

A U.P. PUBLIC SERVICES COMMISSION  
v.  
SUBHASH CHANDRA DIXIT AND ORS.

NOVEMBER 5, 2003

B [K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

*Constitution of India, 1950 :*

C *Articles 320 and 234—UP Public Service Commission (Regulation of Procedure and Conduct of Business) Amendment Act, 1976—Rule 51—UP Nyayik Sewa Niyamavali, 1951—Rule 19—Conduct of Civil Judge (Junior Division) Examination by State Public Service Commission—Adoption of scaling system by invoking power conferred under Rule 51 of 1976 Act in view of Rule 19 of Niyamavali 1951—Correctness of—Held: Niyamavali, 1951 made by Governor in consultation with the Commission and High Court whereas 1976 Act not made in consultation with the Commission and High Court yet the provisions of the 1976 Act applicable for conducting the Recruitment Examination—Further, the 1976 Act gives guidelines for any recruitment to be made by U.P.P.S.C whereas Niyamavali 1951 only gives special rules concerning Subordinate Judicial Service in the State, as such Niyamavali is not a complete code in itself—On facts, State Commission correctly applied scaling formula and prepared merit of candidates for UP Civil Judge (Junior Division) Examination, Provincial Civil Services (Executive Branch) Main Examination 2001 and Preliminary Examination, 2002—Hence, High Court not justified in interfering with the merit list prepared by the Commission.*

F *Articles 320, 14 and 16—Public Service Commissions—Conduct of competitive examinations—Adoption of scaling system—Correctness of—Held: Scaling system adopted to eliminate inconsistency in the marking standards of the examiners is neither arbitrary nor unreasonable—Also when scaling system is adopted after expert study, the Court would not interfere unless it is proved to be arbitrary and unreasonable.*

*Words and Phrases :*

*'Aggregate Marks'—Meaning of.*

Appellant-Uttar Pradesh Public Services Commission conducted the U.P. Civil Judge (Junior Division) Examination, 2000, the Provincial Civil Services (Executive Branch), Main Examination, 2001 and the Provincial Civil Services (Executive Branch) Preliminary Examination, 2002. In these examinations, it applied a system of scaling of marks awarded by the examiners and thereafter, published the result. Unsuccessful candidates challenged the merit lists on the ground that the scaling of marks was arbitrary and illegal. Division Bench of High Court set aside the merit list. Hence the present appeals.

Appellant-Commission contended that Article 320 of the Constitution gives ample power to the Public Service Commission to conduct the examinations for appointment to the services of the Union and States and such power is not subject to any of the provisions contained in the Constitution; that it is the constitutional duty of the State Public Service Commission to conduct such examinations in a free and fair manner; and that the proviso to Section 51 of the UP Public Service Commission (Regulation of Procedure and Conduct of Business) Amendment Act, 1976 gives ample power to the Commission to adopt a scaling system to find out the most suitable candidates for selection and the marks awarded to the candidates could be varied by adopting such a system.

Respondents contended that the examination for selection of Civil Judge [Jr. Division] should have been conducted in accordance with the procedure prescribed in Niyamavali and any deviation therefrom would be illegal; that any of the provisions contained in the U.P. Public Services Commission (Regulation of Procedure and Conduct of Business) Act 1974 being contrary to the provisions of Niyamavali 1951 cannot be applied for the selection of Judicial Officers in the State as the Act of 1974 is not made in consultation with the State Public Services Commission and the High Court; that even if Rule 51 of 1974 Act permitted the U.P.P.S.C. to adopt scaling of marks, the same should not have been applied in the case of selection of Judicial Officers; that Rule 19 of Niyamavali 1951 expressly says that the Commission would prepare the list of candidates in the order of their proficiency as disclosed by the aggregate marks finally awarded which means the marks assigned by various examiners to each of the candidates and not the marks assigned to the candidates after the scaling system is applied; that Niyamavali 1951 is a complete Code in itself and the selection process shall only be done in accordance with the provisions contained therein; and that the system of scaling was unreasonable and arbitrary and thus, violative of Articles 14 and 16 of the Constitution.

**A** Allowing the appeals, the Court

**B** HELD : 1. The U.P.P.S.C. has correctly applied the scaling formula and prepared the merit list of various candidates for the three examinations-Provincial Civil Services (Executive Branch) Main Examination, 2001; Provincial Civil Services (Executive Branch) Preliminary Examination, 2002; and the U.P. Civil Judge (Jr. Division) Examination. Therefore, the Division Bench of the High Court was not justified in interfering with the merit list prepared by the Commission. The judgment of the High Court is set aside the merit list prepared by the Commission would prevail in the case of all the three examinations.

