

(iii) The opinion reports obtained from the two Institutes of Technology was merely speculative and conjectural in nature and so were not to be treated as a material cogent to form a definite view that sanctity of CBT was lost. Still further, opinions were given on wrong assumptions that courts had accepted the stand of U.P. Jal Nigam that over all selection process was compromised. Thus, reports are not worth reliance.

(iv) The investigation report submitted by the SIT dated 22.01.2020 is a mere police report as contemplated under Section 173(2) erstwhile Cr.P.C., 1973 based upon the statements recorded under Section 161 Cr.P.C. that are not admissible in law under the Indian Evidence Act, 1872 and therefore, the authority absolutely mislead itself in placing reliance upon such police report to arrive at a conclusion that selection process in question was so much compromised that only option left was to annul the entire selection with consequential cancellation of all the appointments. Even the reports submitted by CFSL is not worth reliance absolutely for want of authenticity of data provided to it for verification by the SIT, and yet the findings were arrived at by SIT as per the reports of CFSL dated 11.12.2019 and 22.01.2020. However,

he argued that reports at least got established that data verification was possible and the endeavour of the Corporation ought to have been to provide any authorized forensic expert access to it to get some authentic and lawfully admissible report. In other words as per the arguments raised, the segregation between tainted and untainted candidates was very much possible, provided of course, the efforts were genuinely and sincerely made in a correct direction.

(v) There being no complaint as to the conduct of CBT and no material having surfaced out in the SIT report as to the involvement of any constituent member of the Interview Board or any of the selected candidates for the matter, in any kind of corrupt practice like bribery, nepotism and favouritism, there was no issue as to the outsource agency in any manner manipulating the original CBT data and the tainted and untainted words and expressions were contextual to the challenge laid to the certain questions in question paper and answers to certain questions provided in the master answer key. However, with the SIT report coming after the judgment of the Supreme Court and the two opinions already obtained from the Institutes of Technology, the entire controversy took a somersault and instead exploring for an opportunity of reworking the merit list *qua* CBT, Corporation took the view wholly erroneously that entire selection was vitiated for gross irregularities.

(vi) The Corporation could not have gone into questions as to the availability of vacancies for want of requisite sanction, nor could have gone into the question of there being any selection conducted in hot haste to pronounce the results and give

appointments, just a day or two before the notification of model code of conduct on 04.01.2017, because the Division Bench of this Court had in its very first judgment dated 28.11.2017 had rejected the arguments and the said judgment came to be affirmed in SLPs by Supreme Court twice.

51. In support of his first argument, Mr. Khare submitted that in the judgment of Division Bench dated 28.11.2017 it had been very specifically held that *“no exercise was undertaken to distinguish the case of tainted and non tainted candidates to arrive at a conclusion while passing the order impugned”* and so the orders were set aside. Mr. Khare therefore, argues that this should be taken as a mandate contained in the order itself that a wholesome exercise was needed to be undertaken by the respondent Corporation to distinguish the cases of tainted from non tainted candidates. Sri Khare submits that while Special Leave Petition was preferred, the Court had declined to interfere with the order on the ground that nothing contained in the order of Division Bench may have had restrained the U.P. Jal Nigam, Lucknow to rework the merit list on the basis of the corrections brought in the CBT result, provided of course, the High Court had agreed to the same. However, the review petition filed before the Division Bench was rejected and upon second time the SLP being filed, the Court inquired from the Corporation who were appellants therein, as to what exercise was undertaken pursuant to the order of Division Bench. This order was passed while entertaining the SLP on 20.08.2018, according to Mr. Khare, indicated very well that the Supreme Court wanted an exercise to be undertaken by the respondents and it was thereafter only that the respondent Corporation proceeded to obtain opinion from the technical Institutes like

Institutes of Technology. Mr. Khare has submitted that even the letter dated 31.08.2018 written to two IITs clearly stipulated that opinion was sought for only to clarify as to whether it was possible to segregate tainted from untainted candidates and interestingly this opinion was sought by making a declaration that original data was deleted from the primary source server by the Aptech Limited. According to Mr. Khare this statement of fact was made with a deliberate intention to mislead IITs otherwise the letter would have simply asked for a fair opinion upon the data contained in CDs supplied and if need be to connect to the Aptech limited through Corporation. Mr. Khare has submitted that since Supreme Court had fixed 20.09.2018 in the SLP by which time the Corporation was to furnish the status report and since by 20.08.2018, Corporation had not undertaken any exercise, it proceeded in a hot haste to somehow get an opinion so that it might not be held guilty for non compliance of the judgment of this Court despite its affirmation by the Supreme Court, previously. Even the IITs were not given sufficient time to form a view, inasmuch as, the experts were merely Associate Professors who were entrusted with the task to exercise the material and render their opinion on the basis of data made available by the Corporation in the form of CDs.

52. Mr. Khare further submitted that the opinion was sought only in respect of the examination conducted, result prepared, *qua* vacancies of Assistant Engineers only. Mr. Khare submitted that even the data that was recovered by the SIT which was sent for examination to the CFSL was not made available to the IITs by seeking permission from the court if it was at all *custodia legis*.

53. Besides above, Mr. Khare has further argued that Aptech Limited itself has taken a stand in the counter affidavit vide its paragraph nos. 7, 8 & 9 in the matter of writ petition of Ambrish Kumar Pandey that the original data base was kept secured by the Aptech Limited. Thus, according to Mr. Khare as was mandated in the judgment of High Court affirmed by Supreme Court, it required the Corporation to have undertaken an exhaustive exercise to get the original hard disks examined by the forensic experts before furnishing any report to the Supreme Court and it would have also helped the Corporation to have confirmed opinion as to whether the data seized and recovered from Aptech agency from its local environment, was a mirror image of the original data earlier available on the primary source cloud server or not.
54. Mr. Khare has further reiterated his earlier stand that the Professors of IIT and IIITs were required to give their opinion only to the extent whether segregation was possible or not on the basis of data base provided by the Aptech Limited. Mr. Khare has submitted that manner in which letter was drafted and addressed to the IITs that original data was deleted from the cloud server, it was something like giving a clue to the experts that nothing remained to be verified about as all the data available was a secondary data. So according to Mr. Khare, there was a limited query made to the IITs which were replied and possibly no expert would have taken a different view or could have expressed different opinion as was expressed by the Associate Professors of IITs for the format of letter and accompanied material placed before them.

55. In support of his second argument, Mr. Khare has drawn the attention of the Court to the relevant provisions as contained in the Information and Technology Act, 2000 (for short IT Act) which vide its Chapter XII-A provides for examination of electronic evidence. Mr. Khare has placed emphasis upon Section 9-A of the Act that provided for the authority to specify vide notification in the Official Gazette any department, body or agency of the Central Govt. or State Govt. for examination of electronic evidence. According to Mr. Khare the Ministry of Electronics and Information Technology has already notified on 29.08.2022 agencies like Forensic Wing Lab and Defence Cyber Agency (DCA), Rajaji Marg, New Delhi as examiner of electronic evidence within India. He has submitted that under Section 45-A of the erstwhile Indian Evidence Act, 1872 and corresponding Section 39(2) of new Bhartiya Sakshya Adhiniyam, such electronic devices are admissible in law as electronic evidence and so the reports are liable to be proved by registered and approved forensic experts in a court of law proceedings. In this regard, Mr. Khare has also taken the court to the provisions framed by the Delhi High Court under its rules as to admissibility of such electronic evidence.
56. In support of his third argument Mr. Khare submitted that Associate Professor of IIIT, Allahabad in his final report clarifies that observations are subject to conditions that all documents and data shared with the undersigned had a verified provenance and responses provided by the personnel made available for interaction with the undersigned on the relevant dates.

57. He has further argued that before arriving at a conclusion the experts proceeded on an assumption that U.P. Jal Nigam believed that over all testing process had been compromised and since the Court had asked the Corporation to segregate the tainted from untainted candidates, it implied that court had accepted the assertions of U.P. Jal Nigam to the effect that over all recruitment process had been compromised. According to Mr. Khare the opinion proceeded since on these very misplaced assumptions, it easily formed a view that in the absence of any hash value and checksum information as to students' response being provided *qua* the CD given to it for verification, no definite opinion could have been expressed about the data integrity *qua* selection process. In the circumstances, the original hard disks ought to have been provided or Corporation should have organized meeting of Aptech Limited with Professors of IITs. The entire conclusion according to Mr. Khare therefore, in the reports are just speculative and conjectural and no prudent man would have any doubt about that after going through the opinions expressed by the Associate Professor of IIIT, Allahabad.
58. Mr. Khare has argued that on similar lines the IIT, Kanpur had also submitted its report and having got encouraged by these two reports obtained in respect of Assistant Engineers CBT and the selection held, the Corporation proceeded to obtain opinion *qua* CBT conducted in respect of Junior Engineers and identical opinions similar reports were also given *qua* Junior Engineers and RGCs.
59. Mr. Khare submitted in support of his third argument that except for technical opinions expressed by the Associate

Professors, there was no other material available with the Corporation to examine the sanctity of the examination nor was there any genuine effort made in that direction to get verified data integrity through experts agencies approved by appropriate government under Information Technology Act, 2000.

60. On the point of checksum information and hash value which remained wanting for the experts of IITs, Mr. Khare has referred to certain literature in that regard. According to Mr. Khare, hash value is a digital finger print provided to decode encrypted data. It is a digital key to unlock a data which is provided in encrypted form but it depends upon which kind of data is supplied. If the data has been created and downloaded from the main source server then it creates a hash value so that the data integrity may be verified at a later stage by applying the same. For a set of data, a particular hash value is provided and any modification of data would change the hash value but this would arise only in the event secured data is provided with a hash value. Mr. Ashok Khare, learned Senior Advocate has relied upon the work and literature namely digital fingerprint for investigation and cases involving electronic evidence by the Ovie Carroll and a treatise in the name of Electronic Evidence, old edition by Steaphon Mezon and Denial Sen which refers to hash value as a kind of digital fingerprint which is required to be put to forensic examination for the reason that a professional understands what the tool to be used to unlock the device perform the relevant task and also manner and method in which a computer device is required to be examined forensically so as to return a finding as to data integrity. Since the result processing data was there provided

by the Aptech to the U.P. Jal Nigam which in turn was forwarded to the Professors for verification and examination, then in that event, if the checksum information and the hash value is lacking, the proper course would have been for the Corporation to have asked for it from the Aptech itself or to have brought the Aptech in touch with the Professors of IITs. Still further as Mr. Khare argues, once the data was seized from the local environment of the Aptech Limited then best course was to provide the Professors access to this data but the Corporation having not done so, committed manifest illegality and in such circumstances a mere expressed opinion by the Professors of the IITs for want of requisite material cannot be itself a ground to annul the entire selection and appointments made.

61. In respect of fourth argument regarding SIT report, much emphasis was laid upon which in the orders impugned, Mr. Khare submits that police report is only limited to the extent of taking cognizance by a Court of law. A Court may take cognizance upon it or may not, but for mere cognizance taken upon the such police report, the police report does not acquire an evidenciary value and even the statements recorded by the police tracing its power to Section 161 of Cr.P.C., are not admissible in evidence. Mr. Khare submitted that although these reports could have been taken on their face value so as to arrive at some conclusion on the principle of preponderance of probability as to the allegation made regarding conduct of CBT, these reports cannot conclusively form basis, nor can be treated to be conclusive proof of charge. He therefore, argues that the Corporation having relied heavily upon the SIT report in arriving at a conclusion that the entire selection process was

marked by gross irregularity and illegality, has manifestly erred in law.

62. On CFSL report, Mr. Khare has argued that when the Corporation itself doubted the integrity of data whether seized by the police or provided by the Aptech Limited, it should not be acceptable. Whatever material was placed before the Forensic Lab had been examined by it but the manner in which the 4th time report was called by the Investigating Team proved itself that the forensic lab itself was not sure about the data to furnish the information as required by the SIT.
63. According to him, even though 169 candidates have been shown in the CFSL report to have been awarded inflated marks so as to make them qualify for interview but the data integrity being questionable, it cannot be said that these 169 candidates were really tainted. Mr. Khare further argued that only point was whether any process was undertaken to segregate tainted from untainted candidates or not and if independent of the SIT report, there was no exercise undertaken and in the face of the fact that only opinion was sought which was rendered as such clarifying their own stand by experts for limited material supplied, the order impugned cannot be sustained in law.
64. In support of his 5th argument Mr. Khare submitted that there was no charge found established either against the constituent members of the interview Board or against any of the candidates as far as SIT report is concerned. Mr. Khare argues that except for the police investigation, there was no independent investigation or inquiry as such from any individual constituent member of interview board so as to elicit from them whether they were under pressure or undue

influence to award marks to particular category of candidates, particular caste of candidates or candidates belonging to a particular religion, nor there is any charge sheet filed against any of the constituent members of the board. Even none of the candidates to whom it could have been said that they having indulged in corrupt practice made the selection process questionable, has been charge sheeted. According to him, had there been any remote possibility of involvement of any candidate in the corrupt practice so as to take undue advantage for belonging to a particular caste, group or religion, the police must have laid its hand upon such candidates at least those who have been selected and given appointment, but the SIT report gives a complete clean chit on this score by neither chargesheeting any member of interview board, nor any of the candidates who had been selected and appointed. Thus, on this count also the decision taken by the Corporation cannot be sustained.

65. In support of his last argument, Mr. Khare has submitted that issues to the effect that in absence of prior sanction from the Government by the Board of U.P. Jal Nigam to fill up the vacancies in question or that there was non availability of vacancies that have been filled up by holding selection and giving appointments, were no more open for the Corporation as in the first judgment of the Division Bench all these arguments were negatived and that judgment came to be upheld by the Supreme Court in its first judgment dated 16.03.2018 and then again judgment of Supreme Court in the second round of litigation. Both the judgments if conjointly read, give a decent burial to these issues. Even the issue of offering appointment a day or two before the notification of the

model code of conduct, according to Mr. Khare remained no more alive for the Corporation to give any consideration much less a thoughtful consideration while passing the order impugned.

66. To sum up the arguments and the submissions advanced by Mr. Khare on behalf of the petitioners before this Court, according to him, the Corporation failed to undertake any exercise worth a genuine exercise to segregate tainted from untainted candidates. Having based its decision upon mere reports obtained from the Associate Professors of IITs having no accreditation to conduct forensic examination of electronic/computer data based records under the Information Technology Act, 2000 and police investigation report, it misdirected itself in arriving at a conclusion that there was no possibility to segregate tainted from untainted candidates and hence no notices were required to be issued to selected and appointed candidates, for cancelling their respective appointments.
67. Mr. Khare further submits that these appointments were made in 2017 and they have continued for 3 years time and during entire their service period except for the fact that SIT investigation was going on and some in-house inquiries were previously conducted, there was no evidence that could be said to have surfaced out regarding involvement of such employees in the selection process to get appointment orders.
68. Taking the plea of innocence on principle of equity further Mr. Khare has submitted that defective questions answers were in such a miniscule that those defective questions or answers could not have been taken to be sufficient enough to form a definite view that selection process was vitiated for any serious

irregularity. According to him, whether it is a case of Assistant Engineer or a case of Junior Engineer or even Routine Grade Clerk, such defective questions and answers count to be 2 to 3% only.

69. In support of all his above submissions upon different arguments raised and noted above, Mr. Khare has relied upon following authorities:

(i). In the case of Preet Singh Karola and others v. State of Punjab and others, (2006) 11 SCC 356.

(ii). Jogender Pal and others v. State of Punjab and others, (2014) 6 SCC 644.

(iii). Sachin Kumar and others v. Delhi, Sub-ordinate Service Selection Board (DSSSB) and others (2021) 4 SCC 631.

(iv). Vanshika Yadav v. Union of India and others, 2024 SCC Online SC 1870.

(v). Akash Yadav v. State of U.P. and others (Special Appeal Defective No.- 127 of 2023 and other connected matters).

70. Mr. Ashish Mishra, learned Advocate who is appearing in a number of writ petitions filed on behalf of Junior Engineers and Routine Grade Clerks both hear at Allahabad and its Lucknow Bench, has though adopted the arguments of Mr. Khare but has further added following more arguments:

(i) The process of recruitment was absolutely as per the advertisement issued which very exhaustively laid down the

process to take place and procedures to be followed sequentially, and since the publication of answer key was not provided for under the procedure laid down in advertisements, non publication thereof itself could not have amounted to any serious irregularity.

(ii) The CFSL report itself is sufficient to identify tainted candidates and further verification, if was needed, could have been got done by the Corporation from material provided by the CFSL, Hyderabad in DVD with a hash value to decode it. There arises no question to doubt the data integrity because one of the hard disks seized was a mirror image of data taken from primary cloud server CtrlS, Mumbai, an agency which was hired by M/s. Aptech Limited.

(iii) The opinions expressed by Institutes of Technology at Allahabad and Kanpur were contextual to the issue of segregation of two categories namely tainted and untainted and are not conclusive to form any view as to the integrity of computer based online CBT data being ever interfered with or modified.

(iv) For wrong questions framed and wrong options assigned as answers to few questions in the master answer key, itself cannot be a ground to hold the entire CBT was bad for any gross procedural irregularity or illegality for malice.

(v) Yet another argument has been advanced that since these appointments had taken place and the appointees had joined the establishment and worked for about three years, whereas, the probation period was of 2 years, in the absence of any material cogent and sound enough to draw a conclusion that

the appointments were obtained by fraud or mischief committed by these employees, such appointees did deserve at least a notice prior to cancellation of their appointments.

71. In support of his first submission Mr. Ashish Mishra, learned counsel appearing for the petitioners has taken the Court to the advertisement issued on 28th October, 2016 for the post of Junior Engineer (Civil) brought on record as Annexure- 2 to the writ petition being Writ – A No.- 4572 of 2020, which laid down exhaustive guidelines not only for the purposes of filling up the application form, submission of fee, eligibility criteria but also the mode of selection. He submits that vide clause 8 and 9 of the advertisement it provided that on the basis of CBT result the interview shall be held. In the first leg, CBT test will be held on multiple choice option format with 80 questions, each question shall have one mark and it is on the basis of CBT test that merit list shall be prepared for candidates to be called for interview accordingly and in the second leg, the interview shall be held which would be of 20 marks for Assistant Engineer & Junior Engineer and 25 marks for Routine Grade Clerk and the final merit list/ select list will be prepared by adding marks obtained in the interview with those marks obtained in the written examination and this, according to him, does not refer to any such procedure which may be said to have made it compulsory for the examination conducting body to upload master answer key or response sheet of the candidates. He further submits that even earlier in the year 2013-2015 when selection was held by U.P. Jal Nigam itself on posts of Assistant Engineer and Junior Engineer on the basis of online CBT, no master answer key was uploaded.

72. Taking the argument further Mr. Mishra has argued that this selection in question was held in the year 2016 and in those days even the master answers keys were not ordinarily published what to say about the response sheet. He submits that even the agreement signed between the corporation and M/s Aptech Ltd. clearly demonstrated that answer key would be published but the M/s Aptech would act ultimately in accordance with the instructions received from the corporation and nothing is coming out from the pleadings raised in the counter affidavit of corporation that before declaration of final select list, any correspondence took place between the corporation and M/s Aptech Ltd. to publish the master answer key. He submits that an exhaustive procedure was provided under the advertisement to hold selection step by step and so notes contained therein and the guidelines prescribed, amounted to complete brochure itself in respect of the selection and appointments and the corporation cannot be permitted to raise an argument that the advertisement did not provide the procedure exhaustively to be followed in holding the selection for the post in question.
73. Referring to the CFSL report Mr. Ashish Mishra submitted that the report itself evidences that original data seized in the hard-disks from the local environment office of the M/s Aptech Ltd. consisted of one hard-disk with mirror image data of CtrlS, whereas back up file was in one hard-disk and four hard-disk were relating to processing data. According to him, the report itself discloses that this data related to all the candidates, who had participated in the CBT conducted in respect of different posts in the categories Assistant Engineer, Junior Engineer and

Routine Grade Clerk and which all was analyzed by retrieving through the Data Recovery Tools.

74. He submits that report has very immaculately been drawn as to the data retrieved, analysed after due comparative study with the data provided by the SIT in respect of the candidates, who were called for interview and then it was all compressed and saved in the folder name 'CBT Comparison' in the DVD that was duly marked by the laboratory.
75. Mr. Mishra further submits that once entire data was retrieved and then was kept in folder in a DVD which was also provided with a 'hash value' and also contained a scanned copy of the documents provided by the SIT for the purposes of comparison, then it does not lie in the mouth of the corporation to suggest even that sufficient data was not available or the data was not worth trust for want of due verification.
76. Mr. Mishra strenuously argued that it would have been a different case in the event this data analysed by CFSL was further forwarded to the forensic experts under the Information Technology Act, 2000 for further examination but as the records reveal, according to him, this data compressed in DVD remained in the custody of SIT and the corporation never endeavoured to get it from SIT to accompany the CD/ DVD obtained from M/s Aptech even to the Institutes of Technology, Kanpur and Institutes of Information Technology, Allahabad.
77. Thus, according to Mr. Mishra, the proper analysis of the data retrieved from the hard-disk, one of which was a mirror image of the data of primary cloud server of the CtrlS, Mumbai, the original source server, had been put to rigorous analysis by a

forensic lab and the report prepared by it was never put to challenge, this should have been taken as sufficient material itself to be discussed in the order impugned so as to draw a conclusion as to whether tainted candidates could have been segregated from untainted or not.

78. Mr. Mishra submits that 169 candidates, who had been shown in the documents provided by the SIT to have obtained marks which upon verification by CFSL were found to be given more than the original marks contained in the data base, clearly established that these 169 candidates did not deserve to be called for interview as per the CBT merit list of M/s Aptech Ltd. and these candidates, therefore, can very well be placed in the category of tainted candidates. A further verification could have been done by the corporation to cross check it but this having not been done, the corporation could have proceeded to delist these 169 candidates and in lieu thereof candidates who deserved to be called for interview as per the merit list/ revised list ought to have been given opportunity. According to Mr. Mishra a decision to arrive at a conclusion that there was no possibility to segregate the tainted from untainted candidates as per the mandate of Division Bench of this Court, a misplaced judgment seeing the material available with the corporation and hence the findings so returned in the order impugned are perverse and unsustainable.

79. Mr. Mishra further submits that these candidates who were in merit but fell in untainted category but were offered appointments and have worked for 3 years with the establishment and there being no complaint as such regarding their work and conduct and since the rules applicable to the

employees of the corporation provided for a period of probation of two years and there was no such order passed by the competent authority of corporation extending probation period, such employee should be taken to have acquired permanent status and could not have been removed except for a disciplinary proceeding. But this is not a case in hand, all that has come up against them is that they have been axed only for a finding returned and that too based upon no such substantive material to hold that their selection itself vitiated for gross irregularities committed in the selection process.

80. Mr. Mishra cite cases where appointments have been offered to a candidate after selection, a different parameter and yardsticks was to be applied than in those cases where though selection had taken place but no appointment orders was issued. He argues that the legal position is well settled that no one even placed in the merit list has a vested right to get an appointment but once candidate gets an appointment order after selection then he gets at least a vested right to be heard before he is fired and that too on the ground that appointments have been made for gross irregularity and illegality in the selection process.
81. In support of all above submissions, Mr. Mishra, learned counsel for the petitioner has placed reliance upon following authorities in addition to the authorities already cited by Mr. Khare:
 - (i). *Anamica Mishra and others v. U.P. Public Service Commission, Allahabad and others*, 1990 (Supp) SCC 692.
 - (ii) *Ranvijay Singh and others v. State of U.P. and others*, (2018) 2 SCC 357.

(iii) Kapil Kumar and others v. State of U.P. and others (2023) SCC Online All 4024.

82. Mr. Mishra has also placed reliance upon the judgment in the case of Prem Lata v. State of Tamilnadu of Madras High Court in Writ Petition No.- 19939 of 2014 decided on 17th November, 2022 (Paragraph 89)
83. Citing the judgment of Division Bench of this Court in the case of Kapil Kumar (*supra*), taking the plea that if the candidates upon revision of the result in view of the decision upon challenge to questions answers in the CBT examination are found meritorious in the order, such candidates who have already been selected may not be disturbed and adjustment can be made of the candidates of the revised list in accordance with the merit upon other existing available vacancies. He has placed reliance upon the paragraph 30 and 31 of the judgment.
84. Mr. Seemant Singh, learned Advocate appearing for some of the petitioners has also adopted the arguments advanced by Sri Khare and Sri Mishra above and only added this much; in the face of a fact that CFSL report has remained unquestioned till date, this itself was a sufficient material available with the Corporation to arrive at a conclusion as to who are the tainted candidates who could be segregated and taken out of the select list.
85. Mr. Seemant Singh has also emphasised upon the report of Aptech Limited which itself has identified a large number of candidates who did not deserve to be called for interview and yet were called and those who deserved to be called but were

not called and this could have been sufficient to rework the merit list of CBT.

86. One more submission has been advanced by Sri Seemant Singh, learned counsel appearing for some of the petitioners that corporation in fact either did not supply the correct data to the institutes of Technology while seeking their opinion regarding Junior Engineer, nor the learned Associate Professors, who were to render opinion did not make sincere attempt to verify the data by asking the corporation to hold consultation with M/s Aptech Limited while giving before enquiry report. He submits that report itself is untenable for the simple reason that it proceeds upon the data concerning Routine Grade Clerks and not Junior Engineers and yet the opinions have come in respect of the CBT of Junior Engineers.
87. Sri Seemant Singh in this regard has taken the Court to the report submitted by Associate Professor of Indian Institute of Technology, Kanpur Nagar dated 3rd January, 2019.
88. Sri Seemant Singh has also argued that in view of the order initially passed on 18th February, 2020 in the matter of Ambarish Kumar Pandey (Writ – A No.- 5912 of 2020), FSL report ought to have been given weightage. It is argued that FSL report since was approved by the Government itself as SIT report based upon the CFSL report was approved, the respondent corporation while considering the matter ought to have given absolute weightage to the CFSL report by discussing the same for identifying and segregating tainted from untainted candidates, which is quite lacking in the order impugned.

89. Placing reliance upon the authority of Supreme Court in the case of **Ashok Kumar Yadav v. State of Haryana and others, 1997 AIR SC 454**, Sri Seemant Singh has submitted that merely for someone has scored better marks in interview than in written examination or *visè versa*, this itself cannot be a ground to hold that selection process was vitiated for any kind of vested human intervention with an intention to give benefit to a particular caste, creed and religion as has come to be alleged in the counter affidavit. It is submitted that the fact that a candidate obtained marks in a particular written examination and in interview marks appeared to be beyond proportion, unless and until there is intrinsic material available as to any kind of interpolation or tempering of records or any kind of influence being ever exercised upon the interview Board, its constituent members, cannot itself be a ground to hold that selection process stand compromised.
90. Thus, according to Sri Seemant Singh in the event Corporation was not sure about the data, then Corporation ought to have trusted its examination conducting agency in the absence of there being any iota of evidence leading to the charge of corrupt practice at its end in relation to the conduct of CBT in question. He thus, also questions the decision taken by the Corporation to annul the entire selection and appointments.
91. Lastly appearing on behalf of a number of petitioners learned Senior Advocate Mr. Radha Kant Ojha assisted by Mr. Namit Srivastava has argued that once the Aptech Limited had taken a stand that the data was preserved in his Archive NAS at its NOIDA office and it was hundred percent sure of its authenticity and integrity and in the face of the fact that the

opinions expressed by the IIT, Kanpur and IIIT, Allahabad, as has been argued by his other colleagues, to be speculative and conjectural, the Archival data should be directed to be examined afresh by the forensic experts so as to rule out any doubt as to sanctity of selection process regarding conduct of the examination of which much hype was created by the Corporation without any basis.

92. Mr. Ojha submits that a number of candidates have already became over aged to apply for selection in any of Government service and in the face of the fact that a large number of candidates deserved to be called for interview if the revised result of the Aptech was accepted and if the FSL report is to be accepted which has not been doubted even by the Corporation till date by challenging it, it would be in the interest of justice that the entire merit list is reworked after the forensic examination is completed. According to him, this will be a correct approach taking holistic view of the matter. In any case, Mr. Ojha has also assailed the order impugned in these petitions for want of proper material to justify the stand taken by the Corporation.
93. There are other learned Advocates appearing for different petitioners in different petitions who have also adopted the arguments already advanced by their senior colleagues at the bar on behalf of the petitioners.
94. Mr. Radha Kant Ojha, learned Senior Advocate assisted by Mr. Namit Srivastava appearing for seven of the petitioners has relied upon the judgments and authorities cited by Mr. Khare and Mr. Mishra. Additionally he has of course, submitted that many of the Assistant Engineers, who have been selected and

appointed have gone over-aged for any selection in any other establishment and since they have made it to the merit list and there is no charge against them has come up either in the SIT report or any other inquiry reports, they should not be held responsible for any such alleged irregularity in the selection process. He, however, still submits that in the face of the fact that M/s Aptech Ltd. has come up with the stand that original data still continues to be saved on its archive server NAS, NOIDA place, the same may be directed to be analysed by agency that is approved by appropriate Government under the Information and Technology Act, 2000 and that according to Mr. Ojha would given a complete quietus to the controversy.

Arguments raised for the Corporation

95. Meeting the arguments as advanced above by learned Advocates appearing for the petitioners, Mr. Manish Goyal learned Senior Advocate, appearing for the corporation defended the orders impugned in these petitions claiming them to be based upon valid findings arrived at after thorough examination of material available and reasonable appreciation thereof by the concerned authority.
96. According to him, procedure for conducting CBT out by M/s Aptech Limited was adopted against the written agreements reached between the corporation and outsourced agency separately for three sets of examination, i.e. for Routine Grade Clerks on 17.06.2016, for Junior Engineer 28th August, 2016 and for Assistant Engineer on 15th December, 2016 and this breach committed by Corporation *qua* the agreements has eroded the trust reposed in the agency as to the sanctity of CBT process and integrity of data thereof stored by it.

97. Mr. Goyal submitted that data retention policy much talked about, if ran contrary to the agreements recorded between Corporation and M/s Aptech Ltd., it were the agreements to prevail. Mr. Goyal submitted that Institutes of technology were in these circumstances left with no other alternative in the face of the fact that original data was deleted from the primary source cloud server, but to express their inability to give certificate of authenticity to the data supplied by the agency. According to Mr Goyal, in these circumstances, no definite opinion could have been forward by Institutes of technology as to the correctness of answer sheets not being manipulated and the truthfulness data of result processing not being tempered with. He has placed much emphasis upon the checksum information and 'hash value' digital fingerprints as key to unlock/ access original data and since M/s Aptech Limited failed to provide checksum information and and requisite hash value of the data, no tracking could be made to verify the correctness of candidates' response data to questions, recorded by it. Mr Goyal submitted that it was duty of the service provider to have provided the relevant checksum information and hash value. For the absence of checksum information as to the original response data of the candidate in the examination hall, and in the absence of hash value, it was impossible to verify the records and still further, it became difficult to know as to whether the data provided was the modified one or copy of original one.
98. Mr. Goyal submitted that 'hash value' created once the data is transmitted from original server to a secondary server by the original service provided and this hash value continues to remain constant to decode the original data provided in an

encrypted form. Any attempt to have access to the data without information about the 'hash value', would certainly corrupt the original data and any fresh 'hash value' means data is already modified. The hash value is a digital signature put to a data to access it. Mr Goyal submitted that service provider since did not provide the 'hash value', it remained illusive data as to its authenticity and integrity upon transfer to a local environment device. A data Security is always marked by digital fingerprint of the digital signature, as was done by CFSL, Hyderabad consolidating the data retrieved from the original hard disks into a DVD marked as "CAH – 75–2018 – DVD,"

99. Mr. Goyal has also argued that it is relevant to refer to the reports of the Associate Professors of IIIT, Allahabad and IIT Kanpur in respect of Assistant Engineers and Junior Engineers. He has argued that from the report submitted by Associate professors, it is clear that they were unable to express any definite opinion/view with regard to the issue of segregation of tainted candidates from the untainted candidates. Mr Goyal also took the Court through the CFSL report, which, according to Mr. Goyal shows that no 'hash value' information was available to the data contained in hard disks that were six in number.
100. Mr. Goyal has put emphasis upon the CFSL report to demonstrate that hard disks that were recovered from the local environment of office of the M/s Aptech Ltd. under the order of the Special Magistrate, Anti-corruption/ Central Bureau of Investigation, Lucknow, with search warrant, were all sent to Hyderabad on 23rd of October 2018 for forensic examination. He submitted that SIT report, made it clear that

these hard disks were though recovered from the office of the Aptech premises, but none of the hard disks contained the 'hash value'. According to Mr. Goyal, if 'hash value' had been assigned to the original data, then while showing certificate at the time of preparation of seizure memo, the officials of the M/s Aptech Ltd. would have given the information regarding hash value, but no such information was given *qua* the hard disks that contained according to the certificate by Official of the M/s Aptech Ltd, a mirror image of the original data downloaded from the primary source cloud server CtrlS is stored, nor the hard disks had the system logs.

101. Elaborating further the definition of 'hash value', Mr Goyal submitted that hash value or checksum information is provided to decode the data contained in the hard disk or such other device. He has referred to a famous treatise, namely, Electronic Evidence: Disclosure, Discovery & Admissibility, First Edition by Stephen Mason, in which vide paragraph of 3.16, the details are given for preserving digital data evidence. The relevant paragraph runs as under:

“3.16 Validating digital evidence

Digital evidence in particular needs to be validated if it is to have any probative value. A digital evidence specialist will invariably copy the contents of a number of disks or storage devices, in both criminal and civil matters. To prove the digital evidence has not been altered, it is necessary to put in place checks and balances to prove the duplicate evidence in digital format has not been altered since it was copied. An electronic fingerprint is used to prove the integrity of data at the time the evidence was collected. The electronic fingerprint uses a cryptographic technique that is capable of being associated with a single file, a floppy disk or the entire contents of a hard drive. As digital evidence is copied, a digital evidence specialist will use software tools that are relevant to the task. program that causes a checksum operation, called a 'hash function' to be applied to the file or disk that is being copied. The result of applying a hash

function to digital data is called a hash value. The hash value has been calculated against the content of the data. This is a one-way function, containing the mathematical equivalent of a secret trapdoor. For the purposes of understanding the concept,, this algorithm is easy to compute in one direction and difficult to compute in the opposite direction, unless you know the secret. The hash function is used to verify that a file, or the copy of a file, has not changed. If the file has been altered in any way, the hash value will not be the same and the investigator will be alerted to the discrepancy. A digital signature can also be used in this way, by combining the hash value against some additional information, such as the time.”

Mr. Goyal has also referred to paragraph 3.34, which runs as under under.

“3.34 Logs, files and printing

In addition, when a user uses their computer they leave traces of th actions across a range of data logs and files. A data log is capable containing any type of data, depending on what the system is programmed to capture . For instance, if a file is downloaded from the Internet, a date and time stamp will be added to the file to demonstrate when the file was downloaded on to the computer. When the file is moved, opened or modified, the time and date stamps will be altered to reflect these changes. In addition, the metadata can also help provide more information about the file, such as the location to which it was stored on the disk, the printer and the original time and date the file was created. When a file is printed, the computer tends to store the print job in a temporary file and then sends the file to the printer when the printer has the capacity to print the document. Once the command to print has been passed to the temporary store the user can continue to work with the application, for instance they can continue to type a new document whilst the previous document is waiting to be printed. The temporary print store retains valuable information, such as the name of the file to be printed, the type of application used, the name of the printer, the name of the person whose file is to be printed, and the data itself. In addition, there is a date and time stamp added to these files to show when the file was printed. It should be noted, however, that the date and time stamp can be altered, which means it is important to ensure the time and date stamp is corroborated by other methods.”

102. In view of the above, Mr Goyal has argued that material evidence would have been collected from the electronic device

or computer device provided the hash value information or checksum information was provided by the custodian of data which in the present case was certainly M/s Aptech Ltd.

103. Mr. Goyal submitted that according to the data retention policy brought on record by M/s Aptech Ltd., it was clear that Mr. Fernandes was in the helm of affairs and when he was issuing certificate regarding hard disks seized by the police from the local environment, he must have been in possession of this necessary information as well. According to Mr. Goyal any prudent man in these given facts and circumstances, while material is being seized from his possession, would have certainly known that police would send these materials collected or seized for forensic examination to present this as crucial electronic evidence in a court of law proceeding, and therefore, in all fairness the officials of the M/s Aptech Ltd. should have also shared necessary checksum information and 'hash value' of the data retrieved or downloaded from the original cloud server. Thus, according to Mr. Goyal, this crucial information was deliberately withheld by M/s Aptech Ltd. to cover up its misdeeds committed in the matter of selection in question, may be in connivance and conspiracy with certain officials of the Corporation who facilitated tampering of final results before entry in computer's modified data. It is thus tampering with original select list of the CBT that facilitated, according to Mr. Goyal, undeserving candidates to participate in interview showing exit door to the deserving candidates. Mr. Goyal, thus emphatically argued that entire selection process was undoubtedly compromised to select and then offer appointments on pick and chose basis.

104. Referring to the report of the Chief Engineer dated 29.05.2017, Mr. Goyal has taken the court to the finding part of it that records that appointments were required to be made by the State Government and not by the corporations because sanction to the post was to be accorded only by the State Government and not Managing Director of the UP Jal Nigam, until and unless the regulations were amended. According to Mr Goyal, Corporation had no authority to advertise the posts to undertake any recruitment drive. Mr Goyal has further taken the Court to clause 11 of the report that takes out extract from the merit appended as annexure 15 and as per extracts, it included 22 such candidates who, according to the report were though called for interview, but were given highly excessive marks by the interview board. The example of, Mohammed Shams has been cited, who in the eligibility column could only score 3 out of 4 marks but towards technical knowledge, personality and power of expression, he was awarded full marks. So was also the case cited of another candidate Gaurav Kumar Verma, who was though not selected, was also awarded only three marks towards eligibility but was awarded full marks towards technical knowledge and personality and capacity of expression. These are the two instances only as per the records made available by the Aptech itself and Mr Goyal submits that this clearly showed how nepotism and bias vitiated the selection process.
105. Referring to another report of the Chief Engineer, level II dated 14, July 2017, Mr Goyal has submitted that 15 objections were received out of 80 questions from the question paper of online examination for the post of Assistant Engineer, Civil and as per the Aptech's own version, 11 objections were correct. Similar

was a case in the second inning of the Assistant Engineer, Civil examination in which out of 80 questions, 16 objections were received as per the version of Aptech's, objections were found to be valid. Mr Goyal however, submits that report also recorded that objections regarding seven questions out of same to be correct. Thus, according to the report as Mr Goyal argued, that objection should have been invited to resolve them in the first instance, and thereafter only CBT select list should have been published/notified. Mr. Goyal further argued that according to the report, the defect in framing of questions and preparation of answer key and its assessment was at the level of M/s Aptech Ltd only.

106. According to Mr. Goyal it was indeed a defective way of admitting the select list without publishing the master answer key to invite objections from the candidates. Master Answer Key for the post of Assistant Engineer and Junior Engineer was published only after two months of the declaration of result as results were declared on 03.01.2017, whereas, the master key answer were published on 28.02.2017. Likewise in the case of Routine Grade Clerk the result declared on 24.12.2016 but the master answer key was published on 27.03.2017 and in the case of Junior Engineers the result was declared on 01.01.2017 and the master answer key was published on 14.02.2017. Mr. Goyal submitted that it has never been a practice, nor it should be taken as a healthy practice to first draw the select list on the basis of CBT merit, to hold interview and offer appointments and thereafter only publish the master answer key. It appeared, according to Mr. Goyal, too urgent for certain officials of respondent Corporation who were in the helm of affairs and in conspiracy with the officials of M/s. Aptech Limited to

conclude the recruitment drive in a shortest span of time and in any case before the notification of model code of conduct. This is the reason why, Mr. Goyal argues, that within 28 hours to 48 hours of the declaration of final merit list the appointment orders were issued. Mr. Goyal submitted that the hush hush manner in which the entire recruitment drive was expedited to be concluded was all aimed at clearing appointments of preferred candidates of particular caste, religious group before any intervention of law could have taken place. Citing the report of SIT Mr. Goyal submitted that report carries weight in the light of observations made by Division Bench in Special Appeal No. 625 of 2019. Division Bench, according to Mr. Goyal, had very clearly observed that *“the Jal Nigam being appointing authority is competent and it is well within its domain to find out whether examination clearly and transparent manner and subject to report of SIT, analysis of Forensic Laboratory and any other material that may be placed before the Jal Nigam to take decision”*. Mr. Goyal further referred to another observation *“it goes without saying that some decision is to be taken in accordance with law for the purpose of finding out possibility of segregation between the tainted and untainted candidates the report of the SIT acquires significance.”* Now taking the Court to the SIT report, Mr. Goyal submitted that certain statements of officials of M/s. Aptech Limited are very crucial. According to him, the statement of Vishwajeet Singh, Technical and Delivery Head of M/s. Aptech Limited is important as according to him the said Vishwajeet Singh had worked with M/s. Aptech Limited in August 2016 and admitted before the SIT that main task of M/s. Aptech Limited was to prepare questions papers, conduct examinations, the assessment of answer sheets and then final

declaration of merit list of CBT. From the SIT report Mr. Goyal has placed before the Court certain questions put to the said Vishwajeet Singh in the matter of Routine Grade Clerks, Junior Engineers and Assistant Engineers. He has also taken the Court to certain queries made regarding placement of server, main server of M/s. Aptech Limited and it was admitted in his statement that M/s. Aptech Limited was working with separate data centre providers namely CtrlS and Net Magic in whose control the data was and they were located in Mumbai. M/s. Aptech Limited according to the statements uses this cloud data. Mr. Goyal submitted that this statement very clearly established that online examination data was consolidated at the cloud server which was later on drawn offline into the local environment server and the result was declared. Entire data though was to be kept for one year as per the agreements which also included online registration data / attendance, biometric data of the candidates, candidates' response data, original question paper and original answer key and also revised answer key. The other data after the revision of answer key was separately to be saved because it interfered with the original data available on the cloud server by way of result processing. These facts directly fell from the mouth of officials of M/s. Aptech Limited and therefore, Mr. Goyal submitted that this should be clearly conceded by M/s. Aptech Limited. Mr. Goyal has also taken the court to the statement of Ajay Kumar Yadav, General Manager of Aptech Limited posted in its office at Lucknow where the question was raised about the process undertaken by the Aptech Limited for declaring result of the candidates and answer given was that the computer based result was provided to Sri P.K. Ashudani, the then Managing Director which was password protected and

this data trailed to marks obtained by the candidate. This data was on excel format and thereafter, Mr. Ashudani with the help of one Hemant and Santosh Rastogi who being officers of M/s. Aptech Limited also had access to the password accused it and prepared result and sent it to the Aptech on the basis of which the candidates were invited for interview marks. It was also stated by said Ajay Kumar Yadav that after the interview marks was also obtained in hard copy from Jal Nigam and then adding the marks in computer based results a final select list was prepared. On the question as to whether the result sheet which was provided by Jal Nigam, was ever matched with original primary data available with the Aptech or not, Mr. Ajay Kumar Yadav admitted that it was not matched with the marks present in original data base. Upon another query as to when original data had been deleted from the primary source cloud server then was it not possible that the result provided by the U.P. Jal Nigam might only have been available upon server because M/s. Aptech Limited followed instructions of officers of U.P. Jal Nigam only and contract was not followed, the reply was that since it was multiple department work activity, the departments worked independently and so it was not possible. Upon another query, if U.P. Jal Nigam might have changed the results because the result provided by U.P. Jal Nigam to M/s. Aptech Limited was not matched with the result available in its data base, in reply it was admitted that it could have been possible. On the question of fixing responsibility Mr. Ajay Yadav clearly admitted before SIT that it was the duty of the Aptech to upload the answer key as per the agreement and if it was not done, it was a mistake on the part of the Aptech. Thus, according to Mr. Goyal, from the statements it is clear that Aptech Limited provided the

password protected result to the Managing Director who gave access to the others also which should not have been done. The original data of CBT result was completely got tampered with and was provided in the hard copy as well to the Aptech Limited to be uploaded and it was then the candidates were called for interview on that basis. Resultantly those who secured lesser marks were called for interview for inflated marks and those who had secured higher marks were denied the opportunity.

107. In support of his above submission Mr. Goyal has cited the report of Central Forensic Science Laboratory, Hyderabad which is now part of the SIT report. As per the report submitted by the Laboratory, 30 candidates of Assistant Engineer (Civil), 3 candidates of Assistant Engineer (Computer Science), 4 candidates of Assistant Engineer (Electrical & Mechanical), 58 candidates in the category of Junior Engineer (Mechanical) and 53 candidates of Routine Grade Clerk totalling to 169 candidates where such whose CBT result in the original data base was found to be with less marks than in the list provided by the SIT and this led to the only conclusion that the recruitment and selection process was badly compromised. Further the original data was not provided by the Aptech limited even though it was aware of the controversy going on in Court and also subject to enquiry at the level of the Government and the Corporation.
108. Mr. Goyal also refers to the report of M/s. Aptech Limited dated 19.08.2017 brought on record as Annexure No. C.A.-5 to the writ petition of Mr. Surendra Singh being Writ – A No. 4572 of 2020 (relevant para 55) wherein M/s. Aptech Limited

itself admitted that certain facts that went to the root of the matter. The report contains a list of 331 candidates of Junior Engineer (Civil) and 148 of Junior Engineer (Electrical/Mechanical) totalling 475 who were not selected for interview though they deserved after that revised result by M/s. Aptech Limited. According to the report of M/s. Aptech Limited, 656 candidates of different streams of Junior Engineers were wrongly called for interview though they were ineligible to be placed in the CBT merit list and thus they ousted a large number of candidates from the zone of consideration for not being placed in that list. It is though contended by Mr. Goyal that the entire team of M/s. Aptech Limited in conspiracy with its officials of Corporation were neck deep in corruption in the matter of selection *qua* public employment. The manner and method in which the entire plan was designed to accomplish the task and the manner and method in which a particular section of candidates were awarded deliberately higher marks in interview even though they had scored lesser marks in the examination, it showed that it was all done to somehow facilitate entry of such candidates in interview. These corrupt practices had really adversely affected the opportunities of the genuine candidates who would have acquired placement in the merit list, had the selection been fair. According to Mr. Goyal, all this could not have been rectified and only option was therefore, available to annul the entire selection process. Not one or two but in all six reports besides SIT report, according to Mr. Goyal are there that are indicative of the fact that the entire selection process was unduly influenced by those who were in the helm of affairs as they abused their authority to influence those who interview+ as well as M/s. Aptech Limited.

109. Mr. Goyal emphasises on the point that in the event of systemic fraud in selection process in any competitive examination where applications are invited from open market, it is always necessary to annul the entire selection process in order to restore confidence of people in the system of recruitment. In this regard, he has cited the latest judgment of Supreme Court on the point in the matter of **Gohil Deshraj Anubhai and Others v. State of Gujarat & Others, (2017) 13 SCC 621, para 21 & 22** and **State of Tamilnadu and Others v. Kalaimuni & Others, (2021) 16 SCC 217, para 14.**
110. The assisting counsel to Ms Goyal, Ms. Anjali Goklani, learned Advocate, has placed the relevant paragraph nos. 35, 36, 37, 38, 55 and 56 of the judgment before the Court to canvas the correct legal position in the above regard. Mr. Goyal submitted that the Court dealt with fundamental issue *qua* process of examination getting vitiated to what extent and submits that the Supreme Court has held that if the irregularities in the process is found to be at systemic level questioning the credibility and legitimacy of the selection process, then such irregularities will be taken to have pervaded the entire domain of selection. Mr. Goyal submitted that in such circumstances notice to candidates individually loses its significance.
111. Mr. Goyal submitted that the Supreme Court considered all these aspects in its celebrated judgment cited above i.e. Gohil Deshraj (supra) and State of Tamilnadu (supra) the above. In the case of State of Tamilnadu and others the Court held that the decision of the board to cancel entire selection process in order to instil confidence in people *qua* integrity of selection

process was justifiable. He emphasised upon principle of judicial review by the High Court and argued that sufficiency of material will not fall within the purview of judicial review. Mr. Goyal vehemently urged that High Court is to only look into the decision making process and if it was not found to be flawed one, the Court will not go into the question of appreciation of material as it stood already examined by the authority concerned. He has submitted that in the judgment of Gohil Deshraj (*supra*) the principle of primary judicial review has been discussed in extenso and argued that when the action challenged is arbitrary by putting it on the testing anvil of Article 14 of the Constitution, the Court performs a primary review to test the correctness as to the discrimination meted out if any and as to whether it is excessive or it has a nexus with the object sought to be achieved by the Administrator. On the other hand question of proportionality therefore, will arrive between the charge and the action taken by the Administrator. The rationale behind the order and reasonableness could be put to test but the court would then confine itself to secondary role in judicial review as it will only look as to whether an Administrator has done the primary role or not. If the Administrator is found to have accomplished the primary role in arriving at a conclusion considering the relevant factors, then consideration accorded will not fall within the domain of judicial review to raise a question as to sufficiency of material.

112. Mr. Goyal also relied upon another judgment of **M/s. Aptech Limited v. U.P. Power Corporation and another, 2019 SCC OnLine All 4906**, a judgment of Division Bench of which I was also a member. In order to emphasise a point that where the examination conducting body is a party to the agreement, it

was to ensure conduct of examination procedurally as per terms of agreement to ensure confidentiality of its secured data and if it failed procedurally making investigation *qua* entire selection process as to whether it exposed its hardware and software to human intervention then in such a case it would be inevitably judicious to cancel the entire selection. In the said case, the Division Bench had upheld the order of blacklisting passed against the same service provider Agency. He further submitted that the decision in that case was taken by the State Government relying upon the inquiry report submitted by the STF which had indicted the service provider for deliberate negligence. Reiterating the principle of Wednsebury Reasonableness Mr. Goyal submitted that where the confidence of public is shaken for selection process getting adversely affected for human intervention resulting in irregularities at large affecting a large number of candidates as they lose their chance of success only for manipulations no prudent man would allow such selection to stay. Mr. Goyal placed before the Court para 20, 21, 23, 25, 28 and 30 of the said judgment. Mr. Goyal also cited the judgment in the case of **Puneet Bhardwaj v. Delhi State Government** being **Writ – C No. 15270 of 2022** and the connected matter decided by Delhi High Court on 15.09.2023 and placed paragraph nos. 5, 6, 25, 27, 28, 29, 30 & 31 of the judgment. Mr. Goyal argues that in the above case, two points were raised before the Court:

(i) Petitioner had no vested right of being considered for appointment on the post of Junior Engineer/ Assistant Engineer upon being selected by Delhi State Electricity University; and

- (ii) Notices issued, impugned in the writ petition, involved violation of principles of natural justice as opportunity to be heard was not afforded to the petitioners who were selected.
113. The Court rejected both these arguments on the ground that the entire selection process was surrounded by malpractice and irregularities and so there was nothing wrong in cancelling the entire selection process. It is held that in such circumstances it becomes difficult for the agencies conducting such examination to identify as to how many candidates were engaged in such malpractice and such irregularities.
114. Meeting the point that once the candidates have been selected and given appointments pursuant to which they had submitted their joining and so there should be no cancellation of all the appointments by one stroke of pen without giving them individual notice, Mr. Goyal cited the authority of Madras High Court in the case of **R. Premlata and Others vs. State of Tamilnadu and others** decided on 17.11.2022 being Writ Petition No. 19939 of 2014. He has placed reliance upon paragraph nos. 69, 79, 80, 81, 82, 83, 84 & 87 of the said judgment.
115. Mr. Goyal submitted, firstly in the said case a retired Judge of Delhi High Court was entrusted with the enquiry in the matter of selection and 152 candidates who were found to be tainted and a finding was returned to the effect that allotment of marks with less experience drastically changed the entire complexion of the selection exercise. Mr. Goyal submits that the findings were that act and conduct of selectors prejudiced the rights and interest of a large number of meritorious candidates who had participated in the selection process and, therefore, these

candidates stood deprived of equal opportunity in the matter of selection and appointment as enshrined under the Constitution. Thus, according to Mr. Goyal where it is established that there was a deep rooted corrupt practice leading to manipulations resulting in irregularity in awarding marks to the candidates, it would not affect the non tainted candidates as they would have still a fair chance to compete in future.

116. Giving the example of the present case where 656 undeserving candidates were called for interview as per the own stand of M/s. Aptech Limited who should not have been intervened, Mr. Goyal submits, it goes without saying that a large number of candidates were virtually deprived of their opportunity to participate in interview in getting finally selected. He submits that if total number of vacancies were 800 and plus these 600 and plus candidates would have certainly affected the entire merit list substantially. Mr. Goyal submitted further that as per the CFSL's own report if 169 candidates have taken to be wrongly favoured and hence tainted then it is only one instance where the data was examined by the CFSL and if the entire data was got verified available at primary source server which was a cloud server, the merit list would have been absolutely different but opportunity was not there for data being deleted for primary source cloud server.
117. Thus, according to Mr. Goyal it is an established case of fraud played in the process of selection which has vitiated the entire exercise *qua* recruitment and the SIT having found the officials of M/s. Aptech Limited to have conspired with the officials of the Corporation, they have all been named in the report which

was finally submitted on 22.01.2020 and the court has taken cognizance thereupon under criminal law.

118. Yet another argument was raised on behalf of the Corporation by Mr. Goyal, learned Senior Advocate *qua* the doctrine of impossibility as would be attracted in the given facts and circumstances of the case. He has argued that select list was so much manipulated in respect of a large number of candidates to be specific post of Junior Engineers, Assistant Engineers and Routine Grade Clerks that it had become impossible for the Corporation to draw a line between selected on merits and the selected fraudulently and those deprived of opportunity.
119. In support of the above doctrine, Ms. Ananya Shukla, learned assisting counsel to Mr. Goyal has placed paragraph nos. 39 and 40 of the authority of Supreme Court in the case of **State of Madhya Pradesh v. Narmada Bachao Andolan & others and the connected matters, (2011) 7 SCC 3639** and read out paragraph nos. 39 & 40 of the judgment. It is argued that if for inevitable disability to perform mandatory part of law, in other words performance of formalities prescribed by statute if rendered impossible by the circumstances over which the person entrusted with the task has no control, then non performance of such duty is a valid excuse. It is stated to be the law of natural equity which has been applied down the ages. Yet another judgment of Constitution Bench of Supreme Court in the case of Election Commission, **IN Re: Special Reference No. 1, (2002) 8 SCC 237** has been cited which arose out of an election dispute and petition had got rendered infructuous for the reason that tenure of elected person had expired. Ms. Shukla placed paragraph no. 151 of the said judgment in which

it was held that “*where the law creates a duty or charge and party is doubted to perform it without default in him and has no remedy over it there, the law in general excuse him*” this mandatory character of law, it is argued loses its binding effect for there being supervising impossibility caused by an act of God.

120. Applying this principle to the facts of the present case Mr. Goyal submitted, the report of SIT showed that favour was given to a particular caste and religion for the reasons known to the then Minister of Urban Development who happened to be the Chairman of the Board and the officials of U.P. Jal Nigam who all acted in conspiracy and connivance with the service provider agency and this resulted in a large number of candidates getting selected fraudulently and this was all so deeply rooted that right from CBT result to interview and then final preparation of merit list all stood manipulated. Taking the Court to the relevant facts and figures as have been reduced in writing under the SIT report *qua* category of Assistant Engineer, there were 42 candidates out of 122 selected candidates who were awarded more than 17 and above marks in interview 27 of them belonged to a particular religion and 22 of them found place in the final select list. Similarly a particular caste candidate who were 8 in numbers were awarded 17 and above marks found place in the final select list. In the category of post of Junior Engineer, Mr. Goyal presented the figure according to which total 219 candidates who were awarded 17 and above marks out of 20 in interview, 74 of them belonged to particular religion and 57 of them found place in the merit list and so also the 66 candidates of particular caste out of 219 candidates in total found place in

the select list. Again in the category of Routine Grade Clerks 49 candidates were awarded 20 and above marks out of total 25 in interview and 26 candidates out of total selected 52 candidates of particular religion who were awarded 20 marks and above found place in final select list. Similarly 25 candidates of a particular caste out of 49 selected candidates were also awarded 20 and above marks in interview out of 25 were placed in final select list. Mr. Goyal submitted that looking to the time factor involved in conducting the interview of candidates by each board it was clear that the interview board had not much time to assess the total personality of a candidate participating in the interview and hence awarded marks only on pick and chose basis. Mr. Goyal submitted that at least figures speak themselves. In support of his submissions Mr. Goyal has taken the Court to the statement of Mr. Anand Murti Srivastava, the then Superintending Engineer and Sri Chandra Dhar Dubey, the then Superintending Engineer recorded on 31.01.2018 and 01.07.2018 respectively. These statements have been placed before the court only to demonstrate that only time schedule for statement was stated but nothing had been stated as to what time was actually consumed in interview each day or shift.

121. Thus, according to Mr. Goyal, the authority while passing the order has fully appreciated all the reports available to it and has valid justified reasons on facts to cancel the entire selection process. In the decision making process, according to Mr. Goyal, the factors like findings in inquiry reports, the own admission of Aptech in revising the result, not uploading the original master answer key before the select list inviting objections, deleting the date from primary source cloud server,

not providing the digital signatures as to the data provided in CDs by Aptech Limited so as to explore the possibility of verifying the data integrity and non compliance of the agreement in selection process by the M/s. Aptech Limited, have all weighed the decision of the authority of the Corporation to conclude that it became absolutely impossible to segregate tainted candidates from untainted candidates.

122. According to Mr. Goyal, the entire selection got so circumstanced by motivated actions of selectors to serve their vested interests that it became impossible to take against out of choff by rewarding the merit and therefore, upon the principle of law laid down by the Supreme Court in the case of **Union of India v. O. Chakradhar, (2002) 3 SCC 146**, the entire selection and appointments deserved to be cancelled and no notice to candidates individually.
123. Mr. Goyal has taken to the details of the report of Institutes of Technology summarised in the counter affidavit vide para 85 in Writ Petition No. 4572 of 2020, Surendra Singh & Another vs. State of U.P. & Others.
124. Mr. Sanjay Kumar Om, learned counsel appearing for the U.P. Jal Nigam (Rural) has adopted the arguments advanced by Mr. Manish Goyal, learned Senior Advocate. Additionally he has submitted that corporation undertook a very exhaustive exercise in going through various reports that were available to it and examined the same very minutely to arrive at a conclusion, genuinely drawn, that entire selection process was too vitiated to be reckoned with. According to him, the illegalities and irregularities in selection process were so deeply rooted that it became impossible to form separate

buckets of tainted and unstained candidates as was directed by Division Bench of this Court in its earlier judgment dated 28th November, 2017.

125. Thus, according to him, the judgment of the authority of the corporation to annul the entire selection process and consequently the appointments do not suffer from vice of flow in the decision making process and hence this Court may not exercise its power of judicial review to interfere with orders impugned in these petitions.
126. Mr. Aditya Bhushan Singhal and Mr. Vimlesh Kumar Rai, learned Advocates appearing for U.P. Jal Nigam (Urban) are assisting counsel to Mr. Goyal and adopted all his arguments.

Arguments raised for the State of Uttar Pradesh

127. Leading the arguments on behalf of State of U.P. Mr. Ajeet Kumar Singh, learned Additional Advocate General assisted by Sri Amit Verma, learned Standing Counsel argued that there was no direction taken from the Finance Department to hold selection and appointment against the post in question in the U.P. Jal Nigam. According to him, the power lay with the Board and not the Chairman as per Section 7(3) and 8 of U.P. Water Supply and Sewerage Act, 1975. According to him the Board which was empowered to take decision being competent authority recognized under the statute, had never taken a decision to make selection and appointment. He submitted further that the then Minister being in the capacity of ex officio Chairman of the Board of U.P. Jal Nigam proceeded to hold selection and appointment at his own discretion.

128. Upon a pointed query being made as to why the original data was not collected from the archives NAS NOIDA placed office of Aptech Limited while the SIT was conducting investigation and even the service provider agency had written to it regarding the same, Mr. Singh submitted that it was the duty of SIT to have conducted investigation further in the light of letter, if any written by M/s. Aptech Limited and he cannot make any submission regarding stand of SIT to confine itself to recovery of the hard disk from the local environment office Mumbai of M/s. Aptech Limited. However, he supported the findings arrived at by the SIT during the investigation regarding gross irregularity and illegality committed in the selection process and so resultant appointments offered to less meritorious candidates. He thus, sought to defend the orders impugned here in these petitions.
129. On other legal aspects involved in the case Mr. Singh has adopted the arguments advanced by learned Senior Advocate appearing for the Corporation Mr. Goyal. Additionally, of course, he put up a point that the seizure memos that were prepared by the SIT may also taken into consideration.

Arguments advanced on behalf of M/s Aptech Limited

130. Ms. Meha Rashmi, learned Advocate appearing on behalf of the service provider M/s. Aptech Limited has basically argued following three points:
- (i) As per the agreement reached between M/s. Aptech Limited and the Corporation, the agency was to live objection tracker by uploading the answer key for 7 days after conclusion of CBT but M/S. Aptech Limited was also to honor

the directions/ instructions issued from time to time by the senior officials of the Corporation with whom the agency was coordinating as per the agreement.

131. In support of her submissions, she cited clause 'e' of the Post Examination Stage Activities, as prescribed under the work order which clearly provided "*answer key will be displayed for 7 (days) after the test or as requested by U.P. Jal Nigam objections/ queries received online should be attended and remedial action should be taken*". She has placed emphasis upon the words and expression "*as instructed by U.P. Jal Nigam*" to demonstrate that even though the work order carried this directive in black and white but alternatively it also provided that the agency would be working as per the instructions received from U.P. Jal Nigam. She submitted that the first phase of examination was held on 08.08.2016 *qua* Routine Grade Clerk and M/s. Aptech Limited informed the Managing Director of U.P. Jal Nigam on 09.08.2016 that as per the departmental instructions and discussions held with the officials of the Corporation it had been decided not to go ahead for the procedure of inviting objections to questions and answers from the candidates and instead, results were to be processed immediately.
132. Likewise, she submitted, after the CBT was conducted in respect of Junior Engineers post in all categories and concluded finally on 07.12.2016, the Managing Director held discussion with M/s. Aptech Limited to process the result instead of inviting objections to the questions and answers. Again a further letter was written on 17.12.2016 in respect of the CBT held for the post of Assistant Engineers which had

concluded on 16.12.2016. All these letters have been brought on record by M/s. Aptech Limited through the counter affidavit filed in its behalf in the matter of Ambrish Kumar Pandey vs. State of U.P. and others being Writ – A No. 5912 of 2020. It is thus, sought to be urged by Ms. Meha Rashmi, learned Advocate that it was not M/s. Aptech Limited which was to be blamed for not uploading the answer keys, rather U.P. Jal Nigam which insisted for the announcement of results of CBT, was to be blamed. According to her, there was no clause clearly providing that in all circumstances publication of master answer key was to take place before final declaration of CBT result and thus whatever was provided under the work order was complied with in its letter and spirit. She argued that M/s. Aptech Limited was the only examination conducting agency and at every stage of selection process it was having consultation with the officials of U.P. Jal Nigam. Likewise the Managing Director and its authorized officers of the Corporation would be holding discussions and consultations with the officials of Aptech Limited in their office and giving guidelines.

133. On the point of deleting the data from the primary source cloud server Ms. Rashmi submitted that online examination whenever is held there are three servers that are working side by side. One server at a centre where the examination is conducted for transmitting all the minute details, they can be termed as audit trail in respect of the candidates attempting questions and giving answers; another server is available in the office of service provider agency where online applications registered etc. are processed and all these details are finally transmitted to the online cloud server which is a hired space

provided to the agency by another service provider. According to her, when the data are collected and final result is declared, the entire matter comes to a close. In such circumstances, therefore, the data is transmitted from the cloud server to the local environment and further sent to the other storage device at assigned places of service provider and as per Aptech's data restoration policy after the expiry of six months it is sent to archive storage NSA placed at its Noida Office.

134. In support of her above submissions, she led the Court through the data retention policy of service provider agency and submitted that these documents were also supplied to SIT to have a look as to how the data retention policy has been framed and what exactly the Aptech Limited does in respect of such online examinations. Ms. Rashmi submitted further that on 18.09.2018 M/s. Aptech Limited had written a letter to the Managing Director, U.P. Jal Nigam in the above regard and she has drawn attention of the court towards Annexure No. 22 of the counter affidavit filed by it in the matter of Ambrish Kumar Pandey, which clearly provided that the data Centre at Mumbai retained the data on the cloud server only for 30 days.
135. Thus, according to Ms. Rashmi as per the terms and agreement of the service provider agency reached with M/s. Aptech Limited, the cloud server space which was used for the purposes of live program like registration online of the candidates, holding online examination, was only for a limited duration. She further submitted that the data was there stored in the local environment only for the purposes of processing the result so as to prepare the final select list as a result of CBT. This, according to Ms. Rashmi was not the main secured

data and related to the examination/ CBT only. All these informations regarding candidates attempting the question etc. was transferred through the software 'audit trail' which was used by service provider agency namely M/s. Aptech Limited. Thus, according to her, the hard disks which were claimed to have been seized and were six in numbers, from the local environment office of M/s. Aptech Limited were in fact nothing but storage of the result processing data. She argued that the CDs/ DVDs that were claimed by the Corporation to have been provided to it and which were forwarded to the Institutes of Technology both at Kanpur and Allahabad for verification of data integrity, were not the primary source data. CDs/ DVDs are always secondary source and had the corporation been sincere to conduct forensic examination of the material relating to the examination held online by the service provider agency, it should have looked into the data retention policy and accordingly should have asked M/s. Aptech Limited to provide access to its original data preserved in archive storage.

136. She further argued that M/s Aptech Ltd. itself had submitted a report to the effect that after objection to the certain questions and answers were solved revising the result and handed it over to the Corporation vide letter dated 24th July, 2017 in respect of Routine Grade Clerks, on 14th August, 2017 in respect of Junior Engineers and 22nd July, 2017 in respect of Assistant Engineers, but Corporation miserably failed for the reasons best known to it, to proceed to revise final select list of the CBT results. She further submitted that in view of the order passed by the Court in Service Single No. 7640 of 2020 dated 17.09.2020, the data stored in the Archive could not be

exposed to anyone as it became *custodia legis*. According to her whenever a record or property is put on hold under the orders of the Court, in principle, these properties and records become *custodia legis*.

137. Meeting the arguments earlier advanced on behalf of U.P. Jal Nigam that no checksum information or 'hash value' was made available by M/s Aptech Ltd. so as to enable the experts of IITs to arrive at a definite conclusion that original data was not interfered with and further to arrive at a conclusion as to whether tainted and untainted candidates could be segregated or not, Ms. Rashmi, learned Advocate, submitted that original data is still saved in the Archive storage of Aptech named as NSA at its NOIDA based office and Corporation could have asked any expert to have access to that and this could have been also done for IIT experts. She reiterated the stand of M/s Aptech Ltd. that whatever DVDs and CDs were provided by M/s Aptech Ltd. to the Corporation containing data was a processed data consisting of results of CBT on excel format. She further argued that when CFSL report was already there in place and the SIT submitted a final report sometimes in January, 2020, it was still open for the State or for that matter Corporation to have access to the CFSL data comprised in DVDs with 'hash value' for the purposes of verification of data integrity. She submitted that this could have been done also by taking leave of the concerned court.
138. She vehemently urged that original primary source cloud server data which was downloaded to the secondary server and finally kept in Archive storage of the Company was in fact as per the protocol.