**C** [228-G-H; 229-A-B]

**D** 2.1. U.P. Nyayik Sewa Niyamavali, 1951 was made by the Governor in consultation with the U.P. Public Services Commission and the High Court by virtue of the powers conferred by Article 234 of the Constitution whereas the provisions of the U.P. Public Services Commission (Regulation of Procedure and Conduct of Business) Amendment Act, 1976 was not made in consultation with the Commission and the High Court. The Act of 1976 gives guidelines for any recruitment to be made by U.P.P.S.C. The proviso to Rule 51 of 1976 Act gives ample power to the Commission to adopt any method, device or formula to eliminate any variation in the marks awarded to the candidates. The various provisions deal with the method and manner in which the examinations are to be conducted. On the other hand, the Niyamavali, 1951 only gives the special rules concerning Subordinate Judicial Service in the State of Uttar Pradesh. It does not deal with the method and manner in which the examinations are to be conducted. Furthermore, the proviso to Rule 51 is not in any way in conflict with Rule 19 of Niyamavali, 1951. Further, various steps and procedures have to be adopted in completing the recruitment for which detailed procedure has been laid down. The procedure is not part of the Nyamavali 1951. Therefore, the Niyamavali 1951 is not a complete Code in itself and the selection process would not only be done in accordance with the provisions contained therein. All the provisions of the Act of 1976 are applicable for the purpose of conducting examination for recruitment of Judicial Officers in the State. [222-B-H; 223-A-B]

**H** 2.2. The expression 'aggregate marks' used in Rule 19 of the Niyamavali 1951 can only be construed as the final marks awarded after the scaling system is applied. The aggregate marks can only be considered

to mean as the total marks finally obtained by the candidate after the complete valuation process is over. [222-C-D] A

2.3. There is no case that the selection to the posts of Civil Judge (Jr. Division) was held in contravention of any of the rules made under Article 234 of the Constitution. The Niyamavali, 1951 gives the various subjects and the qualifying marks for each subject. No such Rules have been violated and particularly there is no violation of Rule 19 of the Niyamavali, 1951. [224-A-B] B

*Umesh Chandra Shukla v. Union of India and Ors.*, [1985] 3 SCC 721; *Durgacharan Misra v. State of Orissa and Ors.*, [1987] 4 SCC 646 and *State of Bihar and Anr. v. Bal Mukund Sah and Ors.*, [2000] 4 SCC 640, distinguished. C

3.1. The Proviso of Rule 51 of the 1976 Act gives power to the Commission to eliminate variation in the marks awarded to the candidates and to adopt any method, device or formula considered appropriate for that purpose. In the case of Judicial Service examination, more than four thousand candidates appeared. The answer papers were evaluated by 14 examiners. Some examiners were liberal in awarding marks whereas some others were strict in awarding marks. The difference in marks awarded by the examiners was sought to be minimized by applying the scaling formula. If scaling method had not been used, only those candidates whose answer sheets were examined by liberal examiners alone would get selected and the candidates whose answer sheets were examined by strict examiners would be completely excluded, though the standard of their answers may be to some extent similar. The scaling system was, thus, adopted with a view to eliminate the inconsistency in the marking standards of the examiners who participated in evaluation of answer sheets and the details have also been furnished as to how the scaling formula was adopted and applied. [226-E-G; 227-G-H] D E F

3.2. The observation of the Division Bench of the High Court that the Commission did not take care of varying standards which may have been applied by different examiners but has sought to reduce the variation of the marks awarded by the same examiner to different candidates whose answer sheets had been examined, is not correct. The application of scaling formula to the examinations in question was neither arbitrary nor illegal. The selection of the candidates was done in a better way. Also it could not be proved that the adoption of scaling system has in any way caused H

**A** injustice to any meritorious candidate. Moreover, this formula was adopted by the U.P.P.S.C. after an expert study and in such matters, the Court cannot sit in judgment and interfere with the same unless it is proved that it was an arbitrary and unreasonable exercise of power and the selection itself was done contrary to the rules. Ultimately, the agency conducting the examination has to consider as to which method should be preferred and adopted having regard to the myriad situations that may arise before them. [228-C-G]

**B**

*Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors.*, [1978] 2 SCR 272 and *Kamlesh Haribhai Goradia v. Union of India and Anr.*, (1987) 1 GLR 157, referred to.

**C**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8609 of 2003.

From the Judgment and Order dated 3.10.2002 of the Allahabad High Court in C.M.W.P. No. 32802 of 2001.

**D**

WITH

C.A. No. 8613, 8614, 8611 and 8612 of 2003.

**E**

R.N. Trivedi, Additional Solicitor General, P.P. Rao, Shail Kumar Dwivedi, G.V. Rao, Ms. Sweta Garg, Shoeb Aalam, Vibhakar Mishra, Pankaj K. Singh, Dr. Vinod Kumar Tiwari, K.L. Janjani, S.W.A. Qadri, Amitesh Kumar, Ravi Prakash for L.R. Singh for the Appellant.

**F**

Rakesh Diwedi, P.P Malhotra, Vikas Singh, Vishwajit Singh, Ritesh Agrawal, Ms. Binu Tamta, R.C. Verma and Ajay K. Agrawal for the Respondents.