139. Dealing with academic point as to purpose and the characteristic of software tools like 'checksum', 'hash value' and 'audit trail', Ms. Rashmi submitted that these are only software tools to verify integrity of original data. She submitted that data transmitted from main cloud server to the storage server is automatically done without human intervention and 'audit trail' is the software tool that was in fact used by M/s Aptech Ltd. This software tool verify the original data like the one respondents wanted *qua* Click of the mouse at the relevant point of time at a particular centre of a particular a candidate while attempting questions. These details are embedded in data and can only be verified by experts of the field so as to come to a definite conclusion whether data continued to be stored in its original form or had further been modified. The audit trial according to Ms. Rashmi provides a complete chain of events date-wise and time-wise and if forensic expert is put to a task to examine it, then such an expert he would immediately come to arrest a case if date and time of chain is broken at any particular stage. Once chain is found to be broken then data accessed would have to be taken to have already been modified. Similarly, she argued that checksum and hash value and other software tools do the same but on different formats they work and are applied to. She submits that she was surprised as to why the Corporation did not seek opportunity to verify the data by requesting M/s Aptech Ltd. to provide access to experts of IITs to its archival data.
140. Meeting the arguments advanced by counsel appearing for the Corporation that original result was prepared on excel sheet but was supplied on HTML format and this was indicative of

some interpolation or tampering, she submitted that it was highly misplaced an argument. According to her M/s Aptech Ltd. worked on Excel format and processed data was reproduced on excel format. She argued that original data from the cloud server when downloaded in local environment it continued on .txt and the same way was stored in the Archive Storage Server, but once it was worked upon or processed for that matter, then it got transformed on the format which is applied like in the present case excel format. This is the reason according to her, how the data was provided on excel format placed and this is the reason as she argues that data recovered/retrieved from the hard disk was a result processing data.

141. Any investigation report on the basis of result processing data, she argues, cannot be taken to be a conclusive report *qua* data integrity so as to hold that selection process was compromised. She argued that service provider agency as a matter of fact conducted entire CBT in coordination with officials of the Corporation at every stage and there has been no complaint from the Corporation's side at any point of time until informations were sought under the Right to Information Act from the Corporation and it insisted for publication of master answer key and response sheet. She argued that even entire investigation report has discussed CFSL report to arrive at a conclusion that sufficient evidence were available to hold that named accused persons were guilty of the offences but in respect of a senior official of the M/s Aptech Ltd. Namely, Sri Bhawesh Jain, charge-sheet has already been quashed by Lucknow Bench of this Court vide judgment and order dated 02.06.2022 in matter under Section 482 of Cr.P.C. being no.

2235 of 2022. Thus, according to her, itself is indicative of the fact there was nothing intrinsic was there available in the investigation report to hold the accused persons guilty of the charge. Thus, according to her, both Police investigation report and enquiry reports are based upon no material indicating any systematic fraud in selection procedure at the level of M/s Aptech Ltd.

142. Ms. Rashmi further reiterated the stand of M/s Aptech that once it intimated the special investigation team vide mail written to it on its official mail ID on 7th September, 2018 admitting a fact that original data continued to be stored in its Archive storage NAS NOIDA, SIT ought to have visited the Noida office of the M/s Aptech to lay its hand over the data stored there. This, according to Ms. Rashmi, could have done justice to the candidates who had fairly and genuinely participated in the open selection process and had fairly made it to the merit list. Thus it was serious lapse on the part of the SIT, in not approaching the M/s Aptech Ltd. at its office at Noida for the said purpose and instead continued to depend upon that hard-disks that were seized from the local environment office at Mumbai.

143. The submission regarding 65-B of the Evidence Act, 1872 certificate *qua* hard-disks recovered, particularly hard-disk No.- 6 which contained the image data of primary source Cloud server CtrlS and that neither Mr. Neeraj Malik, nor Mr. Roman Fernandes could have given it and instead, it was required to be given only by an officials of the company CtrlS, whose hard-disk it was and had the image data of cloud server. According to Mr. Meha Rashmi, learned counsel M/s Aptech

Ltd. had no control over the data transmission from the original cloud server to the hard-disk of the CtrlS company and, therefore, the officials could not have known the nature of material which was claimed to be image data of the Cloud server in absence of the certificate by the officials of concerned CtrlS company. The certificates issued by Mr. Neeraj Malik and Mr. Roman Fernandes, therefore, cannot be treated to be valid certificate within the meaning of Section 65-B of the Indian Evidence Act, 1872.

144. Mr. Goyal has also relied upon the judgment in the matter of **M/s. Aptech Limited v. Union of India, 2021 (1) High Court Cases Del. 580** in which vide para 7 the Court has referred to the judgment of the Division Bench of this Court in the case of M/s. Aptech Limited v. U.P. Power Corporation as already referred to herein above. The Court referred to the findings returned in para 30 of the Division Bench judgment of this Court. The Court did not approve the conduct of M/s. Aptech Limited for having concealed this fact that a High Court had earlier approved the order of blacklisting. Mr. Goyal has referred to para 47 of the judgment on the principle of judicial restraint in matters of administrative action, in the event the decision making process was found to be not flawed one.

Reply to the arguments of M/s Aptech by Corporation

145. Replying to the arguments advanced on behalf of M/s Aptech Ltd., Mr. Manish Goyal, learned Senior Advocate appearing for the corporation submitted that the principle of *custodia legis* is not applicable to the case in hand because its records, as claimed by the Aptech Ltd. in its archive storage NAS,

Noida office, was not in custody of any court of law, nor the court had placed it in custody of a third person or authority in its behalf. In this connection he has placed reliance upon the judgment of Supreme Court in the case **Bank of India v. Vijay Transport and others (2000) 8 SCC 512**.

146. On perusal of the mail sent on 7th September, 2018 to the SIT by Aptech as was claimed in the counter affidavit, Mr. Manish Goyal submitted that authenticity of the letter is doubted, firstly for the reason that mail ID could not be said to be of the SIT and secondly the signature of the official is also questionable as the covering letter does not match these or subsequent correspondences that took place between the Corporation and the SIT and between the Corporation and the M/s Aptech Ltd inasmuch as format of letters was different.

Arguments in Rejoinder on behalf of petitioners

147. Meeting the points raised by Mr. Manish Goyal, Mr. Khare, learned Senior Advocate in his rejoinder has emphasized basically on three points:

Firstly, that only inquiry that was to be conducted by the respondent Corporation was to be aimed at how to segregate tainted candidates from untainted candidates in the light of the judgment of the High Court dated 27th November, 2017 as there was no issue with regard to sanctity of selection *qua* its procedure adopted by the M/s Aptech Ltd. Thus, according to Mr. Khare, the inquiry has been beyond proportion and crossing the limits fixed by the judicial pronouncements previously made in that regard;

Secondly, in view of the master answer key uploaded by the corporation/ Jal Nigam to invite objections from the candidates, the controversy was limited to the extent of a revised result to be prepared after resolving the issue of disputed questions and answers by referring to the same to the experts and, therefore, the expression tainted and untainted was contextual to that only and, therefore, the inquiry ought to have been limited to that extent only; and

Thirdly, principle of 'hash value' has wrongly been interpreted and applied to the case in hand and the opinion of the experts were absolutely on a misplaced instructions provided by the U.P. Jal Nigam while asking for their opinion.

148. On the point of short time or negligible time given by the Interview Boards to the candidates in different categories while interviewing them, Mr. Khare submitted that chart that has been appended along with supplementary affidavit that was filed before the Supreme Court and has been brought on record through counter affidavit in the writ petition of Samrah Ahmad, clearly establishes that considering the number of candidates and interview board constituted, sufficient time was provided. He has further argued that there cannot be a uniform fixed time formula to interview a candidate as a candidate may not respond properly, so the interview may end in a minutes' time, whereas in case if a candidate responds very positively, the interaction may go for a longer time. He submitted that looking to the statements of the members of interview board made before the SIT it is clear that no undue influence or pressure was ever exercised upon them, nor name of any candidate had been taken by them who might have pressurised

them before or during the interview. Thus, according to Mr. Khare, this argument is highly misplaced that the candidates were not properly interviewed and marks were allotted whimsically and those who had not been able to score better in CBT, were given higher marks in interview deliberately to make them qualify for final select list.

149. Mr. Ashish Mishra, learned counsel for the petitioners replying to the arguments advanced by Mr. Manish Goyal on behalf of the corporation in rejoinder, submitted that mere wrong answers and wrong questions in a MCQ pattern CBT cannot itself be a ground to upset the entire selection because those, who had genuinely qualified and found place in the select list deserved appointment. If the error is rectified in respect of those very candidates, who should have been called for interview but were not called, there would be no need to annul the appointments of those who have already been working with the respondent corporation after selection. Those who if finally succeed after revised result, can be adjusted in accordance with their merit upon the available vacancies. However, Mr. Mishra would not hesitate in submitting in his usual fairness that CFSL report if taken to be an ultimate evidence available to identify the tainted and unstained candidates, then those very 169 candidates that were found by CFSL to have been called for interview on the basis of inflated marks, their merit can be arrested in the matter of selection and they may be placed out of zone of consideration and their appointments would then certainly go.

150. On the point of timings spent by the interview board in interviewing the candidates Mr. Mishra submitted that about

266 candidates in the category of Junior Engineers did not appear before the Interview Board and thus this could have further been taken to have enlarged time span in respect of those candidates who were interviewed. Likewise there were absentees in Assistant Engineer category and there may have been absentees in respect of Routine Grade Clerk category as well.

151. Looking to the chart appended with affidavit filed before the Supreme Court Mr. Mishra reiterated that time spent in interview from morning till evening with 10 Board in case of Junior Engineers, it cannot be said that the number of candidates were so much high or rather too much that it left hardly sufficient time for the members of interview board to evaluate and assess the merit of the candidates more so when 266 candidates did not turn up for interview in Junior Engineer category and 16 candidates did not turn up in Assistant Engineer category but unfortunately the SIT while analysing these facts in its report has overlooked this very aspect of the matter absolutely.
152. Mr. Mishra took the Court through the statement of Mr. Ram Prakash Gangawar, who was a member of the Interview Board and upon interrogation by SIT, he stated that interview was duly held and no pressure at any point of time was exercised upon him for giving special marks to any candidate particularly.
153. Similar statement, according to Mr. Mishra, is also of Mr. Vipin Kumar Tripathi, Director of the Government Engineering College, Bijnor, who was also member of the Interview Board, wherein he also stated that nobody had

exercised any kind of influence upon him, nor made any recommendation in respect of any particular candidate. Similarly, Mr. Mishra submitted, Sri Prasad Shukla, Director of Government Engineering College, Banda, member of another Interview Board very clearly stated to the investigating officer that no such pressure was exercised upon him. Mr. Mishra submitted that similar were the statements of Mr. Virendra Pathak, Mr. Kayde Azam Lari and Mr. Sunil Kumar, Mr. Pradeep Kumar and so the other members of Interview Boards, who were interrogated by the SIT.

154. Thus, according to Mr. Mishra, the argument raised on the principle of average of time as drawn, by Mr. Manish Goyal, the Additional Advocate General and learned Senior Advocate, cannot be made basis to form a view that the finding arrived at by SIT is based upon cogent and intrinsic material that entire process of selection was compromised.
155. On the point of model code of conduct Mr. Mishra has argued in the rejoinder that this will apply only in matters where adhoc or temporary appointments are to be made. In the event selection process had already been initiated then selecting authority was not in any manner restrained by any notification of model code of conduct, from declaring result of selection for making appointments.
156. Mr. Mishra would argue that these are the statutory bodies that are governed by the Statutes to conduct the recruitment drive and, therefore, they are governed by the rules framed in that regard. Once the procedure prescribed is codified in law then a mere notification by the Election Commission, say a model code of conduct notification in view of the parliamentary or

State Legislative Assembly election will not certainly restrain or put a bar upon such a statutory body or such institutions from declaring results of selection and offering appointments in respect of substantive vacancies advertised. What may affect would be a new recruitment drive as a policy decision in immediately drawn just at the notification of model code of conduct to influence voters in election.

157. In respect of an argument by Mr. Goyal that report of M/s Aptech Ltd. identifying 656 candidates such candidates, who were called for interview, though did not deserve and this itself could be a ground to hold that selection process was compromised, Mr. Mishra contended that out of 656 candidates except for two candidates, namely, Sri Abhishek Srivastava, Junior Engineer (Civil) and Mohd. Tahseeb Khan, Junior Engineer (Mechanical/ Electronics), the remaining 654 candidates were not selected at all.
158. Similarly, 479 candidates, who were found to have not been called for interview though they ought to have been called for interview after the revised list was published, he submits that these candidates would find place in the lowest order of merit list, otherwise the candidates, who were already there in the merit list were called for interview on their own merit and there is no such finding arrived at that those who were called for interview and were selected, did not deserve to be called for interview except for 169 candidates who have been found by CFSL, *to wit*, tainted candidates.
159. Thus, according to Mr. Mishra, the entire select list cannot be upset only on the ground that 479 candidates in fact deserved to be called for interview on the basis of the revised result

prepared by M/s Aptech Ltd. but for the act of corporation were not called for interview.

160. Meeting the argument of Mr. Goyal that there could have been much more number of candidates than 169 identified by the CFSL and who could have been characterised as of tainted category and *qua* number since was not known therefore, it could not be definitely said that the findings to that count arrived at was correct one, Mr. Ashish Mishra submitted that SIT report and CFSL report both are silent in respect of any further candidate to have been found with inflated marks. In fact SIT also indicted the accused persons on the basis of CFSL report having found 169 candidates only to have marched to interview board with inflated marks. It is submitted that once the SIT report had been accepted by Additional Chief Secretary (Home) and no challenge was laid to it, nor any further investigation was ordered, it would be taken, whatever the CFSL report was placed reliance upon, was worth merit reliance for identifying the candidates, who fall in the tainted category and segregating such candidates from those, who fall in the untainted category for being selected and placed in merit list genuinely.

161. Mr. Mishra replying to the arguments of Ms. Meha Rashmi, learned counsel for the 5th respondent in Writ – A No.- 5912 of 2020, submitted that 6th hard-disk was the mirror image file of the cloud server data stationed/ placed in local environment office of M/s Aptech Ltd and not of the CtrlS company and since it was recovered from the local environment office of the M/s Aptech Ltd, Aptech Ltd. at Mumbai, it should not have shied away from admitting that it was the hard-disk recovered

from its possession and that certificate issued by Mr. Roman Fernandes was worth a certificate admissible in law.

162. It is equally important to notice here the argument advanced by Mr. Mishra, learned Advocate appearing for the petitioners who also relied upon para 89 of the judgment in R. Prem Lata (supra) where the Court had held that while terminating the services of appointed candidates compliance of three principles at the hands of the State was imperative; firstly, with regard to sufficiency of material collected to arrive at a satisfaction that the selection process was tainted, secondly to determine the question that illegality committed goes to the root of the matter and this satisfaction and sufficiency of material is required to be achieved through investigation in fair and transparent manner, and thirdly the sufficient material present has enabled the State to arrive at a satisfaction that officers in majority have been found to be part of fraudulent act rendering the system itself to be corrupt. Mr. Mishra submitted that looking to the facts, investigation report of SIT and the opinion reports of the Associate Professors of Institutes of Technology, it does not lead in any manner to conclude that there was any deep rooted corrupt practice which had been adopted either by those who were selectors or those who were candidates so as to benefit only a few to the prejudice of majority.

ISSUE FOR DETERMINATION

163. Having heard rival submissions advanced by learned Advocates appearing for the respective parties and having gone through the records, more especially enquiry reports, police report of SIT and the report submitted by the Associate Professors of the IIT, Kanpur and IIIT, Allahabad discussed in

the order impugned, I am of the view that following issue emerges for consideration of this Court :

“whether the material discussed in the orders impugned were cogent enough to reach out to a conclusion that entire selection process in respect of vacancies of AE/JE/RGC in question was so much compromised that there left no possibility to segregate tainted from untainted candidates, and therefore, taking a holistic view of the matter, it became imperative to cancel entire selections and appointments made in respect of those very posts”

DISCUSSION UPON ARGUMENTS AND MATERIALS

164. In order to appreciate the material discussed in the orders impugned here in these petitions, first point that is required to be thrashed out, is as to what the High Court and Supreme Court meant by words and expression ‘tainted and untainted’. It is, therefore, pertinent here to look first into two in-house enquiry reports of the officials of the Corporation dated 29.05.2017 and 7.7.2017 (Annexure CA-4 and CA-5 in Writ Petition No. 7076 of 2021). These two enquiries as a matter of fact were for the order passed by the Lucknow Bench of this Court, first in Writ Petition bearing No. 9794 (SB) of 2017, Gaurav Kumar Verma v. State of U.P. and Others dated 8.5.2017 and the order dated 15.5.2017 in Writ Petition No. 15948 of 2017 (Utkarsh Singh v. State of U.P. and Others.

First Departmental Enquiry Report dated 29.5.2017

165. The first enquiry report, which was submitted by Anup Kumar Saxena, Chief Engineer (Urban) concluded as under:

(I). The entire selection process was outsourced to M/s Aptech Ltd. and the records available do not indicate that any effort was made to get selection conducted by any established and

reputed institution like IIT or Government Engineering College or a recognized university.

(ii) The then department of Urban Development had directed the Managing Director , U.P. Jal Nigam to carry out recruitment drive in respect of 113 posts of Assistant Engineers, (Civil) and 9 posts of Assistant Engineers (Mechanical/Electrical) on 16.11.2016.

(iii) Uttar Pradesh Jal Nigam Engineer (Public Health Branch) Service Regulations - 1978 vide its Regulation 10, part IV provided that post of Assistant Engineer (Electrical/Mechanical) shall be filled up by a candidate with bachelor degree of a recognized institute or University with Mechanical and Electrical Trade or has qualified part-A & part- B examinations in Electrical and Mechanical trade from a recognized institute, and whereas no amendments were made to Rules and yet only upon mere approval of the Managing Director, 4 posts out of 9 posts of Electronic and Mechanical Trades were assigned to Computer Science/Electronic Communication upon which appointments were made on 3rd January, 2017, and the U.P. Jal Nigam Board accorded its approval subsequently vide resolution dated 6th January, 2017, however, the requisite approval of appropriate Government was not taken.

(iv). Considering the pleadings raised in matter of Gaurav Kumar Verma (*supra*), a finding came to be returned that allotment of higher marks to the candidates who were four in interview, even though they had obtained much less marks in CBT and this proved that entire selection process stood vitiated and deserved annulment.

(v). Placing reliance further upon pleadings of irregularities in allotment of marks and 4 candidates attempting questions identically and looking to a fact that 4 in serial numbers were selected, it could not be assumed to be just a coincidence and thus it raised a question mark *qua* conduct of selection by the outsourced agency.

(vi). Manner in which entire selection process was hurriedly conducted and the processing of results and its declaration and appointment orders issued in close proximity to avoid effect of notification of Model Code of Conduct, this all in itself was indicative of an act and conduct, enough to establish that the entire selection process had stood compromised.

(vii). Out of 19 candidates in the category of Civil, two candidates in the category of Mechanical/Electrical, 3 candidates in the category of Computer Science and Electronic Communication, totalling to 24 candidates had raised objection as to 42 questions in respect of which answers assigned were questionable/ doubtful and M/s Aptech Ltd. and report dated 25.5.2017 having found 26 questions in Civil, 19 questions in Electrical/Mechanical and 2 in Computer Science to be incorrect, the sanctity of the examination was lost.

Second Departmental Enquiry Report dated 07.07.2017

166. In the second inquiry report dated 07.07.2017 submitted by Sri Rajiv Nigam, Chief Engineer (Level-II) following findings have been arrived:

(i) There was no effort made to get the selection conducted by any established prestigious institute like Government Engineering College/ Institute.

- (ii) The Urban Development Department accorded approval on 16.11.2016 asking the U.P. Jal Nigam to go ahead with the recruitment driver in respect of 113 posts of Assistant Engineer (Civil) and 9 posts of Assistant Engineer (Electrical and Mechanical);
 - (iii) The Urban Development Department of the Government of U.P. had sanctioned 300 crore rupees as interest free loan to U.P. Jal Nigam in which vide clause 4 it was specifically provided that appointments shall be made against the existing vacancies with the prior approval of the Finance Department only and yet before issuing the appointment order on 03.01.2017 these directives were not followed at all.
 - (iv) Referring to the writ petitions of Utkarsh Singh (supra) and Sri Mukesh Kumar Patel (Writ Petition No. 15948 of 2017) the inquiry officer concluded that these two candidates having secured only 50 and 49 marks each were not called for interview because the last cut off for the written CBT in the OBC category was 54;
 - (v) The candidates for the post of Assistant Engineer (Civil, Computer Science, Electronics, Communication and Electrical), 522, 22 and 20 candidates were called for interview even though no master answer key was published inviting objections.
167. Upon information being sought under the Right to Information Act, 2005 when the letter was written to M/s. Aptech Limited, they uploaded the entire result on 14.02.2017 and the answer key was published online on 28.02.2017. In respect of first shift examination of Assistant Engineer (Civil) 15 questions in

respect of second shift, 16 questions were objected too and in respect of Assistant Engineer (Electronic/ Mechanical) out of 80 questions, objections were raised to two questions and in respect of Assistant Engineer (Computer Science/ Electronic) with regard to 11 questions objections were raised. These objections were sent to M/s. Aptech Limited for solutions and in its letter dated 25.05.2017 M/s. Aptech Limited admitted that 11 questions out of 15 questions in respect of which objections were raised in the first shift examination of Assistant Engineer (Civil/ Mechanical) were correct as the answers were wrong and in respect of second shift out of 16, 6 questions were wrong or there was some doubt. In respect of Assistant Engineer (Computer Science), out of 11 questions, answers to 10 questions were found to be wrong. The procedure was to first upload the master answer key in respect of online examination inviting objections and to resolve them first and thereafter, only the select list was to be published. This procedure having not been followed gross irregularity was committed by M/s. Aptech Limited. Looking to the number of wrong answers to the questions, the findings returned was that gross irregularity got committed at the end of the Aptech Limited because it was Aptech Limited who had this onerous task of drafting the question papers and providing correct answers to the questions asked in the model/ master answer key.

168. Referring to the petition of Shubham Sachan being writ petition no. 19413 of 2017 who had applied for the post of Assistant Engineer (Mechanical) in the OBC category, it is stated that he had obtained 60 marks out of 80 and yet in interview he was awarded only 12.8 marks and so, he could

secured on 72 marks. Had the answer key been published earlier inviting objections resolving the same, such exercise would have facilitated his plant in CBT merit list to qualify for interview.

169. Shubham Sachan's writ petition since pleaded that question no. 29 was correctly answered and the objections raised by him had been found to be valid by M/s. Aptech Limited, wrong assessment was made as correct in respect of a wrong answer.

170. Thus, in view of these gross illegalities/ irregularities committed by the outsourced agency/ service provider who had conducted CBT of the candidates online, many undeserving candidates were made to march to the interview board and many deserving candidates were left out.

171. On the point of *mala fides*, the inquiry officer expressed his view that 5500 candidates had participated in the selection process of Assistant Engineers so upon a mere perusal of documents this could not be concluded that there was any act of malice or act vitiated for *mala fide* in the conduct of CBT but this could be claimed with authority only after putting the data to the Forensic Expert examination and getting a report confirming such malicious exercise.

172. From the above two reports, three things emerge out to be admitted position on facts (prior to the intervention by this Court under its order dated 28.11.2017):

(i) The entire controversy upto this stage was only limited to the conduct of selection of only Assistant Engineer in different trades as there was no issue at least available on record to demonstrate anything relating to the conduct of

selection of Junior Engineer and Routine Grade Clerk. It is based upon these above findings that Chief Engineer, U.P. Jal Nigam passed an order on 11.08.2017 holding that the entire selection was *void ab initio* and therefore, the entire consequential action got rendered *non est*. The appointment orders accordingly issued on 03.01.2017 were held to be void ab initio and consequentially cancelled w.e.f. 03.01.2017 itself. However, the salary paid to the employees who had been working pursuant to the appointment orders were made irrecoverable.

(ii) Though the department of Urban Development had authorized the Managing Director, U.P. Jal Nigam to go ahead with the recruitment drive but neither the financial sanction was taken from the Finance Department, nor the relevant rules even mandated to confer power upon the Corporation through its board to carry out recruitment exercise against the posts, more especially in respect of those that were assigned to the trade of computer science and electronic communication.

(iii) The entire findings have come to be returned regarding selection process to have been compared on the basis that wrong answers assigned in the master answer key to the questions in respect of which objections were raised, were not resolved prior to publishing the final merit list/ select list and issuance of consequential appointment orders.

173. The inquiry officer on the basis of pleadings raised by those very petitioners in whose petitions and the orders passed in first leg of litigation, thus came to conclude that if master answer key had been published prior to publication of merit list, the select list would have been different and it would have

ensured transparency on one hand and trust in the conduct of selection in public employment on the other.

174. While dealing with the challenge laid to the order passed by the competent authority of the corporation annulling the entire selection and appointments, petitioners confronted by these very findings had raised a number of arguments before the Court and the Court exhaustively dealt with all those arguments and then having appreciated the pleadings raised and documents produced, concluded that the vacancies were duly sanctioned and were permanent in nature and, therefore, there was no issue either of impropriety on the part of the corporation in going ahead with the recruitment drive, nor there was any issue with regard to the contract given to a private agency to undertake selection process.
175. The Court held that entire selection process was undertaken as per the procedure prescribed stage by stage and, therefore, once the appointment orders were issued pursuant to the selection process undertaken as prescribed for under the advertisement, the candidates who were offered appointments and had been given joining, deserved a notice before cancellation of appointment orders.
176. The Division Bench rejected the arguments of the corporation that the very fact that some of the defective questions and incorrect answers found to be incorporated, it led to an impression as genuine one that undeserving candidates got entry into the select list and, therefore, the entire selection stood vitiated. The Court held that there were certain complaints with regard to the selection proceedings and it was incumbent upon the State Government to have held an inquiry

to find out as to who were candidates not suitable for appointment so as to cancel their appointments, but no such exercise was undertaken by the respondents to distinguish cases of tainted from untainted ones.

177. Looking to the factual background of the case until this judgment was passed the inquiry reports upon which the order dated 11th August, 2017 was passed impugned in that writ petition, I find that epicentre of the controversy to be only non publication of the master answer key before the declaration of the final select list, which upon its publication led to genuine objections raised to certain questions and answers and, therefore, the candidates, who attempted wrong answers might have been placed in the select list and those who did not attempt or may have attempted questions to which the answers were doubtful got an exit door. The Division Bench, therefore, in these circumstances, had found the impugned order cancelling the appointments to be bad for want of exercise to segregate tainted from untainted candidates. The matter, therefore, got remitted for decision afresh in the light of the observations so made.

178. Thus, the words and expressions ‘tainted and untainted’ as has come to be referred in the judgment dated 28th November, 2017 is only contextual to this fact based controversy as I have already discussed above in the two inquiry reports and so I have no reason to doubt that until the two inquiry reports and even judgment of Division Bench later on, there was no issue with regard to any kind of gross illegality in the conduct of the examination except the propriety issue *qua* appointments to 4

posts of Assistant Engineer in the trade of Computer Science/ Electronic Communication stream.

179. Having dealt with the words and expressions ‘tainted and untainted’, now I proceed to examine the reports submitted by the IIT Kanpur and IIIT Allahabad made upon a call of corporation vide its letter dated 31st August, 2018.
180. Before coming to the reports I would like here to refer to the two letters written to these institutes of technology by the corporation on 31st August, 2018. In these letters specifically reports were called for in respect of online examination for the post of 122 Assistant Engineers only.
181. What is interesting to notice here is that corporation requiring for an independent report from IITs put a remark in the letter itself that *on the directions of the Honb’le Court inquiries were conducted which established commitment of gross illegalities and irregularities in the examination*. On the basis of findings entire examination process was rendered “void ab initio” “and recruitment was cancelled on 11th August, 2017” and then the letter also records that examination conducting body M/s Aptech Ltd. submitted that data *qua* selection had been deleted from the primary source cloud server and, therefore, the question was whether “*it was possible to segregate tainted from non tainted candidates and whether the data provided in CDs by M/s Aptech would be an authentic data in the context of deletion of data from primary source cloud server*”. With this letter in hand the Associate Professors of IIIT, Allahabad and IIT Kanpur submitted their respective reports making certain key observations.

Report of IIIT Allahabad [1st Report (Assistant Engineer)]

Key Observations:

- 1. There is no record available of any checksum (MD5/SHA-1/SHA-2 etc.) of the candidates response being computed immediately after the closure of the exam session for each candidate. Neither was any checksum computed/provided for the response database (which would inevitably have been created as the candidates responses were recorded) nor were these checksum (of the candidate responses/overall response database) if computed shared by the service provider with the office of UP Jal Nigam (UPJN).*
- 2. Concurrent to the terms and conditions of the contract between UPJN and the service provider, the service provider was responsible for generating the question data bank for the online computer based test. This is enumerated vide item number 7 (seven) on page 3 of the contract documents.*
- 3. There is no record available from the service provider that it provided the information listed in the contract document item "h" under the "Exam Operations".*
- 4. The service provider has also communicated that it has deleted all the data pertaining to the computer based test from the original server (Cloud Server).*
- 5. The Service provider has submitted the examination data on three compact discs (CDs) to UPJN.*
- 6. None of the files on these CDs have the checksum incorporated/ provided with them.*

- 7. All the candidate response files presented in HTML seem to have been modified on 27th February 2017, which is a most two months after the appointment letters to the successful candidates were sent out.*
- 8. All the HTML candidate response files that were provided on the CDs contain structured links to images of questions that were presented to candidate along with the response of the candidate the test "Question not answered", followed by correct answer and its explanation.*
- 9. The service provider, in their letter dated 25.05.2017 have stated that twenty six (26) questions, across all the three disciplines were flawed.*
- 10. Following directions from the Honorable High Court dated 01.05.2017 an enquiry into the issue of flawed questions was undertaken by UPJN and its findings dated 07.07.2018 revealed that twenty-nine (29) objections raised in connection with the validity of the questions of the computer based test hold merit.*
182. Examining the CDs provided by the corporation minutely, according to the report, in the absence of any checksum information not being provided by the service provider, identification of tainted candidates was impossible and also the authenticity of the data provided could not be verified for want of crucial information and for the reason that the candidates' response files that were preserved in HTML got modified on 27th February, 2017.
183. It assigns reason that candidates' response file as submitted by the service provider were created rather hurriedly and certainly

as not expected and in the absence of any validating information, there is very possibility that these candidates' response data file might have been distorted.

184. Further before arriving at conclusion to offer its final opinion, interestingly the Associate Professor observed that the scope of enquiry being limited to the technical aspects of the testing process and the rigour with which tests were conducted, he proceeded to presume as under:

(a). It was established opinion of U.P. Jal Nigam that testing process by service provider was compromised as per its letter and the implication was that testing process for other two posts was also compromised;

(b) Since the Court asked U.P. Jal Nigam to identify tainted and untainted candidates, it implied that Court accepted the stand of U.P. Jal Nigam that overall recruitment process got compromised.

185. Based upon the above, final opinion expressed is:

(I). Standard operating procedure of publishing master key before, declaration of CBT based select list, having been violated and recruitment process being further progressed and culminated in appointment orders resulted in denial of a fair opportunity in the overall selection process.

(ii). The mismatch in gender data for want of proper verification by service provider Courts doubt on the diligence exhibited by the service provider.

(iii). There existed no robust audit trail mechanism to verify whether an applicant's test record is untempered. The sanctity

of testing data could not be implicitly assumed for want of relevant checksum information.

(iv). In the absence of checksum information outsourcing data cannot be accepted.

186. The above opinion was subject to a condition that all the documents and data shared with the technical expert of IIIT had a verified provenance and responses provided by the person made available on 13th and 14th December, 2018 at the U.P. Jal Nigam Head Office.

Report of IIT, Kanpur [1st Report (Assistant Engineer)]

187. After examining the CDs that were provided by the corporation the expert of IIT, Kanpur concluded as under:

(I). In the matter of online examination the response data of the candidate is uploaded on the main server like in the present case cloud server immediately after the completion of the examination and thus response of each candidate becomes secured and cannot be tempered or interfered with. However, in the case in hand since the file was modified on 27th February, 2017 it raised strong doubt about tempering with the data which could not be ruled out and, therefore, it became difficult to independently confirm that response sheet of the candidates in CDs made available were the responses made by the candidates on the date of examination.

Since the primary data had been deleted from the cloud server, it was difficult for the expert to corroborate the data provided in the CDs to be an exact copy of the original data.

(ii). No audit trail containing the mouse click and the time spent in the choices made by the students were provided in CDs as audit trail would have made it easier to corroborate that answers given by the students in the examination was the same as the answers that were created later but in the absence of any audit trail discrepancies if had happened in the examination, could be detected and corroborated by way of confirmation that no such discrepancies had ever taken place.

(iii). The grading of the answer sheet is done only after the objections are invited or even rebuttals from the candidates to consolidate the responses and freezing of the answer key. This protocol having not been followed in the present case it raises apprehension that response sheets of individual candidate might have been tampered with.

188. Two above reports proceed to examine the data which was provided in CD form by the corporation to them with this note that this was the data provided by the M/s Aptech and that in the domestic inquiry a finding had already come to be returned that entire selection process was compromised.

189. The original data having been deleted from the cloud server admittedly upon expiry of 30 days, the same was not available and, therefore, the task left for the experts to give information as to whether the data provided was a genuine enough to demarcate a line between tainted and untainted candidates. However, the experts have expressed their inability to come to a definite conclusion and hence proceeded to hold that since the CD contained data which stood modified on 27th February, 2017, nothing could be said with surety as to whether the

selection process stood compromised or not for any kind of tempering with the original answer sheets of the candidates.

190. There is therefore, no definite view expressed in the absence of checksum information and hash value *qua* the data provided by the outsourced agency. Thus authenticity of the data could not be verified.
191. In order to appreciate the opinion of experts in the background of non availability of checksum information and hash value and even the audit trail details as has been opined by the experts of IIIT, Allahabad and IIT Kanpur, it is now necessary to at least throw some light upon hash value, checksum and audit trail like software tools.