The Judgment of the Court was delivered by

**K.G. BALAKRISHNAN**, J. Leave granted.

**G**

Three of these appeals have been preferred by the Uttar Pradesh Public Services Commission (hereinafter called as "U.P.P.S.C.") challenging the judgments rendered on 3.10.2002 and 11.12.2002 by the Division Bench of the High Court of Allahabad in Civil Miscellaneous Writ Petitions. The U.P.P.S.C. conducted various competitive examinations and in these examinations, the U.P.P.S.C. applied a system of scaling of marks awarded

**H** by the examiners who valued the answer papers. The system of scaling of

marks was invoked in the U.P. Civil Judge (Junior Division) Examination held in August 2000, the result of which was published on 25.1.2001. Some of the candidates, who could not secure selection in the examination assailed the examination system adopted by the U.P.P.S.C. mainly on the ground that the introduction of scaling of marks was arbitrary and illegal. Their plea was accepted by the Division Bench and by judgment dated 3.10.2002, the Division Bench set aside the merit list prepared by the U.P.P.S.C. in respect of the Civil Judge (Jr. Division) Examination, 2000 and directed that the merit list be prepared afresh on the basis of actual marks secured by the candidates without applying the formula of scaling. SLP (Civil) No. 23723 of 2002 is filed against that decision.

Similarly, U.P.P.S.C. held examination for the Provincial Civil Services (Executive Branch), Main Examination, 2001 and Provincial Civil Services (Executive Branch) Preliminary Examination, 2002. In both these examinations, U.P.P.S.C. applied the system of scaling. The results of these two examinations were also challenged on similar grounds and the Division Bench set aside the final merit list prepared by the U.P.P.S.C. in respect of these two examinations. SLP (Civil) No. 207 of 2003 is in respect of Provincial Civil Services (Executive Branch) Main Examination, 2001 and SLP (Civil) No. 208 of 2003 arises out of the examination of Provincial Civil Services (Executive Branch), Preliminary Examination, 2002.

The remaining two appeals arising out of SLP (C) No. 3758 of 2003 and SLP (C) No. 6295 of 2003 have been preferred by candidates aggrieved by the aforesaid judgments of the High Court.

At first, we shall consider the SLP (Civil) No. 23723 of 2002 in respect of Civil Judge (Jr. Division) Examination, 2000. The U.P.P.S.C. advertised for selection of 147 posts of Civil Judge (Jr. Division) Examination, 2000. The examination consisted of written tests and viva voce. Total marks for written examinations were 850. 100 marks were assigned for viva voce. The details are as follows:-

Subjects		Marks
(i) Present day	Paper-I	150 marks
(ii) Substantive Law	Paper-II	200 marks
(iii) Procedural Law	Paper-III	200 marks
(iv) Criminal & Revenue Law	Paper-IV	200 marks

A	Language I & II		
	(a)	English to Hindi & <i>Vice Versa</i>	Paper-V                      60 marks
	(b)	Hindi to Urdu & <i>Vice Versa</i>	Paper-VI                     40 marks
		Total	850 marks

B            4270 candidates appeared for the examination. For each of the subjects in the written examination, there were around 14 examiners and each of them evaluated about 300 answer sheets, except in language papers. U.P.P.S.C. had earlier held similar examination for Civil Judge (Jr. Division) for selection of Judicial Officers in 1997 and 1999. According to the U.P.P.S.C., there was wide disparity in awarding marks by the various examiners in respect of the

C            same subject. The answer sheets were randomised before being given to examiners. The randomisation was done at three stages, namely, at the stage of allotment of roll numbers, allotment of centre and at the time of distribution of answer sheets to the examiners for evaluation. U.P.P.S.C. received representation from several quarters to adopt a scientific method of evaluation

D            of marks awarded by different examiners in respect of common papers. It was noticed that the different examiners adopted different yardsticks to award the marks to the candidates. Thus, the candidates were left at the whims of the examiners. The gross disparity between two sets of examiners resulted in injustice to some of the candidates and therefore a check was required. It was noticed that the marks awarded by two different sets of examiners required

E            to be scaled in accordance with certain universally accepted method. U.P.P.S.C. considered the different facets of scaling system and appointed a three-member committee to carry out an in-depth study of the scaling system. The members of this committee consisted of Professors from reputed universities. U.P.P.S.C. considered the recommendations made by the expert committee and on

F            7.9.1996 accepted the report of the Committee. U.P.P.S.C. resolved to apply the formula of scaling and thereafter, it was made applicable to the PCS Preliminary Examination, 1996 and also in PCS Main Examination held in 1996. Considering the utility of the scaling system, the U.P.P.S.C. decided in its meeting on 13.10.1999 to apply the scaling pattern for all the examinations conducted by them. In the case of Civil Judge (Jr. Division) Examination,