2nd Opinion Report, IIIT Allahabad

192. It is apt here also to refer to the other reports furnished by the experts of the IIT Kanpur and IIIT Allahabad in respect of conduct of CBT *qua* Junior Engineers and Routine Grade Clerks, if third report in sequence and second report by IIIT Allahabad dated 19th December, 2018 proceeds to record its consequences after noting key observations that are enumerated in the report itself. These key observations relate to non publication of master answer key immediately after conclusion of CBT by the service provider. 7 wrong questions in the RGC CBT and 18 wrong questions in Junior Engineer CBT raised serious questions to the validity of the question papers formulated by service provider for computer based test. Two appointment orders issued to male candidates against reserved vacancy of female candidates in the category of Junior Engineers, non availability of checksum information so as to analyse the candidates response data if recorded, not

supplied to the U.P. Jal Nigam, in respect of typing proficiency test held for RGC recruitment as well, breach of contract by the service provider, non furnishing of data pertaining to the computer based test and computer based multiple choice test that might have been available on the original server. Thee CDs provided indicated that data stood modified on 27th February, 2017 after the appointment orders were issued and the candidate's response file for that RGC CBT presented on HTML format stood modified on 08th March, 2017, the scope of investigation being limited to the technical aspect of the testing process.

193. With these key observations regarding testing process and rigor with which recruitment tests were held, the report records two assertions made by the U.P. Jal Nigam while seeking opinion of the experts: firstly, that Assistant Engineers testing process by the service provider was compromised, and therefore, there was tacit implication of Jal Nigam that overall testing process of other two tests must have also been compromised; and secondly since the Court had asked for segregation between tainted and untainted candidates in respect of recruitment drive conducted by the Corporation with the help of outsourced agency, it means that the Court accepted the assertion of Jal Nigam that overall recruitment process had been compromised.
194. On the above premises, the expert of the IIIT Allahabad came to following conclusions with the rider that documents and data shared with expert had a verified prominence and response provided by personnel made available for interaction with undersigned on 13 and 14th December, 2018 at the U.P. Jal Nigam Office, Lucknow:

“Prior to any conclusions being drawn from these observations it is necessary to establish scope and context of this evaluation. While the scope is being limited to the technical aspects the testing process and the rigor with which both the recruitment tests were conducted, the text is established by way of the following two assertions.

(a) UPJN is of the opinion that the testing process for the post of Assistant Engineers, conducted by the same service provider was compromised (as mentioned in the letter 120/Mu A(A-3) -(1019-18). This leads to the tacit implication that UPJN believes that the overall testing process for the other two posts has also been compromised

(b) Referring to the letter 120/Mu A(A-3) -(1019-18), Honourable High Court has instructed UPJN to identify tainted and non-tainted candidates. This implies that the honourable court has accepted the assertion of UPJN that the overall recruitment process could have been compromised.

Conclusions:

A. Considering that generation of a question bank is a human task, there is always room for errors in the questions. This is especially true in cases where a testing question bank is generated by an external agency - which then, possibly outsources this task to individuals who may not be subject matter experts. Therefore, per observations I and 2, the standard operating procedure of, posting the answer key of the tests for perusal by the candidates to enable them to share their concerns and observations about the correctness of the questions before even preparing any list of qualified candidates, was violated in both the exams. This problem was further exacerbated by proceeding with the recruitment process and issuing appointment letters. This led to several candidates being denied a fair opportunity in the overall selection process.

B. Observation 3 highlights a particularly egregious oversight in the testing process. Under a fair assumption that the two candidates made a genuine error while submitting their applications online, both these candidates would have been (as per observations 6 and 7) subjected to verification and scrutiny during their CBT and then subsequent interview stages. It is inconceivable that a mismatch in the gender data was not identifiable in BOTH these stages for both these candidates. Therefore, it definitely casts doubt on the diligence exhibited by the service provider and the sanctity of the candidate's identities at least at these two testing centers and by a reasonable and logical extension, all the testing centers.

C. Ensuring due provenance of applicant testing data is vital. In other words, in the event that an audit is required to verify whether applicant test record is untampered, there must exist a robust audit trail mechanism. To perform this assessment, the original response data of the candidates (captured immediately at the closure of the examination window) along with relevant checksum information is required. This reference (checksum) information, as per observation 4 above, was neither received by the service provider nor communicated to UPJN. Therefore, the sanctity of the testing data cannot be implicitly assumed.

D. In the absence of information (as per observation 4) and by noting observations 9-11, the authenticity of the data as and in the form provided (observations 13) cannot be accepted and/or verified.

E. The sanctity of both the recruitment processes seems vitiated in view of observations made above.

Final notes:

All the above observations are based on the implicit condition that all the documents and data shared with the undersigned have a verified provenance, and

responses provided by the personnel made available for interaction with the undersigned on 13th and 14th December, 2018 at the UPJN head office in Lucknow, are true. Additionally - This report uses two technical terms which are being explained below for your convenience.

Checksum: A small block of digital data generated by a checksum algorithm such as MD5.

(Message Digest 5), SHA-1 (Secure Hash 1), SHA-2, etc. when it operates on a given source data (file). This small block of digital data generated is like a digital fingerprint and is unique to the file it was generated for. In the event that the source file changes or is modified in any form, its checksum will change.

- *HTML: HyperText Markup Language is the basic computer language, used to create web pages.*

I hope that this report, addresses the request, raised in your letter 120/Mu A (A-3)-(1019-18) dated 27.11.2018 to your satisfaction.”

2nd Opinion Report (IIT Kanpur)

195. The second report of expert of IIT Kanpur that was fourth in series of report from Allahabad and Kanpur, appears to be in respect of Routine Grade Clerk test held because it records chronology of events that relate to RGC. The report records that no file in CDs provided by M/s Aptech Ltd. with the last modification data equivalent to the day of examination and since experts were informed that the original data from the cloud server had been deleted, they found it difficult to corroborate that data provided in the CD to be the exact original data that was available immediately upon completion of test. Further opinion recorded by the expert is that no Audit Trail containing individual mouse clicks and time stamps of

the choices made by the student has been provided in the CDs and hence in absence of Audit Trail, it was not possible to corroborate and confirm that there happened no discrepancy between the candidates actual response and those which were used for grading. The expert of the IIT, Kanpur finally opined that in absence of primary data being provided by M/s Aptech Ltd., it was not possible to confirm the authenticity of data provided in CDs independently and hence segregation of tainted and untainted candidates was not possible.

Hash Value/ Checksum/Audit Trail

196. Having discussed above four reports submitted by experts of the institute of technology to appreciate the same in the light of arguments advanced on behalf of rival parties to the litigation, it is necessary to first understand as to what are the software tools, which are often referred to as 'hash value', 'checksum information' and 'audit trail'.
197. Having gone through the literature on the subject matter provided by learned Senior Advocate Mr. Ashok Khare appearing for the petitioners as well as those provided by Mr. Manish Goyal, learned Senior Advocate and Additional Advocate General appearing for the respondents, in my view, hash value is a digital fingerprint or digital signature created for data security and is passed on to log in to the data. Any attempt to access data will be secured by such digital signature, would corrupt the data itself if hash value code is not applied.
198. Yet another crucial aspect is that this digital signature is while key to have access to the data but it has also a constant value so long as data is not changed or modified. Any change or modification if attempted to the original data, it will change the

hash value. In other words, hash value is applied to access the original data in its secured form, and therefore, hash value is provided /fixed to ensure data integrity. Thus hash value is a fixed string or a number generated from input data of any signs using hash function and it, therefore, represents data in a constant form. Hashing is often used for encrypted data integrity verification and efficient data record. Thus hash value has a characteristic of being a fixed sign determinative thereby to ensure that the same input will always be produced with same hash value. In other words different inputs will produce different hash values and so minimizing the collisions and irreversibility. Likewise the checksum is a value derived from block data is to detect the errors or corruption in the data during stage of transmission. It is basically used for data integrity verification by comparing checksum calculated before transmission with checksum recalculated at the destination.

199. Thus both the hash value and checksum are aimed at ensuring data integrity and difference is that checksum algorithm are simple and fast for quick integrity checks but checksums are not designed to be collision- resistant or secure. They only detect accidental errors.
200. The audit trail is a chronological record that documents sequence of activities or events related to specific transaction, system or process. It is used to track changes, monitor system usage and verify the integrity of actions and decisions made. It is claimed that records in audit trail are typically designed to be tamper proof. This tool traces changes in the entire path of data created, its transmission, and its final delivery. It is commonly used in financial transaction cybersecurity etc. and it helps organizations to detect fraud, manipulations and

transactions so as to check the credibility and after-all to ensure transparency in operations.

201. In the reports of the experts of the institutes of technology as have come to be referred to herein above and quoted *qua* their opinions expressed in respect of the data provided in all the four reports, the experts have categorically expressed their opinion that in the absence of checksum information, hash value to the data provided in CD and there being no audit trail traceable so as to find out as to whether the attempt through a mouse click by a candidate to a question with correct answer as recorded is an authentic data as to the time, date and place when the event held or subsequently modified to match the results. No confirmed opinion, therefore was expressed.
202. The experts' report express the opinion unequivocally that since the original data was claimed to have been deleted from the cloud server and the Court had directed for segregating the tainted candidates from untainted candidates nothing could be stated finally but in the background of the questions raised as to the integrity of the selection process for the reason that Court virtually held that the selection process had stood compromised, it concluded that it would have happened. So the opinion expressed by the experts of the IITs, if drawn up in a nutshell was not a confirmed opinion and was only based upon the input provided by the corporation in its letter seeking information. There was all the more reason to reach out to this conclusion on the basis of analysis by these experts as CDs provided to it contained data that stood modified on 27th February, 2027 (For AE), 24th & 25th February, 2018 (For JE) and 5th March, 2018 (For RGC). The experts are referring to

the CDs and not the original hard-disks. Learned Additional Advocate General while arguing the matter was confronted with the query by the Court as to whether this CD contained any data obtained from CFSL, he very clearly stated that this CD contained the data that was provided by M/s Aptech and not by the CFSL. It is to be noticed here that learned counsel appearing for M/s Aptech had clearly argued before the Court that CDs contained was asked for by the corporation, result data after the original data was processed to prepare the result. So, it was a data in secondary form not in its original form.

203. It was also argued on behalf of M/s Aptech Ltd. and not disputed by the corporation that CDs were provided to the corporation by M/s Aptech Ltd. on 28th February, 2017 in response to the letter of corporation dated 14th February, 2017 *qua* examination related details of AE, JE, RGC & Stenographer Grade IV and further soft copy of answer key and response sheet of those very candidates on 28th February, 2017 in response to letter dated 7th February, 2017. Obviously data taken from original data base does amount to providing data in secondary source i.e. CD or DVD.
204. However, these observations at this stage are yet to be tested on the basis of the arguments advanced by the rival parties and further while I analyse their arguments relating to the various reports discussed above and the findings arrived at in the orders impugned because still I have not considered the SIT report and the one submitted by Central Forensic Science Laboratory, which has been heavily relied upon by the SIT in its ultimate final report submitted in the matter of criminal investigation.

**Central Forensic Science Laboratory, Hyderabad Report
(CFSL)**

205. This CFSL report dated 11th December, 2019 analyses the data retrieved from the hard-disks supplied to it by the special investigation team for the purposes of comparative study with the documents supplied by the SIT relating to the marks of the candidates in the CBT who were called for interview. After the retrieving the original data from the hard-disk by applying two tools namely, MSSQL management Studio version 2008, Microsoft Access 2016 and Steller Phoenix, SQL Data Recovery version 8.00 in respect of the data base files relating to Assistant Engineers in all trades, Junior Engineers in all trades, Stenographer and Routine Grade Clerk, it says that data provided by the SIT were compared with the original computer based test score present in the computer data base recovered from hard-disks as well as the backup files and after comparison it concluded that marks of some of the participants in all the above categories were increased. There names were provided in various annexures it consisted of 169 candidates belonging to different trades of Assistant Engineers, Junior Engineers and of course Routine Grade Clerk cum Stenographer who were otherwise unsuccessful candidates.
206. The data upon comparative chart being prepared by the CFSL, was provided both in the hardcopies and soft copies to the SIT and the softcopy was provided in the folder named 'CBT Comparison' in a DVD marked as CAH-75-2018-DVD.
207. The entire data retrieved from data base relating to the various posts of Assistant Engineers, Junior Engineers, Routine Grade Clerks and Stenographers Grade IV pertaining to the

participants who appeared in the CBT was provided also in the folder called 'All participants data' in the same DVD.

208. The CFSL also provided a specific data in respect of the petitioner Ambarish Kumar Pandey in one of the petitions bearing Roll No.- 1112075512 which records when the examination started for U.P. Jal Nigam Electrical and Mechanical for which he was appearing and total score of the question paper, the attempted questions and wrong attempts made. It is here pertinent to recall the arguments of Mr. Ashish Mishra, who had referred to this data to emphasise that there was a complete audit trail as to the time and place of the examination questions attempted by a candidate. If the entire data had been analysed by any other forensic expert or recognized and approved by agency then it would have become very clear that data provided in the hard-disks that were seized was the correct data. There is no quarrel amongst the learned Advocates appearing for the rival parties that 169 candidates are those candidates who had been given inflated marks to participate in interview though Mr. Khare had raised a point of doubt about the correctness of data provided to the CFSL in view of the allegations made by the M/s Aptech itself that the hard-disk seized from the local environment of the M/s Aptech office at Mumbai consisted of only processed data.

SIT (Police) Investigation Report

209. Even though Mr. Khare had raised objection as to the evidenciary value of the police report submitted under Section 173(2) Cr.P.C. but since the Corporation has taken notice of the same and in the matter of administrative law, an authority can look into those reports so as to arrive at a conclusion on the

principle of preponderance of probability, that irregularity has taken place to the extent of impunity, I find it necessary and imperative to go through the details of this report as well.

210. Now I proceed to discuss the last report which was submitted by the SIT in the matter of criminal investigation pursuant to the FIR registered vide Case Crime No. 2 of 2018. This report was submitted on 31.01.2020, obviously after the two judgments, both of the High Court and Supreme Court. The reference to this last report becomes necessary also for the reason that in paragraph no. 41 of the counter affidavit filed by the Corporation in the matter of Samrah Ahmad v. State of U.P. & Others (supra) it has been averred that the Division Bench (Special Appeal Defective No. 625 of 2019) in its order dated 31.07.2019 had directed to take a decision in the matter of recruitment process but the same will be subject to the report of SIT and CFSL.
211. The Special Investigation Team that was entrusted with task to carry out investigation into the selection process undertaken by the service provider M/s Aptech Ltd. including the interview procedure adopted by the U.P. Jal Nigam . The investigating team through its officers interrogated as many as 59 persons, who were either complainant, police officers, retired and serving officers of the U.P. Jal Nigam, officials of M/s Aptech Ltd. and the members of the different interview boards that had conducted interview of the selected candidates. The investigating team also examined the documents, which were supplied to it or otherwise it gathered from different sources and this list of documents consisted of 43 items, which included even hard disks seized from the local environment office of the M/s Aptech Ltd. at Mumbai and also 4 forensic

lab reports submitted by Central Forensic Science Laboratory situate at Hyderabad. On the principles of preponderance of probability as I have already observed, it becomes necessary to go through the SIT report even though this is only a police report submitted under Section 173(2) of erstwhile Cr.P.C. but statements of various persons recorded after interrogation by the police in the report become relevant to the controversy in hand and so also the analysis by the investigating agency as well as findings returned thereupon by it.

212. About 59 persons who were interrogated by the investigating agency, statements of Vishwajeet Singh, Roman Fernandes, Ajay Kumar Yadav, Niraj Malik, officials of the M/s Aptech Ltd. and that of Mr. Prem Kumar Ashudani, former Managing Director of U.P. Jal Nigam, Mr. Anup Kumar Saxena, the then Chief Engineer, Urban, U.P. Jal Nigam who had submitted first inhouse enquiry as on 29.5.2017, Rakesh Prasad Sinha, the Chief Engineer Level- II who had also submitted report of in-house enquiry and Sri Syed Afaq Ahmad, Officer on Special Duty, Ministry of Urban Development are relevant to the contrary in the present case.
213. In the matter of CBT held for the post of Routine Grade Clerks and Stenographers the statement of various officials who were there in the system, have been recorded. Upon question being put to Sri Ram Sewak Shukla during interrogation by the SIT, he had admitted to have made complaint to Chief Minister on 22.03.2017. He stated that during period in question the then Minister Mr. Azam Khan indulged in corrupt practice and adopted a very calculated tactics to ensure that maximum person of his community were appointed. He claimed that in matter of selection and appointment upon 1300 posts and used

the then Minister did a lot of fraudulent activity with the help of Mr. Prem Kumar Ashudani, the then Managing Director, U.P. Jal Nigam and the then Chief Engineer Anil Kumar Khare.

214. Sri Arvind Kumar Rakesh who retired from the post of Chief Engineer, Level-I, Allahabad, had been in interview board for Assistant Engineers and denied any irregularity in his board or in awarding marks, nor favour was shown to any candidate for his caste or religion.
215. Sri Chandra Dev Singh Yadav who retired from the post of Chief Engineer (Mechanical and Electrical) on 31.07.2018 did not give any impression during the interrogation that any undue influence was ever exercised upon him or any kind of request was made to award higher marks to any candidate on the basis of caste, creed or region.
216. Sri Ved Prakash Mishra, Chief Engineer, Ganga Pollution Control, Varanasi Circle, Varanasi was also member of the Interview Board for the post of Junior Engineers claimed that the interview was held in two shifts, one at 10.00 a.m. and the second at 2.00 p.m. and after the interview was conducted, each candidate was awarded marks on the basis of average marks calculated out of the marks allotted by each member of interview board. Upon the cutting on the marks/ tabulation sheet prepared in the interview, he only claimed that it was because of mistake in writing. He also did not give any impression that he was approached by anyone to award any candidate higher marks on the basis of caste, creed or religion.

217. Sri Chandra Dhar Dubey who retired from the post of Superintending Engineer from Gonda denied that list that was provided to interview board contained any CBT marks. He stated that only roll number and the name of the candidate was provided. He denied to be involved in any manner in any other exercise during the recruitment drive except conducting interview.
218. Sri Anand Murti Srivastava who retired from the post of Superintending Engineer, U.P. Jal Nigam, Lucknow upon interrogation by the police gave a statement regarding allocation of marks in interview which was of 20 marks in total. On the question of knowledge of CBT marks to the members of interview board, he denied to have had any such knowledge because no such information used to be given. He also denied any influence ever to have been exercised upon him or that he was approached by anyone for awarding higher marks to any particular candidate or category of candidates.
219. Sri Avanindra Kumar Singh who had retired from the post of Superintending Engineer, U.P. Jal Nigam, Lucknow gave almost similar statement. Sri Ashwani Kumar Tyagi who had retired from the post of Chief Engineer, U.P. Jal Nigam, Lucknow and was also member of Interview Board upon being asked about the parameters upon which the marks had been awarded, he did not give any impression that he was approached by anyone to award higher marks to a candidate of particular caste, creed or religion. According to him parameters laid for overall assessment of candidates were strictly adhered to

220. Sri Alok Kumar, the Executive Engineer posted at Lucknow was also a member of Interview Board and made a categorical statement that no influence was exercised upon him, nor any pressure was exercised upon him, nor was he approached by anyone to award higher marks to a particular candidate. Regarding a particular question as to whether he was ever approached to change the result sheet, he denied.
221. Sri Ram Prakash Gangwar, member of an Interview Board working as Lecturer in Government Polytechnic College, Hardoi also made similar statement so was also the statement made by one Vipin Kumar Tripathi, Director, Government Engineering College, Bijnor who was also a member of Interview Board. Sri Shiv Prasad Shukla who was Director of Government Engineering College, Banda and member of Interview Board also denied to have ever been approached or pressurised by anyone to award higher marks to any particular category of candidate. Sri Virendra Pathak, Sri Kayde Azam Lari, Retired Chief Engineer (PWD), Sri Sunil Kumar, Lecturer, HBTU, Kanpur, Sri Pradeep Kumar, Lecturer, HBTU, Kanpur, Sri Shailendra Pratap Singh, Lecturer, Government College, Lucknow, Sri Dipti Parmar, Lecturer, HBTU, Kanpur, Sri Zubair Ahmad, Chief Engineer, U.P. Jal Nigam, Sri Amit Kumar, Lecturer Architecture, Government Polytechnic Lucknow, Sri Usha Kiran, Lecturer, Mechanical Engineering, Government Polytechnic, Lucknow, Mohd. Kasim Ali, Lecturer Architecture, Government Polytechnic, Lucknow who were all members of different boards, have all given similar statements.

222. The SIT during interrogation of a large number of persons though had put up a number of twisted questions as is reflected from its report but the reply given conveys this impression only that the interviews were conducted as per the norms, marks were allotted by boards as per the parameters laid and the interview board members were neither approached by the candidates, nor were unduly influenced or coerced by anyone to award higher marks or particular marks to a particular candidate belonging to particular caste, creed or religion.
223. Mr. Vishwajeet Singh during his entire interrogation regarding conduct of selection in the matter of Routine Grade Clerk, Junior Engineer and Assistant Engineer, clearly stated to the SIT that right from stage of drafting of the question paper till assessment of answer-sheet and declaration of CBT result, was entirely the duty cast upon service provider. He stated to the SIT about number of question papers, number of questions asked, the date and shifts in which CBTs were held. He also stated that if there was anything wrong found to be detected in framing a question and assigning answer to a question in master answer key, it was also a responsibility to be shouldered by the service provider. He also stated in reply to a query made to him regarding publication of master answer key, that in view of discussion held between M/s Aptech Ltd, and the Corporation, officials of the Corporation wanted result to be published first in respect of the CBT held for all the three categories of posts. He reiterated Clause 'e' of the work order/contract, according to which the answer key was required to be published immediately after examination held for seven days or as per instructions received from the Corporation and so Aptech followed the instructions of

Corporation in publishing the result first. He blamed the Corporation also for publishing the answer key quite late as on 28th February, 2017 and also blamed the Corporation for holding interview first and for not permitting master answer key to be displayed on the website.

224. Regarding selection of M/s Aptech Ltd. to undertake selection process, Mr. Vishwajeet Singh stated that team members of the officials of Aptech had taken proposal to the office of U.P. Jal Nigam and after perusing the same, Managing Director of the Corporation, Mr. P.K.Ashudani, the Chief Engineer Sri A.K.Khare, Senior Technician Sri R.P.Sinha and also Sri Syed Afaq Ahmad, Officer on Special Duty attached with the Chairman of U.P. Jal Nigam appreciated the proposals and accordingly accepted M/s Aptech Ltd, to undertake selection in question. Upon another pointed query being made as to whether any of the officials of the M/s Aptech Ltd. was related to the officers of the Corporation, he denied.
225. Regarding placement of server or the storage of the data in respect of the selection process, which consisted of online registration of application, issuance of admit card, examination and also declaration of result etc. it is stated that M/s Aptech Ltd. was working with two separate data Center Provider, namely Control S (Ctrl S) and another NTT Net Magic Control S and both servers were at Mumbai. Aptech used public cloud area space of Net Magic (Control S) regarding data security and saving of the original data after final results were prepared and published. It was stated that as per Clause 12 of the Aptech Ltd. responsibilities in the work order and soft-copy and hard copy of the result was made available to the U.P. Jal Nigam and the remaining data which was to be preserved for period of

one year as per contract. Mr. Vishwajeeti Singh very clearly stated that entire data relating to online registration, attendance biometric, candidates' original response, original questions and original answers and revised answer key were all preserved. He stated that after the examination the data which was collected at the cloud server was later on downloaded in the local environment server. This statement being very crucial to the controversy regarding deletion of data, which has been reason assigned for the opinions by the experts of institutes of technology and which played crucial role in decision making of the Corporation, is reproduced hereunder:

प्रश्न- सेन्टर से आन लाइन परीक्षा का डेटा जो आपके कथनानुसार क्लाउड के सर्वर पर कन्सीलीडेट किया गया। जहाँ से आप द्वारा पूरे डेटा को आफ लाइन मोड (अपनी हार्ड डिस्क) लोकल इनवायरमेंट पर लाया गया तथा आपके कथनानुसार कस्टमर (उ०प्र० जल निगम) की रिक्वायरमेंट के अनुसार रिजल्ट बनाया गया। क्लाउड के सर्वर पर जो ओरिजिनल डेटा कन्सीलीडेट किया गया, क्या आपके द्वारा संरक्षित रखा गया है, यदि नहीं तो क्यों? उसको संरक्षित रखने की अवधि क्या है?

उत्तर- अनुबंध के अनुसार Aptech limited Responsibilities के अन्तर्गत बिन्दु-12 पर अंकित है, कि रिजल्ट की साफ्ट और हार्ड कापी उ०प्र० जल निगम को उपलब्ध कराने के पश्चात परीक्षा से सम्बंधित समस्त डेटा को कम से कम 01 वर्ष तक संरक्षित रखने हेतु अनुबंध किया गया है। अनुबंध के अनुसार समस्त डेटा जैसे कि अभ्यर्थी के आन लाइन रजिस्ट्रेशन का डेटा, उपस्थिति का डेटा, वायोमेट्रिक का डेटा, अभ्यर्थी का मूल रिस्पांस, मूल प्रश्न तथा उसके मूल उत्तर तथा रिवाइज्ड उत्तर -की (अगर कोई है तो) संरक्षित रखा गया है। परीक्षा के उपरान्त डेटा को क्लाउड पर एक्त्रित किया जाता है, जो एक माह तक क्लाउड पर संरक्षित रहता है, उसके बाद डेटा को क्लाउड से डाउन लोड कर लोकल इनवायरमेंट पर रखा जाता है।

प्रश्न- परीक्षा सम्बंधी डेटा क्लाउड से अपने लोकल इनवायरमेंट (डेटा लेस) में डाउन लोड किया था, क्या उसका सिस्टम आपके पास उपलब्ध?

उत्तर- सिस्टम उपलब्ध है, आवश्यकतानुसार प्रदान किया जा सकता है।

प्रश्न- आपके कथनानुसार आपने उ०प्र० जल निगम की रिक्वायरमेंट के अनुसार क्वेरीज रन की थी। वह क्वेरीज क्या थी, उसका आपके पास क्या प्रमाण है?

उत्तर- उ०प्र० जल निगम द्वारा प्रकाशित किये गये विज्ञापन तथा विभिन्न पत्रों द्वारा रिजल्ट बनवाने हेतु श्रेणीवार अभ्यर्थियों की संख्या का चार्ट प्रदान किया गया जिसके आधार पर रिजल्ट बनाने की क्वेरीज (कम्प्यूटर, प्रोग्राम) बनाया गया। यह क्वेरीज (कम्प्यूटर प्रोग्राम) वर्तमान समय में उपलब्ध नहीं है, परन्तु इन क्वेरीज को चार्ट के अनुसार दुबारा बनाकर उपलब्ध कराया जा सकता है।”

“Question: The online examination data from the center, as stated by you, was consolidated on the cloud server. From there, the entire data was downloaded to your local environment (hard disk) in offline mode, and according to your statement, the results were generated as per the requirements of the customer (U.P. Jal Nigam). Is the original data consolidated on the cloud server is preserved by you? If not, why? What is the duration for which it is preserved?”

Answer: According to the contract, under Aptech Limited's responsibilities, it is mentioned in point 12 that after providing both soft and hard copies of the results to U.P. Jal Nigam, all examination-related data will be preserved for at least one year. As per the contract, all data such as the candidates' online registration data, attendance data, biometric data, original responses from candidates, original questions, and their original answers, as well as revised answer keys (if any), are preserved. After the examination, the data is collected on the cloud, where it remains for one month; afterward, it is downloaded from the cloud and stored in the local environment.

Question: Was the system for downloading examination-related data from the cloud to your local environment (data-less) available with you?

Answer: The system is available and can be provided as required.

Question: According to your statement, you ran queries based on the requirements of U.P. Jal Nigam. What were those queries, and what proof do you have of them?

Answer: The queries for generating results were based on the chart provided by U.P. Jal Nigam through the published advertisement and various documents regarding the number of candidates in each category. This computer program for generating results is not currently available, but these

queries can be recreated and provided according to the chart.”

(Translated by the Court)

226. Regarding question as to whether server of U.P. Jal Nigam was ever utilized by M/s Aptech Ltd., Mr. Vishwajeet Singh denied. Regarding any query as to why answer key were not uploaded, he stated that there was clear direction from the Corporation that results would be published first. In this regard, he referred to correspondence that took place with the official of the Corporation in respect of all three categories of posts dated 09.8.2016, 7.12.2016 and 17.12.2016. Regarding any data online or offline ever made available to the Managing Director Corporation, Mr. Vishwajeet Singh clearly stated that original marks obtained by the candidates after appearing in online examination were provided to Corporation online via F.T.P. of which IP Address was 103, 8, 127,108.
227. Regarding four candidates bearing roll no. 5201211717, 5301211969, 6201212371, 5201211587 whose login ID was changed, which showed that M/s Aptech Ltd. manipulated original documents in connivance and conspiracy with officials of the Corporation, Mr. Vishwajeet Singh replied that candidates with from roll number, namely, Adarsh Kumar Pandey, Arun Saroj, Chandra Prakash Pandey, Jyoti Gupta, were given to the U.P. Jal Nigam, in which login Id of the M/s Aptech Ltd. was not given to U.P. Jal Nigam. These were finally selected and there assigned login id was never changed. This shows appointments to be ill tainted.
228. Mr. Roman Anthony Fernandes, who was then General Manager (Technical) in M/s Aptech Ltd., upon a pointed query being made towards interrogation by the SIT officials stated

that the question papers for CBT in all the three categories of RGC, JE and AE were got prepared by the subject experts and it were those very experts who prepared master answer key and so, if there was any wrong questions and wrong answers given, the responsibility was of those experts only.

229. Upon an another query being made as to why the objections were not invited by publishing the master answer key, he stated that officials of U.P. Jal Nigam of finalizing the result before the publication of answer key upon instructions of officials of Jal Nigam. He however admitted that one of the clauses under the agreement was that the answer key would be published after completion of CBT.
230. On the point of undeserving candidates getting selected, he put the blame upon the corporation for asking the M/s Aptech to first process and publish the result. Upon a specific query being made as to who were officials who forced M/s Aptech Ltd. to process and publish the result first before inviting objections by publishing master answer key, he stated that after CBT was conducted meeting was held with the officials of the corporation in respect of the RGC in the first week of August, 2016, in respect of Junior Engineer in the first week of December, 2016 and in respect of Assistant Engineer in the second week of December, 2016 and in all three meetings the then Managing Director Mr. P.K. Ashudani, Chief Engineer Mr. A.K. Khare, and Senior Engineer Sri R.P. Sinha, remained present and so also the officials of M/s Aptech, namely senior Manager Mr. Santosh Rastogi and Assistant Manager Mr. Hemant Nagpal.

231. He further stated that in the meeting Aptech officials had asked for publication of the answer key but the officials of corporation directed Aptech officials to first process the result as model code of conduct for elections in the State would be notified soon. He stated that when corporation asked to give this instruction in writing, the official refused but in this regard M/s Aptech Ltd. had written letters to the corporation on 9th August, 2016 (RGC), 7th December, 2016 (JE) and 17th December, 2016 (AE) addressed to Managing Director, U.P. Jal Nigam. Regarding another query about the cloud server and the data downloaded from there consolidated in the local server, he stated that after giving soft and hard copy of the result as per the responsibilities of M/s Aptech the contract was that entire data would be for one year. He stated that after the texts the data was accumulated at the cloud server and was retained there for one month and thereafter the data was downloaded from cloud server to the local environment and its other servers.
232. Regarding another query about the retention and availability of downloaded data to the local environment, it was stated that data was available and if needed it could be provided. He stated that online data of examination never remained protected on the cloud server system and that was why it was always downloaded to the local environment and this entire data was available.
233. Regarding the question related utilization of server of U.P. Jal Nigam it was replied that it all depended upon the requirements, however, M/s Aptech Ltd. did not use the server and website of the corporation.

234. Mr. Roman Fernandes, the then General Manager of M/s Aptech Ltd. upon being interrogated, stated that question papers were drafted with the aid of experts of the subject matter and those experts, who had drafted the papers had the duty to provide answers to the master answer key. This statement was in respect of all three categories of posts for which the selections were held.
235. Regarding post examination stage activities like publishing the master answer key and the response sheet of the candidates so as to invite their objections regarding correctness of any question or correctness of answer and resolution thereof from subject experts of the fields, Mr. Fernandes reiterated the stand taken by the earlier officials, namely, Mr. Vishwajeet Singh and contended that, had the corporation not asked for supply of the CBT result and had it not directed the service provider agency to first carry out the selection process, the service provider agency would have in all circumstances published the master answer key for inviting objections from the candidates as per clause of contract.
236. Regarding data retention policy, he stated to the SIT that there was one year agreement to retain the data that consisted of registration data, attendance date, biometrics data, candidates' original response data, the original question papers and the original master answer key and these were all preserved as taken from cloud server into the local environment server.
237. Mr. Ajay Kumar Yadav, upon being interrogated by the SIT, took the same stand as was taken by other two officials of M/s Aptech Ltd. Further upon a pointed query being made regarding primary data of cloud server whether it was securely

preserved with him or not, he denied. According to him, the data was taken from the cloud server to local server and further securing it by applying a code No.- 513.

238. Regarding non publication of master answer key before declaration of results of CBT, he stated that the technical team of Bombay had provided the result of CBT to Mr. P.K. Ashudani in a downloadable format which was protected with a password and this document consisted of the entire CBT result. This result was given on an Excel format with password protecting to the Managing Director Mr. P.K. Ashudani who with the help of officials of M/s Aptech submitted list of the candidates to M/s Aptech to publish it for the purposes of interview and after the interview was held final results were prepared adding the marks of interview provided by U.P. Jal Nigam.
239. Regarding matching of the list provided by Jal Nigam in a hardcopy as far as the CBT marks are concerned with the original data, Mr. Fernandes denied to have conducted any such verification or comparison further.
240. Regarding a very crucial query; since original data was deleted from the cloud server so it did make possible to change the original result available at your server because at every stage the terms and conditions of the contract were not followed and only the wish of the officials of the corporation was taken care of, Mr. Yadav very clearly stated in his reply that in a system of multiple department activity they all work independently and, therefore, it was not possible.

241. To another crucial query that corporation might have changed the results at its own stage and remaining results were kept intact because the results containing marks provided by the corporation were not compared with that available on the server of M/s Aptech Ltd., Mr. Yadav replied that it was possible.
242. Regarding non publication of the master answer key in time, in reply by Mr. Yadav stated it to be a mistake. The crucial questions asked by the SIT official from Mr. Yadav a crucial witness in the case representing M/s Aptech Ltd. as referred to herein above and his replies to the question are reproduced here under:

“(10) श्री अजय कुमार यादव पुत्र श्री रामचन्द्र यादव निवासी-521/231 बड़ा चांदगंज, अलीगंज, महानगर, लखनऊ, उम्र करीब 39 वर्ष मो0नं0-9235501192 ने कथन किया कि उ0प्र0, जल निगम में भर्तियों के दौरान वह ऐपटेक लि0 में जनरल मैनेजर के पद पर लखनऊ कार्यालय में नियुक्त था। भर्तियों में सेल्स और ग्राउन्ड ऑपरेशन की जिम्मेदारी उसकी थी यदि इसमें कोई अनियमितता पायी गयी हो तो उसकी जिम्मेदारी होगी।

प्रश्न-क्या प्राइमरी डाटा (क्लाउड) आपके पास सुरक्षित है ?

उत्तर-नहीं। टेक्निकल टीम ने क्लाउड से कम्पनी के लोकल सर्वर पर 513 नम्बर कोड कर सुरक्षित रखा था।

प्रश्न-सीबीटी परीक्षा के बाद जल निगम ने अभ्यर्थियों का परिणाम उपलब्ध कराने की आपकी क्या प्रक्रिया थी ?

उत्तर- बाम्बे टेक्निकल टीम से कम्प्यूटर बेस्ड टेस्ट (सी.बी.टी.) परीक्षा परिणाम जल निगम के एम.डी., पी.के. आशुदानी को डाउनलोडेबल फॉर्मेट में जो कि पासवर्ड प्रोटेक्टेड था उपलब्ध कराया गया था परिणाम सीबीटी के अंको के साथ सभी अभ्यर्थियों का दिया गया था। यह परिणाम एक्सेल फॉर्म में था तत्पश्चात जल निगम के एम.डी.पी.के. आसूदानी से ऐपटेक के हेमन्त वह संतोष रस्तोगी द्वारा परिणाम/पासवर्ड लाया गया था व साक्षात्कार हेतु सॉर्ट लिस्टिंग कर लिस्ट तैयार कर पुनः परिणाम जल निगम को भेज दिया गया था। जल निगम द्वारा मांगे गये फॉर्मेट में साक्षात्कार के बाद साक्षात्कार के अंक जल निगम से हार्ड कापी में प्राप्त कर सी.बी.टी. और साक्षात्कार के अंक जोड़कर फाइनल मेरिट लिस्ट तैयार कर जल निगम को उसकी टीम द्वारा दिया गया था।

प्रश्न-क्या जल निगम द्वारा उपलब्ध करायी गयी रिजल्ट को आपने ऐपटेक के पास पहले से मौजूद प्राइमरी रिजल्ट (डेटा) से मैच कराया था या जल निगम उपलब्ध कराये गये रिजल्ट से ही साक्षात्कार हेतु सूची तैयार कर जल निगम

को दी थी जबकि सूची एक्सेल फार्म में थी यानी किसी भी स्तर पर परिणाम में फेर बदल सम्भव था ?

उत्तर-नहीं। उसके द्वारा उनकी व जल निगम की सूची को मैच नहीं कराया गया था।

प्रश्न-आपने बताया कि क्लाउड सर्वर डिलीट हो चुका हैं ? तो क्या यह सम्भव नहीं है कि जल निगम द्वारा प्रदान किया गया परिणाम ही आपके सर्वर पर ही हो क्योंकि हर स्तर पर अनुबंध नियमों को पालन न करते हुए आपने केवल जल निगम की इच्छा पर ध्यान अधिक दिया था ?

उत्तर-चूंकि मल्टिपल डिपार्टमेंट स्वतंत्र रूप से कार्य करता है। तो यह प्रथम दृष्टया सम्भव नहीं है।

प्रश्न-क्या यह सम्भव नहीं है कि जल निगम उस परिणाम में अपने स्तर से चेंज कर लिया हो और बाकी परिणाम उसी आधार पर बने क्योंकि आपका कथन है कि उस परिणाम को एपटेक के परिणाम से मैच नहीं किया गया था।

उत्तर-हाँ। यह सम्भव है।

प्रश्न-दोनों परिणामों को मैच न करने की जिम्मेदारी किसकी बनती है ?

उत्तर-यह जिम्मेदारी इनकी बनती है।

प्रश्न-आन्सर-की एपटेक द्वारा क्यों समय से अपलोड नहीं किया गया ?

उत्तर-यह एपटेक की तरफ से मिस हुआ है।”

“(10) Shri Ajay Kumar Yadav son of Shri Ramchandra Yadav resident-521/231 Bada Chandganj, Aliganj, Mahanagar, Lucknow, age about 39 years, mobile no.-9235501192 stated that during the recruitment in UP, Jal Nigam, he was posted in Aptech Ltd. Lucknow office on the post of General Manager. He was responsible for sales and ground operation in the recruitment, if any irregularity is found in it, then it will be his responsibility.

Question-Is the primary data (cloud) safe with you?

Answer - No. The technical team had saved it on the company's local server by serving it with code no. 573.

Question- What was your procedure for providing the results of the candidates by Jal Nigam after the CBT exam?

Answer- The Computer Based Test (CBT) result from Bombay Technical Team was made available to MD of Jal Nigam, PK Ashudani in downloadable format which was password protected. The result of all the candidates was given along with the marks of CBT. This result was in Excel format. Thereafter, the password was got applied by MD of Jal Nigam, PK Ashudani by Hemant and Santosh Rastogi of Aptech and after short-listing the list was prepared for

interview and the result was again sent to Jal Nigam. After the interview in the format demanded by Jal Nigam, the interview marks were obtained from Jal Nigam in hard copy and the final merit list was prepared by adding the marks of CBT and interview and given to Jal Nigam by his team.

Question- Did you match the result provided by Jal Nigam with the primary result (data) already available with Aptech or did you prepare the list for interview from the results provided by Jal Nigam and gave it to Jal Nigam while the list was in Excel form, meaning that it was possible to change the result at any stage?

Answer-No, their list was not matched with that of Jal Nigam.

Question- You said that the cloud server has been deleted? So was it not possible that the result provided by Jal Nigam was present on your server because you at every stage paid more attention to the wishes of Jal Nigam by not following the conditions given under the contract?

Answer-Since multiple departments work independently, this is not possible at first sight.

Question: Is it not possible that Jal Nigam may have made changes in the result at its own level and the rest of the results were prepared on that basis because you have said that that result was not matched with the result of Aptech.

Answer-Yes. It is possible.

Question – Who is responsible for not matching the two results?

Answer – This is their responsibility.

Question: Why was the answer key not uploaded by Aptech on time?

Answer-This is a miss on the part of Aptech."

(Translated by Court)

243. Mr. Neeraj Malik, another official of M/s Aptech Ltd. made similar statement as other officials of the Aptech had made and regarding a query whether transparency was maintained at the level of M/s Aptech Ltd., he stated that transparency was fully ensured and reiterated the stand that corporation had insisted

for declaration of result in stead of publishing master answer key.

244. Regarding signing of an agreement by him on 13th December, 2016 itself whereas agreement took place between the corporation and M/s Aptech Ltd. on 15th December, 2016 he stated that it might have had happened but the fact was that agreement was entered on 15th December, 2016 by all the witnesses to it, namely Senior Manager Mr. Santosh Kumar Rastogi and Mr. Hemant Pal, the Assistant Manager.
245. Mr. Prem Prakash Ashudani, who was the then Managing Director of U.P. Jal Nigam, upon being interrogated by the officials of the special investigating team stated that insofar as the recruitment of Routine Grade Clerks and that of Stenographers are concerned, it was the duty of the Chief Engineer (A-3) Mr. Anil Kumar Khare and it was he, who used to undertake correspondence for any query made in regard to the select list.
246. Regarding Assistant Engineer he stated that the responsibility was of Mr. Pramod Kumar Sinha and after his retirement the responsibility fell upon Mr. Anil Kumar Khare.
247. Regarding a query as to why the recruitment process undertaken in respect of the 32 Stenographers was suddenly stopped and cancelled, he stated that only 32 candidates were found eligible after due relaxation accorded, for which the recommendation was made to the Chairman/ Hon'ble Minister, through the office of the officer on special duty, Mr. Syed Affaqu Ahmad but in order to get more meritorious candidates

in future by conducting the re-examination, the then selection process in progress was cancelled.

248. Regarding a query being made as to why the answer sheets were not published despite there being a condition so prescribed under the contract, he gave only this much reply that it was the duty of M/s Aptech Ltd. and if it had not adopted this procedure, it was to be blamed only. He stated that he never directed M/s Aptech not to invite objections and so far as the letter written by M/s Aptech on 17th December, 2016 was concerned, he claimed to have knowledge of any such letter.
249. Regarding action to be taken against M/s Aptech Ltd. for violating terms and conditions of the contract it is stated by Mr. P.K. Ashudani that the serious lapses that happened at the end of M/s Aptech was subject matter of inquiry for which a committee was duly constituted.
250. To another question for ensuring sanctity and transparency in an open competitive examination by inviting applications through public tender procedure, Mr. Ashudani in reply stated that in the year 2013 when tender was uploaded only two agencies had applied, out of which one agency was selected because the other agency had no requisite infrastructure facility. He further stated that generally the Government institutions do not undertake to conduct competitive examinations and, since work was of such magnitude in respect of open competitive tests to be held by inviting applications for holding selection on posts in public employment that only limited number of agencies were having

this experience and expertise and, therefore, inviting of tender could not have fetched good result.

251. He stated that not only KNIT was not agreeing to online mode of test and showed its inability to conduct online tests, even the financial proposal that was placed by the KNIT, Sultanpur was much higher than what was proposed by M/s. Aptech Limited and that was why M/s. Aptech Limited was selected and given the work order. Regarding the selection being held in a hurried manner by providing instructions that entire selection was to be concluded within four months, Mr. Ashudani in reply stated that there was an urgent requirement to make appointments upon vacant positions and normally four months time is consumed in conducting selection and issuing appointments. Since the post of Assistant Engineer was outside purview Public Service Commission, therefore, no approval was required from the State Cabinet for carrying out recruitment drive. Regarding declaration of results in respect of the vacancies of Assistant Engineer and Junior Engineer and issuing appointment order just a day or two before the notification of Model Code of Conduct in view of the forthcoming Legislative Assembly elections, Mr. Ashudani replied that in matters of selection and appointment through Public Service Commission or Staff Selection Commission such examination and selection process continues even after notification of the election. Moreover, in this case only joining was to be given as rest of the exercise was already over. Therefore, he asserted, the results were declared and appointment orders were issued. Regarding four candidates namely Mohd. Shams, Syed Ahmad Ali, Samrah Ahmad and Kailash Vishwakarma whose response to questions either the

correct or incorrect answers were all similar as 58 same questions were correctly answered and two same questions were attempted with same wrongly answer choice for which they were allotted same marks, Mr. Ashudani replied that this matter did not come to his notice, nor was placed before him while he was in service and therefore, in that regard such query may be put to M/s. Aptech Limited.

252. Regarding sanction of loan of Rs. 300 crores, he submits that there was no such issue there and instead letters were written and correspondence was made with the State Government to convert the Corporation into a Government Corporation. Regarding procedures not being followed or followed in hurried manner that may have resulted in serious lapses, Mr. Ashudani stated in reply that with the appointment order issued in respect of RGC on 19.11.2016 and till the joining of Junior Engineers made on 16.01.2017, in all two months' time took place and the period of four months under the contract was the maximum period and not the minimum period. Regarding general powers of management of the Corporation and the exercise of power of the Chairman who enjoyed it in the ex-officio capacity, Mr. Ashudani told to the SIT officials that in terms of Section 8 and 89 of the relevant Act, all the crucial decisions had to be taken by the department of Urban Development and for taking certain decisions the Board of Directors had authorized the Chairman of U.P. Jal Nigam and in that regard a circular letter was issued on 20.10.1987, photocopy of which had been handed over to the Investigating Officer. He further stated that since regular meeting of the Board of Directors of the Corporation would ordinarily not take place and which resultantly would have seriously affected

the working of the Corporation, therefore, the Chairman was authorized to take decision in the matter and since he was heading the Board as Chairman and being a very senior Cabinet Minister, some of the decisions were left to his discretion accordingly. Regarding a query that four posts out of 9 posts Assistant Engineers were directed to the trade of Computer Science and Electronic Communication out of way by the Chairman of U.P. Jal Nigam and for relaxation in the matter of appointment of Stenographers the proposal was mooted though the Officer on Special Duty for which neither the O.S.D. was competent, nor the Chairman of the Board, he replied that there were three circular letters issued from time to time for carrying out properly the work of three departments which were being headed by the Minister concerned and as per the wish of the Minister the papers used to be processed through the OSD concerned only. Regarding financial sanction in respect of vacancies in question that were required from the State Government and that under the U.P. Water Supply and Sewerage Act, 1975 the fund was to be spent only upon work relating to the Services of the Sewer and Water Supply, he stated that these are the provisions under the Act for which he cannot make any comment but he was apprised on 05.12.2017 that the loan that was provided by the Government for that no demand was raised by the Corporation. The only demand raised was that the department should be made a Government Department so that the dues *qua* salary and pension of retired employees should be cleared and out of total demand of Rs. 374/- crores only a limited amount was paid.

253. Another person who was crucial to the controversy and interrogated by the SIT was Syed Afaq Ahmad, the Officer on

Special Duty directly attached to the then Minister of Urban Development and Chairman of U.P. Jal Nigam Mr. Azam Khan. Regarding four posts of the Assistant Engineers (Mechanical and Electrical) that were diverted to the trade of Computer Science and Electronic Communication, he stated that in that regard the Board of Directors had granted approval but he did not remember the exact date. With regard to the permission taken from the State Government for amending the regulation, he stated that he had no information regarding the same. On the question of placement of the file before the Urban Development Department and the remarks made upon the same, he stated that the budget was allocated to U.P. Jal Nigam by the State Govt. as U.P. Jal Nigam did not have its own budget, nor any other source of income and whatever the papers were forwarded to the Government by the U. P. Jal Nigam, were forwarded to the Chairman Mr. Azam Khan. Regarding cancellation of recruitment drive in respect of posts of Stenographers, he stated that that was all within the domain of Managing Director of U.P. Jal Nigam and he had unnecessarily forwarded the papers to the office of the Chairman. Regarding Computer based test results, he stated that he had no such information that entire result had reached the office of U.P. Jal Nigam.

254. Regarding procedure adopted in the CBT conducted in respect of Assistant Engineers, Junior Engineers and that of the Routine Grade Clerks, he stated it to be the duty of M/s. Aptech Limited and as per the information received by him the question papers were drafted by the subject experts. Regarding the act and conduct of M/s. Aptech Limited in not publishing the master answer key despite there being a clause under the

agreement, he stated that since oral directions were issued by the Corporation to first declare the result and proceed with the selection process, neither the master answer key, nor the response sheets were published. Regarding four persons namely Mohd. Shams, Syed Ahmad Ali, Samrah Ahmad and Kailash Vishwakarma obtaining similar marks in CBT attempting same number of questions as correct and same number of questions as incorrect with the similar incorrect answers, he stated that this can be taken only as a coincidence. The question whether subject experts can be from anywhere, he stated in reply that subject experts can be taken from anywhere but in order to ensure transparency, the experts were taken from outside the State.

255. After discussing these statements of the crucial witnesses who were interrogated by the SIT, I would now like to refer to the crucial documents also examined by the SIT. Out of various documents that were examined by the SIT, the most crucial of the documents were the report submitted by the CFSL which was discussed by it in detail while conducting analysis of the evidence collected by it in arriving at a conclusion that the offences under various sections of IPC and the Special Acts charged against those accused persons were made out. The SIT report has discussed it in detail in its analysis part to arrive at a final conclusion that it did identify such persons whose marks retrieved from the original data base of the hard disks were not same as provided by the SIT for comparison purposes and 169 such candidates were identified in such category who would not have been called for interview for inflated marks. The SIT also examined the details provided to it regarding constitution of the Interview Board, the list of candidates who were

selected for the purpose of interview and upon drawing an average time spent per candidate concluded that not much time was available to the Board to conduct interview of the candidates so as to appreciate and assess their personality.

256. The SIT has also examined the experts of the interview board so as to elicit from them as to whether any kind of influence was ever exercised upon any of them to favour a particular candidate or a particular category of candidate. The SIT has also gone into the details of incorrect questions and incorrect answers to which objections were raised and having recorded and analysed the oral statements as well as the documentary material it finally concluded that in the matter of selection process for conspiracy of the officials of the Corporation with those of M/s. Aptech Limited, the selection process appeared to have been absolutely compromised and sufficient evidence was there available to it to charge these officials of M/s. Aptech Limited and those of Corporation for committing offence under various sections of Indian Penal Code, the Information and Technology Act and the Prevention of Corruption Act.

257. Two Officers of U.P. Jal Nigam, namely, Anoop Kumar Saxena, the then Chief Engineer (Urban) and Rakesh Nigam, the then Engineer, Level-II, who had submitted initial two reports, were also interrogated by S.I.T. and during their interrogation they have been only queries as to those aspects of the matter regarding permission not taken to fill up the vacancies and that the Committee which was constituted to look after the Corporation never held any meeting and they only stated that looking to the circumstances involvement of

highups of the Corporation in vitiating the selection process cannot be denied.

258. In its final analysis it has referred to certain admitted facts that emerge out from interrogation:

(i) The OSD Urban Development Department, Government of U.P. vide letter no. 2421/9-3-15C/10TC Urban Development Department No. 3 dated 14.01.2016 intimated sanction of Hon'ble the Governor vide Government Notification No. 66/2015/1978/47-A-Ka-3-2015-13/65/2015 dated 30.12.2015 to fill up the vacancy of Routine Grade Clerks and Stenographers through recruitment process to be carried out by any agency other than subordinate selection commission.

(ii) A committee was constituted under the Chairmanship of Sri A.K. Khare, the Chief Engineer, U.P. Jal Nigam to carry out the recruitment drive. The said committee however, never met, nor records reveal that any such meeting of the committee was ever held.

(iii) For assessment of expenditure a letter was written by M.D., U.P. Jal Nigam; MNIT, Allahabad and IIT, Lucknow and KNIT, Sultanpur, Government of U.P., Lucknow on 28.10.2015 and ultimately on 19.05.2016 M/s. Aptech Limited was approved and which carried out the entire selection process under the agreement that was reached between M/s. Aptech Limited and Corporation on different dates for different categories of posts.

(iv) On 20.12.2016 suddenly the recruitment for Stenographer was cancelled by the Chairman of the Board as he failed to obtain relaxation in typing in respect of 32 candidates who could have been ultimately selected and since no such authority vested with him, he was left with no other option but to cancel the same vide order dated 20.12.2016. This resulted in the loss of Rs. 33,75,880.20 paise as the CBT exercise was undertaken in respect of these vacancies of Stenographers also.

(v) The similar findings have come to be returned in respect of Junior Engineers and Assistant Engineers also regarding permission to be taken for conducting recruitment through some Government agency or institutes in the first instance but since nobody came forward, therefore, the task was entrusted to a private agency.

(vi) The report discusses the dates and the letter numbers also by which the Government had granted sanction to fill up the vacancies like in the case of Assistant Engineers letter was written on behalf of the Government on 16.11.2016 to fill up the vacancies of Assistant Engineers. Similarly, in the case of Junior Engineers also the letter was written by the Government on 09.03.2016.

(vii) Regarding four persons obtaining similar marks attempting same questions as correct answers and same questions with some wrong answers, after final analysis the finding arrived at by the SIT is that this could not have been taken to just a co incidence.

(viii) The SIT also considered the reports of experts of Institutes of Technology and placed heavy reliance upon the same and after analysing all the material documents available before it including the reports, it came to conclude that M/s. Aptech Limited had deliberately selected undeserving candidates in order to give them undue benefit and raised/ inflated accordingly their CBT marks which resulted ultimately in denial of selection to the meritorious candidates. This act and conduct of M/s. Aptech Limited according to the SIT was absolutely illegal and in the clear clandestine manner in which they processed the result and published the same in a clandestine manner by giving password and login ID in advance to Managing Director so as to expose it the officials illegally and it deserved to be blacklisted as well.

(ix) The further finding is that the evidence sufficiently are available to enable it to conclude finally that entire selection was a result of conspiracy and fraud just to give selection and appointment to own men by the selectors and those who were in helm of affairs. This entire exercise violated the constitutional mandate to ensure transparency and sanctity in the matter of open selection in competitive examination inviting applications from public in matters of public employment.

259. Upon arriving at these above findings on the basis of material available to it and detailed interrogations carried out with various process, the SIT found that charges levelled against

these named accused persons stood valid so as to prosecute them under various sections of IPC, Prevention of Corruption Act and Information and Technology Act and hence it filed the charge sheets.

260. Having discussed and examined all the above reports minutely the findings arrived at, in general, as contained in the reports, I summarize them as under:

(I). The reports discuss and record findings to the effect that sanction was not obtained from the State Government for carrying out recruitment drive in respect of posts in question.

(II). The reports further record findings to the effect that financial sanction from the State Government was also a must which remained wanting in the matter. Rs. 300 crore advanced to U.P. Jal Nigam as loan only and so diverting the said money towards recruitment drive was questionable.

(III) Reports also give findings to the effect that sincere efforts were not made to get selection held by any government institute or any recognized University, nor efforts were made to invite applications in general from various private agencies/ government agencies through open tender process for outstanding selection.

(IV) The selection of M/s Aptech Ltd. to conduct CBT was hurriedly done to somehow hold selection and give appointments to own men and Service provider agency M/s Aptech Ltd. breached the terms of contract and conditions given in the work order by not publishing master answer key immediately after CBT was concluded and this act resulted in selecting and giving appointments to undeserving candidates.

(V) Forensic examination of data retrieved from the seized hard disks from the local environment office of M/s Aptech Ltd. and comparison thereof with data of candidates called for interview disclosed that 169 candidates in all three categories namely RGC, AE, JE, whose marks were changed to higher marks to give them opportunity to walk in for interview to the prejudice of those deserving candidates who were not called for interview.

(VI) The four candidates, namely Mohd. Shams, Sayed Ahmad Ali, Kailash Vishwakarma and Samrah Ahmad had resorted to unfair practise as they not only attempted similar number of questions but whose wrong options as answers to

certain identical questions led to inevitable conclusion that selection process in fact was vitiated for gross irregularities and use of unfair means.

(VII). Two male candidates in Junior Engineer category were wrongly placed in select list and appointed upon seats reserved for women category and this led to another inevitable conclusion that preparation of select list was malafidely done in conspiracy with officials of U.P. Jal Nigam to select and given appointments to own men and these irregularities and illegalities were deeply rooted in the system of selection.

(VIII). M/s Aptech Ltd. had the responsibility to get question papers prepared and so also master answer key prepared, and therefore, due to incorrect/doubtful questions asked and incorrect / doubtful answers given in the question papers and the master answer key respectively, a blunder was committed which very much hit at root of the CBT conducted by it and thus entire selection process stood vitiated.

(IX). Due to illegal act of suddenly cancelling the recruitment drive on the post of Stenographer vide order dated 26.12.2016 a huge financial loss was caused to public exchequer amounting to Rs. 33,75,880.20 as expenditure was incurred in conducting CTB in respect of these vacancies as well.

(X). The Chairman of U.P. Jal Nigam and the then Union Development Minister Mr. Azam Khan with the aid of OSD Mr. Afaq Ahmad abused his position both as a Senior Cabinet Minister and Chairman of U.P. Jal Nigam in getting the recruitment drive conducted to select own men on various posts so advertised and therefore, as a sequel to this design, he conspired with the officer of the upper echelons of the U.P. Jal Nigam and M/s Aptech Ltd. as well to manipulate CBT results and get the interview conducted in a hush-hush manner.

(XI). The entire selection process that was carried out, was absolutely compromised and so consequential appointments made on post of Routine Grade Clerk , Assistant Engineer and Junior Engineer were liable to be held void. The report/revised result sheet prepared by M/s Aptech Ltd. itself established that 656 candidates in Junior Engineer who were called for interview were in fact not entitled to be called for interview and 479 candidates in JE category (331 JE (Civil) and 148 JE (Electrical/ Mechanical) though deserved to be called for interview, but were not called for interview.

(XII). The original data relating to selection process having been deleted from primary source cloud server CtrlS, the

outsourced agency from whom M/sAptech Ltd. had hired the cloud server space and in the absence of digital finger print or signature, like hash value, checksum information and audit trail information to the students response data, neither any verification could be done of the data provided in the CDs handed-over to the experts of the institutes of technology as to its integrity, nor any opinion could be given authoritatively as to the status of data provided, whether genuine or modified and so it became impossible to segregate tainted from untainted candidates.

(XIII). The CD data provided to the expert of the institutes of technology proved itself that data was modified on 27th February, 2017 and 8th March, 2017.

261. The above findings have weighed decision of the respondent Corporation in annulling the entire selection of RGC, AE, JE and resultant cancellation of appointments.
262. Having dealt with the various report in *extenso* in this judgment and having examined the order impugned, before I give my final verdict, I consider it appropriate at this stage to consider the authorities/ rulings cited before me by the learned Advocates appearing for respective parties.

Rulings cited for petitioners

263. Learned Advocates appearing for petitioner have heavily relied upon the authority in the case of ***Indrapreet Khalon and others Vs. State of Punjab and others 2006 (11) SCC 356***. In this case controversy had arisen for cancellation of entire selection process by the State Government *qua* the selection and appointment of Officers of the PCS executive branch as well as PCS Judicial branch. High Court had constituted a scrutiny committee which submitted a report on the basis of which High Court had affirmed the decision of the State Government. The finding of the High Court was to the effect that corrupt means were adopted to secure selection by the candidates which vitiated the entire selection process and because of a large scale corruption and malpractice and manipulation of marks and other illegalities that were committed

during the tenure of the then Chairman Ravindrapal Singh Siddhu, there remained no doubt that the entire selection deserved annulment. Supreme Court dealing with the SLP, framed a question as to whether due to misdeed of some of the candidates, honest and meritorious candidates could also be permitted to suffer. In the said judgment the Court categorized vide paragraph-52 the various authorities falling in different categories.

"We may, at this stage, notice that the following cases would fall in the different categories which are enumerated hereinbelow:

(i) Cases where the 'event' has been investigated:

(a) Union Territory of Chandigarh v. Dilbagh Singh, (1993) 1 SCC 154 at paragraphs 3 and 7.

(b) Krishan Yadav v. State of Haryana, (1994) 4 SCC 165 at paragraphs 12, 15 and 22.

(c) Union of India v. Anand Kumar Pandey, (1994) 5 SCC 663 at paragraph 4.

(d) Hanuman Prasad v. Union of India, (1996) 10 SCC 742 at paragraph 4.

(e) Union of India v. O. Chakradhar, (2002) 3 SCC 146 at paragraph 9.

(f) B. Ramanjini v. State of A.P., (2002) 5 SCC 533 at paragraph 4.

(ii) Cases where CBI inquiry took place and was completed or a preliminary investigation was concluded:

(a) O. Chakradhar (supra)

(b) Krishan Yadav (supra)

(c) Hanuman Prasad (supra)

(iii) Cases where the selection was made but appointment was not made:

(a) Dilbagh Singh (supra) at paragraph 3

(b) Pritpal Singh v. State of Haryana, (1994) 5 SCC 695

(c) Anand Kumar Pandey (supra) at paragraph 4.

(d) Hanuman Prasad (supra)

(e) B. Ramanjini (supra) at paragraph 4.

(iv) Cases where the candidates were also ineligible and the appointments were found to be contrary to law or rules:

(a) Krishan Yadav (supra)

(b) Pramod Lahudas v. State of Maharashtra, (1996) 10 SCC 749 wherein appointments had been made without following the selection procedure.

(c) O. Chakradhar (supra) wherein appointments had been made without type-writing tests and other procedures of selection having not been followed."

(emphasis added)

264. The Court then proceeded to refer to earlier judgment in the case of **Benni TD v. Registrar Cooperative Societies (1998) 55 SCC 269** where the Court had referred to the contention raised that for a tampering of marks in respect of several candidates would draw a conclusion that there had been no fair and objective selection and public interest demanded annulment of selection, and then rejected the same. It then referred to another judgment in the case of **Omkar Lal Bajaj v. Union of India (2003) 2 SCC 673** in which the issue of *en masse* cancellation of LPG distributors on the plea that unequals were clubbed together as a result of arbitrary exercise of executive power, had arisen. The court observed vide paragraph 45 in the said judgment that "*solution by resorting to cancellation all more worse than the problem. Cure was worse than a disease*". Dealing with the principles of law on the point of public interest or probity in governance, the Court referred to paragraphs 35 and 36 of that very judgment, which are reproduced hereunder:

“35. The expression ‘public interest’ or ‘probity in governance’ cannot be put in a straitjacket. ‘Public interest’ takes into its fold several factors. There cannot be any hard-and-fast rule to determine what is public interest. The circumstances in each case would determine whether government action was taken in public interest or was taken to uphold probity in governance.

36. The role model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilised society based on rule of law not only has to base on transparency but must create an impression that the decision making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate.”

265. Having perused those judgments on the point of cancellation *en masse* only on account of certain irregularities detected in respect of a few, the court vide paragraph-58 rejected the arguments of Mr. Dhawan in Khalon’s case that decision of the commission was collegiate in nature.
266. The Court having thus discussed authorities above and applying the same on the facts of the said case directed the matter to be re-examined by the High Court after constituting a committee afresh to find out those who were tainted. Thus the matter was remitted to segregate tainted from untainted

candidates vide paragraphs 94, 95 of the judgment the Court now reproduced as under:

“94. The impugned judgment as also the orders of the State Government and the High Court are, thus, liable to be set aside and directions are issued. Although the impugned judgments cannot be sustained, we are of the opinion that the interest of justice would be subserved if the matters are remitted to the High Court for consideration of the matters afresh. However, with a view to segregate the tainted from the non-tainted, and that in the interest of justice the High Court should be requested to constitute two independent Scrutiny Committees—one relating to the executive officers and the other relating to the judicial officers.

“95. We would, furthermore, request the High Court to consider the desirability of delineating the area which would fall for consideration by such Committees within a time-frame. Copies of such reports of the Committees shall be supplied to the learned counsel for the petitioners and/or at least they should be given inspection thereof. The parties shall be given opportunity to inspect any document including the answer sheets, etc. if an application, in that behalf is filed. Such inspection shall, however, be permitted to be made only in the presence of an officer of the Court. The appellants shall be given two weeks' time only for submitting their objections to such reports and their comments, if any, on any material whereupon the High Court places reliance, from the date of supply of copies or inspection is given. Having regard to the fact that the appellants are out of job for a long time, we would request the High Court to consider the desirability disposing of the matter as expeditiously as possible and preferably within the period of three months from the date of receipt of the copy of this order. Before parting with the case, however, we may observe that it is expected that the State having regard to the magnitude of the matter shall leave no stone unturned to bring the guilty to book. It is the duty of the State to unearth the scam and spare no officer howsoever high he may be. We expect the State to make a thorough investigation into the matter. These appeals are allowed to the aforementioned extent and with the directions and observations made hereinbefore.”

267. Disagreeing on some points, the other Judge on Bench Justice Dalveer Bhandari, as his Lordship then was, in agreement with Senior Judge, observed vide paragraph 127 thus:

"In somewhat similar circumstances, in which initially it looked that it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any form the others, even then in Union of India v. Rajesh P.Pu this Court observed that the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections."

268. Another judgment relied upon is in the case of **Joginder Pal and another Vs. State of Punjab (2014) 6 SCC 644**. This judgment arose out of same controversy, as after the remand of the matter in the case of Inderpreet Khalon (*supra*) the High Court again held that the entire selection process and consequential appointments to be result of manipulations, forgery and fraud even though tainted candidates were identified and were segregated, the court while dealing with the judgment of the High Court very categorically held that a Court was always required to consider the foundational facts and once foundational facts are established then principle of law could be made applicable to test whether appointments were made in violation of Articles 14 and 16 of the Constitution being result of such an absolute arbitrary exercise of power. The Court expressed its view that there existed distinction between a proven case of mass-cheating and unproven charge of corruption and it is only in those circumstances where it is found to be highly improbable to identify the tainted candidates to segregate them from untainted candidates, that mass cancellation of selection and appointment could be resorted to. These were the principles that were discussed along with related principles of law *qua* selection and appointments on the basis of the judgment in the case of Indrapreet Khalon vide paragraph 10.1 to 10-5 which are relevant for the purpose of the case and hence are being reproduced hereunder:

"10.1 An appointment made in violation of Articles 14 and 16 of the Constitution of India would be void. It would be a nullity. Since the services of the appellants were terminated not in terms of the rules but in view of the commission of illegality in the selection process involved, the applicability of the relevant provisions of the statutes as also the effect of the provisions of Article 311 of the Constitution need not be considered.

10.2 Before a finding that an appointment has been made in violation of Articles 14 and 16 of the Constitution can be arrived at, the appointing authority must take into consideration the foundational facts. Only when such foundational facts are established, can the legal principles be applied. When the services of employees are terminated inter alia on the ground that they might have aided and abetted corruption and, thus, either for the sake of probity in governance or in public interest their services should be terminated, the court must satisfy itself that conditions therefor exist. The court while setting aside a selection may require the State to establish that the process was so tainted that the entire selection process is liable to be cancelled. In a case of this nature, thus, the question which requires serious consideration is as to whether due to the misdeed of some candidates, honest and meritorious candidates should also suffer.

10.3 A distinction exists between a proven case of mass cheating for a board examination and an unproven imputed charge of corruption where the appointment of a civil servant is involved. Only in the event it is found to be impossible or highly improbable that the tainted cases can be separated from the non-tainted cases could en masse orders of termination be issued. Both the State Government as also the High Court in that view of the matter should have made all endeavours to segregate the tainted from the non-tainted candidates.