G            2000, the answer sheets were randomised in order to avoid duplicity or any possible mischief. The marks awarded by each examiner were considered and scaled in accordance with the formula adopted by the U.P.P.S.C. The said formula was based on opinion of experts on the subject and accordingly the result was published by the U.P.P.S.C. The merit list published by the

H            U.P.P.S.C. was challenged by the respondents in SLP (Civil) No. 23723 of

2002 on the ground that the scaling system adopted by U.P.P.S.C. was confusing, arbitrary and without any reasonable basis. It was alleged that arbitrary marks were awarded to certain candidates in the name of scaling system to provide undue favour to them. It was contended that the U.P.P.S.C. had not disclosed the guidelines and criteria adopted in implementing the scaling system and, therefore, it was arbitrary and unjustified. It was also contended that several candidates had been awarded less than 40% marks without any basis whereas several other candidates who had secured lesser marks in the written tests were awarded more than 60% or 70% marks.

The Division Bench considered the various contentions raised by the respondents as well as the U.P.P.S.C. and held that the application of scaling was not justified nor supported by any valid statutory permission. The Division Bench was of the opinion that where selection was to be made on comparative merit, the adoption of any such process which had the effect of adding marks to the actual score of the candidate, was destructive of the system whereas the objective was to select a small number of best candidates on the basis of their merit out of thousands who had appeared in the examination.

The Division Bench also held that the U.P.P.S.C. had no power under Rule 51 of the U.P.P.S.C. (Regulation of Procedure and Conduct of Business) Act, 1974 to invoke the scaling system. Rule 51 says that the merit list shall be prepared after adding the marks of interview/personality test with the marks secured by the candidates in the written examination. The Division Bench was of the opinion that the expression 'marks obtained by the candidates in the written examination' meant the actual marks awarded by the examiner.

Shri P.P. Rao, learned Senior Counsel, appeared on behalf of U.P.P.S.C. in SLP(Civil) No. 23723 of 2002 and Shri Rakesh Dwivedi, Senior Counsel appeared on behalf of the respondents. Additional Solicitor General, Mr. R.N. Trivedi appeared on behalf of the appellants in SLP(Civil) No. 207 of 2003 and SLP(Civil) No. 208 of 2003.

Shri Rakesh Dwivedi contended that the system of scaling adopted by U.P.P.S.C. with respect to the competitive examination of Civil Judge, [Jr. Division] is unconstitutional as it has been enforced without any corresponding amendment in the U.P. Nyayik Sewa Niyamavali, 1951 [for short "Niyamavali 1951"] and the examination for selection of Civil Judge [Jr. Division] should have been conducted in accordance with the procedure prescribed in that Niyamavali and any deviation therefrom would be illegal. The counsel further

A contended that any of the provisions contained in the U.P. Public Services Commission (Regulation of Procedure and Conduct of Business) Act 1974, which are contrary to the provisions of the Niyamavali 1951, cannot be applied for the selection of Judicial Officers in the State of Uttar Pradesh as the U.P. Public Services Commission Act, 1974 is not an enactment made in accordance with Article 234 of the Constitution of India as there was no consultation with the State Public Services Commission and the High Court.

B It was further contended that even if Rule 51 of 1974 Act permitted the U.P.P.S.C. to adopt scaling of marks, the same should not have been applied in the case of selection of Judicial Officers.

C Shri P.P. Rao, learned Senior Counsel appearing for the U.P. Public Service Commission contended that Article 320 of the Constitution gives ample power to the Public Service Commission to conduct the selections of candidates and such power of the Public Service Commission to conduct the examinations for appointment to the services of the Union and States is not subject to any of the provisions contained in the Constitution and that it is

D the constitutional duty of the State Public Service Commission to conduct such examinations in a free and fair manner.

E In order to understand the rival contentions raised by the parties in this case, it is necessary to refer to various provisions in the Constitution as well as the two enactments, namely, the Niyamavali 1951 and the U.P. Public Services Commission (Regulation of Procedure and Conduct of Business) Act, 1974 which regulates the conduct and procedure of examinations.

Article 234 of the Constitution reads as under :

F “234. *Recruitment of persons other than District Judges to the judicial service.*—Appointments of persons other than District Judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.”

G In accordance with the above Article of the Constitution, Niyamavali 1951 was enacted and in the preamble it is mentioned that in exercise of the power conferred under Article 234 and the Proviso to Article 309 of the Constitution of India, the Governor in consultation with the U.P. Public Service Commission and the High Court of Judicature at Allahabad, makes the rules

H regulating the recruitment to posts in, and the condition of service of persons

appointed to the Uttar Pradesh Nyayik Sewa. Part II of the Niyamavali 1951 deals with the strength of the service. Part III deals with the procedure for recruitment to the service and Rule 6 thereof says that recruitment to the service shall be made on the basis of the result of a competitive examination conducted by the Commission. Rules 10, 11 and 12 of Part IV deal with the eligibility criteria and academic qualifications. Rule 15 of Part V deals with the procedure for recruitment. It reads as under :

“15. *Competitive examination*—The examination may be conducted at such time and on such dates as may be notified by the Commission and shall consist of—

- (a) written examination in such legal and allied subjects, including procedure, as may be included in the syllabus prescribed under Rule 18;
- (b) an examination to test the knowledge of the candidates in Hindi and Urdu; and
- (c) an interview to assess the all round student career of the candidates and their personality, address and general suitability.”