10.4 Cases which may arise where the selection process is perceived to be tainted may be categorised in the following manner:

- (i) Cases where the "event" has been investigated.*
- (ii) Cases where CBI inquiry took place and was completed or a preliminary investigation was concluded.*
- (iii) Cases where the selection was made but appointment was not made.*
- (iv) Cases where the candidates were also ineligible and the appointments were found to be contrary to law or rules"*

If the services of appointees who had put in a few years of service were terminated, compliance with three principles at the hands of the State was imperative viz.: (1) to establish satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted; (2) to determine the question that the illegalities committed went to the root of the matter, which vitiated the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reason of a thorough investigation in a fair and transparent manner; (3) whether the sufficient material present enabled the State to arrive at a satisfaction that the officers in majority had been found to be part of the fraudulent purpose or the system itself was corrupt.

10.5 Once the necessary factual findings as enumerated above are arrived at, or it is found impossible or highly improbable to separate tainted from untainted cases, all appointments traceable to the officers concerned could be cancelled. But admittedly, in the present case, although there had been serious imputations against Ravinderpal Singh Sidhu being at the helm of the affairs of the State Public Service Commission, all decisions made by the Commission during his tenure are yet to be set aside."

269. The Court after examining the entire controversy in hand in the said case and the judgment in the case of Khalon observed that in Khalon's case the Court had not accepted the submission of respondent that it was not practicably possible to segregate tainted from untainted candidates. The Court, therefore, in the circumstances when there was no evidence available to hold those who had been offered appointment and had discharged duties pursuant to the appointment orders who had not in any manner in-judged in any fraud in finding place in the select list their appointment and posting orders were to be saved against the existing vacancies and in the circumstances if the vacancies were were not there then supernumerary posts were directed to be created giving them limited benefit. Vide paragraph 44 the Court held thus:

44. It would be apposite to quote the following portion of the said judgment in this behalf : (High Court of Punjab and Haryana case [High Court of Punjab and Haryana v. State of Punjab, (2010) 11 SCC 684 : (2011) 1 SCC (L&S) 769] , SCC pp. 692-93, paras 26-27)

“26. It is not in dispute any more that the candidates were given fresh opportunity to appear for selection for the aforesaid post in the exams exclusively held for them in the year 2004. Out of 57 such candidates, 20 candidates were reselected and they were given benefit of original appointment. As many of these candidates are the respondents and have worked as judicial officers for some period and it has also not been proved or established completely against them that they had indulged in malpractice in examinations, we are of the view that they should also be given reappointment and posting orders to the existing vacancies in the State of Punjab and if no vacancy exists, Mr Sharan has assured the court that the State will create supernumerary posts for them but they would not be entitled to get all the benefits as have been granted to them vide the impugned judgment [Sirandip Singh Panag v. State of Punjab, (2008) 4 SLR 432 : (2008) 4 RSJ 288] .

27. However, it should not be construed that our judgment is giving seal of approval to the judgment [Sirandip Singh Panag v. State of Punjab, (2008) 4 SLR 432 : (2008) 4 RSJ 288] of the Full Bench of the Punjab and Haryana High Court but with an intention to work out the equities and to do complete justice between the parties and in view of the earlier judgment of this Court in Kahlon case [Inderpreet Singh Kahlon v. State of Punjab, (2006) 11 SCC 356 : (2007) 1 SCC (L&S) 444] that tainted candidates be separated from untainted, meaning thereby that this Court did not accept the submission that it was not practically possible to do so; and further this Court had taken note of reselection held in 2004 in para 92 of the judgment, but held that the effect thereof would be subject to this case, this is the only via media, through which the respondents could also be granted relief as it could not be established that even otherwise, they would have been declared as unsuccessful candidates. Precisely, that is the reason we have moulded the reliefs granted to the respondents by the High Court as our order is not likely to affect seniority of any of the judicial officers, who had already been working prior to the respondents. We are conscious of the fact that by this procedure, there is no

likelihood of any offshoots of the said order and hopefully the whole controversy triggered in the year 1998, would stand settled for all times to come.”

270. The Court also dealt with the statistics as was recorded in the judgment of the High Court where 66% of the persons who were offered appointments, were tainted and which influenced selection process. This percentage was drawn/ worked out taking both direct recruits and nominated candidates together and out of 93 direct recruits 76 had joined and only 10 were found to be tainted. So percentage of tainted candidates in the nominated category was higher to the extent of 80 percent and, therefore, direct recruits were held to be wrongly equated with nominated officers. The Court then held that direct recruits were mostly non-tainted who were appellant before the Court.
271. Thus the Supreme Court set aside the judgment of the High Court and saved those who were selected and appointed falling in untainted category, vide paragraph 47 and 48 the Court held thus:.

47. We may note that the High Court has recorded in the impugned judgment [Amarbir Singh v. State of Punjab, CWP No. 8421 of 2002, decided on 31-5-2013 (P&H)] that 66% cases were found to be of the persons given appointment who were tainted, which influenced the entire selection process. However, during the course of arguments, it was placed before us that the aforesaid percentage is worked out by taking the cases of direct recruits and nominated candidates together. If the figures are separately taken, out of 93 direct recruits, 76 have joined and only 10 are found to be tainted. In fact, the percentage of such tainted candidates in nominated category was much higher i.e. 80%. It was, thus, argued that the cases of direct recruits cannot be taken along with those in nominated category, who influenced the decision in their matter as well. This is also a supportive and important fact which goes in favour of these appellants viz. the non-tainted direct recruits.

48. The aforesaid discursive exercise prompts us to set aside the judgment [Amarbir Singh v. State of Punjab, CWP No.

8421 of 2002, decided on 31-5-2013 (P&H)] of the High Court in respect of these persons with the direction that the appellants be allowed to join the duties forthwith. It is, however, made clear that the intervening period during which they remained out of service shall not count for seniority or any other benefit. However, these persons shall be given the benefit of service rendered by them earlier viz. from September 1999 till 22-5-2002, when they actually worked, for the purpose of seniority and future promotion, etc. These appeals are partly allowed to the aforesaid extent. There shall, however, be no order as to costs.

272. The other judgment which is cited by Mr. Khare is the case of **State of N.C.T. Delhi and another v. Sanjeev @ Bittu, (2005) 5 SCC 181**. The judgment has been cited on the point of judicial review. The principle of judicial review has been discussed in the judgment at a great length *vis a vis* the principle of Wednsebury Unreasonableness and the Court has very categorically held that this power of judicial review can be exercised on the ground of illegality, irrationality and procedural impropriety. It is observed that the Court will be slow to interfere in matters relating administrative functions unless decision suffers from any vulnerability enumerated as illegality, irrationally and procedural impropriety. If the actions taken falls in any of the above categories then it will be a established case of exercise of power not justified one and will fall within the mischief of Wednsebury Unreasonableness. Vide paragraphs 19 to 25 the Court has held thus:

“19. Before summarising the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1947) 2 All ER 680 : (1948) 1 KB 223 (CA)] (KB at p. 229 : All ER pp. 682 H-683 A). It reads as follows:

“... It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory

discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority. ... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

Lord Greene also observed (KB p. 230 : All ER p. 683 F-G)

"... it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable. ... The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another."

(emphasis supplied)

Therefore, to arrive at a decision on "reasonableness" the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view.

20. *The principles of judicial review of administrative action were further summarised in 1985 by Lord Diplock in CCSU case [(1984) 3 All ER 935 : 1985 AC 374 : (1984) 3 WLR 1174 (HL)] as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows :*

"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently

classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community;"

Lord Diplock explained "irrationality" as follows : (All ER p. 951a-b)

"By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

21. In other words, to characterise a decision of the administrator as "irrational" the court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.

22. These principles have been noted in the aforesaid terms in Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] . In essence, the test is to see whether there is any infirmity in the decision-making process and not in the decision itself. (See Indian Rly. Construction Co. Ltd. v. Ajay Kumar [(2003) 4 SCC 579 : 2003 SCC (L&S) 528] .)

23. Though Section 52 limits the scope of consideration by the courts, the scope for judicial review in writ jurisdiction is not restricted, subject of course to the parameters indicated supra.

24. It is true that some material must exist but what is required is not an elaborate decision akin to a judgment. On the contrary the order directing externment should show existence of some material warranting an order of externment. While dealing with the question mere repetition of the provision would not be sufficient. Reference is to be made to some material on record and if that is done, the requirements of law are met. As noted above, it is not the

sufficiency of material but the existence of material which is sine qua non.

25. As observed in Gazi Saduddin case [(2003) 7 SCC 330 : 2003 SCC (Cri) 1637] satisfaction of the authority can be interfered with if the satisfaction recorded is demonstratively perverse based on no evidence, misreading of evidence or which a reasonable man could not form or that the person concerned was not given due opportunity resulting in prejudice. To that extent, objectivity is inbuilt in the subjective satisfaction of the authority.”

273. Mr. Khare has also relied upon a Division Bench judgment of this Court in the case of **Akanksha Yadav v. State of U.P. and 5 others** in Special Appeal Defective No.- 127 of 2023 decided on 12th April, 2023, wherein the matter was that the Commission *suo motu* acted to re-evaluate the amendments after making recommendation of those very appellants. Citing the authorities of this Court itself and one of the Supreme Court wherein the Court had saved those candidates who were selected by giving them placement at the bottom of rectified select list, vide paragraph 17 the Court has held thus:

“17. In a similar controversy to settle the issue, this Court in Ram Naresh Singh and 26 others vs. State of U.P., 2018 (4) AWC 3521, along with companion writ petitions, relying on the decision rendered by the Hon'ble Supreme Court in Rajesh Kumar and others vs. State of Bihar and others, 2013 (4) ADJ 690 and Vikas Pratap Singh and others vs. State of Chhatisgarh, 2013 (14) SCC 494, the Court held that the selected candidates cannot be ousted from service but kept at the bottom of the rectified select list. The relevant paragraph of the report is extracted :

"97. The writ petitioners therefore cannot be ousted from service altogether and shall be kept at the bottom of the rectified Select List issued for Advertisement No. 1 of 2010, and also any other Select List on the basis of any later advertisement issued by the Selection Board, selection on the basis of which has been completed and recommendations made for appointment. The petitioners shall be offered fresh appointments on the posts of Hindi Teachers L.T. Grade in Institution, which have determined such vacancies in direct

recruitment quota and intimated them to the District Inspector of School concerned and further notified to the Selection Board, but on which vacancies selection has not been advertised or finalized by the Selection Board till date.

98. If need be then supernumerary posts be created for the petitioners as directed by the Hon'ble Supreme Court in Civil Appeal No. 367 of 2017 for similarly situated appellants therein, who were ousted as a consequence of rectification of result of selection held for Trained Graduate Grade Teachers in Advertisement No. 1 of 2009 of the Selection Board.

99. The private respondents shall be issued appointment letters forthwith, their dates of appointment relating back to date of first appointment of the writ petitioners herein, and although they will not be entitled to back wages for the period they have not worked, they shall be entitled to seniority and consequential benefits arising out of continuity in service from the date of such back-dated appointment. The entire excise shall be completed by the Government within a maximum period of three months."

274. Learned counsel for the petitioner has also relied upon the judgment in the case of **Ran Vijay Singh and others v. State of U.P. and others (2018) 2 SCC 437**. This judgment has been relied upon for emphasising the point that once the candidates have been selected and subsequently the revision of marks has taken place, then this re-evaluation or for that matter third evaluation that had taken place in that case, will not prejudice the selected candidates. The Court in that case has adopted the middle path in the given facts and circumstances of the said case, to permit Board to declare the third set result after reevaluation but at the same time protected those candidates who had already been selected and might have to be declared unsuccessful on account of the third reevaluation exercise. Vide paragraphs 34, 35 and 36 the Court had held thus:

“34. Having come to the conclusion that the High Court (the learned Single Judge [Ranjeet Kumar Singh v. State of U.P., 2012 SCC OnLine All 268 : (2012) 4 All LJ 19] as well as

the Division Bench [U.P. Secondary Education Service Selection Board v. State of U.P., 2015 SCC OnLine All 5788 : (2016) 3 All LJ 405]) ought to have been far more circumspect in interfering and deciding on the correctness of the key answers, the situation today is that there is a third evaluation of the answer sheets and a third set of results is now ready for declaration. Given this scenario, the options before us are to nullify the entire re-evaluation process and depend on the result declared on 14-9-2010 or to go by the third set of results. Cancelling the examination is not an option. Whichever option is chosen, there will be some candidates who are likely to suffer and lose their jobs while some might be entitled to consideration for employment.

35. Having weighed the options before us, we are of the opinion that the middle path is perhaps the best path to be taken under the circumstances of the case. The middle path is to declare the third set of results since the Board has undertaken a massive exercise under the directions of the High Court and yet protect those candidates who may now be declared unsuccessful but are working as Trained Graduate Teachers a result of the first or the second declaration of results. It is also possible that consequent upon the third declaration of results some new candidates might get selected and should that happen, they will need to be accommodated since they were erroneously not selected on earlier occasions.

36. The learned counsel for the appellants contended before us that in case her clients are not selected after the third declaration of results, they will be seriously prejudiced having worked as Trained Graduate Teachers for several years. However, with the middle path that we have chosen their services will be protected and, therefore, there is no cause for any grievance by any of the appellants. Similarly, those who have not been selected but unfortunately left out they will be accommodated.”

275. Mr. Khare has relied upon the latest judgment of Supreme Court in the case of ***Vanshika Yadav vs Union of India and others; 2024 SCC Online SC 1870***. In this case, the petitioners had filed a number of writ petitions directly before the Supreme Court questioning the results in respect of CBT conducted for National Eligibility Entrance Test for admission for under graduate medical course, by the National Testing

Agency. The argument advanced before the Supreme Court was that since investigation into the complaint *qua* leak of paper and adoption of other unfair means initially by the Bihar Police and later on by the Central Bureau of Investigation called for inaction to cancel the entire examination with a direction N.T.A. to conduct afresh. The Court heard the matter and framed three issues:

“(a) Whether the answer for question in controversy ought to be processed by N.T.A.;

(b) Whether there was a conflict of interest with Director of IIT, Madras analysing the data in this case and;

(c) Whether the sanctity and integrity of examination were compromised at a systemic level.

276. It is the judgment upon the third issue which is relevant for the purpose of this case.

277. In the first instance, the Court discussed the position of law vide paragraphs 62 to 69. The Court held that in arriving at a conclusion as to whether an examination suffers from wide spread irregularities, the Court must ensure that allegations of malpractice are substantiated and that the material on record including investigative reports, point to that conclusion there must be at least some evidence to allow the Court to reach to that conclusion and, therefore, *“in the absence of any specific or categorical finding supported by any correct and relevant material that wide spread infirmities of perverse nature there is no need to hold that there were irregularities into conduct of selection at systemic level”*. Vide paragraphs-70 to 84, the Court discussed the facts and came to conclude that it was possible to separate the beneficiaries of malpractice or fraud from the honest students. These paragraphs are reproduced hereunder:

“70. That the question paper was leaked and some students indulged in malpractice is beyond cavil. No party before the Court including NTA disputes this. The question, however, is

whether this leak was systemic and of a nature as to vitiate the sanctity of the exam. There are various aspects in this case which require the consideration of the Court - the inflation of marks and ranks, the leak of the question paper, other forms of malpractice, the reopening of the registration window, the change of city when the form was opened for corrections, and the award of compensatory marks to 1563 students. These are considered in turn.

71. At the outset, it is necessary to understand certain aspects of the NEET. It is well-known that the counselling process or the process by which admission is gained into different medical colleges depends on the rank of the candidate. The concept of 'qualifying marks' is, however, sometimes misunderstood. The qualifying mark is arrived at after the declaration of results each year and corresponds to the 50th percentile. This year, the 50th percentile was identified to be at 164 marks of a total of 720 marks, for the unreserved category. Candidates who score 164 marks or above are eligible for admission to the MBBS course. However, not all those who have qualifying marks will necessarily gain admission to a medical college. The qualifying marks are necessary but not sufficient for admission. NTA, in its affidavit, states that the purpose of qualifying marks is to ensure that private colleges do not grant admission to totally undeserving candidates. Only a small percentage of those who obtain the qualifying marks will be allotted one of the 1,08,000 available seats. As mentioned above, 56,000 seats of the total figure are in government medical colleges and the remaining 52,000 are in private colleges. Hence, it is appropriate to assess the percentage of success with respect to the 1,08,000 available seats. Rank 1,08,000 corresponds to 577 marks and rank 56,000 corresponds to 622 marks.

72. Data analysis of results has long been an accepted method of discerning the extent to which an examination has been vitiated. In Bihar School Examination Board (supra), this Court considered the validity of the decision to cancel a secondary school examination conducted at a particular centre in Bihar due to the adoption of unfair means by the students. At the centre in which malpractice appeared to have taken place, the percentage of successful examinees was about 80%. In stark contrast, the average percentage of successful candidates at other centres was 50%. The Court also considered the percentage of success subject-wise for thirteen subjects. The marks detailed in the judgment indicate that the candidates performed exceedingly well in all subjects, leading the Court to hold that the "figures speak for themselves". Despite this conclusion, the Court called for some answer booklets and inspected them. Its conclusion (which was based on the data) that the exam was vitiated was substantiated by the answer

booklets, which showed that there was “remarkable agreement in the answers”. Data analysis is a useful tool in the endeavour to detect malpractice.

73. The data placed before us on the percentage of success from different centres did not account for seats which would be allotted on the basis of reservation for the Scheduled Castes, Scheduled Tribes, Other Backward Castes, and Economically Weaker Sections. Were such seats to be accounted for, the figure of 1,08,000 would almost be halved. Hence, the data analysis errs on the side of caution.

74. Certain centres found themselves in the midst of the controversy in this case. It was averred that malpractice was widespread in Hazaribagh, Jharkhand, Patna, Bihar, and Godhra, Gujarat. The data provided by NTA in relation to Hazaribagh for 2024 is as below:

- a. 2733 candidates in total appeared for the exam;
- b. 126 candidates are within Rank 1,08,000. This indicates a success rate of 4.6%; and
- c. 58 candidates are within Rank 56,000. This indicates a success rate of 2.1%.

Further, the statistics from previous editions of the NEET indicate that the success rate (relative to the total number of available seats) for Hazaribagh was 7.2% in 2022 and 6.0% in 2023. When these figures are compared with the success rate for 2024 which is 4.6%, no abnormality becomes evident. To the contrary, the success rate for this year is lower than for the past two years.

75. Similar data for Patna for 2024 is encapsulated below:

- a. 48,643 candidates in total appeared for the exam. The exam was conducted in 70 centres across the city;
- b. 2691 candidates are within Rank 1,08,000. This indicates a success rate of 5.5%; and
- c. 1482 candidates are within Rank 56,000. This indicates a success rate of 3.0%.

In 2022, the success rate (relative to the total number of available seats) was 8.9% and in 2023, the success rate was 7.7%. In Patna, too, the success rate for this year (5.5%) is lower than for the past two years. Even otherwise, there is no irregularity which comes to light.

76. The numbers for Godhra for 2024 are as follows:

- a. 2484 candidates in total appeared for the exam. The exam was conducted in 2 centres;
- b. 21 candidates are within Rank 1,08,000. This indicates a success rate of 0.8%; and

c. 13 candidates are within Rank 56,000. This indicates a success rate of 0.05%.

To compare, the success rate (relative to the total number of available seats) in Godhra was 1.5% in 2022 and 2.1% in 2023. Hence, in Godhra, fewer candidates are within the zone in 2024. There are no other deviations in the data which are cause for concern and which meet the standard of indicating a systemic malaise.

77. From the above figures, it becomes clear that there are no abnormalities in the results for 2024 when compared with the results for the past two years. The report of the Director of IIT, Madras also supports the conclusion of this Court. The report stated that there were no “abnormal indications” in the results for this year, when compared to previous years. It also stated that “analysis shows that there is neither any indication of mass malpractice nor a localized set of candidates being benefitted leading to abnormal scores.” Hence, an analysis of the results does not lend support to the case of the petitioners who seek the cancellation of the exam. The leak of the paper does not appear to be widespread or systemic. It appears to be restricted to isolated incidents in some cities, which have been identified by the police or are in the process of being identified by the CBI.

78. We now turn to the issue of the reopening of registration for NEET. The registration window was initially to be open from 9 February 2024 to 9 March 2024. The last date for registration was later extended to 16 March 2024. Thereafter, NTA reopened the registration portal for two days - 9 and 10 April 2024. During the course of the hearing, the Court enquired into the reasons for the reopening as well as the performance of the candidates who registered when the portal was reopened.

79. NTA stated that it received numerous representations from candidates who raised issues related to One Time Passwords, Aadhar authentication, uploading of documents, and payment. Other technical issues were also raised. Further, it appears that the High Courts of Rajasthan and Karnataka directed NTA to permit certain petitioners, who reported such issues during their registration, to register after the last date. NTA states that it reopened the registration portal to permit all similarly situated candidates to submit their forms for the exam.

80. The data submitted to the Court reflects the performance of the candidates who registered for the exam on 9 and 10 April 2024 and thereafter, appeared for the exam. The students who registered on these dates but did not appear for the exam are excluded from this analysis. Of the 8039 candidates who registered on 9 April 2024, it is seen that five candidates were within the top 1,08,000 ranks and two candidates were in the top 56,000 ranks. This indicates a success rate of 0.06% and

0.02% respectively. Further, of the 14,007 candidates who appeared after having registered on 10 April 2024, forty-four were within the top 1,08,000 ranks and twenty-three were in the top 56,000 ranks. The success rate was 0.31% and 0.14%, respectively. This data does not indicate that an abnormal number of candidates who registered on 9 and 10 April 2024 were successful. We do not find that an unusually high number of students who registered on these dates have been successful. Hence, the Court cannot reach the conclusion that the reopening of the registration portal led to or facilitated malpractice. There is no other material on record at the present time which would indicate the same.

81. The next aspect which falls for consideration is that some candidates changed their preferred cities for the exam, which in turn led to the change of their exam centre. The petitioners averred that this was done to enable malpractice. After changing their preferred city, 33 aspirants went to Hazaribagh, 637 went to Patna, and 24 went to Godhra. Out of the 33 who appeared from Hazaribagh, only one candidate's scores placed him in a rank higher than or equal to Rank 56,000. Thus, the success rate is 3%. Out of 637 candidates who changed their centre to Patna, only 35 were in the top 1,08,000 ranks, indicating a success rate of 5.5%. 17 candidates scored more than 622 marks (corresponding to Rank 56,000). The success rate is 2.7%. Out of 24 candidates who went to Godhra, no candidate scored more than 577 marks (corresponding to 1,08,000 rank). Here, too, the data is not abnormal and therefore does not indicate that a systemic breach has taken place. An unusual number of candidates who changed their preferred cities do not appear to have a higher rate of success. This is a facility which is intended to subserve the interests of candidates. Therefore, the fact that some aspirants changed their preferred cities, taken alone, cannot be considered evidence of malpractice or of dishonest intention. The choice to appear for the exam from a different city may be motivated by myriad factors and the option to change the preferred city is made available every year. Some other relevant and concrete material must be present before the Court can infer that this led to mass malpractice.

82. The parties in the hearing also addressed submissions on a video on Telegram (an instant messaging application) purportedly showing the leaked paper. It was alleged that the leak took place on 4 May 2024. The NTA, in its affidavit, stated that the video shared on Telegram was fabricated and the time-stamp was altered to indicate that the leak took place before the examination date. The investigation by CBI revealed that the images in the video were indeed doctored. The Telegram channel itself was created on 6 May 2024 and the paper was

uploaded on 7 May 2024. Hence, there is no merit in this allegation.

83. As for the re-exam conducted for the 1563 candidates who were initially awarded compensatory marks, the order of this Court dated 13 June 2024 found the re-exam to be fair and justified. The issue no longer subsists. NTA was also permitted to act accordingly following the test which was held, by the order of this Court dated 23 July 2024.

84. Hence, sufficient material is not on record at present which indicates a systemic leak or systemic malpractice of other forms. The material on record does not, at present, substantiate the allegation that there has been a widespread malpractice which compromised the integrity of the exam. To the contrary, an assessment of the data indicates that there are no deviations which indicate that systemic cheating has taken place. The information before us at this stage does not show that the question paper was disseminated widely using social media or the internet, or that the answers were being communicated to students using sophisticated electronic means which may prove difficult to trace. The students who were beneficiaries of the leak at Hazaribagh and Patna are capable of being identified. The CBI investigation reveals the number of students who are the beneficiaries of the malpractice at Hazaribagh and Patna at this stage. This leads us to conclude that it is possible to separate the beneficiaries of malpractice or fraud from the honest students. This being the case, the Court cannot direct a re-exam”

278. Learned counsel appearing for the petitioner has also relied upon the authority in the case of **Anamika Mishra and others v. Uttar Pradesh Public Service Commission, Allahabad, 1990 Suppl. SCC 692**, where the Court was considering the plea that all those candidates, who though had scored better marks in the written but could not do well in interview/ personality test. The Court did not appreciate cancellation of written examination and in the given facts of that case where no appointments were made the Court directed for interview afresh only.
279. Yet another judgment relied upon is of **Kapil Kumar and others v. State of U.P. and others, (2023) SCC Online 4024**.

The controversy in the said case had arisen only on account of challenge being made to certain questions/ answers. The Court vide paragraph 31 issued the following directions instead of offering cancellation of entire selection:

“31. Accordingly, we set aside the judgment of learned Single Judge and dispose of the instant appeals with the following directions:-

(a) The Recruitment Board will revise the result of written examination of such of the appellants who are short of 2.5 or less marks from the cut off marks in their respective categories.

(b) The Recruitment Board will hold their medical examination and in case they succeed on all other parameters, they shall be appointed against the posts which remained vacant after the final round of recruitment. The aforesaid exercise shall be carried out within six weeks from today after due intimation and public notice to all concerned.

(c) These candidates, if selected finally, will be placed at the bottom of the seniority list, while maintaining their inter-se merit position and they shall be entitled to salary and allowances only from the date of their actual appointment, as admissible under the Service Rules.

(d) The aforesaid benefits shall only be available to those who have approached this court so far and not to any other candidate.”

280. Yet another judgment of Supreme Court has been cited in the case of **Shri Dhar Yadav and others v. State of U.P. and others**, wherein upon a misc. application No.- 566 of 2024 in SLP (Civil) No.- 25828 of 2023, learned Solicitor General on behalf of the State of Uttar Pradesh had made statement before the Court that in the event if petitioners before the Court succeed, they would be adjusted against supernumerary posts. The judgment has been cited to take the plea that the candidates, who have been selected and appointed if after the

revision of marks due to solution to the challenged questions and answers if merit gets revised then those already selected may be protected.

Rulings cited for Respondents

281. Mr. Goyal has sought to urge before the Court and so strenuously that since the authority has considered all the reports available to it, this Court may not exercise the power of judicial review on the ground that the material considered by the corporation was not sufficient enough to arrive at a conclusion to which it has arrived. In this regard Mr. Goyal has relied upon the authority in the case of **Mohinder Singh Gill and another v. Chief Election Commissioner and others, 1978 (1) SCC 405**, in which vide paragraph 8 the Court held thus:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.”

282. Yet another judgment relied upon is of the Division Bench of this Court in the case of **M/s Aptech Ltd. v. U.P. Power Corporation and others, (2019) SCC Online Allahabad 4906**. In this matter the Court considered the order of black listing passed by the State Government in respect of M/s Aptech Ltd. on the basis of inquiry report conducted by the STF relating to the examination conducted by the agency for making recruitment on the post of Stenographer Grad III and Office Assistant III Accounts, Additional Personal Assistant, Assistant Review Officer, Junior Engineer (Electrical).
283. Mr. Goyal has placed reliance of paragraphs 14, 18, 20, 22, 23, 28 and 30 of the judgment, wherein the Court considered the report of STF replying to the M/s Aptech Ltd. to the show cause notice and the State action in black listing the agency and also in respect of the proportionality of the decision taken. The Court in the said judgment had relied upon the authority of the Supreme Court in the case of **Teri Oat Estates Pvt. Ltd. v. Union Territory, Chandigarh, (2004) 2 SCC 130**.
284. Mr. Goyal has also relied upon the judgment in the case of **Sachin Kumar and others v. Delhi Subordinate Service Selection Board and others, (2021) 4 SCC 631** to canvass the principle of judicial review as he has argued by him before this Court that there was no flaw in the decision making process by the authority while arriving at a conclusion under the order impugned. According to him, since the Court itself permitted that all available reports be taken into account including such other reports that are made available to it, in view of Division Bench judgment in the case of Mahesh Kesharwani and others v. Amrish Kumar Pandey and others in Special Appeal No.-

Defective No.- 625 of 2019 decided on 31st July, 2019 the decision would be subject to SIT report, the authority of the corporation also considered the SIT report.

285. Yet another judgment relied upon is of learned Single Judge of Madras High Court in the case of **R. Prem Lata & Others v. State of Tamilnadu and others being Writ No. 19939 of 2014** and other connected matters decided on 17.11.2022. The controversy in the said case arose on account of cancellation of entire selection and appointments as a result of a report of the Administrator which was indicative of large scale fraud committed in which 156 candidates were found to be tainted. Allotment of marks in the said case without experience, less experience, drastically changed the rank in the selection. The Court found that the findings arrived at by the Administrator as a matter of fact affected the rights of hundreds of meritorious candidates who had participated in the process of selection. It is submitted by Mr. Goyal that the court emphasised on the principle of law where the candidates have been deprived of equal opportunity as enshrined under the Constitution and this mandate was violated and that at a too large a scale, then in such circumstances segregation of untainted candidates became difficult.

286. According to Mr. Goyal the Court acknowledged that in cases where there is a deep rooted illegality and irregularity in awarding marks to candidates on pick and chose basis, then it becomes a case of systemic fraud and fraud unravels everything and therefore, looking to the larger public interest in matters of public employment, such selection and appointments are liable to be annulled.

287. Learned Advocate has relied upon paragraph nos. 79 to 83 of the judgment which are reproduced hereunder:

“79. The findings of the Administrator of the Board revealed an act of illegality, favouritism and the selection was conducted without proper interview and even as per the petitioners, the constitution of Selection Committee itself was irregular. Thus, they have raised a ground that entire selection was vitiated even in respect of the appointed candidates, who all are working few years.

*80. In this context, in the case of **Union of India and Others vs. O.Chakradhar [(2002) 3 SCC 146]**, the Hon'ble Supreme Court held that **“The extent of illegalities and irregularities committed in conducting a selection have to be scrutinised in each case, so as to come to a conclusion about future course of action is to be adopted in the matter. If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons, who have been unlawfully benefited or wrongfully deprived of their selection, in such cases, it will neither be possible nor necessary to issue individual show cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.”***

81. Even in the present case, illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out the right from the wrong or vice versa. The Result of such a selection cannot be relied or acted upon.

82. In the present case, the selected candidates pleaded that they were appointed and working for about 6 to 8 years and therefore, they should not be disturbed. The undue lenient view of the Courts on the basis of human considerations in regard to selection of candidate for public appointments by adopting illegal means on the apart of the authorities has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in Courts of Law. Courts do and should take human a sympathetic view of matters. That is the very essence of justice. But considerations of Judicial Policy also dictate that a tendency of this kind, where undue advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself. Engender cynical disrespect towards the judicial process

and in the last analyses embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrong could be retained by an appeal to the sympathy of the Court. Such instances reduce the jurisdiction and discretion of Courts into private benevolence.

83. Thus, the entire selection is to be set aside, if the selection is conceived in fraud and delivered in deceit. Awarding of irregular marks, selection of less meritorious candidates in adopting a trickery method are also corrupt practices, the entire selection is liable to be set aside.”

ANALYSIS AND FINDINGS

288. According to Mr. Goyal, learned Senior Advocate and learned Additional Advocate General appearing for the Corporation, Mr. Ajeet Kumar Singh, learned Additional Advocate General appearing for the State of U.P., Mr. Sanjay Kumar Om, learned Advocate appearing for U.P. Jal Nigam (Rural) these findings based upon various reports supported by sufficient material and so if the authority has arrived at a particular conclusion, this conclusion cannot be held bad on the ground that decision making process was a flawed one. Further, this Court may not in exercise of its power of judicial review upset the decision for the material being not sufficient, nor on the ground that there was a possibility to arrive at a different conclusion. On the principle of Wellsburry Law of reasonableness, what a prudent man would come to conclude, in fact has been concluded in the order impugned by the competent authority.

289. On the contrary the argument as quoted in the earlier part of this judgment led by Mr. Ashok Khare, Mr. R.K. Ojha, learned Senior Advocate, Mr. Ashish Mishra and Mr. Seemant Singh, learned Advocates have in fact questioned the findings firstly on the ground that forensic examination experts' report of IIT,

Kanpur and IIIT, Allahabad was not tenable being not within the legal framework as prescribed for under the Information Technology Act, 2000 and secondly, the findings arrived at to the effect that there was no possibility to segregate tainted from untainted candidates are perverse and material available itself identified untainted candidates.

290. Learned Advocates had further argued that under the orders of the Court while liberty was to examine the reports only to find out as to whether it was possible to identify tainted and untainted candidates. The further argument was that there was neither any seal by the court in approving either the reports, nor there was any judgment by the Court that entire selection undertaken by the respondents was compromised.

291. I have already referred to the arguments of learned Advocates as were advanced before me and the authorities cited by them before the Court, both on behalf of petitioners as well as respondents and have also discussed them at length. For testing their rival statements on principle of law laid down in various authorities cited before me and applying them to the facts involved in the case in hand and to find answer to the question framed initially in the earlier part of this judgment, I need to find answer to the following questions:

(i) Whether the report of CFSL, Hyderabad conclusively and validly evidences that sanctity of entire examination/ CBT held by the service provider agency was questionable or is merely a indicative of favour shown to certain candidates only and hence findings that the entire selection was result of conspiracy and fraud, are perverse and not sustainable.

(ii) Whether the report of CFSL, Hyderabad is not sufficient material to identify the tainted candidates to segregate them and so also report by way of revised result provided by the service provider agency M/s. Aptech Limited.

(iii) Whether act of M/s Aptech in deleting the data from primary source cloud server within 30 days of conduct of CBT and downloading the same to save in its server drive including archive NAS, at Noida place amounted to compromising data integrity and made it impossible to verify original data inasmuch as such an act resulted in violation of terms of contract.

(iv) Whether the report submitted by the experts/ Associate Professor of IIT, Kanpur and IIIT, Allahabad were within the legal framework of IT Act, 2000 and so do themselves count as sufficient opinions to return a finding validly enough that there was no data available, nor any material available to come to conclude that selection process had stood in fact compromised. In other words whether the opinions of the experts are conclusive in nature.