Part VI, Rule 19 deals with appointment, probation and confirmation. Rule 19 reads as follows :

“*List of candidates approved by the Commission.* - The Commission shall prepare a list of candidates who have taken examination for recruitment to the service in order of their proficiency as disclosed by the *aggregate marks finally awarded* to each candidate. If two or more candidates obtain equal marks in the aggregate, the Commission, shall arrange them in order of merit on the basis of their general suitability for the service.

Provided that in making their recommendation, the Commission shall satisfy themselves that the candidate has obtained such an aggregate of marks in the written test that he is qualified by his ability for appointment to the service.”

The U.P. Public Service Commission (Regulation of Procedure and Conduct of Business) Amendment Act, 1976 was passed by the legislature of the State of Uttar Pradesh and it received the assent of the Governor on May 19, 1976. This Act lays down the general guidelines in respect of the procedure and conduct of business of the U.P. Public Service Commission. The various

- A** provisions in this Act deal with the method and manner in which the competitive examinations are to be conducted. Chapter II deals with the composition of the Commission and as to how the meetings of the Commission are to be arranged and stipulates that the Chairman and in his absence the senior-most member present shall preside over the meetings of the Commission. Rule 11 of Chapter II says that the decisions of the Commission, as far as may be, shall be unanimous. Chapter III deals with the provisions as to how interview/viva voce is to be conducted. Chapter IV prescribes as to how the written examinations are to be conducted by the Commission. Rule 26 says that the Commission shall prepare a panel of examiners for each subject in which the Commission holds examinations or may constitute a Committee for the purpose and that different committees may be constituted for different subjects and the reports of the Committee shall be laid before the Commission for approval. The Commission may make such alterations or additions as it may deem fit in the panels prepared by the Committee. No officer of the Commission shall be placed on the panel of examiners and the panels so prepared and/or approved by the Commission shall be reviewed by it from time to time. The panel of examiners shall be a secret document and it shall be kept in safe custody by the secretary under seal and shall be submitted to a Member or the Commission on requisition. Examiners shall be appointed by the Commission from the panels made in accordance with the rules. Rule 28 says that the question papers set by the examiners shall be placed before the Commission to ensure conformity with the required standard of examination. The commission may moderate the question papers or constitute a committee to perform the work of moderation on their behalf. Rule 29 says that the Commission shall conduct examination for the various posts to be filled by competitive examination and that the Commission may hold combined competitive examinations for selection to various posts under the purview of the Commission. Rule 30 provides that the Commission shall advertise the vacancies for which selections are to be made and invite applications from eligible candidates. Applications received in response to advertisement shall be scrutinized by the office in the manner prescribed by the Commission. Rule 31 says that no candidate shall be admitted to the examination unless he has duly applied on the prescribed form and has deposited the prescribed application/examination fee within the prescribed time. The Commission is not empowered to accept advance applications from candidates on plain piece of paper and no application received after the last date fixed for receipt of applications shall be accepted. Rule 32 says that all eligible candidates shall, subject to provisions of the rules, be admitted to the examination. Rule 33 provides that the Commission shall fix the place, date/

dates and time of examination and the centres, with the prior approval of the Commission. Rule 34 says that the Secretary shall prepare a list of the persons suitable to be appointed as invigilators and shall get the same approved by the Commission. Rules 35 to 52 deal with the detailed procedure as to how the answer books are to be sent to various examiners and valued by them. Fake roll numbers shall be allotted to each candidate in each paper before the answer books are despatched to the examiners for assessment. Time limit is prescribed for return of the answer sheets after evaluation. The Secretary shall take steps for tabulation of marks obtained by each candidate as soon as scrutiny of scripts has been done. The Commission has to make random checking of the tabulation to ensure the correctness and accuracy of tabulation as well as of assessment of answer books. It is the responsibility of the Commission to ensure correct tabulation of marks and correct restoration of original roll numbers of the candidates. The Commission shall decide the number of candidates to be called for interview to appear before a board of boards on any day. On each day after the interview is over and marks are awarded to each candidate, the mark sheet prepared in duplicate shall be placed in separate sealed covers and the original will be sent to the Secretary to be kept under his safe and secret custody.

Rule 51, which is relevant for the purpose reads as follows:

“51. The mark sheets so obtained shall be opened on the last day of interview and immediately thereafter the marks of interview/personality test shall be added to the marks obtained by the candidates in the written examination. Thereafter on the basis of the totals so obtained, the merit list shall be prepared and placed before the Commission for final declaration of the result.