(v) Whether on the principle of preponderance of probability the statements recorded of various persons as witnesses by the SIT can be considered to lead to a conclusion that as a matter of fact the selection process had stood compromised and findings, therefore, returned by the SIT on the basis of material available before it correctly merited the decision of the respondent in annulling the entire selection.

- (vi) Whether the report of SIT runs contrary to the report of CFSL for returning a finding that there was no possibility to segregate tainted candidates from untainted candidates.
292. Now I proceed to examine the evidenciary value of the report submitted by the CFSL and whether it is sufficient to segregate tainted from untainted candidates.
293. The CFSL, Hyderabad is one of the six Forensic Science Laboratories in the country. The other Forensic Science Laboratories are at Chandigarh, Kolkata, Bhopal, Pune and Guwahati. The CFSL, Hyderabad was the first one created and established in the year 1967. It had been earlier also a government agency and still continues to be a government agency even after 2002. It is a wing of Ministry of Home Affairs. With the new Act coming into force namely the Directorate of Forensic Science, 2002 the Ministry of Home Affairs vide its letter dated 31.12.2002, it recognized and accredited the CFSL at Hyderabad to Directorate of Forensic Science Services, Department of Home Affairs. It is an accredited Laboratory to perform forensic examination of materials *qua* criminal and civil. It is a highly innovative and productive entity of Ministry and that of law enforcement agencies. Thus, there cannot be any doubt about the fact that CFSL, Hyderabad is a government laboratory established by Government to carry out forensic examination of material provided to it in whatever form within the legal frame work. Information Technology Act, 2000 came to be enacted with a purpose to look into the forensic examination of various records stored and supplied using digital technology. It provides for verification in relation to all such digital tools that

are applied for storing the data and also digital signatures, other electronic records or public key that it is grammatical variations and cognate expressions which has been further defined in Section 2(z)(h) as under:

“2(zh) “verify”, in relation to a digital signature, electronic record or public key, with its grammatical variations and cognate expressions, means to determine whether–

(a) the initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber;

(b) the initial electronic record is retained intact or has been altered since such electronic record was so affixed with the digital signature.”

294. Vide Section 79-A it provides for Central Government to notify the examiner of electronic evidence. Section 79-A of the Act is reproduced hereunder:

“79A. Central Government to notify Examiner of Electronic Evidence.–*The Central Government may, for the purposes of providing expert opinion on electronic form evidence before any court or other authority specify, by notification in the Official Gazette, any Department, body or agency of the Central Government or a State Government as an Examiner of Electronic Evidence.*

Explanation.–*For the purposes of this section, “electronic form evidence” means any information of probative value that is either stored or transmitted in electronic form and includes computer evidence, digital audio, digital video, cell phones, digital fax machines.]”*

295. From a bare reading of aforesaid provisions, it is clear that an authority has to specify by notification in official gazette any department body or agency either of the Central Government or State Government as examiner of electronic evidence. The Ministry of Home Affairs having notified the CFSL, Hyderabad as a Government agency to carry out forensic

examination of records, it goes without saying that the report submitted by CFSL, Hyderabad would fall within the definition of report under the Information and Technology Act, 2000 and therefore, have full evidenciary value for the purposes of courts/ judicial proceedings.

296. Having arrived at the above finding, I may hold that the report submitted by the CFSL will hold good for determination of controversy involved in hand in the present case and since the CFSL report has not been questioned either by the Corporation or State Government at any stage at any forum, therefore, it would depend now as to how the court evaluates the report of CFSL.

297. I have already discussed the report in detail in the earlier part of this judgment but it is necessary her to summarise the same:

(i) The CFSL, Hyderabad completely verified the data obtained from the 6 hard disks that were seized and recovered by the SIT and handed over to the CFSL for its examination. It has not only looked into the backup data files but has also examined the mirror image of primary source cloud server available in its disk drive that was also recovered and seized from the local environment office M/s. Aptech Limited. The report records in its finding part that the entire data of those who participated in the examination/ CBT held in all the three categories namely the RGC/ Junior Engineer/ Assistant Engineer was duly verified after being retained by applying the necessary recovery tools to recover the data and after its verification it clearly opined that there were candidates belonging to different categories 169 in number whose original marks stored in the data base retrieved from the hard disk

where less than those provided by the SIT on the basis of which the candidates were called for interview. The entire report does not disclose any other candidate's name or roll number except 169 candidates whose marks shown as inflated marks in the records provided by SIT. The report nowhere records any finding to the effect that the data retrieved from the hard disk seized from the local environment office of M/s. Aptech Limited was manipulated or modified one.

(ii) The CFSL in fact while recovered the data/ retrieved data from the hard disk was fully in a position to testify as to whether the data at any point of time stood modified by way of manipulation or any effort made by agency at its end to change it from what was originally there. Since the CFSL was provided with both the hard disks as well as the data in its entirety *qua* the candidates who had participated in the selection process, the CFSL could have easily identified if the data recovered/ retrieved from the original hard disk were insufficient but there is no such report.

298. Having summarised the findings arrived at in the report of CFSL as above, I am not able to accept the argument of Mr. Khare that the authenticity of the data provided by the CFSL to be doubtful and therefore, it could not be said that findings arrived in identifying 169 candidates by the CFSL were conclusive. Mr. Khare seems to have based his arguments on the basis of the argument advanced by learned counsel for the Corporation that the original data had stood deleted and the expert opinion of the IIT was to the effect that there was no place available to the software tools which were given access

for verification of data, inasmuch as, in the background that the original data had stood deleted from the original cloud server.

299. In my considered view, Mr. Khare could not have maintained the argument relying upon certain findings arrived at by the respondent authorities that the original data's authenticity was under cloud while questioning the decision which is also based upon the report of SIT that had relied upon CFSL report.

300. **The CFSL report is held to be within the legal framework of IT Act, 2000 and that sufficient evidence to identify and segregate tainted candidates. Thus question Nos. (i) and (ii) are decided accordingly.**

301. The question that arises for consideration is as to what would be the effect of deletion of original data from the cloud server of (CtrlS) and whether for a mere act of deleting the primary source data from the primary source cloud server soon after its expiry of a period of 30 days as per data retention policy of M/s Aptech Ltd., can it be assumed that whatever data was left there in the storage at the local environment office of the Aptech lost its integrity and whether it would go to the root of the matter to hold that there was not data available to verify so as to hold that sanctity of the CBT got eroded.

302. I have carefully examined the contract agreement between Corporation and M/s Aptech Ltd. and I have no reason to doubt that as per recitals made in Clause 'e' of the conditions made thereunder M/s Aptech Ltd. was required to hold back data for a period of one year. The agreement Clause E which I have already quoted above in earlier part of this judgment does not in any manner lead to draw a conclusion that M/s Aptech Ltd. was required to retain data at its primary source cloud server

for one year. What inference can be drawn from the terms of contract is that M/s Aptech Ltd. will preserve data for one year and as and when required by the Corporation, M/s Aptech Ltd. will certainly be furnishing the requisite data.

303. Nothing has been brought on record on behalf of the Corporation in its entire counter filed in Samrah Ahmad or Surendra Singh's case from where it can be deduced that Corporation at any point of time required original data downloaded from the CtrlS cloud server to be furnished. What Corporation required as the correspondences showed that result of CBT data be given and that was of course given to the Corporation in CD form. Had there been any effort to the Corporation to request to provide access to the data storage device of the Aptech Ltd. so as to verify the original data that was downloaded from the cloud server and Aptech had failed to provide access, it could have been presumed that data was lost. The question, therefore, now remains to be answered whether in the given facts and circumstances M/s Aptech Ltd. can be held to have breached the contract. In my considered, Aptech cannot be said to have breached the contract by just getting download the original data from the cloud server CtrlS to its storage device. The agreement between Corporation and Aptech Ltd. does not show anything from its clauses that secondary storage device could not be utilized by Aptech for storing the data. There is also nothing in agreement, which may have further guided for the agreement between Aptech Ltd and CtrlS. It is an admitted position on facts that the cloud server was to be utilized for live CBT to be held and was to be utilized for uploading the application forms of candidate and also providing for admit cards online. All these data were live

on a cloud server hired by M/s Aptech Ltd, may be for a period of 30 days but that agreement between Aptech Ltd and cloud server are not in issue. It is worth noticing here the terms of contract as has been highlighted by me while reproducing the same in this judgment earlier, that propriety was there already with the service provider and the data retention policy of the year 2015 did not change. Storage of data for security purposes and to ensure data integrity, lies within the domain and discretion of the service provider. The retention policy very clearly provided for transmission of data in copy form and corporation never disputed either the contract or the data retention policy. Thus, the data saved in the assigned server in the local environment or in its archival server cannot be held to be against the terms of contract. Thus, it cannot be said that deletion of data from the cloud storage in any manner has denied an opportunity for Corporation or any other forensic agency of verifying truthfulness or correctness of the data.

304. Yet another point important to be noticed here that after hard disks were seized by SIT from the possession of the Aptech, which was there in its local environment office at Mumbai. The said hard disks were given to the Central Forensic Science Laboratory for examination. Original data was retrieved from the hard disks and was provided back to the SIT in DVD form giving a hash value so as to have access to the data downloaded from the hard disks. So endeavour of the Corporation should have been to get an access to the hard disks or DVDs from SIT to be further verified or examined from the expert of the institutes of technology. Admittedly, SIT submitted a report on 22nd January, 2020 whereas letters were written to the institutes of technology on 31st August, 2018,

therefore, at that very point of time, the SIT was in possession of the CDs/DVDs provided by the CFSL containing data. The hard disks that were given to the CFSL will be deemed to be in possession of SIT and so while seeking report from the experts of the IITs they should have been provided access to the data. From the reports of the IIT experts, it is clear that opinions and observations have been made in the report with this implicit condition that all the documents and data shared with experts of the IITs had verified prominence and responses provided by personnel made available for interaction with undersigned on relevant dates ,13th and 14th December, 2018. It is, therefore, clear that original hard disks that were recovered from the possession of the Aptech Ltd. though were provided to the Central Forensic Science Laboratory for its examination, but were not provided to the experts of the IITs who were required to given their opinion, moreso when opinion was sought with this statement that original data had been deleted from the primary source cloud server.

305. M/s Aptech Ltd. has taken a stand and so firmly before this Court during course of argument by learned Advocate representing the agency that CDs that were provided to the Corporation were secondary data source as these were having processed data of result and copy of original data. Thus original data from the cloud server was either there in hard disks or there in secondary storage devices kept at Noida office of Aptech Ltd. However, despite correspondences made in that behalf nothing was done either by SIT or Corporation to ask for access to storage device at Noida. There is no counter affidavit filed to the counter the averments made by the Aptech in its counter affidavit filed in Ambrish Kumar Pandey's case

though it is admitted by Corporation that it is in possession of counter affidavit. Under the circumstances, it will be presumed that correspondence is made between Aptech Ltd. and the SIT were there available on record and were correct and yet no effort was made either by the Special Investigation Team or the Corporation to get access to the storage device/ Archive NAS at Noida placed office where the data were stored. The correspondence having not been denied, now the Corporation cannot take a stand that there is serious doubt about any such correspondence to have taken place.

306. It is to be noticed here that upon a pointed query being made, learned Additional Advocate General, Mr. Ajit Kumar Singh had accepted this fact that the mail ID that was shown by the M/s Aptech Ltd. in the correspondence with SIT was in fact Mail ID of the SIT. Thus, in absence of any challenge to the CFSL report, nor anything coming out in the CFSL report questioning correctness of the data stored in the storage device, namely, 6 hard disks which also contained one hard disk having direct mirror image of data taken from the cloud server CtrlS, it can be safely concluded that the data in absence of any dispute as retrieved from the hard disks were the true data taken from primary source cloud server.
307. The stand taken by the Aptech's counsel during course of argument that data were not true data is also not sustainable for the simple reason that certificates have been issued by the responsible officers of the M/s Aptech Ltd. certifying those six hard disks one of them very clearly was mentioned as mirror image of data taken from cloud server CtrlS. Processing data was also there in one of the hard disks. It is also worth noticing that when Roman Fernandes is admitted to be the person who

had authored data retention policy , if he certified that data was stored at the local environment office of M/s Aptech Ltd. at Mumbai, now M/s Aptech Ltd. cannot be permitted to take stand that Roman Fernandes was not authorized to issue any certificate, and therefore, in absence of any challenge to the data that was retrieved by the Forensic Science Laboratory, which was authorized to carry out forensic science examination being government agency of the Ministry of Human Affairs of the Government of India, it can safely be held that data that was retrieved from the hard disks provided to CFSL by the SIT contained the original data taken from the primary source cloud server. **Thus question no. (iii) stands answered in negative.**

308. Now I proceed to examine the arguments regarding the reports of the Associate Professors of IITs, whether to be within the legal frame work of the Information of Technology, 2000 or not. I find that the experts opinions were called for immediately after the Supreme Court wanted the corporation to place the status report as to the action taken by it in compliance of the judgment and order of Division Bench of this Court on 27th November, 2017 vide its order dated 16th March, 2020 that letters were written to the IITs asking for their respective opinions in the background of two basic information given to them in the letter: *firstly*, that the original data was deleted from the primary source cloud server and, therefore, whether in these circumstances any verification of the data provided in CD could have been done; and *secondly*, whether in these circumstances any exercise for segregation could be undertaken between tainted candidates and the untainted candidates. Although Mr. Goyal has strenuously argued that

these reports of Associate Professors are based upon their knowledge, expertise with experience and skills and relate to the basic aspects of data storage by the authority who is to ensure data integrity, Mr. Goyal could not place before the Court any material by which it could be said that these IITs were in fact authorized by the appropriate Government to carry out any forensic examination of the digital records taking aid to the provisions of the Act which are undisputed to both the parties, namely Information Technology Act, 2000. In the light of the provisions quoted in my analysis and findings upon question Nos. (i) & (ii), it becomes very much clear that an authority to carry out forensic examination of any digital records is required to be recognized and authorised so also by a certification and notification in that behalf, would carry out such forensic examination.

309. One of the arguments advanced by Mr. Goyal is that these expert reports were called for in the light of the judgment of Division Bench of this Court and, therefore, it was not a voluntary decision of the corporation to ask for the opinion from these experts.
310. I have carefully gone through the order of Division Bench dated 15th May, 2017 in Writ – A No.- 15948 of 2017 and I find that this order relating to the issue of doubtful/ incorrect questions and doubtful/ incorrect answers in respect of which objections were raised and instructions were placed before the Court that the corporation was trying to get it examined through the experts of the institutes of technology. The Court recorded the statements of learned Advocate appearing for the corporation, *“it is also stated that in the event no comments are*

received from the said agency, the same shall be examined by some professionals in some reputed engineering colleges in the state”. This observation relates to the instructions only in respect of doubtful/ incorrect questions and doubtful/ incorrect answers. Therefore, the argument advanced by Mr. Goyal that these reports were called for in the light of the order of Division Bench of this Court passed in Writ – A No.- 15948 of 2017 and in the connected matters dated 15th May, 2017 is not correct.

311. Comparing the two reports with that of Central Forensic Science Laboratory with reports obtained from the experts/ Associate Professors of the Indian Institute of Technology, Kanpur / Institute of Information and Technology, Allahabad as to their legal status, it can be safely concluded that the reports obtained from and submitted by the Central Forensic Science Laboratory, Hyderabad were within the legal frame work of the Information Technology Act, 2000, as I have already discussed earlier whereas the reports obtained from the Institutes of Technology like IIT Kanpur and IIIT, Allahabad were definitely not within the legal frame work of the Information of Technology Act, 2000. In the circumstances, therefore, the objections raised by Mr. Khare regarding maintainability of the report of the two experts of the Institutes of Technology is liable to be upheld. **Question No. (iv) accordingly stands answered in negative.**

312. Now coming to the questions as to findings arrived at by the Special Investigation Team in its final report submitted on the basis of the statements recorded of the various persons, who were interrogated and also the material perused and examined

by it and approved by the State Government and whether findings by SIT as to impossibility of segregation between tainted and untainted are bad being contrary to CFSL report, in my considered view the law is very much clear that in the matter of administrative law where a decision has to be taken by the authority especially in service matter, then strict law of proof as required to establish the guilt in criminal law under Evidence Act, is not required, instead, the preponderance of probabilities is to be taken into consideration to hold the material to be sufficient one for the charge to be proved.

313. Supreme Court in the case of **State of Rajasthan and others v. Heem Singh, (2021) 12 SCC 569**, referred to its earlier judgment in the case of **Moni Shankar v. Union of India, (2008) 3 SCC 484** in which vide paragraph 17 it was held thus:

“17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality.”

314. Applying the above principle to the facts of present case, where the SIT has interrogated a large number of persons out

of which statements of certain persons are very crucial to the controversy in hand and which are being chiefly relied upon by the Special Investigation Team by submitting its final report, it becomes necessary to analyse the statements recorded by the SIT during interrogation to come to the conclusion whether the findings arrived in SIT report are perverse or are worth reliance to justify the decisions taken by the corporation under the orders impugned. Although Mr. Khare has argued vehemently that the police report is nothing but a simple report under Section 173(2) of Code of Criminal Procedure and, therefore, will not be having any evidentiary value and the statements so recorded by it are further to be proved in the testimonies that are taken and recorded during the criminal trial but in my considered view, the statement can be taken into consideration in order to test the findings finally arrived/returned by the Special Investigating Team in its final report holding that the entire selection process stood compromised. As that report has been heavily relied upon in the order impugned and so this is to be seen on the same principle of preponderance of probability.

315. The principle of what a prudent man would realise in understanding a point to arrive at a conclusion has been taken to be a wednesbury reasonableness principle and has been discussed in the judgment of Supreme Court in the case of **M. Siddiq (D) through legal representatives Ram Janm Bhumi Temple Case v. Mahant Suresh Das and others, (2020) 1 SCC 1**. The Court in that judgment vide paragraphs 724 referred to the analysis done by the Supreme Court in the case of **N.G. Dastane v. S. Dastane, (1975) 2 SCC 326** and then also observed vide paragraph 725 regarding the principle of

preponderance of probability upon the subject matter involved in the case. Paragraph 724 and 725 of the judgment are reproduced hereunder:

“724. Analysing this, Y.V. Chandrachud, J. (as the learned Chief Justice then was) in N.G. Dastane v. S. Dastane [N.G. Dastane v. S. Dastane, (1975) 2 SCC 326] held : (SCC pp. 335-36, para 24)

“The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note: ‘the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue [Per Dixon, J. in Wright v. Wright, (1948) 77 CLR 191 (Aust).] , CLR at p. 210’; or as said by Lord Denning, ‘the degree of probability depends on the subject-matter’. In proportion as the offence is grave, so ought the proof to be clear [Blyth v. Blyth, 1966 AC 643 : (1966) 2 WLR 634 : (1966) 1 All ER 524 (HL)] , All ER at p. 536’. But whether the issue is one of cruelty or of a loan on a promote, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged.”

(emphasis added)

725. The Court recognised that within the standard of preponderance of probabilities, the degree of probability is based on the subject-matter involved.”

316. As I have already referred to hereinabove the statement of Mr. Ashudani, the then Managing Director, U.P. Jal Nigam, an officer on special duty in Ministry of Urban Development, Mr. Asfaque Ahmad, four officers of M/s Aptech Ltd Mr. Roman Fernandes, Mr. Ajay Kumar Yadav and Mr. Neeraj Malik are very crucial to the controversy and so I proceed as per discussions already held above to summarize, what they have stated, as under:

(i). The statement of Mr. Ashudani the then Managing Director fully explains the circumstances in which permission was taken from the State Government to carry out the recruitment drive and even letters were written to the government institutes who showed inability to conduct the selection. It has also come in the statement that the proposal of KNIT Sultanpur was not found to be financially viable in view of the financial proposal proposed by M/s Aptech Ltd. inasmuch as KNIT was not ready to conduct CBT online and that was why and how M/s Aptech Ltd. was chosen.

(ii). Power of the Chairman was also explained away and it came to be categorically stated that the board had approved all such decisions.

(iii). The statements of official of M/s Aptech fully supported the act and conduct of the service provider agency in adopting the procedure as per the terms of the

contract and as per the instructions received from officials of U.P. Jal Nigam from time to time.

(iv). None of the statements of the members of Interview Board can be said to be indicative of any pressure being ever exerted or exercised upon any one of them to favour a particular candidate belonging to a particular caste, creed or religion.

(v). The members of Interview Board have also very clearly stated before the SIT that they were not made aware of the CBT marks of the candidates, who were interviewed by them.

(vi). The members of the Board very clearly stated about the time schedules of the interview for each shift each day and it appears that since no question was put as whether the whole day interview was held or not so they did not tell the actual time consumed in interview.

(vii). In arriving at findings by SIT that sufficient time was not provided in interview to each candidate, the SIT has apparently looked to the numbers of the candidates to whom call letters were issued and the scheduled period and time and then drew an average time given to a candidate but I find that 266 candidates in the Junior Engineer category and 16 candidates in Assistant Engineer category did not turn up to participate in the interview.

(vii) Looking to the affidavit filed before the Supreme Court as has been brought on record as annexure to the counter affidavit filed by the corporation in writ petition

of Samrah Ahmad, I find that each board for Assistant Engineer and Routine Grade Clerk had been provided sufficient time to interview the candidates and a number of candidates was not so proportionally high to conclude that sufficient time was not provided to.

317. Vide paragraph 20 of the affidavit of Mr. I.K. Srivastava the then Chief Engineer, Level – II (Establishment 2-1) the chart of Interview board of Assistant Engineers has been given.
318. In board No.- 1 in the first slot 27 candidates were put to interview. So also in the second slot 25 candidates were put in interview on 30th December, 2016. On 31st December, 2016 likewise 26 and 24 candidates were to be interviewed.
319. This figure has continued up to the board – 5. The board – 6 had only two shifts interview on 31st December, 2016 having 21 candidates and 18 candidates respectively on its board.
320. Now applying the average in terms of time and number, 25 candidates and 3 hours' time if were interviewed, it comes to 8 candidate in one hour's time.
321. Vide paragraph 21 it is stated in respect of Junior Engineers that each day there was one slot only for whole day and there were 10 boards constituted. Board No.- 1, for instance, had 73 candidates in a day and lastly on 24th December, 2016 it had only 64 candidates. Similar was the number almost in all other boards each day. Now considering the 75 candidates each day for the interview scheduled to be held from 10:30 am to 5:30 pm and in some cases 10:00 am to 5:00 pm (as per the statements made by two different members of different boards)

so approximately 15 candidates in 60 minutes if absentees are also included.

322. Again vide paragraph 22 the details of the interview board and the candidates had been given in respect of the Routine Grade Clerk. Each day only there was one shift for whole of the day. Board No.-1, for instance, had 41 candidates to be interviewed on 30th November, 2016 and on third day on 2nd December, 2016 it had 30 candidates on board to be interviewed. Similar is the case with the last board that is the 6th board having 40 and 30 candidates to be interviewed. Now drawing the average of 40 candidates if interviewed in five hours, time spent comes to 60 minutes for 8 candidates and again when absentees are not excluded.
323. This above is the pure statistics base on law of average. It does not exclude the candidates who did not turn up to participate in the interview and, therefore, the findings by the SIT based on the statistics it had drawn to conclude what only 4-5 minutes were given to a candidate does not appeal to reason and rather is found to be perverse as against the records.
324. These findings arrived at by SIT regarding selection process having been compromised on the basis of the reports obtained from the IITs are also not sustainable in view that I have already held about the maintainability of those four reports.
325. Findings arrived by SIT that since original data was deleted from the cloud server therefore, verification could not be done about the correctness of the data provided in the CD to the experts of the institute of technology, is also not sustainable for the reason that the Court has already held the opinion obtained

from the reports from the IIT, Kanpur was not within the legal frame work.

326. From the perusal of the entire report of the SIT, I have found that the Special Investigation Team has broadly discussed the doubtful questions and doubtful answers in its report on the basis of challenges made to the questions and answers by the different candidates after the master answer key and response sheet were published. The Special Investigation Team has arrived at this conclusion that this was the duty of the M/s Aptech Ltd. to prepare the questions papers as well as to provide the answers in the master answer key for its final verification. After the response sheets were published, the challenges that were laid to various questions and answers and the revised result that was prepared by M/s Aptech Ltd was sufficient to demonstrate that the agency failed to perform its duty properly and as a matter of fact these wrong questions and wrong answers resulted in calling for undeserving candidates for interview and placing them in the select list. This according to SIT was also a result of conspiracy that was hatched by the then senior Minister who happened to be the Chairman of the corporation in connivance with officials in the upper echelons of the corporation and with those of M/s Aptech Ltd.
327. This above finding merely on the basis of the revised result cannot be sustained for the simple reason that only a very few number of questions and answers were found to be doubtful. It is true that the result came to be revised and, therefore, candidates stood identified who in fact should not have been called for interview and yet were called but this is nothing exceptional. In any examination which is a competitive in

nature in which the papers are prepared on the format of multiple choice questions, some questions and some answers are bound to fall in doubtful category. This is also apparent from the report submitted by the service provider agency in which 19 answers in respect of certain questions were still doubtful as two experts had given two different options to be the correct answers of same questions.

328. The total questions that were asked in the four papers with 80 questions each for the CBT held in respect of the Assistant Engineer were 320. The questions that were finally determined as incorrect were 7 and so 20 wrong answers were determined. Meaning thereby a doubtful or incorrect questions answers in total were 27 in number. Now taking the average out of 320 it comes to eight percent (8%).
329. So also in the case of Junior Engineers total 400 questions were there in 5 papers consisting 80 questions in each paper and only 6 wrong questions were found by the experts and so the 18 wrong answers. So there were in all 24 doubtful questions and answers out of 400 and it comes to six percent (6%).
330. So also in the case of Routine Grade Clerks total 480 questions were there in 6 papers consisting 80 questions in each paper and only 7 wrong answers were found. This also totals to 7 out of the 480 which comes to one point four percent (1.4%).
331. Thus, there is only a very miniscule percentage or number of doubtful questions and doubtful answers and this cannot be said to be sufficient ground itself to hold that the entire

selection process insofar as conduct of CBT is concerned was compromised.

332. Still further, M/s Aptech Ltd. has taken its clear stand taken before the Court that the agency itself outsourced preparation of questions to a third party/ persons who are experts in their field and, therefore, M/s Aptech Ltd. did not have expertise to evaluate the questions and answers for every questions asked and answers given by the said experts and it is all further put to test by way of notification for the experts of the concerned subject when the challenges are made. Therefore, to come to the conclusion and hold that there was a conspiracy by the Minister concerned and the M/s Aptech Ltd. was a part of it in preparing question papers and answers to benefit poorer candidates does not appeal to reason in the given facts and circumstances of the case.
333. Applying principle of criminal law as to be admissibility of report as evidence, in my considered view, such police report is absolutely inadmissible. This report is only for the purposes of a court of law to take cognizance of the matter to conduct trial and it is yet to be proved in trial whether findings arrived in the SIT report are worth merit or not. Police reports submitted under Section 173(2) Code of Criminal Procedure are mere collective opinion of police officers conducting investigation and are just placed for the Court to hold trial. Such opinions by themselves are not conclusive and prosecutive whereas have to prove the charge by entering the witness box. If such reports are taken as conclusive proof of this charge even for administrative purpose then it will run against all norms of law in the matter of charge and its proof. Such police reports are

not substantive piece of evidence (**Rajesh Yadav v. State of U.P. (2022) 12 SCC 200**).

334. During the discussion above in this judgment *qua* statements of persons interrogated by SIT, I find that none of the statements corroborates the findings that have been arrived at by the SIT in its final conclusion. It appears that SIT after perusing the entire records proceeded to assume that selection process got compromised and there was a conspiracy hatched by the then Minister in connivance with the officer at higher echelons of U.P. Jal Nigam. It is still not clear as to how SIT has come to form this view. If SIT has relied upon the report of CFSL, then it clearly clarifies and identifies only 169 persons who have been shown with inflated marks and were given opportunity to walk in for interview. Besides those 169 candidates, there is no doubt express in the CFSL report regarding marks allotted to any other candidate, nor CFSL report doubts in any manner preparation of result of CBT.
335. It is also interesting to notice that in the SIT report there is no discussion regarding conduct of the CBT. The entire interrogation has centred around the marks obtained by 169 candidates named in the list of CFSL were inflated and that the selection by agency was not done properly to conduct CBT and also cancellation of the result of Stenographers by executive fiat of the Chairman was a biased decision. The entire conduct of Chairman of the U.P. Jal Nigam has been doubted and finding has been arrived that not only conduct of the agency was questionable, but even selection process itself was entirely a result of conspiracy and fraud.
336. It is also worth interesting to notice here that at no point of time prior to the objections being invited by publishing the

master answer key, there was any challenge to the CBT held by the Aptech Ltd. As a matter of fact, all this controversy arose after challenges were made as to the correctness of certain questions and certain answers and certain writ petitions came to be filed setting up the claim by the respective petitioners of those petitions. It was ultimately when in-house enquiries were held by two Chief Engineers of the U.P. Jal Nigam, it all raised controversy regarding sanction of posts, exercise of discretion by Chairman of U.P. Jal Nigam and preparation of select list and manipulation of results etc. Although, I have considered the statements recorded by the Special Investigation Team, as it carried out interrogation with various persons and also examined certain records on the principle of preponderance of probability at least to find out whether the findings arrived at by SIT worth reliance or not, as conclusion has been arrived at by the authority under the orders impugned relying upon the same, but I must observe here that interrogation by the police and statement recorded under Section 161 Cr.P.C. are absolutely admissible in law. The statements that are recorded by the police after carrying out interrogation with various persons during investigation is required to be corroborated by testimonies of prosecution witnesses during trial. It is only investigating agencies *prima facie* view that sufficient evidence has been collected so as to make out a charge for particular offence committed but this by itself cannot be conclusive admissible report in law to place absolute reliance thereupon.

337. I find merit in submission of Mr. Khare that SIT report being a plain sample report filed under Section 173(2) Cr.P.C. it has no evidentiary value. I have already discussed the report of SIT in

detail and have found that none of the persons who were interrogated and who were the responsible officials of M/s. Aptech Limited as well as the officers of U.P. Jal Nigam gave any statement to the effect that selection process was in any manner conducted with gross irregularity or illegality. They have not even accepted that selection was compromised, though questions were put to them as to the alleged was grossly committed by M/s. Aptech Limited of the contract entered with the Corporation while conducting the selection. All that they had stated was not publishing the master answer key before CBT result but there is no whisper about the conduct of the CBT being vitiated or any irregularity or illegality on the part of M/s. Aptech Limited. Therefore, merely because the SIT have arrived at some findings which will not be admissible at this stage even in law and decisions to conclude that the entire selection process was vitiated for gross illegality and irregularity committed at the end of agency conducting the CBT proceeding is, therefore, unjustified and hence unsustainable.

338. **Thus in view of the above question No. (v) stands answered in negative and question No. (vi) stands answered in affirmative.**

Findings as to sustainability of orders impugned

339. Now it becomes necessary here to discuss the orders impugned in the different writ petitions in respect of the three categories of selectees and appointees. The impugned orders that are passed, are of the same date i.e 2nd March, 2020 and are *verbatim* same, the reasons assigned are also same and they discuss the same very reports. The findings that have been

arrived in the orders impugned so as to annul the selection and appointments of the candidates in different above categories can be summarized as under:

(i) M/s Aptech Ltd. an outsourced agency/ service provider that was entrusted with the task to carry out the CBT for selection in respect of different categories of posts in U.P. Jal Nigam, under work contract/ orders separately issued in respect of CBT for individual categories of RGC, AE and JE, failed to abide by contract in its letter and spirit. Contracts were signed in order to ensure transparency and to maintain sanctity of selection process to be held in respect of posts in question to offer employment, required under the contract to immediately declare / publish the master answer key soon-after the CBT was concluded, but this was not done by the M/s Aptech Ltd. in gross violation of the terms of contract which in fact compromised selection process.

(ii) The procedure adopted to publish select list calling candidates for interview and preparing and publishing final select/merit list and offering appointments before even inviting objection to the questions and answers which would have been doubtful, has caused serious prejudice to meritorious candidates.

(iii). The compact disk containing data of the CBT examination handed over to U.P. Jal Nigam on 28 February, 2017 in respect of Junior Engineer, and RGC, which were all forwarded to the IIT, Kanpur and IIT Allahabad for opinion on 31.8.2018

(iv) Looking to the doubtful act and conduct of the M/s Aptech Ltd. in carrying out CBT and preparing select list publishing the same without due verification of the records provided to it by the U.P. Jal Nigam original data that was contained in its data base, there left no other option but to request the State for investigation by a Special Investigation Team, which came to be constituted on 13th July, 2017. The findings have come to be returned by Special Investigation Team in its final report that original data had been deleted against the terms / conditions of the contract, which made it impossible for experts to verify the correctness of data contained in the CDs.

(v) Heavily relying upon the reports/opinion given by the experts of the Institutes of Technology, Kanpur and Institute of Information Technology, Allahabad, according to which, it stood clearly established that data provided in the compact disk could not be verified as to have traces of original data, as neither the software tools for the purpose ensuring security of the data were used nor, audit trail details that were used and this all automatically concluded that there remained nothing to form a definite view that data provided in the CDs were the original data.

(vi) The reports that were considered under the impugned order, specially the report of SIT led it to conclude that entire selection process stood compromised and it became very difficult to trace out and explain as to at what stage and in what manner manipulations had taken place and in such

circumstances, it was difficult to identify as to who were the untainted candidates. In other words Corporation's authority has doubted the CBT result itself on the basis of which select list was drawn besides 169 candidates identified by CFSL.