Provided that the Commission may, with a view to eliminating variation in the marks awarded to candidates at any examination or interview, adopt a method, device or formula which they consider proper for the purpose.”

The contention of the learned counsel for the U.P. Public Services Commission is that the Proviso to Section 51 gives ample power to the Commission to adopt a scaling system to find out the most suitable candidates for selection and the marks awarded to the candidates could be varied by adopting such a system, whereas the contention of the respondents' counsel is that Rule 19 of Niyamavali 1951 expressly says that the Commission shall prepare the list of candidates in the order of their proficiency as disclosed by the aggregate marks finally awarded and it was argued that the marks finally

**A** awarded means the marks assigned by various examiners to each of the candidates and it does not mean the marks assigned to the candidates after the scaling system is applied.

The question, therefore, that arises for consideration is whether the U.P. Public Service Commission can adopt the scaling system by invoking the power conferred under Rule 51 of the 1976 Amendment Act in view of Rule 19 contained in Niyamavali 1951. Of course, Niyamavali 1951 was made by the Governor in consultation with the U.P. Public Services Commission and the High Court of Judicature at Allahabad by virtue of the powers conferred by Article 234 of the Constitution. Whereas the provisions of the 1976 Act are general guidelines for the U.P. Public Services Commission, it is not an enactment made in consultation with the High Court. Nevertheless, the provisions of 1976 Act are applicable for the purpose of conducting examination for recruitment of Judicial Officers in the State of Uttar Pradesh. The expression 'aggregate marks' used in Rule 19 of the Niyamavali 1951 can only be construed as the final marks awarded after the scaling system is applied. Certainly the Proviso to Rule 51 of 1976 Act gives ample power to the Commission to adopt any method, device or formula to eliminate any variation in the marks awarded to the candidates. The various provisions contained in 1974 Act deal with the method and manner in which the examinations are to be conducted. The Niyamavali 1951 deals with only general provisions regulating recruitment to the posts and the conditions of service. Niyamavali 1951 does not deal with the method and manner in which the examinations are to be conducted. Various steps and procedures have to be adopted in completing the recruitment for which detailed procedure has been laid down. This procedure is not part of the Niyamavali 1951.

**F** We do not think that the Proviso to Rule 51 is in any way in conflict with Rule 19 of Niyamavali 1951. The aggregate marks can only be considered to mean as the total marks finally obtained by the candidate after the complete valuation process is over. The dictionary meaning of 'aggregate' is thus: (i) a whole formed by combining several disparate elements; (ii) the total score of a player or team in a fixture comprising more than one game or round; (iii) **G** formed or calculated by the combination of many separate units or items.

The contention of the respondents' counsel is that Niyamavali 1951 is a complete Code in itself and the selection process shall only be done in accordance with the provisions contained therein. This plea cannot be accepted as the Niyamavali 1951 only gives the special rules concerning Subordinate **H**

Judicial Service in the State of Uttar Pradesh whereas the U.P. Public Service Commission (Regulation of Procedure & Conduct of Business) Amendment Act, 1976 gives guidelines for any recruitment to be made by U.P.P.S.C. All these provisions are applicable to a recruitment made to Judicial Service also. A

Learned counsel for the respondents made reference to three decisions of this Court and contended for the position that if the recruitment is made in contravention of the rules framed under Article 234 of the Constitution, the same shall be void. *Umesh Chandra Shukla v. Union of India and Ors.* [1985] 3 SCC 721 is a decision concerning the recruitment to the post of Subordinate Judges in Delhi Judicial Service. There, a competitive examination was held and 27 candidates qualified to be eligible for viva voce test. A list was published by the High Court and the Full Court approved the list of the 27 qualified candidates. As per the rules, only such candidates would be called for viva voce who had obtained 50 per cent marks in each of the written papers and 60 per cent in the aggregate, excepting the candidates belonging to Scheduled Castes and Scheduled Tribes in whose case the marks prescribed were 40 per cent in each of the written papers and 50 per cent in the aggregate. The Selection Committee called for viva voce only such candidates who had qualified written test as provided in the appendix. The Selection Committee noticed that some of the candidates who had otherwise secured very high marks, had to be kept out of the zone of consideration for final selection by reason of their having secured one or two marks below the aggregate or the qualifying marks prescribed for the particular paper. So the Selection Committee decided that moderation of two marks in each paper to every candidate shall be done. In view of the decision of the Selection Committee, instead of 27 candidates, 31 candidates were called for interview. This was challenged by some of the candidates and this Court struck down the selection and held that the list prepared by the committee after moderation of marks is liable to be struck down. Addition of any marks by way of moderation to the marks obtained in any written paper or to the aggregate of the marks in order to make a candidate eligible to appear in the viva voce test would indirectly be an amendment of clause (6) of the Appendix to the Delhi Judicial Service Rules, 1970 which is of mandatory nature. Such amendment to the rules can be made under Article 234 only by the Lt. Governor after consulting the High Court in that regard. B C D E F G

In the above decision, minimum marks were prescribed for viva voce. Apparently, the candidates who were later included in the list by the selection H

- A committee had not secured the minimum marks to be qualified for viva voce. The selection as such was done contrary to the rules of recruitment. This decision has no application to the case in hand. There is no case that the selection to the posts of Civil Judge (Jr. Division) was held in contravention of any of the rules made under Article 234 of the Constitution. As regards the appendix, the Niyamavali 1951 gives the various subjects and the qualifying marks for each subject. There is no case that these rules have been violated. As already noticed, rule 19 of the Niyamavali 1951 also is in no way violated in the present selection process.