340. In the total circumspect of the events that have taken place and the statements and materials as discussed in the SIT report, there appears to be a serious question raised about the powers of the Chairman of the Board to exercise certain discretion which lay with the Board itself and further the committee that was constituted to carry out the selection process had not met and it was done single handedly. I may observe here that this Court is bound by the earlier judgment of the Division Bench dated 28.11.2017 and two subsequent judgments of the Supreme Court affirming the Division Bench judgments of the High Court dated 16.03.2018 and 15.11.2018. Supreme Court noted that the judgment of the Division Bench of the High Court had set aside the impugned order earlier passed by the authority cancelling the selection and appointment on the ground that principles of natural justice were not complied with and that no effort sincere enough, was made by the corporation to segregate tainted from untainted candidates and this view of the Division bench came to be affirmed with observation made by the Supreme Court in its final order dated 15.11.2018 that the appellant corporate must in the first place comply with directions of the Division Bench issued under its judgment and order dated 28.11.2017 and it is in that process the appellants may take into consideration the previous enquiry reports and all other relevant materials and documents which

may be available to them in order to find possibilities of segregation of tainted from untainted candidates.

341. Thus, those questions *qua* exercise of power by the Chairman of the Board, question of availability of vacancy, issue regarding sanction/ permission from the state government to carry out recruitment drive etc. were no more available for the respondent Corporation to look into. The corporation was only to find out whether there was a systemic fraud committed in the process of selection so as to hold that the entire selection process stood compromised and, therefore, the selections had to go and so also the consequential appointments and so there remained no scope of identifying and isolating tainted candidates and giving them show cause notices individually.

342. Upon reading various paragraphs quoted above in this judgment of various authorities/ rulings cited on behalf of the rival parties, a principle of law emerges out *qua* which there is no dispute that an administrative action can be interfered with if the decision is irrational, illegal or arbitrary. A decision would be irrational, if it is not based upon any cogent material to support the decision taken. It will be illegal, if it has not gone into the question required to be addressed taking into consideration all the aspects that are required to meet the requisites of arriving at a conclusion and thirdly in the event of procedural impropriety.

343. In order to test, if upon any of these basic principles the decisions in question can be upheld, the principles of Wednsebury Law of Reasonableness becomes a good testing anvil. The Wednsebury Unreasonableness is what a reasonable man would have ordinarily arrived at a conclusion given the

facts and circumstances involved in a particular case, but the authority arrived at different conclusion. The question, therefore, would arise in the present case as to whether the decision taken by the authority was illegal or irrational or procedural impropriety was committed.

344. I have already discussed various reports and have held that as far as the reports of experts of IITs is concerned that was not within the legal frame work. With the enforcement of Information Technology Act, 2000 it is clear that every electronic evidence, if is to be led, is to be examined and tested by experts of forensic field and that too by those experts who are having the expertise and have received accreditation of an appropriate government. The Act requires the appropriate government to notify such agencies. Two of the agencies have already been authorized as have been placed before the court by the learned counsel appearing for M/s. Aptech Limited namely CERT-In and HTQC. The Act, 2000 and Rules framed thereunder very clearly provide detailed procedure and with the advancement of technology and their use it becomes necessary that the electronic evidence is examined thoroughly by the experts of the field only. It is not clear what method was adopted by the Associate Professors of Institutes of Technology in conducting forensic examination of the evidence in the form of CDs provided by the Corporation whereas four times the reports were called for by the SIT from the CFSL which is a government agency of the Ministry of Home Affairs. It is a settled law that when a thing is required to be done that should be done in that manner alone, **(2015) 11 SCC 628, Tata Chemicals Limited v. Commissioner of Customs (Preventive), Jamnagar.**

345. In the circumstances, therefore, I have already held that the expert opinions that were sought from the Associate Professors of Institutes of Technology were neither the experts recognized under the Information and Technology Act, 2000, nor these opinions could have been termed to be admissible within the legal framework as prescribed for under the Act, 2000 besides the fact that opinions were not conclusive. In the circumstances, therefore, any finding arrived at by the authority on the basis of these reports are bound to be held irrational. It is equally important to notice here that in the earlier part of this judgment these reports itself are found not conclusive because the experts have opined on the basis of material provided to it by the Corporation. It is admitted position of fact that the Corporation did not give any access to the hard disks seized from the office of local environment of M/s. Aptech Limited for seeking opinion of these experts of Institutes of Technology, nor did it provide DVDs with data issued by the CFSL. It was well within the prerogative of the Aptech Ltd that whatever data will be provided to a party/person (Corporation) would be a copied data (vide clause 12-c (iii) of data retention policy). Further, all intellectual property rights with respect to the services and the Aptech Ltd propriety material etc. was to belong to that agency (vide clause Propriety Rights under the contract with U.P. Jal Nigam) so unless and until access to original data was given by U.P. Jal Nigam to the experts of IIT, Kanpur and IIIT, Allahabad, no definite opinion could have been given on the basis of the copied data. In the circumstances therefore, the decision arrived at on the basis of opinion of experts is clearly unsustainable.

346. I must add here that initially at the very beginning and subsequently upon argument being advanced by Mr. Ojha for examination of archival data of M/s. Aptech Limited saved in its office at NOIDA place both Mr. Goyal questioned the retention of data beyond one year being grant agreement/ written contract and refused it to be trust worthy to be put to forensic examination any further. Mr. Khare and Mr. Mishra also disagreed to this suggestion.
347. I do not find in the entire order impugned in these petitions there to be any discussion by the authority over and above findings reached out in the SIT report. It is true that in a decision making process authority was required to consider and discuss reports so as to draw a conclusion, but the authority is equally required to consider as to whether conclusion drawn in the reports was tenable or not.
348. I have already discussed in detail those findings of the SIT which have been relied upon by the Corporation and have found it to be *sans* material indicative of deep rooted corrupt practice except for the CFSL report which had clearly identified 169 candidates to have been given inflated marks to facilitate their entry in to the interview board.
349. The argument therefore, advanced by Mr. Goyal relying upon the judgment of learned Single Judge of Madras High Court that there was a deep rooted conspiracy and fraud and it was all grounded in the system to be treated as systemic fraud which vitiated the selection process, also does not find favour in the given facts and circumstances of the case. There is no finding either by the SIT or the other two in-house inquiry reports which can be said to be indicative of this fact that any of the

candidate was indulged in any corrupt practice or tried to influence the selectors to award him/ her special marks. This is also so clear from the statements of marks of interview board who had repeatedly stated to the police that nobody had approached them to give higher marks to a particular candidate. Therefore, I find merit in the submission of Mr. Mishra as referred to paragraph no. 89 of the judgment in **R. Prem Lata** (*supra*) that there was no sufficiency of material collected on the basis of which satisfaction came to be recorded, nor there was any material to be indicative of fact that any candidate in order to find favour committed any kind of fraud in connivance with or in conspiracy with the selectors. I have already answered above important question that CFSL reports findings finally identify tainted candidates to be segregated. The forensic report finding is clearly indicative of fact and that 169 candidates were awarded inflated marks and these very candidates found place in select list and resultantly were offered appointments. It is true that *there may be situation where the nature of the irregularities may be manifold and the number of candidates involved is of such a magnitude that it is impossible to precisely delineate or segregate the tainted candidates from untainted* [Sachin Kumar (*supra*)] but *the court must ensure that allegations of malpractice is also substantiated and that the material on record, including investigation reports, point to the conclusion* (Vanshika Yadav v. Union of India and others, 2024 SCC OnLine SC 1870) but the reports as discussed above including SIT report except for conclusion drawn do not indicate of any widespread and systemic level malpractice. Data surfaced out must be in respect of majority of candidates and must also count to abnormal score to establish a case of systemic breach.

350. In so far as judgment of Division Bench of this Court to which I was party being a member on Bench, relied upon by Mr. Goyal, is concerned the principle laid down was that service provider under the contract was to carry out selection as per the terms of contract and if it failed, it deserved blacklisting. Applying the test laid down in the said case, it cannot be ruled out that it was onerous task to be executed by the agency to ensure fair examination for selection. In the said case the manner in which examination was conducted as per the STF report, it found the agency to be responsible for serious irregularities that have been elaborated in paragraph 31 of the judgment. In the present case I have already found that till CBT was conducted and the CBT merit list was passed on to U.P. Jal Nigam initially with secure password and login Id, there was no issue. So it cannot be said that Aptech agency misdirected itself against the contract in conducting CBT.
351. What transpires from the reports is that at some level a deliberate act was committed either by the authorities of the Corporation or the officials of M/s Aptech Limited, who were to prepare the result and declare the same for the purposes of forming a select list. Candidates, who in fact had secured lesser marks and could not match the meritorious candidates and their marks with inflated report so as to place them in CBT select list to make them eligible for interview. The statement of officials of Aptech Mr. Vishwjeet becomes important here. Mr. Vishwajeet has very clearly stated, as discussed in the earlier part of this judgment, that after the results were prepared oral instructions were given by the officials of U.P. Jal Nigam to supply the select list. The select list prepared after processing the data on the basis of CBT result available in data base was

supplied with secured password to the officials of U.P. Jal Nigam along with login ID. This access of processed result was provided to the authorities of U.P. Jal Nigam, who were in fact to hold interview of the selected candidates. After the password and login ID was given to the officials of U.P. Jal Nigam, a select list was returned to the Agency to publish. Mr. Vishwajeet has stated very clearly that this select list was also got published by the Aptech on the basis of which the interview was held. Even though there is statement given by one of the complainants Ram Sewak Shukla that there was a large scale bungling in the selection process but in his statement he has only made allegations and has failed to refer to any such incident as such or any statement of a particular person involved in the selection process, which may be said to be very cogent and convincing to hold that allegations to be true and correct to make out a proven case of fraud. This clearly shows that upto the stage of conclusion of CBT, no manipulation had taken place, nor any irregularity was committed, nor at least could be demonstrated by any one with conviction. Since no access was given to the assigned cloud server of Ctrl S, nothing could be done to affect the data base. It, therefore, appears, to have taken place only after CBT result was prepared and access of processed data was provided to the officials of the Corporation that certain manipulations took place in result and this is apparent from the CFSL report. This shows, therefore, that some favours were shown to some candidates by the officials of the Corporation may be in league with the M/s Aptech Limited but the question arises as to whether this very act of giving inflated marks, can be said to have amounted to such a deep rooted fraud or conspiracy that would justify the annulment of entire selection. The Courts

have held, as authorities are already referred to and cited by the learned Advocates appearing for the respective parties, that just for a few candidates, who have found favour at the hand of officials of the agencies, this should not prejudice the candidates, who have marched to the select list and were ultimately given appointments on the basis of their untainted merit. The CFSL report having not been questioned anywhere and as I have already held that Central Forensic Laboratory Hyderabad was the competent Government Agency in the matter to conduct forensic examination of the hard disks and the fact that CFSL report itself does not disclose that any modification of the original data had taken place or that the data was missing, it is thus clear that those candidates, who were given inflated marks and were 169 in number were the tainted candidates. This report is a sufficient evidence itself available on record to identify the tainted candidates and, therefore, findings arrived at to the contrary in the order impugned cannot be sustained in law.

352. The doctrine of impossibility as argued by Mr. Goyal would not attract in the present case for the simple reason that once 169 candidates were found to be only candidates with inflated marks during the forensic examination by the established and recognized Central Forensic Laboratory, Hyderabad, there remains nothing further to undertake any enquiry for segregation of tainted and untainted candidates.

353. In the absence of any direct evidence to prove a case of systemic fraud, the concerned authority has relied upon circumstantial evidence drawn on the basis of certain candidates for being favoured in matters of selection and

appointments and it, therefore, in such circumstances has considered it to be a judicious decision to cancel the entire selection and more so in the name of restoring public trust and confidence in the system. The plea taken is that Article 14 of the Constitution mandates absolute transparency and sanctity in the matter of open selection for public employment. The courts, in my considered view are required to be more conscious in evaluating considerations that would have weighed such decisions to protect innocent and meritorious candidates so that all candidates are not tarred with same brush. In matters of competitive examination where a large number of candidates participates, the endeavour should be to protect the honest and meritorious candidates who have found place in merit list out of their sheer hard work and labour and this is also necessary to maintain trust and faith in the adjudicatory function of constitutional law Courts.

354. In view of the above and considering the point in the light of judgment in the case of State of NCT of Delhi and another vs. Sanjeev @ Bittu (*supra*) about misreading of evidence or there being no evidence at all, in my considered view from the entire material discussed in the judgment it can be concluded that the order impugned completely misjudged and misconstrued them so as to annul the entire selection and appointments in the name of inspiring confidence of people in the system. Thus, orders impugned in these petitions dated 02.03.2020 in respect of AE, JE and RGC deserve to be held unsustainable in law.
355. Now the question arises whether these above tainted candidates, if were issued with appointment orders deserved

prior notice and ultimately relief, if any, may be granted to the untainted candidates in the given facts and circumstances of the case and in the light of law discussed by Division Bench of this Court on 28.11.2017 and the last judgment of Supreme Court on 15.11.2018.

356. The question of relief to such above candidates arises if their case survives. Original CBT marks, it maintained, they would not have reached to the stage of interview even. I have already arrived at this conclusion that segregation of tainted and untainted candidates was possible and this is so apparent on the face of record. This litigation has continued for a very long period of time and so, I consider it appropriate to give a quietus to the controversy in the light of various authorities of Supreme Court.
357. 363 candidates are before this Court in respect of post of Junior Engineers in various writ petitions, 56 candidates are relating to the post of Assistant Engineers and 20 candidates are in respect of Routine Grade Clerks.
358. Following are the names with their roll numbers present in the computer list as per CFSL report with inflated marks of the candidates in the category of Assistant Engineer, Junior Engineer and Routine Grade Clerk, who are petitioners in different writ petitions.

JUNIOR ENGINEER

NO.	ROLL NO.	PETITIONER NAME	FATHER'S NAME	SR. NO IN SIT REPORT	CBT PRESENT IN COMPUTER	CBT PRESENT IN THE LIST OF SELECTED/S	INTERVIEW	WP
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					DATABASE	HORTLISTED DOCUMENTS		
1.	110905 2445	JITESH KUMAR	NARVED SINGH	32	21	67	12	4531/2020
2.	110905 3867	SATISH GUPTA	PHOOL CHANDRA GUPTA	40	22	67	11.75	4531/2020
3.	120100 6037	VIVEK SINGH	MAHESH SINGH	28	44	62	17.25	5912/2020
4.	120603 5158	SACHIN KUMAR	PRATAP SINGH	11	30	69	12	4631/2020
5.	120200 8787	AJAY SINGH	MAHENDRA SINGH	4	24	69	15.50	10075/2020
6.	111207 4197	AJEET KUMAR RAJAK	BHULAN RAJAK	18	0	62	18	10075/2020
7.	120803 8917	MUKESH KUMAR	RAMRAJ SAROJ	44	33	61	17.75	10075/2020
8.	220703 8460	RAHUL KUMAR(JE E/M)	RAMA SHANKAR TRIPATHI	10	25	62	17.50	10075/2020
9.	220904 9895	ASHUTOSH KUMAR SINGH(JE E/ M)	GYANENDRA SINGH	16	46	61	18	10075/2020
10.	131207 2774	ASHOK KUMAR(JE E/M)	GOVARDHAN PATEL	11	34	68	11.25	7150/2020
11.	110200 8640	AANAND GUPTA	ASHOK KUMAR GUPTA	2	35	69	16.75	7150/2020
12.	120804 6058	VISHAL TIWARI	RAMESHWAR TIWARI	5	27	69	15.25	7150/2020
13.	220905 1483	SANJAY SINGH(JE E/ M)	RAM SHABD YADAV	7	30	68	11.75	7474/2020
14.	110905 3786	SANDEEP KUMAR PATEL	RANJEET CHAUDHARY	21	25	69	10.50	7474/2020
15.	110502 7213	SANJAY CHAUDHAR Y	RAM CHANDRA CHAUDHARY	26	38	69	10.25	9333/2020
16.	130804 2613	SHABAB HAIDAR(JE E/M)	ZWFEQUAR HAIDAR	6	49	62	18	9333/2020

17.	110904 8117	ARJUN KUMAR	RAM DAYAL	57	36	64	12.12	9333/2020
18.	210502 9492	SESHMANI NISHAD(JE E/M)	BAGIRATHI NISHAD	1	29	68	15	9333/2020
19.	120905 2147	FAIYAJ AHMAD	NIYAZ AHMAD	1	26	69	17.25	9333/2020
20.	120502 7869	MOHAMMAD AMEEN	LATE NAYEEM AHMAD	15	31	62	18	9333/2020

ASSISTANT ENGINEER

NO.	ROLL NO.	PETITIONER NAME	FATHER'S NAME	SR. NO IN SIT REPORT	CBT PRESENT IN COMPUTER DATABASE	CBT PRESENT IN THE LIST OF SELECTED/S HORTLISTE D DOCUMENT S	INTER -VIEW	WP
1.	120821705 9	AYUSHM AN SRIVASTA VA	VIJAY KUMAR LAL	4	28	60	18.9	10440/2021
2.	110922140 5	ZUBZIR KHAN	NIZAMUDDIN KHAN	19	31	60	17	10440/2021
3.	120821908 8	KRISHNA KUMAR KHARE	L.N. KHARE	18	29	60	17	10440/2021
4.	110822030 3	AMIR AKHTAR	ASIF AKHTAR	24	35	60	16.8	10440/2021
5.	110721487 8	VIVEK SINGH	RAM NAYAK SINGH	17	32	60	17.2	10440/2021
6.	111223078 8	ANKUT KUMAR YADAV	INDRA BHOSHAN YADAV	30	39	63	12.4	10440/2001
7.	120822102 9	SYED SHUJA ABBAS RIZVI	SYED ABBAS RAZA RIZVI	1	24	64	17.4	10440/2021
8.	120821906 2	KAMRAN AHMAD KHAN	ANWAR AHMAD KHAN	3	35	63	17	10440/2021
9.	120220425 9	SYED AMIR JAMAL	SYED JAVED JAMAL	16	23	60	17.2	10440/2020

10.	1107214391	SAMAR ALI	SHAKIR ALI	22	27	60	17	10440/2021
11.	1204206879	HUSAIN HUZUR	SYED MOHAMMAD HUZUR	10	40	60	17.2	10440/2021
12.	1208219158	SAMRAH AHMAD (AE E/M)	SIRAJ AHMAD	4	31	58	16.6	7076/2021
13.	1208218385	ASIF KHAN	MOHD. SHAMIM	7	24	60	18	17507/2022
14.	1202203062	FAISAL SALAMAT	SALAMAT UL SIDDIQUI	13	42	60	17.2	17507/2022
15.	1208215755	MOHD. FAHAD ANSARI	MOHD. ASLAM	25	37	60	16.8	17507/2022
16.	1202203416	MOHD. SHARIQ SHAHAB	MOHD. KHALID SHAHAB	12	27	60	17.2	17507/2022
17.	1111227548	HARSH SATENDR A SINGH	SATENDRA SINGH	15	29	60	17.2	17507/2022
18.	1204208520	SYED MOHAMM AD JAWAD	MOHD. IDRIS	20	37	60	17	17507/2022
19.	1110222665	LALIT KUMAR YADAV (AE CS/EC/EE)	OM PRAKASH YADAV	2	29	58	18	12010/2020
20.	1110229472	MOHD. YASAR KHAN (AE CS/EC/EE)	MAHFOOZ RAHMAN KHAN	1	41	58	18	12010/2020
21.	1210224533	KAILASH VISHWAK ARMA(AE E/M)	CHEDILAL VISHWAKARM A	3	38	58	16.6	12010/2020
22.	1210224540	MOHD. SHAMS (AE E/M)	KURSHEED ANWAR	1	39	58	18	12010/2020
23.	1108216025	RAJESH KUMAR (AE CS/EC/EE)	RAMUGRAH	3	26	55	17	8936/2021
24.	1208218340	ASHISH PRATAP SINGH	JITENDRA BAHADUR SINGH	8	48	60	17.9	12501/2021

25.	12082186 64	DILSHAD KHAN	IRSHAD KHAN	2	31	63	17	12501/2021
26.	110621202 3	DHIREND RA KUMAR PRAJAPAT I	JITENDRA KUMAR PRAJAPATI	27	26	60	16.4	12501/2021

ROUTINE GRADE CLERK

NO.	ROLL NO.	PETITIONER NAME	FATHER’S NAME	SR. NO IN SIT REPOR T	CBT PRESENT IN COMPUTER DATABASE	CBT PRESENT IN THE LIST OF SELECTED/ SHORTLIST ED DOCUMENT S	INTER -VIEW	WP
1.	720116325 7	SARFARAZ KHAN	PARVEZ AHMAD KHAN	39	32	75	20	4453/2020
2.	520119127 3	MAYANK RAJPUT	MAHENDRA PRATAP SINGH RAJP-UT	8	59	69	20.4	4453/2020
3.	71012508 43	FAIZ SALAMAT	SALAMAT ULLAH SIDDDIQUI	43	59	66	19.4	7952/2022
4.	720112617 1	MOHD. SADIQ KHAN	MOHD. SHAMIM	37	38	75	20.2	7952/2022

359. It is an admitted position of fact that these candidates had been originally awarded marks that were lesser to what they were given for the purposes of interview while select list was being prepared with the involvement of officials of the Corporation and it is clear from the comparative study by CFSL with their original marks retrieved from the data base of hard disks that was seized by the police from the local environment Office of M/S Aptech Limited, Mumbai.

360. The report, therefore, makes it clear that marks of 169 candidates were enhanced or rather inflated to their advantage

only. It is a case of fraud committed by the selectors, for some extraneous considerations and the beneficiaries cannot be permitted to take advantage of fraud only on the plea of non compliance of principles of natural justice. The law on the point is well settled in a number of authorities of Supreme Court and High Courts.

361. To begin with, in the case of ***Ram Chandra Singh vs. Savitri Devi and others; (2003) 8 SCC 319***, the Court held that fraud vitiates every solemn act and fraud and justice never dwell together. It is relevant here to refer to paragraphs-15, 16, 17 and 18 of the judgment, which run as under:-

"15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together.

16. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentations may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad."

362. The Court also refer to judgment of Calcutta High Court in the case of ***Chittranjan Das vs. Durgapore Project Limited: 1995 (2) Calcutta Law Journal 338***, wherein it was held that even

the principles of natural justice are not required to be complied with in such cases. Paragraph-29 of the said judgment is reproduced hereunder:-

"29. In Chittaranjan Das vs. Durgapore Project Ltd. it has been held: (Cal LJ p. 402, Paras 57, 58:

"57. Suppression of a material document which affects the condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural justice are not required to be complied within such a situation.

58. It is now well known that a fraud vitiates all solemn acts. Thus, even if the date of birth of the petitioner had been recorded in the service returns on the basis of the certificate produced by the petitioner, the same is not sacrosanct nor the respondent company would be bound thereby."

363. In the case of ***State of Chhatisgarh vs. Dhirojo Kumar Sengar; (2009) 13 SCC 600***, the Court held that commission of fraud once proved, principles of natural justice were not required to be complied. Vide paragraphs-17, 18 and 19, the Court held thus:-

"17. It is in the aforementioned premise, the contention in regard to the breach of audi alteram partem doctrine must be considered.

Principle of natural justice although is required to be complied with, it, as is well-known, has exceptions. [See V.C., Banaras Hindu University and Others v. Shrikant (2006) 11 SCC 42]

24. One of the exceptions has also been laid down in S.L. Kapoor v. Jagmohan and others [(1980) 4 SCC 379 : AIR 1981 SC 136] wherein it was held:

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-

observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs."

(Emphasis supplied)

18. Legality of grant of a valid appointment was dependant upon the proof that the respondent was the adopted son of Chittaranjan Singh Sengar. He not only failed to do so, the materials brought on record by the parties would clearly suggest otherwise. His application for grant of appointment on compassionate ground was rejected by the Joint Director of Education. He did not question the legality or validity thereof. He, it can safely be said, by suppressing the said fact obtained the offer of appointment from an authority which was lower in rank than the Joint Director, viz., the Deputy Director. When such a fact was brought to the notice of the Deputy Director that the offer of appointment had been obtained as a result of fraud practiced on the Department, he could, in our opinion, cancel the same.

19. Respondent keeping in view the constitutional scheme has not only committed a fraud on the Department but also committed a fraud on the Constitution. As commission of fraud by him has categorically been proved, in our opinion, the principles of natural justice were not required to be complied with."

364. This view was further reiterated in the case of ***Ganpati Bhai Mahiji Bhai Solanki vs. State of Gujrat and others; (2008) 12 SCC 353***. Again in the case of ***Commissioner of Customs (Preventive) vs. M/s Aafloat Textiles (I) Pvt. Ltd. and others in Civil Appeal No. 2447 of 2007 decided on 16th February, 2009*** it has been held that if somebody secures unfair advantage upon a deliberate act of deception then it is a gain for another's loss and it amounts to deliberate cheating

intended, to get advantage. Vide paragraphs-12 and 17, the Court held thus:-

"12. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Indian Contract Act, 1872 defines "fraud" as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case i.e. Derry and Ors. v. Peek (1886-

90) All ER 1 what constitutes "fraud" was described thus: (All ER p. 22 B- C) "fraud" is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false". But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in Administrative Law. It has been aptly

observed by Lord Bridge in Khawaja v. Secretary of State for Home Deptt. (1983) 1 All ER 765, that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation of statutory law. "Fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute. "If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. The misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which the power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. "In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain. In public law the duty is not to deceive. (See Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers, (1992 (1) SCC 534).

17. In Lazarus Estate Ltd. v. Beasley (1956) 1 QB 702, Lord Denning observed at pages 712 & 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (page 722)"

365. The above view came to be reiterated by Supreme Court in the case of ***Badami (Deceased) by her L.R. vs. Bhali: (2012) 11 SCC 574*** in holding that fraud vitiates even the most solemn proceedings in any civilized system of jurisprudence.

366. Applying these principles to the facts of the present case, I find that these persons, whose names have been given in the chart have deliberately obtained benefit of inflated marks and that appears to be at the instance of Officers of U.P. Jal Nigam because they were provided by the Aptech, password and login ID to go through the processed result, the final CBT merit list. It is clear that since they were provided access only to processed result and not to the original data base, they could not do tampering of select list and the original marks contained in the original data base of Hard disks of M/SAptech Pvt. Ltd. and this is how the act of commission of fraud has surfaced out. It is not only an established case of fraud in respect of those very candidates but it must have been done in conspiracy and connivance with such candidates. I can only term it to be unfortunate that Special Investigation Team did not interrogate these very candidates. Once CFSL report was there, these candidates ought to have been interrogated because ultimately it was done for their benefit and they cannot plead innocence in the matter. They are very much part of entire conspiracy that was hatched, may be at the instance of high ranking officers of U.P. Jal Nigam. I gave ample opportunity to Mr. Khare to counter the CFSL report so as to show any material that original marks contained in data being of hard discs retrieved by CFSL were incorrect but Mr. Khare would only argue that since U.P. Jal Nigam authorities have themselves doubted data integrity, it could not be said with authority that this data based information were correct. However, Mr. Ashish Mishra and other Advocates have trusted the forensic experts of hard disks by CFSL and its report. Mr. Ojha of course, took the plea that M/s. Aptech's archival data be forensically examined but both learned Advocates appearing for Corporation, Mr.

Khare for petitioners did not agree to this. In the circumstances except for those 169 candidates' own efforts no one else would have changed their marks in select list after it was forwarded to Managing Director U.P. Jal Nigam to be transmitted back to agency M/s. Aptech Ltd. for publication. Thus according to me these persons do not deserve even a notice and their candidature, therefore, deserves to be rejected/ cancelled including their appointment orders and, accordingly, their claims deserves to be rejected.

367. **Thus the main issue as is framed in paragraph No.- 163 above *qua* controversy is decided in favour of the petitioners other than those 169 candidates mentioned in the CFSL report and it is held that there was sufficient material available with the respondents especially the CFSL report to hold 169 candidates to be tainted candidates and the order impugned therefore, in respect of these untainted candidates deserve to be set aside.**

368. In view of the above, therefore, respective claims of all those petitioners whose marks were inflated and were permitted wholly illegally to participate in interview and find place in the final select list and got appointments for fraudulently given inflated marks, deserve to be rejected.

369. The question now is what about those candidates, who according to revised list of result, count for 479 (Junior Engineer category) in number and who deserved to be called for interview but were not called. In my considered view those petitioners who are before this Court, if they are amongst the 479 candidates, they deserve to be called for interview and

after their interview, if they reach to last cut off of the respective category of the selected candidates excluding 169 tainted candidates, they can be placed accordingly, against the available vacancies with U.P. Jal Nigam Urban and Rural.

370. The Court is however, conscious of this fact that many candidates on their own volition have failed to challenge the orders impugned for reasons known to them but law on the point is very clear. Those who have remained satisfied and failed to approach the court in time, would not be entitled to similar relief given to those who challenged the orders. In the case of **U.P. and others v. Arvind Kumar Srivastava and others (2015) 1 SCC 347**, the Court held that ordinarily in identical matters the litigants who were identically placed are entitled to identical relief but those who have remained not vigilant in their matter of claims and have not approached the Court, may not be entitled to identical relief. Vide paragraphs 22.1 and 22.2 the Court held thus:

“22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot

claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

371. I am also reminded here of a maxim “*Invito beneficium non datur*” meaning thereby, law confers upon a man no rights or benefits which he does not desire. Abandonment of right is held to be much more than a mere waiver, acquiescence or laches. The selections in question were in respect of advertisements issued in the year 2016 pursuant to which appointments were made in the year 2017. Many petitioners approached this Court in the first leg of litigation and then in the second and third leg of litigation but many of them may have on their own sweet will and desire not approached the Court to question orders/ action taken, taking themselves to be satisfied with the final outcome of the results of selection. In such circumstances, they are to be taken to have acquiesced to the results of selection carried. Even after the litigations started and continued for a long, if they chose not to set up their claim they are to blame themselves. In these circumstances, therefore, they are liable to be held to have abandoned their claims and the relief in this bunch of petitions is confined to only those who have already approached the law courts till the time of this judgment.

372. It is further clarified that since the Corporation earlier was a unified Corporation, namely, Jal Nigam when advertisement was published and selections were held and appointments were given, these employees were definitely the employees of unified Corporation who were selected and appointed and who were liable to be selected and appointed. Merely for the bifurcation of the erstwhile U.P. Jal Nigam in two different

units in year 2021, namely, U.P. Jal Nigam (Urban) and (Rural) it will have hardly any bearing upon the claim of the petitioners to be adjusted in the appointments as a consequence of this order.

373. U.P. Jal Nigam (Urban) has filed a supplementary counter affidavit duly sworn by Mr. Ashutosh Yadav, Deputy Manager (Law), U.P. Jal Nigam (Urban), Prayagraj appended therewith a chart disclosing 158 vacancies in the cadre of Assistant Engineer (Civil), 18 vacancies in the cadre of Assistant Engineer (Electrical/ Mechanical) 622 vacancies in the cadre of Junior Engineer (Civil) and 114 vacancies in the cadre of Junior Engineer (Electrical/ Mechanical) as on 1st September, 2024. Similarly 35 vacancies in the cadre of Junior Engineer in the headquarter to be available as on 1st September, 2024.
374. Similarly, the supplementary counter affidavit has been filed by U.P. Jal Nigam (Rural) duly sworn by Mr. Sandeep Kumar, Chief Engineer (E-2-1), (E-2-2), (E-3) U.P. Jal Nigam (Rural) appending therewith the chart showing 154 vacancies of Assistant Engineer (Civil), 24 vacancies of Assistant Engineer (Electrical/ Mechanical), 793 vacancies of Junior Engineer (Civil), 42 vacancies of Junior Engineer (Civil) for direct recruitment, 186 vacancies of Junior Engineer (Electrical/ Mechanical) for direct recruitment and 35 vacancies of RGC in the headquarter cadre and 20 vacancies in the original cadre of corporation as on date of filing of affidavit i.e. 18th September, 2024.
375. In view of the above following directions are issued:-

(i) All writ petitioners, who are untainted (other than 169 candidates) and have found place in the merit list and were accordingly given appointments on posts falling in their respective categories, their appointment orders stand restored as a consequence of quashing of the orders passed by the Corporation impugned here in these petitions. The Corporation shall ensure their joining and payment of salary accordingly within a maximum period of two months from today. However, these petitioners will not be entitled to any arrears of pay for the period they have remained unemployed, may be for the action taken by the Corporation but their seniority shall be restored and so also pay protection shall be granted accordingly with notional increments;

(ii) Both the Corporations namely U.P. Jal Nigam (Urban) and U.P. Jal Nigam (Rural) represented here before this Court through their panel Advocates, shall each adjust 50% of untainted candidates in their respective departments and it is after their adjustment only that any recruitment drive shall further be undertaken pursuant to the advertisement, if any, issued. The adjustment, in order to avoid any controversy, should be roster based *qua* every category of posts as well as General/ OBC/ SC/ ST categories. The first candidate in the order of merit of respective category against the post AE/JE/RGC will go to be U.P. Jal Nigam (Urban) whereas second will go to U.P. Jal Nigam (Rural) and so on;

(iii) Those candidates whose names find place in the list of 479 candidates as per the revised result published by the M/s Aptech Limited and have approached the High Court, shall be called for interview for their respective category of posts

AE/JE/RGC respectively. A merit list shall be drawn in their respect within three months from today. Those whose total marks in their respective categories of General/OBC/SC/ST match with the last cut off of respective categories in the earlier merit list after removing names of 169 candidates of CFSL report, shall be offered appointment as per the roster provided above for untainted candidates;

(iv) Those candidates, who have not approached the Court are taken to have remained satisfied with the result of selection and the ultimate decisions of the corporation in that regard and are held to have abandoned their respective claims;

(v) The respective claims of petitioners, whose names occur amongst the 169 candidates be AE or JE or RGC category in the report of CFSL report, Hyderabad, are hereby rejected.

376. This entire bunch of writ petitions thus stands finally disposed off in above terms and the orders impugned dated 2nd of March, 2020 passed by the competent authority of the Corporation in respect of Assistant Engineers, Junior Engineers and Routine Grade Clerk stand hereby set aside accordingly.

377. Before parting, I may acknowledge with appreciation the hard work rendered by Ms. Nidhi Verma and Ms. Simran Yadav, Research Associates (Law) attached to my office for their valuable assistance rendered in the matter that helped me to navigate through thousands of pages of records (petitions, affidavits and compilations) and also their meticulous efforts in searching authorities of this Court and of Supreme Court in

addition to those cited, to help me go through contours of law
to finally author this judgment.

Order Date :- 4.10.2024
Atmesh/ Sanjeev/ IrfanUddin