- C Another decision relied upon by the respondents' counsel is *Durgacharan Misra v. State of Orissa and Ors.*, [1987] 4 SCC 646. The Orissa Judicial Service Rules did not prescribe the minimum qualifying marks to be secured at the viva voce test for selection of Munsifs. As per the Rules, the Commission shall add the marks of the *viva voce* test to the marks in the written examination and then the merit list is to be prepared on the basis of the aggregate marks secured by the candidates. The list so prepared is to be forwarded to the State Government. The Commission had no power to exclude the names of any candidates from the selection list merely because he has secured less marks at the viva voce test. Contrary to these Rules, the Commission prescribed the minimum marks for viva voce test and prepared the merit list. This Court held that the Rules have been framed under the Proviso to Article 309 read with Article 234 of the Constitution in consultation with the High Court and the appointments of persons to the Judicial Service of the State shall be made in accordance with these Rules and the Commission shall select the candidates in accordance with these rules and it cannot prescribe additional requirements either as to eligibility or as to suitability and the decision of the Commission prescribing the minimum marks to be secured at the viva voce test was held to be illegal and without authority. This decision has no application to the facts of the present case. In that case, the selection was made against the Rules framed by the Governor under Article 309 read with Article 234 of the Constitution. Here, no such rules have been violated and as already noticed, there was no violation of Rule 19 of the Niyamavali 1951.

- G Reference was also made to the decision of this Court in *State of Bihar and Anr. v. Bal Mukund Sah and Ors.*, [2000] 4 SCC 640. The Bihar State Legislature passed an enactment providing reservation to the extent of 50 per cent for Scheduled Castes, Scheduled Tribes and OBCs in the Judicial Service.

H

This enactment was passed under Article 309 of the Constitution treating the Judicial Service as part of the State Service. Majmudar, J., speaking for the majority of the Constitution Bench, observed that 'Judicial Service' only earmarks the Members of that service and their appointment is to be made under the rules made under Article 309 read with Articles 233 and 234 of the Constitution and that any scheme of reservation foisted on the High Court without consultation with it directly results in truncating its power of playing a vital role in the recruitment of eligible candidates to fill up the vacancies and hence such appointments of reserved posts would remain totally ultra vires of the scheme of the Constitution. This decision also is of no assistance to the respondents.

It is important to note that under Article 320 of the Constitution, the Union and the State Public Service Commission has been conferred with ample power to conduct examinations for appointment to the services of the Union and to the services of the State. Of course, the power conferred on the Public Service Commission shall not be used arbitrarily. Similarly, powers of superintendence, direction and control of the preparation of the electoral rolls, for, and the conduct of, all elections to Parliament and to the Legislature of every State have been vested with the Election Commission. While considering the parameters of the powers of the Election Commission, this Court in *Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors.*, [1978] 2 SCR 272 observed as under:

"Even so, situations may arise which enacted law has not provided for. Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provision in Article 324 to take care of surprise situations. That power itself has to be exercised, not mindlessly nor *mala fide*, nor arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation.....Article 324, in our view, operates in areas left unoccupied by legislation and the words 'superintendence, direction and control' as well as 'conduct of all elections' are the broadest terms. Myriad maybes, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election."

The above observation made in the context of Article 324 would equally apply to Article 320 when it comes to the question of power of the Public Service Commission. The question, therefore, to be considered is whether the U.P.P.S.C. has exercised its powers arbitrarily and whether adoption of scaling

A system was with ulterior motives to give undue preference to some candidates.

The U.P.P.S.C. in its Special Leave Petition as well as the rejoinder affidavit filed before us has stated in detail as to how the scaling system was applied and the circumstances which necessitated the adoption of such a formula. At the outset we must say that the scaling system, which was adopted by the U.P.P.S.C. was not similar to the scaling system adopted by the Union Public Service Commission. The system adopted by U.P.S.C. was challenged by certain candidates in a writ petition before the High Court of Gujarat. The Division Bench of the Gujarat High Court considered the question in detail in *Kamlesh Haribhai Goradia v. Union of India and Anr.*, (1987) 1 GLR 157 and held that the process of moderation was necessary to find out the merit of the candidates inter se and the marks cannot be awarded till such uniformity is achieved in the matter of assessment of the performance of the candidates at the examination. It, therefore, cannot be said that there is any deviation so that the Commission would not have any authority or power to moderate the valuation of the performance of the candidates at the written examination.

D In the instant case also, the challenge of the respondents was that the system of scaling was unreasonable and arbitrary and thus violative of Articles 14 and 16 of the Constitution.

E As already noticed, the Proviso to Rule 51 of the UPPSC (Regulation of Procedure and Conduct of Business) Amendment Act, 1976 gives power to the Commission to eliminate variation in the marks awarded to the candidates and to adopt any method, device or formula considered appropriate for that purpose. The system of scaling was intended to remove the disparity in evaluation. In the case of Judicial Service examination, more than four thousand candidates appeared. The answer papers were evaluated by 14 examiners. Some examiners were liberal in awarding marks whereas some others were strict in awarding marks. The details given along with the Special Leave Petition show the extent of difference in marks awarded by the examiners. Table 1 on page 47 in SLP(C) No. 3758 of 2002 shows as follows:

**Table-1**

Subject - Present day Maximum Marks - 150

Exam- iner no.	No. of Scripts Examined the examiner	Mean marks of	Standard deviation of the marks allotted	Minimum marks	Maximum marks	After Scaling Mean marks of the scaled score	After Scaling Standard Deviation of the scaled score
1	2	3	4	5	6	7	8
1	300	68.50	17.23	10	102	75.00	14.98
2	300	45.91	16.02	0	92	75.01	14.99
3	300	39.39	14.12	2	76	74.98	14.99
4	600	35.07	21.64	0	105	74.99	15.00
5	300	52.16	20.66	0	112	75.00	15.03
6	300	53.55	13.84	7	94	74.97	14.99
7	300	66.17	27.15	8	134	75.00	15.01
8	300	70.09	13.65	0	97	75.04	14.98
9	300	35.94	10.74	9	77	74.96	14.99
10	300	81.74	15.95	25	125	75.02	15.01
11	300	77.45	15.68	26	125	74.99	15.01
12	300	49.98	14.43	11	92	75.03	15.00
13	300	41.16	17.72	3	99	74.98	15.00
14	111	47.82	24.25	4	118	74.99	14.92

There is a vast percentage difference in awarding marks between each set of examiners and this was sought to be minimised by applying the scaling formula. If scaling method had not been used, only those candidates whose answer sheets were examined by liberal examiners alone would get selected and the candidates whose answer sheets were examined by strict examiners would be completely excluded, though the standard of their answers may be to some extent similar. The scaling system was adopted with a view to eliminate the inconsistency in the marking standards of the examiners. The counsel for the respondents could not demonstrate that the adoption of scaling system has in any way caused injustice to any meritorious candidate. If any

A candidate had secured higher marks in the written examination, even by applying the scaling formula, he would still be benefited.

The Division Bench of the High Court observed that the process of scaling was done examiner-wise only and the scaling formula did not take into consideration the average of Mean of all the candidates in one particular paper but took Mean of only that group of candidates which has been examined by one single examiner. The counsel for the U.P.P.S.C. submitted that the observation made by the High Court is incorrect. The scaling formula was adopted to remove the disparity in the evaluation of 14 examiners who participated in the evaluation of answer sheets and the details have also been furnished as to how the scaling formula was adopted and applied. Therefore, we do not think that the observation of the Division Bench that the Commission did not take care of varying standards which may have been applied by different examiners but has sought to reduce the variation of the marks awarded by the same examiner to different candidates whose answer sheets had been examined, is correct. The Division Bench was of the view that as a result of scaling, the marks of the candidates who had secured zero marks were enhanced to 18 and this was illegal and thus affected the selection process. This finding is to be understood to mean as to how the scaling system was applied. 18 marks were given notionally to a candidate who secured zero marks so as to indicate the variation in marks secured by the candidates and to fix the Mean marks.

In that view of the matter, we do not think that the application of scaling formula to the examinations in question was either arbitrary or illegal. The selection of the candidates was done in a better way. Moreover, this formula was adopted by the U.P.P.S.C. after an expert study and in such matters, the Court cannot sit in judgment and interfere with the same unless it is proved that it was an arbitrary and unreasonable exercise of power and the selection itself was done contrary to the rules. Ultimately, the agency conducting the examination has to consider as to which method should be preferred and adopted having regard to the myriad situations that may arise before them.

The U.P.P.S.C. has applied the scaling formula and prepared the merit list of various candidates for the three examinations, namely, the Provincial Civil Services (Executive Branch), Main Examination, 2001; Provincial Civil Services (Executive Branch) Preliminary Examination, 2002; and the U.P. Civil Judge (Jr. Division) Examination.

The Division Bench of the High Court was not justified in interfering with the merit list prepared by the Commission. Therefore, we set aside the judgment of the High Court and direct that the merit list prepared by the Commission shall prevail in the case of all the three examinations referred to above. The appeals are accordingly allowed. Parties to bear their own costs. A

N.J.

Appeals allowed. B